

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held on

WEDNESDAY 22 APRIL 2020



Ashleigh Sherry
Manager Business Systems and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 22 April 2020

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 8 April 2020	
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS.....	5
3.1	DA2019/1403 - 75 The Corso, Manly - Alterations and additions to the first floor accommodation, new doors to North Steyne, replacement awning to the Corso, signage zones, air-conditioning to the roof and other ancillary works at Hotel Steyne	5
3.2	DA2019/1481 - 741 Warringah Road, Forestville - Demolition of existing dwellings and construction of a two storey Boarding House comprising nine (9) bedrooms and a part sub-basement park for 5 cars with access via Melwood Avenue	58
3.3	REV2020/0002 - 115A Pacific Road, Palm Beach - Review of Determination of Application DA2019/0874 for Construction of a garage	104
3.4	DA2019/1383 - 11 Ocean Road, Palm Beach - Demolition works and construction of a dwelling house including a swimming pool	135
3.5	DA2019/1339 - 41 Lodge Street, Balgowlah - Torrens title subdivision of one lot into two and the construction of two semi-detached dwellings, including the demolition of the existing dwelling	187
3.6	DA2019/1258 - 29 Parkview Road, Fairlight - Demolition works, construction of a dual occupancy (attached) and strata subdivision.....	230

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 8 APRIL 2020

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 8 April 2020 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1

DA2019/1403 - 75 THE CORSO, MANLY - ALTERATIONS AND ADDITIONS TO THE FIRST FLOOR ACCOMMODATION, NEW DOORS TO NORTH STEYNE, REPLACEMENT AWNING TO THE CORSO, SIGNAGE ZONES, AIR-CONDITIONING TO THE ROOF AND OTHER ANCILLARY WORKS AT HOTEL STEYNE

REPORTING MANAGER

Anna Williams

TRIM FILE REF

2020/210080

ATTACHMENTS

- 1 Assessment Report
- 2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/1403 for Alterations and additions to the first floor accommodation, new doors to North Steyne, replacement awning to the Corso, signage zones, air-conditioning to the roof and other ancillary works at Hotel Steyne on land at Lot 100 DP 1069144, Lot 101 DP 1069144 & Lot 102 DP 1069144, 75 The Corso, Manly, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1403
Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 100 DP 1069144, 75 The Corso MANLY NSW 2095 Lot 101 DP 1069144, 75 The Corso MANLY NSW 2095 Lot 102 DP 1069144, 75 The Corso MANLY NSW 2095
Proposed Development:	Alterations and additions to the first floor accommodation, new doors to North Steyne, replacement awning to the Corso, signage zones, air-conditioning to the roof and other ancillary works at Hotel Steyne to Hotel Steyne
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Steyne Hotel Freehold Pty Ltd
Applicant:	Steyne Hotel Operations Pty Ltd ATF Steyne Hotel Operations Trust
Application Lodged:	09/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	28/02/2020 to 13/03/2020
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 3,028,232.00

PROPOSED DEVELOPMENT IN DETAIL

The proposal is primarily based around refurbishment and upgrade works to the existing hotel accommodation located on the first floor. The hotel currently has 25 hotel rooms. The proposal will increase the number of hotel rooms to 41. In addition, the proposal includes alterations to the ground floor gaming room, new external doors to North Steyne, replacement awnings, signage zones and air conditioning units at roof level.

In details, the proposal includes the following works:

Ground Floor

- New ground floor doors to the North Steyne facade to replace existing windows;
- New exterior awning works;
- New accessible ramp and access from North Steyne through the cafe to the ground floor pub and refurbish the existing ramp to the beach bar restaurant;
- New signage zones;
- Amend gaming room layout;
- Improvements to kitchen;
- New awnings to seating areas within the courtyard, and
- Infill internal opening between cafe and beach bar restaurant.

Note: the hotel entrance will be via the double doors located on the eastern end of the North Steyne.

First Floor

Upgrade of all hotel accommodation rooms to the east, south and west and central wings including new bathrooms and air conditioning to every room. In detail, the upgrade of the accommodation includes:

- West Wing (Corso) - Corridor and housekeeping becomes Room 29;
- West Wing - infill stair to create rooms 26, 27 and 28, delete internal stair (no. 4) and creation of a new office over gaming area;
- Northern Wing - 6 new hotel accommodation rooms and the relocation of the existing administration offices to the second floor;
- Corso Wing - Extend the existing verandah, replace managers apartment with one additional room and creation of a new maids room;
- East wing - Conversion of existing office and services area to the managers apartment and Reception/office;
- East wing - Conversion of existing bathrooms to housekeeping and linen rooms;
- Amendments to existing lift No. 2 to provide disabled access to the first floor via the proposed external walkway;
- New access door to link up the external walkway/lift No. 2 to the lounge area;
- West wing - new access corridor linking the new external walkway to the internal corridor;
- Relocation of the existing external courtyard stair within the adjacent service area and associated minor alterations to existing corridors and cool rooms in the west wing, and
- New glazing to the openings on the courtyard elevation of the hotel accommodation.

Second Floor

- Relocation of existing external central stair;
- Conversion of existing "Blacket's Bar" to administration office, and
- Removal of redundant condensers to central wing and installation of two new air conditioning condenser units for the hotel accommodations. An acoustic screen is proposed around the perimeter of the area of plant.

Roof Area

- Installation of a total of two (2) air conditioning condenser A/C units for hotel accommodation rooms on the existing roofs as detailed below:
 - Unit A located on the upper roof adjacent to the western parapet wall;
 - Unit B located on the northern roof level adjacent to the northern parapet wall;
 - Two units located on the level 2 roof level adjacent to the existing plant. An acoustic screen is proposed around the perimeter of the existing and proposed plant.

Additional Details

Additional information relating to the roof top plant was submitted on 19 March 2020.

It is noted that a similar Development Application (DA) DA2018/2023 for an upgrade of the hotel accommodation to create 41 hotel rooms and install roof top plant was approved on 17 April 2019.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Local Environmental Plan 2013 - 6.13 Design excellence
 Manly Local Environmental Plan 2013 - 6.21 Noise impacts—licensed premises
 Manly Local Environmental Plan 2013 - Schedule 5 Environmental heritage
 Manly Development Control Plan - 3.1.3 Townscape (Local and Neighbourhood Centres)
 Manly Development Control Plan - 3.2 Heritage Considerations
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 3.4.4 Other Nuisance (Odour, Fumes etc.)
 Manly Development Control Plan - 3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)

Manly Development Control Plan - 3.6 Accessibility
 Manly Development Control Plan - 3.9 Mechanical Plant Equipment
 Manly Development Control Plan - 3.10 Safety and Security
 Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor
 Manly Development Control Plan - 4.2.5.1 Design for Townscape
 Manly Development Control Plan - 4.2.5.4 Car Parking and Access
 Manly Development Control Plan - 4.4.3 Signage
 Manly Development Control Plan - 4.4.4.1 Awnings in LEP B1 and B2 Business Zones
 Manly Development Control Plan - 5.1.2 The Corso

SITE DESCRIPTION

Property Description:	<p>Lot 100 DP 1069144 , 75 The Corso MANLY NSW 2095 Lot 101 DP 1069144 , 75 The Corso MANLY NSW 2095 Lot 102 DP 1069144 , 75 The Corso MANLY NSW 2095</p>
Detailed Site Description:	<p>The subject site consists of three (3) allotments with a quadruple frontage located on the northern side of The Corso and Sydney Road, the western side of North Steyne and the eastern side of Henrietta Lane. The site is located in the Manly Town Centre.</p> <p>The site is irregular in shape with a primary frontage of 34.075m along The Corso and secondary frontages of 41.475m along North Steyne, 13.665m along Sydney Road and 44.27m along Henrietta Avenue. The site shares a boundary wall with the northern adjacent property which has a length of 39.125m. The site has a surveyed area of 1948m².</p> <p>The site is located within the B2 Local Centre zone and accommodates part-one, part-two, part-three storey commercial building operating as a pub with on-site hotel accommodation. The building is known as Hotel Steyne.</p> <p>The site is flat and contains no vegetation or landscaped area.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by multi-level commercial, residential and mixed-use developments. Manly Beach is located directly opposite the property to the east.</p>

Map:



SITE HISTORY

The land has been used for commercial purposes for an extended period of time. A search of Council's records has revealed a significant number of development applications and modification applications relating to the site. The following applications are of relevant to the assessment of this development application.

- Pre-lodgement Meeting (PLM2019/0189) was held on 24/09/2019 for the subject proposal. The subject application is consistent with the proposal tabled at the PLM and is supported with the information recommended at the PLM to be included with the DA.
- DA2018/2023 for alterations and additions to the existing accommodation within the Hotel was approved on 17/04/2019. The approval included an upgrade of visitor accommodation to create a total of 41 rooms (16 new room), a 33sqm increase in GFA and new roof top plant. Note: The subject application differs from DA2018/2023 in that it also includes the installation of new doors to North Steyne, replacement awnings and signage zones.
- On 24 February an Order was issued requiring remedial fire safety upgrade work to be carried out to Hotel Steyne. Work in response to this order has commenced.
- On 27 February 2020 an Order was issued requiring repair works to all facades and six Juliet balconies of the Hotel Steyne. Work in response to this order has commenced.
- Building Application lodged for existing roof top plant was lodged on 1 April 2020.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

are: **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 4 submission/s from:

Name:	Address:
Mr Gregory Ernest Brown	8 Macquarie Road PYMBLE NSW 2073
Samantha Stow	505 / 9 - 15 Central Avenue MANLY NSW 2095
Mr David Edward Glading	507 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Richard Roy Goodmanson	705 / 9 - 15 Central Avenue MANLY NSW 2095

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

- Insufficient information has been submitted of the proposed roof top plant in terms of size and scale and there is a concern that AC units for 42 bedrooms will be excessive. The design should be amended to house the AC units on a lower level in the open courtyard area so that it is not visible from the public domain on a platform or the like. The design of the plant needs to consider impacts on the heritage fabric. It is requested that the height of any new units be kept to a minimum and the installation be fully enclosed in a visually neutral and sound dampening cladding.*

Comment

The applicant has submitted additional details on the proposed roof top plant including plans showing the location and height of the two A/C units on the upper roof and two A/C units on the level 2 roof. The application was re-notified and the additional information exhibited. No further submissions have been received. The additional information confirms that proposed units will not be visible from the public domain and all plant will sit below the height of the existing roof parapet. As such Council's Heritage Officer has no objections to the proposed roof top plant subject to a condition requiring the plant to be screened. Conditions are also included requiring noise from the proposed plant not to result in adverse impacts to neighbouring properties.

- Existing unsightly bulky plant on the roof impacts on views from upper level neighbouring residential apartments.*

Comment

A site visit to the neighbouring apartment building, Pacific Waves 9-15 Central Avenue, confirms that existing plant has been installed on the roof visible from the balconies of the upper floor units facing south-east. The Applicant has been advised that unauthorised plant can not be included in the assessment of the subject development application. The Applicant notes that the

units were installed by the previous owner and has since lodged a Building Information Certificate (BIC) on 1 April 2020 for the roof top plant. The proposed A/C units will be located below the existing parapet height and it is considered unlikely that the proposed units will result in any view loss issues to neighbouring properties. A detailed discussion in relation to view loss is contained under clause 3.4.4 of this report.

- *Potential acoustic impacts, noise must not exceed 5dB(A). In addition, potential impacts relating to odour and smoke pollution.*

Comment

The application was referred to Council's Health Unit who offer no objections to the roof top plant subject to conditions requiring the plant not to cause an "offensive noise" as defined by the Protection of the Environment Operations Act 1997 and any noise emitted shall not exceed more than 5dB(A) above the background level when measured from within any property boundary. In addition, a condition requires the new plant to be enclosed in a visually neutral acoustic screen.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p>General Comments</p> <p>Hotel Steyne proposes to make mostly internal changes to their existing premises including modifications to restaurant areas, bedrooms and re-instating working air conditioner condensers on the roof. Potential for noise impacts from roof-mounted air conditioner condenser units needs to be considered.</p> <p>The Statement of Environmental Effects states <i>The plant and equipment will comply with all acoustic requirements of Manly DCP 2013 including acoustic enclosures and advises that Installation of air-conditioning condenser units for hotel accommodation rooms on the existing roofs in existing plant and equipment areas. (not visible from the public domain).</i></p> <p>The Manly DCP 2013 states <i>Noise Control reports are to be submitted with DAs for licensed premises for the management of patron noise (including patrons exiting the premises) and other offensive noise (including amplified music and plant and equipment noise emissions) emitted over the life of the development.</i> The applicant has not provided an acoustic report and therefore not meet the requirements</p>

Internal Referral Body	Comments
	<p>of the Manly DCP.</p> <p>The air-con units however are being placed in existing enclosures - replacing the disused units. Considering the surrounding environment (The Corso) to which these units will be placed in, we are satisfied with recommending approval subject to noise conditions relating to the air conditioning units.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p> <p>Planners Comment</p> <p>The Applicant has submitted a letter prepared by Acoustic Logic. The letter notes that there is no difference in the acoustic implications between the approved design under DA2018/2023 and the proposed reconfiguration. The letter notes that the proposed works will create the opportunity for a significant improvement in the acoustic amenity of the new guest rooms in comparison to the 25 existing guest rooms based on the following:</p> <ul style="list-style-type: none"> • All changes to the level 1 facade are limited to openings which face inwards onto the existing Steyne Hotel Courtyard space and the windows will be treated with a continuous full height architectural glazing system. Modern glazing with acoustic seals would be expected to provide an improvement of at least 5dB(A) compared to the existing (poorly sealed) single glazing). • Glazing design will be undertaken during the detailed design phase of the project to ensure that acoustically suitable window systems are installed. • Any new external mechanical plant would (once selected) be designed to be compliant with NSW EPA Noise Policy for Industry requirements with respect to noise impacts on nearby development. This can be made mandatory by condition of consent. <p>The conditions recommended by Council's Health Officer have been included in this report. In addition, a condition requires that the recommendations in the Acoustic Logic letter be complied with.</p>
Environmental Health (Food Premises, Skin Pen.)	<p>General Comments</p> <p>Hotel Steyne proposes to make mostly internal changes to their existing premises, some of which include modifications to restaurant areas, bedrooms and re-instating</p>

Internal Referral Body	Comments
	<p>working air conditioner condensers on the roof.</p> <p>Hotel Steyne was previously issued with an Improvement Notice (Council Ref: 2019/578498) under the Food Act in order to address a number of food safety issues namely pest exclusion measures from food preparation areas including the bar areas. Hotel Steyne subsequently asked for an extension of time on some of the items in the Notice due to impending DA application (DA2019/1403) that would include refurbishments to the hotel that would address some of the items in the notice. An extension of time was granted until the 31 March 2020 in order to address the outstanding items in the notice.</p> <p>Environmental Health recommends approval subject to conditions relating to Food Premises areas of the hotel namely the design and fit out. This is to ensure compliance with legislation and to protect public health and safety.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
NECC (Development Engineering)	<p>The applicant proposed some amendments to the existing building. The proposed works have no impact to the on site stormwater management and the access of the building. Development Engineering has no objection to the application.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as it is a heritage item, being Item I111 - Hotel Steyne - 75 The Corso" and is within the Manly Town Centre Conservation Area. It is also in the vicinity of a number of heritage items:</p> <p>Item I106 - Group of commercial buildings - All numbers, The Corso</p> <p>Item I112 - Group of 4 commercial buildings - 102–112 The Corso</p> <p>Item I104 - Street trees - The Corso (from Whistler Street to Sydney Road)</p> <p>Item I110 - New Brighton Hotel - 69–71 The Corso</p> <p>Item I232 - Commercial and residential building (street facade only) - 4–10 Sydney Road</p>
	Details of heritage items affected
	<p>Details of the heritage items as contained within the Manly Heritage inventory are as follows:</p>

Internal Referral Body	Comments
	<p><i>Item I111 - Hotel Steyne</i> <u>Statement of significance:</u> This building is a fine example of Inter-War Art Deco style Hotel. Landmark building on the corner of The Corso and South Steyne.</p> <p><u>Physical description:</u> Original Hotel built 1862 and rebuilt in 1936 in Inter-war Art Deco Style of polychrome brickwork with heavy brick modelling along parapet and corrugated asbestos roof. Significant elements include: fan shaped lintels to windows; tile and brick detailing beneath windows; original tiling to ground floor, octagonal corner 'tower'.</p> <p>In general the openings appear to be original. (The building completes the streetscape of The Corso at the ocean front and by turning the corner into North Steyne provides a physical link between these two vistas)</p> <p><i>Manly Town Centre Conservation Area - C2</i> <u>Statement of significance:</u> The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings.</p> <p><i>Item I106 - Group of commercial buildings</i> <u>Statement of significance:</u> The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort.</p> <p><u>Physical description:</u> The Corso acts as a low scale horizontal corridor which steps down from the harbour to the ocean. The atmosphere of The Corso is of a 19th century place. Its special qualities include the contrasts of horizontal (low scale architecture) and vertical (planting) dimensions, and urban and natural elements.</p> <p><i>Item I112 - Group of 4 commercial buildings</i> <u>Statement of significance:</u> This is an outstanding Federation Free Style/ Art Nouveau</p>

Internal Referral Body	Comments
	<p>influenced façade with imaginative and exuberant design. It creates a significant back drop terminating the eastern end of Sydney Road.</p> <p><u>Physical description:</u> A group of four parapeted brick and rendered two storey shops. The principal significance lies in the elaborate rendered decoration at first floor level. The 2-storey is set in fine symmetry which was originally accentuated on the party wall by an elaborately modelled central gable surmounted by a smaller gabled pediment (now demolished). The remaining semicircular and circular windows set in ornately carved pediment are intact.</p> <p><i>Item I104 - Street trees</i> <u>Statement of significance:</u> Part of earliest planting on The Corso c.1850's by H.G. Smith. Historic and aesthetic importance to the streetscape. <u>Physical description:</u> Centre planting of Ficus Macrophylla (Moreton Bay Fig) Remnant Palm planting (Phoenix Canariensis) of 1928.</p> <p><i>Item I110 - New Brighton Hotel</i> <u>Statement of significance:</u> This building is an example of exotic Egyptian-like motifs and Inter-war Free Classical style. The hotel is of major significance due to its contribution to the streetscape, its visual/textural interest and its association with early 20th century development of the resort. An unusual design utilising exotic Egyptian-like motifs appropriate to the resort location such as columns faintly reminiscent of the Brighton Pavilion. The building is an important feature on the corner of Sydney Rd and the Corso and its eclectic design contributes to the rich collection of architectural styles in the streetscape of the Corso. <u>Physical description:</u> This is a three storey, rendered brick, wedge shaped building forming the corner of Sydney Road and The Corso. Date 1926 written on parapet. The ground floor elevations are rendered and tiled and remnants of the original door/window joiner survive, although much altered. Several windows, especially in Sydney Road, have the original classically ornamented acid etched and gold leaf highlighted windows intact. Several original window sills have deep valance in render beneath the window sills. The awning (not significant) is supported on heavy scrolled projecting brackets, the top of the awning provides a balcony of French doors set between slender pilasters topped by lotus flower capitals supporting a cornice in classical pattern. The wrought iron railing is not original. Decorative spandrel panels occur beneath the second floor windows, except in the central bay which is crowned by a low pitched gabled pediment. There is a simple masonry parapet. The wrought iron railing (not original). Significant elements include the plaster decoration to the first and second floors and parapet-notably the neo-Egyptian influence in</p>

Internal Referral Body	Comments																											
	<p>the exaggerated pilasters and the massive brackets beneath the awning. Art Nouveau. Unsympathetic new windows and doors. Unusual but not completely intact.</p> <p>Item 1232 - Commercial and residential building (street facade only)</p> <p><u>Statement of significance:</u> Although altered, the building reflects its former use as a picture theatre, a major focus of suburban entertainment in the post WW1 years and now the last indication of the many picture theatres in the precinct. It has a strong presence in the Sydney Road streetscape and the contributions to the overall cultural heritage significance and character of the Town Centre Conservation Area.</p> <p><u>Physical description:</u> Double storey, stucco parapeted, former picture theatre built in the Inter War Free Classical style. Parapet featured heavily moulded entablature, two large circular windows with adjacent awning windows. Main form of facade is intact but entry level detail and interior now demolished. Front facade originally had segmented arch highlight over wide entry, where lower level windows are currently. The word "Olympic" was embossed over the entry, framed by a matching curved string course. Freestanding letters O L Y M P I C also formerly across parapet. Ground floor and interior are now highly modified. Current form reflects 1954 conversion of Waltons Store.</p> <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table> <table><tr><th colspan="3">Consideration of Application</th></tr><tr><td colspan="3">The proposal is seeking consent for alterations and additions to the</td></tr></table>	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 is seeking consent for alterations and additions to the		
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 is seeking consent for alterations and additions to the																												

Internal Referral Body	Comments		
	<p>first-floor accommodation level of the Hotel Steyne, 75 The Corso Manly.</p> <p>Proposed changes from the approved DA are sympathetic to the heritage item, therefore there are no objections raised on heritage grounds subject to conditions:</p> <ul style="list-style-type: none">Proposed blade signage shown on DA.300 and the symmetrical signage shown on DA.301 Revision E, are not acceptable as they are considered not original.Location of the existing and additional air-conditioning condenser units on the existing roofs and the roof terrace should be submitted to Council's Heritage before the issue of the construction certificate to make sure that they are not visible from the public domain of The Corso and North Steyne. <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p> <table><tr><th>Further Comments</th></tr><tr><td><p>COMPLETED BY: Oya Guner, Heritage Advisor</p><p>DATE: 02 April 2020</p></td></tr></table>	Further Comments	<p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 02 April 2020</p>
Further Comments			
<p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 02 April 2020</p>			
Strategic and Place Planning (Urban Design)	<p>Urban Design Comments:</p> <p>The proposal is generally acceptable except for the existing roof plant located on the highest part of the roof near the south-eastern corner which will be visible from surrounding taller developments. It is understood that the roof plant were not DA approved so the applicant will have to seek compliance or remove them completely. As part of the compliance application, the cluster of existing a/c condenser units and other machinery could be made more tidy by surrounding them with a low screen about a metre high.</p>		
Waste Officer	<p>Waste Management Assessment</p> <p>This is a commercial Building - with no residential component, as such, Council's Waste Unit have no comment on the proposal.</p>		

Internal Referral Body	Comments
	Completed as "Approved without 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.
NSW Police – Crime Prevention Office (Local Command matters)	The proposal was referred to NSW Police. No response has been received and therefore it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 64 - Advertising and Signage

The application includes the following signage zones:

- Zones for hand painted sign to the awning fascia fronting the Corso and Henrietta Street;
- Two blade signs to the south-east corner;
- One high level wall sign located on the south-east corner
- One ground level wall sign located adjacent to the entrance doors to the hotel on North Steyne frontage.

The content of the sign has not been submitted and a condition will require the submission of a separate DA for the approval of the signs. In addition, the principle of the two blade signs are not supported from a heritage perspective, refer to discussion in the heritage referral section above, and a condition requires that they are not included in any future signage DA.

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	With the exception of the location of the blade signs the proposed signage zones are compatible with the character of the area.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Subject to the deletion of the two blade signs the zones are consistent with the theme for signage in Manly.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	Subject to the deletion of the two blade signs the zone will not detract from the visual quality of the Manly Conservation Area.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The signage zones will not compromise important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The signage zones will not dominate the skyline.	YES
Does the proposal respect the viewing rights of other advertisers?	N/A	NA
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale and proportion of the signage zones are acceptable.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The signage has the potential to contribute to the visual interest in the street.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposal has the potential to rationalise and simplify existing signage.	YES
Does the proposal screen unsightliness?	NA	NA
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No signage zones are located above the building.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The scale and proportion of the signage zones is compatible with the characteristics of the site and area.	YES
Does the proposal respect important	The signage zones respect important features of	YES

features of the site or building, or both?	the site.	
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	NA, this will be assessed under the A for the detailed design of the signage.	NA
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	NA	NA
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	NA This issue will be assessed under the DA for the detailed design of the signage.	NA
Can the intensity of the illumination be adjusted, if necessary?	As above	NA
Is the illumination subject to a curfew?	As above	NA
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	As above	NA
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	As above	NA

Accordingly, the proposed signage zones are considered to be of a scale suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

Comment:

The proposed alterations are not expected to impact upon the coastal environment area.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

As above.

14 Development on land within the coastal use area

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

impact on the following:

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

Comment:

No impacts to the coastal use area are expected as the proposed works are primarily internal.

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	Perimeter: 10m	No change to existing	Yes
	Centre north: 12m	No change to existing	Yes
Floor Space Ratio:	Perimeter: 2:1	FSR: 1.3:1	Yes
	Centre north: 3:1	FSR: 2.1:1	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.10 Heritage conservation	Yes

Clause	Compliance with Requirements
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	Yes
6.21 Noise impacts—licensed premises	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

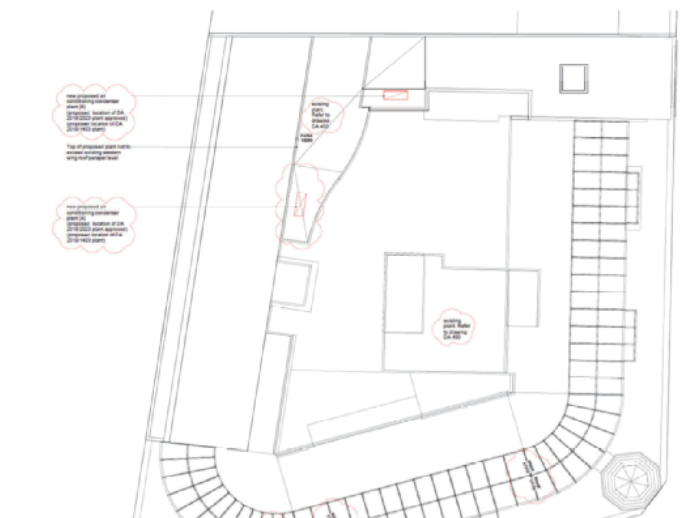
4.3 Height of buildings

The site is subject to two maximum building height limits, namely:

- (i) 10m along the perimeter of the site to the east, south and west, and
- (ii) 12m within the central north section.

Comment:

The existing building has a maximum building height of 13.2m. The proposed roof top A/C units are set back from the north and west boundaries and are subject to the 12m height limit. Amended plans have been submitted which depict the height of the existing A/C units located adjacent to the parapet of the western wall. Two A/C units are proposed at the upper roof level. Unit A is in close proximity to the existing A/C units next to the western parapet and unit B is located near the northern boundary wall. The proposed A/C units measure 11.5m in height from ground level and therefore sit below the maximum 12m height limit. The units are set back 11.6m and 14.9m from the western boundary to Henreitta Lane and sit below the 11.76m western parapet height, refer to plan and section below.





The proposed units comply with the maximum building height development standard and meet the objectives of the standard as discussed below:

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

The proposed units comply with the maximum 12m height limit. Subject to a condition requiring the screening of the A/C unit from views from upper level residential apartments the proposed units have been assessed as providing a roof form that is acceptable.

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

The bulk and scale of the two AC units have been assessed as acceptable.

(c) to minimise disruption to the following:

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

Given the location of the proposed units setback from the boundaries and below the maximum building height they will not obscure views to nearby residential developments from public spaces including Manly beach.

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

Given the location of the units and the height of the units below the western parapet they will not impact on views from nearby residential developments to public spaces including Manly Beach, refer to discussion under clause 3.4.3.

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

The proposal will not impact on viewed between public spaces.

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

The proposal will not impact on solar access to public and private open spaces or habitable rooms to adjacent dwellings.

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

The proposal will not impact on existing vegetation or bushland.

4.4 Floor space ratio

The site is subject to two FSR controls, namely:

- Zone U, 2:1 around the perimeter of the site and
- Zone V, 3:1 within the centre of the site.

The subject site has a site area of 1948sqm and an existing GFA is 3971sqm resulting in an FSR across the site of 2.0 (1.23:1 along the perimeter and 2:1 in the centre).

The proposal will result in a 47sqm increase in floorspace as a result of the following resulting in a GFA of 4018 comprising:

- Ground floor - 21sqm reduction as a result of alterations to the gaming bar (centre of the site);
- First floor - 47sqm increase as a result of the infill of two balconies and the creation of an office (centre of the site), and
- Second floor - 11sqm as a result of the infill of a void to create a hotel room.

The proposed GFA is 4018sqm which will result in an FSR of 2.0 (1.3:1 in zone U and 2:1 in zone V). The proposal complies with the maximum FSR. The infill of the balconies and voids to create additional floor space will not add to the bulk and massing of the building.

The proposed FSR of both sections of the site comply with the standard.

5.10 Heritage conservation

The subject building is a heritage item, being "Item I111 - Hotel Steyne - 75 The Corso" and is within the Manly Town Centre Conservation Area. It is also in the vicinity of a number of heritage items, including 102–112 The Corso and the New Brighton Hotel - 69–71 The Corso

Hotel Steyne is a fine example of Inter-War Art Deco style Hotel, a landmark building on the corner of The Corso and South Steyne.

The original Hotel was built 1862 and rebuilt in 1936 in Inter-war Art Deco Style of polychrome brickwork with heavy brick modelling along parapet and corrugated asbestos roof.

The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales.

Detailed Assessment

The proposal is seeking consent for alterations and additions to the first-floor accommodation level of the Hotel Steyne, 75 The Corso Manly. The proposal has been supported with a HIS as required under clause 5.4 of the Manly DCP. It is noted that a CMP is not required under this provision.

Proposed changes from the approved DA are sympathetic to the heritage item, therefore there are no objections raised on the heritage grounds subject to the following:

Proposed signage shown on DA.300 and the symmetrical signage shown on DA.301 Revision E, both noted as "new blade signage - Location and overall dimensions to match previous signage shown in historical photo 3", are not acceptable as they are considered not original. A condition requires the submission of a DA for the detail / content of all future signs and reference will be made that the blade signs are not supported.

The size and location of the additional air-conditioning condenser units for hotel accommodation rooms on the existing roofs to be submitted to Council's Heritage before the issue of the construction certificate to make sure that they are not visible from the public domain. A low screening, which is not visible from the public domain of The Corso and North Steyne, around the existing and new plant and equipment areas is recommended.

In summary, subject to conditions the proposal complies with Clause 5.4 of the Manly LEP.

6.13 Design excellence

In considering whether development exhibits design excellence, the consent authority must give consideration to whether the development:

- (a) contains buildings that consist of a form, bulk, massing and modulation that are likely to overshadow public open spaces, and*
- (b) is likely to protect and enhance the streetscape and quality of the public realm, and*
- (c) clearly defines the edge of public places, streets, lanes and plazas through separation, setbacks, amenity, and boundary treatments, and*
- (d) minimises street clutter and provides ease of movement and circulation of pedestrian, cycle, vehicular and service access, and*
- (e) encourages casual surveillance and social activity in public places, streets, laneways and plazas, and*
- (f) is sympathetic to its setting, including neighbouring sites and existing or proposed buildings, and*
- (g) protects and enhances the natural topography and vegetation including trees, escarpments or other significant natural features, and*
- (h) promotes vistas from public places to prominent natural and built landmarks, and*
- (i) uses high standards of architectural design, materials and detailing appropriate to the building type and location, and*
- (j) responds to environmental factors such as wind, reflectivity and permeability of surfaces, and*
- (k) coordinates shared utility infrastructure to minimise disruption at street level in public spaces.*

Comment

The proposal complies with design excellence provisions of clause 6.13 of the LEP in that:

- The creation of the double doors to the Steyne frontage will enhance, activate the streetscape and allow for enhanced casual surveillance. The detailed design of the doors and materials are appropriate to the heritage building;
- The proposal will not result in street clutter subject to conditions deleting the blade sign zones, and

- The proposal is sympathetic to neighbouring sites subject to conditions requiring screening to roof top plant.

6.21 Noise impacts—licensed premises

The proposal is primarily for the upgrade of the hotel accommodation. The proposed alterations to the licensed component of the site including minor alterations to the courtyard to include awnings and a reduction in the size of the gaming area. There is no intensification of the use of licensed component of the site and conditions are included to ensure that the proposed roof top plant will not result in acoustic impacts to neighbouring properties. Refer to discussion under Environmental Health.

Schedule 5 Environmental heritage

The subject site is a heritage item located within the Manly Conservation Area. Subject to conditions, Council's Heritage Specialist has not objections to the proposal. Refer to detailed discussion in the referrals section of this report.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1,948sqm	Requirement	Proposed	% Variation*	Complies
4.2.3 Setback Controls in LEP Zones B1 and B2	Public road frontage - Nil Side boundaries - Nil	Nil (no change to existing) Nil (no change to existing)	N/A N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.4 Car Parking and Access	No	Yes
4.2.5.6 Late Night Venues	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.3 Signage	Yes	Yes
4.4.4 Awnings	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes
4.4.4.2 Awning supported from the ground	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

Detailed Assessment

3.1.3 Townscape (Local and Neighbourhood Centres)

3.1.3.1 Design Principles

The following design principles should be achieved in all development involving the erection of a new building or external alterations to an existing building in order to:

- *maintain and enhance the townscape of the former Manly Council area's LEP Business Zones;*
- *achieve the townscape objectives of this plan; and*
- *consider that the development exhibits design excellence in accordance with considerations of LEP clause 6.13(4) (as a statutory consideration for land in Zone B2 Local Centre and as a DCP consideration in other zones).*

Design Details

c) Design details of proposed developments must complement adjacent building in the locality with particular reference to:

- (i) the scale, proportion and line of visible facades;*
- (ii) the pattern of openings and the visual pattern of solids to voids on facades;*
- (iii) both the overall wall and parapet height and the height of individual floors in relation to adjoining development and important corner buildings and the height of awnings. See also paragraph 4.4.4; and*
- (iv) materials, textures and colours;*

Comment

The external alterations to create a new doorway opening on North Steyne is consistent with the design principles and details in that the scale, proportions and pattern of openings are consistent with the existing facade.



