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 15 APRIL 2020

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

Peter Robinson
Executive Manager Development Assessment

northern beaches council

Panel Members

Peter Biscoe	Chair
Robert Hussey	Town Planner
Graham Brown	Town Planner
Lloyd Graham	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

northern beaches council

Agenda for a meeting of the Northern Beaches Local Planning Panel to be held on Wednesday 15 April 2020 Commencing at 1.00pm

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 1 APRIL 2020

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 1 April 2020 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	**MOD2019/0648 - 57 SMITH STREET, MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA0251/2017 GRANTED FOR ALTERATIONS AND ADDITIONS TO THE EXISTING SEMI-DETACHED DWELLING**
AUTHORISING MANAGER	**RODNEY PIGGOTT**
TRIM FILE REF	**2020/198828**
ATTACHMENTS	**1 Assessment Report** **2 Site Plan and Elevations**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2019/0648 for Modification of Development Consent DA0251/2017 granted for alterations and additions to the existing semi-detached dwelling at Lot 131 DP 603177, 57 Smith Street, Manly subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0648

Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 131 DP 603177, 57 Smith Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA0251/2017 granted for Alterations and additions to the existing semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Paul Rybicki Olivia Dix Rybicki
Applicant:	Paul Rybicki Olivia Dix Rybicki

Application Lodged:	18/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	16/01/2020 to 30/01/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 15.02%
Recommendation:	Approval

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of modification application MOD2019/0648 for Modification of Development Consent DA0251/2017 granted for alterations and additions to the existing semi-detached dwelling. The application seeks to modify a consent previously granted by the former Northern Beaches Independent Assessment Panel, so is referred to the equivalent Northern Beaches Local Planning Panel (NBLPP) for determination.

The proposed modifications result in a variation to the floor space ratio development standard of the Manly Local Environmental Plan 2013 (MLEP 2013) of 15.02%, though this is a reduction in the approved floor space ratio development standard non-compliance. The proposal also results in a minor

reduction in compliance with the side setback control of the Manly Development Control Plan 2013 (MDCP 2013). These non-compliant elements are supported on merit. The application did not receive any submissions.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify the development approved under DA0251/2017, as follows:

- Internal reconfiguration;
- Reduction of depth of first floor rear balcony;
- Alteration to roof form from gable to hip with eave overhang;
- Changes to windows;
- Amendment to privacy screening; and
- Changes to materials and finishes.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 131 DP 603177 , 57 Smith Street MANLY NSW 2095

Detailed Site Description:	The subject site consists of one allotment located on the western side of Smith Street, Manly. The site is irregular in shape with frontages of 8.815m to Smith Street, 34.46m to Alexander Street, and 5.88m to Collingwood Street. The site has a surveyed area of 231.9m². The site is located within the R1 General Residential zone and accommodates a single-storey semi-detached dwelling, sharing a common boundary with 55 Smith Street. The site is relatively level with no significant vegetation. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by one- and two-storey detached and semi-detached dwellings.

Map:

SITE HISTORY

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

- DA85/2013 for Alterations and additions to an existing dwelling including changes to windows, bi-fold doors, raise the height of the existing deck, planter boxes and front fence was approved on 12 July 2013 under staff delegation.
- DA85/2013 Part 2 for Section 96 to modify approved Alterations and additions to an existing dwelling including changes to the windows, bi-fold doors, raise the heights of the existing deck, planter boxes and front fence – involving modifications to convert front fence to a solid fence

was approved on 5 November 2014 by the former Development Assessment Unit.

- DA251/2017 for Alterations and additions to the existing semi-detached dwelling was approved on 4 April 2018 by the Northern Beaches Local Planning Panel.
- Mod2018/0703 for Modification of Development Consent DA251/2017 granted for Alterations and additions to the existing semi-detached dwelling was refused on 8 May 2019 bythe Northern Beaches Local Planning Panel.
- REV2019/0026 for Review of Determination of Modification Application MOD2018/0703 in relation to alterations and additions to a semi-detached dwelling (DA0251/2017) was refused on 2 October 2019 by the Northern Beaches Local Planning Panel.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA0251/2017, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	**Comments**
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA0251/2017, as the modifications are minor in nature, retain the use as a semi-detached dwelling, and do not result in any unreasonable impacts.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in	Development Application DA0251/2017 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2013 and Manly Development Control Plan 2013.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this

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

Section 4.15 'Matters for Consideration'	Comments
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
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral This application has been referred to Heritage as the site is located within the ***Pittwater Road Conservation Area***, listed in Schedule 5 of Manly Local Environmental Plan 2013. The site is also located in the vicinity of a number of listed heritage items, being: ***Item I77 - Street trees*** - Alexander Street (from Collingwood Street to Balgowlah Road) ***Item I78 - House*** - 30 Alexander Street ***Item I223 - Street trees*** - Smith Street (from Pine Street to Carlton Street and around the intersection with Alexander Street) Details of heritage items affected Details of the conservation area and heritage items as contained within the Manly Heritage inventory are: ***Pittwater Road Conservation Area*** This site is within a part of the Pittwater Road Conservation Area which is generally characterised by a consistent pattern of 1 and 2 storey residential cottages, some conjoined. Many single storey cottages have upper level additions,some appropriately recessive but some intrusive, being too close to the street. ***Item I77 - Street trees*** - *Alexander Street (from Collingwood Street*

Internal Referral Body	Comments
	to Balgowlah Road) Statement of Significance: Listed for the streets aesthetic importance (from Collingwood Street to Balgowlah Road) Physical Description: Mixed planting of Norfolk Island pines, Camphor Laurels, Brush Box and Bunya Bunya pine. Avenue planting. ***Item I78 - House*** *- 30 Alexander Street* Statement of Significance: No.30 Alexander Street, Manly is an excellent representative example of a Federation Bungalow of local significance to the Manly area. The residence is well built, retains high integrity and is substantially intact. The residence has a number of features typical of the Federation Bungalow that are still intact and in extremely good condition, including ornate Australian plaster ceilings and cornices, decorative Australiana windows (flannel flower) and Australiana lead light panels to front (primary entrance) door and marble main fireplace. The property represents the transition from farming and other occupations in the early years of northern Manly, through the horse transportation era before motor transport gained ascendency, and into a residential neighbourhood which remains today virtually as it appeared in the 1920s. No. 30 Alexander Street is the earliest house on the northern side of the street which has access right through to Rolfe Street. It is the only one built and used for dual purpose of good quality middle class accommodation and the office for a horse drawn cab business. The dwelling is one of the best preserved Federation bungalows in this important Federation period streetscape. The curtilage of the place contributes strongly to the setting of the place and includes the present day allotment boundaries and the streetscape (of single storey appearances; roof forms; simple front verandahs and front gardens; street trees; the lack of driveways, crossings, garages; and sympathetic front fencing). ***Item I223 - Street trees*** *- Smith Street (from Pine Street to Carlton Street and around the* *intersection with Alexander Street)* Statement of Significance: Aesthetic. Unique tree species used for street planting. Only one of its type within the Manly Municipality. Physical Description: Unique planting of Tuckeroo (Cupaniopsis Anacardioides) and

Internal Referral Body	Comments
	Avenue effect created with further planting of Brush Box (Lophostemon Confertus) c. 1920's

Other relevant heritage listings		
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No	
NSW State Heritage Register	No	
National Trust of Aust (NSW) Register	No	
RAIA Register of 20th Century Buildings of Significance	No	
Other	No	

Consideration of Application

The proposal seeks consent for modifications to an approved development application, which was approved by the Northern Beaches Local Planning Panel on 4 April 2018 (DA251/2017). A modification application (MOD2018/0703) to this approved DA was refused by the Northern Beaches Local Planning Panel on 8 May 2019. Following this refusal a review of determination application (REV2019/0026) was submitted, which was refused by Northern Beaches Local Planning Panel on 2 October 2019. The reasons for refusal of the review of determination application were:

1. *The proposed modifications will result in an adverse visual impact upon the heritage significance of the Pittwater Road Conservation Area, inconsistent with the objectives set out in clause 5.10 (a)&(b) (Heritage Conservation) of Manly Local Environmental Plan 2013, and clauses 3.2 (Heritage Considerations) and 5.2 (Pittwater Road Conservation Area) of Manly Development Control Plan 2013.*
2. *The proposed modifications will result in a development with an asymmetrical roofscape and dominating the existing building form and being highly visible from a number of viewpoints therefore impacting on the overall visual character of the Pittwater Road Conservation Area.*

The application has been reviewed, along with the plans and other documentation and assessed in relation to

Internal Referral Body	Comments
	relevant heritage provisions contained within the Manly LEP 2013 and Manly DCP 2013. The objectives of the Manly LEP 2013 clause 5.10 Heritage Conservation are as follows: • *(a) to conserve the environmental heritage of Manly,* • *(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,* In relation with the Clause 5.2 of the Manly DCP a new development *"should recognise the linear nature of the buildings in Pittwater Road for their contribution to the visual character of this street."* The objectives of Section 3.2 "Heritage Considerations" of Manly DCP 2013 are 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.* <u>Comment:</u> The application does not affect significant fabric at the front of the semi fronting Smith Street and it is believed that the form and shape of the proposed rear addition will have minimal impact upon the Pittwater Conservation Area. However, it is considered that the new window addition to the side wall of the original building is not acceptable as the size and shape of the proposed window opening is not complementary with the original window openings. *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.* <u>Comment:</u> It is considered that the design of the first floor addition will have a negligible impact upon the heritage significance of the Pittwater Road Conservation Area as part of a semi, the proposal responds to the design of the adjoining semi to maintain symmetry. *Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/or conservation areas, is of an*

Internal Referral Body	Comments
	appropriate form and design so as not to detract from the significance of those items. Comment: As noted above, the proposal will have a negligible impact upon the heritage significance of the Pittwater Road Conservation Area. *3.2.2 Alterations or additions to Heritage Items or Conservation Areas* *3.2.2.1. Complementary Form and Scale that Distinguishes Heritage Significance* *This section requires that alterations or additions to buildings within a conservation area do not replicate, overwhelm, dominate or challenge the heritage details or character of a building or area.* Comment: It is considered that the design of the proposed addition will not dominate the heritage details of the existing building but, the new window addition to the side wall of the original building is not acceptable as the size and shape of the proposed window opening is not complementary with the original window openings. *3.2.2.2 Retaining Significant Features and Landscape Setting* *This section requires that alterations or additions to buildings within a conservation area must retain original features and any new detailing should be complementary with the character of the item or place. Additions can be contemporary in style as long as the design is complementary with the character of the item.* Conclusions As stated above, it is believed that the proposal will have an acceptable impact upon the heritage significance of the Pittwater Conservation Area. A Heritage Impact Statement had not been submitted with the application and the Statement of Modification did not include the heritage considerations regarding the impact on the Pittwater Conservation Area, but given the considerate design approach towards the heritage, it is regarded not necessary in this instance. Therefore, no objections are raised on heritage grounds subject to imposition of a condition requiring deletion of the proposed new window to the existing ground floor bedroom or alternatively replacing this window with a window opening which complementary with the original window openings. Consider against the provisions of CL5.10 of MLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No
	Further Comments

Internal Referral Body	Comments
	COMPLETED BY: Oya Guner, Heritage Advisor DATE: 05 February 2020 Assessing Officer's Comment: A suitable condition has been applied in accordance with the comments above regarding the proposed modification of the northern window to the ground floor bedroom.

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. A296936_03 dated 13 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 has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

The site is subject is classified as coastal environment area under the *State Environmental Planning Policy (Coastal Management) 2018* ('the SEPP'). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

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

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

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

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

Comment:
The proposed modifications are minor in nature and are not anticipated to result in any additional impacts on the matters listed above. The approved development involved predominantly internal works at the ground floor and the addition of a first floor over the ground floor footprint. The current modification application is also predominantly internal, in turn resulting in a reduced (albeit a minor reduction) in floor space.

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

(a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*

(b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*

(c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:
The development as modified is designed, sited and will be managed to avoid adverse impact on the matters listed at subclause (1).

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 modifications are minor in nature as described above and are not anticipated to result in an increased risk of coastal hazard on the subject site or other land.

As such, it is considered that the application does/does not comply with the requirements of the SEPP.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.76m	7.6m	N/A	Yes
Floor Space Ratio	0.6:1 139.1sqm	0.694:1 161sqm	0.69:1 160sqm	15.02%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes

Clause	Compliance with Requirements
6.4 Stormwater management	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:
Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the EP&A Act, which is a free-standing provision that in itself authorises the development to be approved, notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a written request under Clause 4.6 in order to determine the modification application. Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Nevertheless, an assessment of the variation is as follows:

Development standard:	Floor Space Ratio
Requirement:	0.6:1 (139.1sqm)
Approved:	0.694:1 (161sqm)
Proposed:	0.69:1 (160sqm)
Percentage variation to requirement:	15.02%

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 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
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.
Comment:
As detailed, a written request is not required in this case.

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 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.

Comment:
As detailed, a written request is not required in this case.

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

Objectives of Development Standard
The underlying objectives of the standard, pursuant to Clause 4.4 Floor Space Ratio of the MLEP 2013 are addressed as follows:

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
Comment:
The proposed modifications retain a bulk and scale comparable to existing developments in the streetscape, which includes multiple properties with first floor additions on narrow lots. The modified first floor addition remains adequately set back from each property boundary, thereby retaining a suitable reduction of the visual impact of the development on the streetscape. It should be noted that, while minor, the proposal results in a reduction in floor space overall.

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 modified development is suitably designed and sited so as not to obscure any important landscape or townscape features. The development does not impact on any significant views or vistas to or from public or private places.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
Comment:
The proposed modifications maintain an appropriate visual relationship between the new portion of the dwelling and the existing character and landscape of the area. The first floor addition is set generally behind the ridge line of the existing roof when viewed from the primary street frontage (Smith Street), and is also adequately set back and articulated from the side boundary along Alexander and Collingwood Streets, in order to be more subservient to the existing ground floor. The proposed contemporary modifications are sympathetic to, but do not attempt to replicate the heritage style of the existing ground floor, in accordance with Clauses 3.2.1.1 and 3.2.2.1 of the MDCP 2013.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
Comment:
The proposed modifications are suitably designed so as not to unreasonably impact on the use or enjoyment of adjoining land and the public domain. This is reflected in that no public submissions were received in objection to this proposal.

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:
Not applicable. The subject site is zoned R1 General Residential

Zone Objectives
The underlying objectives of the R1 General Residential zone are addressed as follows:

To provide for the housing needs of the community.
Comment:
The proposed modifications retain the residential use of the site, while increasing the livability of the dwelling.

To provide for a variety of housing types and densities.
Comment:
The proposed modifications maintain the existing variety of housing types and densities in the locality.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.
Comment:
Not applicable. The proposed development retains the residential use of the site.

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.

6.4 Stormwater management

Under Clause 6.4, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:
(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and
(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and
(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.
Comment:
The proposed modifications do not alter the landscaped treatment of the site, and therefore do not alter approved levels of on-site infiltration, or runoff. The proposed modifications do not require on-site stormwater retention, in accordance with Council policy. As such, the consent authority can be satisfied

in relation to the matters above.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 231.9sqm	**Requirement**	**Approved**	**Proposed**	**Complies**
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: Min. 117sqm	161.9sqm	160sqm	Yes
4.1.2.1 Wall Height	North: 6.5m (based on flat site)	6.42m	6.4m	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.27m	1.3m	Yes
	Pitch: maximum 35 degrees	25 degrees	20 degrees	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North - Ground Floor: 1.29m	978mm	900m	No
	North - First Floor: 2.14m	890mm - 1.5m	Unchanged	As approved
	Windows: 3m	890mm - 1.5m	900mm - 1.5m	As approved
4.1.4.4 Rear Setbacks	8m	8.5m	Unchanged	As approved

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 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
3.7 Stormwater Management	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.7 First Floor and Roof Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.2 Pittwater Road Conservation Area	Yes	Yes

Detailed Assessment

4.1.3 Floor Space Ratio (FSR)

The proposed floor space ratio non-compliance is addressed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013.

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

The proposed development includes a minor decrease to the approved north side setback at the ground floor from 978mm to 900mm, where Clause 4.1.4.2 of the MDCP 2013 requires a setback of 1.29m (being one third of the ground floor wall height). The proposed development is acceptable in relation to the relevant objectives of this clause, as follows:

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.
Comment:
The proposed modifications provide setbacks consistent with comparable existing and recently approved developments in the locality. Further, the proposed modifications retain appropriate articulation and building materials to soften the visual impact of the new works. As such, the proposed modifications retain the existing spatial portions of the street, the street edge and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:
The proposed development is adequately designed so as not to result in any unreasonable impacts on solar access, privacy, maintenance of views, and streetscape character, for the reasons detailed throughout this report. The proposed development does not impact upon traffic conditions.

Objective 3) To promote flexibility in the siting of buildings.
Comment:
The proposed modifications retain adequately siting and design in order to provide an appropriate level of amenity (including visual privacy and solar access) to the subject site, as well as adjacent sites.

Objective 4) To enhance and maintain natural features by:

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

Comment:
The proposed modifications are contained wholly within the approved building footprint and do not impact further upon landscaping and vegetation beyond the approved development. The subject site does not contain urban bushland.

Objective 5) To assist in appropriate bush fire asset protection zones.
Comment:
The subject site is not located within a bush fire asset protection zone.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP

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

In summary, a detailed assessment has been required for the variation to the floor space ratio development standard, and the non-compliance with the side setback development control. These matters are 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 Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2019/0648 for Modification of Development Consent DA0251/2017 granted for Alterations and additions to the existing semi-detached dwelling on land at Lot 131 DP 603177,57 Smith Street, MANLY, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
A.01 Title Page Site Plan	5 December 2019	Du Plessis + Du Plessis Architects
A.04 Proposed Ground Floor Plan	5 December 2019	Du Plessis + Du Plessis Architects
A.05 Proposed First Floor Plan	5 December 2019	Du Plessis + Du Plessis Architects
A.06 Proposed Roof Plan	5 December 2019	Du Plessis + Du Plessis Architects
A.07 Proposed Section XX & YY	5 December 2019	Du Plessis + Du Plessis Architects
A.08 Semi Elevations	5 December 2019	Du Plessis + Du Plessis Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. A296963_03	13 December 2019	Du Plessis + Du Plessis Architects
Schedule of Colours and Finishes	December 2019	Du Plessis + Du Plessis Architects

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

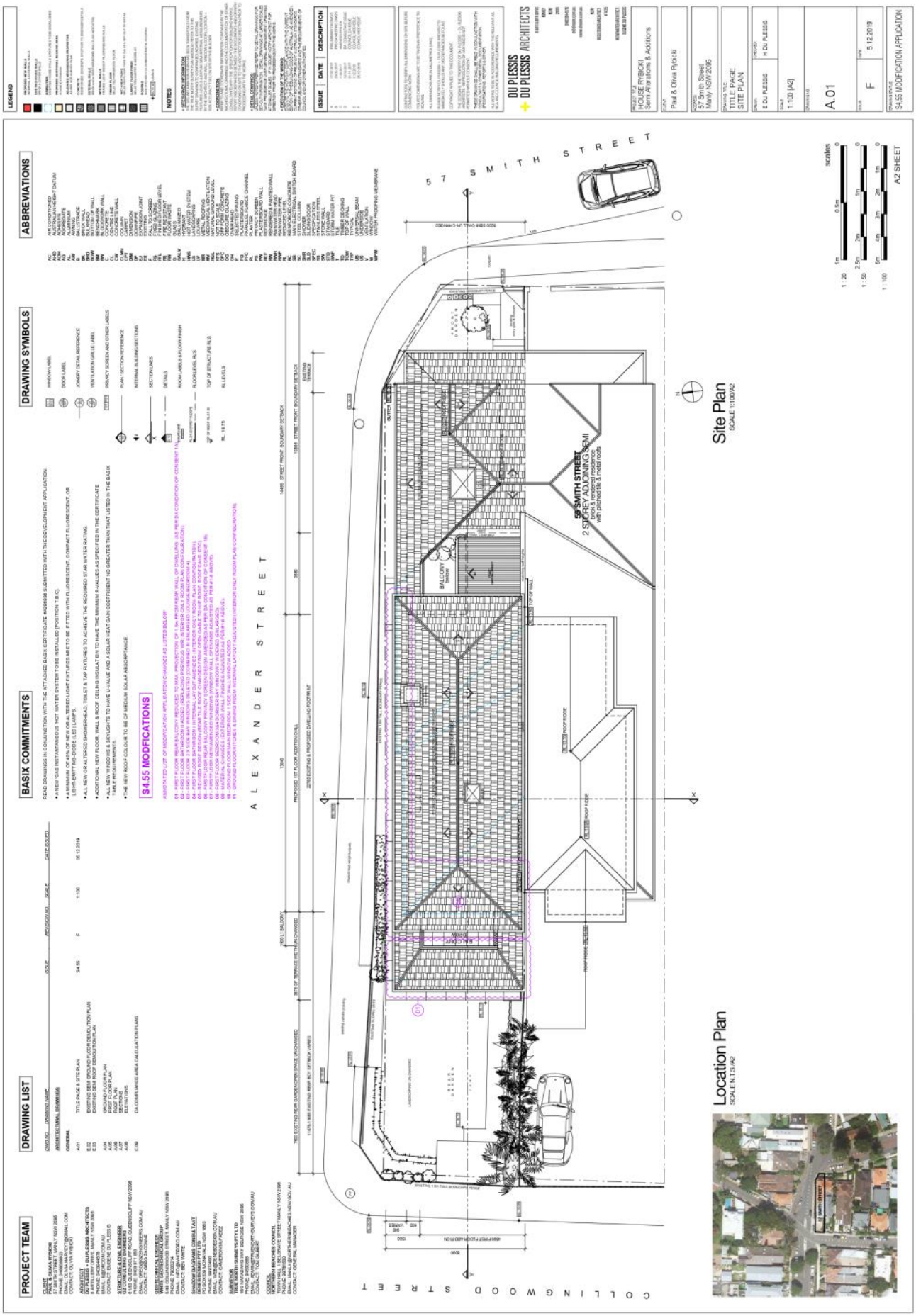
Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

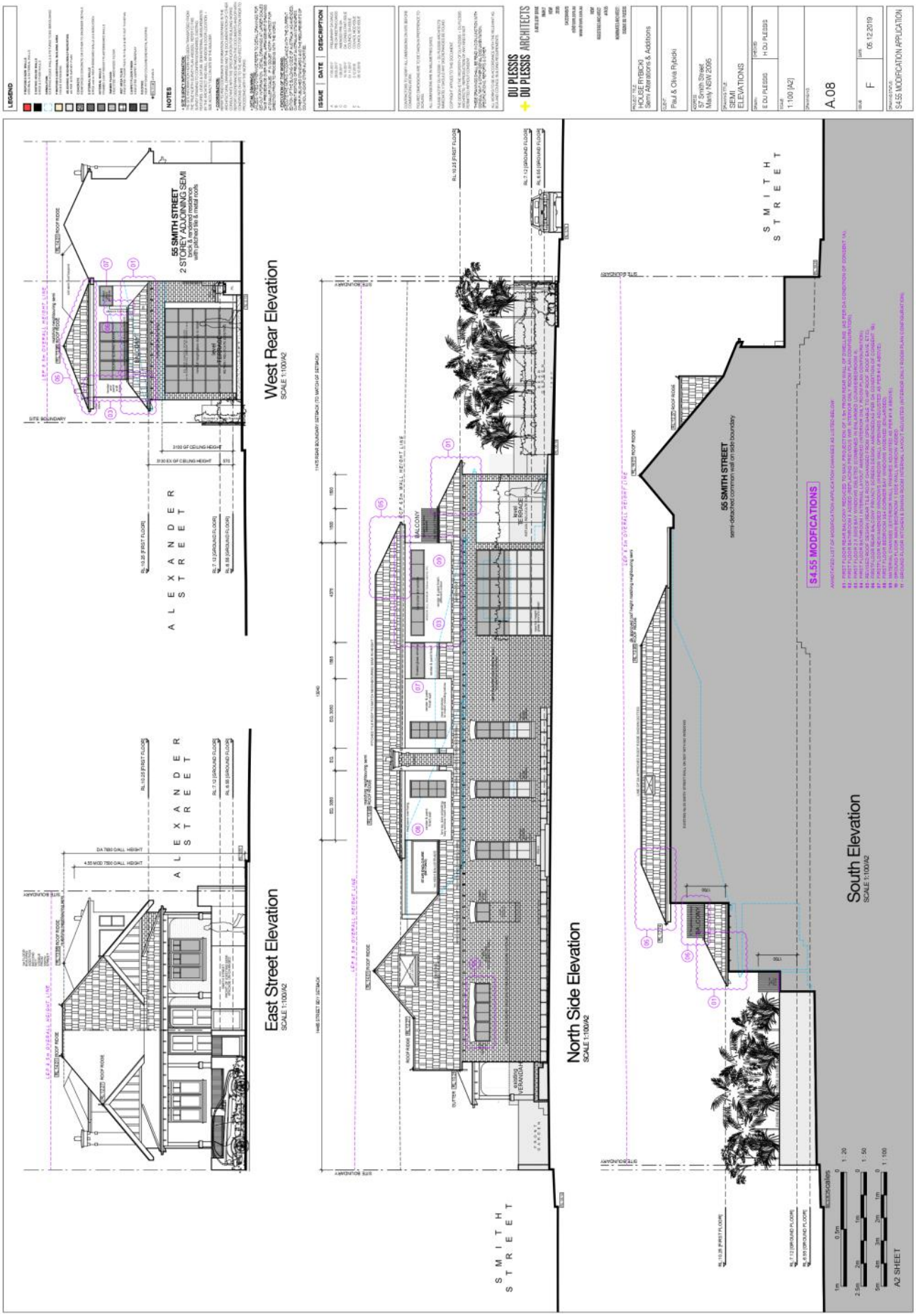
B. Add Condition No. ANS02A Northern Window to Ground Floor Bedroom to read as follows:

The proposed new window on the northern elevation of the ground floor bedroom is to be deleted or replaced with a window opening that is complementary with the original window openings on this

facade. Details demonstrating compliance with this condition are to be submitted to and approved by Council's Heritage Advisor prior to the issue of the Construction Certificate.

Reason:To preserve the heritage character and the significance of the Pittwater Road Conservation Area.


PROJECT TEAM
DRAWING LIST
BASIX COMMITMENTS
DRAWING SYMBOLS
ABBREVIATIONS
LEGEND
NOTES
ISSUE
DATE
DESCRIPTION
DU PLESSIS ARCHITECTS
HOUSE RYBICKI
Semi Alterations & Additions
Paul & Olivia Rybicki
57 Smith Street
Manly NSW 2095
TITLE PAGE
SITE PLAN
E Du Plessis
H Du Plessis
1:100 [A2]
A.01
F
5.12.2019
S4.55 MODIFICATION APPLICATION
S4.55 MODFICATIONS
ALEXANDER STREET
COLLINGWOOD STREET
57 SMITH STREET
57 SMITH STREET
2 STOREY ADJOINING SEMI
brick & rendered residence
with pitched tile & metal roofs
BALCONY
Site Plan
SCALE 1:100/A2
Location Plan
SCALE N.T.S /A2
scales
A2 SHEET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Semi Alterations & Additions
Paul & Olivia Rybicki
57 Smith Street
Manly NSW 2095
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S4.55 MODIFICATION APPLICATION
55 SMITH STREET
2 STOREY ADJOINING SEMI
with pitched tile & metal roofs
West Rear Elevation
SCALE 1:100/A2
ALEXANDER STREET
East Street Elevation
SCALE 1:100/A2
SMITH STREET
North Side Elevation
SCALE 1:100/A2
55 SMITH STREET
semi-detached common wall on side boundary
S4.55 MODFICATIONS
South Elevation
SCALE 1:100/A2
A2 SHEET

ITEM 3.2	**DA2019/0239 - 638 PITTWATER ROAD, BROOKVALE - DEMOLITION WORKS AND CONSTRUCTION OF A MIXED USE DEVELOPMENT**
AUTHORISING MANAGER	**RODNEY PIGGOTT**
TRIM FILE REF	**2020/199428**
ATTACHMENTS	**1 Assessment Report**
	2 Site Plan and Elevations
	3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives 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. DA2019/0239 for Demolition works and construction of a mixed use development at Lot 1 DP 1001963, 638 Pittwater Road, Brookvale subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0239

Responsible Officer:	Daniel Milliken
Land to be developed (Address):	Lot 1 DP 1001963, 638 Pittwater Road BROOKVALE NSW 2100
Proposed Development:	Demolition Works and construction of a mixed use development
Zoning:	Warringah LEP2011 - Land zoned B5 Business Development WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Marval Property Pty Ltd S & A Apartments Pty Ltd RNSAL Property Enterprises Pty Ltd
Applicant:	BBF Town Planners

Application Lodged:	08/03/2019
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Mixed
Notified:	20/03/2019 to 22/04/2019
Advertised:	23/03/2019
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 22.18%
Recommendation:	Approval

Estimated Cost of Works:	$ 16,546,098.00

Northern Beaches Council is in receipt of Development Application No. DA2019/0239 for a three storey shop top housing development with basement car parking located at No. 638 Pittwater Road, Brookvale.

The subject site is zoned B5 Business Development under the provisions of the Warringah Local Environmental Plan 2011 (WLEP 2011). The proposed development is prohibited within the zone but is permissible with consent as the site is within "Area 5" in Schedule 1 Additional Permitted Uses.

The site adjoins an industrial zone, fronts a busy transport corridor, has three street frontages and a long southern boundary. This results in unique constraints for the design, particularly in relation to solar access. To the north of the site is No. 640 Pittwater Road, which has no vehicle access other than Pittwater Road and if redeveloped, would need access through one of its two neighbouring sites, the subject site being the most suitable.

The design includes small breaches of the height limit along parts of the development and one large non-compliance to create an illuminated light disk on the corner of Pittwater Road and Orchard Road. This results in the development exceeding the 11m height limit by a maximum of 2.44m.

The proposal is therefore reliant upon a variation to the maximum building height development standard prescribed by clause 4.3 of WLEP 2011, with a maximum variation of 22.18%.

The applicant's written request to vary this standard satisfactorily addresses the matters required, and overall, the consent authority can be satisfied that the relevant matters of clause 4.6 of WLEP 2011 have been properly addressed and the variation to the development standard is acceptable and worthy of support.

Other issues discussed further within this report include, the removal of a significant tree, two apartments being 2sqm undersized, the lack of a phase 2 site assessment and the front setback to a portion of Orchard Road.

The proposed development is a suitable architectural response to the context of the site. The development, despite the breach of the height limit, will be compatible with the height, bulk and scale of surrounding built form. The resultant development will provide a suitable level of amenity for future occupants, will not result in any adverse impacts upon the character of the streetscape or the amenity of adjoining properties, and will be an upgrade for the site.

As such, the proposal has been found to be consistent with the principles of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65), the relevant objectives of the Apartment Design Guide, and the relevant provisions of the WLEP 2011 and Warringah Development Control Plan 2011 (WDCP 2011).

The public exhibition period generated no submissions and overall, there were no matters that would warrant the refusal of the application in the public's interest.

The application has been referred to the Northern Beaches Local Planning Panel for determination in accordance with the direction issued by the Minister for Planning on 23 February 2018, as the application seeks consent for a three-storey shop top housing development that is subject to the provisions of SEPP 65 and involves a variation to the building height development standard greater than 10%.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes:

1. The demolition of all existing structures on site and the removal of the large tree near the southern boundary.

2. The construction of a shop top housing development that includes:

- Three levels of basement parking (RLs 4.7, 7.9 and 11.1) with 164 parking spaces, motorcycle and bicycle parking, and residential storage space.
- Three ground floor (RL 15.1) retail/business tenancies with additional basement floor space for

the largest of the tenancies. Associated waste storage and service vehicle loading areas.
- The ground floor also contains the lower levels of eight SoHo style apartments.
- Two levels of residential apartments (RLs 20.1 and 20.2, and 23.15 and 23.25) containing 40 apartments in total.
- Awnings around the western, southern and eastern boundaries of the site.
- An illuminated light disk is proposed on the roof on the corner of Pittwater Road and Orchard Road.

3. Vehicular access is via Charlton Lane for residential, retail and business parking, and via Orchard Road for loading and services.

4. Communal open space is located on the podium level.

5. Associated landscaping works.

6. Provision has been made within the top basement level for access to No. 640 Pittwater Road, to the north west of the site, which does not have access other than from Pittwater Road.

7. No signage or uses for the tenancies are proposed under this application.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 2.5 Additional permitted uses for particular land
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation

SITE DESCRIPTION

Property Description:	Lot 1 DP 1001963 , 638 Pittwater Road BROOKVALE NSW 2100
Detailed Site Description:	The site is located on the eastern side of Pittwater Road, the northern side of Orchard Street and the western side of Charlton Lane. The site is "L" shaped and has an area of 2662sqm. The site has boundaries of 16.21m with Pittwater Road, 7.365m with the corner, 90.61m with Orchard Road, 40.235m with Charlton Lane, 39.655m with No. 642 Pittwater Road, and 21.925m and 39.85m with No. 640 Pittwater Road. Existing on the site is a two storey building. The front portion is currently used for retail purposes and the rear as a loading dock. There is one large tree, located on the southern boundary near the rear of the site. There is a line of trees to the east of the site as well as some on the corner of Pittwater Road and Orchard Road. The surrounding development consists of industrial properties to the east and north, commercial properties to the west and the Brookvale bus depot to the south. Warringah Mall is located a few hundred metres to the south west.

Map:

SITE HISTORY

The site was the subject of a Planning Proposal in 2012 that added the site to "Area 5" on the additional permitted uses map. This states:

5 Use of certain land in the vicinity of Pittwater Road and Roger Street, Brookvale
(1) This clause applies to land in the vicinity of Pittwater Road and Roger Street, Brookvale, shown as "Area 5" on the Additional Permitted Uses Map.
(2) Development for the following purposes is permitted with consent—
(a) office premises,
(b) retail premises,
(c) shop top housing.
(3) Consent must not be granted under this clause to development for the purposes of shop top housing unless the consent authority is satisfied that the development will not have a significant adverse impact on any adjoining land in Zone IN1 General Industrial.

PLM2018/0051
A pre-lodgement meeting was held to discuss the current proposal. Relevant comments included:

"*The proposal exhibits a significant departure from the existing Height of Buildings Development Standard which cannot be supported via a variation under Clause 4.6 of the WLEP.*

Furthermore, it is considered that the amalgamation of the site with the neighbouring site to the north (640 Pittwater Road) will provide a more comprehensive and consistent outcome. Should this option be considered, you are recommended to attend another pre-lodgement meeting to discuss the design, planning and technical outcomes of such a scheme."