Photo of site showing the existing eastern elevation.



Proposed doors in the eastern elevation.

3.2 Heritage Considerations

Clause 3.2.2.1(a) Complementary Form and Scale that Distinguishes Heritage Significance requires:

a) Alterations or additions to heritage items or buildings within a conservation area will not necessarily seek to replicate, overwhelm, dominate or challenge heritage details or character of the building or structure of heritage significant buildings. However, a contemporary response which complements and respects the form and scale of the original buildings may be considered if the heritage significance is retained.

Comment

The primary external alteration relates to the creation of a new opening along the North Steyne frontage. As discussed above, Council's Heritage Specialist has no objections to the proposal and it has been assessed that the alterations reflect the form, scale, proportions and openings of the original building.

3.4.1 Sunlight Access and Overshadowing

The additional roof top plant will not result in overshadowing to neighbouring properties.

3.4.2 Privacy and Security

The objectives of clause 3.4.2 are:

1) *To minimise loss of privacy to adjacent and nearby development by:*

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

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

3) *To encourage awareness of neighbourhood security.*

Comment

The hotel rooms have been designed to face the North Steyne and will not impact on the visual privacy of any neighbouring residential properties. The rooms will allow for passive surveillance of the street in accordance with the objectives of the clause.

Clause 3.4.2.3 Acoustical Privacy (Noise Nuisance) also required

a) Consideration must be given to the protection of acoustical privacy in the design and management of development.

Comment

An acoustic screen is proposed around the plant on level 2 which adjoins the hotel accommodation. In addition, Council's Environmental Health Unit recommend the imposition of conditions requiring the A/C units not to create an offensive noise and noise not to exceed 5dB(A) above background level measure from any property boundary.

New glazing is proposed to the opening in the hotel rooms that face the courtyard to protect acoustic privacy to the occupants of the hotel rooms.

The proposal primarily relates to an upgrade of tourist accommodation. There are some minor alterations to the licensed area including a reduction in the size of the gaming room and installation of awnings to within the courtyard. The alterations are not regarded as intensity the use of the licensing area or result in additional acoustic impacts.

The application was referred to the NSW Police Local Command, no response has been received and it is assumed that the Police have no issues with the proposal.

3.4.3 Maintenance of Views

The objectives of clause 3.4.3 (maintenance of views) is to;

- 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.*
- 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*
- 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

Comment

Four submissions have been received from residents in the Pacific Waves development at 9-15 Central Avenue which raise concerns relating to the loss of foreshore views as a result of the proposed roof top plant. The submission note that insufficient information was submitted with the original DA to assess view loss and add that the existing roof top plant current results in clutter and view loss.

The applicant notes that the proposed plant was approved under DA2018/2023. Notwithstanding the approval additional information has been submitted to address issues of view loss including details on the location and height of the proposed plant and a photographic analysis of the proposed roof plant in relation to the existing roof structure. The proposed roof top plant comprises two A/C units, Unit A is set back 11.6m m from the western boundary to Henretta Lane and sits below the height of the western parapet.



Photographs of roof, submitted by Applicant, showing the western parapet wall. The proposed plant sits behind this wall and will not exceed the height of the parapet. The Waves Apartment can be seen to the left of photo one.



Photo of existing plant adjacent to western parapet



Montage, submitted by the Applicant, showing the existing unauthorised plant and the proposed location of Unit A.

Tenacity Principles

The first step in the is the assessment of views to be affected.

Comment:

Views can be observed from the top floor apartments within the Pacific Waves towards the ocean, Manly Beach and beyond to Shelly Beach. The view to Shelly Beach is a whole view, i.e. a view in which the interface between land and water is visible is more valuable than one in which it is obscured.

The second step is to consider from what part of the property the views are obtained.

Comment

The views are observed from the balconies and windows of the top floor apartments within the Pacific Waves development looking in a south easterly direction across the roof of the subject site. Views are best observed from a standing position on the balconies.

The third step is to assess the extent of the impact.

Comment

As discussed above, the air conditioning units are sited below the height of the western parapet. Subject to a condition requiring the siting of Unit A to be directly adjacent to the western parapet wall it is unlikely that the unit will be visible from the the upper floor apartments of the Waves development looking east towards the foreshore, as such it has been assessed that the unit will not result in loss of views and the siting of the unit complies with objectives of clause 3.4.3.

A/C Unit B is proposed to be located on a lower roof element adjacent to existing mechanical ventilation plant in close proximity to the northern wall. Due to the length of this unit and its position further into the centre of the site it may be visible in part from the east facing windows and balconies of the upper floor apartments of the Waves development, see montage below. The unit is positioned at a lower roof level, the height of the unit sits below the height of the western and northern parapet. As such, the unit will not result in view loss and complies with the objectives of clause 3.4.3, refer to photos below.



Existing plant adjacent to northern parapet.



Two additional units and an acoustic screen are proposed to the level 2 roof adjacent to the plant room. Given the location of the two units at the lower level they will not impact on view loss from neighbouring

upper level apartments, refer to photo below.



Photo of existing plant to the level 2 plant room. Two additional units are proposed adjacent to behind the existing plant with a

In regards to issues concerning the view loss from existing plant a site visit to Unit 505 in the Pacific Waves Development confirms that a number of A/C Units have been installed in the south-east corner of the roof which sit above the roof level, refer to photos below.



Photo taken from the balcony facing south-east from the level 5 apartment within Pacific Waves.

The existing plant is un-authorised and retrospective development consent cannot be given for this work under the subject development application (DA). The Applicant was advised that the plant should be removed or a Building Information Certificate (BIC) lodged to seek retrospective consent for the plant.

The fourth step is to assess the reasonableness of the proposal that is causing the impact.

Comment

Given the above, the proposal has been assessed reasonable as it is unlikely to result in view loss to the south-easterly facing upper floor apartments of the Pacific Waves development. Issues relating to the existing plant will be considered separately under the BIC.

3.4.4 Other Nuisance (Odour, Fumes etc.)

The proposal includes the general improvements to the existing bars to comply with an order. Council's Environmental Health Unit have recommended additional conditions relating to the upgrade of the kitchen, mechanical ventilation, food storage and waste areas to comply with Australian standards and protect public health and safety.

3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)

A condition requires all air conditioning units are to have a minimum 4 star energy rating for cooling only. Reverse cycle air conditioning units are to have a minimum of 4 star rating on one cycle and 3 star rating on the alternate cycle.

3.6 Accessibility

The proposal includes a new accessible path at ground level and the inclusion of an accessible hotel room on the second floor accessible via a lift. As such, the proposal complies with objective one in that it provides improved levels of access and facilities for people with disabilities.

3.9 Mechanical Plant Equipment

Clause 3.9.2 Roof-top Plant, Lift Towers etc requires .

Roof-top plant and lift towers must be inconspicuous and / or designed as an integral part of the building in such a way as to appear as an appropriate part of the overall townscape. Plant equipment is to be appropriately located and designed such that it is not apparent from the street level view or from other active pedestrian areas and must not compromise street character, landscaping or pedestrian amenity or conflict with townscape objectives of this plan. See paragraph 3.1 Streetscapes and Townscapes.

Comment

As discussed elsewhere in this report, the siting and height of the proposed four A/C units has been designed to be inconspicuous so that they are not visible from street level, will have no impacts on view sharing and will not result in unacceptable roof clutter.

3.9.3 Noise from Mechanical Plant requires:

External mechanical plant systems (for pools, air conditioning and the like) must be acoustically enclosed and located centrally and away from neighbours living areas of neighbouring properties and side and rear boundaries.

Comment

As discussed elsewhere in this report, Council's Environmental Health Unit have offered no objections

to the proposal subject to conditions to control the noise from the plant in order to protect the amenity of adjoining uses.

3.10 Safety and Security

The upgrade hotel rooms and new hotel rooms are primarily orientated to North Sydney which will help assist with passive surveillance.

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

See discussion below under Part 4.2.5.4 of the DCP for specific Manly Town Centre controls.

4.2.5.1 Design for Townscape

The proposal includes the creation of a double doors onto North Sydney which will help activate the development to the public domain.

4.2.5.4 Car Parking and Access

Description of non-compliance

The premises has no provision for on-site car parking. The minimum required car parking under Manly DCP 2013 for Hotel accommodation in Manly Town Centre is 1 space for every 4 rooms or suites. Therefore, in accordance with the proposal to add 17 rooms on the site, 5 car spaces are required on the site. Further, the 27m² increase in gross floor area (GFA) will require an additional car space. The total car space deficiency on the site is 6 spaces.

There are exceptions to the parking rates/requirements for properties located within the Manly Town Centre, which includes the Corso. Therefore, a merit assessment is completed below.

Merit consideration

The existing building does not provide any on-site car parking, and therefore does not comply with the car parking provisions. Notwithstanding, the proposed is considered acceptable based on the following:

- The proposal generally relates to the refurbishment of the existing hotel accommodation. Strict compliance with the car parking requirement to the subject premises is considered to be unreasonable as there is no provision or ability to provide car parking on the site.
- Convenient public transport options that service the greater Northern Beaches, North Shore and the City are available nearby. The Ferry Wharf terminal to access the city of Sydney is approximately 400m away in distance. The bus terminal to access the Northern Beaches and the North Shore area is located along West and East Esplanade also approximately 400m away in distance. It is considered unlikely that customers using the accommodation will arrive to the site using a private vehicle or rental car.
- There are four (4) Council car parks located within the Manly Town Centre all easily accessible to the Corso. The four (4) car parks provide over 245 parking spaces. All are available for the use by the general public.
- If the required on-site car parking is enforced it would likely negatively impact upon the heritage significance of the building.
- A section 7.11 development contribution will be applied to the car space deficiency in accordance with the Manly Section 94 Contributions Plan.

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

4.4.3 Signage

Clause 4.4.3.1.a limits the Maximum Number of Signs in relation to a shopfront to two (2) identification signs will be permitted per frontage.

Comment

The application seeks consent for the approval of signage zones in the following locations:

- 1 hotel sign
- 2 blade signs
- 3 fascia signs.

Subject to the deletion of the two blade signs the number of signs is acceptable for the subject site with three frontage.

Clause 4.4.3.2 Signage on Heritage listed items and in Conservation Areas requires:

a) Advertising signs should be designed and located in a manner which preserves and enhances Heritage listed items and Conservation Areas

Sign locations

b) Signs should be discreet and should complement the building and surrounding uses. The architectural features of the building or listed item should always dominate. Advertising should preferably be placed in locations on the building or item which would traditionally have been used as advertising areas.

Comment

The blade signs are not consistent with the original heritage building. Subject to a condition requiring the deletion of the two blade signs at the corner of the site Council's Heritage Officer has no objections to the signage zones. A condition requires a separate development application for the detailed design of all external signs.

4.4.4.1 Awnings in LEP B1 and B2 Business Zones

The exterior awning along the Coros, Whistler Street and Henrietta Lane are proposed to be replaced and detailed to replicate the historic awning. Council's Heritage Officer has no objections to the proposed replacement awning. The height of the awning varies between 3m and 3.1m above ground level and is therefore below the recommended minimum 3.5m height. Given that the awning replaces the existing heritage awning and aligns with the height of existing awning the proposed awning has been assessed as acceptable.

5.1.2 The Corso

5.1.2.4 Parapets to be read against the sky requires:

a) Parapet details on the street frontage, and in some cases the related original or historically relevant roof form, are to continue to be read by pedestrians as silhouetted against the sky. This is also to be the

case for the parapet of any new building fronting The Corso.

b) This provision applies in respect to both oblique and perpendicular views of buildings as pedestrians move through the street. This provision will govern the height and setback of any permitted additional floor levels and also establishes an important 'visual catchment' to The Corso that needs to be kept clear of obstructions.

Comments

The proposed roof top plant is sited below the parapets and will not impact on the views of the parapet when read against the sky.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$30,282 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,028,232.

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/1403 for Alterations and additions to the first floor accommodation, new doors to North Steyne, replacement awning to the Corso, signage zones, air-conditioning to the roof and other ancillary works at Hotel Steyne to Hotel Steyne on land at Lot 100 DP 1069144, 75 The Corso, MANLY, Lot 101 DP 1069144, 75 The Corso, MANLY, Lot 102 DP 1069144, 75 The Corso, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.010 Rev D - Site Plan	20.11.2019	Luchetti Krelle
DA.020 Rev C - GFA Calculations	17.03.2020	Luchetti Krelle
DA.030 Rev A - GF Demolition Plan	20.11.2019	Luchetti Krelle
DA.040 Rev F - GF Scope of Works Plan	05.02.202	Luchetti Krelle
DA.300 Rev E - Exterior Elevations - New Entry Doors	05.02.2020	Luchetti Krelle
DA.301 Rev E - Exterior Elevations - Awning Improvements	05.02.2020	Luchetti Krelle
DA.302 Rev E - Exterior Elevations - Awning Improvements and Signage	05.02.2020	Luchetti Krelle
DA.303 Rev F - Exterior Elevations - Awning Improvements	05.02.2020	Luchetti Krelle
DA.305 Rev I - Overall Sections	20.03.2020	Luchetti Krelle
DA.351 Rev G - Overall Sections	20.03.2020	Luchetti Krelle
DA1.030 Rev D L1 Demolition Plan	20.11.2019	Luchetti Krelle
DA1.040 Rev E L1 Scope of Works Plan	29.11.2020	Luchetti Krelle
DA2.040 Rev G L2 Scope of Works Plan	18.03.2020	Luchetti Krelle
DA2.050 Rev C Roof Plan	18.03.2020	Luchetti Krelle

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Fire Engineering Statement - Rev 1 Ref. 12519431	4 December 2019	Mark Cooney
Acoustic report No. 20190000/1126A/R1/TT	27 November 2019,	Acoustic Logic.
BCA Assessment Report Rev 1 ref 190462	4 December 2019	City Plan
Heritage Impact Statement Version 4	6 December 2019	Architectural Projects.

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	22.11.2019	Luchetti Krelle

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 (Demolition):**

- (a) 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 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
 - (ii) 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.

- (b) 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.

(c) 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.

Reason: Legislative Requirement.

3. Prescribed Conditions

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

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

Reason: Legislative requirement.

4. General requirements (Demolition):

- (a) Unless authorised by Council:
Demolition and excavation works are restricted to:
 - o 8.00 am to 5.00 pm Monday to Friday only.

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

(b) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

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

state until such time as new construction works commence.

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

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

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

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

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) 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.

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 \$30,282.32 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 \$3,028,232.00.

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.

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

8. Building Code of Australia Upgrade requirements and Fire Safety Upgrade

The Building Code of Australia works and fire safety measures to upgrade the building as detailed and recommended in the Building Code of Australia Assessment Report prepared by City Plan, dated 4/12/2019, Report No.190462 and the Fire Engineering DA Statement - Rev 1 by GHD Reference No. 12519431 dated 4/12/2019, are to be taken into consideration as part of the assessment for the Construction Certificate.

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.

9. **Access for People with Disabilities**

Access to and within the building is to be provided for Persons with a Disability. In this regard the recommendations contained in the Accessibility Assessment Report No. 190364 prepared by City Plan and dated 9/12/2019 are to be implemented as part of the assessment of the Construction Certificate

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 Access for building occupant safety.

10. **Air Conditioning Units**

The details design of the roof top air conditioning units (including the existing units) including dimensions and location is to be submitted to Council prior to the issue of a Construction Certificate. A low screen, which is not visible from the public domain of the Corso or North Steyne, is to be installed around the A/C units. Details of the screen shall also be submitted to Council for approval.

Reason: To ensure that there is no visual impact on the public domain or taller developments.

11. **Signage**

A separate development application shall be lodged for the detailed design of all signage. Note: the blade signs shown on drawing reference DA.301 Rev E are not acceptable as they are not original and shall not be included in the DA.

Reason: To preserve the heritage significance of the item.

12. **Plans of Kitchen Design, construction and fit out**

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Certifying Authority. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Reason: To ensure that the Food premise complies with the design construction and fit-out requirements.

13. Plans of Mechanical ventilation

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with the Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings", must be approved by the Certifying Authority for any cooking equipment with an individual or combined power rating level that triggers the requirement for mechanical ventilation under AS1668.2 including any deep frying equipment.

Reason: To ensure that the design, construction and installation requirement for mechanical ventilation complies with the Australian Standard 1668.2.

14. Food premises waste storage areas

A designated waste storage area(s) are to be provided to accommodate all food premises. The waste storage area must be of an appropriate size to adequately contain all waste produced from food premises.

The construction, fit-out and finishes of the designated food premises waste storage area must comply with Standard 3.2.3 of the Australia and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises' and Australian Standard AS1668.2.

Reason: To ensure there is adequate storage and collection of waste from food premises and to minimise the risk of pest harbourage..

15. Grease Traps

Grease traps must be appropriately designed and installed to adequately treat all trade waste water waste produced from food premises. Grease traps must have a piped connection to the boundary and must be designed so it does not impede right of way or any pedestrian access. Any grease traps must not be located in any kitchen, food preparation area or food store area.

Approval for the systems must be granted by Sydney Water prior to its installation.

Reason: To ensure that provision for commercial trade waste provisions have been considered with the development. .

16. Noise - Design of roof top air conditioning condensers and housing

Detailed plans and specifications must be provided to the Certifying Authority prior to the issue of the Construction Certificate that the air conditioning unit condensers and associated plant/housing are designed so that:

- They do not cause "Offensive Noise" as defined by the Protection of the Environment Operations Act 1997;
- Any noise emitted shall not exceed more than 5dB(A) above the background level when measured from within any property boundary; and
- They will comply with the Environment Protection Authority's NSW Industrial Noise Policy.

Reason: To ensure compliance with legislation and to minimise nuisance to any neighbouring residents.

17. 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.

18. **Blank condition for prior construction certificate**

Air Condition Unit A shall be located directly adjacent to the western parapet wall. Air Conditioning Units A and B shall not exceed the height of the western parapet. A low screen shall be erected around the units.

Reason: In order to ensure that the plant will not result in adverse visual clutter of the roof.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

19. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

20. **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.

21. **Food Premises Fit Out**

The construction and fit-out of all food premises areas including preparation and storage must comply with the relevant and current guidelines including:-

- Food Act 2003,
- Australian Standard AS 4674-2004: Construction and fit out of food premises,
- Australia and New Zealand Food Standards Code 3.2.2: Food Safety Practices and General Requirements, and
- Australia and New Zealand Food Standards Code 3.2.3: Food Premises and Equipment.

Reason: To ensure compliance with legislation and to protect public health and safety..

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

22. **Environmental Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

- (a) Fire Engineering Statement - Rev 1 Ref. 12519431, dated 4 December 2019, prepared by Mark Cooney.
- (b) Acoustic report No. 20190000/1126A/R1/TT, dated 27 November 2019, prepared by Acoustic Logic.
- (c) BCA Assessment Report Rev 1 ref 190462 dated 4 December 2019, prepared by City Plan.
- (d) Heritage Impact Statement Version 4 dated 6 December 2019 prepared by Architectural Projects.

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

Reason: To ensure compliance with standards.

23. **Registration of Food Business**

All food businesses must be registered with the Appropriate Regulatory Authority prior to trading.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

24. **Kitchen Design, construction and fit out of food premises certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a suitably qualified professional that the design, construction and fit out of all food premises areas including preparation areas are compliant with the requirements of the following:

- Food Act 2003,
- Australian Standard AS 4674-2004: Construction and fit out of food premises,
- Australia and New Zealand Food Standards Code 3.2.2: Food Safety Practices and General Requirements, and
- Australia and New Zealand Food Standards Code 3.2.3: Food Premises and Equipment.

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

Reason: To ensure that the kitchen complies with the design requirements.

25. **Mechanical ventilation**

Where Mechanical ventilation is required to be installed in the food premises it must comply with Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings" Prior to any Occupation Certificate (OC) being issued, certification is to be provided by a suitably qualified person that the mechanical ventilation complies with the above requirements.

Reason: To ensure that the installed mechanical ventilation complies with the requirements of the Australian Standard 1668.2.

26. **Noise - Roof top air conditioning condensers and housing**

Prior to the issuing of any interim / final occupation certification is to be provided from a suitably qualified professional such as an acoustic engineer that the design and installation of the rooftop air conditioning condensers and associated plant/housing when operational:

- Will not cause "Offensive Noise" as defined by the Protection of the Environment Operations Act 1997;
- Any noise emitted shall not exceed more than 5dB(A) above the background level when measured from within any property boundary; and
- Will comply with the Environment Protection Authority's NSW Industrial Noise Policy.

Reason: To ensure that offensive noise is not created from plant and equipment.
(DACHPFPOC6)

27. **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 and Rescue 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.

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

28. **Noise from roof top air conditioning condensers**

Any air conditioning condenser units and the associated plant/housing on the site must be installed and operated at all times so as:

- Will not cause "Offensive Noise" as defined by the Protection of the Environment Operations Act 1997;
- Any noise emitted shall not exceed more than 5dB(A) above the background level when measured from within any property boundary; and
- Will comply with the Environment Protection Authority's NSW Industrial Noise Policy.

Council may require the owner or occupier of the premises to engage the services of a suitably

qualified professional to undertake an acoustic assessment of the premises in the event concerns regarding the emission of 'offensive noise' are raised and/or justified by Council.

Reason: To ensure compliance with legislation and to minimise nuisance to any neighbouring residents. (DACHPGOG5)

29. **Air Conditioning and energy efficiency**

All air conditioning units are to have a minimum 4 star energy rating for cooling only. Reverse cycle air conditioning units are to have a minimum of 4 star rating on one cycle and 3 star rating on the alternate cycle.

Reason: In the interest of energy efficiency.



DESIGN INTENT FOR
APPROVAL ONLY, NOT FOR
CONSTRUCTION

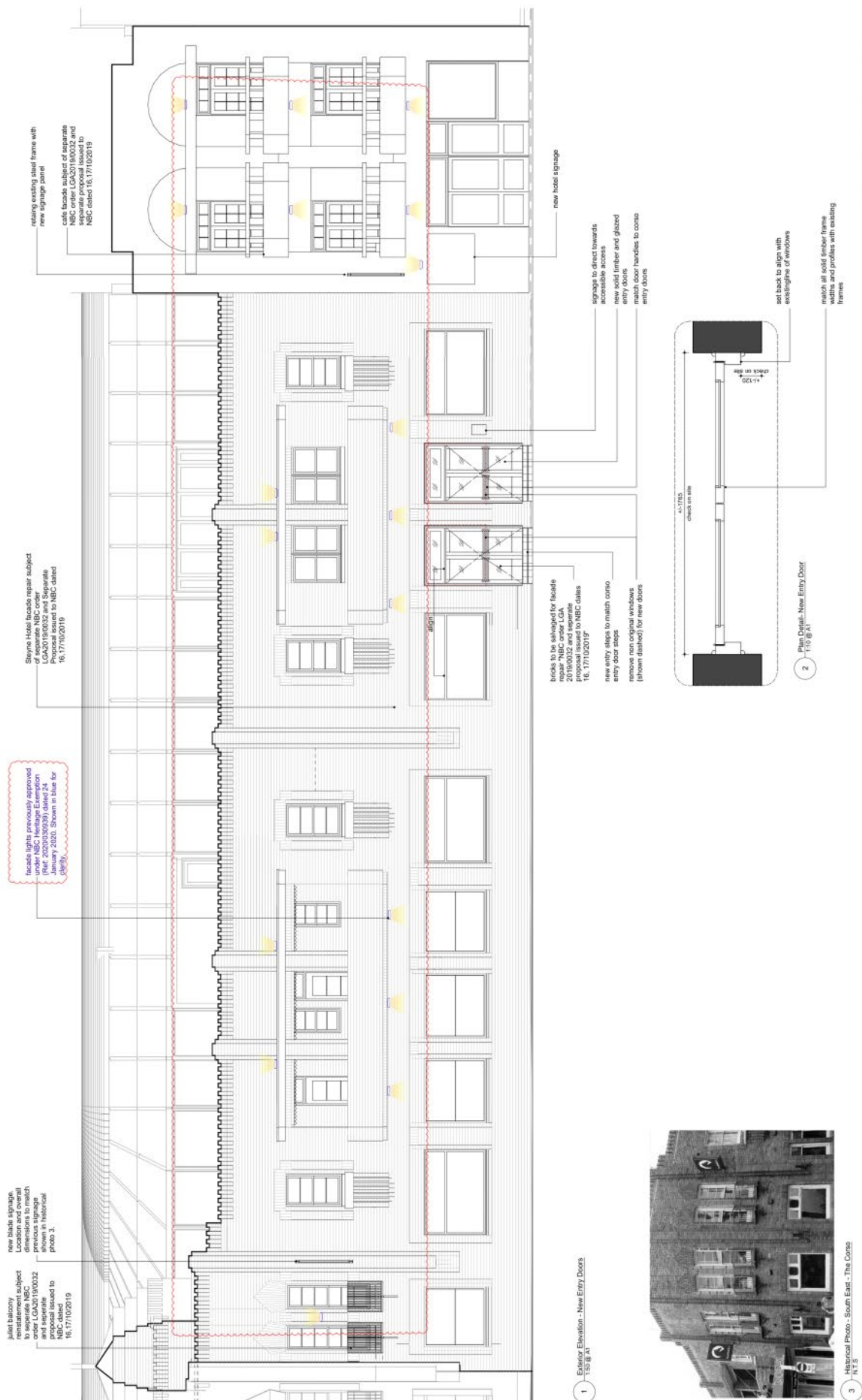
**LUCHETTI
KRELLE** 

Edizione No. 14 - Settembre 2016 - 1000 copie
Gruppi di lavoro e assemblee generali. L'unico modo per unire le nostre forze e vincere le nostre battaglie. Insieme, possiamo fare la differenza. Insieme, possiamo cambiare il mondo. Insieme, possiamo cambiare la storia.

50 Corso Duomo, 10 - 20121 Milano, Italia
Tel. +39 02 5800 1000 - Fax +39 02 5800 1001
E-mail: info@luchettikrelle.it
Web: www.luchettikrelle.it

New	Description	Date
A	Draft Issue for Consultant Review	8/11/19
B	Issue for approval review	11/11/19
C	Issue for approval review	13/11/19
D	Issue for approval review	20/11/19

Site Plan	Date 5/11/19	Scale 1:500
Drawing No. DA.010	Drawn: LK	Revision D



ISSUE FOR AUTHORITY APPROVAL

Exterior Elevations - New Entry
Doors

Date	Scale	Drawn	REVISION	DRAWING NO.
8/1/19	1:50	LK	E	DA.300



0' 1" 2" 3" 4" 5" 6" 7" 8" 9" 10'

Hotel Steyne
Ground Floor

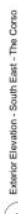
Rev	Description	Date
A	Draft Issue for Consultant Review	8/11/19
B	Issue for approval review	11/11/19
C	Issue for approval review	13/11/19
D	Issue for approval review	20/11/19
E	Amendment for approval	05/02/20

DESIGN INTENT FOR
APPROVAL ONLY, NOT FOR
CONSTRUCTION



Historical Photo - South East - The Corso

[illegible]



DESIGN INTENT FOR
APPROVAL ONLY, NOT FOR
CONSTRUCTION

[illegible]

ISSUE FOR AUTHORITY APPROVAL

Exterior Elevation - External
Awning Improvements

**Hotel Steyne
Ground Floor**



Rev	Description	Date
A	Draft Issue for Consultant Review	8/11/19
B	Issue for approval review	11/11/19
C	Issue for approval review	13/11/19
D	Issue for approval review	20/11/19
E	Amendment for approval	08/02/20

10

OR

CONTENT

DESIGN I

1

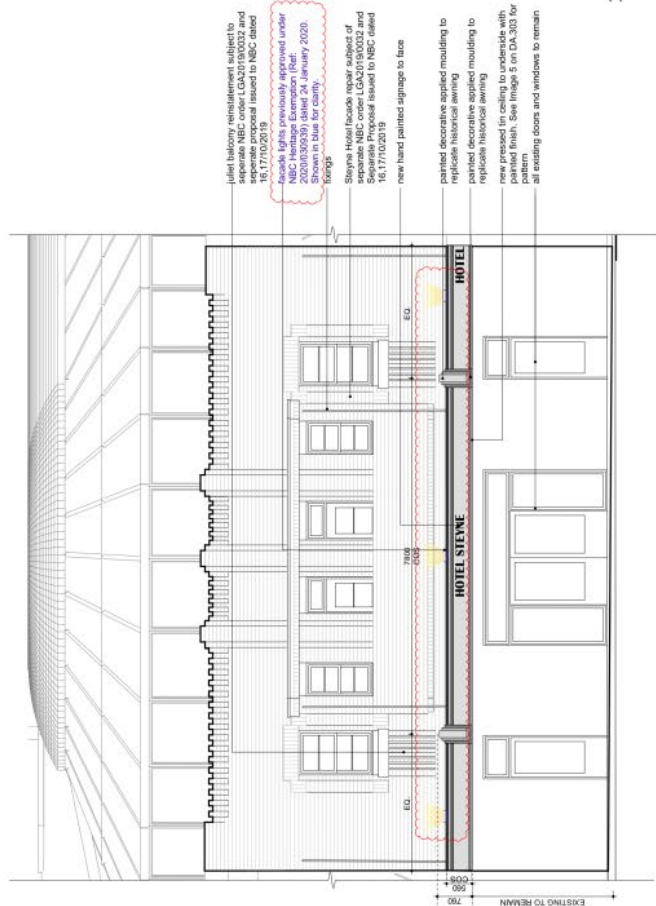
University

...the ...

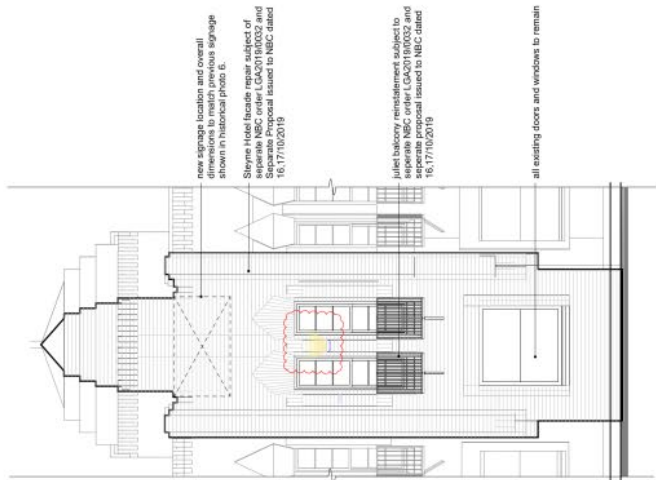
over Street
NW 28th
3435

五

LUCHE
KREI



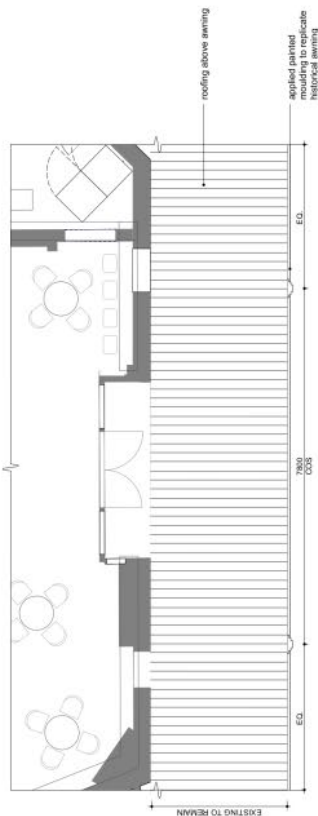
2 Exterior Elevation - South West - Sydney Road
1:50 @ A1



3 Exterior Elevation - South West - Sydney Road
1:50 @ A1



6 Historical Photo - South East - The Corso
N.T.S



4 Exterior Avening Plan - South West - Sydney Road
1-401-238-81



4 Historical Photo - South East - The Corso
N.Y.C.



5 Historical Photo - South East - The Corso
N.Y.S.

DESIGN INTENT FOR
APPROVAL ONLY, NOT FOR
CONSTRUCTION

**LUCHETTI
KRELL**

4500 West 10th Street
Suite 100
Denver, CO 80202
Tel: 303.733.8800
Fax: 303.733.8801
www.luchettikrell.com

© 2000 Luchetti-Krell. All rights reserved. Luchetti-Krell is a registered trademark of Luchetti-Krell. All other trademarks are the property of their respective owners.