DA2018/1912
This development application was rejected by 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	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This

Section 4.15 Matters for Consideration'	Comments
	documentation has been submitted. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to concerns raised by Council. Amended plans were submitted that lowered the height of the development and made other minor changes. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This 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 Warringah Development Control Plan section in this report. **(ii) Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. **(iii) Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received 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** The proposal is for mixed development including residential units. This site and surrounding sites are light industrial where zoning is to allow activities that would likely create noise, in some cases 24/7, and not impact on a residential receiver. There are no buffer zones. The significant neighbouring bus depot operates 24/7. If residential premises are permitted to be introduced without noise consideration, then placing noise limits on future use of surrounding sites may not be possible and would be considered unreasonable, following introducing residential use immediately adjacent. . As stated in the submission: “An acoustic assessment has been undertaken for the Development Application by Wilkinson Murray Pty for the proposed mixed use development at 638 Pittwater Road, Brookvale. The following findings have been determined by this assessment: • Site-specific noise emission criteria have been established for surrounding receivers. It is noted that mechanical services and plant have not been selected; however, it is envisaged that compliance with criteria can be achieved. Whilst unlikely to be needed, standard engineering noise controls can be implemented at design stage to meet established noise criteria if required. • Traffic associated the development will not adversely impact on the

Internal Referral Body	Comments
	acoustic amenity of surrounding residences. • Apartments facing Pittwater Road will require improved glazing to ensure that the acoustic amenity of future residences is protected. Preliminary recommendations provide options for glazing. • Improved glazing is recommended for apartments facing Charlton Lane to control noise emissions from the light industrial area. • No special glazing is required on all other apartments. • Internal noise isolation requirements in accordance with the NCC will be achieved by adopting appropriate constructions." Environmental Health believe despite the comments above that acoustic treatments should be provided to all external residential habitable rooms due to future, reasonably anticipated, light industrial noise and lack of buffer zones (otherwise refusal is recommended). Additionally windows may need to be closed at night, in particular to reduce noise for sleeping. Therefore, provision of air conditioning and adequate ventilation to residential apartments should also be required. On this basis then the proposal can be positively reviewed. **Recommendation** APPROVAL - subject to conditions
Landscape Officer	The Landscape Plan and Arborist's Report submitted with the application are noted. The Arborist's Report indicates that the majority of trees along the rear of the site are to be retained, which is supported. It is noted that a mature *Cinnamomum camphora* (Camphor Laurel Tree) on the north eastern corner of the site is to be one of the trees removed. *C. camphora* is an exempt species under WDCP Clause E1, whereby Council approval to remove the tree is not required. As such, no objections to removal are raised. The Arborist's Report identifies a mature *Eucalyptus microcorys* (Tallowood tree) located inside the site, near the southern boundary. The tree is described in the Arborist's Report as being 22m high, 18m canopy spread, of Good health and vigour, of High Retention/Significance value and with a Typical Form/Habit. The Arborist's Report further advises under Comments: Remove & Replace: Tree is too close to line of excavation for underground parking. The conclusion therefore is that the tree is required to be removed due to the design of the development rather than due to any health or structural defects of the tree. Brookvale is noted as an area deficient in tree cover. Recently released data from the Office of Environment and Heritage on urban heat and tree canopy data indicates Brookvale to contain less than

Internal Referral Body	Comments
	10% tree canopy cover and receives a Vulnerability Score of 5 - Most Vulnerable in the Heat Vulnerability Index 2016. As such, it is considered that the tree should be retained and the development designed around the tree to enable retention with the inherent benefits such a tree brings to the site and the local environment. At this stage, the proposal is not supported with regard to landscape issues. **Planners comment** This site is within a B5 Business Development zone that allows nil or minimal setbacks, with the intention of developing all or the vast majority of the site to activate the streetscape, and create employment and homes along a busy transport corridor. It is noted that Council's Landscape Officer recommends the retention of the large tree on the southern boundary, towards the western side of the site. The retention of this tree would render a large portion of the site undevelopable including putting limitations on the basement and space available for access cores and vehicle movement through the three levels. In this regard, it is not considered viable to retain this tree on this site. The retention of the trees on the western side of the site (within the road reserve) will be ensured through conditions and will help to protect the urban forest of the Northern Beaches. In addition, the proposed landscape plan will add planting on the structure.
NECC (Development Engineering)	Reference is made to Development Engineering Referral Response 1 dated 15/4/19 and Response 2 dated 14/11/19 and the additional information provided by the Applicant. Note to Planner: Please ensure appropriate arrangements have been made for future vehicular access to the adjoining property 640 Pittwater Road. This may require the creation of a Right Of Way where one does not currently exist. Please consider this in your assessment and apply any appropriate condition. No objections are raised to the proposed development, subject to conditions.
NECC (Water Management)	This application was assessed under Warringah DCP 2011 C4 – Stormwater Warringah DCP 2011 C5 – Erosion and Sedimentation Warringah Council PL 850 Water Management Policy

Internal Referral Body	Comments
	Stormwater The applicant has included adequate stormwater quality treatment for the site. An operation and maintenance plan must be provided and attached to the positive covenant. Conditions apply. **Sediment** An appropriate soil and water management plan has been provided. Sediment and erosion controls must be established before any demolition on the site and maintained until all work is complete. **Groundwater** The site is located over the coastal sands aquifer "Manly Coastal Sands", which is located in an area of moderately high vulnerability, being a significant source of water to both Curl Curl and Manly Lagoon catchments. General Terms of Approval have been provided by Water NSW, and these must be complied with. A dewatering permit must be obtained from Northern Beaches Council prior to any dewatering of groundwater from the site, as this must be included with the application to Water NSW. The application must include a dewatering management plan that addresses flow rates and water quality monitoring and treatment. Water discharges are only to the stormwater system and must be managed in a way that does not overwhelm the capacity of the local stormwater system. Conditions apply. Ongoing discharges from this development are not permitted. The basement must be tanked as designed.
Strategic and Place Planning	The proposal is considered acceptable in terms of Council's Strategic Planning, subject to suitable conditions to resolve matters related to SOHO units (no residential use at ground level), provision for possible future additional floors and a driveway connection to adjoining land at 640 Pittwater Road, and adequate acoustic and landscape treatment of apartments adjoining IN1 land to reduce conflict. **Draft Brookvale Structure Plan** On 8 August 2017, Council endorsed the Draft Brookvale Structure Plan for public exhibition. The Draft Plan was exhibited for 6 weeks until 20 November 2017. The Draft Brookvale Structure Plan Map designates the subject site as Town Centre (Mixed Use) and indicates a Proposed Vehicle Connection along the site's eastern boundary to Charlton Lane. Orchard Road is also designated as a Green Street. The strategic intent for the Town Centre, expressed in the Draft Brookvale Structure Plan, is focused on revitalisation, activation, providing for employment growth and encouraging residential development in mixed use arrangements to assist viable commercial

Internal Referral Body	Comments
	redevelopment and provide housing choice and affordability. The Draft Brookvale Structure Plan recommends the following changes to the zoning, land use and development controls for the Town Centre (Mixed Use) area which includes the subject site: • rezoning from B5 Business Development to B4 Mixed Use, with a requirement for ground floor and first floor retail/business/office uses, and the option for residential uses (shop top housing) above first floor level • increasing the maximum building height from 11m (3 storeys) to 21m (6 storeys) Character and built form recommendations include: • active street frontages and enhanced pedestrian environment • two-storey podiums with setbacks above podium Submissions on the Draft Brookvale Structure Plan were made on behalf of the owners of the subject site. The submissions sought an increase in building heights to 8 storeys (27m). Reference was made to the site's size, prominent corner location and proximity to the B-line and Warringah Mall, making it suitable for more intensive, landmark development and a potential catalyst to the redevelopment of the town centre and the provision of housing choice and affordability. In response to over 100 submissions received on the Draft Brookvale Structure Plan, Council has engaged consultants to undertake a traffic and transport study for Brookvale-Dee Why. At the same time, LGA-wide housing and employment studies have commenced as part of the LEP review. These studies will assist in ensuring all options are considered for the future growth and development of Brookvale as a vital Strategic Centre for the region. Once the transport, housing and employment studies are complete, the Draft Brookvale Structure Plan will be revised and finalised for implementation through subsequent LEP and DCP amendments. The proposed development in a general sense does not preclude the strategic land use intent expressed in the Draft Brookvale Structure Plan. The site is a good location for residential and employment growth, particularly in terms of accessibility to public transport, provided impacts can be managed effectively at the interface with the IN1 General Industrial zone. Matters which require further consideration are outlined below. *Future Expansion* The proposed development at 3 storeys is potentially an under-utilisation of the site compared with the potential building height which

Internal Referral Body	Comments
	may ultimately be envisaged by the Brookvale Structure Plan. Although the Draft Brookvale Structure Plan recommends 6 storeys for the site, further studies are underway which may result in revisions to the final recommendations on building height and scale. The design of the proposed development incorporates provision for additional storeys, a future basement driveway connection to adjoining land at 640 Pittwater Road, and a basement commercial tenancy, which could be converted to future parking for additional floors and/or redevelopment of 640 Pittwater Road. It appears from the evidence submitted that the applicant has made a reasonable effort, albeit unsuccessful, to purchase the adjoining site at 640 Pittwater Rd for amalgamation with the subject site. The basement driveway connection to 640 Pittwater Rd is shown on drawing A04. Conditions of consent can secure this connection, along with the ability to convert the basement commercial area to future parking and an appropriate certification to ensure the structural design of the building can accommodate at least 2 additional floors in the future. Pre-lodgement advice suggested the applicant provide a concept plan for redevelopment of 640 Pittwater Road. Such a plan could illustrate how future development on 640 Pittwater Road could in concept integrate with the proposed development, and satisfy Council's concerns about potential sterilisation of that land, and the ability to achieve vehicular access and SEPP 65 Apartment Design Guide compliance. *First Floor Residential* Although the Draft Brookvale Structure Plan recommends mandatory retail/commercial uses on ground and first floor levels, the proposed residential apartments at first floor level are permissible under the site's current zoning and therefore cannot be reasonably opposed. Likewise, although the Draft Brookvale Structure Plan recommends mandatory setback of buildings levels above two storey podiums, the existing DCP controls do not require this. *Ground Level Commercial and SOHO Units* Suitable conditions will need to be imposed to ensure that the ground level commercial and SOHO unit spaces will not be used for residential purposes. With the possibility of the ground level SOHO units being rented out for commercial uses, separate to the residential uses above, consideration may need to be given to provision for amenities for commercial tenants. Appropriate allocation of parking spaces to each unit will also need to be considered. *Basement Commercial* An email from BBF Planners following the pre-lodgement meeting makes reference to self-storage units being considered for the

Internal Referral Body	Comments
	basement and ground floor commercial space of the development. Self-storage units are permissible under the site's B5 zoning. Self-storage units would be prohibited if the site were rezoned to B4 Mixed Use as recommended by the Draft Brookvale Structure Plan. A key reason for excluding self-storage units from a Mixed Use zone, with the potential for shop-top housing, is the need avoid potential conflicts between uses, particularly with regards to residential amenity and impacts associated with more intensive and potentially noisy or hazardous uses. These issues will need to be considered at such time that a development application/s is received for use of the basement and ground floor commercial spaces. If an application is received in the future for self-storage units, it may be pertinent to impose conditions designed to reduce potential conflict such as restrictions on storage materials and hours of operation. Fire risk may also be a consideration as it is difficult to control the materials stored in self-storage facilities. *Industrial Interface* Clause 5(3) of Schedule 1 of the Warringah LEP states: "*Consent must not be granted under this clause to development for the purposes of shop top housing unless the consent authority is satisfied that the development will not have a significant adverse impact on any adjoining land in Zone IN1 General Industrial.*" Whilst the 6m building setback, retention of mature trees and landscaping to Charlton Avenue will assist with reducing noise and visual impacts, suitable conditions may be necessary to require acoustic treatment to the apartments adjoining the IN1 zone to ensure an adequate standard of residential amenity. Plans Master Set – Omission of A07 It is noted that drawing A07 Second Floor Plan appears to be missing from the Master Set (drawing A06 First Floor Plan is included twice). Conclusion These comments are provided in relation to the strategic planning framework for Brookvale. They do not indicate any assessment of the application against relevant planning controls. Strategic Planning considers the proposal to be acceptable, subject to suitable conditions to resolve matters related to SOHO units (no residential use at ground level), provision for possible future additional floors and a driveway connection to adjoining land at 640 Pittwater Road, and adequate acoustic and landscape treatment of apartments adjoining IN1 land to reduce conflict.
Strategic and Place Planning (Urban Design)	**Urban Design Comments - December 2019:**

Internal Referral Body	Comments
	The amended proposal has addressed the issues from the previous Urban Design Comments satisfactorily. **Urban Design Comments - October 2019:** The proposal cannot be supported for the following reasons: 1. "Illuminated light disk" roof feature should be integrated with the building design. More detailed information should be provided: a. Proposed lighting design system/ concept design to illuminate the disk – types of colour lights, colour changes, frequency, etc. Will the disk be the only element illuminated on the overall building facade? Is there a time schedule for the disk to be lit up? b. Construction material of the disk to compliment the rest of the building material finishes. c. Service elements are integrated into the design for maintenance purposes. 2. There should be a knock-down wall panel located next to the service vehicle bay area to provide for possible future service entrance to the next door landlocked neighbour at 640 Pittwater Road. This is in addition to the basement level one knock-down panel to access future basement of the neighbouring site. 3. The proposed awnings to the street frontages should be dimensioned on the drawings. Where street trees are required, the street awning should be set back from the kerb along its entire length by not less than 1.5m to accommodate the trees. The minimum width of awning should be 2m. 4. To prevent visual and acoustic privacy issues in the small light well proposed, obscure glass block wall should be nominated for one side of the windows facing the light well at unit 13/14, 15/16, 19/20, 33/34, 35/36 and 39/40. 5. The development should be designed around the existing 'Tallowood' tree to enable retention with the inherent benefits such a tree brings to the site and the local environment as per landscape officer comment. **Urban Design Comments - April 2019:** The proposal cannot be supported for the following reasons: 1. The building height control of 11m has been breached by 0.7 to 3m. The additional building height and bulk will set an undesirable precedent for future development around the area. The site is located at a corner location and can justify a corner building element of exceeding the 11m height control by 1.1m at most. The "light disk" roof feature needs more clarification. 2. The 4.75m floor to ceiling height on the ground floor is

Internal Referral Body	Comments
	excessive. Apartment Design Guide (ADG) recommends 3.3m minimum for shops/ commercial area. ADG recommends 3.1m floor to floor for residential area. Reducing the floor to ceiling height on the ground floor will help to reduce the overall building height breach. 3. The Right-of-Way to benefit the next door landlocked neighbour (640 Pittwater Road) to the north needs to be a 6m wide minimum corridor all the way from Orchard Road to the common boundary on the ground floor to cater for service vehicle access and egress. This is in addition to the basement level one knock-down panel to access future basement of the neighbouring site. 4. The basement commercial area for future car parking addition to cater for future Brookvale Structure Plan up-zone is unusual. It could be used as storage area for the commercial and residential units, which would make it more acceptable as an underground space. 5. The acoustic impact for the new apartments will need to be justified with acoustic treatments to make it acceptable as a residential building located next to an industrial area. 6. Facade treatment can be further improved to contribute greater visual interest of the building and the character of the local area through a balanced composition of building elements, textures, materials and colour selections. 7. A light well could be created from the communal area courtyard to get sunlight to Soho units 2, 4 & 6. 8. Street trees are required so the street awning should be set back from the kerb along its entire length by not less than 1.5m to accommodate the trees. The minimum width of awning should be 2m. 9. The second floor plan (Drawing no. A07) is missing.
Traffic Engineer	The Development proposes a total of 40 residential units and 2,124sqm of commercial office space. The site will provide: - 157 car parking spaces - 60 bicycle parking - 8 motorbike spaces - 2 service bays **Traffic:** The assumptions regarding the traffic generation are deemed adequate. The generation of 42 vehicles in the peak AM and 32 in the peak PM periods is deemed negligible on the network. However due to the narrow nature of Charlton Lane, it is advised that either parking be removed along the full length of the road, or a one-way system be introduced. Any changes the road arrangements in this manner will require

Internal Referral Body	Comments
	approval of the Local Traffic Committee. The applicant will be conditioned to provide plans demonstrating both outcomes. This will require SIDRA assessment of both scenarios to be undertaken. As such, the applicant will be required to provide the SIDRA data prior to any Occupation Certificate. **Parking:** The parking rates adopted as part of the applicant's report are deemed accurate. However, the layout of the parking does not appear to comply with AS2890. Aisle widths at critical locations seem to be more narrow. With the plans not being detailed, further information would be required. However, due to the surplus of parking being proposed, it is envisaged that spaces can be relocate, altered and removed to make the space compliant. This will be conditioned, provided the applicant does not reduce numbers below the minimum required being 106 spaces. **Pedestrian:** Appropriate safety measures around the lift areas will be required. This should include bollards due to the exposed nature of the lift access to protect pedestrians. This will be conditioned. **Servicing:** A loading bay management plan will be required/conditioned to ensure the appropriate use of the loading bay by the identified truck sizes only. The restrictions will need to be included in the site Operational Management Plan.
Waste Officer	Bin room dimensions and access acceptable to Council. Bulky goods storage room acceptable to Council.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Ausgrid raised no objections to approval subject to condition. These conditions have been included in the recommendation of this report.
NSW Roads and Maritime Services (Traffic Generating Development)	TfNSW reviewed the application, raised no objection to approval and provided the following comments: 1. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004, AS2890.6-2009 and AS 2890.2 – 2002 for heavy vehicle usage. Parking Restrictions may be required to maintain the required sight distances at the driveway. 2. All vehicles are to enter and leave the site in a forward direction. 3. The proposed development will generate additional pedestrian movements in the area. Pedestrian safety is to be considered in the vicinity.

External Referral Body	Comments
	TfNSW requested a number of conditions to be incorporated into any consent.
Nominated Integrated Development – Water NSW (Permit for Temporary Construction Dewatering)	Water NSW responded on 15 April 2019, commenting: "*Water NSW has determined that the proposed development is likely to encounter groundwater during the excavation process, and is subject to a Water Supply Work Approval under the Water Management Act 2000 for dewatering during the construction phase. This determination is subject to appropriate construction methods to be employed to minimise volume of groundwater take during the construction phase. Water NSW provides General Terms of Approval attached.* *On the basis of limited information available, Water NSW considers that the take of water may be required during construction. A water supply work approval under S92 of the water Management Act 2000, and, subject to exemptions, a water access licence may be required to account for the water take*." The GTAs will form part of the consent.

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.

In response to the above requirements of the SEPP, the applicant has submitted a Phase 1 Environmental Site Investigation dated May 2010, prepared by Environmental Strategies. It is noted that the report is from 2010. However, as the site has not changed in the interim (i.e. no building works or new uses that may cause contamination) and the legislation has not been altered since before 2010, the age of the report is acceptable in this instance.

In its conclusion, the investigation states:

"Based on the results of the Stage 1 Environmental Site Assessment, it is understood the site has been used for a range of commercial/light industrial purposes since 1902.

It is anticipated that the site is underlain by up to 1m of fill, overlying natural sands. Groundwater was recorded to occur at 2m below grade within 800m of the site.

No significant contaminating activities were observed in the area surrounding the site.

A Phase 2 Environmental Site Assessment is recommended based on the results of this Phase 1 ESA to assess the quality of the fill on the site and to determine whether previous site use has impacted the soil and groundwater beneath the site.

If the proposed development of the site requires soil to be excavated and removed, ES advises that this material will be required to be classified in accordance with the DECCW (2009) Waste Classification Guidelines prior to disposal off-site. The material is required to be disposed to an appropriately licensed landfill. Similarly, if material is to be imported on to the site it will require a certificate showing it's suitability as clean fill supported by a laboratory analytical report."

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, Clauses 7(1)(b) and 7(1)(c) of the SEPP must be considered.

Clause 7(1)(b) stipulates that "*if the land is contaminated, it* [Council] *is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out*".

Given the claimed potential of contamination on the site as noted in the Phase 1 Investigation, a Phase 2 Environmental Site Assessment must be done for the site to confirm whether contamination is actually present, at what levels and at what locations.

No Phase 2 Environmental Site Assessment has been provided at DA stage, however, it is difficult to conduct one due to the presence of the buildings.

It is critical that a Phase 2 be done prior to construction but it does not need to be done prior to demolition. As such, it is recommended that a condition be imposed requiring a Phase 2 to be done and provided to Council for approval, after demolition but prior to the start of any excavation or construction. If that report recommends any remediation work, this must also be done prior to any excavation or construction.

Clause 7(1)(c) stipulates that "*if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose*".

The extent of any potential remediation of the site is uncertain due to the lack of a Phase 2 Environmental Site Assessment. Therefore, before any remediation of the site could be recommended and undertaken, a Phase 2 Environmental Site Assessment would be required in accordance with the SEPP and the Contaminated Lands Management Act 1997 to confirm the presence of contamination, what any such contamination may actually consist of and the precise locations and depths of any contamination. This will be addressed via a condition of consent and, as such, the development can be supported.

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment

Development (SEPP 65) stipulates that:

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

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

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

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

As previously outlined, the proposed development is for the erection of a three storey shop top housing development plus basement car parking for the provisions of 40 self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

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

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.
Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:

The site sits within a B5 Business Development zone. Residential accommodation (and by extension shop top housing) is prohibited in this zone. However, the site sits within "Area 5" under Schedule 1 Additional permitted uses of WLEP2011. This area allows shop top housing with the aim of increasing the number of homes along this busy transport corridor.

While there are no large shop top housing developments on any adjoining or nearby sites (the closest are approximately 100m away in Roger Street), shop top housing is envisaged for this site and will help to set the future context and neighbourhood character for the area.

As a result, the development meets this principle.

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 bulk and height of the proposal have been assessed in detail below in this report. Both are considered acceptable.

The development will help set the desired future character of the area, is of a suitable scale for the site and the current controls. The design displays sufficient articulation and manipulation of building elements to suit the site and the broader industrial/commercial nature of Brookvale. The development will activate the public domain, will improve the streetscape and will be an upgrade to the site.

As a result, the development meets this principle.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.
Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:

The floor plans, and the use of the north facing courtyard and communal area, have allowed every apartment to receive some direct sunlight. This is despite the site having a long southern boundary. This design will allow a high level of amenity for most apartments. No apartments will be left with inadequate amenity.

The site is located along a busy transport corridor and close to numerous shops and services, including employment lands. Overall, the density of the proposal is suitable.

As a result, the development meets this principle.

Principle 4: Sustainability

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

Comment:

98% of the apartments are naturally cross ventilated and all receive some direct sunlight. A waste management plan was submitted with the application and suitable conditions will be imposed to ensure the development will generally comply with this plan. The proposal was also submitted with a Building Sustainability Assessor Certificate, the specifications of which are shown on the plans.

As a result, the development meets this principle.

Principle 5: Landscape

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

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

Comment:

The development does not require any deep soil areas, however, the 6.0m setback to the eastern boundary, containing existing trees, will remain and will continue to enhance the site. The planting on the structure, within the communal area and courtyard is suitable for the building and its location.

As a result, the development meets this principle.

Principle 6: Amenity

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

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

Comment:

The apartment layouts are sensible and have suitable dimensions. The use of the north facing courtyard and communal area have allowed every apartment to receive some direct sunlight. This is despite the site having a long southern boundary. This design will allow a high level of amenity for most apartments.

No apartments will be left with inadequate amenity.

The site is located along a busy transport corridor and close to numerous shops and services, including employment lands. Overall, the density of the proposal is suitable.

As a result, the development meets this principle.

Principle 7: Safety

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

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

Comment:

The development will activate the streetscape with the provision of the new retail tenancies. In addition, the new apartments will allow casual surveillance of the public domain.

The entrances to the building will be secure and the vehicle entries are suitably located and will allow secure residential parking and accessible visitor/customer spaces.

As a result, the development meets this principle.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

The proposal includes a mix of studio, and one, two and three bedroom apartments. This will provide a variety of accommodation types and choices for different demographics, living needs and household budgets.

The development includes a north facing communal space accessible to all residents.

As a result, the development meets this principle.

Principle 9: Aesthetics

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

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

Comment:

Brookvale is a mainly industrial area with older style low rise commercial buildings fronting Pittwater Road. The visual appearance of the development will fit within this context and help shape the desired future character.

Articulation along the facades and a mix of colours and materials have been provided. The illuminated light disk will add an additional feature to the building that will increase the visual interest.

Overall, the design of the building is compatible with the context in which it sits and will be an upgrade to the site.

As a result, the development meets this principle.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Yes, the proposal is one of the first large shop top housing developments in the area and will help to set the desired future context.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Yes, the development is orientated with the site, which unfortunately has a long southern boundary, meaning access to sunlight is an issue, however, the design has dealt with this by providing courtyards to allow sunlight to penetrate into most apartments.
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?	Yes, the activation of the streetscape along all three street frontages.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows:	Yes, communal open space has been provided

<table>
<tr><td></td><td>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)</td><td>on the podium level with good access to sunlight from the north and north west.</td></tr>
<tr><td>Deep Soil Zones</td><td>Deep soil zones are to meet the following minimum requirements:
<table>
<tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr>
<tr><td>Less than 650m^2</td><td>-</td><td rowspan="4">7%</td></tr>
<tr><td>650m^2 – 1,500m^2</td><td>3m</td></tr>
<tr><td>Greater than 1,500m^2</td><td>6m</td></tr>
<tr><td>Greater than 1,500m^2 with significant existing tree cover</td><td>6m</td></tr>
</table></td><td>No, while the controls for the site do not envisage any landscaping, a deep soil zone is provided along the Charlton Lane 6.0m setback.</td></tr>
<tr><td>Visual Privacy</td><td>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.</td><td>The development has nil setbacks to the northern, southern and western boundaries. This is appropriate for the site. The setback to the eastern boundary is 6.0m, however, this adjoins a lane and therefore provides suitable separation.</td></tr>
<tr><td>Pedestrian Access and entries</td><td>Do the building entries and pedestrian access connect to and addresses the public domain and</td><td>Yes, the retail tenancies have separate entries to</td></tr>
</table>

	are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	the residential units.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Yes, the car parking and loading/service entries have been separated.
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.	The development provides adequate car parking.
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.	Yes, Despite the long southern boundary, the use of the communal open space and a courtyard has allowed 32 of the 40 (80%) of apartments to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.
	- A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	No apartments will receive no sunlight in mid-winter.
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	Yes, 39 of the 40 (98%) of the apartments are naturally cross ventilated.

<table>
<tr><td></td><td>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.</td><td></td></tr>
<tr><td></td><td>• Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</td><td>Yes</td></tr>
<tr><td>Ceiling Heights</td><td>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:
<table>
<tr><th colspan="2">Minimum ceiling height</th></tr>
<tr><td>Habitable rooms</td><td>2.7m</td></tr>
<tr><td>Non-habitable</td><td>2.4m</td></tr>
<tr><td>For 2 storey apartments</td><td>2.7m for main living area floor

2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr>
<tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr>
<tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr>
</table></td><td>Yes, the ground floor has a floor to ceiling height of 4.6m. The apartments are 2.7m.</td></tr>
<tr><td>Apartment Size and Layout</td><td>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>35m^2</td></tr>
<tr><td>1 bedroom</td><td>50m^2</td></tr>
<tr><td>2 bedroom</td><td>70m^2</td></tr>
<tr><td>3 bedroom</td><td>90m^2</td></tr>
</table>
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m^2 each.

A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m^2 each.</td><td>No, variation supported.

The one studio apartment has an area of 41sqm.
The one bedroom apartments have a minimum area of 50sqm.
Two of the two bedroom apartments have a minimum area of 68sqm, the remaining six are more than 70sqm.
The three bedroom apartments have a minimum area of 91sqm.

The 2 x two bedroom apartments below 70sqm still have an adequate layout to result in acceptable amenity.</td></tr>
<tr><td></td><td></td><td></td></tr>
</table>

	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.	Yes
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Yes
	In open plan layouts (where the living, dining and kitchen are combined), the maximum habitable room depth is 8m from a window.	Yes
	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	Yes
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Yes
	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	Yes
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Yes
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: **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	Yes The studio has a 12sqm balcony. The one bedroom apartments have minimum balconies of 10sqm. The two bedroom apartments have minimum balconies of 10sqm. The three bedroom apartments have minimum balconies of 13sqm.
	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.	Yes, the apartments that directly adjoin the communal open space have allocated areas of at least 15sqm.
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Yes, six is the maximum.
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A
Storage	In addition to storage in kitchens, bathrooms and	Yes, all apartments have

	bedrooms, the following storage is provided: **Dwelling Type** / **Storage size volume** Studio apartments / $4m^2$ 1 bedroom apartments / $6m^2$ 2 bedroom apartments / $8m^2$ 3+ bedroom apartments / $10m^2$ At least 50% of the required storage is to be located within the apartment.	internal storage plus storage spaces within the basement.
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.	Yes, an Acoustic Assessment has been provided outlining recommendations to protect the amenity of the residents.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Yes
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.	Yes, the proposal provides all types of apartments from a studio to three bedroom apartments.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	N/A
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Yes
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.	Yes
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Yes
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes: **Plant** / **Definition** / **Soil** / **Soil** / **Soil Area**	Yes

	type		**Volume**	**Depth**		
	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					Yes
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.					N/A
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.					Yes
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.					Yes, awnings are provided. No signage is proposed.
Performance						
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?					Yes
Water Management	Has water management taken into account all the					Yes

and Conservation	water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	
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?	Yes
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Yes

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 proposal is recommended for approval.

(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 development has demonstrated that adequate regard has been given to the design quality principles, and the objectives specified in the Apartment Design Guide for the relevant design criteria. As such, the proposal is worthy of support.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 962606M_02 dated 11 March 2019).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	45	45

A condition 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 who responded on 4 April 2019. Ausgrid consented to the application, subject to conditions.

Roads and Maritime Service (RMS)

Clause 101 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—
(i) the design of the vehicular access to the land, or

(ii) the emission of smoke or dust from the development, or
(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:

The site fronts Pittwater Road. Vehicle access is proposed via Orchard Road and Charlton Lane. In this regard, the safety, efficiency and ongoing operation of Pittwater Road will not be adversely affected by the development. Council's Traffic Engineers have reviewed the number of vehicle movements and have not raised any objections to approval.

In relation to noise and emissions, the application was accompanied by an Acoustic Report. This report made an assessment of traffic noise, industrial noise and mechanical noise. The report recommended additional glazing and other design solutions to reduce the noise impact to the future residents.

Clause 102 - Impact of road noise or vibration on non-road development states:

(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—
(a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,
(b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

Comment:

The site fronts Pittwater Road, meeting the criteria for assessment under this clause.

The application was accompanied by an Acoustic Report. This report specifically addressed Clause 102 of the SEPP, and the *Development near rail corridors and busy roads* guidelines, and made recommendation for additional glazing and other design solutions to reduce the dB(A) levels to meet the requirements of 35 dB(A) at any time between 10 pm and 7 am in any bedroom in the residential accommodation, and 40 dB(A) at any time anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway).

The application was also referred to the RMS who did not raise any objection to the proposal, subject to conditions.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	13.44m	22.18%	No

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

2.5 Additional permitted uses for particular land

The site is within 'Area 5 on the Additional Permitted Uses Map. This clause states:

Development for the following purposes is permitted with consent:
(a) office premises,
(b) retail premises,
(c) shop top housing.

Comment: The proposal is for shop top housing.

Consent must not be granted under this clause to development for the purposes of shop top housing unless the consent authority is satisfied that the development will not have a significant adverse impact on any adjoining land in Zone IN1 General Industrial.

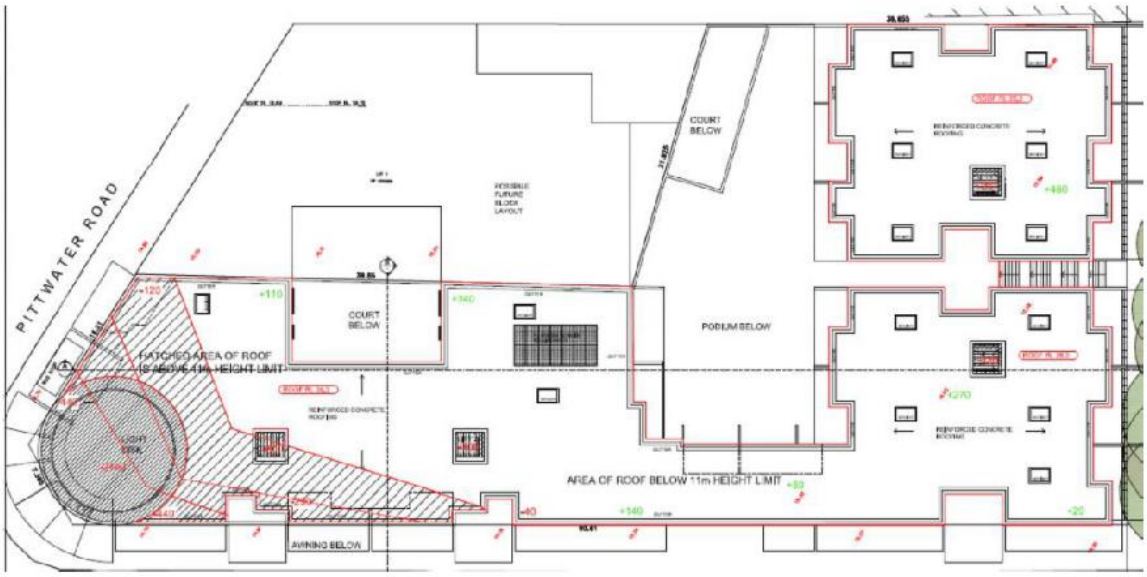
Comment: The impacts on adjoining land is discussed below in this report. In summary, the proposal will not have a significant adverse impact on the adjoining IN1 General Industrial zoned properties. This is achieved by the 6m building setback, retention of mature trees and landscaping to Charlton Lane to assist with reducing noise and visual impacts. Suitable conditions requiring compliance with the acoustic report, to reduce the impacts to the apartments adjoining the IN1 zone, have been included in the recommendation.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	Maximum of 13.44m
Percentage variation to requirement:	22.18%

It should be noted that the maximum height is only reached by the architectural light disk. While there are some elements of the rest of the building that breach the 11m height limit, the majority of the proposal is below it. The hatched area on the roof plan, below, shows the portion of the building above the 11m height limit.



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

Comment:

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes adevelopment standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that 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 ofthe 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:

"*Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context.*

We have also formed the considered opinion that the proposal will maintain appropriate amenity in terms of solar access and privacy and will not give rise to any adverse public or private view affectation. In this regard, the development satisfies the objectives of the height of buildings standard and accordingly strict compliance is unreasonable and unnecessary under the circumstances.

In our opinion, there are sufficient environmental planning grounds to justify the variation including the desire to provide 4.75 metre ground floor ceiling heights to provide greater flexibility in terms of future commercial uses (consistent with the zone objectives), the slight fall across the surface of the land and the desire for single level floor plates and the appropriateness of an architectural roof feature to reinforce the visual importance of the site as the southern gateway to the Brookvale Business precinct. The building heights proposed are compatible with the heights established by development along Pittwater Road and those anticipate by the 11 metre/ 3 storey height standard.

Further, the architectural roof feature and future proofing of the building represent a skilful response to the prominent corner location of the site and the future proofing of the development having regard to the informally exhibited Brookvale Structure Plan. Such outcomes also promote/ facilitate the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act."

It is agreed that the non-compliant portions of the building will not be offensive, jarring or unsympathetic in a streetscape context, and that the proposal will not result in any adverse amenity impacts.

It is agreed that floor to ceiling heights and the architectural roof feature will be a benefit to the site, and that the slight fall of the land contributes to the non-compliance.

It is also agreed that the building heights proposed are compatible with the heights established by development along Pittwater Road and those anticipated by the 11 metre/ 3 storey height standard.

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 B5 Business Development zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

> *a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
>
> Comment:
>
> The development mostly sits under the height limit. The element with the greatest height breach is the light disk. This will provide an architectural element on the prominent corner that will add visual interest to the area.
>
> The surrounding development has a mix of heights (from the open bus depot to the south, to four storey shop top housing developments on Roger Street). The proposal will sit comfortably amongst the existing development and will help set the future character of the area.
>
> Overall, the building will be compatible with the height and scale of surrounding and nearby development.
>
> *b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
>
> Comment:
>
> The breach of the height limit to accommodate the light disk will add visual interest to the site and the area without resulting in any disruption of views, loss of privacy and loss of solar access.

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

Comment:

The site is located in a commercial/industrial area. The development will not unreasonably impact on the scenic quality of Warringah's coastal and bush environments.

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

Comment:

As above, the breach of the height limit will add visual interest to the development when viewed from the public streets around the site.

Zone objectives

The underlying objectives of the B5 Business Development zone

- *To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*

  Comment:

  The proposal will provide new business uses for the site, as well as residential accommodation, that will support and enhance the viability of Brookvale.

- *To provide for the location of vehicle sales or hire premises.*

  Comment:

  While the proposal does not specifically seek consent for a vehicle sales or hire premises, the site does not prohibit this use or impact on other sites from providing this use.

- *To create a pedestrian environment that is safe, active and interesting by incorporating street level retailing and business uses.*

  Comment:

  The proposal will adequately activate the streetscape, providing a better pedestrian environment. The driveways are suitably designed to minimise safety concerns.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B5 Business Development zone.

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

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

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

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and
(b) to allow earthworks of a minor nature without requiring separate development consent.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality

Comment: The proposal is likely to disrupt existing drainage patterns as the excavation will require de-watering. This has been reviewed by the NSW Office of Water who have issued General Terms of approval that will form part of the consent.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

6.4 Development on sloping land

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
B5 Side Boundary Setbacks	Northern boundaries - Merit Assessment	Nil	N/A	Yes

B7 Front Boundary Setbacks	Front portion (Pittwater Road and Orchard Road) - consistent with adjacent buildings	Nil	N/A	Yes (consistent with adjacent buildings)
	Rear portion (Orchard Road and Charlton Lane) - 4.5m	Orchard Road - Nil Charlton Lane - Basement - 6.0m Above ground levels - 6.0m	100% N/A N/A	**No** Yes Yes
B9 Rear Boundary Setbacks	Merit Assessment - The site does not have a rear boundary. This control does not apply.	N/A	N/A	N/A

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
A.5 Objectives	Yes	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	No	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B7 Front Boundary Setbacks

Description of non-compliance

The proposal has a nil setback to Orchard Road.

The control requires a minimum of 4.5m.

Merit consideration:

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

- *To create a sense of openness.*
- *To maintain the visual continuity and pattern of buildings and landscape elements.*
- *To protect and enhance the visual quality of streetscapes and public spaces.*
- *To achieve reasonable view sharing.*

  Comment:

  The 4.5m setback is aimed at industrial sites/buildings that have their main frontage to Orchard Road. In this case, the proposal is for shop top housing, which requires street activation along all frontages. A nil setback along Pittwater Road and a 4.5m setback along Orchard Road is impractical for this development and would not result in sufficient space to provide retail tenancies to activate the streetscape.

  In this regard, the proposed nil setback along Orchard Road is acceptable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C3 Parking Facilities

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

  Comment:

  The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Shop top housing - Residential	1 space per 1 bedroom dwelling 1.2 spaces per 2 bedroom dwelling 1.5 spaces per 3 bedroom dwelling 1 visitor space per 5 units or part of dwellings	26 x 1B = 26 10 x 2B = 12 4 x 3B = 6 40 units = 8 visitor	Residential = 88 Visitor = 9	+45
Commercial/retail	1 space per 40 m2 GFA	2,124sqm = 54	62	+8
Total		106	159	+53

  The development provides adequate carparking, including a large surplus of spaces.

  It is noted that additional capacity has been proposed to cater for any future redevelopment of this site, should the site be rezoned/granted a height increase as part of a future Brookvale Master Plan.

  The applicant has not provided any indication of the number of potential future dwellings that could be accommodated using the 53 spaces plus the basement area underneath the main retail tenancy.

  In order to ensure these additional spaces will be available for any future development, a condition has been recommended requiring that, the surplus 53 carparking spaces are not allocated to strata allotments (associated with the development approved under this consent) and that they not be used or leased out for 'public parking' purposes. The surplus parking spaces may be allocated as common property until such time as any future development occurs on the site.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

  Comment:

  The proposed parking is within a basement and will have a minimal visual impact on the street and surrounding public space.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

The proposed parking is within a basement and will not dominate the street or surrounding public space.

E1 Preservation of Trees or Bushland Vegetation

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

- *To protect and enhance the urban forest of the Northern Beaches.*
- *To effectively manage the risks that come with an established urban forest through professional management of trees.*
- *To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.*
- *To protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities.*
- *To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long-term.*
- *To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.*

Comment:

This site is within a B5 Business Development zone that allows nil or minimal setbacks, with the intention of developing all or the vast majority of the site to create employment and homes along a busy transport corridor.

It is noted that Council's Landscape Officer recommends the retention of the large tree on the southern boundary, towards the western side of the site.

The retention of this tree would render a large portion of the site undevelopable including putting severe limitations on the basement and space available for vehicle movement through the three levels.

In this regard, it is not considered viable to retain this tree on this site.

The retention of the trees on the western side of the site (within the road reserve) will be ensured through conditions. In addition, 11 new street trees, being native tuckeroos, are proposed along the Orchard Road frontage, with one tree proposed on Pittwater Road. Council's Road Assets Team have raised no objections to their location. This outcome will help to enhance the urban forest of the Northern Beaches.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of $165,461 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $16,546,098.

ACCESS TO 640 PITTWATER ROAD

No. 640 Pittwater Road has a single frontage to Pittwater Road. To the sides and rear, this lot is surrounded by the subject site to the south and east, and No. 642 Pittwater Road to the north. This results in problems for the redevelopment of No. 640 Pittwater Road given that a future driveway crossing from Pittwater Road (there is an existing one, however, this will have to be removed if the site is redeveloped) is prohibited.

The solution to this issue is for the site to be amalgamated with either No. 638 Pittwater Road and/or No. 642 Pittwater Road. Failing this, future access to No. 640 Pittwater Road will need to be provided.

In *Karavellas v Sutherland Shire Council [2004] NSWLEC 251* Commissioner Tuor addressed the issue of amalgamation of sites through a Planning Principle as follows:

"The general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:

- *Firstly, is amalgamation of the sites feasible?*
- *Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?"*

Comment:

Is amalgamation feasible?

The documentation submitted with the application includes details of the attempted purchase of No. 640 Pittwater Road by the owners of No. 638 Pittwater Road. A market valuation is provided, along with a formal offer to the owner of No. 640 Pittwater Road, to purchase the property at 10% above the market valuation. This attempt was unsuccessful.

Can orderly and economic use and development of the separate sites still be achieved?

To ensure No. 640 Pittwater Road can still be developed, the current proposal includes the ability for the upper level of the basement to be knocked through, to provide access to No. 640 Pittwater Road should it be developed independently in the future.

Given the size of No. 640 Pittwater Road, a single level basement knock through within the subject site is not considered sufficient for No. 640 Pittwater Road to be able to achieve a development of appropriate urban form and with acceptable level of amenity. This is because what would be a multi-level basement on No. 640 Pittwater Road will require space for ramps, allowing access to the lower levels of a future basement. With only one knock through, the required ramps within No. 640 Pittwater Road would take up a disproportionate amount of the basement area, thereby limiting the number of parking spaces that could be provided.

To solve this, it is recommended that all three levels of the proposed basement have the ability to be accessed by a future development on No. 640 Pittwater Road. It is recommended that a condition be included in the consent to ensure this, but that this condition only comes into force should No. 640 Pittwater Road be developed independently (i.e. not with No. 642 Pittwater Road).

Overall, subject to the additional knock throughs, the proposal will enable reasonable development of the No. 640 Pittwater Road to occur while maintaining the amenity of both developments.

The application is consistent with this Planning Principle.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

The application seeks consent for a three storey shop top housing development with basement car parking located at No. 638 Pittwater Road, Brookvale.

The site adjoins an industrial zone, fronts a busy transport corridor, has three street frontages and a long southern boundary. This results in unique constraints for the design, particularly in relation to solar access. To the north of the site is No. 640 Pittwater Road, which has no vehicle access other than Pittwater Road and if redeveloped, would need access through one of its two neighbouring sites, the subject site being the most suitable. This issue has been resolved via a condition of consent.

The proposal is reliant upon a variation to the maximum building height development standard prescribed by clause 4.3 of WLEP 2011, with a maximum variation of 22.18%, as a result of the slight slope of the land and the addition of an architectural feature to the main corner of the site. The variation to the development standard is acceptable and worthy of support.

The other critical issues discussed within this report include, the removal of a significant tree, two apartments being 2sqm undersized, the lack of a phase 2 site assessment and the front setback to a portion of Orchard Road.

The removal of the tree, while not recommended by Council's Landscape Officer, is necessary for the proper redevelopment of the site in line with the controls. The two undersized apartments have a suitable layout, adequate storage, receive adequate sunlight and are acceptable. The lack of a phase 2 assessment has been resolved via a condition requiring the assessment to be completed prior to any construction work or excavation on the site but post demolition. The proposed front setback to Orchard Road is suitable for the site and the development.

The proposed development is a suitable architectural response to the context of the site. The development, despite the breach of the height limit, will be compatible with the height, bulk and scale of surrounding built form. The resultant development will provide a suitable level of amenity for future occupants, will not result in any adverse impacts upon the character of the streetscape or the amenity of adjoining properties, and will be an upgrade for the site.

The public exhibition period generated no submissions and overall, there were no matters that would warrant the refusal of the application in the public's interest.

The development has been assessed against SEPP 65 and the Apartment Design Guide and has been found to satisfactorily meet the design principles and the relevant numerical requirements. The development meets the aims and reasonably complies with the controls within the WLEP 2011 and the WDCP 2011.

The development is a high quality urban design that will minimise the impacts to surrounding properties, activate the streetscape, and bring an attractive building onto this prominent corner site within the neighbourhood centre.

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.

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 WLEP 2011 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 DA2019/0239 for Demolition Works and construction of a mixed use development on land at Lot 1 DP 1001963, 638 Pittwater Road, BROOKVALE, 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**
A02	5 December 2019	Barry Rush & Associates Pty Ltd
A03	5 December 2019	Barry Rush & Associates Pty Ltd
A04	5 December 2019	Barry Rush & Associates Pty Ltd
A05	4 October 2019	Barry Rush & Associates Pty Ltd
A06	4 October 2019	Barry Rush & Associates Pty Ltd
A07	4 October 2019	Barry Rush & Associates Pty Ltd
A08	4 October 2019	Barry Rush & Associates Pty Ltd
A09	4 October 2019	Barry Rush & Associates Pty Ltd
A10	4 October 2019	Barry Rush & Associates Pty Ltd
A11	4 October 2019	Barry Rush & Associates Pty Ltd
A14	4 October 2019	Barry Rush & Associates Pty Ltd
A17	4 October 2019	Barry Rush & Associates Pty Ltd

A18	4 October 2019	Barry Rush & Associates Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Construction Impact & Management Statement	August 2018	"Growing My Way" Tree Consultancy
Access Assessment Report	15 November 2018	BCA Logic
DA Noise Assessment	January 2019	Wilkinson Murray Pty Ltd
Geotechnical Investigation Report	17 August 2018	Morrow Geotechnics Pty Ltd
Phase 1 Environmental Site Assessment	May 2010	Environmental Strategies

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
Sheet 0 - Masterplan Revision D	4 September 2018	Conzept Landscape Architects
Public Domain Plan 01 Revision D	4 September 2018	Conzept Landscape Architects
Public Domain Plan 02 Revision D	4 September 2018	Conzept Landscape Architects
GF Landscape Plan 03 Revision D	4 September 2018	Conzept Landscape Architects
GF Landscape Plan 04 Revision D	4 September 2018	Conzept Landscape Architects
L1 Landscape Plan 05 Revision D	4 September 2018	Conzept Landscape Architects
Detail & Specification Revision B	16 August 2018	Conzept Landscape Architects

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	November 2018	APEX Engineers

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. Water NSW GTAs

The development must be carried out in compliance with the following General Terms of Approval from Water NSW:

1. A Water Supply Work Approval from WaterNSW must be obtained prior to commencing dewatering activity on the proposed site. Please complete an Application for approval for water supply works, and/or water use.
2. An application for a Water Supply Works Approval will only be accepted upon receipt of supporting documentation, and payment of the applicable fee (see Application fees for New or amended Works and/or Use Approvals). The information required for the processing of the water supply work application may include preparation of a dewatering management plan. Please refer to checklist attached.
3. If approved, the Approval will be issued for a period of up to 24 months to cover the dewatering requirements during the construction phase. It will include conditions to ensure that impacts are acceptable and that adequate monitoring and reporting procedures are carried out. The Approval will be issued subject to the proponent meeting requirements of other agencies and consent authorities. For example, an authorisation by either Sydney Water or the local Council, depending where the water will be discharged. If contaminants are likely, or are found to be present in groundwater, and are being discharged to stormwater, including high salinities, a discharge licence under the Protection of the Environment Operations Act 1997 (NSW) may also be required.
4. WaterNSW prefers “tanking” (i.e. total water proofing below the seasonal high water table) of basement excavations, and avoids the ongoing extraction of groundwater after the initial construction phase. It is also advised to adopt measures to facilitate movement of groundwater post construction (eg. a drainage blanket behind the water-proof membrane).
5. If the basement is not “tanked”, the proponent will require a Water Access Licence (WAL) and need to acquire groundwater entitlements equivalent to the yearly ongoing take of groundwater. Please note: Acquiring groundwater entitlements could be difficult, and may cause delay in project completion. If a WAL is required, please complete an Application for a new water access licence with a zero share component.

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. Transport for NSW Conditions

The development must be carried out in compliance with the following conditions from Transport for NSW:

1. TfNSW has previously resumed & dedicated a splay corner of land as road along the Pittwater Road frontage of the subject property, as shown by grey colour on the attachment A Aerial – “X”.

   All buildings and structures (other than pedestrian footpath awnings), together with any improvements integral to the future use of the site are wholly within the freehold property (unlimited in height or depth), along the Pittwater Road boundary.

2. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Documents should be submitted to Development.Sydney@rms.nsw.gov.au

   A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

3. TfNSW advises that current practice is to limit the number of vehicular conflict points along the arterial road network to maintain network efficiency and road safety. This current practice is reflected in Section 6.2.1 of TfNSW current publication of the Guide to Traffic Generating Developments, which states 'access across the boundary with a major road is to be avoided wherever possible'.

   Pittwater Road is a major arterial road, which carries a high volume of traffic, where transport efficiency of through traffic is of great importance.

   Further to the above, clause 101(2a) of State Environmental Planning Policy (Infrastructure) 2007, which reads as follows:

   "The consent authority must not grant consent to development on land that has frontage to a classified road unless it is satisfied that:
   (a) where practicable, vehicular access to the land is provided by a road other than the classified road".

   Therefore the proposed 'future vehicle access to adjoining Lot 1 DP 900686' Right of Way as shown on page 4 of the Master Plan should be restricted until existing driveway to 406 Pittwater Road, Brookvale is made redundant.

4. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.

5. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Pittwater Road.

6. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Pittwater Road during construction activities. A ROL can be obtained through https://myrta.com/oplinc2/pages/security/oplincLogin.jsf

Reason: To ensure compliance with Transport for NSW.

4. Prescribed Conditions

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

   (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

   (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

   (iii) stating that unauthorised entry to the work site is prohibited.

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

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

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

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

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

Reason: Legislative requirement.

5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(g) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(j) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2008

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of $165,460.98 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 $16,546,098.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater

Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

7. Security Bond

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

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

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

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

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

8. Construction, Excavation and Associated Works Bond (Road)
The applicant is to lodge a Bond with Council as security against any damage or failure to completion of the construction of civil infrastructure works within Pittwater Road, Orchard Road and Charlton Lane as part of this consent.

The bond shall be valued at 120% the cost of civil infrastructure works. The cost of works shall be determined in consultation with Council by submission of written quote(s) from a suitably qualified, licensed and insured contractor independent from the Applicant.

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

Reason: Protection of Council's infrastructure.

9. Construction, Excavation and Associated Works Bond (Drainage)
A Bond of $10,000 as security against any damage or failure to complete the construction of Stormwater drainage works as part of this consent.

Reason: Protection of Council's Infrastructure

10. Construction, Excavation and Associated Works Bond (Maintenance for civil works)
The developer/applicant must lodge with Council a Maintenance Bond for the construction of civil infrastructure works within Kenneth Road and Condamine Street.

The bond is valued at 10% the cost of civil infrastructure works. The value of the bond shall be determined in consultation with Council.

The Maintenance Bond will only be refunded on completion of the six-month Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing practical completion.

Reason: Protection of Council's infrastructure.

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

11. On slab landscape planting and associated works

a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.

b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

c) The following soil depths are required in order to be counted as landscaping:
-300mm for lawn
-600mm for shrubs
-1metre for trees

Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

12. Detailed Design of Stormwater Quality System

A certificate from a Civil Engineer, stating that the stormwater quality management system has been designed in accordance with the Stormwater Plans Rev C (Oct 2019) by Alpha Engineering and Development and the Council's Water Management Policy.

The certificate shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment

13. Boundary Identification Survey

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

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

14. Building Code of Australia Report

The recommendations made in the Building Code of Australia Report prepared by BCA Logic Revision 110121 Dated 15 November 2018 are to be carried out to the building.

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

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

15. Pump-Out System Design for Stormwater Disposal

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

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

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

The Applicant is to submit an application for approval for Infrastructure works on Councils roadway. Engineering plans for the new development works within the road reserve within this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for civil infrastructure works within Pittwater Road, Orchard Road and Charlton Lane, which shall be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer.

The design must include the following information:

<u>Pittwater Road</u>

i. Removal of redundant layback and vehicular crossing.
ii. Provision of a minimum 1.5m wide footpath and upgrade of any associated pram ramps.
iii. Provision of any streetscape works in accordance with Council's Warringah Public Space Design Guidelines, including any paving, street furniture etc.
iv. Concurrence shall be obtained from the RMS, including for the stormwater drainage connection.

<u>Orchard Road</u>

i. Provision of a layback and vehicular crossing 6.5 metres wide. Removal of any redundant vehicular crossings and laybacks.
ii. Provision of a minimum 1.5m wide footpath and upgrade of any associated pram ramps.
iii. Provision of any streetscape works in accordance with Council's Warringah Public Space Design Guidelines, including any paving, street furniture etc.

Charlton Lane

i. Provision of a layback 6 metres wide.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

17. Tanking of Basement Level

The basement area is to be permanently tanked. Details of the tanking are to be prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Water. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Principal Certifying Authority. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

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

18. On-site Stormwater Detention

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Warringah Water Management Policy PL850, and generally in accordance with the concept drainage plans prepared by Alpha Engineering and Development, drawing number A8256 - SW01 to SW07, revision D, dated 11/12/19. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

19. 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.

20. Sub-Soil Seepage

All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit, directly to the kerb inlet pit within Pittwater Road and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

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

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

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

21. 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.

22. Traffic Management and Control

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

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

23. Basement Carpark Ramp Crest

The Applicant is to ensure the basement carpark ramp provides a crest a minimum 200mm above the edge of bitumen level adjoining the property in Charlton Lane. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of the basement carpark from surface flows.

24. Structures Located Adjacent to Council Pipeline or Council Easement

All structures are to be located clear of any Council pipeline or easement. The Applicant is to ensure footings of any new development within this development consent adjacent to an easement or pipeline are to be designed in accordance with Northern Beaches Council's

Warringah Water Management Policy PL850. Details and certification prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

25. Noise reduction measures - design

In addition to the recommendations in the Acoustic Assessment by Wilkinson Murray Pty that prior to commencement, a further review be carried out by an acoustic engineer to require:

1. Windows to all habitable rooms be upgraded to reduce noise to residents from potential future light industrial uses on neighbouring premises and reflected noise from hard surfaces within the Development.
2. Air conditioning (or alternative air supply to National Building Code requirements) being provided to habitable rooms to allow for adequate ventilation when windows are closed.
3. Review proposed mechanical plant and equipment, fans, and air conditioning before installation to ensure noise compliance with assessment by Wilkinson Murray Pty Ltd.

Reason: To provide acoustic amenity for residential residents from surrounding light industry and main road.

26. Tree protection and pruning

(a) Existing trees which must be retained
All trees unless exempt or noxious in in the relevant planning instruments

(b)Tree protection and pruning

i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
.
iv) All tree protection measures, including fencing, are to be in place prior to commencement of works
v) Tree pruning within the subject site is approved to enable construction in accordance with the approved plans.
vi) Tree pruning is not to exceed 15% of any existing tree canopy
vii) All tree pruning to be in accordance with AS4373-2007 Pruning of amenity trees.

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

27. Pre-Construction Stormwater Assets Dilapidation Report

Survey a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at:

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-

specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.

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

Reason: Protection of Council's Infrastructure

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

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

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

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.

30. 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.

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

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The CTMP must address following:-
• The proposed phases of construction works on the site, and the expected duration of each construction phase;
• The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;

• Make provision for all construction materials to be stored on site, at all times;
• The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
• The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
• The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
• Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
• Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
• Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
• The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
• Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
• Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
• The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
• Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
• The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
• Proposed protection for Council and adjoining properties;
• The location and operation of any on site crane; and

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

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

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic

(including traffic flow and parking) and pedestrian amenity adjacent to the site.

32. Pedestrian Safety - Bollards

The applicant is to ensure appropriate safety measures are implemented surrounding the lift access to protect pedestrians within the basement levels.

Plans demonstrating safety bollards and yellow painted hatching must be submitted to and approved by the accredited certifier prior to the issue of any Construction Certificate.

Reason: To ensure pedestrian safety is maintained around lifts.

33. Phase 2 Environmental Site Assessment

A Phase 2 Environmental Site Assessment must be conducted for the site and provided to Council.

The assessment must be undertaken prior to any excavation or construction work on the site. Demolition can occur prior to the assessment being done.

No excavation or construction may commence until Council has given written approval. If the assessment requires the site to be remediated, this must be done prior to any excavation or construction work.

Details demonstrating compliance must be provided to the Principal Certifying Authority prior to the commencement of any excavation or construction work.

Reason: To ensure the site is suitable for the proposed development.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

34. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties: Nos. 640 and 642 Pittwater Road.

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

35. Public Liability Insurance - Works on Public Land

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

36. 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.

37. Demolition Works - Asbestos

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

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

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

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

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

38. Survey Certificate

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

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

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

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

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

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

approved plans.

39. Civil Works Supervision
All civil works approved in the Roads Act Approval are to be supervised by an appropriately qualified and practising Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority

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

40. Vehicle Crossings
The provision of one vehicle crossing layback 6 metres wide in Charlton Lane and one vehicle crossing 6.5 metres wide on Orchard Road in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

Any works within Pittwater Road will require approval from the RMS.

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

Reason: To facilitate suitable vehicular access to private property.

41. Substitution of Stormwater Treatment Measure
The substitution of an "equivalent" device for the stormwater treatment measure approved in the Development Application process must first be approved by the Principal Certifying Authority.

Details must be submitted to the Principal Certifying Authority for approval prior to installation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management Policy.

42. Waste Management During Development
The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

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

43. Excavation, de-watering and construction noise
Noise from excavation, de-watering and construction shall be kept to a minimum to neighbouring businesses through use of best practice methods and equipment. Should Council receive complaints (which it considers valid) then the immediate services of an acoustic engineer are to be engaged by the site controller and any recommendations implemented before work continues. Where de-watering pumps are to be used overnight noise is not to be audible in any residential premises at night.

Reason: To minimise the noise impact of site works and comply with legislation.

44. De-watering of excavation
A system is to be utilised to ensure that all sediment, colour and pollutants are removed from all ground water before disposal to any storm water drainage.

Reason: To eliminate potential water pollution.

45. Trees Condition

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

(a) A general decline in health and vigour.
(b) Damaged, crushed or dying roots due to poor pruning techniques.
(c) More than 10% loss or dieback of roots, branches and foliage.
(d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
(e) Yellowing of foliage or a thinning of the canopy untypical of its species.
(f) An increase in the amount of deadwood not associated with normal growth.
(g) An increase in kino or gum exudation.
(h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
(i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of Trees.

46. Installation and Maintenance of Sediment Control

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

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

47. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by Alpha Engineering and Development.

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

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

48. Dewatering Management

If groundwater is encountered during excavations of greater than one metre depth from the existing ground surface level and dewatering is required to continue work, work must cease until the applicant has provided a dewatering management plan to Northern Beaches Council that details planned discharges of groundwater to Council's stormwater network, including expected flow rates and treatment methods. This information must be provided to WaterNSW when making an application for a dewatering permit.

The dewatering management plan must be certified by a suitably qualified civil engineer who

has membership of Engineers Australia and appears on the National Engineering Register (NER). Council must issue a permit based on the plan and general terms of approval from WaterNSW, and a dewatering permit provided by WaterNSW prior to dewatering commencing.

Discharges must achieve the following water quality targets in addition to any conditions/documentation of this consent, any requirements of the General Terms of Approval/Controlled Activity permit issued by WaterNSW, and legislation including Protection of The Environment Operations Act 1997 and Contaminated Lands Act 1997.

Parameter	Criterion	Method	Time Prior to Discharge
Oil and grease	No visible	Visual inspection	<1 hour
pH	6.5- 8.5	Probe/meter	<1 hour
Total Suspended Solids (TSS)	<50mg/L	Meter/grab sample measures as NTU	<1 hour

NOTE: The correlation between NTU and TSS must be established by a NATA accredited laboratory prior to the commencement of dewatering activities.

All records of water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Groundwater/tailwater must be discharged to the nearest stormwater pit in accordance with Council's Auspec1 Design Manual and must not spread over any road, footpath and the like. Discharge to the kerb and gutter will not be accepted.

Reason: Protection of groundwater aquifers, groundwater dependent ecosystems and receiving environments.

49. Protection of stormwater treatment measures

Stormwater treatment measures must not be installed or must be kept offline until the site has been fully stabilised to prevent damage from sediment during construction works.

Reason: Protection of stormwater treatment measures.

50. Waste/Recycling Requirements (Materials)

During demolition and/or construction, the following materials are to be separated for recycling –

timber – bricks – tiles – plasterboard – metal – concrete, and evidence of disposal for recycling is to be retained on site.

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

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

51. Landscape completion certification (PLEP)

Condition:
Landscaping is to be implemented in accordance with the Landscape Plans referenced in condition 1.
a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.
b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been established and maintained in accordance with the approved landscape plan.

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

52. Landscape Maintenance

Evidence of an agreement for the maintenance of all plants for a period of twelve (12) months from the date of practical completion of the building is to be provided to the Principal Certifying Authority prior to issue of the final Occupation Certificate.

Reason: To ensure landscaping will be appropriately maintained.

53. Stormwater Disposal

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

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

54. Certification for the Installation of Stormwater Quality System

A certificate from a Civil Engineer, who has membership to the Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the Stormwater Plans Rev C (Oct 2019) by Alpha Engineering and Development.

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

Reason: Protection of the receiving environment

55. Stormwater Quality Operation and Maintenance Plan

An Operation and Maintenance Plan is to be prepared to ensure proposed stormwater quality system remain effective.

The Plan must be attached to the Positive Covenant and contain the following:
a) Inspection and maintenance schedule of all stormwater treatment measures
b) Maintenance requirements for establishment period
c) Routine maintenance requirements
d) Funding arrangements for the maintenance of all stormwater treatment measures
e) Identification of maintenance and management responsibilities
f) Vegetation species list associated with each type of vegetated stormwater treatment measure
g) Waste management and disposal
h) Traffic control (if required)
i) Maintenance and emergency contact information
j) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
k) Work Health and Safety requirements
l) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment

56. Works as Executed Drawings - Stormwater Quality System

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

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

Reason: Protection of the receiving environment.

57. Installation of Rainwater Tanks

Rainwater tanks shall comply with the following:

a) Be fitted with a first-flush device that causes initial rainwater run-off to bypass the tank and must drain to a landscaped area. The first flush device will not be permitted to connect to the stormwater system
b) Have a sign affixed to the tank stating the contents is rainwater
c) Be constructed or installed in a manner that prevents mosquitoes breeding, such as the use of mesh to protect inlets and overflows
d) Have its overflow connected to an existing stormwater drainage system that does not discharge to an adjoining property, or cause a nuisance to adjoining owners
e) Pumping equipment must be housed in a soundproof enclosure
f) Where the rainwater tank is interconnected to a reticulated water supply, it must be installed in accordance with Plumbing Code of Australia, particularly backflow/cross connection prevention requirements

A certificate from a licenced plumber shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To conserve potable water.

58. Installation of Water Efficient Fittings

The following Water Efficiency Labelling and Standards (WELS) Scheme rated fittings must be installed:

a) 4 star dual-flush toilets
b) 3 star showerheads
c) 4 star taps (for all taps other than bath outlets and garden taps)
d) 3 star urinals
e) 3.5 star washing machines
f) 4 star dishwashers

A certificate from a licenced plumber shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate demonstrating compliance with this condition.

Reason: To conserve potable water.

59. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

60. Loading Dock Management Plan

A Loading Dock Management Plan shall be prepared by the applicant and submitted to and approved by the accredited certifier prior to the issue of any Occupation Certificate. The Plan will need to demonstrate how loading dock will be managed to ensure that there will be only one vehicle entering and exiting the loading dock access in any period and how safe servicing arrangements including waste collection will be undertaken without interrupting general traffic. Vehicle queuing on public road(s) is not permitted.

Reason: to ensure the loading dock is managed appropriately and that tenants are aware of the conditions of use.

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

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Warringah Water Management Policy PL850 and the approved Construction

Certificate plans. Civil Engineer demonstrating compliance is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure.

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

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

63. Positive Covenant and Restriction as to User for On-site Stormwater Detention
A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.
Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

64. Protection of stormwater treatment measures during construction
Stormwater treatment measures must not be installed or must be kept offline until the site has been fully stabilised.

A certificate from a Civil Engineer, who has membership to the Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures are in new condition and do not contain sediment. The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of stormwater treatment measures.

65. Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Quality System
A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of

Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements, (available from Council), at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

66. Post-Construction Road Reserve Dilapidation Report

The applicant must submit a post-construction dilapidation report prepared by suitably qualified civil engineer. The report must clearly detail the final condition of all public property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure.

The post-construction / demolition dilapidation report must be submitted to Council for review after the completion of all building works. Any damage to Council's infrastructure is to be rectified to the satisfaction of Council prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council.

67. Prior to occupation certificate - Noise compliance

Prior to final occupation a review of noise compliance conditions of approval and referencing the Acoustic Assessment by Wilkinson Murray REPORT NO. 19035 VERSION A shall be carried out by a suitably qualified person to ensure compliance with noise criteria.

Reason: To ensure noise reduction measures are compliant prior to occupation.

68. Post-Construction Dilapidation Survey

A post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.

The post construction dilapidation report must be submitted to the Council for review and the Principal Certifying Authority prior to the issue of the Occupation Certificate. Any damaged to Council's stormwater infrastructure is to be rectified in accordance with Council's technical specifications prior to the release of the security bond. Reason: Protection of Council's Infrastructure

69. Certification of Civil Works and Works as Executed Data on Council Land

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits.

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

70. Garbage and Recycling Facilities

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

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

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

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

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

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

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

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

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

Reason: To ensure consistent numbering for emergency services access.

72. Waste Management Confirmation

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

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

73. Fire Safety Matters

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

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

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

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

74. Visitor/Customer Parking

The visitor and retail customer parking must be accessible at all times. These spaces must not be behind a locked gate or the like.

The allocated residential spaces may be behind a secure gate.

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

Reason: To ensure visitors and customers can use the parking.

75. Road Way configuration

The applicant is to prepare 2 options for the configuration of Charlton Lane as follows:
- a two-way configuration with parking removed from both sides of the lane way
- a one-way configuration with 'no parking' restrictions maintained along one side of the lane way

These configurations must be accompanied by SIDRA analysis undertaken by an accredited traffic engineer demonstrating the impacts of both options on the local network, including the intersections of;
- Charlton Lane and Sydenham Road
- Charlton Lane and Orchard Road
- Orchard road and Pittwater Road
- Sydenham Road and Pittwater Road

The applicant must submit and have approved by Council's Local Traffic Committee, detailed drawings of the options, including signage and line marking, SIDRA data and report prior to the issue of any Occupation Certificate.

Reason: To determine the most appropriate configuration of the lane way to optimise traffic being generated by the proposed development.

76. Signage and Line Marking plan - Implementation

The applicant is to install the treatment approved by the Local Traffic Committee, at no cost to

Council, prior to the issue of any Occupation Certificate.

Reason: To ensure the configuration of the lane way is operational prior to tenants moving in.

77. Waste and Recycling Facilities Certificate of Compliance
The proposal shall be constructed in accordance with Warringah Development Control Plan – Part C9 Waste Management

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

Reason: To ensure waste and recycling facilities are provided.

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

Reason: To ensure waste is minimised and recycled.

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

Reason: To ensure ongoing access for servicing of waste facilities.

80. Authorisation of Legal Documentation Required for Waste Services
The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

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

Reason: To create encumbrances on the land.

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

81. Maintenance of Stormwater Quality System
The stormwater quality system must be maintained at all times in accordance with the Stormwater Quality Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

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

Reason: Protection of the receiving environment.

82. Allocation of Spaces

159 car parking spaces shall be provided, made accessible, and maintained, at all times (unless they must be removed to comply with the condition requiring vehicle access to No. 640 Pittwater Road).

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.

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

Reason: To ensure that adequate parking facilities to service the development are provided on site.

83. Customers and Visitors Sign

A sign, legible from the street, shall be permanently displayed to indicate that customer and visitor parking is available on the site. These spaces shall be clearly marked as such.

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

Reason: To ensure that customers and visitors are aware that parking is available on site and to identify those spaces.

84. Right of Access (through-site vehicle link)

A right of access (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and the accompanying 88B instrument to ensure a through site vehicle access on all basement levels to No. 640 Pittwater Road.

The right of access must be of suitable dimensions (height and width) for vehicles to pass through in both directions (i.e. it must not be so narrow that it only allows one way access).

The terms of the right of access (available from Northern Beaches Council), are to be prepared by a registered surveyor at the applicants expense.

The right of access only needs to be activated should No. 640 Pittwater Road redevelop without consolidating with any other neighbouring sites.

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

Reason: To allow the reasonable development of the neighbouring site.

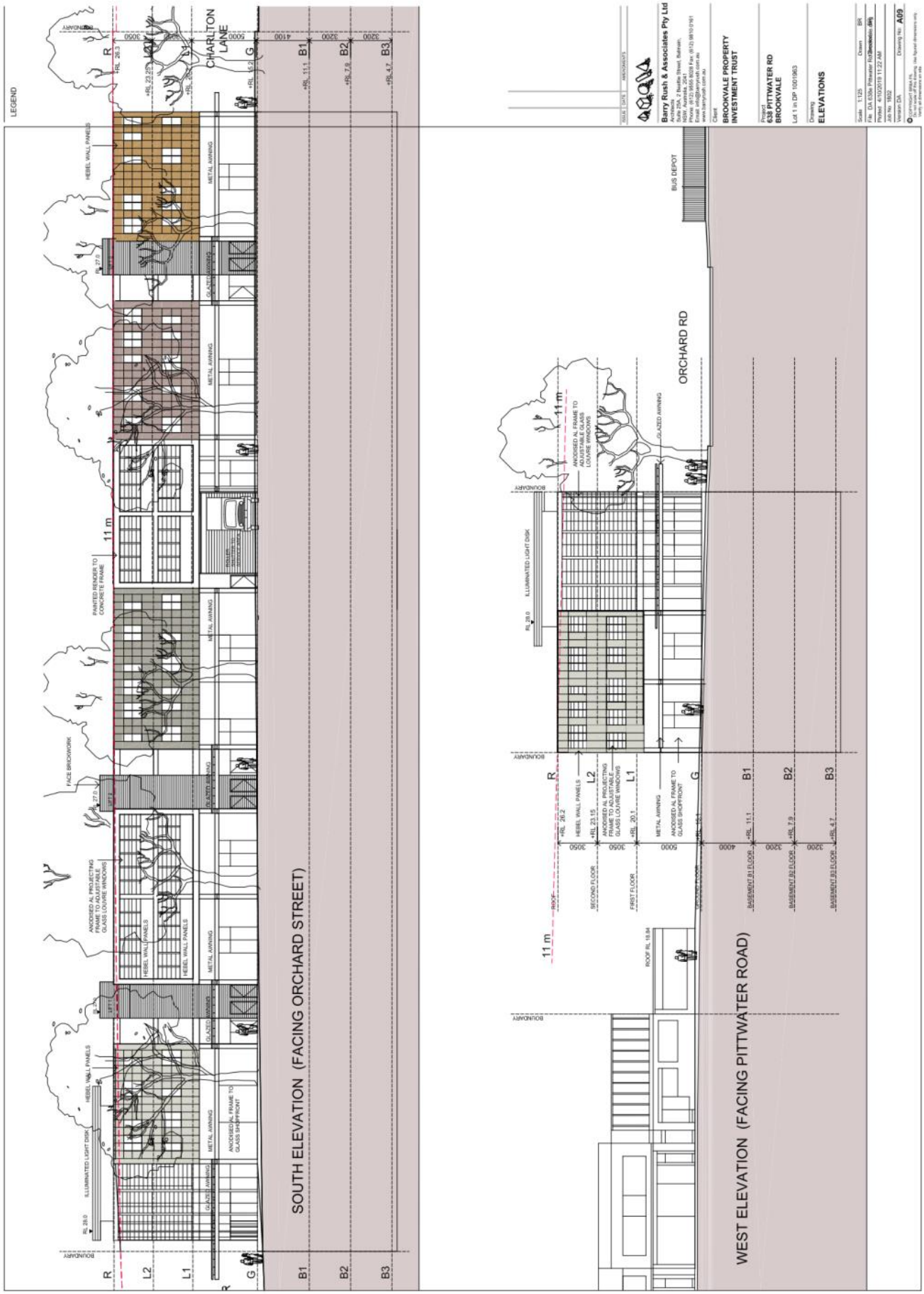
85. Surplus Parking Spaces

The 53 surplus car parking spaces must not be allocated to strata allotments (associated with the development approved under this consent) and that they must not be used or leased out for 'public parking' purposes.