Rev	Description	Date
A	Issue for authority approval	17/10/19
B	Draft Issue for Consultant Review	8/11/19
C	Issue for approval review	11/11/19
D	Issue for approval review	13/11/19
E	Issue for approval review	20/11/19
F	Amendment for approval	05/02/20

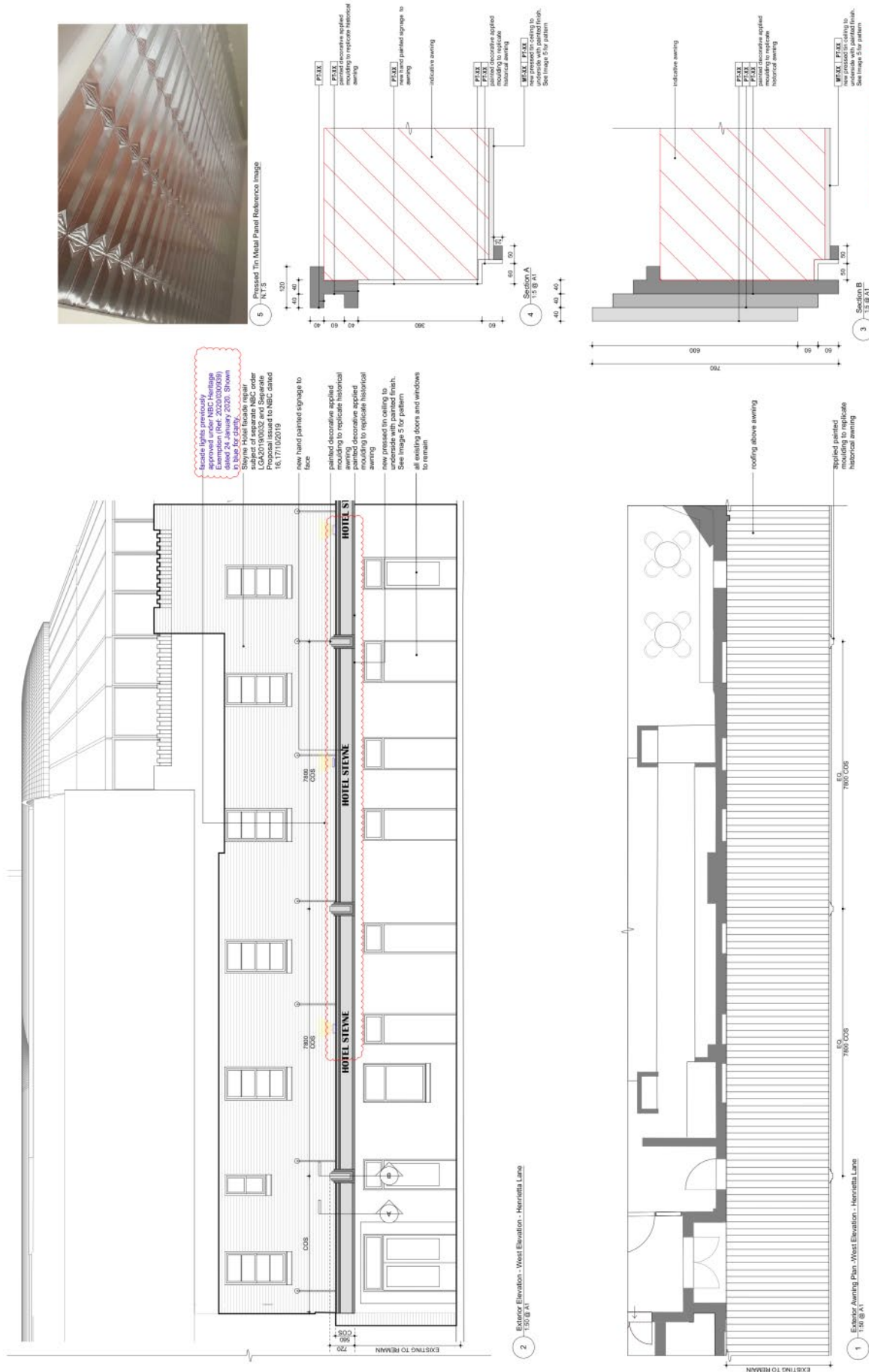


Hotel Steyne
Ground Floor

Exterior Elevations - External
Awning Improvements and
Signage

DRAWING NO.
DA.302

ISSUE FOR AUTHORITY APPROVAL



DESIGN INTENT FOR
APPROVAL ONLY, NOT FOR
CONSTRUCTION

[illegible]

Rev	Description	Date
A	Issue for authority approval	17/10/19
B	Draft Issue for Consultant Review	8/11/19
C	Issue for approval review	11/11/19
D	Issue for approval review	13/11/19
E	Issue for approval review	20/11/19
F	Amendment for approval	05/02/20

Hotel Steyne
Ground Floor

Exterior Elevation - External Awning Improvement	Date	Scale	Drawn
	5/11/19	1:50	UK

ISSUE FOR AUTHORITY APPROVAL

ITEM 3.2

**DA2019/1481 - 741 WARRINGAH ROAD, FORESTVILLE -
DEMOLITION OF EXISTING DWELLINGS AND CONSTRUCTION
OF A TWO STOREY BOARDING HOUSE COMPRISING NINE (9)
BEDROOMS AND A PART SUB-BASEMENT PARK FOR 5 CARS
WITH ACCESS VIA MELWOOD AVENUE**

REPORTING MANAGER**Anna Williams****TRIM FILE REF****2020/210288****ATTACHMENTS**

- 1 Assessment Report**
- 2 Site Plan & Elevations**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/1481 for demolition of existing dwellings and construction of a two storey Boarding House comprising nine (9) bedrooms and a part sub-basement park for 5 cars with access via Melwood Avenue on land at Lot 6B DP 370509, 741 Warringah Road, Forestville, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1481
Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 6B DP 370509, 741 Warringah Road FORESTVILLE NSW 2087
Proposed Development:	Demolition of existing dwellings and construction of a two storey Boarding House comprising nine (9) bedrooms and a part sub-basement park for 5 cars with access via Melwood Avenue.
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under the Affordable Housing SEPP
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jarrold Richard Mirabito Matthew Joseph Mirabito Rebecca Victoria Mirabito
Applicant:	Jarrold Richard Mirabito Matthew Joseph Mirabito Rebecca Victoria Mirabito
Application Lodged:	19/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	25/01/2020 to 15/02/2020
Advertised:	25/01/2020
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,233,000.00

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the demolition of all structures and construction of a two storey boarding house comprising:

- Nine (9) accommodation rooms;
- One common room;
- Courtyards and laundry;
- Vehicular access via Melwood Avenue;
- Excavation to a depth of 1.6m and a part sub-basement parking for five (5) cars and one (1) share space, two (2) motorbikes and two (2) bicycles. A bin store area is located within the western perimeter of the sub-basement with sliding grills for external access to the bins.



Photomontage of the proposed boarding house looking south-west from Warringah Road.

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 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - C4 Stormwater
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 6B DP 370509 , 741 Warringah Road FORESTVILLE NSW 2087
Detailed Site Description:	<p>The subject site consists of one allotment (Lot 6B, in DP 370509) located on the corner of Warringah Road and Melwood Avenue.</p> <p>The site is regular in shape with a frontage of to Warringah Road of 11.936 metres, (excluding the splayed corner of 5.7 metres), a frontage to Melwood Avenue of 30.112 metres, a southern boundary of 15.24 metres, and an eastern boundary of 37. 16 metres. The site has a surveyed area of 533.5m².</p> <p>The site is located within the R2 Low Density Residential and accommodates a single storey detached dwelling with a secondary single storey dwelling located in the southern portion. Vehicle access is on the Melwood Avenue frontage located towards the southern boundary. The building is setback an average of 7 metres from Warringah Road, and 2.5 metres from Melwood Avenue. The building has a setback to the rear of approximately 2 metres, although a carport is located on the rear boundary.</p> <p>The site has an average slopes of 6% from south to north, a number of trees are located along the northern frontage to Warringah Road. The site is enclosed on all boundaries by a combination of timber and colourbond fencing and screen planting.</p>  <p>Subject site looking east from Melwood Avenue.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

Adjoining and surrounding development to the north is characterised by one and two storey dwelling primarily of brick and tiled roof construction set back from Melwood Avenue. The adjoining dwellings to the south and east are two storey. The Forestville Public School is located approximately 60m to the south with an RSL club located beyond this. The six lane Warringah Road is located to the immediate north and a petrol station is located on the opposite side of Warringah Road.

Map:



SITE HISTORY

Pre-lodgement Meeting PLM2018/0302 was held on 24/01/2019 for the construction of a boarding house. A nine (9) room two (2) storey hipped roof building with six (6) parking spaces was presented. The subject application has modified the design of the building to include a contemporary skillion roof. The applicant has also incorporate design modification to address concerns about building bulk and privacy.

Application CDC2017/0075 for Private SEPP - Demolition of existing garage & Construction of a secondary dwelling was approved on 10/02/2017.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land).

Section 4.15 Matters for Consideration'	Comments
environmental planning instrument	Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development,	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the</p>

Section 4.15 Matters for Consideration'	Comments
including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Lee William O'Mara	1 Melwood Avenue FORESTVILLE NSW 2087
Ms Sarah Jane Mason	1 / 735 Warringah Road FORESTVILLE NSW 2087
Ian James Mercer Moyra Eileen Mercer	49 Melwood Avenue FORESTVILLE NSW 2087
Gregory David Burke	733 D Warringah Road FORESTVILLE NSW 2087
Jo-Jo Burke	733 D Warringah Road FORESTVILLE NSW 2087

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

- Road safety and parking;
- Over-development and insufficient setbacks;
- Safety of school children, and
- Over-supply of boarding houses.

The matters raised within the submissions are addressed as follows:

- ***Traffic issues, Melwood Avenue is a busy entry road onto Warringah Road. Insufficient car parking and no available on street car parking due to commuter parking.***

Comment:

The proposal provides five (5) car parking spaces. The site is considered to be an accessible area in that it is located within 400m of a regular bus services, as such the proposed parking complies with the numerical requirements of the Affordable Housing SEPP which requires 0.2 spaces per room. Access to the site is retained on to Melwood Avenue. Council's Transport Unit and Transport for NSW have no objections to the proposal and subject to conditions the proposal will not impact on road safety.

- ***Over-development, too large with insufficient setback.***

Comment:

The proposal generally complies with the built form controls in terms of height and setbacks. The setback is similar to the footprint of the existing building. There is a minor breach of the side envelope control on the western elevation, however, the breach will not result in unacceptable amenity impacts on neighbouring properties.

- ***Concern for the safety of school children and clarification required on the organisation that will be operating the boarding house. Have the school being notified?***

Comment:

The proposal was exhibited in accordance with Council's procedure which included sending letters to thirty eight (38) neighbouring properties. In addition, a site notice was installed on the frontage of the site and a advert placed in the Manly Daily. Given the location of the school, approximately 60m to the south, the school was not notified. The proposal is for a *New Generation* Boarding House and Council has no concerns about the safety of school children with the location of the proposed boarding house. A Plan of Management has been submitted which outlines detailed operation procedures that will help ensure that the amenity of the surrounding environment is maintained. Condition require compliance with the Plan of Management.

- ***No need for a boarding house as there are other in the area with vacancies.***

Comment:

This is not a material planning issue which is a consideration under the Environmental Planning and Assessment Act, 1979.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.

Internal Referral Body	Comments
	<p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Industrial)	<p>General Comments</p> <p>Proposal to demolish two existing structures and construct a 9 bedroom Boarding House. Environmental Health have investigated the components of demolition (hazardous waste materials) and the noise generated by air conditioning units and communal areas. The applicant provided the following relevant documents: Master Set (plans); Waste Management; Plan of Management; Acoustic (report); and Statement of Environmental Effects.</p> <p>Waste management: our investigation found no indication of hazardous materials such as asbestos, adequate measures are in place to manage demolition waste. Standard conditions (to be instated automatically by the Planning section of Council) regarding sediment and erosion control and dust suppression during construction / demolition phases.</p> <p>Noise: sources of greatest concern to surrounding residences include air conditioning unit and communal areas/room location.</p> <p>The acoustic report demonstrates the location of the air conditioning unit and communal areas. Those are proposed to face the adjacent roads and placed as far away as possible from other residences.</p> <p>Quantitatively, the report extrapolated daytime measurements to give night time levels approximately 60-70 dBA in the external areas of the premise. This is stated to be lower than the predicted noise level of air conditioning units as 65 dBA (not clear whether this is a combined level). Combining mechanical and vocal noise as 'operational noise', predicted noise levels fall below the background road noise levels.</p> <p>Qualitatively, re-iterates some of the Plan of Management controls, time of use for the outdoor common area is recommended as 10 pm.</p> <p>Plan of Management discusses the use of outdoor communal area from 6 am to 11 pm, with exception of management approval. No on-site manager, but a 'house representative'.</p> <p>Recommendation</p>

Internal Referral Body	Comments
	APPROVAL - subject to conditions
Landscape Officer	<p>The Landscape Plan requires amendment to provide planting of size sufficient to ameliorate the building bulk and integrate the development into the streetscape, however this can be conditioned by nominating screen planting heights and additional trees around the site.</p> <p>The Communal Open Space areas nominated at the front of the site offers little amenity to users and being located in the detention basin, meaning it will be unusable in certain situations. E.g. following rain it's likely to be boggy and unappealing. No detail is provided regarding facilities for the Common Open Space other than turf and shrub planting. The proposed landscape areas can be conditioned to improve the outcome from a planting perspective.</p> <p>Recommended conditions are included if the proposal is to be approved.</p>
NECC (Development Engineering)	No objections are raised to the proposed development, subject to conditions.
Strategic and Place Planning (Urban Design)	The applicant submitted new amendments on 3 April 2020 to address urban design issues identified in the pre-lodgement meeting. The roof to the entrance and balcony of unit 5 were modified to create a clear break of the building bulk and to highlight the entry point of the development. The issue of overlooking into the next door neighbor has been resolved with privacy screens on the upper floor. The proposed building facades are well articulated and will fit well contextually into the existing streetscape. As such the proposal can be supported.
Traffic Engineer	<p>The proposal is for demolition of the existing dwelling house and construction of a boarding house comprising 9 accommodation room (including manager's room), 5 parking spaces, 2 motorbike spaces and 2 bicycle spaces. Parking is proposed to be accessed via a combined ingress/egress driveway located on Melwood Avenue.</p> <p>The expected traffic generation of 4 vehicle trips in peak hours is considered to have minimal impact on the road network and is acceptable.</p> <p>The parking provision is in compliance with the SEPP requirements which is satisfactory.</p> <p>Given the low level of traffic generation and also reasonable visibility between vehicles ingressing and egressing the driveway, the proposed single width driveway is considered acceptable.</p> <p>The car parking area and the driveway design is to be in accordance with AS2890. This guideline requires the gradient of last 6m of the</p>

Internal Referral Body	Comments
	<p>driveway from the property boundary to be maximum of 1:20 (5%). This is required to ensure adequate visibility between exiting vehicles and pedestrians on the frontage footpath. Given the site being located in close proximity to a school resulting in increased pedestrian activities at this location, the non-compliance raises further pedestrian safety concern and is not considered acceptable.</p> <p>In view of above, the proposed development can be supported subject to condition.</p>
Waste Officer	<p>Waste Services Updated Referral (7/4/2020)</p> <p>Planners comments - Draft amended plans illustrate a sliding screen along the western frontage of the bins enclosure providing both external access and screening. In addition, the accessible footpath has been extended along the western frontage of site to extend the length of the bin enclosure.</p> <p>Waste comments - The following is required to ensure compliance with Northern Beaches Waste Management Guidelines:</p> <ul style="list-style-type: none"> • The sliding door to access waste storage area the must be robust and fit for purpose. • The wall between the waste storage area and the shared space must be approximately 1m high. <p>Waste Services Referral</p> <p>The applicant has not complied with the Northern Beaches Waste Management Guidelines. The following is required to ensure compliance:</p> <p>The pathway and access between the Waste Storage Area and Collection Point must be a) hazard free and not via a pathway with vehicular traffic. b) A minimum width of 1200mm.</p> <p>The plans should demonstrate that,</p> <ul style="list-style-type: none"> a. All bins must be accessible by residents and contractors without requiring to move one bin to access any others either for residents depositing waste or contractors emptying bins. b. Storage of material or parking vehicles/motorbikes etc in front of the bins cannot prevent such access.

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 significant period of time with no prior land use. There is no history of any previous uses as described in table 2 of SEPP 55 which would trigger a requirement for consideration of contamination issues. As such, no further consideration under Clause 7 (1) (b) and (c) of SEPP 55 is required and the land is considered suitable for residential land use.

SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 3: Boarding houses

Clause 25: Definition

For the purposes of this Division, the Standard Instrument defines a 'boarding house' as a building that:

*"(a) is wholly or partly let in lodgings, and
(b) provides lodgers with a principal place of residence for 3 months or more, and
(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".

In this Division 'communal living room' means *"a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room".*

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	

(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	Consistent The site is located within the R2 Low Density Residential zone and, as such, the proposed use is permissible with consent under WLEP 2011.
--	---

Clause 27: Development to which this Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Comment
(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area. Note: Accessible area means land that is within: (c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.	Consistent The site is located within the R2 Low Density Residential zone and is situated not more than 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday. Bus services operate along Warringah Road by Forest Coachlines and Transport for NSW . A bus stop is located on the footpath directly adjacent to the site that provides public transport in a westerly directly along Warringah Road to Chatswood and other suburbs. A bus stop is located on the opposite side of Warringah Road at the intersection with Woodland Road which provides public transport to the east. This bus stop is located 300m from the subject site and can be accessed via traffic lights located at Forestville. In summary, the site is within 400m walking distance of bus stops in both directions used by a regular bus operators in compliance with the control. As such, the site is assessed as being in an accessible area A bus stop is located on the footpath directly adjacent to the site that provides public transport in a westerly directly along Warringah Road to Chatswood and other suburbs. A bus stop is located on the opposite side of Warringah Road at the intersection with Woodland Road which provides public transport to the east. This bus stop is located 300m from the subject site and can be accessed via traffic lights located at Forestville. Bus are available from both bus

	stops on a regular bases, at least one per hour. In summary the site is considered to be in an accessible area in compliance with the control.
(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.	Not applicable. The site is located within the Sydney region.

Clause 28: Development may be carried out with consent

Requirement	Comment
Development to which this Division applies may be carried out with consent.	The development constitutes the construction of a boarding house, as defined by the Standard Instrument. Therefore, the development may be considered under this Division of the SEPP as development which may be carried out with consent.

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed	Compliant/Comment
(1) Density and scale A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP	Not applicable
	(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP	Not applicable
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the	The subject site is zoned R2 Low Density Residential, which does not allow residential flat building development. The land does not contain a heritage item. The site is not subject to a floor space ratio control.	Not applicable

	<p>State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:</p> <p>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or</p> <p>(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</p>		
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) building height	if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	The proposed development is 8.4m in height, being below the maximum building height of 8.5m.	Compliant
(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	The landscape treatment of the front and side set back area is consistent with the streetscape in which the building is located, including adequate dimensions and planting to soften the visual bulk of the proposed development. The total landscape area equates to 38.4% of the site area.	Consistent
(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	The proposal includes a communal living area which is orientated to achieve a minimum of 3 hours of direct sunlight between 9am and 3pm in mid-winter.	Consistent

(d) private open space	<p>if at least the following private open space areas are provided (other than the front setback area):</p> <p>(i) one area of at least 20m² with a minimum dimension of 3.0m is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m² with a minimum dimension of 2.5m is provided adjacent to that accommodation,</p>	<p>i) The proposal provides a 24sqm area of open space with a minimum dimension of 3.0m for the use of the lodgers to the western frontage to Melwood Road. An additional larger area of common open space is located to north along the Warringhah Road frontage.</p> <p>ii) The proposal does include accommodation for a house manager, although it is noted that the Plan of Management refers to a house representative.</p>	Compliant
(e) parking	<p>if:</p> <p>(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any</p>	<p>The proposal is for a <i>New Generation</i> boarding house with self contained units. Nine (9) units are proposed and five (5) spaces are proposed including one (1) accessible space and an adjoining shared space. The site is located within an accessible area and a minimum of 0.2 spaces are required for each room. The proposed five (5) parking spaces therefore compliance with the Affordable SEPP and Council's Transport Unit have no objections to the proposal.</p>	Compliant

	development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,		
(f) accommodation size	if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least: (i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or (ii) 16 square metres in any other case.	All rooms have a compliant minimum 16sqm area which is required for rooms with more than one border.	Compliant
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	Each room is self contained to accommodate a single lodger with a private kitchen and bathroom provided.	Consistent
	(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	Noted	Noted

Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	The proposal includes 9 boarding rooms and a communal living room.	Compliant
(b) no boarding room will have a	The boarding rooms proposed are	Compliant

gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m ² ,	a minimum 16sqm and a maximum 22sqm.	
(c) no boarding room will be occupied by more than 2 adult lodgers,	The Plan of Management stipulates that a maximum of two (2) adult lodgers are permitted to reside in each room.	Compliant
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Adequate bathroom and kitchen facilities will be available within each room.	Consistent
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The proposal provides a total of nine (9) rooms, as such, a boarding house manager is not required.	Consistent
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	The site is located with a R2 Low Density Residential zone and, as such, clause (g) is not applicable.	Consistent
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	The proposal provides for bicycle and motor-bike parking.	Compliant
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	Not relevant	Not relevant

Clause 30AA: Boarding houses in Zone R2 Low Density Residential

A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Comment:

The subject site is zoned R2 Low Density Residential zone and proposed nine (9) rooms in compliance with the control.

Clause 30A: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC

268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 Senior Commissioner Roseth developed the following Planning Principles:

- *The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.*

Comment:

The predominate built form is one and two storey detached dwellings set back from the street, however, it is noted that there are some exceptions to this including a primary school and RSL club located to the south and a petrol station to the north on the opposite side of Warringah Road.

The proposal presents a two storey built form which sits below the 8.5m maximum building height development standard and is consistent with the height of other properties in the streetscape, including the height of the two storey dwelling which directly adjoin the site to the south. In this regard, it is considered that the scale of the development is compatible with the streetscape and consistent with the first principle.

- *The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

Comment:

The proposal is generally compliant with the numerical built form controls, however, the building is of a greater size than the majority of developments in the street. The scale, bulk and massing of the development has been reduced with the modulation of the facades to Melwood Avenue into two pavilions with balconies to activate the facade and reduce the scale and density of the building. The design presents a contemporary pitched / skillion roof building which has been broken up into three (3) separate components to reduce the perceived scale of the building from the street frontages. In addition, the proposal has been amended to increase the depth of the recess between the two building volumes / pavilions and add expression to the entrance. Council's Urban Designer supports the revised design and it is considered that the mass of the building has been reduced so that it is contextually appropriate in the streetscape.

The subject site is a corner site and the proposal has numerically compliant set back. It is also noted that the proposed setbacks are similar to the setbacks of the existing buildings. As such, the footprint and sub-division pattern of the proposal has been assessed as acceptable and the proposed building will sit within a landscaped setting similar to other developments in the area. In this regard, the development is considered to be compatible with the scale of surrounding development and consistent with the second principle.

The third principle is that where a site has existing characteristics that assist in reducing the visual

dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.

Comment:

The site has a gentle slope (6 %) from south to north toward Warringah Road, the proposed built form steps down the site to respond the typography. The proposal also uses the existing excavated footprint to accommodate the car parking, as such, the design will help mitigate perceptions of bulk and scale as view from Melwood Avenue. A condition requires the existing trees along the northern frontage to Warringah Road are to be protected and retained. In addition, an amended landscape plan is required to provided for additional planting of suitable species which together with existing planting will reduce its visual dominance of the development from the streets. In summary the proposal has been assessed as being consistent with the third principle.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

Comment:

There is a consistency of architectural style of older dwellings comprising tiled hipped roof, brick walls, verandas and windows. However, more recently constructed dwellings and alterations include the use of a variety of materials, roof forms and finishes. The proposal presents a contemporary pitched (skillion) roof building which uses a palette of materials including face brick, cement walls, metal deck roof and wall sheeting, aluminium windows and screens with powder-coat finish. The proposed materials are consistent with the more recent developments in the area. In this regard, the development is considered to be consistent with the fourth principle.

The above principles were further developed in Project Venture Developments v Pittwater Council (2005) NSWLEC 191 to include the following:

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

Comment:

The physical impacts of the development on surrounding properties are assessed as consisting of constraints on the development potential of surrounding sites, privacy, overshadowing and noise.

Constraints on the development potential of surrounding sites

The proposed development is generally sited to ensure reasonable development of adjoining properties and limits impacts to surrounding properties.

Privacy

Windows and balconies are primarily orientated to the two street frontages. A highlight window (located 1.6m above the finished floor level) is proposed on the southern elevation. The height of the window will ensure that privacy is maintained to the dwelling to the south. It is also noted that there is existing screen planting along the southern boundary that will be retained. A privacy screen with fixed louvres is proposed to be installed along the edge of the common corridor to the east to help protect privacy to the neighbouring dwelling. The primary outdoor common areas is located within the north-west corner of

the site adjacent to Melwood Avenue and a secondary area is located to the north adjacent to Warringah Road, both areas are positioned away from neighbouring residential properties. In summary, the development has been design to ensure that no windows, balconies or external common areas will result in a loss of privacy to adjoining residential dwellings.

Overshadowing

The proposed development does not unreasonably overshadow the subject site or adjacent sites as demonstrated by the submitted shadow diagrams.

Noise

The proposed development is not anticipated as resulting in unreasonable noise impacts, as supported by the submitted Plan of Management and Acoustic Report.

Conclusion to character assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is compatible with the character of the local area and surrounding wider locality.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1053142M dated 5 December 2019).

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

Commitment	Required Target	Proposed
Water	40	45
Thermal Comfort	Pass	concession target pass
Energy	50	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 conditions recommended by Ausgrid have been included in the determination.

Department of Transport NSW

The site fronts Warringah Road which is a classified road. As such clause 101 of the Infrastructure SEPP is relevant.

Clause 101 of the SEPP (Development with frontage to classified road) states:

- (1) *The objectives of this clause are—*
- (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
 - (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*
- (2) *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.*
- and Schedule 3 of the SEPP requires that the following development(s) are referred to the RMS as Traffic Generating Development.*

Comment:

The application was referred to the Department of Transport for NSW who did not raise any objection to the proposal subject to conditions which have been included in this report. It is noted that access to the site will remain to be provided from Melwood Avenue. As such, it is unlikely that the development will compromise the operation and function of the classified road in compliance with the objectives of clause 101.

Clause 102 of the SEPP (Impact of road noise or vibration on non-road development) states:

- (1) *This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of RMS) and that the consent authority considers is likely to be adversely affected by road noise or vibration—*
- (a) *residential accommodation,*
 - (b) *a place of public worship,*
 - (c) *a hospital,*
 - (d) *an educational establishment or centre-based child care facility.*
- (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.

(4) In this clause, freeway, tollway and transitway have the same meanings as they have in the Roads Act 1993.

Comment

The acoustic report includes an assessment of the development in accordance with clause 102 of the SEPP and makes recommendations for the mitigation of road noise to sleeping and other habitable areas. The recommendations of the acoustic report to comply with the noise levels included specifications relating to the wall, window and door construction. Conditions requires compliance with the recommendations of the acoustic report and the noise levels stipulated under sub-clause 102 (3)(a) and (b) for sleeping areas and habitable rooms.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.4m	N/A	Yes

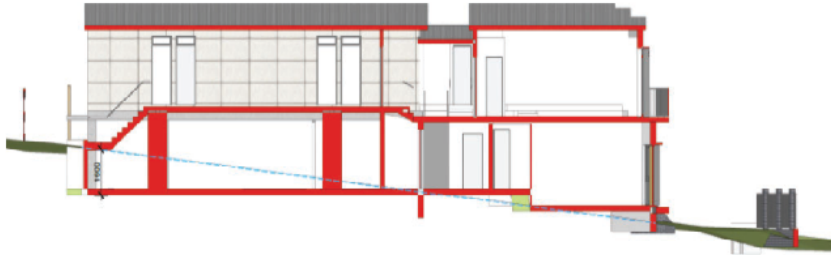
Compliance Assessment

Clause	Compliance with Requirements
Part 2 Permitted or prohibited development	Yes
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

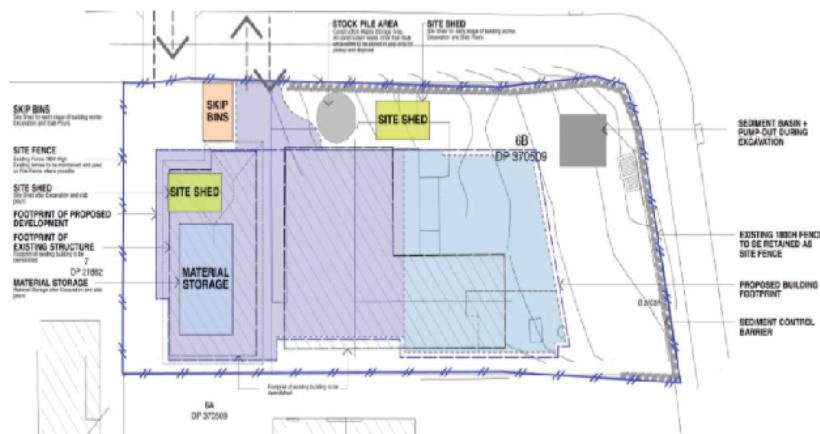
Detailed Assessment

6.2 Earthworks

The proposal includes excavation to a maximum depth of 1.6m to create a sub-basement parking area, see section below. The excavation is contained in the southern half of the site, see plan below which shows the excavation area in purple.



Section showing the depth of excavation (source Macphail & Sproul architects).



Plan showing the footprint of the excavation in purple (source Macphail & Sproul architects)

A geotechnical report has been submitted which confirms that subject to recommended conditions that the proposal is unlikely to result in the disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality.

6.4 Development on sloping land

The site is zoned as Area A and Area B on the landslip risk map. The front of the site has a slope of less than 5 degrees and at the rear between 5 degrees and 25 degrees.

Clause 6.4 (3) states:

(3) 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*
- (b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*
- (c) the development will not impact on or affect the existing subsurface flow conditions.*

Comment

The applicant has submitted a geotechnical and landslip report which notes that there is no obvious signs of slope instability within the immediate vicinity of the site and subject to the recommendations of the report being followed there it is unlikely that the new work will increase the risk of instability.

Given the minimal extent of excavation it has been assessed that the proposal is unlikely to result in risks associated with landslides in relation to both property and life. The recommendations of the geotechnical and landslip report are included as a condition of consent.

The application was referred to Council's Engineer who offer no objections to the proposal subject to conditions, including those relating to stormwater. Subject to these conditions the development is unlikely to cause significant detrimental impacts because of stormwater discharge from the development site or impact on or affect the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.6m	N/A	Yes
B3 Side Boundary Envelope - West Side Boundary Envelope - South	4m	Two (2) areas of envelope breach: 0.2m - 1.1m in height for a length of 7.7m 0 - 0.3m in height for a length of 2.2m	(see details in table)	No
B5 Side Boundary Setbacks	0.9m (south)	0.9m	N/A	Yes
	0.9m (west)	2m	N/A	Yes
B7 Front Boundary Setback to Warringah Road Secondary setback to Melwood Avenue	6.5m	6.5m	N/A	Yes
	3.5m	3.5m	N/A	Yes
B9 Rear Boundary Setbacks (Does not apply to corner sites)	6m	N/A	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (213.4sqm)	38.4% (205sqm)	3.9%	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
Part B Built Form Controls	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D1 Landscaped Open Space and Bushland Setting	No	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
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

There are two breaches of the 4m side boundary envelope control on the east elevation as detailed below and shown in the images:

- Breach relating to the stairs 0m - 0.3m height of a length of 2.2, and
- Breach relating to the upper floor unit 3 apartment for a height of between 0.2m and 1.1m for a length of 7.7m



Side Boundary envelope breach - west elevation.



3D image of envelope breach submitted by the Applicant.

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:

The varied set back of the west elevation will help reduce the bulk of the western elevation.

The minor area that breaches the envelope on the eastern elevation will not result in a visually dominate development by virtue of height and bulk given the existing vegetation that screens the development on approach from the east and the new planting that will be required as a condition of consent.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The breach in the side envelope control will not result in adverse amenity impacts to neighbouring properties in terms of solar access and privacy. Shadow diagrams have been submitted which confirm that the neighbouring properties will retain a compliant amount of solar access to primary outdoor areas. It is noted that the area on non-compliance sits adjacent to the driveway to the neighbouring dwelling, see photo below.



- *To ensure that development responds to the topography of the site.*

Comment:

The breach in the side envelope control corresponds to the topography of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 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

The proposed car parking complies with the following design principles:

The proposal includes five (5) car parking spaces, including a disabled space and a shared space which is integrated into the building in a sub-basement. A transport report has been submitted which confirms that the site is located in an accessible location within 400m of public transport. As such the

Affordable Housing SEPP requires 0.2 car parking spaces per room. The proposed five (5) parking spaces comply with the provisions of the Affordable Housing SEPP which prevail over the WDCP. Council's Transport Unit and the Department of Transport for NSW have no objections to the proposal subject to conditions.

C4 Stormwater

The proposal includes On Site Detention (OSD) within the 6.5m front set back to Warringah Road. The application was referred to Council's Engineer who offered no objections to the proposal subject to conditions.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The clause requires 40% (213.4sqm) of landscape open space. The proposal provides 205sqm (38.4%) of landscaped open space which is 8.4sqm (3.9%) less than is required.

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 proposal includes a landscape plan which has been reviewed by Council's Landscape Officer. A condition requires an amended landscape plan, appropriate planting and the retention of existing trees, refer to landscape referral above. Subject to these conditions, suitable planting can be implemented to maintain and enhance the streetscape.

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

Comment:

There are no indigenous vegetation, topographical features or habitat for wildlife recorded on the site that require conservation or enhancement.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The dimensions of the landscape open space will allow for planting of suitable species to mitigate the height, bulk and scale of the building.

- *To enhance privacy between buildings.*

Comment:

The development has been designed to orientate windows and balconies to the street frontage so that windows will not overlook existing buildings. It is also noted that there is sufficient screen planting to the south and east boundaries to ensure that privacy between the neighbouring dwellings is maintained.

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

Comment:

The proposal includes a 24sqm communal area of open space to the north-east section of the site in compliance with the Affordable Housing. In addition, a secondary area of communal space is provided to the northern frontage. Given the location of the detention basin in this area the quality of this space may be comprised periodically such as after heavy rainfall.

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

Comment:

The proposal provided for a clothes drying yard along the eastern boundary.

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

Comment:

As noted above, a detention basin is provided within the northern frontage of the site which has been assessed by Council's Engineers as 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.