The surplus parking spaces may be allocated as common property until such time as any future development occurs on the site.

Reason: To ensure the site is suitably developed in the future and adequate car parking is provided.

CHARLTON LANE
PITTWATER ROAD
ORCHARD ROAD
LEGEND
REINFORCED CONCRETE ROOFING
ROOF RL 26.3
ROOF RL 26.2
PODIUM BELOW
COURT BELOW
POSSIBLE FUTURE BLOCK LAYOUT
AREA OF ROOF BELOW 11m HEIGHT LIMIT
HATCHED AREA OF ROOF IS ABOVE 11m HEIGHT LIMIT
LIGHT DISK
AWNING BELOW
TOTAL ROOF AREA = 1679.4m²
ROOF AREA BELOW 11M HEIGHT = 1367.1m² 81%
ROOF PLAN
SCALE (METRES) 1:250 AT A3
NORTH
Barry Rush & Associates Pty Ltd
BROOKVALE PROPERTY INVESTMENT TRUST
638 PITTWATER RD
BROOKVALE
Lot 1 in DP 1001963
ROOF PLAN
Scale 1:125
Drawn BR
Job No. 1602
Drawing No. A08


LEGEND
SOUTH ELEVATION (FACING ORCHARD STREET)
WEST ELEVATION (FACING PITTWATER ROAD)
CHARLTON LANE
ORCHARD RD
BUS DEPOT
HEBEL WALL PANELS
METAL AWNING
GLAZED AWNING
PAINTED RENDER TO CONCRETE FRAME
FACE BRICKWORK
ANODISED AL PROJECTING FRAME TO ADJUSTABLE GLASS LOUVRE WINDOWS
ANODISED AL FRAME TO GLASS SHOPFRONT
ILLUMINATED LIGHT DISK
BOUNDARY
SECOND FLOOR
FIRST FLOOR
BASEMENT B1 FLOOR
BASEMENT B2 FLOOR
BASEMENT B3 FLOOR
ROOF
11 m
Barry Rush & Associates Pty Ltd
BROOKVALE PROPERTY INVESTMENT TRUST
638 PITTWATER RD BROOKVALE
Lot 1 in DP 1001963
ELEVATIONS
Scale 1:125
Drawn BR
File DA 638a Pittwater Rd
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Version DA
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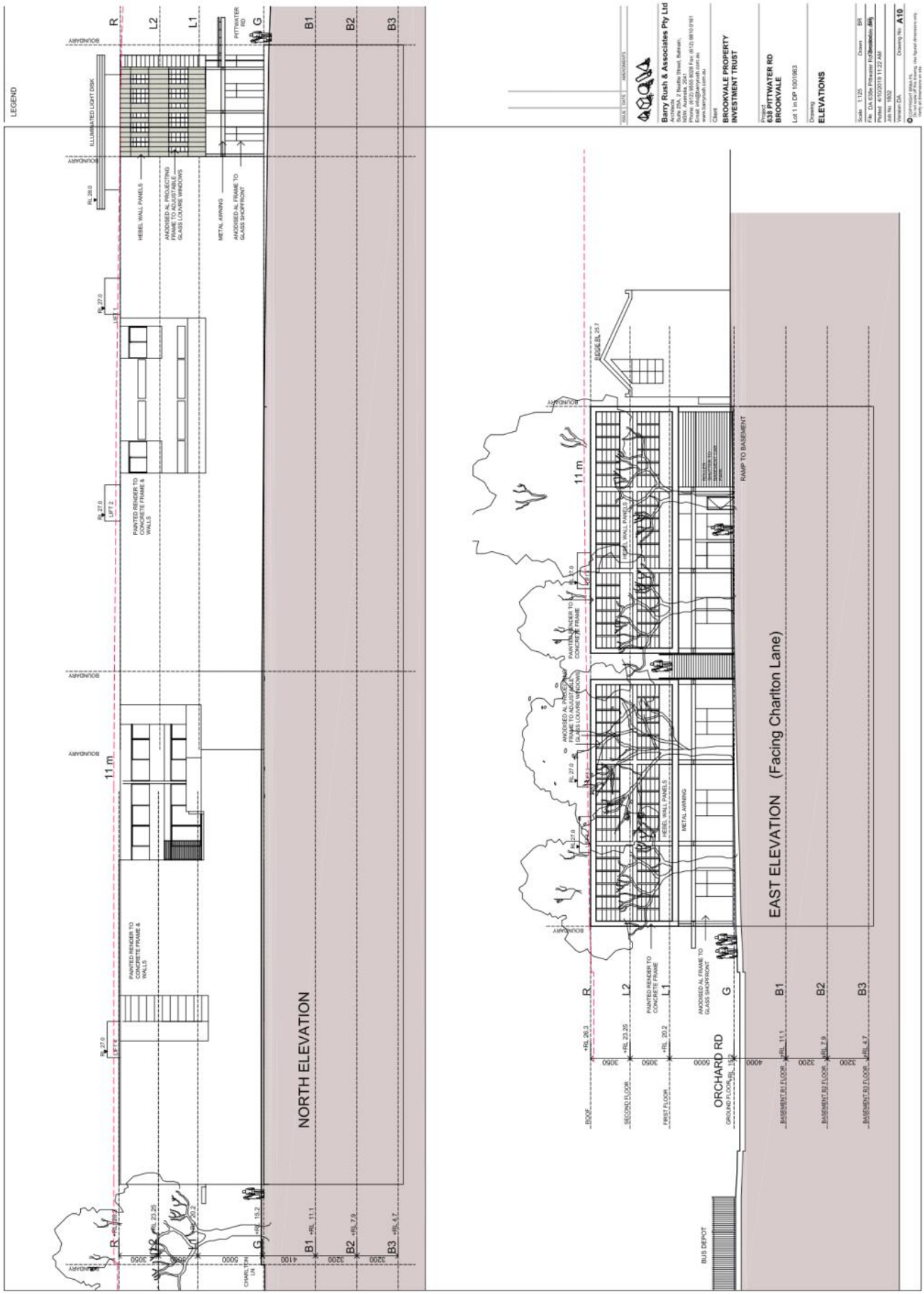

LEGEND
ILLUMINATED LIGHT DISK
HEBEL WALL PANELS
ANODISED AL PROJECTING FRAME TO ADJUSTABLE GLASS LOUVRE WINDOWS
METAL AWNING
ANODISED AL FRAME TO GLASS SHOPFRONT
PITTWATER RD
PAINTED RENDER TO CONCRETE FRAME & WALLS
NORTH ELEVATION
EAST ELEVATION (Facing Charlton Lane)
RAMP TO BASEMENT
ORCHARD RD
BUS DEPOT
ROOF
SECOND FLOOR
FIRST FLOOR
GROUND FLOOR
BASEMENT B1 FLOOR
BASEMENT B2 FLOOR
BASEMENT B3 FLOOR
Barry Rush & Associates Pty Ltd
BROOKVALE PROPERTY INVESTMENT TRUST
638 PITTWATER RD
BROOKVALE
Lot 1 in DP 1001963
ELEVATIONS
A10

Attachment 1

Clause 4.6 variation request – Height of buildings

Pursuant to the height of buildings map, the site has a maximum building height limit of 11 metres.

The objectives of this control are as follows:

(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

Building height is defined as follows:

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

The proposed development has a maximum roof parapet height of 11.44 metres measured at the south western corner of the development with the architectural corner roof feature "light disk" extending to a maximum height of 13.44 metres. The lift overruns breach the height control by between 160mm and 800mm.

The extent of non-compliance can be summarised as a maximum of 440mm (4%) to the roof parapet, a maximum of 800mm (7.2%) to the lift overruns and maximum of 2.44 metres (22.18 %) to the architectural corner roof feature. The non-compliant building elements are depicted on plan A08 an extract of which is at Figure 1 over page.

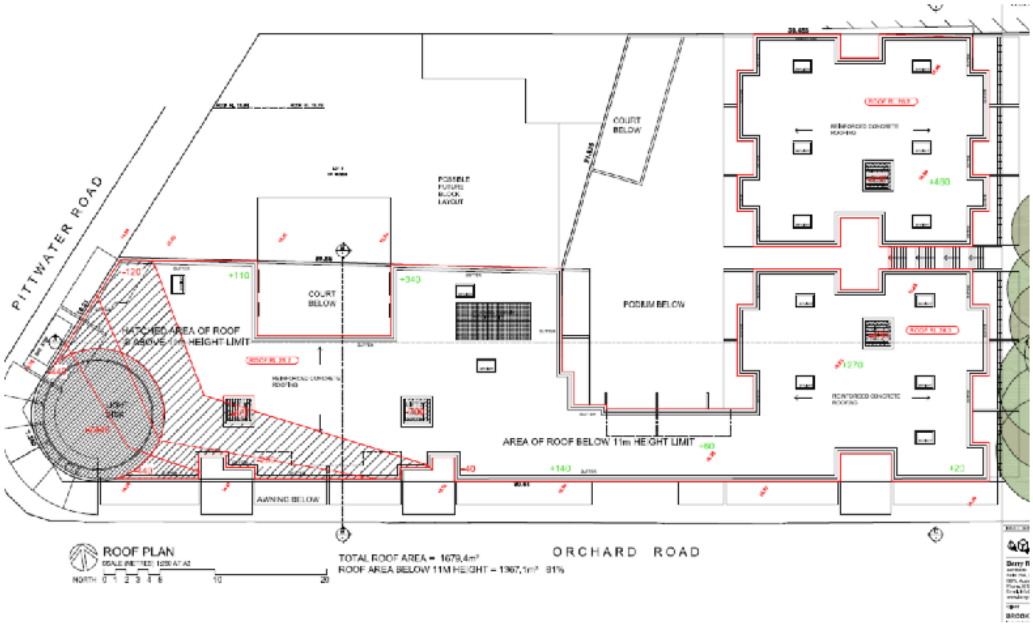


Figure 8 – Plan extract showing extent of 11 metre building height breach

Clause 4.6 of WLEP 2011 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

(b) the concurrence of the Director-General has been obtained.

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

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

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

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

Clause 4.6 Claim for Variation

Zone and Zone Objectives

The Warringah Local Environmental Plan (LEP) 2011 applies to the subject site and this development proposal. The subject site is located within the B5 Business Development zone. The stated objectives of the zone are as follows:

- *To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To provide for the location of vehicle sales or hire premises.*
- *To create a pedestrian environment that is safe, active and interesting by incorporating street level retailing and business uses.*

A range of uses are permissible in the zone with site specific additional permissible uses detailed in Clause 5 of Schedule 1 of WLEP 2011 namely:

5 Use of certain land in the vicinity of Pittwater Road and Roger Street, Brookvale

(1) This clause applies to land in the vicinity of Pittwater Road and Roger Street, Brookvale, shown as "Area 5" on the Additional Permitted Uses Map.

(2) Development for the following purposes is permitted with consent:
(a) office premises,
(b) retail premises,
(c) shop top housing.

Shop top housing is defined as follows:

***shop top housing** means one or more dwellings located above ground floor retail premises or business premises.*

In this regard, all residential dwellings are located above the level of the permissible ground floor retail and business floor space below. This can also be said for the work/ live SoHo style apartments whereby internal connection between the 2 separately defined and permissible uses enables such floor space to be purchased or leased by the same owner/ occupier.

Importantly, these 2 uses can function entirely independently with the ground level retail/ business use accessed from the either the ground level courtyard from Orchard Road or directly from the Charlton Lane frontage. We note that the residential component is separately accessed from the residential floor plate and corridor above. The uses are entirely independent and separately defined apart from the internal staircase connection.

As such, we have formed the considered opinion that the proposed development is appropriately defined as shop top housing in accordance with the judgement in the matter of in the matter of Hrsto v Canterbury City Council (No. 20 [2014] NSWLEWC 121.

Finally, pursuant to clause 5(3) of Schedule 1 WLEP 2011 consent must not be granted under this clause to development for the purposes of shop top housing unless the consent authority is satisfied that the development will not have a significant adverse impact on any adjoining land in Zone IN1 General Industrial.

Given the spatial separation afforded by Charlton Lane and the maintenance of the established Brush Box plantings along the boundary/ zone interface we have formed the considered opinion that the shop top housing development proposed will not have a significant adverse visual or physical impact on land within such zone by virtue of overshadowing, privacy or view loss or visual amenity.

Further, the proposed shop top housing development will not have a significant adverse impact on either existing uses or other permissible uses in the zone as reflected by the immediate relationship of the R2 Low Density Residential zone to the IN1 General Industrial zone along Wattle Street to the south of the site a built form and land use relationship considered compatible by the policy makers.

In any event the acoustic attenuation measures required for the residential apartments pursuant to the provisions of SEPP (Infrastructure) 2007 will ensure that no acoustic conflict will occur between such land uses. Such acoustic measures can be dealt with by way of an appropriately worded condition of consent requiring an acoustic report to be prepared as a component of the Construction Certificate documentation.

Accordingly, Council can be satisfied that the proposed shop top housing satisfies the clause 5(3) Schedule 1 WLEP 2011 considerations and accordingly is permissible with consent in the zone.

We have also formed the considered opinion that the proposal is consistent with the zone objectives by:

- *Providing large floor plate retail/ business tenancies in a location that is close to, and that support the viability of, the Brookvale Centre (first dot point objective); and*
- *Creating a pedestrian environment that is safe, active and interesting by incorporating street level retailing and business uses. (third dot point objective).*

The second dot point objective is not relevant to the permissible land use proposed.

Building Height Objectives

Having regard to the objectives of the height standard as previously identified strict compliance has been found to be both unreasonable and unnecessary for the flowing reasons:

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

Comment: The 11 metre height standard anticipates a 3 storey building form with the breaching elements limited to small areas of roof parapet, lift overruns and the architectural roof feature proposed at the Pittwater Road/ Orchard Road intersection. The non-compliance can be directly attributed to the desire to provide 4.75 metre ground floor ceiling heights to accommodate a range of permissible commercial uses with a mezzanine at ground floor level and the provision of an architectural roof feature to reinforce the visual importance of the site as the southern gateway to the Brookvale Business precinct. The building heights proposed are compatible with the heights established by development along Pittwater Road and those anticipate by the 11 metre/ 3 storey height standard.

The building and design are entirely appropriate for this prominent corner site as it reinforces the building as a strong, robust and defining element within the street block. In this regard, we have formed the considered opinion that the height, bulk and scale of the development are entirely consistent with the height and scale of surrounding and nearby development and that anticipated by the standard.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably concluded that the development is compatible with surrounding and nearby development and accordingly this objective is satisfied.

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

Comment: Having undertaken a detailed site and context analysis and identified available view lines over the site we have formed the considered opinion that the height of the development, and in particular the non-compliant height components, will not give rise to any visual, view, privacy or solar access impacts with appropriate spatial separation maintained to adjoining properties.
This objective is satisfied.

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

Comment: The non-compliant building height will not be readily discernible as viewed to or from Warringah's coastal or bush environments. This objective is satisfied.

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

Comment: The non-compliant building height elements will not be visually prominent as viewed from the street or any public area and will certainly not compromise the amenity of these public places.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context.

We have also formed the considered opinion that the proposal will maintain appropriate amenity in terms of solar access and privacy and will not give rise to any adverse public or private view affectation. In this regard, the development satisfies the objectives of the height of buildings standard and accordingly strict compliance is unreasonable and unnecessary under the circumstances.

In our opinion, there are sufficient environmental planning grounds to justify the variation including the desire to provide 4.75 metre ground floor ceiling heights to provide greater flexibility in terms of future commercial uses (consistent with the zone objectives), the slight fall across the surface of the land and the desire for single level floor plates and the appropriateness of an architectural roof feature to reinforce the visual importance of the site as the southern gateway to the Brookvale Business precinct. The building heights proposed are compatible with the heights established by development along Pittwater Road and those anticipate by the 11 metre/ 3 storey height standard.

Further, the architectural roof feature and future proofing of the building represent a skilful response to the prominent corner location of the site and the future proofing of the development having regard to the informally exhibited Brookvale Structure Plan. Such outcomes also promote/ facilitate the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

In accordance with Clause 4.6(5) the contravention of the development standard does not raise any matter of significance for State or Regional environmental planning with the public benefit maintained by Council's adoption of an application specific merit based assessment as it relates to building height within the 11 metre height precinct in which the site is located.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

a) that the site specific and contextually responsive development is consistent with the zone objectives, and

b) that the site specific and contextually responsive development is consistent with the objectives of the building height standard, and

c) that there are sufficient environmental planning grounds to justify contravening the development standard, and

d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and

e) that given the design quality of the development, and the developments ability to comply with the zone and building height standard objectives that approval would not be antipathetic to the public interest, and

f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

ITEM 3.3	**MOD2019/0641 - 1A QUEENSCLIFF ROAD, QUEENSCLIFF - MODIFICATION OF DEVELOPMENT CONSENT DA2015/1267 GRANTED FOR ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING TO INCLUDE INTERNAL AND EXTERNAL CHANGES AND A TURNTABLE IN THE BASEMENT CAR PARK**
AUTHORISING MANAGER	**ANNA WILLIAMS**
TRIM FILE REF	**2020/199467**
ATTACHMENTS	**1 Assessment Report** **2 Site Plan and Elevations**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2019/0641 for Modification of Development Consent DA2015/1267 granted for alterations and additions to a residential flat building to include internal and external changes and a turntable in the basement car park at Lot CP SP 4968, 1 A Queenscliff Road, Queenscliff subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0641

Responsible Officer:	Tony Collier
Land to be developed (Address):	Lot CP in SP 4968, 1 A Queenscliff Road, QUEENSCLIFF NSW 2096
Proposed Development:	Modification of Development Consent DA2015/1267 granted for alterations and additions to a residential flat building to include internal and external changes and a turntable in the basement car park
Zoning:	Warringah LEP 2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes. The proposal is subject to existing use rights (see separate discussion in this report).
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	The Owners of Strata Plan 4968
Applicant:	The Owners of Strata Plan 4968

Application Lodged:	17/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/01/2020 to 28/01/2020
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of Buildings: 12.9%
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal involves modifications of Development Consent DA2015/1267 granted by the Warringah Development Assessment Panel (WDAP) for alterations and additions to a residential flat building to include internal and external changes and a turntable in the basement car park.

The building is located within the R2 Low Density Residential zone and benefits from existing use rights.

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

The public exhibition of the application resulted in three (3) individual submissions being received which raised concerns with the proposed development. The issues raised include:

- View loss;
- Privacy; and
- Construction of side boundary walls/fences and landscaping levels.

The issues raised in the submissions have been addressed in the "Public Notification" section of this report and in summary they do not warrant refusal of the proposal. Suitable conditions have been imposed where required.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks approval to modify DA2015/1267 in the following manner:

Note: The plans reference Lots 1, 2 and 3 which relate to Units 1, 2 and 3.

Basement level (Approved FL 24.52)

- Extend the excavation adjacent to the storage room for Unit 3 to the side boundary.
- Remove an internal wall to increase the internal area of the storage room for Unit 3 by 10.1m³.
- Remove an internal wall to the storage room for Unit 1 make use of an under-stair area.
- Add a 6.0m diameter vehicle turntable.
- Relocate the drainage pit.

Ground Floor - Unit 1 (Existing RL 27.16)

- Demolish a side wall at the north-western side of the combined living room/kitchen and add a 1.5m wide extension to increase the area of the kitchen and add a pantry.
- Demolish the angled facade at the northern side of the combined living/dining room and replace with a flat facade with 0.5m wide Juliet balcony.
- Infill the highlight window in the south-eastern wall to the ensuite.
- Reconfiguration of rooms by relocating internal walls.
- Add a 0.8m blade wall to the south-western external wall of the lobby.
- Relocated pedestrian ramp.
- Rearrange the front landscaped area.
- Square and cover the bin store.

Mid Level - Unit 2 (Existing RL 29.81)

- Demolish a side wall at the north-western side of the combined living room/kitchen and add a 1.5m wide extension to increase the area of the kitchen.
- Demolish the angled facade at the northern side of the combined living/dining room and replace with a flat facade with 0.5m wide Juliet balcony.
- Extend the ensuite by 1.5m to occupy a potion of the southern (street facing) balcony.
- Reconfiguration of rooms by relocating internal walls.
- Add a 0.8m blade wall to the south-western external wall of the lobby stairwell.
- Remove the flat canopy from the southern side of the building.

Upper Level - Unit 3 (Existing RL 32.44)

- Demolish a side wall at the north-western side of the combined living room/kitchen and add a 1.5m wide extension to increase the area of the kitchen and add a pantry.
- Demolish the angled facade at the northern side of the combined living/dining room and replace with a flat facade with 0.5m wide Juliet balcony.
- Extend the ensuite by 1.5m to occupy a potion of the southern (street facing) balcony.

- Extend Bedroom 1 by 1.0m to occupy a portion of the southern balcony.
- Extend the southern balcony by 1.2m.
- Add a 0.7m high planter box to the south-western corner of the extended southern balcony.
- Reconfiguration of rooms by relocating internal walls.
- Add a 0.8m blade wall to the south-western external wall of the lobby stairwell.
- Remove the flat canopy from the southern side of the building.

Roof - Unit 3 Upper Level & Roof (Existing RL 35.09)

- Replace the existing pitched roof with a shallower pitched roof (i.e. the ridgeline is reduced in height by 1.4m).
- Add 0.4m high parapets around the edge of the new roof.
- Extend the south-western corner of the existing living room by 1.3m to provide a WC.

Following a review of submissions received, the applicant submitted a minor revision to the plans which included the following changes (although these changes could have been imposed as conditions):

- Removal of the proposed planter box at the north-western corner of the development to marginally improve view sharing;
- Reduction to the length of the wall to the proposed ensuite extension at the south-western corner of Level 2 by 0.4m to marginally improve view sharing; and
- Reduction to the height of the planter box at the south-west corner of Level 2 to marginally improve view sharing.

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 relevantDevelopment Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot CP in SP 4968 , 1A Queenscliff Road, Queenscliff
Detailed Site Description:	The site is located on the northern side of Queenscliff Road, has an area of 497.3sqm and is generally flat. Existing on the site is a three storey residential flat building containing three units along with attached garages at the front. The site backs onto the coastal cliff. The surrounding development consists of a mix of residential flat buildings and detached dwellings. The neighbouring property to the west contains a residential flat building. The neighbouring property to the east contains a partially constructed two unit development. The area is zoned R2 Low Density Residential. Residential flat buildings are prohibited in the zone, however, the subject site benefits from existing use rights.

Map

SITE HISTORY

The site is the subject of the following applications:

Consent No 69/149

The existing residential flat building was approved under Land Use Consent No 69/149.

Building Approval C 1054/69

The existing building was approved for construction under Building Approval C 1054/69.
Building Approval C 1054/69 was later amended under the same application number.

DA2015/0837

This application was lodged for alterations and additions to a Residential Flat Building. After a preliminary assessment, the applicants were requested to withdrawn the DA due to insufficient information and non-compliances that could not be supported.

The application was withdrawn on 2 December 2015.

DA2015/1267

This application was lodged on 17 December 2015 for alterations and additions to a residential flat building.

The application was approved by the Warringah Development Assessment Panel (WDAP) on 11 May 2016.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2015/1274, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
a) it is satisfied that the development to which the consent as modified relates is substantially the same	Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was

Section 4.55 (2) - Other Modifications	Comments
development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	originally granted, Justice Bignold established the following test in the *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289* where His Honours states: "[54] *The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.* [55] *The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.* [56] *The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."* The applicant has provided the following justification to support their argument that the modifications are substantially the same: "*In answering the above threshold question as to whether the proposal represents "substantially the same" development the proposal must be compared to the development for which consent was originally granted, and the applicable planning controls.* *In order for Council to be satisfied that the proposal is "substantially the same" there must be a finding that the modified development is "essentially" or "materially" the same as the (currently) approved development - Moto Projects (no. 2) Pty Ltd v North Sydney Council [1999] 106 LGERA 298 per Bignold J.* *The above reference by Bignold J to "essentially" and "materially" the same is taken from Stein J in Vacik Pty Ltd v Penrith City Council (unreported), Land and Environment Court NSW, 24 February 1992, where his honour said in reference to Section 102 of the Environmental Planning and Assessment Act (the predecessor to Section 96):*

Section 4.55 (2) - Other Modifications	Comments
	"Substantially when used in the Section means essentially or materially or having the same essence." What the above- mentioned authorities confirms is that in undertaking the comparative analysis the enquiry must focus on qualitative elements (numerical aspects such as heights, setbacks etc) and the general context in which the development was approved (including relationships to neighbouring properties and aspects of development that were of importance to the consent authority when granting the original approval). *When one undertakes the above analysis in respect of the subject application it is clear that the approved development remains, in its modified state, alterations and additions to the existing residential flat building including an additional partial level of accommodation, which will continue to spatially relate to its surrounds and adjoining development in a consistent manner as originally approved. The previously approved streetscape, privacy, solar access, view sharing and general amenity outcomes afforded by the original application are not significantly altered although views from the upper level apartments in the adjoining residential flat building to the west will be enhance through the replacement of the existing pitched roof form with a low pitched parapeted roof. On the southern end of the building.* *The Court in the authority of Stavrides v Canada Bay City Council [2007] NSWLEC 248 established general principles which should be considered in determining whether a modified proposal was "substantially the same" as that originally. A number of those general principles are relevant to the subject application, namely:* • *The proposed use does not change;* • *The proposed residential density does not change;* • *The building form, footprint, setbacks, floor space, car parking, landscaping and drainage circumstances are not significantly altered;* • *The proposal maintains a complimentary and compatible streetscape and coastal foreshore presentation;* • *The modifications maintain the previously approved residential amenity outcomes (to residential properties within the vicinity of the site) in terms of privacy, visual bulk and overshadowing; and* • *The modifications have resulted from a desire to refine the detailing of the application and replace the remnant section of pitched roof with a more sensitive low pitched and parapeted roof form.* *On the basis of the above analysis we regard the proposed application as being "essentially or materially" the same as the approved development such that the*

Section 4.55 (2) - Other Modifications	Comments
	application is appropriately categorised as being "substantially the same" and is appropriately dealt with by way of Section 4.55(2) of the Act. *We have also formed the considered opinion that the application remains, in its modified state, an application proposing legitimate alterations and additions to the existing residential flat building having regard to a qualitative and quantitative assessment against the planning principle established by the Court in Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187. In forming this opinion, we note the following:* *<u>Qualitative issues</u>* • *How is the appearance of the existing building to be changed when viewed from public places?* *The existing roof form is changed in its totality and upper level additions and proposed to the northern end of building, at each existing level at its southern end and minor additions at each existing level at its north western corner. The existing 3 storey building form and floor plates, including structural floor and wall elements are retained.* • 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? *No significant landscaping removed with landscaping enhanced as a consequence of the proposed development.* • *To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?* *No heritage impacts.* • *What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?* *There are no additional structures within the curtilage of the existing building.* • *What is the extent, if any, of any proposed change to the use of the building?* *Previous approval increased building height at the northern end of the building however this modification reduces building height over the balance of the development.*

Section 4.55 (2) - Other Modifications	Comments
	• *To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?* *Enhanced streetscape outcomes are achieved.* • *To what extent, if any, are the existing access arrangements for the building proposed to be altered?* *No change to previous approval.* • *To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development?* *No change to previous approval.* • *Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?* *No. The general form remains that of a residential flat building containing 3 apartments.* *<u>Quantitative issues</u>* • *To what extent is the site coverage proposed to be changed?* *Slight reduction in site coverage/ increase in landscaped area.* • *To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?* *The development benefits from existing use rights. No numerical provisions apply however general form maintained.* • *To what extent is the building envelope proposed to be changed?* *Compared to what was previously approved a reduction in building height (southern end of building) and slight increase in building footprint in the north western and south western corners of building. This is compensated for through the demolition of existing balcony returns.* • *To what extent are boundary setbacks proposed to be changed?*

Section 4.55 (2) - Other Modifications	Comments
	Minor increase in building footprint/ reduction in the side boundary setback in the north western and south western corners of building. Minor adjustment in southern façade/ balcony alignment. • *To what extent will the present numerical degree of landscaping on the site be changed?* *Minor increase in landscaped area.* • *To what extent will the existing floor space ratio be altered?* *Minor increase in floor space.* • *To what extent will there be changes in the roof form?* *The entire roof form is altered.* • *To what extent will there be alterations to car parking/garaging on the site and/or within the building?* *Minor increase in excavation at basement to accommodate additional storage. No change to approved basement parking area.* • *To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?* *Minor increase in excavation at basement to accommodate additional storage. No change to approved basement parking area.* • *What relationship does the proportion of the retained building bear to the proposed new development?* *Provides for a complimentary and compatible building form".* Reviewing the above comments and the court judgement by Justice Bignold established in the Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289 it is concurred that the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Act.
b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with	Development Application DA2015/1274 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
c) it has notified the application in accordance with: i. the regulations, if the regulations so require, or ii. a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2011 and Warringah Development Control Plan.
d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. Clause 50(1A) of the EP&A Regulation 2000 requires

Section 4.15 'Matters for Consideration'	Comments
	the submission of a design verification certificate from the building designer at lodgment of the development application. This clause is not relevant to this application. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<u>Environmental Impact</u> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. <u>Social Impact</u> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. <u>Economic Impact</u> 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

- ***Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the ‘Act”)?***

Section 4.56 of the Act defines an existing use as meaning:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and

(b) the use of a building, work or land: for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and

(i) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."

This necessarily requires the following questions to be answered.

1. ***Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting thatuse?***

Comment
The applicant provided (under DA2015/1267) evidence in the form of a list of consents which reveals that the existing residential flat building commenced as a lawful purpose in 1969 (under Land use consent No 69/149, Building Approval C 1054/69 and Amended Building Approval C 1054/69), prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

2. ***Was the use of the land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?***

Comment
The use of the land was lawfully approved by Council in 1969 under Land use consent No 69/149, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. ***Has the use of the land been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?***

Comment
The building is currently, and has been, occupied and used as a residential flat building within one year from the date on which the provision having the effect of prohibiting the use commenced.

- ***What is "the land on which the existing use was carried out" for the purposes of cl 42(2)(b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?***

Meagher JA in *Steedman v Baulkham Hills Shire Council [No. 1] (1991) 87 LGERA 26* stated (at 27) the rule to be applied as follows: "t*hat if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose*".

Comment
The land consists of units which have been physically used for the purposes of residential accommodation.

Status of Prescriptive Provisions under Section 4.15 of the EPA Act, 1979

In accordance with the judgments and Planning Principles established by the Land and Environment Court, it is clear that prescriptive requirements of environmental planning instruments and development control plans cannot be applied to the assessment of the application as they would derogate from the existing use rights.

In the absence of the usual considerations which apply by virtue of the application of a local environment plan or development control plan, the merit assessment of the development application which must be undertaken under s 4.15 of the EP&A Act must apply well recognised town planning principles. Planning principles are designed to assist in reaching a decision in a particular case relating to issues which arise in merit cases. Planning principles are not legally binding, but provide an appropriate approach to a merits review of a development application for development relying on existing use rights.

Accordingly, the merits of the subject development application are assessed in accordance with the planning principles relating to existing use rights applications established in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71* below.

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- ***What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild an existing use?***

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the court in this case will have general application in dealing with Development Applications that rely on existing use rights:

1. ***How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?***

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

<u>Comment</u>

This particular locality is unique in that, while the subject site and surrounding properties are zoned R2 Low Density Residential, residential flat buildings are the most prominent land use. The neighbouring property to the west accommodates a larger and higher residential flat building and the property to the east currently contains a partially constructed two unit development.

The proposed works to the subject building will increase the bulk and scale of the building as a result of the new kitchen extension on the western elevation and the additions to the front setback at Levels 02 and 03. However, given the existing development on the surrounding sites, the proposed development will remain in context with the existing and future character of the area and will retain a reasonable bulk and scale.

2. ***What is the relevance of the building in which the existing use takes place?***

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly

an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment
No change of use is proposed and the existing building is not proposed to be demolished.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment
The proposal will have additional impacts on adjoining land, however, these additional impacts are minor and are not unreasonable.

The orientation of the subject site and the surrounding lots mean that the proposal will maintain adequate light and solar access to all adjoining properties.

View sharing is discussed in detail under Part D7 - 'Views' in this report. In summary, the proposal will result in a reasonable sharing of views.

The privacy impacts are discussed in detail in Part D8 - 'Privacy' below in this report. In summary, the proposal will not result in unreasonable privacy impacts.

Overall, the proposal will not have unreasonable amenity impacts on adjoining or nearby properties.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment
The internal amenity of the three units in the development will be improved. The additional floor space will increase the livability of the apartments and the 'squaring' of the northern facade will improve the development when viewed from the water.

Conclusion

The use has been approved under a previous EPI and therefore, is a lawful use. Subsequently, the use can be retained under the current EPI (WLEP 2011).

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 3 submissions from:

Name	Address
Mr Joel Coleman	1 / 7 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Vinko Bokanovic	28 / 4 Beach Street CURL CURL NSW 2096
Doreen Mary McCullagh	1 Queenscliff Road QUEENSCLIFF NSW 2096

Note: The submission listed under 28 /4 Beach Street is from the owner of 1 Queenscliff Road. The

The following issues were raised in the submissions:

- **View loss**

Concern is raised from the owner of Unit 13/7 Queenscliff Road that the modification will "*remove even greater views from my apartment* [than what was already approved under DA2015/1267], *with specific relation to the third floor balcony extensions on the western elevation. The modification effectively walls in the majority of our view to the ocean*".

Comment
This issue has been addressed in detail under Clause D7 - 'Views'.

In summary, the assessment considered that, because the water and headland views were largely maintained and that, because the removal of the pitched roof would improve outlook towards the horizon this, together with the level of compliance achieved by the proposal that the view impact was acceptable and the view sharing reasonable.

Therefore, this issue does not warrant the refusal of the application.

- **Privacy**

The owners of No. 1 Queenscliff Road state:

"*The squaring off of balconies on the North/Eastern building. Whilst this will provide a more usable space for entertaining, I would not object if Council, at the very least, would condition the entire building to provide privacy screens of an approximate height of 1.8m to be placed along the entire Eastern side to all balconies and the additional rooftop terrace*"

Comment
This issue has been addressed in detail under Clause D8 - 'Privacy'.

In summary, it is considered appropriate that, rather than add 1.8m high privacy screens which would add to the bulk of the building and unreasonably inhibit ocean views to the east (which are considered secondary to the more primary views to the north-west (Freshwater Beach), North (the Headland) and north-east (ocean)), the inclusion of a condition is to be imposed which requires the side-facing balconies to be made non-trafficable through the inclusion of fixed barriers to prevent persons standing on those balconies.

This issue does not warrant the refusal of the application.

- **Construction of side boundary walls/fences and landscaping levels**

The owners of No. 1 Queenscliff Road state:

"*Condition all new walls pertaining to the building loads and soil retention for Landscaping to be built independently on 1A's property with a cavity of approximately 50mm separating the existing boundary fence on the entire Eastern boundary. This existing boundary wall/fence has been designed only for it's intended purpose as a fence and not a load bearing wall for the adjoining neighbours at 1A*".

Additionally, the owner also states:

"*Landscaping levels to the ground floor North/Eastern elevation to remain existing as per approved plans DA2015/1267. As visualised on site by Council planners. The new modification does not reflect existing levels which varies approximately 1-1.2m below Ground floor level of Apartment 1*".

Comment
A review of the plans and the site levels indicates that the plans show retaining wall features along the boundary adjacent to the existing 1.8m high boundary wall (which has been erected on the neighbouring property at No.1 Queenscliff Road). The proposed retaining walls are located further north of the existing retaining walls with the intention of filling below the cantilevered living/dining room at the ground floor. This will result in an increase to the level of the lawn in the side setback of between 0.3m to 1.2m.

The retaining wall returns along the side boundary to abut the existing boundary wall. As the owner of No. 1 Queenscliff Road states, the boundary wall been designed only as a fence and not a load bearing wall and therefore, the concern raised is valid in that any additional load to the western side of the wall could result in failure. Rather than specifying a cavity separation, it is considered appropriate to include a condition which requires that the lawn area within the eastern side of the subject site be maintained as approved under DA2015/1267 thereby relieving pressure on the existing wall and maintaining the current level of privacy from the lawn area.

This issue does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comment
Parks, reserves, beaches, foreshore	The application was referred to Council's Parks, Reserves, Beaches and Foreshores department for review. The following comments have been provided: "The proposed modification includes extending the area of balconies that are immediately adjacent to Queenscliff Headland Reserve. There is an approximate 20 metre change in topography between the balcony extension and the reserve over a distance of approximately 3 metres. To ensure that public safety is maintained during the works, the following conditions have been stipulated: • Construction Management Program. • Public Liability Insurance. • No other issues with the proposal". Planner Comment The conditions suggested above are imposed in the consent issued for DA2015/1267, namely: • Condition 14 - Construction Management Plan; and • Condition 19 - Public Liability Insurance (Works on Public Land). It is noted that Condition 14 does not specifically address the points raised and is subsequently recommended to be amended to include the following points (amendments in bold): • Proposed protection for Council land (**including precautions taken to avoid loss of building material down the cliff face**) and adjoining properties. Details are to include site fencing and the provision of hoardings over

Internal Referral Body	Comment
	footpaths; and • **The proposed method of loading and unloading, demolition, excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.**

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)

State Environmental Planning Policy No. 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.

State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

As previously outlined the proposed development is for the refurbishment of a 3 storey residential flat 'housing' development plus basement car parking for the provisions of 3 self-contained dwellings.

As per Clause 4(1)(c), the provisions of SEPP 65 are therefore not applicable to the assessment of this application.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

BASIX certificates have been submitted with the application (see Certificate Nos. A364899, A364916 and A364925 all dated 5 December 2019).

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

State Environmental Planning Policy (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.

State Environmental Planning Policy (Coastal Management) 2018

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

10 *Development on certain land within coastal wetlands and littoral rainforests area*

(1) The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
- *(a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
- *(b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
- *(c) the carrying out of any of the following:*
  - *(i) earthworks (including the depositing of material on land),*
  - *(ii) constructing a levee,*
  - *(iii) draining the land,*
  - *(iv) environmental protection works,*
- *(d) any other development.*

Comment
The development is not located on land located within a coastal wetland or littoral rainforest area. Clause 10 is not applicable.

11 Development on land in proximity to coastal wetlands or littoral rainforest

(1) Development consent must not be granted to development on land identified as "proximity

area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or

(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment

The development is not located on land located within proximity to a coastal wetland or littoral rainforest area.

Clause 11 is not applicable.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

(a) if the proposed development comprises the erection of a building or works - the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and

(b) the proposed development:

(i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and

(ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and

(iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and

(c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment

The NSW Department of Planning, Industry and Environment website refers to a Coastal Vulnerability Area as one that is subject to coastal hazards such as coastal erosion and tidal inundation. However, Clause 12 is preceded by a note which states "*at the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified*".

Therefore, Clause 12 is not applicable at this time.

13 Development on land within the coastal environment area

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

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

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

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability;

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone

Comment
The site is located within the Coastal Environment Area.

The development is situated on the cliff and the changes proposed to the existing and approved building are such that no impact will occur which adversely affect the matters raised in points (a) to (g). Conditions are also imposed in DA2015/1267 appropriately address construction activity such as structural adequacy and excavation work, the protection of rock formations and erosion/sediment control to ensure that the development will not adversely affect the matters raised in Points (a) to (g).

(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 sub-clause (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
Council is satisfied that the development is designed, sited and will be managed (subject to condition) to avoid an adverse impact referred to in sub-clause (1).

The development satisfies Clause 13(1) and (2).

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 development has been designed to ensure that no adverse impact will be caused to the matters raised in Point (a)(i) to (v).

Therefore, Council is satisfied that the development has been designed, sited and will be managed (subject to condition) to avoid any adverse impact referred to in Point (a).

This assessment has considered the development against the applicable standards and controls to take into account the bulk, scale and size of the development within the surrounding coastal and built environment.

The development satisfies Clause 14(1).

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

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

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

Comment
The development is for the modification of consent has been designed to respond to the nature of the site and provide appropriate waste and drainage management systems to avoid any increased risk of coastal hazard.

The development satisfies Clause 15.

Warringah Local Environmental Plan 2011

Is the development permissible?	No (Existing Use Rights)
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	Permitted	Approved	Proposed	Variation	Complies
43 - Height of Buildings	8.5m	96m to 11.33m	Building: 8.2m to 11.33m Kitchen Extension: 8.2m Planter Boxes (NW): 8.7m to 9.6m Planter Boxes (SW): 8.2m	-1.4m N/A 12.9% N/A	Yes Yes **No** Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 – Height of Buildings	No (see commentary below)
6.2 - Earthworks	Yes
6.4 – Development on Sloping Land	Yes

Detailed Assessment

4.3 Height of Buildings

In *Gann v Sutherland Shire Council [2008] NSWLEC 157*, the Court was prepared to distinguish an earlier line of authority, and hold that, since Section 96 (now 4.55) was a “free-standing” provision, it could be utilised to modify a consent even where (in that case) no SEPP 1 or Clause 4.6 Objection could be lodged.

By application of that case in the context of this application, the Council can consider (and approve) a modification that still results in a breach of the height control, without reference to SEPP 1 or Clause 4.6, relying instead on the “free-standing” power of Section 4.55.

In this regard, the matters for consideration under SEPP 1 or Clause 4.6 provide a reasonable and consistent means of assessing any Section 4.55 that is beyond the provisions of the planning controls.

Whilst this modification application will result in a height that exceeds the maximum permitted by Clause 4.3 of WLEP 2011, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the EP&A Act, which is a free-standing provision which, in itself, authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation objection in order to determine the modification.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Notwithstanding that Clause 4.6 does not apply to modification applications, the merits of the departure have been assessed and found that the development satisfies the underlying objectives of Clause 4.3 Height of Buildings under WLEP 2011 and the variation can be supported on its merit.

The modification results in a further breach of the development standard of 1.1m and occurs at the 1.5m wide side extension to the kitchen area at the second floor. Notwithstanding, Council is satisfied that the modified development is substantially the same development as previously approved and therefore no assessment against the objectives of Clause 4.6 is required and the departure from the development standard is supported in this instance.

Warringah Development Control Plan 2011

Built Form Controls

Control	Requirement	Approved	Proposed	Complies
B1 Wall Heights	7.2m	8.04m to 11.09m	**8.2m**	**No**
B3 Side Boundary Envelope	5.0m x 45°	East: Encroachment West: Encroachment	No change Encroachment	N/A **No**
B5 Side Boundary Setbacks	0.9m	East Basement: Nil to 3.7m Above Ground: 3.0m West Basement: Nil to 3.7m Above Ground: 3.0m	 **Nil** to 3.7m No change No change 1.1m to 2.2m	 **No** N/A N/A Yes
B7 Front Boundary Setbacks (Queenscliff Road)	6.5m	Basement: 1.2m Ground Floor: 6.08m Level 1 Balcony: 6.08m Level 1 Wall: 7.43m Level 2 Balcony: 7.43m Level 2 Wall: 946m	No change No change No change **6.1m** to 7.43m **6.0m** to **6.2m** 7.1m	N/A N/A N/A **No** **No** Yes
B9 Rear Boundary Setbacks	6.0m	Basement: 3.4m to 69m Ground Floor Wall: 0.9m to 3.3m Ground Floor Balcony: 0.3m to 2.6m Level 1 Wall: 0.9m to 3.3m Level 1 Balcony: 0.3m to 2.6m Level 2 Wall: 0.9m to 3.3m Level 2 Balcony: 0.3m to 2.6m Level 3 Wall: 0.9m to 3.3m Level 3 Terrace: 0.3m to 2.6m	No change No change **0.7m** to **4.1m** **0.1m** to **5.8m** **0.7m** to **4.1m** **0.1m** to **5.8m** **0.7m** to **4.1m** **0.1m** to **5.8m** No change **0.1m** to **5.8m**	N/A N/A **No** **No** **No** **No** **No** **No** N/A **No**
B13 Coastal Cliffs Setback	Not more than 25m from the front boundary	Basement: 27.3m Above Ground: 31.5m	No change 29.1m	N/A Yes
D1 Landscape Open	40% (198.9m²)	22.9% (113.9m²)	23% (114.4m²)	**No**

Control	Requirement	Approved	Proposed	Complies
Space & Bushland Setting				

Compliance Assessment

Clause	Compliance with Requirements	Consistency with Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	**No**	Yes
B3 Side Boundary Envelope	**No**	Yes
B5 Side Boundary Setbacks	**No**	Yes
B7 Front Boundary Setbacks	**No**	Yes
B9 Rear Boundary Setbacks	**No**	Yes
B13 Coastal Cliffs setback	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	**No**	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	N/A	N/A
E2 Prescribed Vegetation	N/A	N/A
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

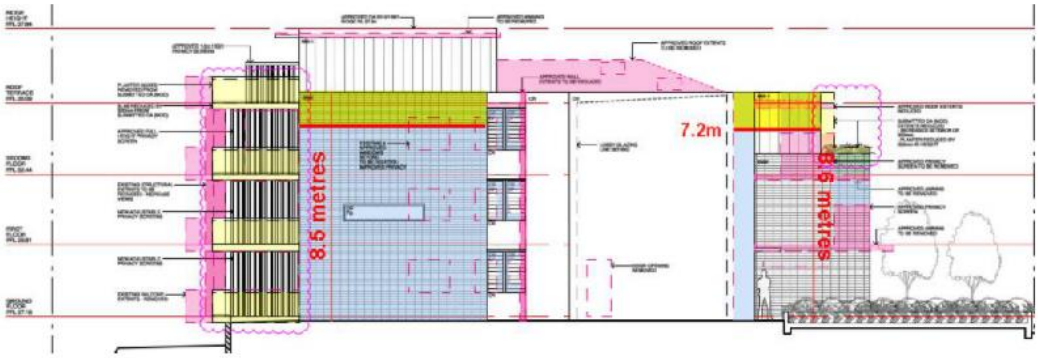
B1 Wall Heights

Description of non-compliance

Clause B1 requires that development provide a maximum wall height of 7.2m

The development proposes a wall height of 8.5m at the new extension (associated with the expanded kitchen areas to all units) located at the north-west side of the building and 8.6m at the new extension (associated with the blade wall to the stairwell and the expanded ensuite to Unit 3) at the south-west corner of the building.

The figure below details the areas of non-compliance (shaded in dark yellow).



Merit consideration

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

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

Comment
The proposed kitchen extension is located at the north-western side of the building and, as such will not be visible from the street nor (due to its elevation and concealment by the neighbouring building to the west) will not be visible from Freshwater Beach. The extension will be visible from the neighbouring property.

The extension is opposite a side-facing balconies and habitable rooms of the neighbouring dwelling, however it is considered that the extension would result in an improved amenity outcome to those balconies and habitable rooms as it reduces the visual privacy impact significantly.

The extension is separated from the afore-mentioned balconies and habitable rooms by a distance of between 3.9m (to the balconies) and 4.6m (to the habitable rooms). This separation does not result in an overbearing sense of enclosure as the outlook from those balconies and habitable rooms is towards the north and north-east (i.e. over the Freshwater headland and the ocean) and the extension does not inhibit this outlook.

The extensions to the southern side of the building will be visible from the street, however these extension are considered to be an aesthetic improvement to the existing built form and a functional improvement to the approved development such that it would not result in any adverse visual impact.

The development is considered to satisfy this objective.

- ***To ensure development is generally beneath the existing tree canopy level.***

Comment
There are no canopy trees on the subject or adjoining sites and it is worth noting that the side

setbacks of the site (and neighbouring sites) form shaded 'wind tunnels' which prevent any significant vegetation from growing.

The development is considered to satisfy this objective.

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

Comment
This matter is discussed in detail under Part D7 - Views, below in this report.

In summary, the new element of the building that breaches the 7.2m wall height control (being the extension to the ensuite at the south-western side of the building at Level 3) will result in a minor loss of views from Unit No 13/7 Queenscliff Road (being the only unit which raised an objection to the proposal in that building). During the inspection of that unit it was considered that the proposed removal of the pitched rood would improve the available views by opening up outlook across the new roof and towards the horizon.

Overall, the proposal will result in a reasonable sharing of views and the elements of the development that do not comply with the wall height control will not unreasonably contribute to any notable view loss.

The development is considered to satisfy this objective.

- ***To minimise the impact of development on adjoining or nearby properties.***

Comment
The orientation of the subject site and surrounding lots mean that the proposal will not result in any unreasonable overshadowing impacts.

View sharing is discussed in detail under Part D7 - Views below in this report. In summary, the proposal will result in a reasonable sharing of views.

The privacy impacts are discussed in detail in Part D8 - Privacy. In summary, the proposal will improve privacy impacts, particularly to the balconies and habitable rooms of the neighbouring building immediately adjacent to the proposed kitchen extension.

Overall, the proposal will not have unreasonable amenity impacts on adjoining or nearby properties.

The development is considered to satisfy this objective.

- ***To ensure that development responds to site topography and to discourage excavation of the natural landform.***

Comment
The modifications proposed do not affect the assessment outcomes of the original Development Application in that the proposal is considered to respond appropriately to the topography of the site.

The development is considered to satisfy this objective.

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

Comment
The modification proposes to replace the pitched roof form with a shallower pitch (almost flat) which will better respond to the contemporary design of the approved development.

The development is considered to satisfy this objective.

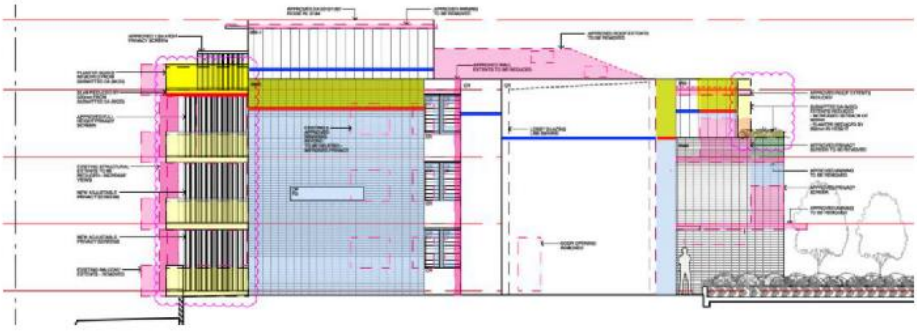
Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B3 Side Boundary Envelope

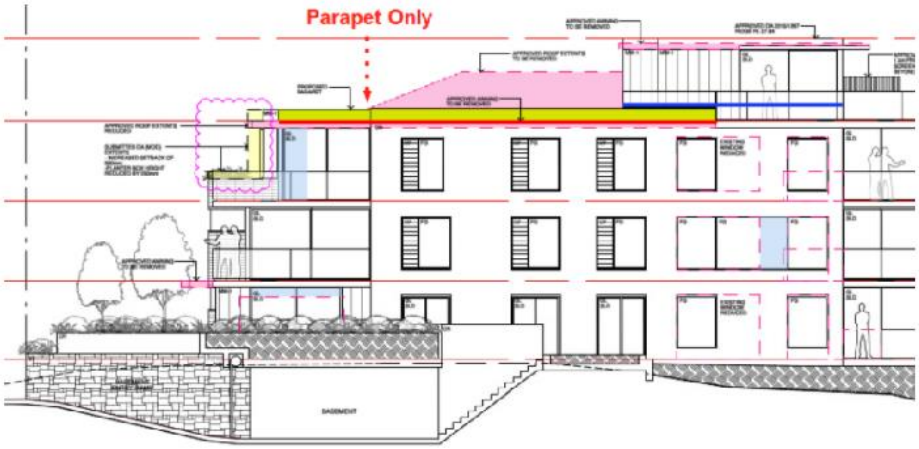
Description of non-compliance

Clause B3 requires the side walls of the development to be

The figures below detail the areas of non-compliance (underlined in red and shaded in dark yellow). The blue lines indicate existing and approved non-compliances which are not subject to this assessment.



West elevation



East elevation

Merit consideration

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

- ***To ensure that development does not become visually dominant by virtue of its height and bulk.***

Comment
As detailed in the figures above, the non-compliant elements include the kitchen extension located at the north-western side of the building, glass balustrades to the north-western side of the new balconies, extensions to the ensuite located at the south-western side of the building and the parapet which extends along the eastern side of the building.

The kitchen is the most notable feature which adds to the bulk of the building (the remaining elements being comparatively minor and visually unnoticeable). This extension is separated from the neighbouring building by a distance of between 3.9m (to the balconies) and 4.6m (to the habitable rooms). This separation does not result in an overbearing visual dominance as it retains sufficient outlook towards the north and north-east (i.e. over the Freshwater headland and the ocean).

The development is considered to satisfy this objective.

- ***To ensure adequate light, solar access and privacy by providing spatial separation between buildings.***

Comment
The orientation of the subject site and surrounding lots mean that the proposal will continue to allow adequate light and solar access to surrounding properties.

Privacy is discussed in detail in Part D8 - Privacy. In summary, the proposal will not result in unreasonable privacy impacts.

The proposed side setbacks numerically comply and will provide adequate spacial separation. The development is considered to satisfy this objective.

- ***To ensure that development responds to the topography of the site.***

Comment
The modifications proposed do not affect the assessment outcomes of the original Development Application in that the proposal is considered to respond appropriately to the topography of the site.

The development is considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011, WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

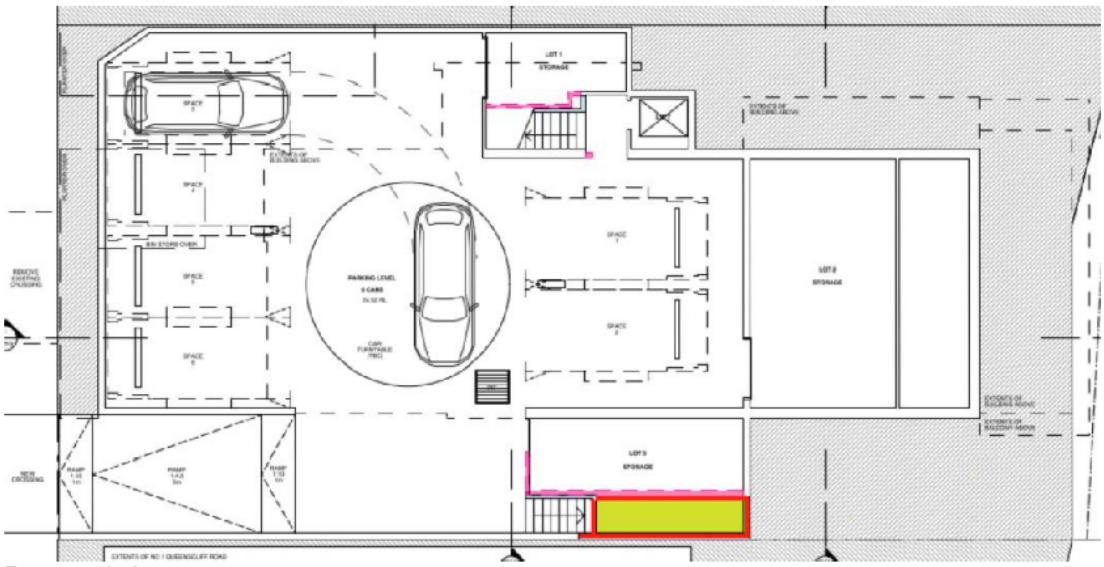
B5 Side Boundary Setbacks

Description of non-compliance

Clause B5 requires development to provide a side setback of 0.9m.

The development includes a new excavated element at the Basement level which forms an extension to the storage area of Unit 3.

The figure below shows the location of the non-compliant element (shaded in yellow).



Basement plan

Merit consideration

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

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

Comment
The non-compliant element does not reduce the calculable area of deep soil landscaped area due to its dimension.

The development is considered to satisfy this objective.

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

Comment
The non-compliant element is sited completely below ground and will not become visually dominant.

The development is considered to satisfy this objective.

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

Comment
The non-compliant element is sited completely below ground and will not add to the scale and bulk of the building.

The development is considered to satisfy this objective.

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

Comment
The non-compliant element is sited completely below ground and will not have any adverse impact upon the level of privacy and solar access to neighbouring private and public properties.

The development is considered to satisfy this objective.

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

Comment
The non-compliant element is sited completely below ground and will not have any impact on the sharing of views.

The development is considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011, WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

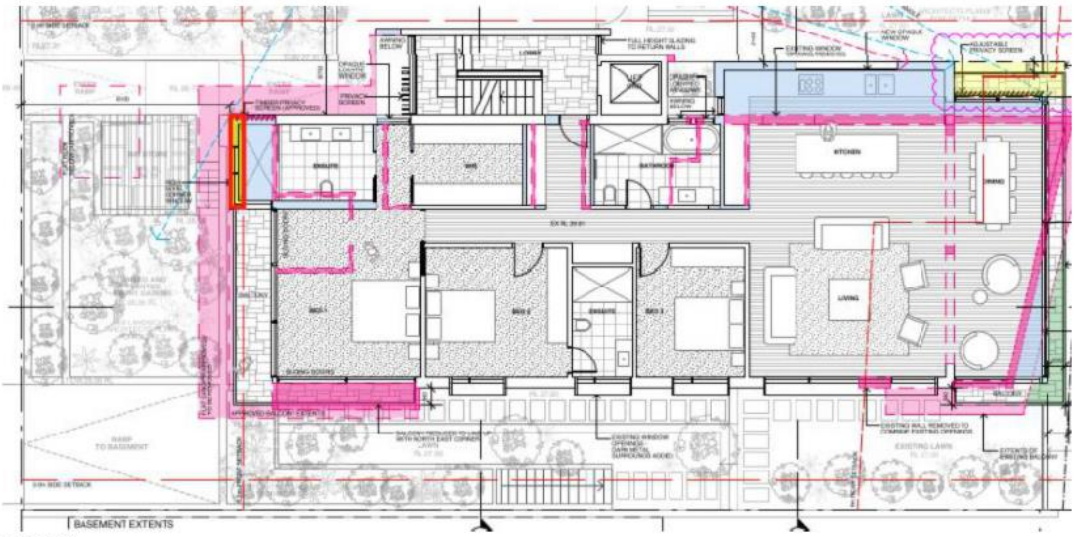
Description of non-compliance

Clause B7 requires development to provide a 6.5m setback to the front of the site (i.e. facing Queenscliff Road).

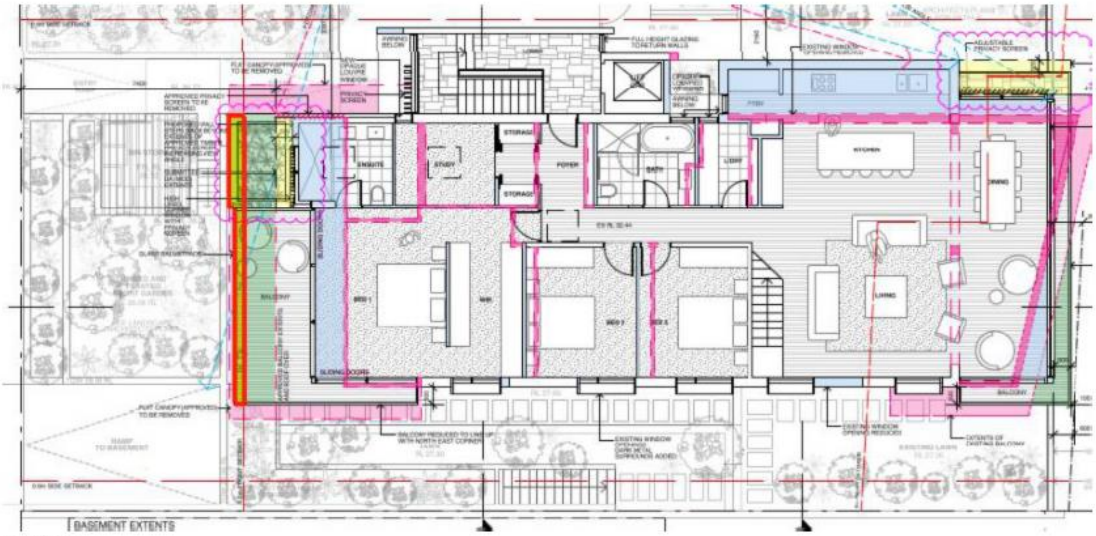
The development includes two elements which encroach with the front setback being:

- Level 1 wall (extension to the ensuite) at 6.1m.
- Level 2 balcony at 6.0m to 6.2m.

The figure below shows the locations of the non-compliant elements (bounded in red and highlighted in dark yellow).



Level 1



Level 2

Merit consideration

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

- ***To create a sense of openness.***

Comment
The non-compliant elements are minor and will not impede any sense of openess beyond that already approved under DA2015/1267.

The development is considered to satisfy this objective.

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

Comment
The non-compliant elements will better align the frontage of the building as a consistent facade as opposed to a slightly terraced facade. This will improve the visual continuity of the building with other more contemporary buildings in the visual catchment and local area.

The two elements are located above ground level and do not impact upon the landscape elements of the site. Notwithstanding, the non-compliance at Level 2 includes a planter box which will add a natural feature to the facade.

The development is considered to satisfy this objective.

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

Comment
The non-compliant elements will better align the frontage of the building as a consistent facade as opposed to a slightly terraced facade. Although not a significant change, the modification will contribute towards enhancing the visual quality of streetscapes and public spaces.

The development is considered to satisfy this objective.

- ***To achieve reasonable view sharing.***

Comment
This matter is discussed in detail under Part D7 - Views, below in this report.

In summary, the element of the building that breaches the front setback control (being the extension to the ensuite at the south-western side of the building at Level 2) will result in a minor loss of views from Unit No 13/7 Queenscliff Road (being the only unit which raised an objection to the proposal in that building). However, this was considered to be minor and maintained reasonable view sharing.

The development is considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011, WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

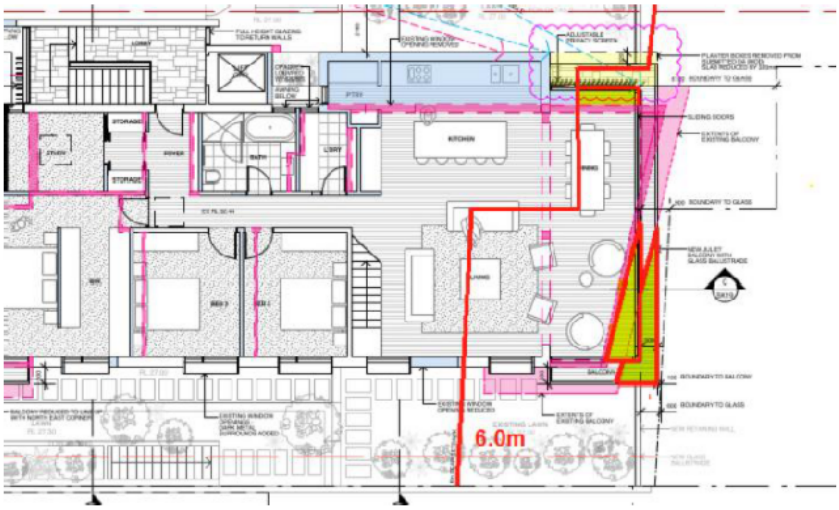
B9 Rear Boundary Setbacks

Description of non-compliance

Clause B9 requires development to provide a rear setback (i.e. the northern boundary) of 6.0m.

Given the irregular formation of the rear boundary, the development provides a rear setback of between 0.1m to 5.8m (although this varies within that range across all levels). Apart from the existing areas of the building which are remaining in situ, the new non-compliant elements include triangular sections of the realigned facade and triangular sections of the Juliet balcony feature.

The figure below details the new areas of non-compliance (bounded in red and shaded in dark yellow) across all floor levels. The floor areas within the rear setback and which are not shaded are existing.



Typical plan for all levels

Merit consideration

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

- ***To ensure opportunities for deep soil landscape areas are maintained.***

Comment

The modified facade does not reduce the opportunity for deep soil landscaping on the site as the area available under the existing situation is unable to be calculated as deeps oil landscaped area due to its narrow width.

As noted under Clause D1 (Landscaped Open Space and Bushland Area), with the exception of an increase of 0.5m² increase, the site maintains its level of deep soil landscaped area on the site and the modification does not impact upon that area.

The development is considered to satisfy this objective.

- ***To create a sense of openness in rear yards.***

Comment
The realigned facade will better resolve a sense of openness to the rear area by visually balancing out the green space across the length of the boundary as opposed to the angled facade which creates a limiting perspective.

The development is considered to satisfy this objective.

- ***To preserve the amenity of adjacent land, particularly relating to privacy between buildings.***

Comment
The modified facade will not result in an unreasonable increase in overlooking.

The most notable area of increase is at the eastern side of the facade where the surface area of the side facing window increases from 3.45m² to 5.75m². Similarly, the surface area of the side window facing to the west is reduced from 7.13m² to 5.75m².

The function of the room the modified facade accommodates remains the same as what is current and the increase/decrease in facade surface area will not exacerbate the degree of overlooking.

It is worth noting that the afore-mentioned east-facing side window will be further forward (and therefore offset) of a terrace to the neighbouring property at No. 1 Queenscliff Road. At the site inspection of that property the neighbour advised that they did not have any concerns regarding overlooking into this particular area.

The development is considered to satisfy this objective.

- ***To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.***

Comment
The local area is characterised by an eclectic mix of manor houses, apartment buildings and detached dwellings of varying age and architectural design. The modifications proposed would better align with the contemporary design already approved under DA2015/1267 and respond to the varied architecture in the area resulting in an enhanced visual continuity.

The development is considered to satisfy this objective.

- ***To provide opportunities to maintain privacy between dwellings.***

Comment
As discussed above, the modification proposed at the rear of the site is not considered to unreasonably impact upon the privacy of neighbouring properties.

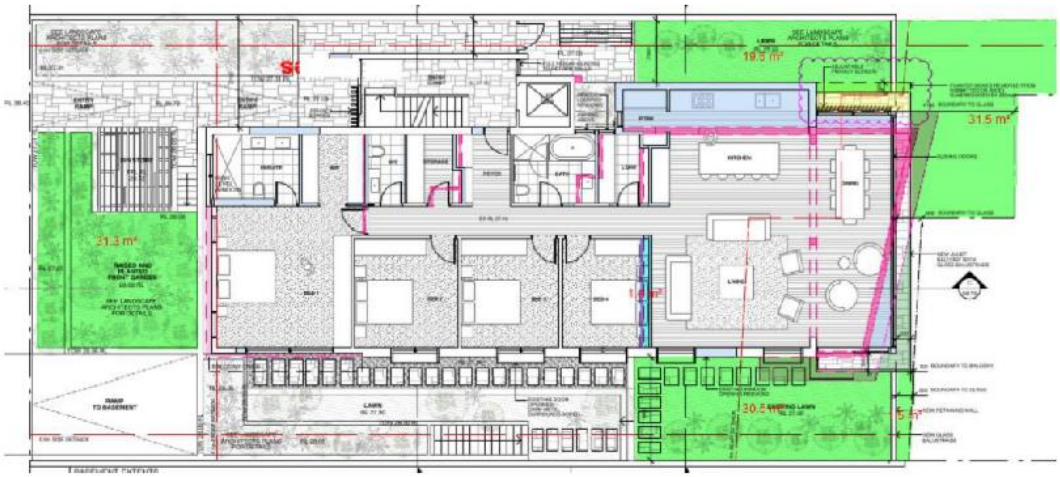
The development is considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011, WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The figure below shows the areas (in green) calculated as landscaped open space. The area within the south-western front setback and eastern side boundary have not been included due to insufficient width and soil depth.



Merit consideration

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

- ***To enable planting to maintain and enhance the streetscape.***

Comment
The approved development includes landscaping within the front setback area (which is currently occupied by a concrete driveway to ground level garages).

The modification proposes to reconfigure the approved landscaped area to improve appearance and usability. Planting and appearance to the street will remain as approved.

The development is considered to satisfy this objective.

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

Comment
There is limited indigenous vegetation, topographical features and habitat for wildlife currently on the site. The proposed additional landscaping in the front yard will enhance the vegetation on the site.

The development is considered to satisfy this objective.

- ***To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.***

Comment
There are deep soil landscaped areas on both the eastern and western sides of the site suitable for medium high shrubs and canopy trees. The shallow landscaped spaces in other areas of the site will be suitable for low lying and medium high shrubs.

The development is considered to satisfy this objective.

- ***To enhance privacy between buildings.***

Comment
There is currently no privacy protection from vegetation on the subject site or either neighbouring property. The proposed new vegetation in the front yard will slightly improve the existing situation, however, overall, the development will maintain reasonable levels of privacy levels.

The development is considered to satisfy this objective.

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

Comment
Each unit will have private open spaces on balconies. The landscaped areas on the site will provide reasonable access around the building and the new landscaping in the front yard will provide an additional recreational opportunity above what is existing.

The development is considered to satisfy this objective.

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

Comment
The site will retain sufficient space for service functions.

The development is considered to satisfy this objective.

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

Comment
The landscaping in the front setback area, while not including in the numerical calculations will improve the water management of the site compared to the hard surfaces currently existing in the front yard.

The development is considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011, WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D7 Views

Clause D7 requires that development provides for the reasonable sharing of views.

Assessment of applications will refer to the Planning Principle established by the Land and Environment Court in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*.

One submission was received from the adjoining property at No. 13/7 Queenscliff Road, Queenscliff which raised concern regarding view loss. Unit 13 is located at the south-eastern corner of the neighbouring residential apartment building to the west. Therefore, the view from Unit 13 is to the east and south-east which includes partial ocean views and partial views of the northern side of the North Head (these views being partially obstructed by apartment buildings to the east (being the subject site) and across the road to the south-east. An inspection of Unit 17 was conducted on 11 February 2020.

An assessment of the extent of view loss to the adjoining property against the four planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, is provided below:

1. Nature of the views affected

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

Comment to Principle 1
The property has water views and a partial view of the north-eastern end of the North head via a diagonal view corridor between the southern end of the subject building and a residential apartment building at the south-eastern end of Queenscliff Road (i.e. No. 2 Queenscliff Road).

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

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

Comment to Principle 2
The views are available from the east facing living room, an east facing bedroom and the south facing balcony. It is also noted that an east facing view is available from the narrow and vertical laundry room window which is located between the living room and balcony although this room is considered to be a service area and not a habitable room.

The available views from the living room and bedroom are towards the south-east while the view from the balcony is to the side and east.

The views from the living room, bedroom and balcony are available in a standing and sitting position although the view from the bedroom is limited due to the higher sill height of the window and its acute angle.

In each instance, the views are side views which are obtained across the subject site.

The figures below show the extent of views obtained from the living room, balcony and bedroom of Unit 17.

Views from the side facing living room (left) and from the street facing balcony (right)

View from the side facing bedroom

3. Extent of impact

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

Comment to Principle 3
An assessment of the extent of works proposed at Level 2 (which is the area of the development creating the most impact to Unit 13) has been conducted and it is considered that the degree of view loss to the living room and balcony would be minor. The assessment found that the living room and balcony would retain the majority of the water view and all of the headland view.

It was noted both during the assessment and at the inspection, that the proposed removal of the pitched roof would increase available standing views from the bedroom as this would open up a view towards the horizon. In that respect the extent of view loss to the bedroom may be considered to be moderate.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4
The areas resulting in impact to views from Unit 13 are primarily at the southern end of Level 2. The assessment of this part of the development (see Clause B7 - 'Front Boundary Setbacks' in this report) found that the non-compliance occurred at the southern edge of the planter box and balcony and that both non- compliances were minor (i.e. 6.0m and 6.2m respectively). These elements do not impact upon the available view because they are low lying features and permit through-site viewing.

The south-western wall to the extension is setback 7.9m from the front boundary and therefore in excess of the permitted 6.5m (note that this wall was previously setback 7.4m but has been increased to 7.9m in response to the concerns raised in the submission).

It is also noted that the removal of the pitched roof will reduce the overall height of the building from 9.7m to 8.4m and increase the availability of views towards the horizon from Unit 13 as well as opening up the unit to more sunlight access and relieving the skyline of building mass

In this respect, the view impact is considered to be acceptable and the view sharing reasonable.