D6 Access to Sunlight

The shadow diagrams confirm that the proposal will not result in unacceptable shadow impacts to adjoining properties and at least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

D8 Privacy

Windows are primarily orientated to the street frontages. A high level bedroom window (located 1.6m above the finished floor level) is proposed on Unit 9 the southern elevation. The window is located 3m from the common boundary and in line with the front yard to No. 1 Melwood Avenue. Given the height and orientation of the window and existing screen planting the window will not result in a loss of privacy to No 1 Melwood Avenue.

A privacy screen is proposed along the edge of the common walkway to the west elevation with fixed angled louvres which will protect privacy to the adjoining property to the east.

In terms of acoustic privacy, the outdoor common areas are located away from neighbouring residents in the north-east corner of the site adjacent to Melwood Avenue and Warringah Road which will help

ensure acoustic privacy to neighbouring properties are maintained. In addition, conditions will require compliance with the Plan of Management and acoustic report to ensure that acoustic privacy to neighbouring properties is maintained.

D9 Building Bulk

The walls are setback at different levels and the street facades are articulated to reduce perceived bulk and massing.

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 \$12,330 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,233,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/1481 for Demolition of existing dwellings and construction of a two storey Boarding House comprising nine (9) bedrooms and a part sub-basement park for 5 cars with access via Melwood Avenue. on land at Lot 6B DP 370509, 741 Warringah Road, FORESTVILLE, 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
DA0001 Rev A - Materials and Finishes Spec	November 2019	Macphall and Sproul Architects
DA0002 Rev A - Site Plan and Demolition	November 2019	Macphall and Sproul Architects
DA0003 Rev B - Floor Plans	Received 7/4/2020	Macphall and Sproul Architects
DA0002 Rev B - Elevations and Sections	Received 7/4/2020	Macphall and Sproul Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
Notes and Standards - Sheet 1 of 4 Ref 3843H Issue A	26 June 2019	NITMA Consulting
Erosion and Sediment Control Plan - Sheet 2 of 4 Ref 3843H Issue A	26 June 2019	NITMA Consulting
Drainage Plan - Sheet 3 of 4 Ref 3843H Issue A	26 June 2019	NITMA Consulting
Pump and OSD Details - Sheet 4 of 4 Ref 3843H Issue A	26 June 2019	NITMA Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Accessibility Assessment Report	31 October 2019	Equibuilt

Acoustic Report Ref. BA190416 Version A	June 2019	Blackette Acoustics
BCA Compliance Assessment Report Ref BCA19/032	29 October 2019	Aramini and Leedham Consulting
Geotechnical and Landslip Report Ref 19/08750	11 August /2019	Micheal Adler and Associates
Traffic Report Rev B Ref 19091	October 2019	Transport and Traffic Planning Association
Section J Energy Efficiency Report	22 November 2019	Certified Energy

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
Landscape Plan DA0005 Rev A	November 2019	Macphail and Sproul Architects

Waste and Construction Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	20 November 2019	Unknown
Construction Management Plan	November 2019	Macphail and Sproul Architects

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

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

2. Noise from Classified Road

Measures shall be included in the design 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.

Reason: To protect the residential amenity of the Units in compliance with the requirements of the Infrastructure SEPP 2007.

3. Transport for NSW

- (a) All vehicles are to enter and leave the site in a forward direction.
- (b) All vehicles are to be wholly contained on the site before being required to stop.
- (c) All demolition and construction vehicles are to be wholly contained within the site and vehicles must enter the site before stopping.

(d) The proposed site on the Melwood Avenue frontage is within a 40 km/h school zone on and also comprises bicycle lanes. Pedestrian and Cyclist safety is to be considered in the vicinity.

Reason: In the interest of road safety.

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$12,330.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,233,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

5. Security Bond

A bond (determined from cost of works) of \$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.

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

6. 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 Warringah Water Management Policy PL850, and generally in accordance with the concept drainage plans prepared by Nitma Consulting, project number 3843H, sheet number 1 to 4, dated 26/6/19. 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.

The drainage plans must address the following:

- i. The permissible site discharge (including piped and bypass) is to be restricted.
- ii. The maximum discharge to the kerb and gutter is to be less than 20 litres per

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.

7. Vehicle Driveway Gradients

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

8. Vehicle Crossings Application

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. 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 facilitate suitable vehicular access to private property.

9. Boarding House Plan of Management

Prior to the issue of any Construction Certificate a Plan of Management is to be prepared for the premises to the satisfaction of the Certifying Authority. The plan shall include detail to manage the requirements detailed as follows:

1) The maximum number of boarders and lodgers

- a) The building is to contain a maximum of 18 persons (not including children under the age of 5 years), being no more than 2 persons per designated bedroom.
- b) The occupier of premises must not allow any room or cubicle in the premises to be used for the purposes of sleeping accommodation unless the room or cubicle has a floor area of 5.5 square metres or more for each person sleeping in it (in the case of long-term sleeping accommodation) or 2 square metres or more for each person sleeping in it (in any other case)

Note The Public Health Regulation 2012 provides that long-term sleeping accommodation means accommodation that is provided to the same person for a period of more than 28 consecutive days

2) The requirements detailed within Schedule 2 Part 1, Clauses 2 – 7 under the Local Government (General) Regulation 2005

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

Reason: To ensure the premises are maintained in an appropriate manner.

10. **Amended Landscape Plans**

- a) Landscape Plan(s) are to be amended to include the following additional plants as follows:
 - i) Southern (rear) garden. Incorporate a minimum of four (4) species capable of attaining a minimum height of 6 metres at maturity (minimum pot size 25 litre) and one (1) tree capable of attaining a minimum height of 8 metres at maturity (minimum pot size 75 litres).
 - ii) Western (Melwood Avenue side) gardens. Incorporate a minimum of four (4) trees capable of attaining a minimum height of 10 metres at maturity (minimum pot size 75 litres),
 - iii) Northern (Warringah Road) garden. Incorporate a minimum of four (4) species capable of attaining a minimum height of 6 metres at maturity (minimum pot size 25 litre) and two (2) trees capable of attaining a minimum of 10m at maturity (minimum pot size 75 litres).

b) Details shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the provision of suitable landscape amenity and character.

11. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

12. **Privacy Screen**

A privacy screen to a height of 2.6m is to be erected for the entire length of the outermost eastern edge of the common corridor as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials

that complement the design of the approved development.

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

Reason: In order to maintain privacy to the adjoining / nearby property. (DACPLC06)

13. **Stormwater Drainage System - Details to Transport for NSW**

Detailed design plans 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.

14. **Provision of driveway gradients in accordance with Australian Standards**

In accordance with Australian Standards AS2890.1:2004, the gradient of last 6m of the driveway from the property boundary shall be maximum of 1:20 (5%).

A plan showing the above in compliance with Australian Standards is to be submitted to the Certifying Authority prior to the issue of a construction certificate.

Reason: To ensure adequate visibility between exiting vehicles and pedestrians on the frontage footpath (DACTRCPC1)

15. **Waste and Recycling Requirements**

Details demonstrating compliance with Warringah Development Control Plan – Part C9 Waste Management, including the required Warringah Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with Warringah Development Control Plan – Part C9 Waste Management, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided. (DACWTC01)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **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.

17. **Tree protection**

(a) Existing trees which must be retained

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

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

18. **Overhead Powerlines**

Safework NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The “as constructed” minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website, www.ausgrid.com.au. It remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

“Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost.

It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site.”

19. **Underground Cables**

Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Safework Australia – Excavation Code of Practice, and Ausgrid’s Network Standard NS156 outlines the minimum requirements for working around Ausgrid’s underground cables.

Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any

cable

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **Road Reserve**

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

Reason: Public safety.

21. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/3 NL and the driveway levels application approval. The driveway shall be a minimum 1 metre clear of the stormwater lintel. 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.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

22. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan dated 22 November 2019.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

23. **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

24. **Landscape completion certification**

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

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

25. Stormwater Disposal

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

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

26. 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 submitted.

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.

27. Environmental Reports Certification

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

Accessibility Assessment Report, dated 31 October 2019, prepared by Equibuilt
Acoustic Report Ref. BA190416 Version A June 2019 Blackette Acoustics
BCA Compliance Assessment Report Ref BCA19/032 29 October 2019 Aramini and Leedham Consulting
Geotechnical and Landslip Report Ref 19/08750 11 August /2019 Micheal Adler and Associates
Traffic Report Rev B Ref 19091 October 2019 Transport and Traffic Planning Association
Section J Energy Efficiency Report 22 November 2019 Certified Energy

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

Reason: To ensure compliance with standards.

28. **Boarding House Plan of Management**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the operator that the requirements of the Boarding House Plan of Management have been implemented and are compliant.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.
Reason: To ensure the premises are maintained in an appropriate manner in perpetuity.
(DACHPFPOC7)

29. **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)

30. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

31. **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.

32. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with Warringah Development Control Plan – Part C9 Waste Management

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

Reason: To ensure waste and recycling facilities are provided. (DACWTF01)

33. **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)

34. **Positive Covenant for Waste Services**

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

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

35. **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

36. **Waste area wall and door design**

- The sliding door to access waste storage area the must be robust and fit for purpose.
- The wall between the waste storage area and the shared space must be approximately 1m high.

Reason: In order to ensure the waste area is accessible internally and externally and the design is durable to allow for waste collection.

37. **Compliance with the Plan of Management**

The on-going use and operation of the boarding house premises must comply with the site-

specific Plan of Management issued with the development application.

Reason: To ensure compliance with the *Warringah Local Environment Plan 2011* and to protect public health and safety. (DACHPGOG5)

38. Outdoor lighting

All outdoor lighting must not detrimentally impact upon the amenity of other premises and adjacent dwellings and must comply with *Australian Standard AS 4282:1997 Control of the obtrusive effects of outdoor lighting*. All lights used to illuminate the exterior of buildings onsite must be positioned so as to prevent the emission of direct light onto adjoining roadways, adjoining land, dwellings and waterways.

Reason: To protect the amenity of adjoining properties. (DACHPGOG5)

39. Noise from mechanical plant

Any air conditioning unit on the site must be installed and operated at all times so as not to cause 'offensive noise' as defined by the *Protection of the Environment Operations Act 1997*. Air-conditioner units (located externally) must not be audible in habitable rooms between 10:00 PM to 7:00 AM Monday to Friday, and 10:00 PM to 8:00 AM on Saturdays, Sundays and public holidays. At all other times, externally located air-conditioner units must not exceed 5 dB(A) above background at the boundary of another residential premise.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties. (DACHPGOG6)

40. Landscape maintenance

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity.

41. Occupancy of Boarding House

The building is to contain a maximum of 18 persons, being no more than 2 persons per designated bedroom. In order to maintain this occupancy rate, a sign is to be erected immediately adjacent to the doorway accessing the building detailing the maximum sleeping capacity of the occupancy.

Reason: To ensure the amenity of occupants. (DACPLG23)

42. **All works to be within the property**

All buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited height or depth), along the Warringah Road boundary.





ITEM 3.3**REV2020/0002 - 115A PACIFIC ROAD, PALM BEACH - REVIEW
OF DETERMINATION OF APPLICATION DA2019/0874 FOR
CONSTRUCTION OF A GARAGE****REPORTING MANAGER****Steve Findlay****TRIM FILE REF****2020/210344****ATTACHMENTS**

- 1 Assessment Report**
- 2 Site Plan & Elevations**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to REV2020/0002 for Review of Determination of Application DA2019/0874 for construction of a garage on land at Lot 2 DP 418388, 115A Pacific Road, Palm Beach, subject to the conditions outlined in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2020/0002
Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 2 DP 418388, 115 A Pacific Road PALM BEACH
Proposed Development:	Review of Determination of Development Application No. DA2019/0874 for Construction of a garage
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority	Northern Beaches Council
Delegation Level:	Development Determination Panel (DDP)
Land and Environment Court Action:	No
Owner:	Robert Russell Bishop
Applicant:	Robert Russell Bishop

Application Lodged:	4 February 2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential – Alterations and additions
Notified:	27 February to 12 March 2020
Advertised:	Not Required
Submissions Received:	Nil
Clause 4.6 Variation:	Nil
Recommendation:	Approval subject to conditions

Estimated Cost of Works:	\$ 158,400.00
---------------------------------	---------------

Executive Summary

This report provides an assessment of a Review of Determination for the construction of a garage on the subject site. The site is located on the eastern side of Pacific Road, is an irregular battle-axe shaped allotment, has a site area is 1,352m², has a maximum depth of 104.9m and has a 7.3m wide access handle to Pacific Road.

On 5 November 2019, Northern Beaches Council refused DA2019/0874 for the construction of a garage. The primary reasons for the refusal were that the construction and location of the garage was such that it would destroy the existing sandstone rock outcrop and concerns regarding the lack of information relating to landscape plans, arborist matters and biodiversity matters.

On 4 February 2020, a Section 8.2 Review of Determination application was lodged and was accompanied by amended plans. The main changes to the proposed development are summarised as follows:

- The design of the garage has been modified to retain a large portion of the exposed rock form; and

- The applicant has prepared a detailed Landscape plan and Arboriculture and Biodiversity reports to address the previous concerns.

Pursuant to Section 8.2 of the Act, the applicant seeks a review of all aspects of the refusal of DA2019/0874. Clauses 8.3 and 8.10 of the Act requires that the request for the review must be made and determined within 6 months after the date of determination. The application was determined on 5 November 2019. The request for review was lodged on 4 February and so the review must be determined by 5 May 2020 to fall within the statutory timeframe.

The assessment of the amended application has concluded that the amended design has satisfactorily addressed the previous concerns raised.

Accordingly, it is recommended that the DDP resolve to support the review application and approve the proposed development for the reasons detailed within this report and subject to the attached conditions of consent.

SITE DESCRIPTION

The subject site is Lot 2, DP 418388, No. 115A Pacific Road, Palm Beach and is located on the eastern side of Pacific Road.

The site is an irregular battle-axe allotment with a 7.3m wide access handle to Pacific Road and a maximum depth of 104.9m. The site has a surveyed area of 1,352m².

The site is located within the E4 Environmental Living zone and accommodates an existing part two/part three storey dwelling house and swimming pool.

The site falls approximately 13m from west to east (i.e. front to rear). Landscaping on the site is largely characterised by native vegetation, exposed rock outcrops, low to medium shrubs and areas of lawn.

Development in the surrounding area comprises predominately one, two and three storey dwelling houses of varying architectural styles and ages. There are a large number of contemporary dwellings in the vicinity of the subject site with most designed to relate to the steep topography of Palm Beach and to capitalise on wide ranging views of Palm Beach.



Figure 1 – Subject Site and Locality Map

RELEVANT BACKGROUND

The Development Application (DA2019/0874) was lodged with Council on 15 August 2019. The application sought approval for construction of a garage.

The application was assessed and determined by way of refusal under delegation for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979;
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E4 Environmental Living of the Pittwater Local Environmental Plan 2014.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.2 Earthworks of the Pittwater Local Environmental Plan 2014.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.6 Biodiversity protection of the Pittwater Local Environmental Plan 2014.
6. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.12 Palm Beach Locality of the Pittwater Local Environmental Plan 2014.

7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor of the Pittwater 21 Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.10 Landscaped Area - Environmentally Sensitive Land of the Pittwater 21 Development Control Plan.
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.13 Construction, Retaining walls, terracing and undercroft areas of the Pittwater 21 Development Control Plan.
12. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.

The Notice of Determination was issued to the applicant on 5 November 2019.

On 4 February 2020, the applicant lodged the current application pursuant to Section 8.2 of the Environmental Planning and Assessment Act 1979 (the Act) for the review of Council's determination of refusal for DA2019/0874.

PROPOSAL IN DETAIL

The proposed development, as revised, comprises the following:

- The construction of garage, with design amended to retain most of the exposed section of rock and also retain significant trees within the site.
- The design also involves excavation work, construct retaining walls and a concrete roof slab and placing the remaining rock, soil and planting on top of the roof at a similar level that which existed before the development

Figure 2 below is provided to assist in the location of the proposed garage (shown in red arrow) within the subject site.



Figure 2 - Location of the Proposed Garage (extract from SEE)

EXTERNAL REFERRALS

Referral Body Internal	Comments
Ausgrid	Approval (subject to conditions) Ausgrid raised no objection to the proposed development, subject to the design submission to comply with relevant Ausgrid Network Standards and Safe Work NSW Codes of Practice for construction works near existing electrical assets.

INTERNAL REFERRALS

Referral Body Internal	Comments
NECC (Bushland and Biodiversity)	Approval (subject to conditions) The conclusions and mitigation measures contained within the ecology assessment report by Cumberland Ecology are noted. Based on the information, a significant impact to threatened biodiversity, including direct impacts to Pittwater Spotted Gum Forest, is unlikely. Therefore the development is designed, sited and will be managed to avoid any significant adverse environmental impact, and the Biodiversity Offset Scheme does not apply. The planting of appropriate native vegetation and removal/control of priority and environmental weeds will reduce the impacts of the development. The development requires the removal of one tree, and all other trees will be retained and protected. The mitigation measures contained within the Arborist Report and the revised Landscape Plan are noted.
Landscape Officer	Approval (subject to conditions) The review application REV2020/0002 of the proposed alterations and additions to the existing dwelling consisting of a new detached underground garage at 115A Pacific Road Palm Beach has been assessed by an alternate Landscape Officer.

Referral Body Internal	Comments
	<p>The Landscape Referral for DA2019/0874 contended that the proposed excavation will remove existing rock outcrops and impact upon mature native trees on the site and the adjoining site to the west, the lack of consultant reports in assessment of tree impacts, and the lack of landscape plans.</p> <p>Within REV2020/0002, the Statement of Environmental Effects notes that the design has been modified to retain a large portion of the rock outcrops, and consultant reports including arboricultural, biodiversity and a landscape design have been submitted. The amended garage design proposes to cut and stabilise the rock outcrop, excavate the area, construct retaining walls and a concrete roof slab and then place the remaining section of rock, soil and planting on top of the roof at a similar level that which existed before the development.</p> <p>The following additional information is provided with application REV2020/0002:</p> <p>Arboricultural Impact Assessment prepared by Jacksons Nature Works Landscape design prepared by Jamie King Landscape Architect Ecological Assessment prepared by Cumberland Ecology</p> <p>The existing visually exposed eastern section of the rock outcrop shall be reinstated to maintain the existing landscape character, where the rooftop of the garage will be landscaped to present as a native bushland with rock outcrop.</p> <p>The architectural plans appear to show no design layout change from DA2019/0874, and if approved amended plans at Construction Certificate are required to show the extent of rock outcrop to be reinstated on the garage roof as proposed in the Statement of Environmental Effects, and design verification from a qualified Structural Engineer will also be required regarding the structural design capacity of the garage roof to support rock outcrops, soil and planting, particularly in a 'wet-state'.</p> <p>Note: the rock outcrop shall be a considerable size to recreate the existing natural character and shall not be a collection of smaller size rock.</p> <p>The Arboricultural Impact Assessment provides the following review:</p> <ul style="list-style-type: none"> existing tree 1 (Angophora) and existing tree 2 (Angophora) located within the site, were the subject of a tree root investigation, with non-structural roots encountered in the investigation trench that can be pruned without impact to the long-term health of the trees, and it is assessed that both trees can be retained by tree protection measures as recommended, existing tree 3 (Angophora) located within the site is not impacted by the development works, existing tree 4 (Scribbly Gum) located within adjoining property No. 115, previously encroached by sewer installation, has a minor encroachment and this can be managed by tree protection measures as recommended, existing tree 5 (Paperbark) located within adjoining property No. 115, has a minor encroachment and this can be managed by tree protection measures as recommended,

Referral Body Internal	Comments
	<ul style="list-style-type: none"> existing tree 6 (Paperbark) located within the development footprint on the site is recommended for removal, existing tree 7 (Angophora) located within adjoining property No. 115, has a minor encroachment and this can be managed by tree protection measures as recommended,. <p>To ensure compliance with the recommendations of the Arboricultural Impact Assessment, a Project Arborist shall be engaged to supervise and approved works within the tree protection zones of all trees as reported above.</p> <p>On review of the REV2020/0002 application, the landscape component is now acceptable following submission of additional information including a Landscape Plan and the Arboricultural Impact Assessment, subject to the following requirements:</p> <ul style="list-style-type: none"> amended plans demonstrating the location of the reinstated rock outcrop over the garage roof as proposed within the Statement of Environmental Effects, protection of existing trees in accordance with the recommendation of the arboricultural assessment, including tree protection measures and supervision and approval of all works within the tree protection zones by a Project Arborist, and Installation of the landscape proposal. <p>Protection of existing trees allows the development to be secondary to the natural environment and satisfies Pittwater 21 DCP controls B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; and the locality specific controls under D12 Palm Beach Locality.</p> <p>The landscape proposal satisfies Pittwater 21 DCP controls C1.1 Landscaping, including the reasonable retention and protection of existing significant trees, especially near property boundaries, and retention of natural features such as rock outcrops; and the locality specific controls under D12 Palm Beach Locality.</p>
Development Engineering	<p>Approval (subject to conditions)</p> <p>The proposed development does not require OSD and connection of stormwater into the existing system is satisfactory. The submitted Geotechnical Report addresses the relevant DCP controls. No objection to approval, subject to conditions as recommended.</p>

Referral Body Internal	Comments
Strategic and Place Planning (Heritage Officer)	<p>Approval</p> <p>This application is a Review of Determination request for the refusal of DA2019/0874 in November 2019. It is noted that no heritage comments were provided on the original application.</p> <p>The application is for a detached underground garage with associated landscaping. The proposed garage is largely underground with landscaping above. The proposed garage is located on the south-western corner of the battle-axe allotment known as 115A Pacific Road, located at least 20 metres south of the boundary with 117 Pacific Road and even more distant from the heritage house located on 119 Pacific Road.</p> <p>It is noted from the Heritage Inventory that the heritage trees on 117 Pacific Road are no longer on the site and the separation between the proposed garage development and the heritage listed "Craboon" is such that there will be no visual or material impact upon the heritage significance of this house.</p> <p>Therefore, no objections are raised to this application on heritage grounds and no conditions required.</p>

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Northern Beaches Participation Plan.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 8.2 – Review of Determination

Subclause (1) (a) of Clause 8.2 Determination and decisions subject to review of the EP&A Act states the following:

- 1) *The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division:*
 - a) *the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary).*

Comment

This application was determined under delegation of Council and is being referred to DDP for determination.

Clause 8.3 Application for and conduct of review of the EP&A Act 1979 states:

- 1) *An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.*
- 2) *A determination or decision cannot be reviewed under this Division:*
 - a) *after the period within which any appeal may be made to the Court has expired if no appeal was made, or*
 - b) *after the Court has disposed of an appeal against the determination or decision.*
- 3) *In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.*
- 4) *The review of a determination or decision made by a delegate of a council is to be conducted:*
 - a) *by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or*
 - b) *by another delegate of the council who is not subordinate to the delegate who made the determination or decision.*
- 5) *The review of a determination or decision made by a local planning panel is also to be conducted by the panel.*
- 6) *The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.*
- 7) *The review of a determination or decision made by a Sydney district or regional planning panel is also to be conducted by the panel.*

Pursuant to Section 8.2 of the Act, the applicant seeks a review of all aspects of the refusal of DA2019/0874.

In accordance with Clauses 8.3 and 8.10 noted above, the request for the review and its consideration must be made within 6 months after the date of determination. The application was determined on 5 November 2019. The application requesting a review was lodged on 4 February 2020 and so must be considered and determined by DDP by 5 May 2020, which is within the 6 months from the date the request for the review was made.

Section 8.2 (3) provides that the Consent Authority may review a determination, if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Proposal in Detail' section of this report. In relation to the issue of substantially the same, in *Michael Standley and Associates Pty Ltd v North Sydney Council* [1997] NSW LEC 190 (5 December 1997) Justice Stein noted;

"There are, of course, differences between the building as sought to be modified and the approved development. The question is, however, whether these

differences result in a building, which could no longer be described as "substantially the same development". The mere fact that there are differences does not mean that the proposal is necessarily one which is not substantially the same as the approved development."

The overall built form of the development has been amended from the original scheme to retain the significant portion of the rock outcrop and trees within the site.

The built form is found to be substantially the same, therefore a consideration of whether the development is substantially the same should focus on whether there are sufficient similarities to reasonably conclude the development is substantially the same.

A review of the original and amended plans has found the following similarities between the two schemes:

- The proposal remains for the same proposed use, i.e. for the construction of garage;
- The proposed design changes result in a reduction in the bulk and scale of the building;
- The amendments do not result in any additional impacts or issues that were not relevant to the DA as originally submitted.

Therefore, the proposed development (as amended) is found to be substantially the same and can be assessed under the provisions of Section 8.2 "Review of Determination".

Assessment of the Reasons for Refusal of DA2019/0874

How has the 8.2 Application Responded to the Reasons for Refusal?

The applicant has amended the proposal and has provided additional information. Consequently, the Reasons for Refusal of DA2019/0874 that are stipulated in the Notice of Determination are examined below to determine if they remain applicable or should be overturned:

- 1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979.***

Comment

A detailed assessment of all the applicable Environmental Planning Instruments has been conducted within the original assessment and within this report, where it is found that the proposal (as amended) is found to be consistent with the applicable EPI's.

Consequently, it is recommended that this reason for refusal should not be maintained.

- 2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.***

Comment

The proposal (as amended) has been found to be consistent with the aims of PLEP 2014, in that development would not have an adverse effect on any special ecological, scientific or aesthetic values.

The revised landscape plan submitted with the application demonstrates, that the development will retain and preserve a number of the existing trees on the site. The amended landscaping plan together with recommendations from the Council's Landscape Officer provides for the retention of a significant portion of rock outcrop, including the retention of additional trees.

For the above reasons, it is recommended that this reason for refusal should not be maintained.

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E4 Environmental Living of the Pittwater Local Environmental Plan 2014.

Comment

The proposed development (as amended) is found to be consistent with the objectives of the zone for the following reasons:

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

Comment

The modified development will be of low density and scale, will be integrated into the landform and landscape, and has been designed to respond to site constraints.

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

Comment

The proposal has been designed to minimise the removal of the listed endangered ecological community and maintain as much native vegetation as possible.

- **To provide for residential development of a low density and scale integrated with the landform and landscape.**

Comment

The design, bulk and scale of the proposed garage is low density and responds to the slope of the land as well as the natural environment. In that regard, the development will not dominate the natural environment, being built to a scale that respects the existing vegetation and rock outcrop setting.

In addition, the modified development will not have an adverse effect on any special ecological, scientific or aesthetic values. This has been further ensured by modifying the design to retain the significant portion of the rock outcrop. The design of the proposed garage adequately responds to the slope of the land and the natural environment.

- **To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.**

Comment

The landscaping of the site will preserve as many of the existing trees on the site as possible and minimise any impact on these established trees, and rock outcrop. Landscaping will be integrated into the building design. The natural landscaped bushland

of the site will ensure that the proposed modified garage sits within a natural setting and below the tree canopy, thereby reinforcing Pittwater's special landscaped context. The development will retain and enhance riparian vegetation and wildlife corridors.

For the above reasons, it is recommended that this reason for refusal should not be maintained.

4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.2 Earthworks of the Pittwater Local Environmental Plan 2014.

Comment

The proposed garage is to be underground, which will involve excavation, but will be well below the existing tree canopy, and will minimise the building's bulk and scale. The applicant has submitted a detailed Geotechnical Report with the application which proposes mitigation measures to ameliorate risk to ensure the design and construction of a structurally sound garage. The recommendation of the Geotechnical Report will be imposed as condition of consent.

For the above reasons, it is recommended that this reason for refusal should not be maintained.

5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.6 Biodiversity protection of the Pittwater Local Environmental Plan 2014.

Comment

This issue has been addressed in the Biodiversity Referral section of this report. In summary, the applicant has demonstrated that the proposal as amended is found to be consistent with Clause 7.6 of PLEP 2014.

Consequently, it is recommended that this reason for refusal should not be maintained.

6. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.12 Palm Beach Locality of the Pittwater Local Environmental Plan 2014.

Comment

The site is in the locality of Palm Beach. The development has been designed to preserve the existing character of the site. The proposed garage will site below the existing tree canopy, and will minimise the building's bulk and scale. The exposed structures of the garage will utilise colours and materials to harmonise with the natural existing environment.

Arborist and Ecology reports have been submitted with the application, both of which survey the existing trees, significant shrubs and fauna on site and both conclude that the impacts on the natural environment will be minimal. The arborist report also provides protective measures for the existing trees, which will be adopted as conditions of consent.

The impact of the development on existing vegetation and rock outcrop has been assessed by Council's Landscape Officer and Biodiversity Section and found to be acceptable subject to conditions.

For the above reasons, it is recommended that this reason for refusal should not be maintained.

- 7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor of the Pittwater 21 Development Control Plan.**

Comment:

This issue has been addressed in the Biodiversity Referral section of this report. In summary, the applicant has demonstrated that the proposal as amended is found to be consistent with Clause B4.4 of P21 DCP.

Consequently, it is recommended that this reason for refusal should not be maintained.

- 8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.**

Comment

The proposed garage is excavated within the site and is located within the existing vegetation, therefore the proposed garage will not be viewable from any public place.

Accordingly, it is recommended that this reason for refusal should not be maintained.

- 9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.**

Comment

The proposed underground garage is located 0.67m from the western side boundary, therefore does not technically comply with the minimum 1.0m requirement. The non-compliance relates to the portion of the garage wall and because it's excavated into site, the non-compliance will not result in a structure that will be visually obtrusive.

Despite the non-compliance with the numerical control, the siting of the proposal is considered to be appropriate, and will achieve consistency with the outcomes of the control, as follows:

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

Comment

The setback of the proposed garage in relation to the western boundary does not detract from consistency with the desired future character of the Palm Beach Locality.

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

Comment

The bulk and scale of the garage is minimised by integrating the garage into the site and around the existing rock outcrop.

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

Comment

The proposed works will not result in any loss of views from any surrounding properties or public place. As such, it is considered that the proposal does not result in any unacceptable view loss and is acceptable in terms of the Land and Environment Court Planning Principle established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*.

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

Comment

As discussed above, the proposed garage will not have impact on view sharing and its siting response to the existing rock outcrop and landscaping within the site.

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

Comment

The site is separated from the adjoining property to the west by dense vegetation. As such, there is limited opportunity for overlooking from subject site and from the adjoining property into the proposed garage.

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

Comment

The proposed development (as amended) provide significant landscaping, to dominate the built form and be integrated with the surrounding landforms and landscape features.

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

Comment

The siting of the proposed garage is found to be satisfactory.

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

Comment

The proposal will maintain ecological attributes of the site where possible.

The application is supported by a landscape plan, which demonstrates the inclusion of a reasonable amount of landscaping within the side setback of the site.

- ***To ensure a landscaped buffer between commercial and residential zones is established.***

Comment

Not applicable as the site does not adjoin commercial zone.

For the above reasons, it is recommended that this reason for refusal should not be maintained.

10. ***Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.10 Landscaped Area - Environmentally Sensitive Land of the Pittwater 21 Development Control Plan.***

Comment

The proposed development provides complies Landscape open space provisions in that it provide in excess of 60% of LOS for the site. In addition, the development has been designed to retain a significant portion of the rock outcrop and trees.

Therefore, it is recommended that this reason for refusal should not be maintained.

- 11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.13 Construction, Retaining walls, terracing and undercroft areas of the Pittwater 21 Development Control Plan.**

Comment

The proposed garage has been designed with retaining walls recessed into the earth for minimal exposure, which will be finished with sandstone, to complement the existing natural landforms. The roof of the proposed garage will be landscaped to blend it with existing landscaping within the site.

Therefore, it is recommended that this reason for refusal should not be maintained.

- 12. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.**

Comment

This issue has been addressed in the Biodiversity and Landscape Referral sections of this report. In summary, the applicant has demonstrated that the proposal as amended is found to be consistent with Clause 7.6 of PLEP 2014.

Consequently, it is recommended that this reason for refusal should not be maintained.

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 \$792 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$158,400.

CONCLUSION

This Section 8.2 Review Application has been assessed having regard to the Reasons for Refusal and the previous assessment in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979, Pittwater LEP 2014 and the relevant codes and policies of Council. This assessment has taken into consideration 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.

The amendments to the proposal and new documentation purport to resolve the environmentally sensitive issues forming the basis of the reasons for refusal of the Development Application. Based on a detailed review of the amended plans and additional environmental reports, the applicant has satisfactorily addressed all the reasons for refusal as discussed above.

Therefore, the reasons for refusal of DA2019/0874 should not be maintained and the review application approved subject to conditions.

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

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

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

RECOMMENDATION (APPROVAL)

THAT Council as the consent authority grant Development Consent to REV2020/0002 for Review of Determination of Development Application No. DA2019/0874 for Construction of a garage on land at Lot 2 DP 418388, 115A Pacific Road, PALM BEACH, subject to the conditions attached to this report.