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

Comment
The proposal will modernise the existing building and will be an innovative design solution that will improve the urban environment.

- ***To ensure existing canopy trees have priority over views.***

Comment

No canopy trees will be affected by the proposal.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011, WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

Clause D8 requires that development should be designed so that:

1. *Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
2. *Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.*
3. *The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*
4. *The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.*
5. *Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.*

A submission was received from No 1 Queenscliff Road (i.e. the property to the east) which requested that the east facing balconies at all levels include 1.8m high privacy screens to prevent overlooking.

The existing 'balconies' are actually 0.5m wide shelves which support balustrades and do not function as balconies. However, for the purposes of consistency with the plans, this assessment will refer to these features as 'balconies although it is questionable that they would function as balconies given their narrow depth.

The balconies are situated at ground level (which is elevated by approximately 1.0m to 1.4m above ground level due to the topography) and at Levels 1 and 2. It is proposed to increase the depth of the side balconies from 0.5m to 0.7m.

The side balcony to the east is to extend further north by 1.1m while the side balcony to the west is reducing in length. The existing terrace at Level 3 is being reduced in depth by 0.25m and is extended further north by 1.1m. Each balcony includes a 1.0m high glass wrap-around balustrade.

The rooms serviced by the balconies at the ground level and at Levels 1 and 2 are extensions to the existing living/dining rooms and the east facing windows are fixed (only the north facing windows include sliding doors).

The northern facing balcony will become a Juliet balcony due to the inclusion of sliding doors at that elevation and it is anticipated that this would form the primary outlook from the living rooms given the view of Freshwater Beach to the north-west, the headland to the north and ocean to the north-east.

A review of the plans and an inspection of No. 1 Queenscliff Road reveals that the building line is situated 5.7m to the south-east from the balconies and 6.5m south-east from the inside face of the new side window.

As No. 1 Queenscliff Road contains two dwellings (one above the other) it is noted that the rooms within the closest part of Dwellings 1 and 2 are bedrooms which are serviced by attached outdoor terraces. The aforementioned terraces are secondary to the primary open space areas (terraces) of both dwellings which are located at the eastern side of the building and away from the subject site.

Given the above review, it is considered that, although backward diagonal viewing would be possible, it is considered that this would not necessarily be from the narrow side balconies as trafficability is limited

by the 0.5m depth. Rather, viewing would be possible from the interior of the rooms adjacent to the balconies which are setback a distance of 6.5m from the northern wall face of No. 1 Queenscliff Road.

However, it is also noted that, despite the side windows extending forward a further 1.0m, this is largely an existing situation because the function of the rooms would not change and that it is more likely that primary viewing would be to the north-west to the north-east (i.e. from the northern facade).

It is noted on the landscape plans that a row of screen plantings is proposed along the north-eastern edge of the side boundary abutting the boundary wall of No. 1 Queenscliff Road. These plantings consist of *Xylosma senticoum* which would reach a mature height of between 3.0m to 4.0m. A review of the plans indicates that this may be effective for the ground floor unit but not for the upper levels and therefore is not considered a viable option in this circumstance.

While the offset location of the side balconies to the windows of the neighbouring property is consistent with the requirements of Clause D8, it is considered that, rather than imposing privacy screens, a balance could be achieved to maintain an eastern (ocean) outlook from the aforementioned rooms while limiting the perception of being overlooked through a condition requiring that the side balconies be made non-trafficable by including a barrier fence at the interface of the north-facing Juliet balcony and the two side balconies to prevent a person accessing and standing on the two side balconies..

Given the elevation of the Level 3 terrace above the neighbouring building it is not considered necessary to include any privacy screening to the eastern edge of the deck.

The figure below shows a view from behind the side balcony at the ground level to the neighbouring building.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

In summary, a detailed assessment has been conducted for each of the following specific issues where numerical non-compliance was found:

- Clause 4.3 - Height of Buildings;
- Clause B1 - Wall Height;
- Clause B5 - Side Boundary Envelope;
- Clause B7 - Front Boundary Setbacks;
- Clause B9 - Rear Boundary Setbacks; and
- Clause D1 - Landscaped Open Space.

Further to the above, a detailed assessment has been conducted for each of the following issues where a performance based matter was to be considered:

- Clause D7 - Views; and
- Clause D8 - Privacy.

In each instance the assessment of the above matters found that the development achieved consistency with the objectives of the control and could be supported. In the case of Clause D8 (Privacy) appropriate conditions were imposed to address an overlooking potential.

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

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2019/0641 for the Modification of Development Consent DA2015/1267 granted for alterations and additions to a residential flat building to include internal and external changes and a turntable in the basement car park on land at Lot CP in SP 4968,1A Queenscliff Road, Queenscliff subject to the conditions printed below:

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

1A. Modification of Consent - 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) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA02(F) - Site Plan	02/03/2020	Watershed Design
DA03(F) - Basement Plan	02/03/2020	Watershed Design
DA04(F) - Ground Level - Lot 1	02/03/2020	Watershed Design
DA05(F) - Mid Level - Lot 2	02/03/2020	Watershed Design
DA06(F) - Upper Level - Lot 3	02/03/2020	Watershed Design
DA07(F) - Roof Level - Lot 3	02/03/2020	Watershed Design
DA08(F) - Section A-A	02/03/2020	Watershed Design
DA09(F) - Section B-B	02/03/2020	Watershed Design
DA10(F) - Section C-C	02/03/2020	Watershed Design
DA11(F) - Elevation - North	02/03/2020	Watershed Design
DA12(F) - Elevation - East	02/03/2020	Watershed Design
DA13(F) - Elevation - South	02/03/2020	Watershed Design
DA14(F) - Elevation - West	02/03/2020	Watershed Design

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
Landscape Site Plan (B)	13/12/2019	Paul Scrivener
Planting Plan - All Levels	13/12/2019	Paul Scrivener

Waste Management Plan		
Drawing No.	**Dated**	**Prepared By**
Waste Management Plan	Not dated	Owner's Corporation - Robinson Strata Management 9468

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

B. Add Condition 1B to read as follows:

1B. Amendments to the approved plans

The following amendments are to be made to the approved plans:

a) Side facing balconies to be non-trafficable
The side facing balconies at the Ground Level, Mid Level and Upper Level (as depicted on the approved plans) are to be made non-trafficable by the installation of fixed balustrades (to match the approved balustrades) at the junctions of the north-facing Juliet balconies and both side facing balconies.

b) Landscape Levels
Landscaping within the eastern side setback is to be maintained at the existing level to avoid additional pressure to the existing boundary wall/fence and to prevent overlooking into the neighbouring property at No. 1 Queenscliff Road.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any construction certificate.

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

C. Amend Condition 14 - Construction Management Plan to read as follows:

14. Construction Management Plan

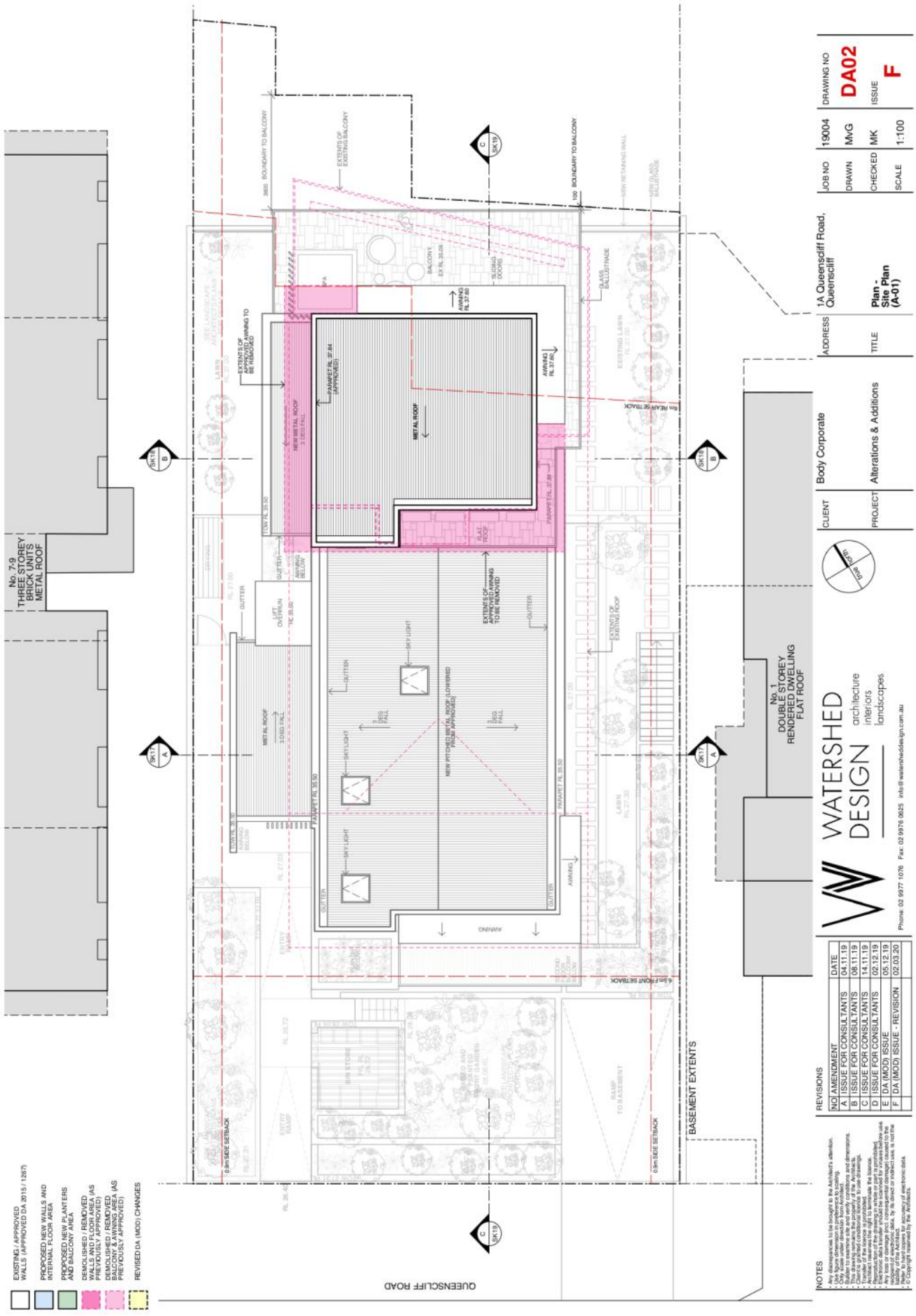
A Construction Management Plan (CMP) is to be prepared and submitted to certifying authority prior to the issue of any construction certificate. The Plan shall detail:

1. The proposed method of access to and egress from the site for construction vehicle.
2. The proposed phases of construction works on the site, and the expected duration of each construction phase.
3. Proposed protection for Council land (including precautions taken to avoid loss of building material down the cliff face) and adjoining properties. Details are to include site fencing and the provision of hoardings over footpaths.
4. The plan is to demonstrate that all works (including demolition, scaffolding and construction works) are to be carried out in accordance with the relevant legislation including "Workcover NSW for work safety and asbestos requirements". The construction works are to ensure the protection of neighbours from falling debris, dust, and other contaminated materials.
5. The proposed method of loading and unloading, demolition, excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the

structure within the site. Wherever possible mobile cranes should be located wholly within the site.

The CMP must be provided to Council for review and approval.

Reason: To ensure appropriate measures have been considered for site during all phases of the construction process in a manner that respects adjoining owner's property rights and residential amenity in the locality. (DACPLCPCC2)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THREE STOREY
BRICK UNITS
METAL ROOF
No. 1
DOUBLE STOREY
RENDERED DWELLING
FLAT ROOF
BASEMENT EXTENTS
QUEENSCLIFF ROAD
EXISTING / APPROVED WALLS (APPROVED DA 2015 / 1267)
PROPOSED NEW WALLS AND INTERNAL FLOOR AREA
PROPOSED NEW PLANTERS AND BALCONY AREA
DEMOLISHED / REMOVED WALLS AND FLOOR AREA (AS PREVIOUSLY APPROVED)
DEMOLISHED / REMOVED BALCONY AND WINDOW AREA (AS PREVIOUSLY APPROVED)
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F DA (MOD) ISSUE - REVISION 02.03.20
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ADDRESS 1A Queenscliff Road, Queenscliff
TITLE Plan - Site Plan (A-01)
CLIENT Body Corporate
PROJECT Alterations & Additions
JOB NO 19004
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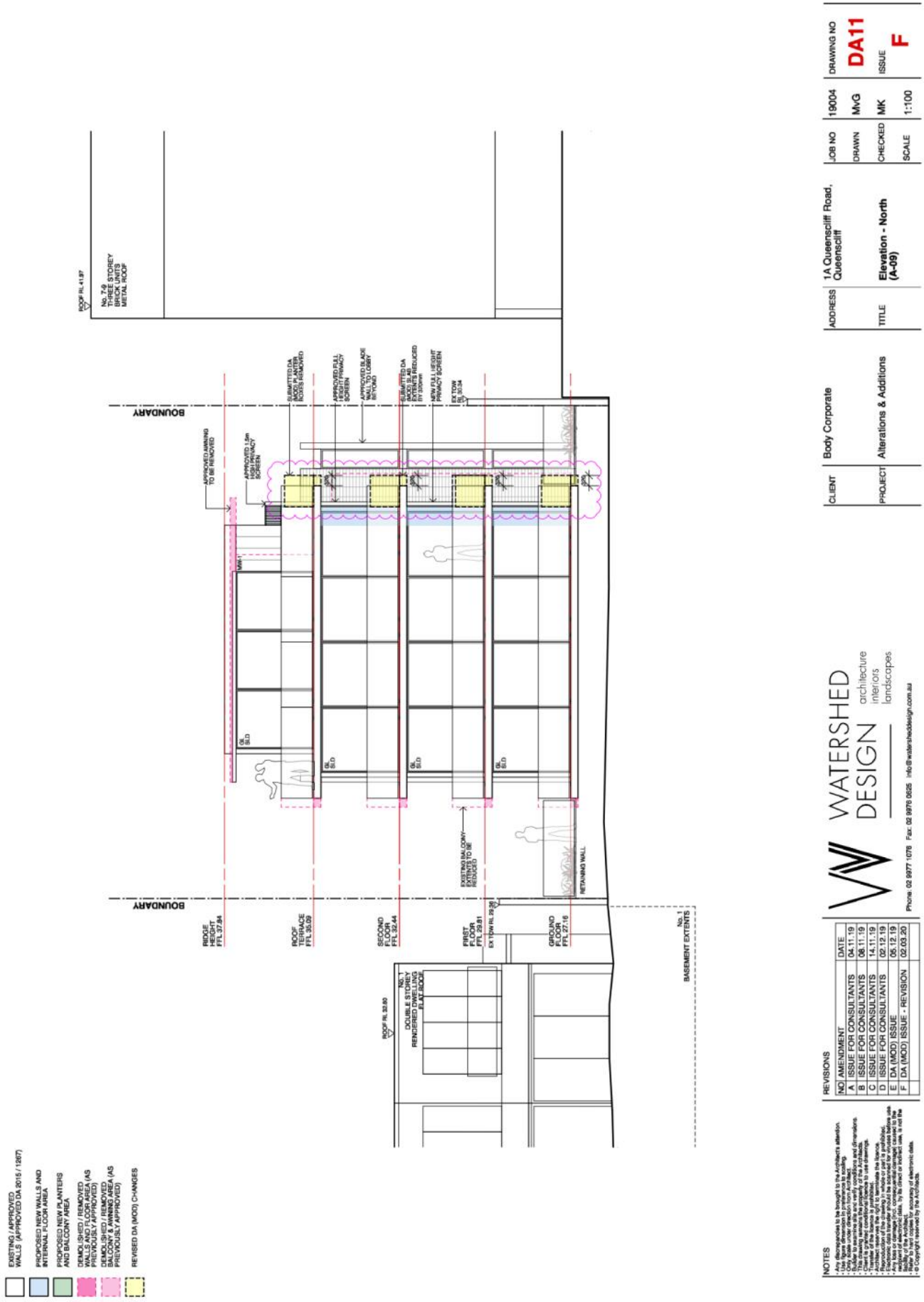
CHECKED MK
SCALE 1:100
DRAWING NO DA02
ISSUE F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APPROVED FULL HEIGHT PRIVACY SCREEN
APPROVED BLADE WALL TO LOBBY BEYOND
SUBMITTED DA (MOD) BLADE EXTENTS REDUCED BY 350mm
NEW FULL HEIGHT PRIVACY SCREEN
EX TOW RL 30.34
GL SLD
EXISTING BALCONY EXTENTS TO BE REDUCED
RETAINING WALL
RIDGE HEIGHT FFL 37.94
ROOF TERRACE FFL 35.09
SECOND FLOOR FFL 32.44
FIRST FLOOR FFL 29.81
EX TOW RL 29.28
GROUND FLOOR FFL 27.16
No.1 BASEMENT EXTENTS
ROOF RL 32.80
No. 1
DOUBLE STOREY
RENDERED DWELLING
FLAT ROOF
EXISTING / APPROVED WALLS (APPROVED DA 2015 / 1267)
PROPOSED NEW WALLS AND INTERNAL FLOOR AREA
PROPOSED NEW PLANTERS AND BALCONY AREA
DEMOLISHED / REMOVED WALLS AND FLOOR AREA (AS PREVIOUSLY APPROVED)
DEMOLISHED / REMOVED BALCONY & PLANTER AREA (AS PREVIOUSLY APPROVED)
REVISED DA (MOD) CHANGES
CLIENT Body Corporate
PROJECT Alterations & Additions
ADDRESS 1A Queenscliff Road, Queenscliff
TITLE Elevation - North (A-09)
JOB NO 19004
DRAWN MvG
CHECKED MK
SCALE 1:100
DRAWING NO DA11
ISSUE F
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PROPOSED NEW PLANTERS AND BALCONY AREA
DEMOLISHED / REMOVED WALLS AND FLOOR AREA (AS PREVIOUSLY APPROVED)
DEMOLISHED / REMOVED BALCONY & WINDOW AREA (AS PREVIOUSLY APPROVED)
REVISED DA (MOD) CHANGES
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ROOF TERRACE FFL 35.09
SECOND FLOOR FFL 32.44
FIRST FLOOR FFL 29.81
GROUND FLOOR FFL 27.18
BASEMENT
BASEMENT ENTRY RAMP
PROPOSED PARAPET
APPROVED AWNING TO BE REMOVED
APPROVED ROOF EXTENTS TO BE REMOVED
APPROVED ROOF EXTENTS REDUCED
SUBMITTED DA (MOD) EXTENTS INCREASED SETBACK OF PLANTER BOX HEIGHT REDUCED BY 250mm
EXISTING WINDOW REDUCED
EXISTING BALCONY EXTENTS BEYOND
APPROVED DA 2015/1267 RIDGE RL 37.84
APPROVED EMERGENCY SCREEN BEYOND
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CLIENT Body Corporate
PROJECT Alterations & Additions
ADDRESS 1A Queenscliff Road, Queenscliff
TITLE Elevation - East (A-08)
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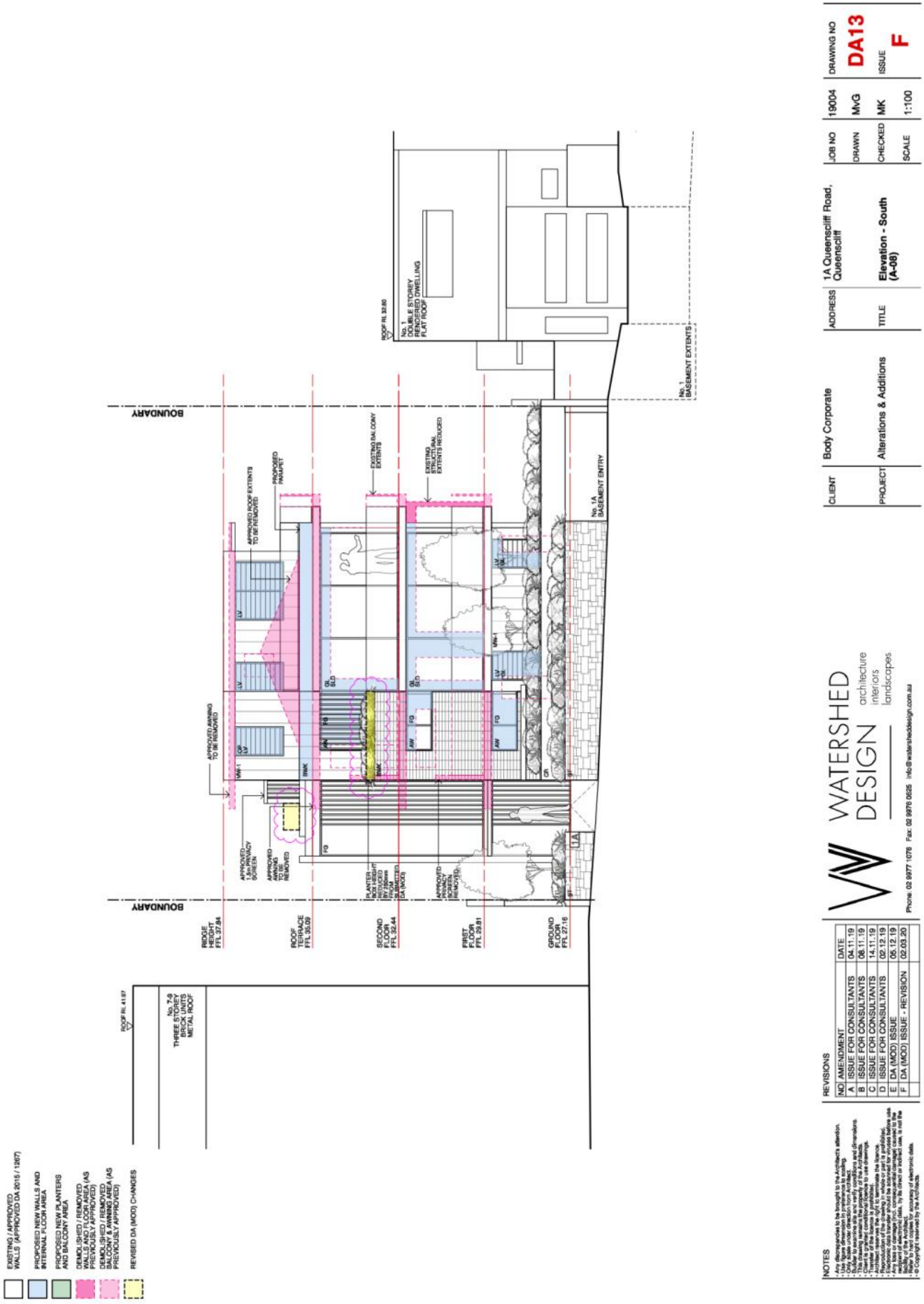
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DEMOLISHED / REMOVED BALCONY AREAS (AS PREVIOUSLY APPROVED)
REVISED DA (MOD) CHANGES
ROOF RL 41.67
No. 7-9 THREE STOREY BRICK UNITS METAL ROOF
RIDGE HEIGHT FFL 37.84
ROOF TERRACE FFL 35.09
SECOND FLOOR FFL 32.44
FIRST FLOOR FFL 29.81
GROUND FLOOR FFL 27.16
BOUNDARY
BOUNDARY
APPROVED AWNING TO BE REMOVED
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PLANTER BOX HEIGHT INCREASED BY 300mm FROM PREVIOUSLY APPROVED DA (MOD)
APPROVED PRIVACY SCREEN (PREVIOUSLY REMOVED)
APPROVED ROOF EXTENTS TO BE REMOVED
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EXISTING BALCONY EXTENTS
EXISTING STRUCTURAL EXTENTS REDUCED
No. 1A BASEMENT ENTRY
No. 1 BASEMENT EXTENTS
ROOF RL 32.80
No. 1 DOUBLE STOREY RESIDENTIAL DWELLING FLAT ROOF
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PROJECT Alterations & Additions
ADDRESS 1A Queenscliff Road, Queenscliff
TITLE Elevation - South (A-08)
JOB NO 19004
DRAWN MvG
CHECKED MK
SCALE 1:100
DRAWING NO DA13
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DEMOLISHED / REMOVED BALCONY & PLANTER AREA (AS PREVIOUSLY APPROVED)
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GROUND FLOOR FL 27.16
APPROVED DA 2015/1267 RIDGE RL 37.94
APPROVED AWNING TO BE REMOVED
APPROVED ROOF EXTENTS TO BE REMOVED
APPROVED WALL EXTENTS TO BE REDUCED
APPROVED 1.5m (HIGH) PRIVACY SCREEN
PLANTER BOXES REDUCED BY 300mm SUBMITTED DA (MOD)
SLAB REDUCED BY 300mm FROM SUBMITTED DA (MOD)
APPROVED FULL HEIGHT PRIVACY SCREEN
EXISTING STRUCTURAL COLUMNS TO BE RETAINED - INCREASE VIEWS
NEW ADJUSTABLE PRIVACY SCREENS
NEW ADJUSTABLE PRIVACY SCREENS
EXISTING BALCONY EXTENTS - REMOVED
EXISTING & APPROVED WINDOWS TO BE REPLACED. IMPROVED PRIVACY
LOBBY GLAZING LINE BEHIND
DOOR OPENING REMOVED
APPROVED ROOF EXTENTS REDUCED
SUBMITTED DA (MOD) EXTENTS REDUCED. PARAPET BEYOND OUTLINE OF ROOF REDUCED BY 250mm IN HEIGHT
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CLIENT Body Corporate
PROJECT Alterations & Additions
ADDRESS 1A Queenscliff Road, Queenscliff
TITLE Elevation - West (A-09)
JOB NO 19004
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ITEM 3.4	**DA2019/1280 - 60 & 62 BEACONSFIELD STREET AND 7, 9, 11 & 13 QUEENS PARADE, NEWPORT - DEMOLITION WORKS AND CONSTRUCTION OF A MULTI UNIT HOUSING WITH ASSOCIATED CARPARKING AND LANDSCAPE WORKS**
AUTHORISING MANAGER	**STEVE FINDLAY**
TRIM FILE REF	**2020/199508**
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. DA2019/1280 for demolition works and Construction of a multi unit housing with associated carparking and Landscape works at Lot 2 DP 209106, Lots 3A & 3B DP 164259, Lots 4A & 4B DP 159498 and Lot 5A DP 158658, 60 & 62 Beaconsfield Street and 7, 9, 11 & 13 Queens Parade, Newport subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1280

Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 3B DP 164259, 62 Beaconsfield Street NEWPORT NSW 2106 Lot 4A DP 159498, 11 Queens Parade NEWPORT NSW 2106 Lot 3A DP 164259, 9 Queens Parade NEWPORT NSW 2106 Lot 2 DP 209106, 7 Queens Parade NEWPORT NSW 2106 Lot 5A DP 158658, 13 Queens Parade NEWPORT NSW 2106 Lot 4B DP 159498, 60 Beaconsfield Street NEWPORT NSW 2106
Proposed Development:	Demolition works and construction of a multi unit housing development with associated carparking and landscape works.
Zoning:	R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Adcock Group Management Pty Ltd
Applicant:	Stable Innovations Pittwater Shores Pty Ltd

Application Lodged:	14/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	21/12/2019 to 01/02/2020
Advertised:	21/12/2019
Submissions Received:	19
Clause 4.6 Variation:	4.3 Height of buildings: 12.9%
Recommendation:	Approval

Estimated Cost of Works:	$ 19,213,942.00

Executive Summary

The proposal involves demolition works and construction of a multi-unit housing development,

comprising 18 x 3-bedroom dwellings with basement car parking for 43 vehicles and associated landscaping at 60-62 Beaconsfield Street and 7-13 Queens Parade, Newport.

The assessment has found that the proposed development is satisfactory in relation to built form, character and streetscape when assessed against the requirements for the Newport Locality under Pittwater 21 Development Control Plan and the internal and external residential amenity.

The applicant has lodged a request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 for a variation to the development standard for building height. The height variation is up to 1.1m above the allowable height of 8.5 m, representing a variation of 12.9%, which relates to the canopies/pergolas over the roof top terraces. The variation is considered acceptable largely due to the light weight nature of the structures, which are integral to the design and provide weather protection for residents. The structures are not considered to result in excessive bulk and scale, will be satisfactory in the streetscape and will not result in adverse shadow, views or amenity impacts on surrounding properties.

The public exhibition of the application resulted in 19 individual submissions being received, all of which raised concerns with the proposed development. The majority of the submissions raised issues of additional traffic, construction related impacts, non-compliance with building height, building envelope and setback controls and impacts on adjoining residential development (privacy, solar access). The issues raised in the submissions have been addressed in the “Public Notification” section of this report and in summary, they do not warrant refusal or re-design of the proposal. Suitable conditions have been imposed where appropriate to address the concerns.

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

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent for demolition works and construction of Multi Unit Housing Development with associated carparking and landscaping. Specifically, the proposed development involves:

- Demolition of all existing structures on site.
- Construction of a townhouse style building 18 x 3-bedroom dwellings with basement car parking for 43 vehicles.
- All of the townhouses have pedestrian access at ground floor level. Lifts provide access within all of the dwellings. Living areas are provided on the upper level of the dwellings with access to a rooftop terrace for additional private open space.
- Carparking is provided in two basement areas, one with access from Beaconsfield Street and the other with access from Queens Parade. Each dwelling is provided with garage parking for two vehicles. The basements also provide visitor car parking for 7 vehicles (including 2 disabled spaces) and a car wash bay. The basement also houses a bin storage room, a bulky goods storage room and a plant room.
- The proposal includes tree removal and landscaping works including works within the road reserv

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)

SITE DESCRIPTION

Property Description:	Lot 3B DP 164259 , 62 Beaconsfield Street NEWPORT NSW 2106 Lot 4A DP 159498 , 11 Queens Parade NEWPORT NSW 2106 Lot 3A DP 164259 , 9 Queens Parade NEWPORT NSW 2106 Lot 2 DP 209106 , 7 Queens Parade NEWPORT NSW 2106 Lot 5A DP 158658 , 13 Queens Parade NEWPORT NSW 2106 Lot 4B DP 159498 , 60 Beaconsfield Street NEWPORT NSW 2106
Detailed Site Description:	The subject site consists of six (6) individual lots, which are to be amalgamated. The amalgamated lots are located

	on the northern side of Beaconsfield Street and extends through to the southern side of Queens Parade. The site is irregular in shaped with total site area of 3,928m², and frontage of 62.385m to Beaconsfield Street to the south and another frontage of 80.465m to Queens Parade to the north. The eastern side boundary is irregular and has a total length of 85.155m. The western side boundary has a length of 46.355mn. The site is currently occupied by a 40-place child care centre plus 2 x 2-bedroom dwellings on 7 Queens Parade, and five dwelling houses on the remaining allotments. The existing buildings are 1 and 2 storeys in height. The area around the buildings is landscaped and the site contains a number of mature trees. The immediate surrounding area contains a mix of residential development in the form of single dwellings, multi-storey residential flat buildings and townhouses with each building typology varying significantly in terms of height, massing and design. Neighbouring development consists a local shopping centre to the west, and a townhouse development and a dwelling house adjoins the site to the east. Other adjoining development within the Locality consists of: • Newport Arms Hotel (on Kalinya Street to the west) • Newport Public School (100m to the east) • Automotive repairs (on the north-eastern corner of Kalinya Street and Queens Parade) • Metro Mirage Hotel (on the north-western corner of Kalinya Street and Queens Parade) • Trafalgar Park (100m to the north-east) • Dearin Reserve (100m to the north-west) • Newport Anchorage Marina (on Beaconsfield Street to the south)

Map:

SITE HISTORY

A search of Council's records has revealed that there are no recent/relevant applications for this site.

The land has been used for residential dwelling-house and child care centre purposes for an extended period of time.

Pre-lodgement Meeting

A pre-lodgement meeting was held with Council on 24 July 2019 in relation to the current proposal. Council raised concerns with the proposal in relation setback requirements to the western boundary, as well the front setback setbacks to Beaconsfield Street and re-orientation of Dwellings 11 to 16 to provide a more stepped design to break-up the bulk of the built form.

The current application has responded to the issues raised, with required setback provided and the orientation of the proposed dwellings are such that the bulk and scale have been minimised and landscaped area maximised.

Development Application History

The development application was lodged with Council on 14 November 2019. During the assessment of the application, the applicant amended the plans to address the following concerns raised:

- Waste - Amending the bin room to improve access for future residents
- Development Engineering - To address impacts of the footpath widening on existing trees
- Urban Design - Improve landscaped terrace relationship (over basement parking) adjacent to side boundaries

The following is a list of the amendments made to the proposal in response to the issues above and design refinements:

- Revised waste collection area on Beaconsfield Street and revised bin & bulk storage within the car park
- Additional waste collection area on Queens Parade and new bin and bulk storage within the car park
- Townhouse 2 & 3 planted area above basement car park adjacent to the rear boundary was redesigned to reduce bulk and built form viewed from No. 58 Beaconsfield Street
- Basement car park along western boundary pulled back in line with 3.0m building setback
- Western elevation corrected to show existing building outlines
- Western boundary walls and landscaping revised
- Footpath on both streets widened to 1.5m
- Additional pop-out showers at Level 1 Townhouse 8 & 9
- Dumbwaiters shown on Townhouse 11 to 18 roof terrace
- Revised landscape area as a result of all the changes

The amended plans represent a better outcome and have reduced the associated impacts. In this respect, the amended application differed only in minor and improved respects from the original application, and did not result in greater environmental impact. Therefore, further notification and advertising was required.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.

Section 4.15 Matters for Consideration'	Comments
	Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	**(i) Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. **(ii) Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. **(iii) Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	The proposed development will not contribute to any unreasonable adverse environmental impacts to the neighbouring buildings and will provide additional housing opportunities to a site that is capable of providing medium density forms of residential accommodation. No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 19 submission/s from:

Name:	Address:
Councillor Kylie Ferguson (Councillor) Mrs Kylie Ann Ferguson	C/- Northern Beaches Council 725 Pittwater Road DEE WHY NSW 2099
Ms Lisa Lee Butler	9 / 14 Queens Parade NEWPORT NSW 2106
Ms Susan Louise Coleman	1 / 75 Beaconsfield Street NEWPORT NSW 2106
Ms Wendy Anne Batchelor	5 / 75 Beaconsfield Street NEWPORT NSW 2106
Mrs Christine Joy Atkinson	13 Beaconsfield Street NEWPORT NSW 2106
Diane Hillier	19 A Beaconsfield Street NEWPORT NSW 2106
Ms Judith Ann Albrecht	7 / 75 Beaconsfield Street NEWPORT NSW 2106
Mrs Susan Maria Trodd	6 / 75 Beaconsfield Street NEWPORT NSW 2106
J R Brady	58 Beaconsfield Street NEWPORT NSW 2106
Mr Darryl John Pike	Po Box 1318 MONA VALE NSW 1660
Mr David Harpur	15 / 14 Queens Parade NEWPORT NSW 2106
Mr Manus John McFadyen	8 / 4 Queens Parade NEWPORT NSW 2106
Mrs Wendy Joy Janssens	PO Box 624 NEWPORT BEACH NSW 2106
Ms Janet Carlen	2 / 15 - 17 Queens Parade NEWPORT NSW 2106
Mrs Carolyn Mary Kinner	3 / 75 Beaconsfield Street NEWPORT NSW 2106
Newport Residents Association	PO Box 1180 NEWPORT BEACH NSW 2106
Mr Peter John Middleton	PO Box 1055 NEWPORT BEACH NSW 2106
Mr Stefan Raymond Albinski	4 / 75 Beaconsfield Street NEWPORT NSW 2106
Mrs Cindy Lee Venables	2 / 75 Beaconsfield Street NEWPORT NSW 2106

The matters raised within the submissions are addressed as follows:

- **Non-compliant and Excessive Height**

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

Comment:
This matter has been addressed under the section '*Detailed Assessment of the Variation to Clause 4.3 - Height of Buildings Development Standard*' under the PLEP 2014 section of this report. In summary, the development was assessed against the Height of Buildings Development Standard under the PLEP 2014 and has been appropriately considered in relation to the requirements of Clause 4.6 of the PLEP 2014, wherein it was found that the development is consistent with the objectives of the Development Standard and the objectives of the R3 Zone.

This matter does not warrant the refusal of the application.