CONDITIONS OF APPROVAL

Application Number:	REV2020/0002
Land to be developed (Address):	Lot 2 DP 418388, 115 A Pacific Road PALM BEACH NSW 2108
Proposed Development:	Review of Determination of Application DA2019/0874 for Construction of a garage

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-01 Issue G (PLAN - SITE, ROOF & SEDIMENT CONTROL)	04/02/2020	Micheal Fountain Architects Pty. Ltd.
DA-02 Issue G (PLAN - GROUND FLOOR)	04/02/2020	Micheal Fountain Architects Pty. Ltd.
DA-10 Issue D (ELEVATIONS)	14/08/2020	Micheal Fountain Architects Pty. Ltd.
DA-11 Issue G (ELEVATIONS)	04/02/2020	Micheal Fountain Architects Pty. Ltd.
DA-20 Issue G (SECTION AA)	04/02/2020	Micheal Fountain Architects Pty. Ltd.
DA-21 Issue G (SECTION BB)	04/02/2020	Micheal Fountain Architects Pty. Ltd.
Sht-101 Issue B (Site Plan)	23/01/2020	Jamie King Landscape Architect
Sht-102 Issue B (Detail Plan Ground Level)	23/01/2020	Jamie King Landscape Architect
Sht-104 Issue B (Sections A & B)	23/01/2020	Jamie King Landscape Architect
Sht-105 Issue B (Sections CC)	23/01/2020	Jamie King Landscape

REV2020/0002

Page 1 of 11



		Architect
Sht-106 Issue B (Elevations)	23/01/2020	Jamie King Landscape Architect

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment Report	23/11/2019	Jacksons Nature Works
Ecology Assessment Report	16/12/2019	Cumberland Ecology
Geotechnical Report (Ref15991SY)	31/07/2019	JKGeotechnics

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
Sht-103 Issue B (Detail Plan Planter Roof Level)	23/01/2020	Jamie King Landscape Architect
Sht-107 Issue B (Area Plans)	23/01/2020	Jamie King Landscape Architect

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	Received 12/02/2020	Rhonda Carr

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	Received 06/03/2020

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

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

3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the
REV2020/0002 Page 2 of 11



Building Code of Australia (BCA).

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

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

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

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



Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



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

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

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

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

FEES / CHARGES / CONTRIBUTIONS



5. Policy Controls

Northern Beaches Council Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 158,400.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.45%	\$ 712.80
Section 94A Planning and Administration	0.05%	\$ 79.20
Total	0.5%	\$ 792.00

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

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

Reason: To provide for contributions in accordance with Northern Beaches Council's Development Contributions Plan.

6. Security Bond

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

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

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

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

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE****7. 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.

8. 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.

9. On slab landscape works

- i) 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 garage concrete slab over which rock outcrop, soil and planting is being provided,
- ii) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule,
- iii) The following soil depths are required to support landscaping as proposed:
 - 300mm for lawn
 - 600mm for shrubs
 - 1000mm for trees
- iv) Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the on slab garage roof is designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting), and the rock outcrop.

Reason: to ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system.

10. Tree Management Plan

A Tree Management Plan, prepared by a qualified AQF level 5 Arborist shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed tree

REV2020/0002

Page 7 of 11



protection measures to be undertaken including protective fencing, trunk protection, ground protection, treatment of severed roots, and the like.

The Tree Management Plan shall additionally provide a schedule of inspections to be carried out by the Arborist including certified approval of works within the tree protection zones of all existing trees identified in the Arboricultural Impact Assessment prepared by Jacksons Tree Services.

Reason: to ensure appropriate tree protection measures are in place during construction activity.

11. Implementation of Ecological Assessment Mitigation Measures

All requirements in the Ecological Assessment (Cumberland Ecology 16 December 2019) are to be implemented prior, during and post construction.

Details demonstrating pre-construction compliance are to be certified by the Arborist / Landscape Architect and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Biodiversity/Vegetation Conservation and Management.

12. Sydney Water "Tap In"

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. Tree removal within the property

The following existing tree assessed and recommended for removal in the Arboricultural Impact Assessment prepared by Jacksons Tree Services is approved for removal as part of this application:

- o tree 6 - Paperbark

No other existing tree is approved for removal. Any subsequent request for tree removal is subject to a Section 4.55 modification application.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. Project Arborist

During the works, a Project Arborist is to be engaged to attend site to supervise and approve the location of tree protection measures and development works such as tree fencing, truck protection, and ground protection, in accordance with the approved Tree Management Plan, and



in accordance with the Arboricultural Impact Assessment recommendations listed under section 5.

The Project Arborist shall document all the associated works including site instructions, recommendations during the works, and photographic evidence to report acceptance of the works within the tree protection zones of all existing trees to be retained and protected.

Reason: ensure the correct procedures and construction techniques are in place and utilised to retain existing trees required for retention.

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

a) Existing trees and vegetation shall be retained and protected as identified in the Arboricultural Impact Assessment prepared by Jackson Tree Services, dated 23 November 2019, including:

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

b) Tree protection shall be generally undertaken as follows:

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

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



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

16. **Protection of rock and sites of significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: preservation of significant environmental features.

17. **Native Vegetation Protection**

Guards or fences are to be provided around native vegetation as identified/ nominated on the approved plans. The guards or fences are to be installed prior to the commencement of any work on the site. No works, including utility installations (eg water, sewer, telephone, drainage), are to be undertaken within 4 metres of the trunk of any such trees. The tree guards shall be a minimum 1200mm high at least four (4) metres from the base of the nominated tree/s and constructed from timber posts and rails or posts and suitable plywood panels.

Reason: To protect and retain trees/the natural environment proposed for retention.

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

18. **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.

19. **Weed Removal and Management**

No weeds are to be imported on to the site.

All invasive and priority weeds on the site are to be removed and managed continuously, in accordance with the Biosecurity Act 2015.

Details demonstrating the removal and management of weeds are to be prepared by the Landscape Architect in writing and submitted to the Principal Certifying Authority prior to occupation certificate.

Reason: Weed management and biosecurity

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

20. **Control of Weeds**

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



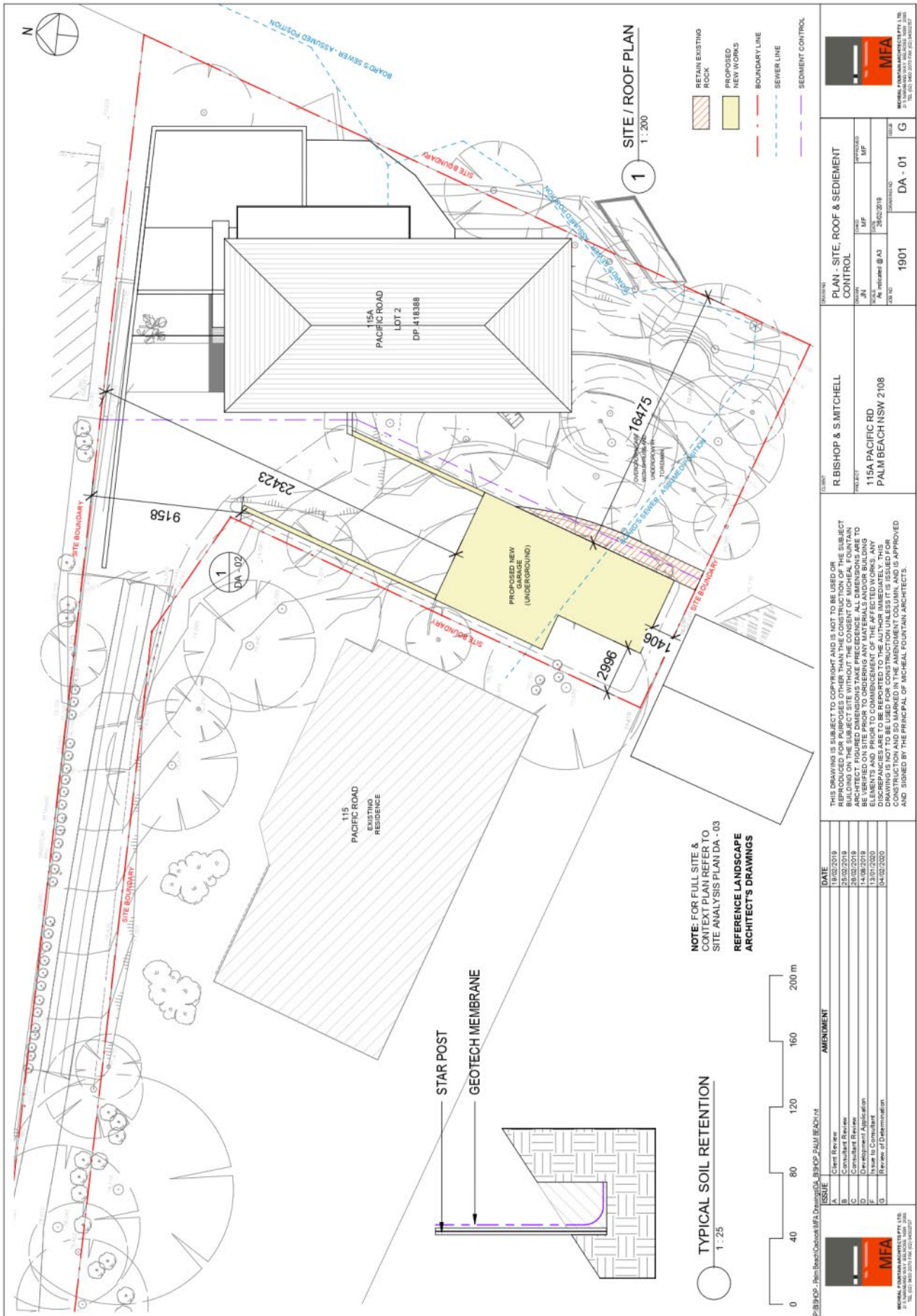
http://www.pittwater.nsw.gov.au/environment/noxious_weeds

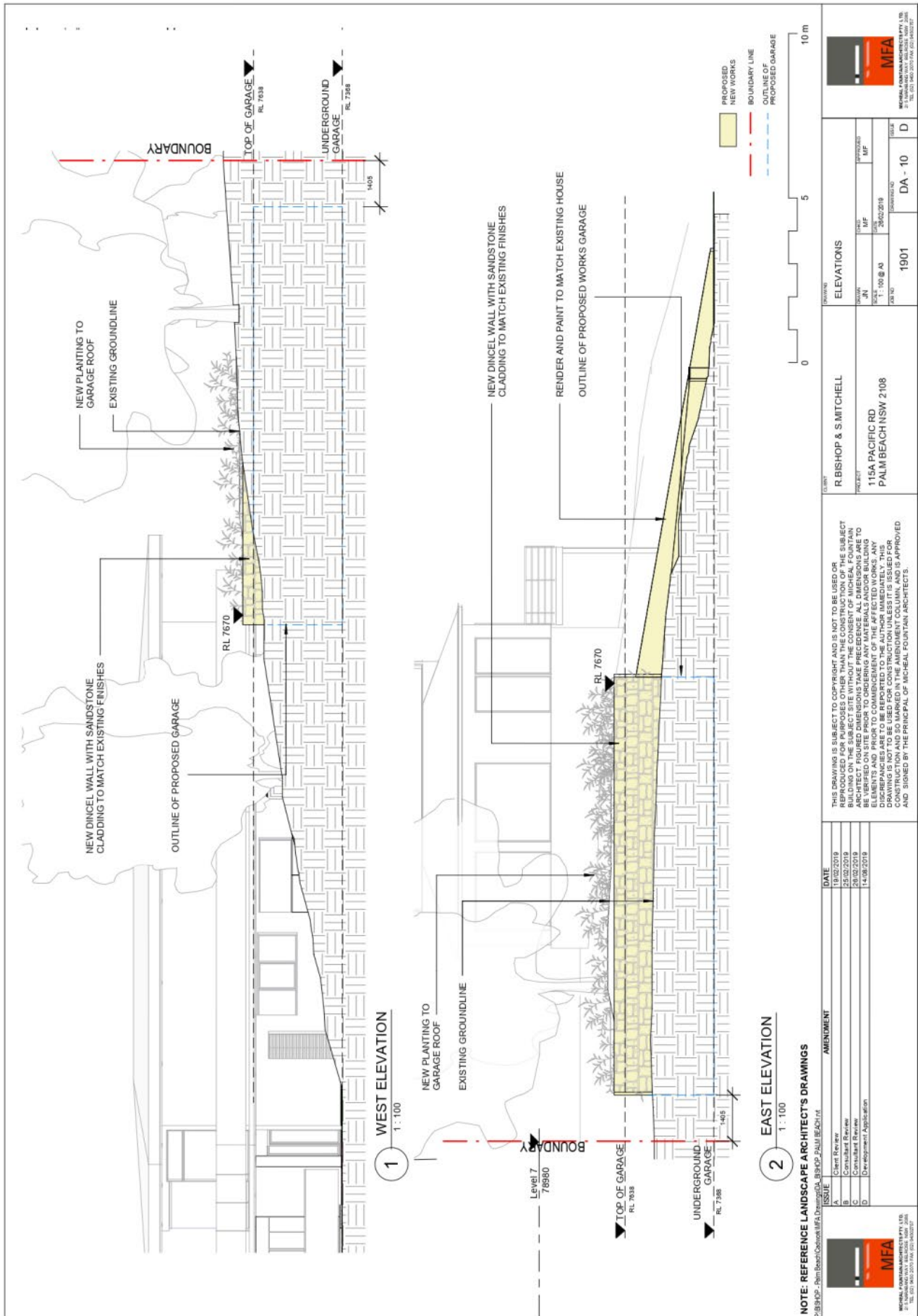
Reason: Weed management.

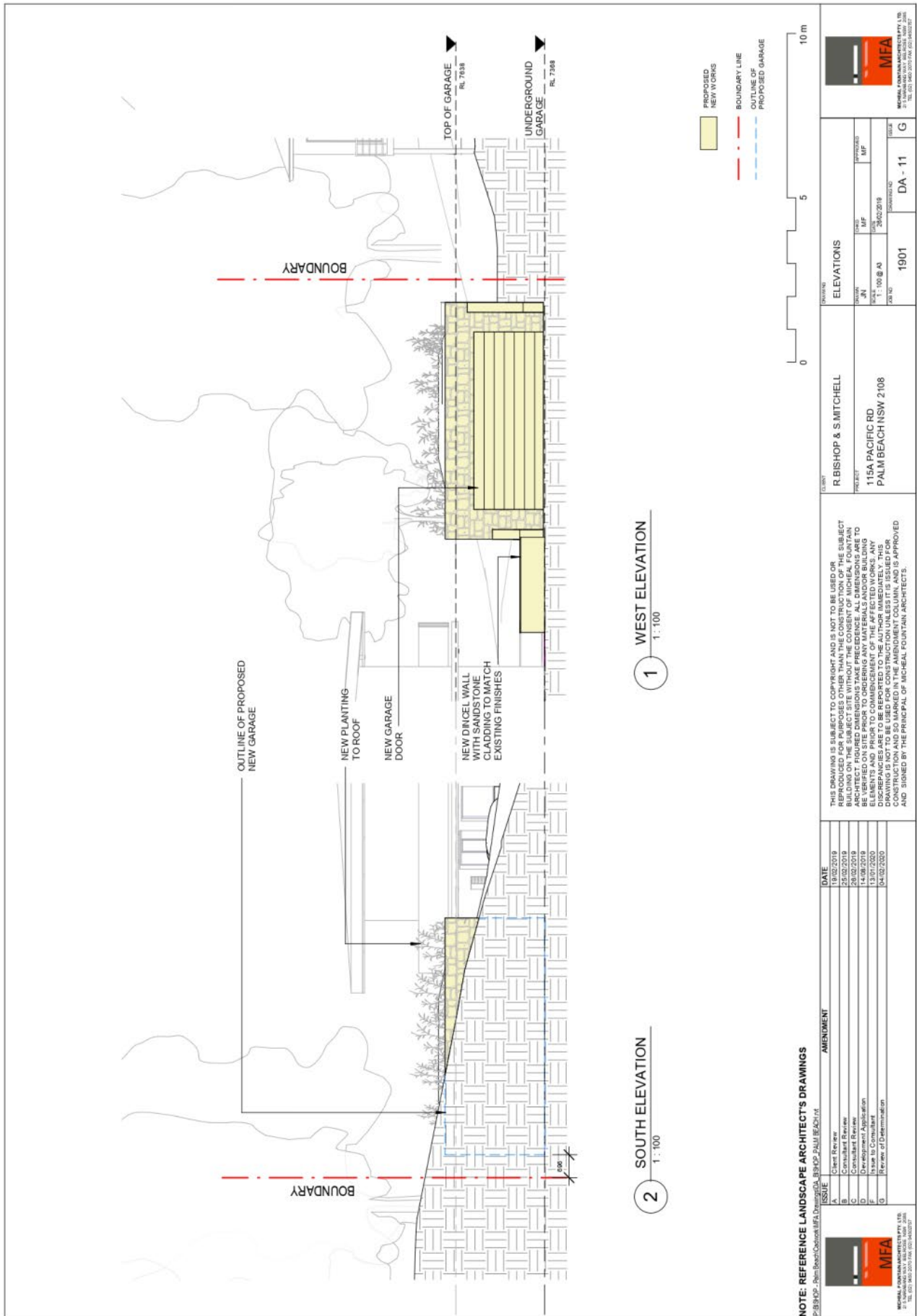
21. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.







ITEM 3.4**DA2019/1383 - 11 OCEAN ROAD, PALM BEACH - DEMOLITION
WORKS AND CONSTRUCTION OF A DWELLING HOUSE
INCLUDING A SWIMMING POOL****REPORTING MANAGER****Matthew Edmonds****TRIM FILE REF****2020/210383****ATTACHMENTS**

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuse** Development Consent to DA2019/1383 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 24 DP 11552, 11 Ocean Road, Palm Beach, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1383
Responsible Officer:	David Auster
Land to be developed (Address):	Lot 24 DP 11552, 11 Ocean Road PALM BEACH NSW 2108
Proposed Development:	Demolition works and construction of a dwelling house including a swimming pool
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	Yes
Owner:	Julie Anne Graham
Applicant:	Julie Anne Graham
Application Lodged:	05/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	17/12/2019 to 22/01/2020
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 31.9%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 3,157,490.00

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for demolition of the existing building on site, and construction of a new multi-level dwelling. The new dwelling is to be comprised of the following:

Lower Ground Floor:

Entrance lobby, wine cellar, storage including bin room, powder room, gym, lift and double garage.

Ground Floor:

Informal living room, gas BBQ, bar, guest bedroom with ensuite, powder room, lift and principle area of private open space that comprises of a sunken lounge, outdoor dining area and swimming pool.

Level 1:

Formal living room, formal dining room, kitchen, butler's pantry, powder room, lift and outdoor terrace.

Level 2:

Study, laundry, lift and three bedrooms (master with walk-in-robe) with an outdoor terrace.

Level 3:

Master bedroom with ensuite and walk-in-robe, reading room and outdoor terrace.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone E4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - C1.24 Public Road Reserve - Landscaping and Infrastructure
Pittwater 21 Development Control Plan - D12.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D12.5 Front building line
Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D12.14 Scenic Protection Category One Areas

SITE DESCRIPTION

Property Description:	Lot 24 DP 11552 , 11 Ocean Road PALM BEACH NSW 2108
Detailed Site Description:	The site is an irregularly shaped lot located on the western side of Ocean Road, directly across the road from Palm Beach. It has an area of 681.3sqm.

The site slopes steeply down from rear to front, with various rock escarpments. The front of the site has been significantly excavated in the past, beneath the front of the existing dwelling on site.

The existing dwelling is a raised one and two storey building. There is also a single detached garage structure located at street level at the front south eastern corner of the site.

The site is vegetated with a mix of native and exotic species.

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 that there have been no recent or relevant applications for this site.

No prelodgement meeting was held with regard to the current application.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April

Section 4.15 Matters for Consideration'	Comments
	2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal. As discussed throughout this report, the proposal fails to achieve consistency with a number of relevant clauses of the DCP.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely	(i) Environmental Impact

Section 4.15 Matters for Consideration'	Comments
impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>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. The proposal is not considered to achieve the relevant requirements and objectives in this regard, and as such is recommended for refusal.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed use of a Dwelling house. However, as discussed throughout this report the details of the proposed dwelling are not considered acceptable.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Pittwater LEP and Pittwater DCP, and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Bertoli Building Pty Ltd	Suite 605 Level 6 22 Market Street Sydney NSW 2000
Robert Purves	24 Sunrise Road PALM BEACH NSW 2108
Thomson Geer	GPO Box 3909 Sydney NSW 2001

Name:	Address:
Mr John Ingham	The Residence Hyde Park, 86/18 College Street DARLINGHURST NSW 2010

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

- Photo Montages / Profiles
- Front setback
- Bulk and scale
- Views
- Shadowing
- Excavation
- Survey

The matters raised within the submissions are addressed as follows:

- **Photo Montages**

A request was made for further photo montages to understand the impacts from the point of view of the neighbour at number 10 to the north. Further requests were made for profiles (height poles) to be erected to better judge impacts on the southern neighbour (number 12), which is currently a vacant lot.

Comment:

The proposal is considered unacceptable in general in relation to the applicable built form controls, as discussed throughout this report, and as such is recommended for refusal. Given this recommendation, requiring the applicant to go to the cost of providing further information and/or height poles is not considered necessary. Additionally, any subsequent view assessment carried out in relation to any height poles erected would not be particularly meaningful given the southern neighbour is currently a vacant lot.

- **Front Setback**

Concerns were raised with the proposed nil front setback.

Comment:

These concerns are supported. The proposed front setback is considered unacceptable in relation to the relevant requirements and objectives of clause D12.5 of the Pittwater DCP (see discussion under relevant clause in this report). Refusal of the application is recommended on this basis.

- **Bulk and scale**

Concerns were raised with the size of the building compared to the size of the property, and that the proposal would visually dominate the area.

Comment:

These concerns are supported, as discussed throughout this report. The proposal involves significant non-compliance with every applicable built form control, and will have a bulk and scale which will dominate the immediate area. Refusal of the application is recommended on this basis.

- **Views**

Concerns were raised by the owner of the vacant neighbouring block to the south regarding view loss.

Comment:

Given that the neighbouring block to the south is vacant, it is impossible to assess view loss for future development of that site in any reasonable way. As such, no unreasonable view loss is considered to occur currently. However, given the level of non-compliance with all applicable built form controls, refusal of the application is recommended. Greater compliance with the built form controls would maximise the opportunity for any future views for a development on the vacant block to the south.

- **Shadowing**

Concerns were raised regarding the level of shadowing of the southern neighbour.

Comment:

As with the discussion regarding views above, a meaningful assessment of shadowing impacts is not possible for the vacant southern lot to the south. Again, given the level of non-compliance with all applicable built form controls, refusal of the application is recommended. Greater compliance with the built form controls would minimise any future possible solar access impacts.

- **Excavation**

Concerns were raised regarding the amount of excavation proposed on the southern boundary. General concerns were also raised with regard to the amount of excavation in general. Further concerns were raised with the adequacy of the geotechnical report, particularly in relation to aspects that the geotechnical engineer has stated may be left to after DA approval and prior to structural design.

Comment:

The application includes a geotechnical report (White Geotechnical Group, 30 August 2019) which meets the requirements of the Geotechnical Risk Management Policy For Pittwater. Given the steepness of the site, the amount of excavation proposed is not considered to be excessive, and is not generally inconsistent with previous development on other similar sites around the Northern Beaches. Non-compliance with the built form controls (including the side setback control) is recommended as a reason for refusal, and in this regard excavation should be moved off the side boundaries.

The adequacy of the report is considered sufficient. Council does not employ qualified geotechnical engineers, and so must rely on the consultant reports provided in this regard. The report submitted includes Forms 1 and 1A of the Geotechnical Risk Management Policy For Pittwater, as is required at DA stage. If the application was to be approved, it would be with a condition to comply with all requirements and recommendations of the geotechnical report. If for some reason further investigations carried out after the DA stage and prior to construction resulted in a need to change the design, a modification application would be required to amend the plans.

- **Survey**

Concern was raised that the survey provided did not survey the entire property (due to access issues to the steep rear), and that the boundaries were not surveyed.

Comment:

These concerns are supported, particularly given the proposed nil setbacks to front and side boundaries. Providing boundary surveys is now a requirement by Council at the DA stage (though was not at the time when the application was lodged). However, given that the application is recommended for refusal, the applicant has not been requested to provide an updated survey at this stage.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The site is in environmentally sensitive lands under the local Planning controls, including E4-Environmental Living Zone, and Scenic Protection Category 1.</p> <p>The proposed works require extensive excavation into the site, including up to the side boundaries. The proposed building also extends to the front boundary and appears to rely on landscaping within the road reserve to provide a landscaped setting to the dwelling.</p> <p>The proposed works are not considered to provide adequate landscape setting in the environmentally sensitive zone and impact significantly on the environmental features of the site.</p> <p>Design amendments could be made to reduce the footprint of the building and respond more sympathetically to the site.</p> <p>Some technical difficulties appears evident regarding proposed landscaping to the upper levels whereby the sections provided don't indicate that there would be adequate soil depth to sustain planting and access for maintenance is not evident, being separated by glass balustrades.</p> <p>At this stage, the proposal is not supported with regard to landscape issues.</p>
NECC (Bushland and Biodiversity)	<p>This application was assessed against:</p> <ul style="list-style-type: none"> • Pittwater LEP Clause 7.6 (Biodiversity) • Pittwater DCP B4.17 (Littoral Rainforest EEC) • Coastal Management SEPP 2018 (Coastal Environment Area) <p>The proposal is for the demolition of the existing structures and construction of a new dwelling with a larger footprint and excavation into the sandstone cliff.</p> <p>The submitted Arborist Report (All Arbor Solutions, 13/10/2019) assesses 6 trees, 2 exempt trees within the property and 3 trees</p>

Internal Referral Body	Comments
	<p>within the neighbouring property to the south. No trees west of the proposed dwelling were assessed although proposal plans indicate these trees are to be retained. No prescribed trees are proposed for removal. The recommended tree protection measures will be conditioned by the Landscape Team.</p> <p>The submitted Flora and Fauna Assessment (Ecoplanning, 24/10/2019) assesses the impacts to biodiversity in accordance with local and state provisions. The assessment found that, "the current proposal was considered unlikely to have a significant impact on any threatened ecological communities, flora or fauna.". The report includes measures to improve biodiversity values of the site including weed management and planting locally native species, which will be conditioned.</p> <p>The Landscape Plan (Sticks & Stones, 8/11/2018) shows 12 locally native trees will be planted onsite, which will enhance the biodiversity value of the site.</p> <p>The proposal is acceptable in terms of biodiversity subject to conditions.</p>
NECC (Coast and Catchments)	<p>Officer comments</p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p>

Internal Referral Body	Comments
	<p>As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Minto Planning Services Town Planning Consultants, dated December 2019, Council accepts the assessment that the DA satisfies the requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>The property is located within a "Wave inundation" hazard area designated on the Coastal Risk Planning Map that is referenced in Pittwater Local Environmental Plan 2014. The subject property is also mapped as being land identified under Coastline Beach Hazard Area on the Pittwater 21 Development Control Plan (DCP) Map MDCP016. As such, the Coastal Risk Management Policy for Development in Pittwater (Appendix 6, Pittwater 21 DCP) and the relevant B3.3 Coastline (Beach) Hazard controls in P21 DCP will apply to new development of the site.</p> <p>Coastline (Beach) Hazard Management</p> <p>A Coastline Risk Management Report by Horton Coastal Engineering Pty. Ltd, dated 20 November 2019, has been submitted with this DA application.</p> <p>The report assessed that "The proposed development would be at an acceptably low risk of damage (over a reasonable 60 year design life) from erosion/recession if founded on bedrock as outlined in Section 6.3, and from coastal inundation and wave runup if the measures outlined in Section 7 are adopted." Compliance with the report must be ensured.</p> <p>The proposed development does comply with the requirements of Clause 7.5 of Pittwater Local Environmental Plan 2014, Section B3.3 of the Pittwater 21 DCP and the Coastline Risk Management Policy for Development in Pittwater for the matters considered herein.</p> <p>Referral Body Recommendation</p> <p>Recommended for approval, subject to conditions</p>

Internal Referral Body	Comments
	<p>Recommended Natural Environment Conditions:</p> <p>CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE</p> <p>Compliance with Coastal Risk Management Report The development is to comply with all recommendations of the approved Coastal Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd, dated 20 November 2019, and these recommendations are to be incorporated into construction plans and maintained over the life of the development.</p> <p>Reason: To ensure coastal risk is addressed appropriately.</p> <p>Low Level Coastal Inundation Risk Design All development must be designed and constructed to achieve a low risk of damage and instability due to coastal inundation, wave impact and foreshore erosion hazards.</p> <p>CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE</p> <p>Post Construction Coastal certificate Prior to the issue of the Occupation Certificate, a Post Construction Coastal Certificate shall be submitted to the Principal Certifying Authority (Form No. 3 of the Coastline Risk Management Policy for Development in Pittwater - Appendix 6 of P21 DCP) that has been prepared and signed by a specialist coastal engineer who is a registered professional engineer with chartered professional status (CP Eng) and coastal engineering as a core competency and who has an appropriate level of professional indemnity insurance.</p>
NECC (Development Engineering)	<p>The subject site is located fronting a road which is under the controls of Transport for NSW (RMS). The current road alignment for the kerb & gutter is not defined. The proposal includes a new driveway crossing, garage and two pedestrian access which is located adjacent to the unformed section of the road verge. Prior to providing a detailed assessment of the application, it is necessary for the application to be referred to the above authority for their comments. RMS is requested to comment on the a new kerb alignment if required, required footpath reserve and the suitability of the proposed access arrangement to the garage. Any road works and permits required are to be recommended as conditions of approval.</p> <p>As Council's Road Asset Team maintain the area of the verge between the kerb alignment and the property boundary it is considered that the application be referred to their department for their</p>

Internal Referral Body	Comments
	<p>consideration with respect to the two private pediatrician accesses. Once comments from both are received Development Engineers can finalise the engineering comments.</p> <p>The submitted stormwater design has been assessed and is considered satisfactory. .</p> <p>Development Engineers cannot support the application due to insufficient information to address clause B6.1 of Pittwater 21 DCP 2014.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed under Pittwater 21 DCP B5.8 Water Quality Pittwater 21 DCP B8.2 Sediment and Erosion Control SEPP Coastal Management 2018 - Coastal Environment Zone</p> <p>The application has not provided water quality treatment, however this can be conditioned. They must install a sediment arrestor pit at the boundary to remove coarse sediments and organic matter from their stormwater prior to discharge from the property.</p> <p>Sediment and erosion controls must be installed prior to any demolition on site and maintained until all work is complete and groundcover re-established.</p>
Parks, reserves, beaches, foreshore	<p>The subject property is separated from Palm Beach Reserve by Ocean Road. The topography of the lot falls steeply eastwards towards the reserve, so sedimentation control has been conditioned to protect reserve amenity. No other issues with the proposal.</p>
Road Reserve	<p>There is limited impact on existing road assets however it is noted that a number of private retaining walls exist within the road reserve corridor. It is noted that it is proposed to remove the existing retaining walls.</p> <p>Any retaining walls that are required to support private property shall be contained within the property boundary and this may require adjustment to the levels within the road verge..</p> <p>The proposed landscaping within the Council public road reserve/verge between the property boundary and the road edge/future kerb alignment is not supported. Whilst it is noted that the existing verge is heavily vegetated, the proposed landscaping is shown to be extending from the property boundary to the edge of the road carriageway/traffic lane. This restricts vehicles pulling onto the road shoulder and/or pedestrian access. Council (and I assume, Transport for NSW (RMS)), would be supportive of the formalisation of the frontage with the construction of kerb and gutter to ensure adequate drainage – this could be included as a condition of consent.</p> <p>The proposed pedestrian access in the form of stepping stones/pavers across the verge is not supported nor the cosmetic appearance of the driveway crossing. Any work on the road reserve will need to comply with Council's standards and specifications.</p>

Internal Referral Body	Comments
	<p>Amended details will need to be submitted as part of s138 application for works on Council's road reserve. This can be covered by conditions of consent by Development Engineers.</p> <p>Recommendation: Refusal (or could be Supported with appropriate conditions requiring the above amendments as part of s138 Road Act application)</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	<p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, the Department of Planning, Industry and Environment (DPIE) and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>
Concurrence – NSW Roads and Maritime Services (s100 – Dev. on proposed classified road)	The application was referred to TfNSW. TfNSW returned the referral, stating that <i>"The proposed development is not on a land reserved for classified road."</i>

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. 1054387S_02).

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

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

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

13 Development on land within the coastal environment area

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

Comment:

The site falls within the coastal environment area. The proposal has been assessed by Council's Coast and Catchment's department, who are satisfied that the development will not cause any adverse impacts on the matters listed above.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposal has been assessed by Council's Coast and Catchment's department, who have stated that the proposal satisfies this clause.

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 site falls within the coastal use area. The application was referred to Council's Coast and Catchment's department, and to the Aboriginal Heritage Office. Neither referral response has raised objections to the proposal, subject to conditions of consent. However, as discussed throughout this report, the proposal is considered to be unreasonable in bulk and scale, and subsequent visual impacts in the context of the surrounding area. For this reason, the proposal is not considered to achieve consistency with this clause.

As such, it is considered that the application does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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

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

Comment:

Council's Coast and Catchment's department is satisfied that the proposal will not cause an increase to risk of coastal hazards.

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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.21m	31.9%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
5.9 Preservation of trees or vegetation	Yes

Clause	Compliance with Requirements
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone E4 Environmental Living

An assessment against the objectives of the E4 Environmental Living zone has been carried out as follows:

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

Comment:

The site is in a highly visible location directly across the road from Palm Beach. The bulk and scale of the development, caused by the level of proposed non-compliance with all applicable built form controls, including the height control, will not result in a visually low impact development.

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

Comment:

The proposal is considered to be inconsistent with the desired character of the locality, as discussed under clause A4.12 in this report. As such, it is not considered to achieve this objective.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:

The proposal will result in significant non-compliance with every applicable built form control, including with regard to the height limit, landscaped area and setbacks. It is not considered to be adequately integrated with the landform or landscape, and will not result in a development that is of a low scale.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

The site is not identified as being in a wildlife corridor or riparian zone and the road is between the site and the beach. However the significant non-compliance proposed with regard to

landscaped open space should be noted, and is another area where the application is deficient.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.21m
Percentage variation to requirement:	31.9%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by*

subclause (3), and

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has not demonstrated that the objectives of the development standard are achieved.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

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

The applicants written request argues, in part:

- The proposal is compliant with the aims and objectives of the E4 zone.
- The proposal is compliant with the objectives of Clause 4.3 of the LEP.
- The proposal is located on a steeply sloping site.
- The proposal is located upon a site which has previously been excavated, resulting in the actual building height being greater than that which would have occurred were the original ground level relied upon.
- The proposal will not result in any unreasonable impacts upon the adjoining properties as a result of its height particularly in relation to overlooking or overshadowing.
- The proposal will provide for a development outcome which is compatible with the surrounding locality and streetscape.

It further argues that compliance with the development standard is unreasonable and unnecessary because:

- The site is a steeply sloping site having a site slope of 31.08 degrees. Council's LEP acknowledges that achieving compliance with height controls is more difficult on sloping sites.
- The subject site has a slope which is nearly twice that contemplated by Council as being a sloping site.
- In addition to the steeply sloping site it is noted that the site has previously been excavated. The existing excavation is located under the existing building envelope and has the effect of exaggerating the building height non-compliance, particularly when assessed against the existing ground levels at the property boundaries. This is evident when comparing the building heights as shown on the side elevation plans and the long section plans, whereby the building based upon the existing ground levels at the boundary has a maximum height of 11.21m compared with the 13m height when measured at the excavated level.
- In relation to the excavated level it is noted that this will be contained within the proposed building envelope and as such the height at this point will not be discernible when the building is viewed from either adjoining properties or the street.

These comments are noted, but are not generally concurred with. The arguments are not considered to provide reasonable justification for the proposed non-compliance. In particular, the following points are made:

- The proposal is not considered to achieve either the objectives of the zone, or of clause 4.3 (see discussion below).
- The steep slope of the site is noted, however, the extent of non-compliance could relatively easily be significantly reduced by reduction in floor to ceiling heights, and further stepping of the building.
- The built form overall is excessive (as discussed throughout this report, and as demonstrated by

non-compliance with all applicable built form controls), and the proposed non-compliance with the height limit will exacerbate this overall over-development of the site.

- The overall height and bulk as proposed will generally inconsistent and significantly larger than the bulk and scale of surrounding development.
- The existing excavation is noted, and the non-compliance is considered to be 11.21m, as measured from the extrapolated natural ground level (as opposed to 13m from the previously excavated ground level). Clause 4.3 allows for a variation to the 8.5m height limit on steep sites of up to 10m. As mentioned above, design changes could be made that would bring the building below this 10m height limit, despite the slope.

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposal will present as an overly large building, the scale of which will generally dwarf its near neighbours. Further, it is not considered to achieve consistency with the desired character statement (see discussion under clause A4.12 in this report).

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

Comment:

The proposed dwelling will be significantly higher than the adjacent and nearby dwellings to the north along Ocean Road. While this height is partly due to the slope of the site, the difference between the proposal and other higher buildings further to the north along Ocean Road should be noted in that the proposal does not propose any significant landscaped front setback area to mitigate against the overall impact of the height and scale of the building. The proposal presents as a dwelling which will dwarf its near neighbours, due not only to the height non-compliance, but also to the proposed non-compliance with every applicable built form control.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The adjoining site to the south is undeveloped. No unreasonable overshadowing is considered to be caused by the proposal.

d) to allow for the reasonable sharing of views,

Comment:

No unreasonable view loss has been identified. The steep slope means that the neighbours to the rear are situated well above the subject site.

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

Comment:

The proposal includes some stepping, but this stepping should be increased to more effectively respond to the topography, and to achieve greater numerical compliance with the control. The proposal has not adequately responded to the topography.

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

Comment:

The visual impact of the development is excessive. The site is in a highly visible location across the road from Palm Beach. The overall development is significantly non-compliant with all applicable built form controls, including landscaped area and setbacks. The proposal will not allow for adequate landscaping surrounding the development to mitigate against the overall bulk and scale. It is not therefore considered to minimise adverse visual impacts on the natural environment.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

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

Comment:

The site is in a highly visible location directly across the road from Palm Beach. The bulk and scale of the development, caused by the level of proposed non-compliance with all applicable built form controls, including the height control, will not result in a visually low impact development.

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

Comment:

The proposal is considered to be inconsistent with the desired character of the locality, as discussed under clause A4.12 in this report. As such, it is not considered to achieve this objective.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:

The proposal will result in significant non-compliance with every applicable built form control, including with regard to the height limit, landscaped area and setbacks. It is not considered to be adequately integrated with the landform or landscape, and will not result in a development that is of a low scale.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

The site is not identified as being in a wildlife corridor or riparian zone and the road is between the site and the beach. However the significant non-compliance proposed with regard to landscaped open space should be noted, and is another area where the application is deficient.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument.

In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard can not be assumed.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5 or established building line, whichever is the greater	Nil	100%	No
Rear building line	6.5m	5.6m	13.8%	No
Side building line	2.5m	Nil	100%	No
	1m	Nil	100%	No
Building envelope	S 3.5m	Up to 4m outside envelope	N/A	No
	N 3.5m	Outside envelope up to 5.2m	N/A	No
Landscaped area	60%	44%	26.7%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.12 Palm Beach Locality	No	No
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.3 Coastline (Beach) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Management		
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
C1.1 Landscaping	No	No
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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	No	No
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	No	No
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	No
D12.6 Side and rear building line	No	No
D12.8 Building envelope	No	No
D12.10 Landscaped Area - Environmentally Sensitive Land	No	No
D12.14 Scenic Protection Category One Areas	No	No

Detailed Assessment

A4.12 Palm Beach Locality

The Desired Character statement requires that *“The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.”*

It goes on to state that *“Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form... A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment”.*

The proposed dwelling will be up to three storeys (above ground level as shown on the side elevations). While this is not necessarily unusual on steep sites, in this case the development will generally present as a building of four to five storeys when viewed from the front. The proposal is significantly non-

compliant with every applicable built form control (as discussed throughout this report), and will create a large building that will not minimise bulk and scale and will visually dominate the immediate area.

The proposed front and side setbacks, and significant shortfall in landscaped area, will not allow for landscaping that will adequately assist in blending into the natural environment. Nor will the development achieve a balance between maintaining the landforms and landscape, and the development of land. The proposal is considered to be an over-development of the site.

The proposal is inconsistent with the desired character as expressed in clause A4.12.

C1.1 Landscaping

Refer to Landscape referral response.

C1.24 Public Road Reserve - Landscaping and Infrastructure

Refer to Road Reserve referral response.

D12.1 Character as viewed from a public place

Description of Non-compliance

The control requires that landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.

An assessment against the objectives has been carried out below:

Merit Assessment

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

Comment:

The proposed development is inconsistent with the desired future character of the Palm Beach Locality (see discussion under clause A4.12 in this report).

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

Comment:

The proposal is overly large and will be of a bulk and scale that dominates the immediate area. The lack of any front setback area to allow for landscaping to visually reduce the built form, combined with the general lack of compliance with any of the relevant built form controls, means the development will not sensitively relate to the spatial characteristics of the area.

- *To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.*

Comment:

The proposed nil front setback will not enable enhancement of the streetscape with vegetation, and the

scale of the development is considered to be unacceptable in relation to the surrounds.

- *The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation.*

Comment:

The development does not provide any front setback area in which to provide vegetation to soften the built form, other than some planter boxes in the undercroft area of the first floor pool and deck. The proposal is for a large development that includes significant non-compliance with all applicable built form controls. The visual impact of the development will not be secondary to landscaping and vegetation.

- High quality buildings designed and built for the natural context and any natural hazards.

Comment:

The design of the building in general is high quality, however, as discussed throughout this report, it is too large in its context. The consultant reports provided demonstrate that no unreasonable impacts will occur in relation to natural hazards.

- *Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum.*

Comment:

The proposed building will dominate the streetscape and surrounding area, and will not give the impression of being two storey maximum, particularly when viewed from Palm Beach. The proposed bulk and scale is not acceptable.

- *To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.*

Comment:

No unreasonable view loss has been identified.

- *To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.*

Comment:

The proposal falls well short of landscaped open space requirements, and no front setback is provided to enable planting to provide any meaningful screening of the built form. The built form of the development will not be secondary to landscaping.

- *To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land.*

Comment:

The proposal will not provide adequate landscaped area, particularly in the front setback area, and will not compliment the landscape character of the area, particularly when viewed from Palm Beach. Rather, the built form is of a bulk and scale that will dominate the immediate area.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

D12.5 Front building line

Description of non-compliance

Development is required to have a 6.5m front setback or match the established building line, whichever is the greater. In this case, 6.5m is slightly greater than the established building line.

The application proposes a nil setback to the first floor (or Ground Level as it is called on the plans), with the garage level below at street level setback 3m in the undercroft area, with planter boxes and the side walls set at nil to the front boundary.

The second storey (Level 01 Floor Plan) is setback a minimum of 3m from the front boundary.

The Level 02 Floor Plan indicates a minimum front setback of 5.2m.

Level 03 is setback a minimum of 6.65m.

Level 04 is setback a minimum of 8.9m, and is the only level to comply in full with the established building line.

Merit consideration

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

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

Comment: The proposal is not considered to achieve the desired future character, as discussed in this report under clause A4.12. The lack of any meaningful landscaped front setback contributes in large part to this inconsistency with the desired future character, as landscaping is unable to be provided to help mitigate against the bulk and scale of the built form.

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

Comment:

There are no views or vistas that have been identified which are adversely affected by the proposed development. Views and vistas are considered adequately preserved.

- *The amenity of residential development adjoining a main road is maintained.*

Comment:

The residential amenity of other residential development along Barrenjoey Road will not be particularly impacted by the proposed front setback (see further discussions under submissions

section of this report).

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

Comment:

The lack of any front setback area to provide significant landscaping will not allow for vegetation to visually reduce the built form in any meaningful way. The proposed dwelling is very large, and will generally dwarf neighbouring buildings. It is also non-compliant with side setback requirements and landscaped open space requirements. The proposal does not achieve this objective.

- *Vehicle manoeuvring in a forward direction is facilitated. (S)*

Comment:

No comments have yet been received from Transport for NSW. However, vehicle manoeuvring in a forward direction is not considered to be a realistic proposition given the slope of the site.

- *To preserve and enhance the rural and bushland character of the locality. (En, S)*

Comment:

The proposal provides no meaningful landscaped front setback, other than a small amount in the undercroft of the first floor. The proposal is also non-compliant with side and rear setback requirements, and landscaped open space requirements. The proposal is considered to be an over-development of the site in general, and does not achieve this objective.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

Comment:

The proposed development is non-compliant with the building height and side boundary envelope controls. The lack of any significant landscaped front setback only exacerbates these issues. The proposal is not of a scale in keeping with the natural environment, and will dominate, rather than enhance the streetscape.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

The proposed dwelling is well designed in terms of materials and architectural features. However, it is too large in its context, and the proposed non-compliance with all applicable built form controls, including the front setback control will not encourage attractive street frontages and improve pedestrian amenity. The application proposes landscaping the road reserve area in front of the site, and this may be expected to worsen pedestrian amenity, and make it impossible to walk past the site without walking in the road.

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

Comment:

The proposed development is of a bulk and scale that will dominate the area and the surrounding built form. The lack of a front setback to the building contributes to this over development of the site, and will not relate to the existing spatial characteristics of the area, as demonstrated by the reasonably uniform established front building line to the north.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

D12.6 Side and rear building line

Description of non-compliance

The Control requires structures be setback a minimum of 1m from one side boundary and a minimum of 2.5m from the other side boundary, and 6.5m from the rear boundary.

The application proposes nil setbacks to both side boundaries, and a minimum rear setback of 5.2m.

Merit consideration

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

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

Comment:

As discussed in clause A4.12 in this report, the proposal is not considered to achieve the desired future character of the locality. The proposed side setbacks are inadequate to support sufficient landscaping to mitigate against the proposed scale of the built form.

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

Comment:

The proposed dwelling will stretch across the entire frontage of the site, with nil side setbacks proposed on both sides at the front of the dwelling. The setback increases on the northern side, however, significant portions of the new dwelling will be within the side setback areas on both sides. The overall building will have a bulk and scale which is generally too large, as discussed throughout this report, and is not considered to be minimised.

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

Comment:

No unreasonable view loss has been identified.

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

Comment:

No unreasonable view loss has been identified.

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

Comment:

The proposal will not necessarily impact in any major way on the privacy, amenity and solar access of neighbours. This is helped by the topography to the rear and the southern neighbouring lot being vacant.

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

Comment:

The proposed development falls well short of landscaped open space requirements, and the proposed setbacks contribute to this issue. The building will stretch from boundary to boundary at the front of the dwelling, and also will be on a nil front setback. The proposal is not considered to achieve this objective.

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

Comment:

The site is steep, and this may be a site constraint that justifies some level of non-compliance with building height side boundary envelope, and front setback (for parking) requirements. However, the steepness of the site does not create any special situation where non-compliance with the side setbacks is justified. The proposal is for a demolition and new dwelling. Compliance with side setback controls is achievable.

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

Comment:

As above, the proposed development falls well short of landscaped open space requirements, and the nil side and front boundary setbacks in particular mean that no meaningful vegetation will be possible to visually reduce the built form.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

Comment:

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

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D12.8 Building envelope

Description of non-compliance

Substantial portions of the proposed new dwelling breach the envelope on both sides. On the northern side the building will be outside the envelope by as much as 5.2m. On the southern side the breach will be up to 4m outside the envelope.

Merit consideration

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

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

Comment:

The proposed development is not considered to achieve the desired future character of the locality, as discussed in this report. The proposed level of non-compliance with the side boundary envelope control contributes to the overall unacceptable bulk and scale of the development.

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

Comment:

The proposed development is significantly non-compliant with the both the envelope and building height controls. There is also a significant shortfall in landscaped open space to allow for planting to mitigate against the bulk and scale, and the overall bulk and scale of the building is considered unacceptable.

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

Comment:

While some level of non-compliance may be acceptable on such a steeply sloping site, the proposal could relatively easily be reduced in height by reduced floor to ceiling heights and further stepping of the development. The dwelling will occupy the majority of the site, and is not considered to be sympathetic to the spatial characteristics of the site and surrounds.

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

Comment:

The scale of the development is considered to be well above what would be considered acceptable. It has not been minimised, and the proposed level of non-compliance with the side boundary envelope, and all applicable built form controls, is symptomatic of this.

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

Comment:

No unreasonable view impacts have been identified.

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

Comment:

The proposed development will not necessarily result in any unreasonable impacts upon the amenity of adjoining properties.

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

Comment:

The proposal falls well short of landscaped open space requirements, and proposes nil front and side setbacks. This will largely prevent the bulk and scale of the built form being adequately mitigated by vegetation.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

D12.10 Landscaped Area - Environmentally Sensitive LandDescription of non-compliance

The control requires a minimum of 60% of the site area to be landscaped.

The application proposes 44% landscaped area.

Merit consideration

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

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

Comment:

As discussed in this report, the proposal does not achieve the desired future character. The lack of landscaped area contributes to this, as the ability to provide vegetation to mitigate against the impacts of the overall bulk and scale is severely limited in the front setback area in particular.

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

Comment:

As discussed throughout this report, the overall bulk and scale of the development is unacceptable. The short fall i landscaped area, particularly in the front and side setback areas means vegetation is not able to be used to minimise the bulk and scale.

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

Comment:

No unreasonable amenity or solar access impacts have been identified.

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

Comment:

The short fall of landscaped area means that insufficient landscaping will be provided to visually reduce the built form. This is particularly problematic in the front setback area.

- *Conservation of natural vegetation and biodiversity.*

Comment:

Council's Bushland and Biodiversity department have assessed the proposal and are satisfied in relation to this issue.

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

Comment:

The proposal has been reviewed by Council's Development Engineer, having regard to provisions for stormwater management and has raised no objections to the proposed stormwater system subject to conditions.

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

Comment:

The proposed landscaping is considered inadequate to appropriately respond to the bushland character of the area. The proposal is for a demolition and rebuild, and there is little justification for such a short fall in landscaped area for essentially a vacant lot (after demolition).

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

Comment:

The significant non-compliance with the minimum 60% requirement is not considered to maximise soft surface to provide for infiltration.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D12.14 Scenic Protection Category One Areas

The control requires that screen planting shall be located between structures and boundaries facing waterways, and that canopy trees are required between dwellings and boundaries facing waterways and waterfront reserves.

For the reasons discussed under the clauses above (in particular, the overall bulk and scale, and lack of any landscaped front setback area), the proposal is not considered to achieve the following objectives of this clause:

- To achieve the desired future character of the Locality.
- To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront.
- Maintenance and enhancement of the tree canopy.
- Colours and materials recede into a well vegetated natural environment.
- To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component.
- To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.
- Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application

is not considered to be acceptable and is recommended for refusal.

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

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

Council is not satisfied that:

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

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

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

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/1383 for the Demolition works and construction of a dwelling house including a swimming pool on land at Lot 24 DP 11552,11 Ocean Road, PALM BEACH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E4 Environmental Living of the Pittwater Local Environmental Plan 2014.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of buildings of the Pittwater Local Environmental Plan 2014.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.12 Palm Beach Locality

of the Pittwater Development Control Plan.

6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.24 Public Road Reserve - Landscaping and Infrastructure of the Pittwater 21 Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.5 Front building line of the Pittwater 21 Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.8 Building envelope of the Pittwater 21 Development Control Plan.
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.10 Landscaped Area - Environmentally Sensitive Land of the Pittwater 21 Development Control Plan.
12. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.
13. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.











Minto Planning Services Pty Ltd

The following provisions of the Pittwater Local Environmental Plan 2014 are considered applicable to the subject site.

Clause 4.3 - Height of Buildings

The subject site is located within Building Height Area “I” and is therefore ordinarily subject to a maximum building height control of 8.5m.

Sub-clause (2D) of Clause 4.3 is also considered to be relevant to the proposal. Clause (2D) states:

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.*

Reference is made to the Architectural Plans (Drawing No. A0300) and which indicates that the site slope of the building envelope is 31.08 degrees.

On this basis it is submitted that a maximum building height of up to 10m may be permissible upon the site.

As detailed on the Architectural Plans (Drawing No. A0200, 201, 300 & 301) the proposal has a maximum height of 13m (measured to the top of the Level 4 glass balustrade) and which exceeds the applicable 8.5m and 10m height requirements.

A Clause 4.6 submission has been prepared in support of this variation as detailed below. It is considered that the submission is well founded and is worthy of the support of the Council.

Minto Planning Services Pty Ltd



Extract of Council Height of Buildings Map

Clause 4.4 - Floor Space Ratio

There is no floor space ratio control applicable to the subject site.

Clause 4.6 - Exceptions to development standards (Height)

This Clause 4.6 submission has been prepared in support of a height of building non-compliance in relation to the height of part of the proposed dwelling to be constructed upon land at 11 Ocean Road, Palm Beach.

The subject site is located within Building Height Area "I" and is therefore ordinarily subject to a maximum building height control of 8.5m.

Sub-clause (2D) of Clause 4.3 is also considered to be relevant to the proposal. Clause (2D) states:

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.*

Reference is made to the Architectural Plans (Drawing No. A0300) and which indicates that the site slope of the building envelope is 31.08 degrees.

Minto Planning Services Pty Ltd

On this basis it is submitted that a maximum building height of up to 10m may be permissible upon the site.

As detailed on the Architectural Plans (Drawing No. A0200, 201, 300 & 301) the proposal has a maximum height of 13m (measured to the top of the Level 4 glass balustrade) and which exceeds the applicable 8.5m and 10m height requirements.

Given that the proposal does not comply with the requirements of Clause 4.3 of the LEP and in order for consent to be granted to the proposal a variation pursuant to Clause 4.6 of the LEP is required.

This Clause 4.6 submission has been prepared in accordance with recent decisions of the Land & Environment Court of NSW and is considered to be well founded and worthy of the support of the Council.

The following is an assessment of the proposed variation against the requirements of Clause 4.6 of the LEP.

1. What are the objectives of Clause 4.6 and is the proposal consistent with them.

The objectives of Clause 4.6 of the LEP 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.*

It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this clause and achieves appropriate flexibility having regard to the steeply sloping topography of the site and the historical excavation which has occurred upon the site.

The proposal also seeks to provide for a high quality, architecturally designed dwelling upon the site and which it is considered will make a positive contribution to the character of the locality.

2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.

Clause 4.3 is contained within Part 4 of the LEP and which is titled Principal Development Standards. It is considered that the wording of the clause is consistent with previous decisions of the Court as to matters which constitute a development standard.

It is noted that both the subject clause and Clause 4.6 of the LEP do not contain exclusions which prevent the application of Clause 4.6.

Minto Planning Services Pty Ltd

On this basis it is considered that the proposal is a development standard for which Clause 4.6 applies.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.

It is my opinion that strict compliance with the requirements of Clause 4.3 is both unreasonable and unnecessary in the circumstances of this case, in that the objectives of the standard are satisfied notwithstanding the proposed non-compliance. In support of this opinion it is submitted that:

- The proposal is compliant with the aims and objectives of the E4 - Environmental Living zone as detailed below.
- The proposal is compliant with the objectives of Clause 4.3 of the LEP as detailed below.
- The proposal is located on a steeply sloping site.
- The proposal is located upon a site which has previously been excavated, resulting in the actual building height being greater than that which would have occurred were the original ground level relied upon.
- The proposal will not result in any unreasonable impacts upon the adjoining properties as a result of its height particularly in relation to overlooking or overshadowing.
- The proposal will provide for a development outcome which is compatible with the surrounding locality and streetscape.

On this basis it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

4. Are there sufficient environmental planning grounds to justify contravening the development standard.

It is considered that a contravention of the development standard is justified on environmental planning grounds given that:

- The site is a steeply sloping site having a site slope of 31.08 degrees. Council's LEP acknowledges that achieving compliance with height controls is more difficult on sloping sites.
- The subject site has a slope which is nearly twice that contemplated by Council as being a sloping site.
- In addition to the steeply sloping site it is noted that the site has previously been excavated. The existing excavation is located under the existing building envelope and has the effect of exaggerating the building height non-compliance, particularly when assessed against the existing ground levels at the property boundaries. This is evident when comparing the building heights as shown on the side elevation plans and the

Minto Planning Services Pty Ltd

long section plans, whereby the building based upon the existing ground levels at the boundary has a maximum height of 11.21m compared with the 13m height when measured at the excavated level.

- In relation to the excavated level it is noted that this will be contained within the proposed building envelope and as such the height at this point will not be discernible when the building is viewed from either adjoining properties or the street.

5. Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed development is in my opinion in the public interest because it is compliant with the zone objectives and the objectives of the particular standard and provides for a high quality built form which will make a positive contribution to the surrounding locality.

In relation to the objectives of the E4 - Environmental Living zone the following comments are provided:

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

Comment

The proposed dwelling house addresses the housing needs of the community by replacing an outdated house in poor condition with a new dwelling that will have a significantly improved aesthetic and landscaped setting.

As detailed in the accompanying Flora & Fauna Assessment report the proposal will have minimal impact on the ecological values associated with the site.

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

Comment

It is my opinion based upon this report and the supporting documentation that the proposal will not result in any unreasonable impacts and as such satisfies the requirements of this objective.

Minto Planning Services Pty Ltd

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment

It is my opinion that the proposal will result in a built form that is of a comparable height, bulk and scale to surrounding dwellings.

It is considered that the proposal has been designed so as to step down the site consistent with the site topography and will provide for an appropriate combination of existing vegetation retention and replacement planting such that the proposal makes a positive contribution to the landscape character of the area.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment

Reference is made to the accompanying Flora & Fauna Assessment Report and which within its conclusion states that:

The proposal does not conflict with the objectives of the zoning under the PLEP (E4 Environmental Living) because the development is considered 'low impact' as the new dwelling will largely occupy the footprint and use the terracing of an existing dwelling. To further support the objectives of this zone, it is recommended that a weed management plan should be instigated in order to enhance the 0.2 ha of retained native vegetation. Planting of native species should also be favoured in landscaped beds.

In addition to the above and importantly, it is noted that the proposal provides for the retention of the existing vegetation corridor which exists to the rear of the existing and proposed dwellings.

In relation to the objectives of the particular development standard it is considered that following objectives of Clause 4.3 of the LEP are applicable:

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

Comment

It is my opinion that the proposal whilst having a height which in part exceeds the applicable height control of 10m is consistent

Minto Planning Services Pty Ltd

with the desired future character of the locality as demonstrated by its compliance with the zone objectives.

In addition to the above it is noted that the proposal is designed by an award winning architect with a proven record of designing high quality buildings. It is considered that the proposal will make a positive contribution to the character of the area.

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

Comment

It is noted that the proposed non-compliances which are attributable to the steeply sloping nature of the site and the historical excavation of the site are limited to the front leading edges of the upper two levels and do not relate to the entire storey.

It is considered that breaches of this nature are not uncommon in this locality.

Whilst the proposal comprises of five levels, it has been designed to step up the site such that the building at no point comprises of more than 3 storeys and is typically no more than 2 storeys in height at any point.

Once completed it is considered that the proposal will present as having a similar height, bulk and scale to surrounding dwellings including recently approved and constructed dwellings.

(c) to minimise any overshadowing of neighbouring properties,

Comment

The proposal will not result in any unreasonable overshadowing of the adjoining properties.

(d) to allow for the reasonable sharing of views,

Comment

It is not considered that the proposal will result in an unreasonable loss of views for adjoining properties and adopts the principles of view sharing.

Minto Planning Services Pty Ltd

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

Comment

Whilst the proposal does involve the further excavation of the site it is not considered that the excavation is excessive or will result in any unreasonable environmental impacts.

It is considered that the extent of excavation proposed is typical of dwellings constructed within this locality.

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

Comment

The subject property is not located in a heritage conservation area and does not adjoin any heritage items.

In relation to the relationship of the proposal to the natural environment reference is made to the accompanying Flora & Fauna Assessment Report and which within its conclusion states that:

The proposal does not conflict with the objectives of the zoning under the PLEP (E4 Environmental Living) because the development is considered 'low impact' as the new dwelling will largely occupy the footprint and use the terracing of an existing dwelling. To further support the objectives of this zone, it is recommended that a weed management plan should be instigated in order to enhance the 0.2 ha of retained native vegetation. Planting of native species should also be favoured in landscaped beds.

In addition to the above and importantly, it is noted that the proposal provides for the retention of the existing vegetation corridor which exists to the rear of the existing and proposed dwellings.

Based upon the above it is considered that the proposal will continue to provide for a development outcome which is compatible with the environmental living zone and the surrounding locality.

Minto Planning Services Pty Ltd

6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

It is my opinion that contravention of the standard does not raise a matter of significance for State environmental planning.

7. What is the public benefit of maintaining the development standard.

It is my opinion that there is no public benefit in maintaining the development standard in this instance given that the proposal is compliant with the zone objectives, provides for development which is compatible with its locality and the absence of any detrimental impact.

Conclusion

It is therefore my opinion based upon the content of this submission that a variation of the maximum height of building provision as required by Clause 4.3A of the Pittwater Local Environmental Plan 2014 is appropriate in this instance.

Clause 5.10 - Heritage Conservation

The subject site is not identified as comprising a heritage item nor is it located within a heritage conservation area and it is not considered to have any heritage significance which would prevent the subject application from proceeding.

The proposal is therefore considered to satisfy the requirements of this Clause.



Extract from Council Heritage Map

ITEM 3.5

**DA2019/1339 - 41 LODGE STREET, BALGOWLAH - TORRENS
TITLE SUBDIVISION OF ONE LOT INTO TWO AND THE
CONSTRUCTION OF TWO SEMI-DETACHED DWELLINGS,
INCLUDING THE DEMOLITION OF THE EXISTING DWELLING**

REPORTING MANAGER**Rodney Piggott****TRIM FILE REF****2020/210480****ATTACHMENTS**

- 1 Assessment Report**
- 2 Site Plan & Elevations**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/1339 for Torrens title subdivision of one lot into two and the construction of two semi-detached dwellings, including the demolition of the existing dwelling on land at Lot 19 Sec 2 DP 6154, 41 Lodge Street, Balgowlah, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1339
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 19 DP 6154, 41 Lodge Street BALGOWLAH NSW 2093
Proposed Development:	Torrens title subdivision of one lot into two and the construction of two semi-detached dwellings, including the demolition of the existing dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	MDD Properties Pty Limited
Applicant:	MDD Properties Pty Limited
Application Lodged:	26/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	10/12/2019 to 15/01/2020
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,000,000.00

Executive Summary

This application for the demolition of existing structures, construction of two semi-detached dwellings and subdivision is referred to the Development Determination Panel as the cost of works exceeds \$1 Million and five (5) submissions have been received against the proposed development. The proposed development is compliant with the Development Standards contained within the Manly LEP 2013 and presents minor non-compliance with the controls for wall height, side setback and total open space contained within the Manly DCP. Each non-compliance is discussed in detail within this assessment report.

The key submissions issues raised are tree removal, privacy, overshadowing and flooding from an overland flow path along the eastern boundary. Council has undertaken assessment of each of the

issues raised and are satisfied that the proposed development will not result in an unreasonable impact to the surrounding properties for the reasons outlined within the report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of demolition of an existing dwelling and construction of two semi-detached dwellings and subdivision. Specifically, the development consists of:

Each dwelling consisting of:

- Basement garage for each dwelling;
- Ground floor consisting of kitchen, living, sitting, laundry and study nook;
- First floor containing four bedrooms, bathroom, en suite, walk in robe and balcony.
- New driveway for vehicular access;
- Landscaping around the development.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 19 DP 6154 , 41 Lodge Street BALGOWLAH NSW 2093

Detailed Site Description:

The subject site consists of one (1) allotment located on the southern side of Lodge Street.

The site is regular in shape with a frontage of 15.24m along Lodge Street and a depth of 50.6m. The site has a surveyed area of 771m².

The site is located within the R1 General Residential zone and accommodates an existing dual occupancy dwelling.

The site has a moderate fall from the rear to the front, with an approximate level change of 4m across the site. A stormwater drainage easement traverses the rear of the site and then along the eastern boundary at a width of 1.8m. A stormwater pipe sits within the easement.

The site has a mature liquid amber tree within the front setback and one street tree on the road reserve (listed as exempt species under Councils Tree Management Controls). One medium height canopy tree exists adjacent to the rear boundary (Large Leafed Privet) which is an exempt species under Councils Tree Management Controls. A variety of low lying shrubs also exist throughout the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a mixture of detached one and two storey dwellings, dual occupancies and a residential flat building. To the west of the site is a detached two storey dwelling. To the east of the site is a two storey dual occupancy with garage under (three storey appearance). Across the road to the north are single storey and two storey 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:

- DA2019/0694 was submitted to Council for construction of a dual occupancy and subdivision. The application was withdrawn by the applicant on 2 September 2019.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Darren James Vorster	144 A Griffiths Street BALGOWLAH NSW 2093
David Fraser Roberts	4 / 142 Griffiths Street BALGOWLAH NSW 2093
Mr Christopher Francis Robertson Mrs Karen Guinn Robertson	1 / 39 Lodge Street BALGOWLAH NSW 2093
Pernille Sealey	36 Bellevue Street FAIRLIGHT NSW 2094
Mr Dominic Christopher Catherin	2 / 39 Lodge Street BALGOWLAH NSW 2093

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

- Concern regarding the impact of the development upon the rear boundary fence and lattice screen adjoining 144A Griffiths Street.
- Concern regarding the number of trees to be removed and request that these be replaced with native mature species.
- Objection to raising the ground level along the eastern boundary and providing a raised building entrance and stairs adjacent the eastern boundary. This would create a privacy, flood impact and implications for the boundary fence.
- Non-compliance with side setback and wall height.
- Privacy concern from windows upon the eastern facade.
- No flora and fauna study has been provided to assess the potential impact upon bandicoots and blue tounge lizards.

- The proposed development will increase the impact of flooding upon 39 Lodge Street caused by an overland flow path along the eastern boundary.
- Non-compliance with open space requirements.
- Impact upon solar access for 39 Lodge Street.
- The impact upon heritage needs to be considered in the assessment of the application.
- The existing duplex should be retained and adapted to lessen the impact upon the environment, rather than demolish and rebuild.

The matters raised within the submissions are addressed as follows:

- *Concern regarding the impact of the development upon the rear boundary fence and lattice screen adjoining 144A Griffiths Street.*
Comment:
The applicant has confirmed the rear boundary fence/lattice screen will be retained and this is notated on the proposed plans.
- *Concern regarding the number of trees to be removed and request that these be replaced with native mature species.*
Comment:
The proposed development involves the removal of one (1) low value native tree and the removal of a number trees which are listed as exempt species under Council's Tree Management Controls. Whilst the removal of a mature liquidamber in the front setback is regrettable, the removal is permitted under Council's tree management controls and the applicant has proposed replacement planting of up to 10 new native trees. Council has recommended conditions which require the new tree planting to have a minimum pot size of 200 litres. The applicant has demonstrated the mature native tree on 43 Lodge Street can be retained and protected throughout the development. Council is therefore satisfied the development is compliant with the DCP with regard to tree retention and replacement planting.
- *Objection to raising the ground level along the eastern boundary and providing a raised building entrance and stairs adjacent the eastern boundary. This would create a privacy, flood impact and implications for the boundary fence.*
Comment:
The previous design submitted under DA2019/0694 (now withdrawn) included a raised entrance and staircase along the eastern boundary. This aspect of the proposal has now been deleted and natural ground levels are maintained between the proposed development and eastern boundary. Therefore, this particular concern has been resolved.
- *Non-compliance with side setback and wall height.*
Comment:
Detailed assessment has been undertaken later within this report with regard to the wall height non-compliance and setback non-compliance. The proposal has been found to be consistent with the objectives of the control notwithstanding the numerical non-compliance. No unreasonable impacts will arise with regards to overshadowing, views or solar access as a direct result of the non-compliance.
- *Privacy concern from windows upon the eastern facade overlooking the entrance of 39 Lodge Street and rear POS area.*
Comment:

The applicant has updated the plan to include an obscure glazed window (Window 9) on the Eastern elevation to limit direct views between this part of the dwelling and the entrance to 39 Lodge Street. This is updated on the elevation plans and notated.