- **Acoustic Privacy**

Concern is raised that the increased density of the development above the existing situation will

have an adverse impact upon the acoustic privacy of neighbouring dwellings.

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

This matter does not warrant the refusal of the application.

- **Traffic safety and congestion**

Several submissions received have raised concerns that the development will increase the number of vehicles on the local road network, thereby exacerbating existing traffic, congestion and degrading traffic and pedestrian and school children's safety. Particularly given there are already traffic issues on Beaconsfield Street, which are becoming worse. There is a constant stream of traffic coming around the corner of Kalinya /Beaconsfield Streets. It is becoming quite dangerous at times with the speed of traffic and car parking. The buses frequently go up and down the road and their timetable should not be disrupted by the comings and goings of the construction site. The street is already struggling with traffic issues and this development will only add to the problem.

A number of submissions raised issues with the width of carriageways, the proximity to Newport Public School, and the location of traffic lights on Barrenjoey Road.

Comment:
The provision of carparking and traffic safety have been addressed by Council's Traffic Section in the referrals section of this report.

In summary, the proposal complies with the carparking requirements of P21DCP, which will minimise the need for occupants and visitors of the development to park on the street.

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

The proposed development will reduce traffic movements and the demand for on-site parking compared to the current situation relating to the existing child care centre on site, which will be removed, and the reduction in the number of driveway crossings and the provision of on-site car parking in accordance with P21DCP.

Issues raised in relation to the use of Beaconsfield Street as a through-road for drivers due to the traffic lights is not a matter to be considered as part of this application as is beyond the matters for consideration under s.4.15 of the Environmental Planning and Assessment Act, 1979.

This matter does not warrant the refusal of the application.

- **Impact from excavation and construction works**

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

Comment:

A Geotechnical Engineers Report was submitted with the application addressing excavation and construction and provides recommendations for protecting adjoining properties. Those recommendations will be imposed as conditions of consent. Furthermore, Dilapidation Surveys will be required to be undertaken in relation to adjoining properties (prior to the issue of a Construction Certificate) which are located within 2.0m of the excavation. This requirement is imposed by way of condition.

This matter does not warrant the refusal of the application.

- **Sunlight Access**

Concern is raised that the proposed development will have an adverse impact upon access to sunlight on the adjoining property at No. 58 Beaconsfield Street.

Comment:
Clause 1.4 of P21DCP requires the retention of 3 hours of sunlight to the principal living areas and main private open space of adjoining dwellings in mid-winter.

The control also provides the following variations which are relevant to the proposal:

Where the following constraints apply to a site, reasonable solar access to the main private open space and to windows to the principal living area will be assessed on a merit basis:

- *where there is adverse slope or topography*
- *where there is existing vegetation, obstruction, development or fences that overshadow*

The shadow diagrams provided indicate the shadowing effects of the development in relation to the neighbouring properties. The shadow diagrams indicate that No.58 Beaconsfield Street will experience some shadows being cast on the rear (north) elevation of the dwelling from 1.00pm in midwinter. However, the property will not be effected by the proposed development from 9.00am – 1.00pm. There will be some overshadowing of that property from 15 Queens Parade at 9.00am.

The impact on solar access is largely unavoidable due to the location of the dwelling at No. 58 Beaconsfield Street being towards the rear of that site, providing a substantial front setback of 16.0m (as shown in the photo below). Furthermore, the topography is such that the property is sited well below the subject site, a difference in level of over 1.0 metre at the common boundary. In this circumstance, the proposal is in accordance with the variation control which refers to "*adverse slope or topography*".

Aerial view of 58 Beaconsfield Street (showing the location of the dwelling and vegetation at the rear)

Finally, it is noted the rear yard of 58 Beaconsfield Street is overshadowed by existing vegetation, whilst the front yard retains generous solar access. This circumstance will not be altered as result of the proposed development.

This issue does not warrant the refusal of the application.

- **Visual Privacy**

Concern is raised that the location of roof top terraces will have privacy impact on the adjoining properties.

Comment:
Pursuant to clause C1.5 of the P21DCP, private open space, recreation areas and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9.0m by building layout, landscaping, screening devices or greater spatial separation. Elevated decks, verandas and balconies should incorporate privacy screens where necessary and should, where possible, be located at the front or rear of the building. Direct views from an upper level of a dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

The proposed development maintains the orientation and relationship of the residential dwellings. The

roof top terraces have been oriented towards the street or the central common open space and away from neighbouring properties. The development provides planter boxes around the rooftop terraces to avoid direct overlooking. The planter boxes are 1.5m – 1.7m wide (to the external face of the structure) and 1.2m in height (from the terrace floor level to the top of the structure). The planter box structures restrict lines of sight into neighbouring properties.

This issue does not warrant the refusal of the application.

- **Insufficient community consultation**

Concern is raised that the development has not undergone sufficient community consultation. In particular, concern is expressed that details of the application was not notified for a sufficient time period over Christmas.

Comment:
The notification associated with the subject DA was extended to all properties that were directly impacted by the development. Other residents were captured by the advertisement in the Manly Daily.

The public exhibition of the application was in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Northern Beaches Community Participation Plan and also included advertising in the Manly Daily.

Whilst the proposal would normally require a 21day notification period, this was extended to account for the Christmas period from 20 December 2019 till 10 January 2020, this notification period was then further extended till 1 February 2020.

Therefore, this issue should not be given determining weight.

- **Setbacks to 58 Beaconsfield Street**

Concern has been raised that the setback of the proposed to 58 Beaconsfield Street is inadequate. This concern was also raised by Council's urban designer at the initial stages of the assessment.

Comment:
To address this concern, the proposal has been amended in consultation with Council's Urban Design Officer to lower the structures near the boundary with 58 Beaconsfield Street.

The proposal provides for carparking adjacent to the rear boundary of 58 Beaconsfield Street. The carparking is set below the level of the subject site at RL20.3, such that it is approximately at the same level as the rear yard of 58 Beaconsfield Street.

The proposal as originally submitted to Council, proposed that a garden terrace extend over the carparking at a level or RL24.6, i.e. 4.3m above the level of the rear yard of 58 Beaconsfield Street. The proposal (as amended) steps the raised landscaped area down as it nears the boundary with 58 Beaconsfield Street. Immediately adjacent to the boundary, the proposal is at ground level, then there is a planter box with cascading plants creating a green wall up to RL23.7, as shown in the following drawing:

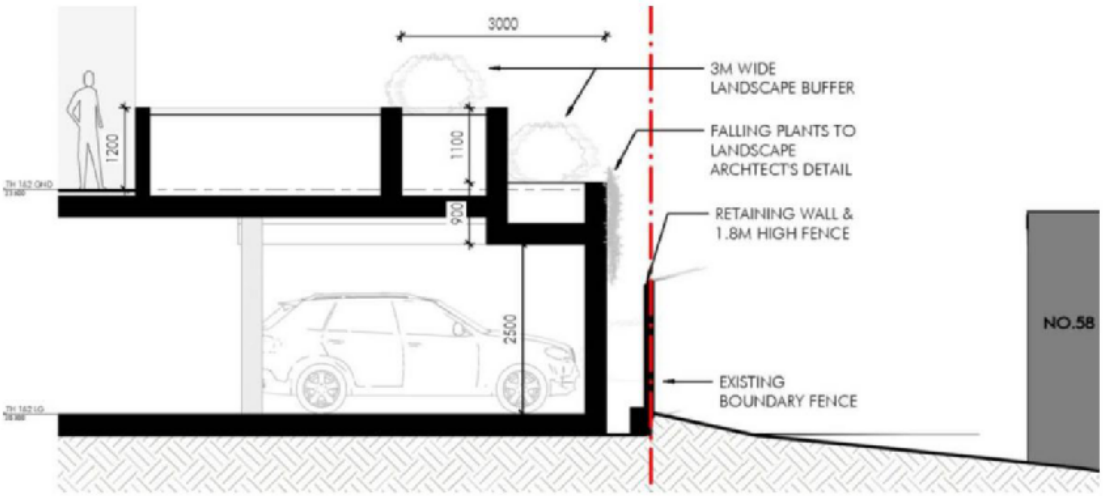

Figure 1 - Showing the relationship of the proposed development with the boundary of No. 58 Beaconsfield Street, (Source architectural plans as amended, prepared by Nettelontribe)

The concern raised is noted and is addressed in the amended plans.

- **Density and Scale of the Development**

Concern has been raised that the proposed development is an overdevelopment of the site and that the scale of the proposed buildings is disproportionate to the land size and inconsistent with adjoining and nearby residences.

Comment:
The proposal provides for a housing density that is less than that which is permitted by the relevant planning controls. In particular, clause 4.5A(4) of PLEP 2014 permits a housing density of 1/200m2 of site area or 19 dwellings. The proposal has a housing density of 1/218.2m2 or 18 dwellings.

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

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

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

This issue does not warrant the refusal of the application.

- **Excessive Tree Removal**

Concern has been raised that the proposed development will result in the removal 85 of 115, or 74%, of existing trees. Of the 75 trees on the site, 73 (95%), will be removed. These will include six trees assessed in the arborist's report as having high landscape significance.

Comment:
The issue of tree removal has been addressed in the referrals section of this report by Council's Landscape Officer. In summary, the proposal retains a number of significant trees within the site and tree replacement is proposed which considered to be satisfactory.

This issue does not warrant the refusal of the application.

- **Not consistent with the requirements of Pittwater 21 DCP**

The submissions received have raised concerns that the development does not comply with the following clauses of the P21 DCP:

1. ***Does not comply with Side and Front Setback controls;***
2. ***Not compatible with the surrounding land uses***
3. ***Exceeds the maximum envelope***

Comment:
The issues raised have been discussed at length in the Pittwater 21 DCP section of this report. In summary, it has been found that the development is consistent with the character of the area and the non–compliance in relation to setbacks and building envelopes is supported in this instance.

Therefore, the specific issues raised in relation to DCP should not be given determining weight.

- **Impact of construction on existing residents (noise, dust, amenity)**

Concern is raised regarding excavation and construction impacts associated with the development and the potential impact on the delivery of trucks during school hours. Concerns have been raised with regards to the proposed construction hours and its potential impact on the operation of the school and other developments within the locality.

Comment:
With regards to excavation and construction management, appropriate conditions have been included in the draft set of consent conditions.

The construction hours are standard hours for all development which are in accordance with the interim construction noise guideline established by NSW Department of Planning, Industry and Environment. Construction hours have been included in the conditions.

Therefore, this issue should not be given determining weight.

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.

Landscape Officer	The proposal indicates amalgamation of several existing Lots to create a development area for the proposed townhouse development. The sites are noted as being in the existing Zone R3 - Medium density residential.The current Lots are predominately single residential development, with the inclusion of a Childcare Centre. The proposed design attempts to retain vegetation within the site, with two trees indicated in the Arborist's Report as High landscape significance trees being retained. The pattern of development enables landscape components, including trees, to permeate through the site,

Internal Referral Body	Comments
	similar to the current pattern. This approach is supported in principle, however removal of four trees indicated in the Arborist's Report as High landscape significance, is noted. The majority of trees on the site are, however, exempt species under Pittwater DCP. A summary of tree removals and replacement is included below. The proposed landscape plan indicates replanting of 33 non- exempt trees on the site. Additional landscape planting is proposed in the road reserve on both the Beaconsfield Street and Queens Parade frontages. Four native street trees with native understorey planting are proposed in the Beaconsfield Street road reserve. It is recommended that two additional street trees be included along this frontage west of the driveway to improve the streetscape frontage and maintain the exisinting sense of green along the verge. Extensive native understorey and tree planting is proposed to be incorporated on the Queens Parade road reserve to supplement the significant native trees growing in the road reserve. The proposed planting concept is supported, however, comment from roads assets section should be sought. If approved, maintenance conditions are recommended to ensure that the development is responsible for ongoing maintenance, or replacement of plants in the event of service access requirements, rather than Council. In view of the above, no objections are raised with regard to landscape issues, subject to conditions as recommended. **Tree Removals/ Retention:** On Site - 58 Exempt trees removed 12 Non- exempt trees removed (4 High landscape significance) 2 Non-exempt trees retained (2 High landscape significance) Road Reserve - 7 Exempt trees removed 2 Non exempt trees removed (1 Moderate landscape significance) 21 Trees retained (11 High significance; 3 Very High significance) **Tree Replanting:** On Site - 33 Non-exempt trees Road Reserve - 5 Non-exempt trees
NECC (Development	

Internal Referral Body	Comments
Engineering)	<u>Stormwater comments</u> The submitted stormwater management plans prepared by NB Consulting Engineers is considered to meet the requirement of Clause B 5.7 of Pittwater 21 DCP 2014. <u>Geo-technical comments</u> JK Geotechnics report suggest that an "Acceptable Risk Management" level is achievable. <u>Driveway and access comments.</u> The existing road and footpath amenities will require to be upgraded. Council traffic Team has deemed the access arrangement for the development to be unacceptable. As a result Council Development Engineers is unable to support the application. No Development Engineering objection subject to conditions.
NECC (Water Management)	This application has been assessed under Pittwater DCP B5.9 - Water Quality Pittwater DCP B8.2 - Sediment and Erosion Control The applicant provided additional notes and a MUSIC model, which satisfied initial concerns about the methodology for stormwater treatment. While the proposed treatment train does not maximise opportunities to reduce runoff through evaporation and evapotranspiration (and to some degree through infiltration), the proposed system using a suspended bio-retention basin and SPEL filters is now regarded as satisfactory. The information about how maintenance of the basin and filters is expected to occur should be included in the operation and maintenance manual for each, as it will be of significant use to the strata manager/committee. Sediment and erosion controls must be installed prior to demolishing any buildings on site and maintained until all work is complete and groundcover re-established.
Strategic and Place Planning (Urban Design)	The amended drawings have addressed the issues mentioned below by cutting back the car park basement structure from the western boundary. The visual impact of the car park structure on the mid- eastern boundary has been reduced by introducing stepped planters. **Urban Design comments made previously:** The applicant should address the following issues: 1. The car parking semi-basement structures stick out of the natural ground levels by more than one metre and encroach into the side boundary setbacks of 3m and rear boundary setback of 6.5m on the western and mid-eastern boundaries respectively. 2. Sun access to the back yard of neighbouring house no.58

Internal Referral Body	Comments
	Beaconsfield Street has been compromised. 3. There is one existing tree kept in the central courtyard. All the existing street trees to Beaconsfield Street will be removed. Current proposal will make the Beaconsfield Street presentation completely bare of mature trees. Proposed road verge landscaping and trees to be planted on the public domain area will take years to give the current verdant streetscape character.
Traffic Engineer	The application proposes the removal of 7 x dwellings and a 40 place child care and the construction of 18 townhouses. **Traffic:** The anticipated change of use is expected to provide significant reductions to the traffic being generated from this site. No objections are raised. **Parking:** Parking numbers are compliant with the DCP. No objections are raised. **Access and Car Park:** The access arrangements are deemed acceptable with the amendments provided by the applicant. The provision of the 'No Parking' space adjacent to the driveway is deemed suitable as it will enable the waiting of vehicles and also assist with the drop-off of passengers to the precinct. Further, additional swept path analysis is required demonstrating that all vehicles can enter and exit each designated space and enter and leave the site in a forward direction. **Servicing:** On-street servicing is deemed acceptable. The applicant will be conditioned to provide a signage plan to restrict parking during waste collection days. This will require approval of the Local Traffic Committee prior to occupation certificate. **Conclusion:** No further objections are raised.
Waste Officer	No objection subject to conditions.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1054289M and 11 November 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0004346360 and 24 October 2019).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	64

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.

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	Dwellings -8.5m Canopies above the rooftop terraces - 9.6m	N/A 12.9%	Yes
Clause 4.5A (4) Density controls for certain residential accommodation	1 dwelling per 200m²	1 dwelling per 218.2m²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.5A Density controls for certain residential accomodation	Yes
4.6 Exceptions to development standards	Yes
5.12 Infrastructure development and use of existing buildings of the Crown	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance:

Development Standard:	Height of Buildings
Requirement:	8.5m
Proposed:	Dwellings - 8.5m Canopies above rooftop terraces - 9.6m
Percentage variation to requirement:	12.9%

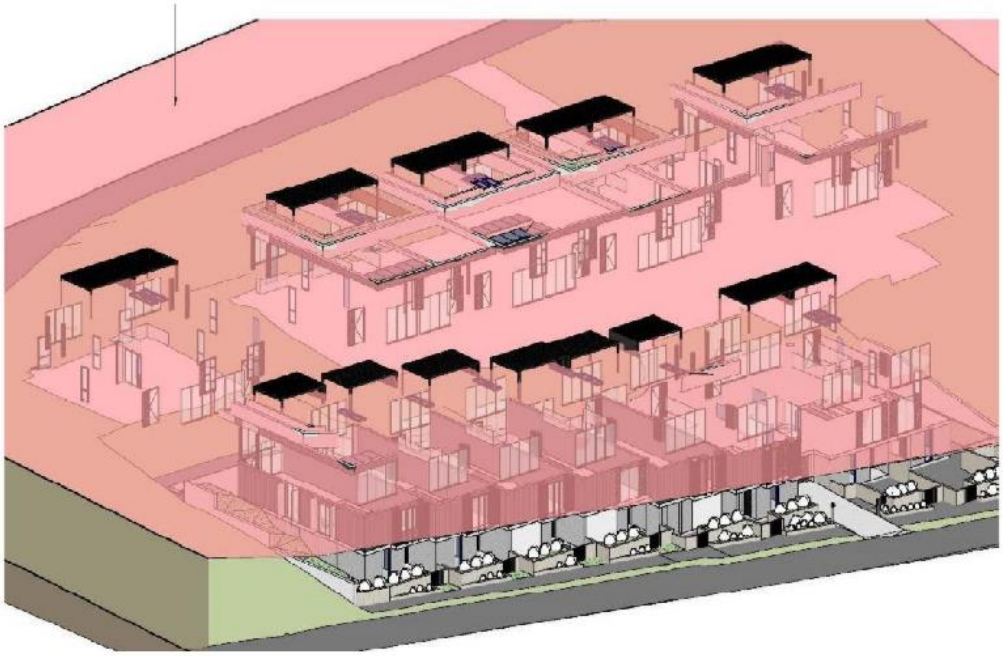

Figure 2 - Building Height Non-Compliance (Source: Statement of Environmental Effects, prepared by Symons Goodyer)

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

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

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

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

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

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

Comment:
In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that 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 ofthe 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.

Applicants Statement:
The applicants written request argues, in part:

The variation to the control is to enable the installation of roofing over the principal private open spaces (roof terraces) of the proposed dwellings which will provide two significant benefits.

Firstly, it will improve the amenity of the roof terraces for the future residents of the building by providing a sense of enclosure and weather protection. This will enhance the usability of the roof terraces and ensure that they achieve the objectives of Council's controls for private open space.

Secondly, the roofing structures will enable the installation of solar electricity generating panels that will enhance the environmental sustainability credentials of the development.

When considering that the proposed roofing structures will not have negative impacts in terms of privacy, views or solar access for neighbouring and nearby properties, the benefits listed above provide sufficient environmental planning grounds to justify varying the development standard.

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 structures above the roof top terraces are of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:
In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R3 Medium Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the 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 development involves a scale, bulk and height which is considered to be appropriate to the existing or desired future character of the street and surrounding area.

The proposed building includes progressive setbacks and good levels of vertical and horizontal articulation, such that the resulting visual quality derived from the building alignments and proportions are consistent with surrounding development and complimentary to the zone.

The proposed built form and scale will define the public domain and contribute to the character of the streetscape, which predominantly features medium density housing of varying ages, scales, and styles.

The development is considered to satisfy this objective.

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

Comment:
The proposed height and scale of the development is consistent and compatible with the height and scale of surrounding and nearby development.

The building generally complies with the Height of Buildings development standard. The variations are minor and, because they do not cover a larger area of roof and are light weight in its appearance, they are not visually prominent and will not detract from the streetscape.

The development is considered to satisfy this objective.

c) to minimise any overshadowing of neighbouring properties,

Comment:
The development is sited and designed to provide adequate sunlight, daylight and ventilation to habitable rooms during midwinter, and does not contribute to any unreasonable overshadowing of adjoining development. As such, the proposal is consistent with the outcomes of the solar access development control and the proposal is supported in this regard.

The development is considered to satisfy this objective.

d) to allow for the reasonable sharing of views,

Comment:
The proposal will not result in any adverse view loss impacts that are visible from the neighbouring properties of the site. The development is satisfactory in terms of the view loss requirements with consideration given to the planning principles for view loss as per the Tenacity v Warringah Council.

The development is considered to satisfy this objective.

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

Comment:
The proposed development has been designed to step down with the slope of the land, which responds to the natural topography of the site.

The development is considered to satisfy this objective.

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

Comment:
Whilst the proposal results in the removal of a large of trees on the site, the proposed development has been designed to retain a number of canopy trees and the proposed landscaping will significantly enhance the natural environment. In this regard, the landscape design for the development includes a good level of replacement vegetation to contributes towards softening and alleviating the size and scale of the proposed building, without under- utilising or overcrowding the site, such that it impacts upon solar access of adjoining properties and which contributes to the landscape character of the streetscape and neighbourhood while providing for acceptable levels of internal and external amenity.

The development is considered to satisfy this objective.

Objectives of the Zone

The underlying objectives of the R3 Medium Density Residential zone are:

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

Comment:
The development will increase the housing stock of the area and provide a reasonable mix of town house types and sizes commensurate to a medium density residential environment.

The development is considered to satisfy this objective.

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

Comment:
The development provides 3 bedroom townhouses, which is considered to satisfy the provision of a variety of houses within the medium density residential environment of Newport.

The development is considered to satisfy this objective.

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

Comment:
The proposed multi-unit housing development will provide additional occupants to frequent local businesses within the Newport precinct. In this regard, the development will enable other land uses that provide facilities or services to meet the day to day needs of residents.

The development is considered to satisfy this objective.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Comment:
The proposed development does not provide any other land uses, therefore this objective is not applicable to the proposed development.

Conclusion:
For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

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

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

7.2 Earthworks

The objective of Clause 7.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development

Comment: The proposal is not likely to unreasonably disrupt existing drainage patterns and soil stability in the locality. In this regard, the applicant has submitted detailed hydraulic plans and calculations have been prepared by NB Consulting Engineers, which adequately addresses the requirement of this Clause.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the

development. A condition has been included in the recommendation of this report requiring any fill to be of an suitable quality.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of an suitable quality.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

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

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m (Queens Parade)	3.0m - 6.5m	53.8%	**No**
	6.5m (Beaconsfield Street)	3.0m	53.8%	**No**
Rear building line	6.5m	N/A	N/A	N/A
Side building line	3.95m - 4.4m (east)	4.1m	6.8%	**No**
	4.25m - 4.8m (west)	2.0m - 3.0m	29.4% - 58.3%	**No**
Building	4.2m (east)	Within envelope	N/A	Yes

envelope	4.2m (west)	Outside envelope	75%	**No**
Landscaped area	50%	50.5% (including impervious areas <1.0m in width)	N/A	Yes
Density controls	Frontage minimum one- third the length of the longest side boundary	Frontages (62.385m and 80.465m) are greater than one-third the length of the longest side boundary (85.155m)	Yes	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport 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
B2.5 Dwelling Density and Subdivision - Medium Density Residential	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.3 Greywater Reuse	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	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
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes
D10.12 Landscaped Area - General	Yes	Yes
D10.14 Fences - General	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

D10.7 Front building line (excluding Newport Commercial Centre)

The control requires a 6.5m front building setback to both Queens Parade and Beaconsfield Street.

The proposal provides the following setbacks:

- Queens Parade - 3.0m to 6.5m (variation up to 53.3%)
- Beaconfield Street - 3.0m (variation of 53.8%)

These areas of non-compliance are justified by the applicant, as follows:

"In establishing an appropriate front setback for the development of the site consideration has been given to the context relative to existing neighbouring development and to the desirability of providing a greater internal setback area within the site to enable the retention of existing significant canopy trees. On both street frontages the proposal provides front setbacks that provide a transition between the existing developments to the east and west of the site.

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On Queens Parade, the neighbouring development to the west has a nil front setback. The proposal provides for a minimum front setback of 3.0m for the western portion of the site, graduating up to 4.0m, 5.0m and 6.5m across the site, such that at the eastern of the site a 6.5m front setback is provided that matches that of the neighbouring development.

On Beaconsfield Street, the neighbouring development to the west has a nil front setback. The proposal provides a 3.0m separation to that building on its western boundary and a series of stepped dwellings with a minimum front setback of 3.0m to Beaconsfield Street. At its eastern end the development is designed to transition to the single dwelling house scale of neighbouring development, with a building containing only two dwellings providing a front setback of 6.5m to 9.5m."

Despite minor areas of non-compliance, the setbacks provide consistency with adjoining development and provides sufficient space for landscaping of an appropriate scale to screen and soften the proposed built form, such that the protrusions of the development are not considered to be unacceptable in the streetscape.

Overall, the siting of the proposed development is consistent with the outcomes of the front building line development control, as follows:

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

Comment:
The proposed development will contribute to the desired mix of low to medium density housing within the Newport Locality, and will complement both street frontages. The proposal is consistent with the bulk and scale of other developments within the area, and as such, the proposal is consistent with the desired future character of the locality.

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

Comment:
The siting of the development in relation to the front setbacks do not result in any unreasonable impacts

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

Comment:
The non-compliance is found to have minimal impact upon the amenity of the neighbouring properties.

- *Vegetation is retained and enhanced to visually reduce the built form. (En) vegetation is retained and enhanced to visually reduce the built form.*

Comment:
The proposal results in the removal a number of mature trees, however the proposal will result in a significant replanting of the site to enhance the amount of native vegetation to ensure that the visual impact of the proposed built form is appropriately softened and establishes the development in a landscape setting.

The proposed development will create a consistent alignment of built form along the streetscapes. Despite the minor non-compliances proposed, appropriate setbacks are provided to allow the scale of

plantings necessary to screen the associated built form and provide an attractive streetscape.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment:
The proposed development is designed with basement carparking, which will allow all vehicles to exit in a forward direction.

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

Comment:
The bulk and scale of the proposed development is appropriately minimised by virtue of two street frontages along with modulation and varied use of materials. The minor 300-500mm areas of non-compliance do not contribute to the perception of excessive built form.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:
The non-compliant elements are satisfactory in terms of the contribution to the visual impact, streetscape and pedestrian amenity.

As discussed above, the non-compliance is consistent with streetscape, and will not have an unreasonable visual impact when viewed from adjoining streetscape by the pedestrians.

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

Comment:
The proposed building includes progressive setbacks and effective levels of vertical and horizontal articulation such that, given the size, topographical and vegetative constraints of the site, visual dominance is minimised as much as possible with the resulting building alignments and proportions being generally consistent with that of other medium density developments in the area.

The non-compliance's resulting from the development are not considered to add unreasonable bulk to the development due to their open form which contributes towards the articulation of the building.

Therefore, having regard to the above, it is considered that the proposed development is consistent with the relevant objectives of Pittwater 21 DCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the variations to the Front Boundary Setback control are supported, in this particular circumstance.

D10.8 Side and rear building line (excluding Newport Commercial Centre)

The control requires requires side boundary setbacks for multi-dwelling housing to be provided in accordance with the following formula:

S = 3 + [(H – 2) / 4]

Where:
- S = the distance in metres
- H = the height of the wall at that point measured in metres above existing ground level

Using the above the formula, the setback required for the proposed development is stipulated in the table below:

Required	Proposed	Variation to control
Eastern Boundary - 3.95m - 4.4m	4.1m	6.8%
Western Boundary - 4.25m - 4.8m (west)	2.0m -3.0m	29.4 -28.3%

Overall, the siting of the proposed development is consistent with the outcomes of the side setback development control, as follows:

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

Comment:
The proposed development will contribute to the desired future character of medium density housing within the locality, and will complement the streetscape. The proposal is generally consistent in terms of setbacks with the adjoining development and as such, the proposal is consistent with the desired future character of the locality.

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

Comment:
The proposed development will create a consistent alignment of built form along the streetscape. Despite the minor non-compliance's proposed, appropriate setbacks are provided to allow the scale of plantings necessary to screen and soften the associated built form and provide an attractive streetscape.

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

Comment:
The siting of the development in relation to the front setbacks do not result in any unreasonable impacts upon views from nearby public or private places.

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

Comment:
The setbacks proposed provide a reasonable level of view sharing, and the proposal will result in a significant enhancement of native vegetation on the site to ensure that the visual impact of the proposed built form is appropriately softened.

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

Comment:
The setbacks proposed will afford a reasonable level of privacy, amenity and solar access for future occupants of the development and do not contribute to any unreasonable impacts upon adjoining properties.

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

Comment:
The proposed development will result in a significant enhancement of vegetation on the site, minimising the visual impact of the development and ensuring consistency with the streetscape.

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

Comment:
The proposed development comprises adequate setbacks and spatial separation with adequate access to ensure landscaped buffers between properties. The proposed landscaping is well designed to ensure a high level of amenity for future occupants.

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

Comment:
The proposed landscaped area includes sufficient dimensions to enable a reasonable level of planting to mitigate the architectural scale of the proposed building without under-utilising or overcrowding the site.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

Comment
The site adjoins B1- Local Centre zoned land on its western boundary, in this regard, it is considered the proposed setback allows for adequate landscape buffers to be provided to this boundary.

Therefore, having regard to the above, it is considered that the proposed development is consistent with the relevant objectives of P 21 DCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the variation to the side setback control is supported, in this particular circumstance.

D10.11 Building envelope (excluding Newport Commercial Centre)

Clause D10.11 of the P21 DCP requires buildings to be sited within an envelope established at a height of 4.2m on the side boundaries extending into the site at 45°.

The development does not comply on the western elevation of the building. The extent of non-compliance is detailed as follows:

Western Elevation - The breach is measured to have an overall length of 23.0m across the two

buildings with an overall height of 1.8m (variation of 75%) as shown in the diagram below (non-compliance is highlighted in yellow).

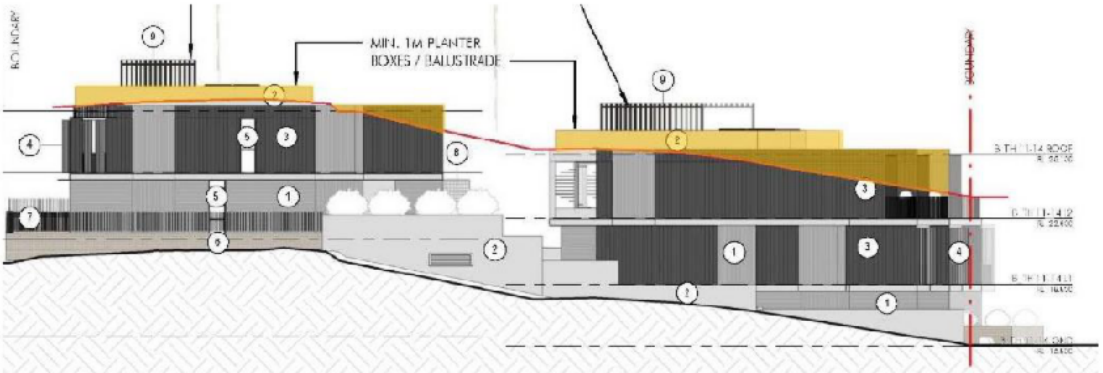

Figure 3: Western Elevation - Non-compliance with Side Boundary Envelope, shown in yellow (source: Statement of Environment Effects by Symonds Goodyer).

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

- To achieve the desired future character of the Locality.

Comment:
The development involves a scale, bulk and height which is considered to be appropriate to the desired future character of the locality.

- 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 building will enhance the streetscapes and includes progressive setbacks and good levels of vertical and horizontal articulation such that the resulting building alignments and proportions are consistent with surrounding development and complementary to the zone.

Because the non-compliance's are predominantly located on the western boundary, which adjoins a B1 commercial zone, and due to the topography of the land, the development will not add to the bulk and scale of the building, such that it will unreasonably dominate its surrounds within the medium density zone.

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

Comment:
The building responds sensitively to the natural environment, being designed around existing vegetation and canopy trees, and providing additional landscaping to improve the streetscape.

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

Comment:
The proposed building includes progressive setbacks and effective levels of vertical and horizontal articulation such that, given the size, topographical and vegetative constraints of the site, visual dominance is minimised as much as possible with the resulting building alignments and proportions being generally consistent with that of other medium density development in the area.

The non-compliance's resulting from the development are not considered to add unreasonable bulk to the development.

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

Comment:
As discussed above, the proposed development does not result in an unreasonable impact upon the equitable sharing of views.

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

Comment:
The non-compliance is found to have minimal impact upon the neighbouring properties for the following reasons:

Overshadowing
The development is sited and designed to provide adequate sunlight, daylight and ventilation to habitable rooms during midwinter, and does not contribute to any unreasonable overshadowing of adjoining development. As such, the proposal is considered to be consistent with the outcomes of the solar access development control and the proposal is supported in this regard.

Privacy
The development is found the be compliant with the separation requirements relating to visual privacy, and as such, the proposal is considered to be consistent with the outcomes of the privacy development control and the proposal is supported in this regard.

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

Comment:
The proposed landscaped area includes both retention of significant existing trees and replacement plantings to enable a reasonable level of landscaping to mitigate the architectural scale of the proposed building without under-utilising or overcrowding the site.

Therefore, having regard to the above, it is considered that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in section 5(a) of the

Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the variations to the building envelope control is supported, in this particular circumstance. _

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of $192,139 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $19,213,942.

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

<u>Submissions</u>
As a result of the public exhibition process, the notification of the application resulted in 19 individual

submissions. The main issues were:

- Traffic and Parking impacts;
- Tree removal;
- Building height
- Construction related impact
- Privacy from rooftop terraces
- Excavation impacts
- Notification period too short
- Non-compliance's with setback requirements in Pittwater 21 DCP
- Overshadowing (58 Beaconsfield Street)
- Density and over development of the site

All resident issues have been addressed in the report (see 'Public Exhibition') and were found to not warrant the refusal or further redesign of the application.

Referrals

All external and internal referral departments have raised no objections to the development, with a number of special conditions to be imposed.

Environmental Planning Instruments
The development has been found to be generally consistent with the Matters for Consideration under s.4.15 of the Environmental Planning & Assessment Act, 1979.

The development has been found to be generally consistent with the various provisions of the following Environmental Planning Instruments:

- State Environmental Planning Policy No. 55 – Remediation of Land;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; and
- State Environmental Planning Policy (Infrastructure) 2007

Pittwater Local Environmental Plan 2014

The development has been found to be consistent with the Aims of the Plan and consistent with the Objectives of Clause 4.6 - Exceptions to Development Standards with regard to a variation to the building height standard. The Clause 4.6 Variation is supported for the reasons detailed in this report.

Pittwater 21 Development Control Plan
The development has been found to be consistent with the Objectives of the Plan.

Variations to the following DCP controls were considered to be acceptable due to their consistency with the Objectives of the relevant Clauses:

- D10.7 - Front Building line
- D10.8 - Side and Rear Building Line
- D10.11 - Building Envelope

On balance and as a direct result of the amendments made to the proposed development to address residential amenity, streetscape, traffic and landscape concerns, it is recommended that approval be

granted to the the application subject to the conditions detailed within the "Recommendation" section of this report.