Window 10 is a sunken window and is off-set to the entrance of 39 Lodge Street which is considered to appropriately mitigate direct views.

The upper floor windows upon the eastern elevation are bedroom windows only. Council do not consider bedroom windows to give rise to unreasonable impacts as they are lower occupancy rooms (unlike living rooms and dining rooms) and the windows proposed are not excessive in size.

- *No flora and fauna study has been provided to assess the potential impact upon bandicoots and blue tounge lizards.*

Comment:

The applicant has submitted an arboricultural impact assessment to address the tree removal on the site. Both Council's biodiversity team and landscape officer are satisfied with the proposed tree removal and the impact upon native tree species/wildlife corridors subject to implementation of the proposed landscaping plan and conditions of consent. The application has been referred to Council's biodiversity team who have advised the site is not within identified bandicoot habitat and therefore, the submission of a fauna study is not required. A condition of development consent has been recommended to undertake a pre-clearance survey with regard to Bandicoot Habitat during works.

- *The proposed development will increase the impact of flooding upon 39 Lodge Street caused by an overland flow path along the eastern boundary.*

Comment:

The applicant has submitted an overland flow study to address the overland flow issue along the rear and eastern boundary of the property. Council's development engineers have undertaken a detailed review of the flood study and confirm that the study has demonstrated that the development will not cause an additional flooding impact upon 39 Lodge Street or worsen the impact upon any adjoining site. Conditions of development consent have been recommended to ensure compliance with the requirements of the overland flow study for the proposed development.

- *Non-compliance with open space requirements.*

Comment:

The proposal consists of a 5% non-compliance with the open space requirements under the DCP. A detailed assessment has been undertaken against the controls later within the report and the proposal is found to be consistent with the required objectives and the minor variation is therefore supported.

- *Impact upon solar access for 39 Lodge Street.*

Comment:

A detailed assessment has been undertaken later within this report with particular attention paid to the solar access impacts upon 39 Lodge Street. The assessment has found the proposal to be reasonable in the circumstances and compliant with the controls.

- The impact upon heritage needs to be considered in the assessment of the application.*
Comment:
 The site is not identified as a heritage item, within the visual catchment of a heritage item or within an identified heritage conservation area. Therefore, heritage is not a consideration for the assessment of the application and there are no applicable planning controls with regard to heritage conservation for the subject site.
- The existing duplex should be retained and adapted to lessen the impact upon the environment, rather than demolish and rebuild.*
Comment:
 Whilst the retention and adaption of existing buildings is encouraged, the applicant is within their rights to lodge an application for a new building for Council's consideration. There are no heritage ground which require the retention of the existing building.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p>The development application proposes the Torrens Title subdivision of 1 lot into 2 and the construction of 2 semi-detached dwellings.</p> <p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation within adjoining properties and within the road verge, and the completion of landscaping. Council's Landscape section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, including 4.1.1.2 Residential Land Subdivision, and 4.4.8 Subdivision.</p> <p>Within the site, one native tree exists of low retention value, with the remaining trees on site consisting of Exempt species as listed under Council's Tree Management controls, or as listed as a Priority Weed species under NSW Biosecurity Act 2015. Significant trees are located within adjoining properties and these shall be protected during all stages of works. Conditions of consent shall be imposed to ensure tree protection measures are in place, including protection of trees on adjoining properties and within the road verge.</p>

Internal Referral Body	Comments
	<p>A Arboricultural Impact Assessment prepared by Martin Peacock Tree Care is submitted with the application, and satisfies the DA Lodgement Requirements, subject to conditions.</p> <p>A Landscape Plan prepared by Edwina Stuart Landscape Design is submitted with the application, and satisfies the DA Lodgement Requirements, subject to conditions.</p>
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against Manly LEP Clause 6.5 (Terrestrial Biodiversity). Consistency with the objectives of this clause is dependent upon retention/replacement of native canopy trees and measures to avoid impact to ground-dwelling native fauna such as bandicoots.</p> <p>The subject site is not within habitat for the endangered population of bandicoots at North Head. As such, assessment via the threatened species 'five part test' (pursuant to Section 7.3 of the Biodiversity Conservation Act 2016) is not required.</p> <p>Four of the five trees proposed to be removed are exempt species, while replacement of the one low-retention value native tree has been conditioned. Therefore, subject to implementation of tree protection measures as recommended by Council's Landscape referral body, and pre-clearance surveys of any stockpiles to avoid impact to ground-dwelling fauna, the proposal is considered to be consistent with the control.</p>
NECC (Development Engineering)	<p><u>Second Referral response on 7/4/2020</u></p> <p>New over land flow study has been provided. The safety concern of the overland flow has been addressed. Development Engineering has no objection to the application subject to the following condition of consent.</p> <p><u>First Referral Response on 09/12/2019</u></p> <p><u>General Information</u></p> <p>The development application has proposed the Torrens Title subdivision of 1 lot into 2 and the construction of 2 semi-detached dwellings. The proposal will require the demolition of the existing site structures.</p> <ul style="list-style-type: none"> • The subject site is situated within a known overland flow path and as such a flood report has been prepared to accompany this application. The submitted concept storm-water design has proposed an OSD systems for each lot. A discharge from Lot 1 OSD is directed over the Lot 2. The design has included a rainwater tanks for each Lot and a very unusual network. The proposed site is not affected by flooding, however, it is subject to a significant overland flow. <p>The proposal for driveway crossing has a different layout through the submission, being presented as a combined crossing on the storm-water drainage plan Job No 19-036 and dwg D1/A and</p>

Internal Referral Body	Comments
	<p>shown on the architectural plans as two separate vehicular crossings for each lot. Council prefers proposal of two separate vehicular crossings. The applicant is required to provide a long section through the center line of each crossing, incorporating Council's vehicular crossing for Normal profile and the section shall be in accordance with AS/NZS 2890.1 in relation to required ground clearance.</p> <p>The submitted storm-water concept design on dwg 19-036, D1/A has proposed structure within the existing drainage easement along the proposed Lot 2. The discharge line from OSD located partially within the Lot 1 is crossing the Lot 2 and connecting to the control pit located at the corner of Lot 2. This arrangement has not been acknowledged by any proposed easement on the submitted proposed subdivision plan. The applicant shall reconsider the concept design to explore possibility of increasing the volume of the re-use system (as required by Basix), and in accordance with Council's Specification for the On-site Storm-water Management and permitted deduction from the proposed OSD of up to 100%. The applicant shall provide a detailed calculation of proposed pervious and impervious area of the subject site and design parameters for both OSD systems.</p> <p>The subject property is situated within a known overland flow path that travels in a northerly direction and affects the site. As the proposed development shall not increase flooding or flood hazard onto neighboring lots, the applicant shall provide sections at the significant points and at every 5.0 m over the overland flow path. The sections shall be taken within the property and/or outside of the subject site to show any difference in depth and volume of the overland flow for the post development analysis.</p> <ul style="list-style-type: none"> •
NECC (Stormwater and Floodplain Engineering – Flood risk)	The development is not in a catchment with a Council-adopted overland flow flood study. Therefore, refer to the Development Engineering referral for the overland flow flooding assessment.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	300sqm	Lot 1: 385.5sqm Lot 2: 385.5sqm	N/A	Yes
Height of Buildings:	8.5m	8.4m	N/A	Yes
Floor Space Ratio	FSR: 0.5:1	Lot 1 FSR: 0.48:1 (186.8sqm)	N/A	Yes

	(192.75sqm)	Lot 2 FSR 0.48:1 (186.8sqm)	
--	-------------	-----------------------------	--

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision—consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

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 of the development

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (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 removal of the excavated material.

- (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.

(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.

(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.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of MLEP 2013, MDCP 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.

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

Comment:

The site is currently serviced by the above mentioned infrastructure and is able to be augmented as necessary to serve the development. Council is satisfied that suitable vehicular access is proposed for the site.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: Lot 1: 385.5sqm Lot 2: 385.5sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 2 dwellings (1 dwelling per 300sqm)	2 dwellings (1 per 385.5sqm)	N/A	Yes

	Dwelling Size: 90sqm	186.8sqm each dwelling	N/A	Yes
4.1.2.1 Wall Height	E: 7m (based on gradient 1:12)	6.2m - 7.8m	11%	No
	W: 7m (based on gradient 1:12)	6.3m - 7.5m	7%	No
4.1.2.2 Number of Storeys	2	3	N/A	No
4.1.2.3 Roof Height	Height: 2.5m	1m	N/A	Yes
	Pitch: maximum 35 degrees	10 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line 7.3m	8m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 1.3m - 1.7m (based on wall height ground floor wall)	1.83m - Ground floor	N/A	Yes
	E: 2.06m - 2.6m (based on varied wall height first floor wall)	2.53m - First floor	2.6%	No
	W: 1.3m - 1.7m (based on varied wall height of ground floor wall)	1.83m - Ground floor	N/A	Yes
	W: 2.1m - 2.5m (based on wall height first floor wall)	2.53m - First floor	N/A	Yes
	Windows: 3m	1.83m - 2.5m	N/A	No
4.1.4.4 Rear Setbacks	8m	13m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	Lot 1 - 50% (193.25sqm) Lot 2 - 50% (193.25sqm)	5%	No
	Open space above ground 25% of total open space	Lot 1 - 17% Lot 2 - 17%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	Lot 1 - 55% Lot 2 - 72%	N/A	Yes
	2 native trees per lot	Lot 1 - 6 trees Lot 2 - 5 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	122sqm per dwelling	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	Lot 1: 43% Lot 2: 43%	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	Lot 1: 2 spaces Lot 2: 2 spaces	N/A	Yes

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

variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The application has been assessed against the solar access provisions contained within the DCP relating to private open space and living room windows. The application has found to be compliant with regards to the solar access provisions contained within the DCP and development not considered to have an unreasonable overshadowing impact.

A detailed assessment has been undertaken with regards to Unit 1 and 2, 39 Lodge Street which each placed a submission against the application with regards to solar access.

Private Open Space (POS) Solar Access

The DCP requires that new development must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June).

The application has been provided with shadow diagrams that demonstrate the existing overshadowing and proposed overshadowing impact of the private open space of the two adjoining properties No.39 and No.43 Lodge Street.

The ground level POS area directly adjoining the rear of the duplex on No.39 Lodge Street is already impacted by self overshadowing by virtue of the direct north-south orientation of the site and the existing building on 41 Lodge Street (which impacts this area during the afternoon period). Therefore, the overshadowing of the rear ground level POS directly adjoining the duplex is an existing impacted area that is not a new impact as a result of the proposed development.

However, the upper floor Unit 2/39 will maintain the required 4 hours of solar access to an upper floor terrace at the rear of the property.

The ground floor Unit 1/39 will maintain the required 4 hours of solar access to an outdoor area located in the rear garden of the site towards the rear boundary.

The proposed development is compliant with each development standard, compliant with the DCP controls relating to wall height and setback for the rear portion of the building (the portion of the building relative to the overshadowing) and each unit for 39 Lodge Street will retain solar access to a POS area within the site. With this considered, the proposal does not cause an unreasonable impact with regard to overshadowing of POS.

Living room window Solar Access

The DCP requires that solar access is maintained for a minimum 4 hours to living room windows for adjoining properties. Each unit within the duplex of 39 Lodge Street contains a north facing living room window facing the street. This window will continue to receive the required 4 hours solar access in accordance with the DCP. Therefore, the development is compliant in this regard.

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

Description of non-compliance

The proposal is non-compliant with clause 4.1.2.1 Wall Height, which requires a maximum wall height of 7m based on the site gradient. A portion of the dwelling is non-compliant with wall height as shown in the below Figure.

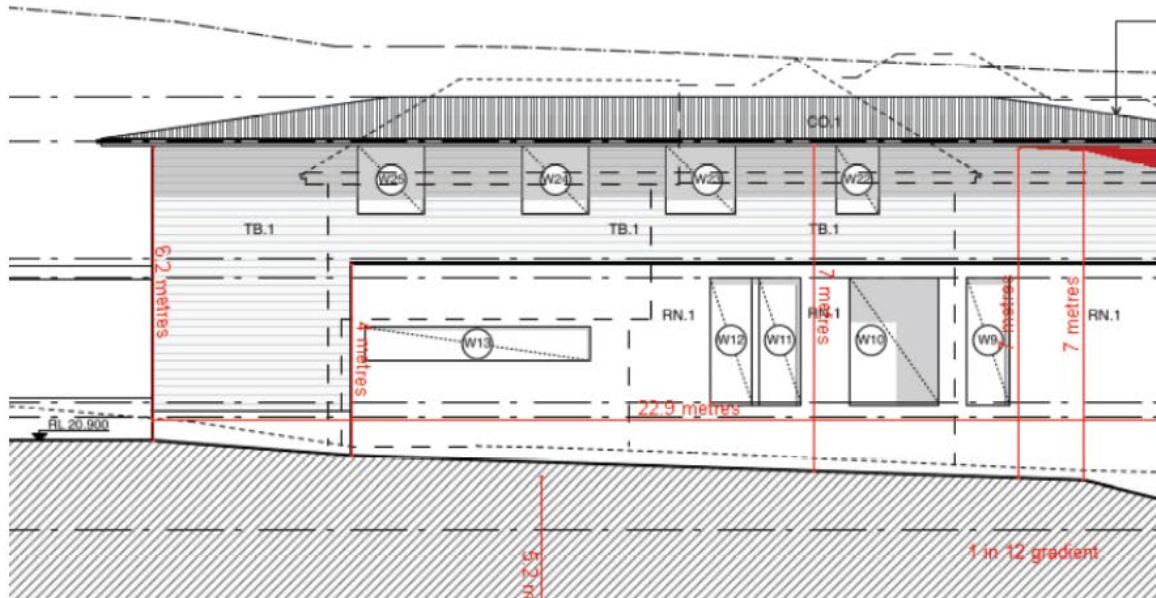


Figure 1 - Eastern elevation non-compliance with wall height.

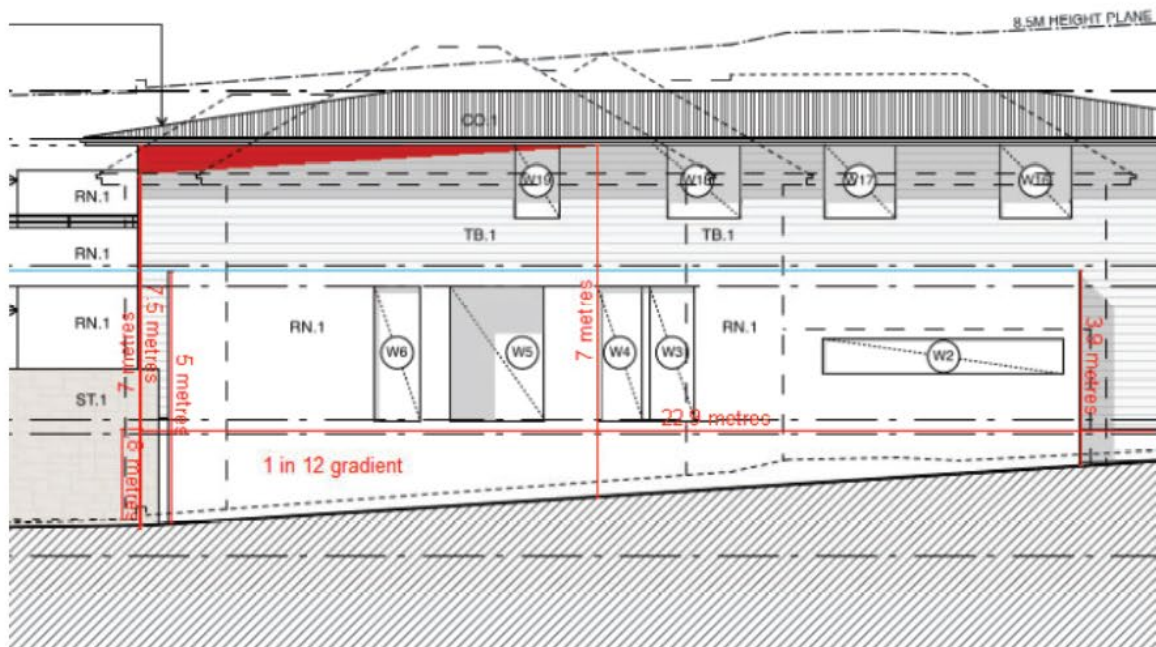


Figure 2 - Western Elevation non-compliance with wall height.

The proposal is non-compliant with clause 4.1.2.2 Number of Stories, which requires dwellings to be a maximum of 2 stories. The proposal is partially three stories at the property frontage. The lower storey is considered to be partially a basement level which is for car parking. It is noted that this is not inconsistent with the existing development within the immediate vicinity of the site, including the existing dwelling on 41 Lodge Street, the adjoining duplex on 39 Lodge Street and a recently constructed dual

occupancy 31 Lodge Street.

Merit Consideration

The proposal is assessed against the objectives of the control in considering the merits of the variation. The objectives are as follows:

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

Comment: The proposed development is not inconsistent with the surrounding buildings with regard to bulk and scale. There are numerous examples of partial three storey dwellings within the immediate vicinity of the site, especially on the southern side of Lodge Street. There is sufficient landscaped area provided to establish canopy tree plantings to maintain the landscaped setting.

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

Comment: The minor non-compliance with wall height does not render the building excessive with regards to bulk and scale. As stated above, the surrounding development is of similar size and scale with a variety of dwellings, dual occupancies and a residential flat building within the immediate of the site.

(c) to minimise disruption to the following

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

Comment: The proposed development does not have a view impact from public or private places.

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

Comment: A detailed assessment against the solar access controls contained under Clause 3.4.1 MDCP has been undertaken earlier within this report. The proposal is found to not have an unreasonable overshadowing impact and compliant with the solar access controls.

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

Comment: This is not applicable to the proposed development.

The proposed development is consistent with the required objectives of the Manly DCP/Manly LEP and therefore, the variation to the control is supported in this particular circumstance.

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

Description of non-compliance

The DCP requires that development is to have a side setback one third of the wall height. The proposal presents a minor non-compliance for the upper floor on the eastern elevation. The first floor is setback 2.5m on the eastern elevation. The non-compliant portion of the building is demonstrated in the below

figure.

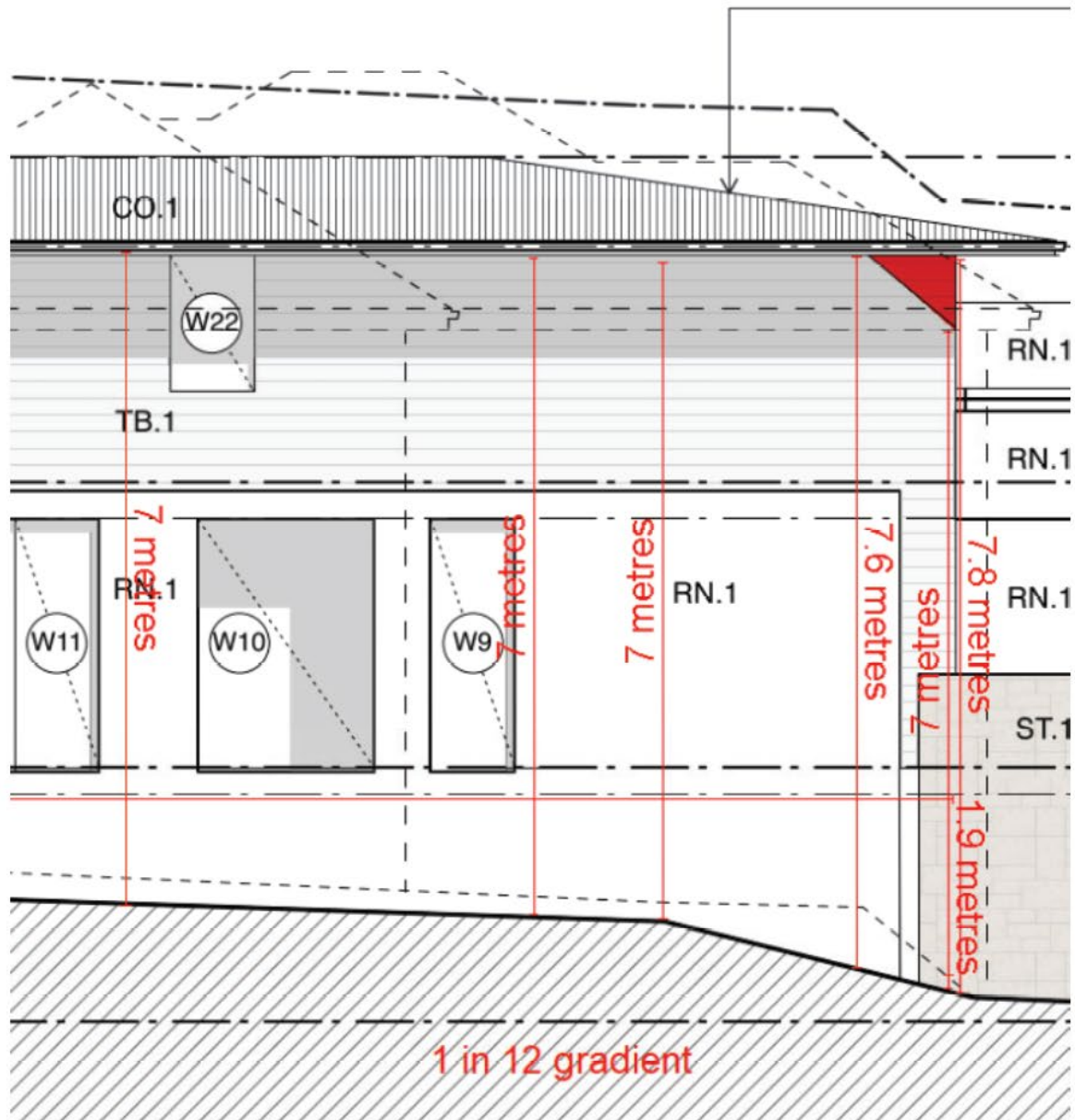


Figure 1 - Non-compliant portion of building shown in red.

Merit Consideration

The proposed development is assessed against the objectives of the particular control is assessing the merits of the variation.

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

Comment: The proposed development is compliant with regard to front setback and majority of the building compliant with side setback except for a minor portion. There is sufficient room in the front setback area to establish canopy tree planting to maintain the landscaped setting of the street.

Objective 2) To ensure and enhance local amenity by:

- providing privacy;*
- providing equitable access to light, sunshine and air movement; and*
- facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*
- See also objectives at paragraph 3.4 Amenity.*

Comment: As discussed in detail elsewhere within this report, the proposed development does not create an unreasonable overshadowing impact and maintains a reasonable level of privacy for adjoining sites. No view impacts will result from the proposal and the spatial proportions and rhythm of the street is maintained through a compliant front setback and suitable spatial separation between the side boundaries.

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

Comment: The building is able to maintained via the side setback areas and is positioned in a way most suitable for the site constraints.

Objective 4) To enhance and maintain natural features by:

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

Comment: The proposal does not result in a loss of significant native canopy trees, the removal of trees is limited to exempt species and identified noxious weeds. Ample landscaped open space is provided to provide new native canopy tree planting as required by the conditions of consent and landscaping plan.

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

Comment: Not applicable, the site is not bushfire prone land.

The proposed development is consistent with the objectives of the particular control contained within the Manly DCP, and therefore the minor variation to the control is supported in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposed development is required to have 55% of site area consisting of total open space. The proposed development consists of 50% open space, non-compliant with the control. The proposal complies with the remaining provisions of the control including soft landscaping.

Merit consideration:

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

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

Comment: The proposal does not result in the removal of any significant value native trees. A number of trees are proposed to be removed, however are not native species and are listed as exempt under the DCP. The proposal allows for ample room for replacement native species which is demonstrated upon the landscape plan and will form conditions of consent. Council's landscape officer has reviewed the proposal and is satisfied it can meet the requirements of the DCP with regard to landscape planting.

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

Comment: The proposal will provide ample room for replacement species to be placed within the site as per the submitted landscape plan and conditions of development consent. Significant native trees are retained and to be protected.

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

Comment: The proposed development will not have an unreasonable impact with regard to views, privacy and access to sunlight. The proposal is consistent with the desired future streetscape and is of a similar scale to the surrounding development. The proposal is consistent with the predominant front setback established by the street.

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

Comment: The development is compliant with regard to the amount of soft landscaping required. Council's development engineers have reviewed the method of stormwater drainage and are satisfied that the proposal can adequately manage stormwater.

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

Comment: The proposal includes the removal of non-native species and replacement with native species/non-invasive weeds.

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

Comment: The proposal will consist of replacement native canopy tree planting to assist potential wildlife corridors.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$10,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,000,000.

CONCLUSION

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

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

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

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

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

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

- The issues raised in the submissions including (but not limited to) overshadowing, privacy, tree removal and the impact of flooding from and overland flow path adjacent to the eastern boundary.
- The non-compliance with the controls for wall height, side setback and total open space

contained within the Manly DCP.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/1339 for Torrens title subdivision of one lot into two and the construction of two semi-detached dwellings, including the demolition of the existing dwelling on land at Lot 19 DP 6154, 41 Lodge Street, BALGOWLAH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A.03-A	22 October 2019	Eaton Architects
A.04-B	24 February 2020	Eaton Architects
A.05-B	24 February 2020	Eaton Architects
A.06-B	24 February 2020	Eaton Architects
A.09-B	24 February 2020	Eaton Architects
A.10-A	24 February 2020	Eaton Architects
Waste Management Plan	1 July 2019	Eaton Architects
Plan of Proposed Subdivision, Ref 21276	11 November 2020	Eaton Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
D1, Revision C	7/04/2020	Soliman Hann & Associates
D2, Revision C	7/04/2020	Soliman Hann & Associates
D3, Revision C	7/04/2020	Soliman Hann & Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No.1018706_02	25 November	Efficient Living Pty Ltd

	2020	
Flood Study, Reference 19848, Revision 3	April 2020	C.K Engineering Services
Geotechnical Investigation Report, No.8956-GR-1-1	30 April 2020	Alliance Geotechnical
Arboricultural Impact Assessment Report	4 June 2019	Martin Peacock Tree Care

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
LP-01, Revision A	16/10/2019	Edwina Stuart
LP-02, Revision A	16/10/2019	Edwina Stuart
PS-01, Revision A	16/10/2019	Edwina Stuart

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

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

2. **Prescribed Conditions**

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

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

that Act,

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the

Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$10,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,000,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website

at www.northernbeaches.nsw.gov.au

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

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

5. **Security Bond**

A bond (determined from cost of works) of \$2,000 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 Bond (Drainage)**

The applicant is to lodge a bond of \$ 10000 as security against any damage to the stormwater drainage infrastructure within the development site as part of this consent

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

Reason: Protection of Council's Infrastructure.

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

7. **Stormwater Disposal**

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

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

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

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

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

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

Reason: Protection of Council's Infrastructure.

9. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted) - Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure

10. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- The elevated platform, stairs and paving along the eastern extent of the dwelling as shown in the engineering plans Drawing. D1 Revision C, dated 7/04/2020, prepared by Soliman Hanna & Associates shall be deleted from the engineering plans.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

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

11. **Fire Separation**

The new building that is proposed to be constructed as two semi-detached dwellings is required to comply with Part 3.7 of the Building Code of Australia –'Fire Safety'.

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 fire safety and for building occupant safety

12. **Sound Insulation**

The new building that is proposed to be constructed as two semi-detached dwellings is required to comply with Part 3.8.6 of the Building Code of Australia –'Sound Insulation'.

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 building occupant health and amenity

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. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. 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 facilitate suitable vehicular access to private property.

15. **Waste Management Plan**

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

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

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

16. **Amended Landscape Plans**

Amended Landscape Plans shall be issued to the Certifying Authority at Construction Certificate stage to amend the following details on the Landscape Plans LP-01, LP-02 and PS-01 prepared by Edwina Stuart Landscape Design:

- i) Cupaniopsis anacardioides shall be removed from the works and schedules and replaced with a suitable small native tree as listed in the Manly DCP, under Schedule 4 - Part B - Native Tree Selection, including either Tristaniopsis laurina or Syzygium paniculatum or Eucalyptus haemastoma, or a combination. The location of the tree planting shall be at least 2 metres from any walling and 2 metres from the front boundary,
- ii) all tree planting shall be planted within the site at a minimum 200 litre container size,
- iii) tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may otherwise be

positioned to minimise any significant loss of views,
iv) all proposed planting shall be nominated within the plans,
v) the proposed *Rhaphiolepis indica* shrub planting shall be deleted and replaced with a non self-seeding species.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: provide landscape amenity to soften the built form and provide landscape amenity.

17. **Compliance with Standards**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **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.

19. **Tree protection measures**

An Arborist with AQF Level 5 qualifications in arboriculture/horticulture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970 - 2009 Protection of Trees on Development Sites, and in accordance with the recommendations of the Arboricultural Impact Assessment Report prepared by Martin Peacock Tree Care, including the following:

- o site attendance, inspection and certification of tree protection measures as listed in section 9.0 Recommendations, specifically 9.2, 9.3, 9.4, 9.5, 9.6 and 9.7. These tree protection measures shall be undertaken at the commencement of works, as well as during demolition and excavation near the existing trees identified as A, C, E and F within adjoining property and within the road verge,
- o site attendance, inspection and certification of tree fencing and ground protection works within the tree protection zone as identified in Appendix B - Tree protection Plan.

The tree protection measures and fencing specified in this clause must:

- i) be in place before work commences on the site, and
- ii) be maintained in good condition during the construction period, and
- iii) remain in place for the duration of the construction works.

Additionally, the Certifying Authority or a Project Arborist AQZ Level 5 must ensure that:

- i) the activities listed in section 4.2 of AS4970 - 2009 Protection of Trees on Development Sites,

do not occur within the tree protection zone of any tree, and
ii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

The Arborist shall provide the Certifying Authority with certification details that the tree protection measures are in place at the commencement of works.

A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: to ensure intrusions into the tree protection zone are minimised to protect significant trees.

20. **Tree removal within the property**

The following existing trees within the site are granted approval for removal as recommended in the Arboricultural Impact Assessment report prepared by Martin Peacock Tree Care:

- T1 Liquidamber (exempt)
- T2 Pencil Pine (exempt)
- T3 Lilly Pilly (low retention value and impacted by development)
- T4 Cocus Palm (exempt)
- T5 Large Leaved Privet (Priority Weed Species)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. **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.

22. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

23. **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.

24. **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.

25. **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.

26. **Vehicle Crossings**

The Applicant is to construct two vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/2 NH and the driveway levels application approval. 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.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying

Authority.

Reason: To facilitate suitable vehicular access to private property.

27. **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.

28. **Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected as identified in the Arboricultural Impact Assessment Report prepared by Martin Peacock Tree Care, including:

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

b) Tree protection shall be generally undertaken as follows:

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

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

tree.

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

29. **Pre-clearance Survey Required – Bandicoot Habitat**

A pre-clearance survey for wildlife is required prior to the relocation or removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no wildlife are present within the area to be cleared. All clearing must initially be carried out with hand tools to identify whether any wildlife are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter). A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to the Principal Certifying Authority.

Reason: To avoid injury or death of wildlife which may be utilising stockpiles of vegetation, materials or debris.

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

30. **Landscape works**

Landscaping is to be implemented in accordance with the approved Amended Landscape Plans.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the amended landscape plans, and any relevant condition of consent.

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

31. **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.

32. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted) - Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure

33. **Post-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a post-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 on Council's web site.

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

Reason: Protection of Council's Infrastructure.

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

34. **Landscape maintenance**

Any existing landscaping including trees required to be retained together with any additional landscaping required by this consent is to be maintained for the life of the development.

A 12 month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. All planting must be maintained for the life of the development, or for their safe useful life expectancy. Planting that may die or is approved for removal must be replaced.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

35. **Environmental and priority weed control**

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: preservation of environmental amenity.

36. **No Planting Environmental Weeds**

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

Reason: Weed management.

37. **Dead or Injured Wildlife – Manly LEP Clause 6.5**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

38. **Provision of Services for Subdivision**

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

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

39. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by 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 fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

40. **Easement for Drainage**

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

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

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

41. **Easement for Services**

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

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

42. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

43. **Restriction as the User (Stormwater Overland flow)**

A restriction as to user shall be created on the title over the area affected by the 100 year ARI

stormwater overland flow in order to :

1. Prohibit the alteration of the final stormwater overland flow path.
2. Prohibit the erection of any structure (including fencing) within the overland flowpath without the written permission of Northern Beaches Council.
3. The future floor level of any dwelling and structures is not to be less than the building platform levels indicated in plans prepared by C. K. Engineering Services, Reference No 19848, Revision 3 and dated April 2020. Such levels are to be detailed in Australian Height Datum on the Section 88B instrument and related to Australian Height Datum and submitted Council for approval.
4. The future building footprint of any dwelling and structures is not to be larger than the building platform indicated in plans prepared by C. K. Engineering Services, Reference No 19848, Revision 3 and dated April 2020.

Northern Beaches Council shall be nominated as a 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 the Subdivision Certificate.

Reason: To ensure no modification of the stormwater overland flow path and the building platform without Council's approval

44. **Survey Plan - Construction Identification**

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

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

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

45. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.





ITEM 3.6

**DA2019/1258 - 29 PARKVIEW ROAD, FAIRLIGHT - DEMOLITION
WORKS, CONSTRUCTION OF A DUAL OCCUPANCY
(ATTACHED) AND STRATA SUBDIVISION**

REPORTING MANAGER

**Rodney Piggott
2020/210527**

TRIM FILE REF

1 Assessment Report

ATTACHMENTS

2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/1258 for demolition works, construction of a dual occupancy (attached) and strata subdivision on land at Lot 30 DP 6413, 29 Parkview Road, Fairlight, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1258
----------------------------	-------------

Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 30 DP 6413, 29 Parkview Road FAIRLIGHT NSW 2094
Proposed Development:	Demolition works, construction of a dual occupancy (attached) and strata subdivision
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Ludo 1 Pty Limited
Applicant:	Ludo 1 Pty Limited

Application Lodged:	11/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	25/11/2019 to 09/12/2019
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,042,000.00
---------------------------------	-----------------

EXECUTIVE SUMMARY

The proposal is for the demolition of existing site structures and the construction and strata subdivision of a dual occupancy (attached)

It is considered that the proposed dwellings adequately address both Parkview Road and Cecil Street with a highly articulated and modulated built form which incorporated ample amount of landscaped open space to ensure a proposal in keeping with the residential characteristics of the area.

A prelodgement meeting with Council by the owner and his architect took on the advice from Council and substantially amended the original design. These included greater setbacks, in particular to the western side boundary to ensure adequate solar access to 27 Parkview Road (property to the south) and better spatial separation to 1 Cecil Street (property to the west). Other design modifications

included more landscaping elements and windows (in particular to Cecil Street frontage) to improve the presentation to the streetscape.

A number of submissions has been received from property owners in Cecil Street to the west and north of the subject site. The submission raised concerns in relation to streetscape, parking, that the proposal fails to promote good design and amenity, rejection of the development and a redesign and public benefit/interest.

The application was assessed against the planning controls of the MDCP 2013 and development standards under the Manly LEP 2013, and whilst there are still variations to setback and open space controls, these have been found to be consistent with the objectives and requirements of the controls (subject to conditions). In this regard, the built form will provide appropriate separation and design to minimise streetscape impacts, other amenity impacts, and will provide an appropriate visual presentation.

Condition No. 6 (Amendments to the approved plans) has been imposed to mitigate potential privacy impacts to the southern neighbour, also lowering the pitch of the front roof section that addresses Cecil Street and installing sliders to the bin enclosure for Unit 2 to ensure that the streetscape is maintained.

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

Therefore, it is recommended that the application be approved, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks to demolition of existing dwelling and associated structures including the garage along the western boundary. The new development will involve the construction and strata subdivision of a attached dual occupancy (both two (2) storeys). The existing landscaping will be enhanced to complement the new dwellings and both streetscapes (Parkview Road and Cecil Street) and a new fence

Dwelling 1 (Eastern End)

Located on the corner of Parkview Road and Cecil Street. Entry is located in the south eastern corner of the property with the entry leading into an open plan kitchen, living and dining room with a mud room and WC located behind the kitchen. The living is connected to a balcony which opens onto the streets. Stair provide access to the first floor which consists of three (3) bedrooms, the main bedroom with an ensuite, a bathroom and flex room. The master bedroom opens onto a north facing balcony.

There is a bin storage which is located adjacent to the Cecil Street frontage and is concealed from Cecil Street by sliders to ensure that the streetscape is maintained.

Dwelling 2 (Western End)

Is located at the western end of the site and fronts Cecil Street. Entry is located on Cecil frontage leading to the formal entrance and foyer from which access to a mud room and WC is available. In addition the entry leads to an open plan kitchen and dining room with a lounge room beyond. The living rooms opens onto a west facing deck and backyard area. Stair provide access to the first floor which consists of three (3) bedrooms, the main bedroom with an ensuite, a bathroom and flex room. The master bedroom opens onto a north facing balcony.

Both dwellings have a single undercroft car parking space. The bin storage for dwelling 2 is located

behind at the rear of this parking area.

A front fence with varying heights is addressing both Parkview Road and Cecil Street. The height of the fence along Parkview Road is 0.845m - 1.13m in height. The height of the fence along Cecil Street is 1.035m - 2.2m in height.

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 Development Control Plan - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 3.4.2 Privacy and Security

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.10 Fencing

Manly Development Control Plan - Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

SITE DESCRIPTION

Property Description:	Lot 30 DP 6413 , 29 Parkview Road FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the corner of Parkview Road and Cecil Street (southwest).</p> <p>The site is regular in shape with a frontage of 13.715m along Parkview Road and a frontage of 37.98m along Cecil Street. The site has a surveyed area of 518.6m².</p> <p>The site is located within the R1 General Residential zone and accommodates pursuant to the provisions of the Manly Local Environmental Plan 2013 (MLEP). The subject property is currently occupied by a single storey brick and clad residence with pitched and tile roof and a detached</p>

garage accessed via a driveway from Cecil Street. Fencing delineates both front boundaries of the property which contains a number of trees.

The site slopes from the eastern frontage (Parkview Road) along the Cecil Street frontage to the western side boundary with a fall of 1.7m (approximately 4% grade).

The site has a number of trees which are classified as exempt species under the Manly Development Control Plan (MDCP) and could be removed without approval (consent).

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by one (1) and two (2) storey detached and semi-detached dwelling houses with front fencing and landscaping. The area is interspersed by a number of multi storey residential flat buildings. A significant number of properties have off-street parking structures located either on the front boundary or forward of the dwelling house alignment.

Map:



SITE HISTORY

PLM2019/0095 - Demolition Works and construction of a semi detached dwelling and subdivision of land

"The original design submitted with the application included significant non-compliances with the rear setback control on Lot 2 and the overshadowing controls of the Manly DCP 2013. Following the pre-lodgement meeting, amended plans were submitted to address the concerns raised. These notes have been prepared on both designs. Where relevant the amended design has been addressed under the

heading Amended Plans.

A fundamental concern is raised over the torrens title subdivision of the development. The torrens title subdivision will result in a lot configuration that is inconsistent with the prevailing subdivision pattern and likely to have unreasonable impacts on the streetscape and amenity of the neighbouring properties. Furthermore the lot dimensions will not allow for the re-development of this lot in compliance with the Manly DCP 2013. As such the torrens title subdivision in this configuration cannot be supported by Council. It is recommended if this built form is to be pursued that strata subdivision be applied for.

Issue/s Raised	Council Response
<p>Streetscape massing</p> <p><u>Relevant MDCP Clause</u></p> <p>Clause 4.4.1 Street Front Setbacks</p>	<p>The development is to be designed to address both street frontages. In this regard, significant concern is raised with the front setback of the dwelling on Lot 2. A further setback is required to minimise the impacts of this setback on the streetscape. Please see comments below under Clause 4.1.4.1 Front Setbacks of the Manly DCP 2013.</p> <p>Concern is also raised with the design of the building within the streetscape. Please see comments under clause 3.1 Streetscape and Townscapes of the Manly DCP 2013.</p>
<p>Setbacks</p> <p><u>Relevant MDCP Clause</u></p> <p>Clause 4.4 Setbacks (front side and rear) and Building Separation</p>	<p>The setbacks of the development have been addressed in detail below under the Manly DCP 2013 below. In summary concern is raised over the setback of lot 2 to Cecil Street and the neighbouring property to the South.</p>
<p>Amenity</p> <p><u>Relevant MDCP Clause</u></p> <p>Clause 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise</p>	<p>The development will result in significant overshadowing of the neighbouring property to the south. The overshadowing is inconsistent with the objectives of the Manly DCP 2013 and cannot be supported by Council.</p> <p><u>Amended Plans</u></p> <p>The amended design includes an 8m setback to the first floor from the western boundary. This design was accompanied by shadow diagrams that demonstrated no unreasonable impacts on the solar access of the property to the south.</p>

Concluding Comments

These notes are in response to a pre-lodgement meeting held on 23/05/2019 to discuss demolition and construction of two semi-detached dwellings and torrens title subdivision at 29 Parkview Road Fairlight. The notes reference preliminary plans prepared by Platform Architects dated 6/05/2019 and revised plans prepared by Platform Architects undated.

The revised proposal is not acceptable due to the inconsistency with the prevailing subdivision pattern and the setback to Cecil Street.

Should the proposed built form be applied for, a torrens subdivision will not be supported.

Based upon the above comments you are advised to satisfactorily address the matters raised in these notes prior to lodging a development application."

It is noted that this advice from the prelodgement meeting was adopted by the applicant and the owner and reflected in the DA submitted which is being currently assessed before 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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the proposed development with its presentation within the streetscape. Additional information (photo montages were submitted by the applicant on 29 January 2020. Amended shadow diagrams were submitted by the applicants architect on 7 April 2020.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Mr Michael Drewin Patten Mrs Kerrie Ann Patten	1 Cecil Street FAIRLIGHT NSW 2094
Mr Michael Drewin Patten Mrs Kerrie Ann Patten	1 Cecil Street FAIRLIGHT NSW 2094
Mr Michael James Cooke Mrs Margot Anne Cooke	5 Cecil Street FAIRLIGHT NSW 2094
Ms Loretta Maree Reilly	10 Cecil Street FAIRLIGHT NSW 2094
Miss Mary Mildred Hertslet	2 Cecil Street FAIRLIGHT NSW 2094
Mrs Cecily Anne Dryden	4 Cecil Street FAIRLIGHT NSW 2094
Ms Nicole Megan Buckland	12 Cecil Street FAIRLIGHT NSW 2094

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

- Streetscape;
- Parking;
- The proposal fails to promote good design and amenity;
- Rejection of the proposed development and redesign;
- Public interest/benefit;

The matters raised within the submissions are addressed as follows:

- Streetscape

Comment: Issues were raised that the proposed development was inconsistent with the existing streetscape due to the proposed modern design, height, bulk and scale, setbacks and selected materials submitted with this application. It is noted within the vicinity of the subject site that there are a number of older styled dwellings/buildings, some from the Federation Period (c. 1890 - c. 1915 namely Federation Bungalow) and the Inter-War Period (c. 1915 - c. 1940 namely Californian Bungalow), particularly within Cecil Street. However, it is noted that there are other examples of modern types of development nearby (34 Parkview Road - modern dwelling (corner of Parkview Road/Birkley Lane), 88 Raglan Street - resident flat building (corner of Parkview Road/Raglan Street) and 112 Sydney Road - three (3) storey boarding house with twenty one (21) studio rooms and two (2) units (corner of Parkview Road/Sydney Road). The development known as Wesley Heights Manly located at 47 Birkley Road can be visible seen from Cecil Street.

The subject site, Parkview Road and Cecil Street are not within a Heritage Conservation Area or mapped as a Manly Heritage area. Additionally, Council's Urban Designer has reviewed the proposed development and supports the proposal as detailed in their referral comments in this report. See "REFERRALS - Internal Referral Body" in this report for detailed comments.

Given the above it is considered that issue has been addressed and does not warrant further amendment of the proposal and/or refusal of the application.

- Parking

Comment: Issues were raised about parking, in particular within Cecil Street. One of the submissions made the following statement:-

"I also object to another car space being taken from Cecil Street. In the past couple of years this small cul de sac has had three on street car spaces taken and this will be another. Already the residents have to struggle to get a car spot in their own street due to Parkview Street residents electing to use the quiet of Cecil Street. This DA is also using Cecil Street as it's entry point. If there are to be two car spaces then please allow one of these in Parkview Street as this is the true address of this lot."

It was noted there are number of properties that provide no off street parking in particular Nos. 8, 10, 12, 14 and 16 Cecil Street.

The subject site has an existing garage which has access off Cecil Street which only provides one (1) parking space, being the longest frontage on this corner allotment. The proposed double driveway will allow for parking of two (2) vehicles off the street with a new kerb and grass to be reinstated to match the existing footpath area where the old driveway was located along the western portion of the subject site, therefore increasing the net parking for the site by one (1) parking space. Given the site is on a corner allotment it was considered that locating a driveway off Parkview Road would not be functional given the proposed building footprint, would reduce parking further on Parkview Road and be a safety concern given its position to the intersection of Parkview Road and Cecil Street.

Additionally, Council's Traffic Engineer has reviewed the proposed development and made the following comments:-

"No objection to the development on traffic engineering grounds."

"The proposal is therefore supported."

Given the above it is considered that issue has been addressed and does not warrant further amendment of the proposal and/or refusal of the application.

- The proposal fails to promote good design and amenity

Comment: A number of submissions raised that the proposal failed to promote good design. As stated above in the point "Streetscape" the proposed design has been reviewed by Council's Urban Designer and is of a satisfactory design.

Given the above it is considered that issue has been addressed and does not warrant further amendment of the proposal and/or refusal of the application.

- Rejection of the proposed development and redesign

Comment: A number of submissions requested the rejection of the proposed development and a redesign which was to be more sympathetic on the grounds that the development has not taken into consideration the existing streetscape in this design. The proposal has been reviewed by Council's Urban Designer and considered against the applicable controls of the Manly Local

Environmental Plan (MLEP), Manly Development Control Plan (MDCP), applicable State Environmental Planning Policies (SEPP's) and Environmental Planning Instruments (EPI's) and is considered to have justifiable merit.

Given the above it is considered that issue has been addressed and does not warrant further amendment of the proposal and/or refusal of the application.

- Public interest/benefit

Comment: Issues were raised that the proposed development had no public benefit or was not in the public interest. This application was notified 23 property owners with 38 notification letters sent out to adjoining and surrounding properties. During this notification period Council received 6 submissions (note 2 submissions are from 1 property). It is considered that this does not warrant sufficient grounds for refusal based on public interest.

Additionally, the development will replace an existing single dwelling house and provide two (2) new dwellings which will allow the opportunity for more housing in this area.

Given the above it is considered that the development overall will provide a general public benefit and the issues raised do not warrant further amendment of the proposal and/or refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p>The Arborist's Report and Landscape Plan submitted with the application are noted.</p> <p>The Arborist's Report indicates removal of nine trees from the site to accommodate the proposed works. Of these, seven trees are exempt under Manly DCP, one is recommended for removal due to structural defects and one is located within the building footprint.</p> <p>The Landscape Plan indicates planting of ten trees on the site and one additional street tree to Cecil Street.</p> <p>In view of the above, no objections are raised with regard to</p>

Internal Referral Body	Comments
	landscape issues, subject to conditions as recommended.
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
Strategic and Place Planning (Urban Design)	<p>The following Urban Design comments are provided:</p> <p>OVERVIEW</p> <p>The development application proposes a strata subdivision for a dual o Fairlight.</p> <p>The predominant character of development in the area and streetscape occupancies, detached and semi-detached type residential and some r</p> <p>The proposed development is a contemporary design that considers th abstraction of the roof form and type; asymmetrical gable end roof form</p> <p>The consideration of topography; fall across the site and the stepping/s considered design response providing pockets of private open space ir assist to soften the form, bulk and scale across the site.</p> <p>Additionally the articulated/modulated plan assists to break up the perc The general principles represented in the bulk, scale and massing of th breach of various controls and provide supporting commentary.</p> <p>BUILT FORM CONTROLS</p> <p>1. 4.1.4 Setbacks (front, side and rear) and Building Separat</p> <p>RESPONSE</p> <p>The constraints of the site as noted below in 4.1.4.1 (a) are such that th</p> <p>2. 4.1.4.1 (a) Front Building Line Context</p> <p><i>Street Front setbacks must relate to the front building line of i</i></p> <p>RESPONSE</p> <p>Noting the constraint of the site configuration/corner allotment the econ that the western allotment somewhat aligns with the Parkview Road bu building alignment on Cecil Street is difficult to meet without a significar configuration can be supported.</p> <p>3. 4.1.5 Open Space and Landscaping</p> <p><i>4.1/5/1 Residential Open Space Areas at DCP Map B – Area</i></p> <p>RESPONSE</p> <p>Noting the location is a corner allotment and having regard to the pre-lc the street address, the design resolves several varying constraints and address the lack of a rear 8 metre setback landscaped zone. Sufficient can be supported.</p>

Internal Referral Body	Comments
	<p>4. 4.1.8 Development on Sloping Sites (Refer Manly DCP)</p> <p>RESPONSE</p> <p>The nature of the sloping site presents opportunities and constraints. The general principles of the design concept with of stepping built form down the site is supported.</p> <p>The step down in section reflected in the slip in plan arrangement of the two occupancies provides a level of interest and articulation/modulation to the streetscape and façades.</p> <p>5. 4.2 Privacy and Overlooking, Overshadowing</p> <p>RESPONSE</p> <p>The architectural concept and detail of the development is such that privacy is readily achievable. The detail of the box windows to the street elevations provides adequate depth and is detailed with privacy screens such that the development will not have nor impact on privacy and amenity and thus is acceptable.</p> <p>The shadow diagrams demonstrate that overshadowing occurs to the southern property casting shadows predominantly over the garage structure.</p> <p>In summary, the development is seen to have design merit and with minor breaches of the controls as set out above the development can be supported.</p>
Traffic Engineer	No objection to the development on traffic engineering grounds
Waste Officer	Note that this DA have only 2 units, thus waste referral not required.

Internal Referral Body	Comments
	<p>However, note that unit 1 doesn't have a waste storage area.</p> <p>Furthermore, the location is not ideal in unit 2 for street access to Cecil St. Waste storage area should be suitable to accommodate 4 bins and access for the resident to wheel to the street.</p> <p>The waste storage should be concealed from view from the street for improved amenity of residents and nearby properties.</p>
Waste Officer	The location of the bin storage area for Unit 1 behind the sliders off Cecil Street is considered to acceptable as the bins will be concealed from view from the street. A condition will included that the bin storage area for Unit 2 is located behind sliders at the end of the undercroft parking space to ensure that the bins are screened from the street and provide improved amenity of the residents and adjoining and surrounding properties.

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

Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1043762M dated 2 October 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0004246310 dated 2 October 2019).

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

--	--	--

Commitment	Required Target	Proposed
Water	40	44
Thermal Comfort	Pass	Pass
Energy	50	51

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.3m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (311.16sqm)	FSR: 0.59:1 (307.6sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 2 Permitted or prohibited development	Yes
2.6 Subdivision—consent requirements	Yes
2.7 Demolition requires development consent	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
Part 6 Additional local provisions	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: Lot 1: 268.5sqm & Lot 2: 250sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 2 dwellings	2 dwellings	N/A	Yes
	Dwelling Size: Lot 161.3sqm	Lot 1: 159.8sqm	N/A	Yes
	Lot 2: 148.3sqm	Lot 2: 147.8sqm	N/A	Yes
4.1.2.1 Wall Height	(Lot 1) S: 6.7m	Lot 1: 6.4m	N/A	Yes
	(Lot 2) S: 6.7m	Lot 2: 5.9m	N/A	Yes
	(Lot 2) W: 6.9m	Lot 2: 6m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	Lot 1: 1.9m	N/A	Yes
		Lot 2: 1.8m	N/A	Yes
	Parapet Height: 0.6m	No parapet	N/A	Yes
	Pitch: maximum 35 degrees	Lot 1: 17.2 - 44.2 degrees* Lot 2: 18 - 45 degrees*	N/A N/A	Yes* Yes*
4.1.4.1 Street Front Setbacks (Parkview Road)	Prevailing building line / 5m	Lot 1: 5m (first floor) 6.2m ground floor	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	(Lot 1) S: 2.0m	1m -1.6m	20% - 50%	No
	(Lot 2) S: 2.06m	2.2m	N/A	Yes
	(Lot 2) W: 2.13m	8m	N/A	Yes

	Windows: 3m	Lot 1: 1m - 1.6m	20% - 50%	No
		Lot 2: 2.2m	26.7%	No
	Secondary street frontage (Cecil Street) - 2m	1.4m - 2.5m	30%	No
4.1.4.4 Rear Setbacks	8m	Corner Allotment (Strata Subdivision - proposed)	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS 3	Open space 55% (285.23sqm) of site area	37% (192.5sqm)	18%	No
4.1.5.2 Landscaped Area	Landscaped area 35% (99.83sqm) of open space	61% 174.8sqm	N/A	Yes
	1 native trees	11 trees	N/A	Yes
4.1.5.3 Private Open Space	12sqm per dwelling	Lot 1: 15.4 Lot 2: 15.2sqm	N/A N/A	Yes Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.6m	N/A	Yes
Schedule 3 Parking and Access	Attached Dwellings 1 space for each dwelling - 3 spaces plus 1 visitor	1 space for each dwelling (2 spaces)	2 spaces	No

* Condition roof pitch to a maximum 35 degrees

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part 3	Yes	Yes
3 General Principles of Development	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
Part 4	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
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes
Schedules	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Parking and Access	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	No	Yes
Schedule 3 - Part B - Minimum Dimensions for parking, access and loading	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

A review of the proposed roof pitches in particular pitches addressing Cecil Street is considered excessive.

Lot 1 having a front roof pitch of 44.2 degrees and Lot 2 having a pitch of 45 degrees.

A condition will be imposed via Condition 6 Amendment to the approved plans as follows:-

"The front roof pitches (Cecil Steet frontage) are to lowered and have a maximum pitch(es) of 35 degrees."

This condition will ensure general compliance with Clause 3.1.1.3 Roofs and Dormer Windows and Clause 4.1.2.3 Roof Height as stated *"The maximum roof pitch must be generally no steeper than 35 degrees. A roof with a steeper pitch will be calculated as part of the wall height."*

3.4.2 Privacy and Security

Condition 6 Amendments to the approved plans has been added to ensure reasonable privacy levels are maintained now and into the future given the close proximity of the stairwell (1m) and the flex room window been only 1.6m from the southern boundary for Unit 1 as follows:-

"The southern facing windows for the stairs and flex room in Dwelling 1 are either to be fixed with obscured glazing and/or a sill height of 1.65m when measured from the floor level and/or stair."

Given the above it is considered that reasonable levels of privacy can be maintained for both parties (Nos. 27 and 29 Parkview Road) subject to condition(s).

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

Applicable Clauses

Clause 4.1.4.2 - Side Setbacks and Secondary Street Frontages.

Description of non-compliance

Clause 4.1.4.2 - Side Setbacks and Secondary Street Frontages

In this respect, the development provides the following secondary street frontages (Cecil Street):

North - 1.4m - 2.5m with a considerable setback at the northeast corner of 6.4m where the deck is located.

Clause 4.1.4.2 requires development to provide variable side setbacks based on the proposed wall height (2m).

In this respect, the development provides the following side setbacks to the south and west boundaries:

South - 1m - 1.6m (First Floor) for Unit 1 and 2.2m (First Floor) for Unit 2

West - 8m (First Floor) for Unit 2

Therefore the non-compliance will vary from 0.4m - 1m (20% - 50%).

Merit consideration

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

"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: There is no non-compliance with the front primary setback to Parkview Road, however there is a non-compliance to the secondary setback with setbacks varying from 1.4m - 2.5m, where the existing dwelling was located 2m from this front secondary frontage (Cecil Street). The proposed development will improve the livability for the occupants and provide two (2) new car parking spaces for the site.

The setback to this secondary street is considered acceptable given the consistency of the proposed setbacks with those of the existing dwelling house and sites corner location where consideration is ordinarily given to a reduced secondary street setback alignment.

The landscape plans submitted with the application indicate that the front setback area between the proposed building and the front boundary will be landscaped such that the landscape character of the street will be preserved.

Similarly, the proposed development with respect to the side boundary setbacks provides desired spatial proportions to respond to the landscape character of the area.

The development satisfies this objective.

"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.*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection."*

Comment: The separation of the built forms enable the development to satisfactorily respond to this objective because:

- The proposed design format enables the development to provide equitable access to light, sunshine and air movement through the site and through the neighbouring private and public properties.
- The design also allows for good spatial separation between adjoining buildings which facilitates view sharing and limit impacts on views and vistas from private and public spaces.
- The new front car parking area, together with the updated design adds to the character of the streetscape which still creating a rhythm of spaces when viewed from the neighbouring private and public properties.
- The new driveway will allow for satisfactory sightlines along Cecil Street.

The development satisfies this objective.

"To promote flexibility in the siting of buildings."

Comment: The proposed setbacks are reflective of the existing format of the development and its attempt to respond to the existing design of the dwelling. In this way, the development adopts a high level of flexibility in the siting of the buildings to preserve the its relationship to its surrounds.

The development satisfies this objective.

"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 available open space area enables the provision of consolidated deep soil zones which can accommodate appropriate plantings including native vegetation and native trees.

The spatial arrangement of the development enables plantings to be provided which ensures that a satisfactory landscape transition is provided at the street frontage.

"To assist in appropriate bush fire asset protection zones."

Comment: The site is not identified as bush fire prone land and therefore does not require the establishment of bush fire asset protection zones.

This objective is not applicable.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The site is located in Area OS3 which requires at least 55% of site area dedicated to Total Open Space of which 35% shall be landscaped area.

Required Total Open Space: 55% (285.23sqm)

Proposed Total Open Space: 37% (192.5sqm)

Required Landscaped Area: 35% (99.83sqm)

Proposed Landscaped Area: 61% (174.8sqm)

Required Tree Planting: 1 native tree

Proposed Tree Planting: 10 native trees on site and 1 street tree (native)

The proposed development results in 192.5m² of Total Open Space, which is 37% of site area. This represents a variation of 18%.

The proposal demonstrates compliance with the minimum 35% of Total Open Space for landscaped area and does not include roof garden landscaped area.

Merit consideration:

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

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

Comment: The proposed development does not require the removal of any significant vegetation and will maintain trees both on site and on the streets. The proposal will have sufficient landscaping to provide habitat for native flora and fauna on the site.

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

Comment: The proposal demonstrates compliance with the required landscape open space requirement which will improve the landscaped nature of the site and improve the amenity of the building when viewed from the streets and nearby properties.

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

Comment: The proposed development is generally expected to improve visual amenity of the site when viewed from the street and nearby properties. No unreasonable impact in regard to solar access, privacy and views are expected.

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

Comment: The site demonstrates compliance with the minimum landscaped area requirement. Stormwater runoff and infiltration are expected to be adequately handled by the proposed landscaped area.

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

Comment: Vegetation planting proposed within this application are locally native species. Therefore, the proposal will limit the opportunity for invasive species to access the site.

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

Comment: As noted above, the proposed development will not result in the removal of any significant landscape features. The proposed soft landscaping, in conjunction with the existing vegetation on site, will maximise opportunities for potential wildlife corridors on the subject site.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of MDCP and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.10 Fencing

Clause 4.1.10 of the MDCP 2013 requires fencing along front boundaries to be constructed to a maximum height of 1m above the existing ground level. The height of the proposed structure ranges between 0.845m and 2.2m, which is inconsistent with the prescribed control.

The proposed fence is to replace the existing front fence of a similar height and extent varying in height from 0.6m - 1.8m in height. The proposed replacement fence has a setback of 0.845m - 1.13m in height to the eastern (Parkview Road) boundary and of 1.1m - 2.2m in height to the northern (Cecil Street) boundary. The variation in the height of the fence along the frontages is due to a slight slope from Parkview Road down to the western boundary towards the north-western corner of the site.

There is a variety of different front fence heights and types along Parkview Road and Cecil Street ensuring that the proposed fencing will minimise its visual impact on the streetscape.

Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

This control requires three (3) resident parking spaces and one (1) visitor space for the subject site, a total four (4) spaces is required given it is a dual occupancy. The proposal has two (2) parking spaces which as denoted within this application, are to be split between the two lots i.e. one (1) parking space per lot, although it is noted there may be a tandem arrangement is possible at Unit 1 reducing the this non-compliance to one (1) car space.

Technically the non-compliance of two (2) parking spaces is considered supportable given the limited area of the site, availability to public transport and that this parking layout is considered satisfactory in this instance.

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 \$10,420 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,042,000.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- Inconsistent 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

Conclusions on the Assessment of the Application

The proposed development does not comply with the 'Secondary Street Frontages' Development Standard of 2m under the MDCP 2013, involving a breach 0.6m (noting the proposal varies from 1.4m to 2.5m) of the development standard. A variation to the Clause 4.1.4.3 Variations to Side Setback in Residential Density Areas D3 to D9 of the MDCP sought support of the breach of the southern elevations 0.4 - 1m of the dwellings. The proposed design does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the MDCP 2013. Additionally, it is noted that the variation of Clause 4.15 Open Space and Landscaping was sought, considered and supported given the substantial amount of landscape area provided 61% (174.8sqm) over the required 35% (99.83sqm) under this control.

In this case, the proposed development provides a design that involves sufficient modulation and sufficient physical separation from neighbours. A condition is recommended to ensure a balanced outcome in design for privacy to ensure amenity and lowering of the front roof pitches to ensure reasonable streetscape and compliance Clause 4.1.2.3 Roof Height with a reduction of the front roof pitches lower from 44.2 degrees and 45 degrees down to the required 35 degrees (maximum roof pitch). Furthermore, an assessment against the objectives of the development standards and DCP controls has found the proposal to be consistent with those provisions and reasonable.

On balance, the proposal should be approved (subject to standard and specific conditions) as the design is reasonable for the site and locality by virtue of a presentation which is consistent with characteristics of the area and also provides sufficient spacing and modulation to reduce any unreasonable impact caused by building bulk.

Therefore, the application is recommended for approval.

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/1258 for Demolition works, construction of a dual occupancy (attached) and strata subdivision on land at Lot 30 DP 6413, 29 Parkview Road, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 03 (Rev D)	26 September 2019	Platform Architects
DA 04 (Rev D)	26 September 2019	Platform Architects
DA 05 (Rev D)	26 September 2019	Platform Architects
DA 06 (Rev D)	26 September 2019	Platform Architects
DA 07 (Rev D)	26 September 2019	Platform Architects
DA 08 (Rev D)	26 September 2019	Platform Architects
DA 09 (Rev D)	26 September 2019	Platform Architects
DA 10 (Rev D)	26 September 2019	Platform Architects
DA 11 (Rev D)	26 September 2019	Platform Architects
DA 12 (Rev D)	26 September 2019	Platform Architects
DA 13 (Rev D)	26 September 2019	Platform Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment Report	September 2019	Axoim Arbor Tree Services
Preliminary Geotechnical Assessment	10 October 2019	White Geotechnical Group

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

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

Landscape Plans		

Drawing No.	Dated	Prepared By
LP01 (Rev C)	9.10.19	R&M Landscape Architecture
LP02 (Rev C)	9.10.19	R&M Landscape Architecture
LP03 (Rev C)	9.10.19	R&M Landscape Architecture
LP04 (Rev C)	9.10.19	R&M Landscape Architecture

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	October 2019	Hugh Rhodes-White

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

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

2. Prescribed Conditions

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

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

that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not

commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$10,420.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,042,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

5. **Security Bond**

A bond (determined from cost of works) of \$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.

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

6. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- a) The front roof pitches (Cecil Steet frontage) are to lowered and have a maximum pitch(es) of 35 degrees.
- b) The southern facing windows for the stairs and flex room in Dwelling 1 are either to be fixed with obscured glazing and/or a sill height of 1.65m when measured from the floor level and/or stair.
- c) The bin storage area for Unit 2 within the undercroft parking space is to be fitted with sliders to ensure that bins are adequately screened from the Cecil Street when a vehicle is not parking within this carspace.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land and compliance with Clause 4.1.2.3 Roof Height

7. **Boundary Identification Survey**

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

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property

boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

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

8. **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 MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003, and generally in accordance with the concept drainage plans prepared by RTS Civil Consulting, drawing number 190804, dated 8/10/2019. 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.

The drainage plans 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.

9. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. 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 facilitate suitable vehicular access to private property.

10. **Waste Management Plan**

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

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

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

11. **Compliance with Standards**

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

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

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

12. External Finishes to Roof

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

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

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

13. Sydney Water "Tap In"

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. 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.

15. Tree trunk, branch and root protection

(a) Existing trees which must be retained

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

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with the Arboricultural Impact Assessment Report dated September 2019 prepared by Axiom Arbor Tree Services 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 local 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.

16. **Project Arborist**

- i) A Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works.
- ii) The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the Arboricultural Impact Assessment Report dated September 2019 prepared by Axiom Arbor Tree Services and AS4970-2009 Protection of trees on development sites.
- iii) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **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.

18. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

19. **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.

20. **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.

21. **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.

22. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. 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.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying

Authority.

Reason: To facilitate suitable vehicular access to private property.

23. **Waste Management During Development**

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

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

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

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

24. **Landscape completion certification**

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

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

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

25. **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 with conditions 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.

26. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

27. **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 submitted.

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.

28. Required Street Tree Planting

a) Street trees shall be planted in accordance with the following schedule:

No. of Trees Required.	Species	Location	Minimum Pot Size
1	<i>Tristaniopsis laurina</i>	Cecil Street Road reserve forward of the property, clear of driveway sightlines and generally in alignment with other street trees.	75 litre

b) SII street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, and mulched to 75mm depth minimum,
c) Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity.

29. House / Building Number

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**30. 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.

31. Landscape maintenance

i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE**32. Compliance with Relevant Legislation**

Prior to the issue of the Strata Plan of Subdivision (including any Stratum), all relevant matters pertaining to this Plan, are to be satisfied to the satisfaction of the Certifying Authority, and evidence provided that the Plan complies with clause 17 Strata Schemes Development Regulation 2016 and the relevant parts of Section 58 Strata Schemes Development Act 2015.

Reason: To ensure compliance with the Consent issued, compliance with relevant legislation, and to ensure adequate provision is made, where required for fire safety, occupant safety, egress, access and appropriate facilities in the premises for building occupants.

33. Building Requirements prior to the issue of a Strata Subdivision Certificate

The Subdivision Certificate to enable the lodgement of the linen plan at NSW Land Registry Services must not be issued until an interim or final Occupation Certificate has been issued in relation to the development.

Reason: To ensure compliance with the Consent issued, compliance with relevant legislation, and to ensure adequate provision is made, where required for fire safety, occupant safety, egress, access and appropriate facilities in the premises for building occupants.