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

RECOMMENDATION

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 DA2019/1280 for Demolition works and Construction of a multi unit housing with associated carparking and Landscape works. on land at Lot 3B DP 164259, 62 Beaconsfield Street, NEWPORT, Lot 4A DP 159498, 11 Queens Parade, NEWPORT, Lot 3A DP 164259, 9 Queens Parade, NEWPORT, Lot 2 DP 209106, 7 Queens Parade, NEWPORT, Lot 5A DP 158658, 13 Queens Parade, NEWPORT, Lot 4B DP 159498, 60 Beaconsfield Street, NEWPORT, 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**
10708_DA002 Issue A (Demolition Plan)	06/11/2019	nettletontribe
10708_DA003 Issue G (Site/Roof Plan)	03/02/2020	nettletontribe
10708_DA004 Issue J (Beaconsfield St Ground Level Plan)	03/02/2020	nettletontribe
0708_DA005 Issue J (Beaconsfield Level 1 Plan & Queens Parade Basement Level Plan)	03/02/2020	nettletontribe
10708_DA006 Issue H (Beaconsfield Level 2 Plan & Queens Parade Ground Level Plan)	03/02/2020	nettletontribe
10708_DA007 Issue F (Beaconsfield Roof Plan & Queens Parade Level 1 Plan)	03/02/2020	nettletontribe
10708_DA020 Issue E (Elevations - Sheet 1)	03/02/2020	nettletontribe

10708_DA021 Issue D (Elevations - Sheet 2)	03/02/2020	nettletontribe
10708_DA030 Issue F (Sections)	03/02/2020	nettletontribe
10708_DA043 Issue C (Adaptable Unit Plan - Type Q1)	12/11/2019	nettletontribe
10708_DA044 Issue C (Adaptable Unit Plan - Type B1)	12/11/2019	nettletontribe
10708_DA045 Issue C (Adaptable Unit Plan - Type B2)	12/11/2019	nettletontribe
10708_DA060 Issue C (Waste Management Detail Plan)	03/02/2020	nettletontribe
10708_DA061 Issue C (Rear Boundary Detail)	03/02/2020	nettletontribe
10708_DA062 Issue A (Western Boundary Detail)	03/02/2020	nettletontribe
10708_DA075 Issue C (Landscape Area Plan)	03/02/2020	nettletontribe

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
D01 - A (Site/Roof Drainage Plan)	08/11/2019	NB Consulting Engineers
D02 - A (Level 2 Drainage Plan)	08/11/2019	NB Consulting Engineers
D03 - A (Level 1 Drainage Bio-retention Inlet Plan)	08/11/2019	NB Consulting Engineers
D04 - A (Level 1 Drainage Bio-retention Onlet and OSD Plan)	08/11/2019	NB Consulting Engineers
D05 - A (Ground Level Drainage Plan)	08/11/2019	NB Consulting Engineers
D06 - A (Music Catchment Plan)	08/11/2019	NB Consulting Engineers
D07 - A (Stormwater Management Notes and Calculations)	08/11/2019	NB Consulting Engineers
D08 - A (Stormwater Management Details)	08/11/2019	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate (1054289M)	11 November 2019	Eco Certificates Pty Ltd
NATHERS Certificate (0004346360)	11 November 2019	Eco Certificates Pty Ltd
Geotechnical Report (32714Brpt)	29 October 2019	JKGeotechnics
Arboricultural Report	13 November	Footprint Green Pty Ltd

	2019	
Traffic and Transport Assessment Issue B	November 2019	Transport and Traffic Planning Associates
Disability Access Report (J000378)	14 November 2019	Cheung Access Pty Ltd
Fire Engineering Statement (12520813)	08 November 2019	GHD Pty Ltd
Construction Management Plan Rev.1.2	February 2020	Auswide Consulting
BCA 2019 Indicative Compliance Report Design Phase Issue 1	12 November 2019	Building Certificates Australia

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:

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
L.SK.01 (Landscape Sketch Plan - GF)	14/11/19	Scape Design
L.SK.02 (Landscape Sketch Plan - Roof)	14/11/19	Scape Design
L.SK.03 (Landscape Planting Plan - GF)	14/11/19	Scape Design
L.SK.04 (Landscape Planting Plan - Roof)	14/11/19	Scape Design
L.SK.06 (Detailed Plan 1)	14/11/19	Scape Design
L.SK.07 (Detailed Plan 2)	14/11/19	Scape Design
L.SK.08 (Landscape Sections)	14/11/19	Scape Design

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	14/11/19	Stable Innovations Pittwater Shores

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 thefollowing;

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 $192,139.42 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 $19,213,942.00.

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

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

5. Security Bond

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

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

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

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

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

6. Construction, Excavation and Associated Works Security Bond (Road works)
The applicant is to lodge a bond with Council of $75000.00 as security against any damage or failure to complete the construction of Kerb & gutter and concrete footpath reconstruction works as part of this consent.

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

Reason: Protection of Council's Infrastructure.

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

7. On slab landscape planting and associated works

a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.

b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

c) The following soil depths are required in order to be counted as landscaping:

- 300mm for lawn
- 600mm for shrubs
- 1metre for trees

Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

8. 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 JKGeotechnics dated 29 October2019 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.

9. Detailed Design of Stormwater Treatment Measures

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the plans prepared by NB Consulting Engineers dated October 2019.

The certificate shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment

10. BCA Report (Class 2-9)

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

The report is to detail the extent to which the proposed building does or does not comply with the deemed-to satisfy provisions of Sections C, D, E and F of the Building Code of Australia. The report is to also provide recommendations with respect to the building works required to ensure that the specified measures and facilities for the proposed development are appropriate for its intended use to:

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

*To be regarded as an "appropriately qualified accredited certifier" the certifier must hold the relevant level of accreditation that would enable the certifier to issue a construction certificate for the subject building.
The 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' is to be submitted to the Certifying Authority with the Construction Certificate application.

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

11. On-site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's PITTWATER DCP21. and generally in accordance with the concept drainage plans prepared by NB Consulting Engineers, drawing number D01 to D08 issue A (1909119), dated 09-11-2019. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

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

The Applicant is to submit an application for approval for Infrastructure works on Councils roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of concrete footpath, kerb & gutter and vehicular crossings which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. Construction of 2.5 metres wide concrete footpath fronting both Beaconsfield Street and Queens Parade.
2. The nature reserve shall be regarded to provide a 4 percent cross fall. If services are encountered the graded may have to be revised subject to detail assessment during the preparation of the design and construction plan.
3. Retaining wall required shall be constructed wholly within the private property.
4. The vehicular crossings 6.0 metres wide on both road frontages in accordance with

Northern Beaches Council vehicular crossing profile.

5. Design plan with levels, longitudinal grades and cross-section for both driveways.
6. Design and sectional plans for the 2.5 footpath and regrading nature reserve along both Beaconsfield Street and Queens Parade.
7. All trees that are to be protected and not permitted to be removed must be clearly marked in the design plan. Tree protection measures are to be provided.
8. Removal of existing Kerb & Gutter fronting both Beaconsfield Street and Queens Parade and reconstructed to Council standard lay backs and kerb & gutter.
9. Line marking are required to be provided where required for traffic management.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

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

13. 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.

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

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

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

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

15. Stormwater Drainage Application

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of

Civil Engineering plans for the design of the of stormwater pipe connection to Council's pit located in Beaconsfield Street which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
Reason: To ensure appropriate provision for disposal and maintenance stormwater management, arising from the development.

16. 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.

17. External Colours and Materials (Industrial, Commercial, Mixed & Apartment Buildings)
(a) External Glazing - The reflectivity index of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20% (expressed as a per centum of the reflected light falling upon any surface).

(b) External Roofing - The external finish to the 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.

(c) Anti Graffiti Coating - The finishes of the walls adjoining <STREET NAME> must be finished in heavy duty long life, ultra violet resistant coating with a high resistance to solvents and chemicals as an anti-graffiti coating easily cleaned by solvent wipe.

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 from glazing does not occur as a result of the development. (DACPLC04)

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

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of

each construction phase;

- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored on site, at all times;
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- Proposed protection for Council and adjoining properties; and
- The location and operation of any on site crane.

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

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

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site. (DACTRCPCC1)

19. Vehicular Swept Paths.

20. Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. Drawings must be submitted with the Construction Certificate application.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles. (DACTRCPCC2)

20. Waste and Recycling Requirements

Details demonstrating compliance with Northern Beaches Council Development Control Plan – Part C9 Waste Management, including the required Northern Beaches Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with Northern Beaches Development Control Plan – Part C9 Waste Management, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided. (DACWTC01)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

- 5 Kaliny Street, Newport;
- 58 Beaconsfield Street, Newport;

- 15-17 Queens Parade, Newport; and
- 54 Beaconsfield Street, Newport

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

22. Tree trunk, branch and root protection

(a) Existing trees which must be retained

i) All trees not indicated for removal on Exisitng Tree Plan Dwg. No. L.SK.05 dated 14/11/19 prepared by Scape Design, unless exempt under relevant planning instruments or legislation

ii) Trees located on adjoining private land

(b) Tree protection

i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by the Project Arborist on site.
ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by the Project Arborist on site.
iii) All tree protection to be in accordance with the recommendations of the Arboricultural Impact Assessment dated 13 November 2019 prepared by Footprint Green and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
iv) All tree pruning within the subject site is to be in accordance with relevant planning controls and AS 4373 Pruning of amenity trees
v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

23. Project Arborist

i) A Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works.
ii) The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the the Arboricultural Impact Assessment dated 13 November 2019 prepared by Footprint Green and AS4970-2009 Protection of trees on development sites.
iii) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

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

24. Tree removal within the road reserve

i) This consent includes approval to remove trees located within the road reserve as indicated on Exisitng Tree Plan Dag No. L.SK.05 dated 14/11/19 preapred by Scape Design

ii) Removal of approved trees in the road reserve shall only be undertaken by a Council approved tree contractor.

iii) Details of currently approved tree contractors can be obtained from Northern Beaches Council Public Trees Section prior to removal.

Reason: Public liability

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

25. Road Reserve

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

Reason: Public Safety.

26. Removing, Handling and Disposing of Asbestos

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

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

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

27. Survey Certificate

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

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

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

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

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

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

28. Installation and Maintenance of Sediment Control

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be

adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

29. Implementation of Construction Traffic Management Plan

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

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

30. Substitution of Stormwater Treatment Measure

The substitution of an "equivalent" device for the stormwater treatment measure approved in the Development Application process must first be approved by the Principal Certifying Authority.

Details must be submitted to the Principal Certifying Authority for approval prior to installation.

Reason: To ensure stormwater is appropriately managed.

31. Installation and Maintenance of Sediment and Erosion Control

All Site drainage and sediment and erosion control works and measures as described in the Soil and Water Management Plan and any other pollution controls, as required by these conditions shall be implemented prior to commencement of any other works at the Site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment

32. Dewatering Management

Discharge must achieve the following water quality targets in addition to any conditions/documentation of this consent and legislation including Protection of The Environment Operations Act 1997 and Contaminated Lands Act 1997.

Parameter	Criterion	Method	Time Prior to Discharge
Oil and grease	No visible	Visual inspection	<1 hour
pH	6.5- 8.5	Probe/meter	<1 hour
Total Suspended Solids (TSS)	<50mg/L	Meter/grab sample measures as NTU	<1 hour

NOTE: The correlation between NTU and TSS must be established by a NATA accredited laboratory prior to the commencement of dewatering activities.

All records of water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Tailwater must be discharged to the nearest stormwater pit in accordance with Council's Auspec1 Design Manual and must not spread over any road, footpath and the like. Discharge to the kerb and gutter will not be accepted.

Reason: Protection of the receiving environment.

33. Protection of stormwater treatment measures during construction
Until the development site has been fully stabilised in 90 percent of the catchment area for the stormwater treatment measures, measures that incorporate filter media and plantings must not be completed nor filter devices installed. Alternatively, completed/installed stormwater treatment measures must be kept offline until this milestone is reached.

Reason: Protection of stormwater treatment measures.

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

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

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

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

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

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

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

37. Condition of retained vegetation

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

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

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

38. Certification for the Installation of Stormwater Quality System

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the plans prepared by NB Consulting Engineers dated October 2019. The certificate must confirm that stormwater treatment devices are completed, online, in good condition and are not impacted by sediment.

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

Reason: Protection of the receiving environment.

39. Stormwater Treatment Measures Operation and Maintenance Plan

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:
   a) Work as executed drawings
   b) Intent of the stormwater treatment measures including modelled pollutant removal ra
   c) Site detail showing catchment for each device
   d) Vegetation species list associated with each type of vegetated stormwater treatment measure
   e) Impervious area restrictions to maintain the water balance for the site
   f) Funding arrangements for the maintenance of all stormwater treatment measures
   g) Identification of maintenance and management responsibilities
   h) Maintenance and emergency contact information
2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure
   a) Activity description, and duration and frequency of visits
   Additionally for vegetated devices:
   b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
   c) Management of weeds, pests and erosion, with weed and sediment cover limited to
3. Maintenance schedule and procedure - ongoing
   a) Activity description, and duration and frequency of visits
   b) Routine maintenance requirements
   c) Work Health and Safety requirements
   d) Waste management and disposal

e) Traffic control (if required)
f) Renewal, decommissioning and replacement timelines and activities of all stormwate
g) Requirements for inspection and maintenance records, noting that these records are

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

40. Works as Executed Drawings - Stormwater Quality System
Works as Executed Drawings for the stormwater quality system must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

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

Reason: Protection of the receiving environment.

41. Post-Construction Dilapidation Report
Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

42. Consolidation of Lots
Lot 3B DP 164259, Lot 4A DP 159498, Lot 3A DP 164259, Lot 2 DP 209106, Lot 5A DP 158658, and Lot 4B DP 159498 must be consolidated as one (1) allotment and registered on a survey plan (prepared and signed by a Registered Surveyor) with the NSW Land Registry Services.

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

Reason: To ensure development is not constructed over property boundaries

43. Positive Covenant for the Maintenance of Stormwater Pump-out Facilities
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

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

44. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.
A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be obtained from LRS.

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

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

45. Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures
A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such

covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

46. Strata Management Statement - stormwater treatment measures

The Strata Management Statement must specifically list the stormwater treatment measures that will be maintained under strata title. The statement must also include the Stormwater Treatment Measure Operation and Maintenance Plan.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To ensure maintenance of all stormwater management assets and protection of the receiving environment.

47. Geotechnical Certification Prior to Occupation Certificate

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

Reason: To ensure geotechnical risk is mitigated appropriately.

48. Works as Executed plan and certification of Council Road and Footpath Works.

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed footpath, kerb & gutter and crossing works have been constructed in accordance with this consent and the approved Section138 Road Act approved plans. Works as Executed plan details overdrawn in red on a copy of the approved road works plan and certified by a registered surveyor in relation to boundaries.

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

49. Required Planting

i) Trees shall be planted in accordance with the following:

MinimuimNo. of Trees Required.	**Species**	**Location**	**Minimum Pot Size**
All trees	As indicated on Landscape Plan Dwg. No. L.SK.03 dated 14/11/19 prepared by Scape Design	As indcated on the Landscape Plan	As indicated on the Landscape Plan

ii) Additional street tree planting - Plant two additional *Hibiscus tileaceus* in the Beaconsfield Street road reserve, one each forward of Units 12(A) and 14(A)

iii) All street trees shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
iv) All street trees shall be planted into a prepared planting hole a minimum of 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, and mulched to 75mm depth minimum,
v) Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity.

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

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

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

51. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**
The units within the development are to be numbered in accordance with the Australia Post Address Guidelines (https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

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

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

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

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

Reason: To ensure consistent numbering for emergency services access.

52. Undergrounding of Telecommunications Services
Arrangements are to be made for the provision of underground telecommunications services to the building.

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

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

53. Sydney Water

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

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

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

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

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

54. Signage and Linemarking – External.

A plan demonstrating the proposed signage and line marking within Council's Public Domain shall be prepared by a suitably qualified person and submitted to and approved by the Local Traffic Committee prior to the issue of any Occupation Certificate.

Note: The applicant is advised that the plan will require approval by the local Traffic Committee if the proposal requires change in existing parking conditions and hence, adequate time should be allowed for this process

Reason: To ensure consistent parking amenity. (DACTRFPOC1)

55. Basement Garage Traffic Signal System.

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

The signal system must;
• be clearly visible from ramp entrances and where applicable the on street waiting space,
• is to clearly indicate to an approaching driver, by way of red light or wording, that an opposing vehicle has entered the ramp,
• Incorporate linemarking to delineate traffic flow and nominate waiting bay locations to allow vehicles to overtake another.

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

Reason: To ensure no vehicle conflicts within the basement carpark (DACTRFPOC2)

56. Waste and Recycling Facilities Certificate of Compliance

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

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

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

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

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

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

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

59. Authorisation of Legal Documentation Required for Waste Services
The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

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

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

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

60. Undesirable Trees
Leighton Green Cypress Cupressocyparis leylandii or any of its cultivars, must not be planted on the site for the life of the development. In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity.

61. Maintenance of Stormwater Treatment Measures
Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications

and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

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

Reason: Protection of the receiving environment

62. Condition for on going - Waste service

Waste services for bins- Building management to take bins to the collection points on Beaconsfield Street and Queens Parade on the night before the collection day. Bins are to be returned to the bin stores once waste service has been completed.

Bulky good store- Building management to take bulky goods from the store room to kerb side the night prior to the booked collection date. Complex booking only, not individual unit bookings.

Reason: To assist with the waste service collection.(DACHEGOG1)

63. Landscape maintenance

i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.
iii) Shrub and groundcover planting located in the Beaconsfield Road and Queens Parade road reserves as indicated on the approved Landscape Plans is to be maintained by the relevant property owners/body corporate.

Reason: To maintain local environmental amenity.

64. Visitors Sign

A sign, legible from the street, shall be permanently displayed to indicate that visitor parking is available on the site and the visitor car parking spaces shall be clearly marked as such.

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

Reason: To ensure that visitors are aware that parking is available on site and to identify those spaces to visitors. (DACPLG04)

65. Loading and Unloading

All loading and unloading of vehicles and the delivery of goods must be carried out wholly within the site.

Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity. (DACPLG20)

QUEENS PARADE
BEACONSFIELD STREET
PUBLIC CAR PARK
2 STOREY BRICK BUILDING
CAR PARK
2 STOREY SHOP LOTS
NO.15 2 STOREY APARTMENT BUILDING
NO.58 1 STOREY TIMBER COTTAGE
DEVELOPMENT DATA
SITE AREA : 3958m²
LANDSCAPE AREA : 1979m² (50%)
TOTAL NUMBER OF TOWNHOUSE : 18
ADAPTABLE UNIT (A) : 9
50 CAR SPACE @ 2 PER DWELLING
7 VISITOR CAR SPACES (INCL. 2 ACCESSIBLE)
Project Name
Qubec
Project Address
60 Beaconsfield Street, Newport
Site Plan/ Roof Plan
SKL
SKL
A1
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Key Plan
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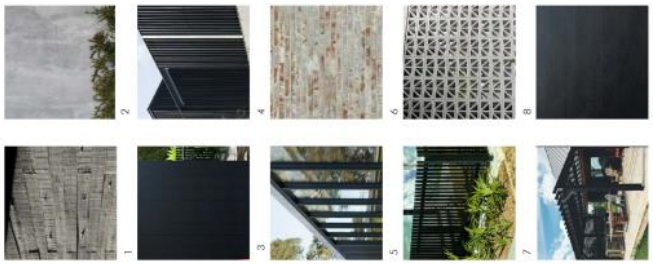
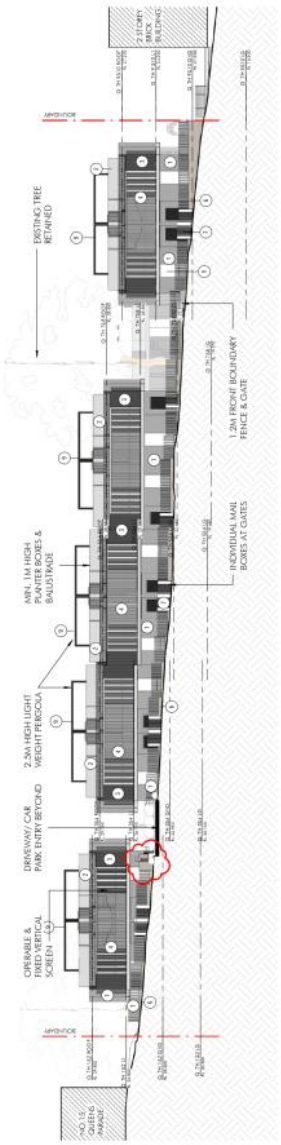
Stable PROPERTIES



1. BOARD FORMED CONCRETE
2. SMOOTH OFF FORM CONCRETE
3. DARK VERTICAL NON-COMBUSTIBLE CLADDING
4. DARK VERTICAL SCREEN
5. VISION GLASS WINDOW
6. RECYCLE BRICK
7. DARK METAL FENCING
8. CONCRETE BREEZE BLOCK
9. DARK PERGOLA
10. DARK PANEL LIFT GARAGE DOOR



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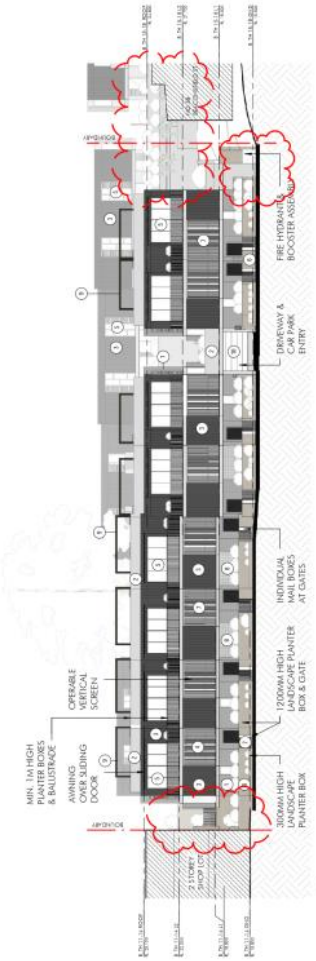
1 : 200



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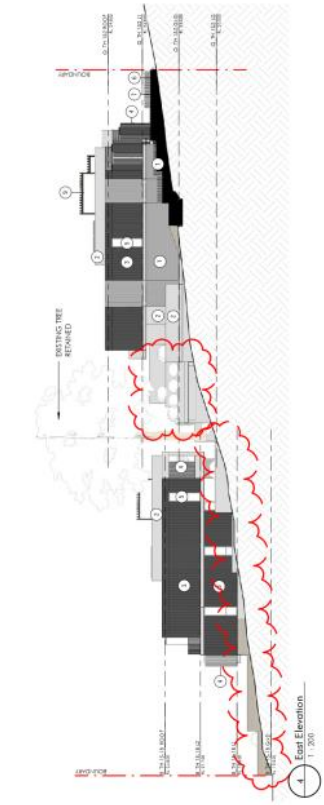
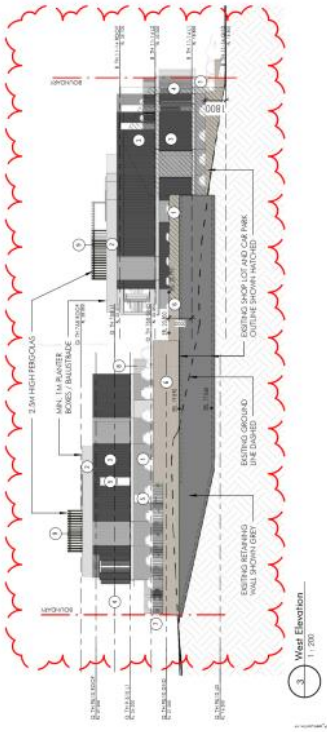


4 East Elevation
1 : 200



3 West Elevation
1 : 200

Stable PROPERTIES

Project Name
Qubec
Project Address
60 Beaconsfield Street, Newport

Key Plan

Elevations - Sheet 1

Drawn	Checked	Sheet Size	Scale
DC	SKL	A1	1:200

Drawing No. 10708_DA020

Issue E

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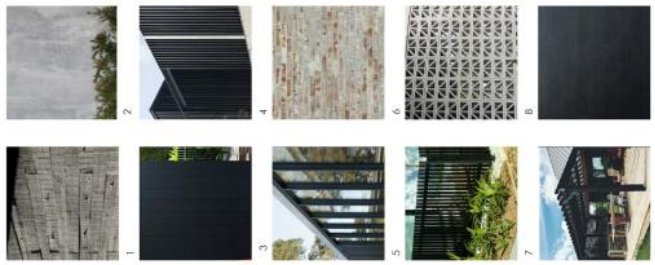

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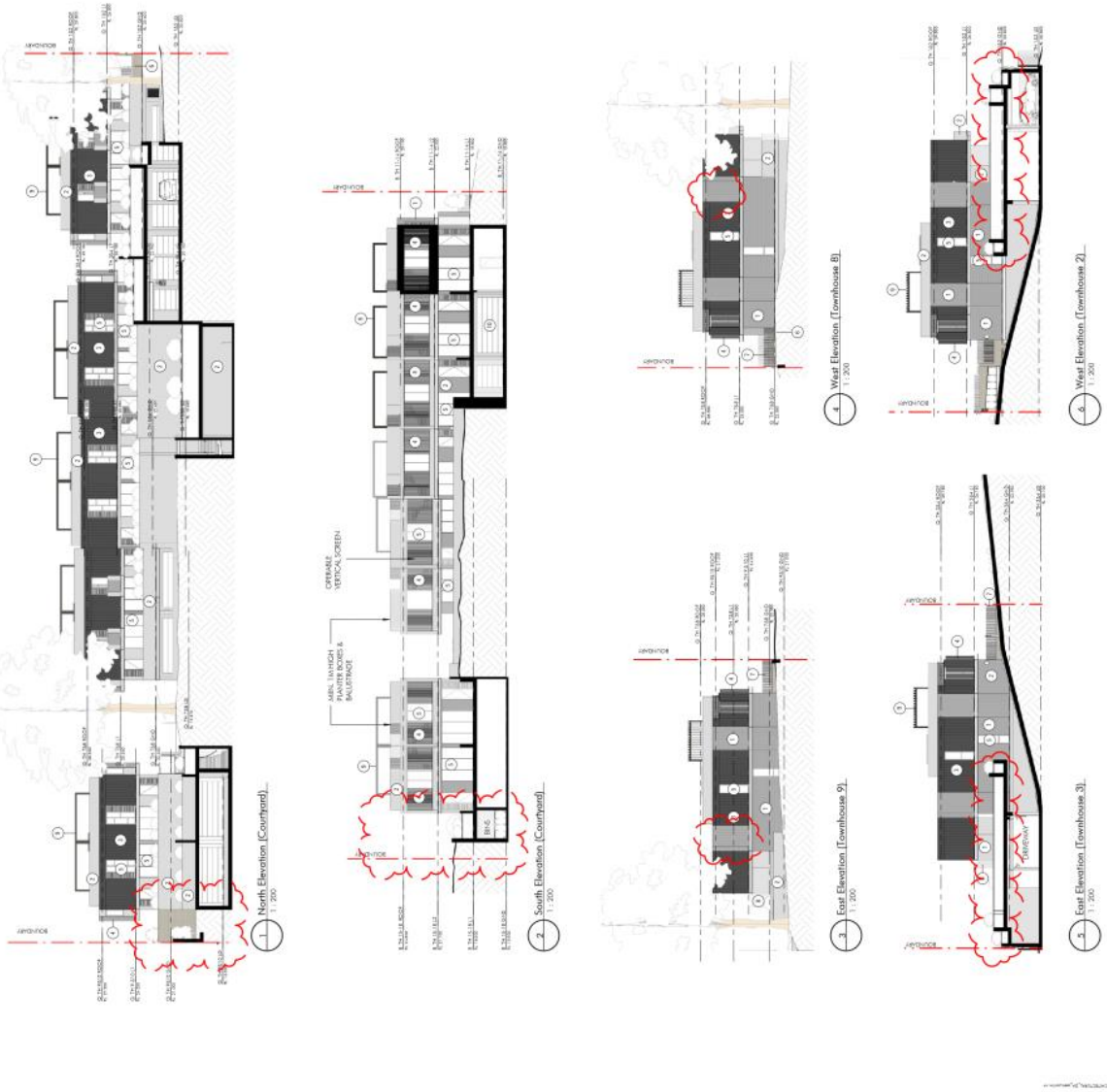

Appendix B Clause 4.6 variation request – building height

Request for exception under clause 4.6 of Pittwater Local Environmental Plan 2014
to clause 4.3(2) of *Pittwater Local Environmental Plan 2014*

Premises: No. 60-62 Beaconsfield Street and 7-13 Queens Parade, Newport

Proposal: Demolition of existing structures and construction of a multi dwelling housing development comprising 18 x 3-bedroom dwellings.

Control: Building height

Clause 4.3(2) of PLEP 2014 permits a maximum building height of 8.5m.

The proposal generally complies with this control. However, the proposal incorporates sun control structures over the proposed roof terraces and some of these structures breach the control by up to 1.1m (as shown on drawing DA055), representing a variation of 12.9%. These structures also provide solar electricity generation for the proposed dwellings.

Extract from drawing DA055 showing the maximum extent of the breach of the building height control.

Introduction:

Clause 4.6(1) of PLEP 2014 states:

> *(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.

To utilise the flexibility provided by clause 4.6 of PLEP 2014 it is necessary for the applicant to demonstrate:

(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.

In addition, Council must 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.

In exercising delegation from the Director-General of the Department of Planning, Council must consider:

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

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

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

This clause 4.6 request has been structured in accordance with the approach adopted by the Court in *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46 and also considers the ways in which a SEPP 1 objection can be sustained as listed in *Webhe v Pittwater Council* [2007] NSWLEC 827 at [26]. Consideration has also been given to demonstrating that there are sufficient environmental planning grounds to justify contravening the standard as discussed in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and to the guidance provided in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

1. Is the planning control in question a development standard?

Clause 4.3 of PLEP 2013 is attached as Appendix B1.

The definition of "*development standards*" in Section 4(1) of the Environmental *Planning and Assessment Act 1979* is attached as Appendix B2.

Clause 4.3(2) is a development standard as it fixes a requirement for the height of a building.

2. What is the underlying object or purpose of the standard?

The underlying objects of the standard are stated in clause 4.3(1) to be:

(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.

3. Is compliance with the development standard consistent with the objectives of clause 4.6?

- Compliance would necessitate an inflexible application of the development standard in circumstances where the development otherwise satisfies the objectives of the control.

4. Does non-compliance with the development standard raises any matter of significance for State or regional environmental planning?

No.

5. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the development standard is unreasonable and unnecessary for the following reasons:

5(a). Achievement of the underlying objectives of the standard

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

- The proposal has a height and scale that reflects the controls that apply. The area is characterised by a variety of housing types and the proposal contributes to this variety. The consistency with the desired future character of the Newport locality is discussed in detail in the Statement of Environmental Effects.

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

- The site is located in an area with a mix of surrounding development including dwelling houses, apartment buildings and commercial

development. The proposal has been designed to sit comfortably within this context. Particular care has been taken to ensure that the development provides appropriate transitions to neighbouring developments in terms of setbacks and scale.

(c) to minimise any overshadowing of neighbouring properties,

- The proposal has been designed to minimise overshadowing of neighbouring properties. All neighbouring properties retain sunlight to their living areas for in excess of 3 hours in midwinter as required by P21 DCP. The proposal has minimal impact on solar access to neighbouring private open space, noting that the rear yard of 58 Beaconsfield Street is currently overshadowed for most of its area in midwinter by existing structures and large trees.

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

- The site analysis has not identified any significant views currently enjoyed by neighbouring and nearby residents that will be affected by the proposal.

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

- The development steps down the slope of the land from Queens Parade to Beaconsfield Street and also along the street frontages to reflect the natural topography of the land.

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

- The development has been designed around existing canopy trees on the site with generous internal areas retained. The recommendations of the consulting arborist have been incorporated into the design and can be enforced by condition through the construction phase. Proposed landscaping will enhance the natural environment. The site does not contain a heritage item and is not within a heritage conservation area.

5(b). Is the standard relevant to this development?

The applicant does not rely upon this method of demonstrating that compliance with the development standard is unreasonable or unnecessary.

5(c). Would the underlying objective be defeated or thwarted if compliance was required?

The applicant does not rely upon this method of demonstrating that compliance with the development standard is unreasonable or unnecessary.

5(d). Has the development standard been abandoned or destroyed by Council's own actions?

The applicant does not rely upon this method of demonstrating that compliance with the development standard is unreasonable or unnecessary.

5(e). **Is the zoning of the particular land unreasonable or inappropriate?**

The applicant does not rely upon this method of demonstrating that compliance with the development standard is unreasonable or unnecessary.

6. **Are there sufficient environmental planning grounds to justify varying the development standard?**

Yes. The variation to the control is to enable the installation of roofing over the principal private open spaces (roof terraces) of the proposed dwellings which will provide two significant benefits.

Firstly, it will improve the amenity of the roof terraces for the future residents of the building by providing a sense of enclosure and weather protection. This will enhance the usability of the roof terraces and ensure that they achieve the objectives of Council's controls for private open space.

Secondly, the roofing structures will enable the installation of solar electricity generating panels that will enhance the environmental sustainability credentials of the development.

When considering that the proposed roofing structures will not have negative impacts in terms of privacy, views or solar access for neighbouring and nearby properties, the benefits listed above provide sufficient environmental planning grounds to justify varying the development standard.

7. **Are there any other matters to consider before agreeing to the exception?**

Yes. Senior Commissioner Moore in *Chidiac v Mosman Council* [2015] NSWLEC 1044 drew attention to the requirement in clause 4.6(b)(ii) of MLEP 2011 (which is the same as clause 4.6(b)(ii) of PLEP 2014) and that it is necessary to demonstrate that the proposal will satisfy the objectives for the site coverage control and for the R3 Medium Density Residential zone to demonstrate that the requirement that the proposal be in the public interest has been met.

In this regard, the objectives for the R3 Medium Density Residential zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

The proposal is consistent with these objectives for the following reasons:

- ✓ It provides for the housing needs of the community within a medium density environment.
- ✓ It enhances the variety of housing types and densities in the area.

  [Note: The other zone objective is not relevant to this proposal.]

8. Is the exception request well founded?

For the reasons given above the exception request is considered to be well founded.

Geoff Goodyer

Geoff Goodyer
14 November 2019

Appendix B1

Clause 4.3 of PLEP 2014

4.3 Height of buildings

(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.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

(2A) Despite subclause (2), development on land -

(a) at or below the flood planning level or identified as "Coastal Erosion/Wave Inundation" on the Coastal Risk Planning Map, and

(b) that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map,

may exceed a height of 8.5 metres, but not be more than 8.0 metres above the flood planning level.

(2B) Despite subclause (2), development on land—

(a) at or below the flood planning level or identified as "Coastal Erosion/Wave Inundation" on the Coastal Risk Planning Map, and

(b) that has a maximum building height of 11 metres shown for that land on the Height of Buildings Map,

may exceed a height of 11 metres, but not be more than 10.5 metres above the flood planning level.

(2C) Despite subclause (2), development on an area of land shown in Column 1 of the table to this subclause and identified as such on the Height of Buildings Map, may exceed

the maximum building height shown on the Height of Buildings Map for that land, if the height of the development is not greater than the height shown opposite that area in Column 2.

Column 1	Column 2
Area	Maximum height above the flood planning level
Area 1	11.5 metres
Area 2	8.5 metres on the street frontage and 10.5 metres at the rear
Area 3	8.5 metres
Area 4	7.0 metres

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—

(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and

(b) the objectives of this clause are achieved, and

(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and

(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

(2E) Despite subclause (2), development for the purposes of shop top housing on land identified as "Area 5" on the Height of Buildings Map may have a height of up to 10 metres if the top floor of the building is setback a minimum of 6 metres from the boundary to the primary street frontage.

(2F) Despite subclause (2), development on land identified as "Area 6" on the Height of Buildings Map must not exceed 8.5 metres within the area that is 12.5 metres measured from the boundary of any property fronting Orchard Street, Macpherson Street, Warriewood Road or Garden Street.

(2FA) Despite subclause (2), the maximum height for a secondary dwelling or a rural worker's dwelling in Zone E4 Environmental Living or Zone RU2 Rural Landscape is 5.5 metres if the secondary dwelling or rural worker's dwelling is separate from the principal dwelling.

(2FB) Despite subclause (2), in the case of a dual occupancy (detached), the maximum height for the dwelling that is furthest back from the primary street frontage of the lot is 5.5 metres.

(2G) In this clause—

flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard, or other freeboard determined by an adopted floodplain risk management plan.

floodplain risk management plan has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government.

Appendix B2

Definition of "development standards"

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,

(b) the proportion or percentage of the area of a site which a building or work may occupy,

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

(d) the cubic content or floor space of a building,

(e) the intensity or density of the use of any land, building or work,

(f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,

(g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,

(h) the volume, nature and type of traffic generated by the development,

(i) road patterns,

(j) drainage,

(k) the carrying out of earthworks,

(l) the effects of development on patterns of wind, sunlight, daylight or shadows,

(m) the provision of services, facilities and amenities demanded by development,

(n) the emission of pollution and means for its prevention or control or mitigation, and

(o) such other matters as may be prescribed.