

# AGENDA

## **NORTHERN BEACHES LOCAL PLANNING PANEL MEETING**

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

**WEDNESDAY 20 MAY 2020**

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



**Peter Robinson**  
**Executive Manager Development Assessment**

**Panel Members**

Peter Biscoe	Chair
Marcus Sainsbury	Environmental Expert
Annelise Tuor	Town Planner
John Simmonds	Community Representative

**Quorum**

A quorum is three Panel members

**Conflict of Interest**

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

# **Agenda for a Meeting of the Northern Beaches Local Planning Panel to be held on Wednesday 20 May 2020 Commencing at 1.00pm**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 6 May 2020	
<b>3.0</b>	<b>DEVELOPMENT APPLICATIONS .....</b>	<b>5</b>
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4.1	REV2020/0006 - 79A Lauderdale Avenue, Fairlight - Review of Determination of Application DA2019/0342 for alterations and additions to an existing residential building to create an attached dual occupancy and strata subdivision.....	61
4.2	REV2020/0004 - 22 Wattle Avenue, Fairlight - Review of Determination of Application DA2019/0795 for demolition works and construction of a dual occupancy (attached) and swimming pools.....	151

## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 6 MAY 2020**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 6 May 2020 were adopted by the Chairperson and have been posted on Council's website.

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### 3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	DA2019/1340 - LOT 100/ MEATWORKS AVENUE, OXFORD FALLS - ALTERATIONS AND ADDITIONS TO THE EXISTING PREMISES
AUTHORISING MANAGER	STEVE FINDLAY
TRIM FILE REF	2020/274643
ATTACHMENTS	<ol style="list-style-type: none"><li>1 Assessment Report</li><li>2 Minutes - Independent Public Hearing Panel</li><li>3 Site Plan and Elevations</li></ol>

#### PURPOSE

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

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#### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2019/1340 for alterations and additions to the existing premises at Lot 100 DP 1023183, Lot 100/ Meatworks Avenue, Oxford Falls for the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/1340
<b>Responsible Officer:</b>	Lashta Haidari
<b>Land to be developed (Address):</b>	Lot 100 DP 1023183, Meatworks Avenue, Oxford Falls
<b>Proposed Development</b>	Demolition works and construction of additional industrial/warehouse development with ancillary office space and basement car parking.
<b>Locality:</b>	B2 Oxford Falls Valley - WLEP 2000
<b>Category of Development:</b>	Category 3 (Industry)
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	Northern Beaches Local Planning Panel
<b>Land and Environment Court:</b>	Yes
<b>Owner:</b>	Numeve Pty Ltd
<b>Applicant:</b>	Gelder Architects
<b>Application Lodged:</b>	26 November 2019
<b>Integrated Development</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Industrial
<b>Notified:</b>	1st Notification – 4.12.2019 to 15.1.2020 2nd Notification – 18.1.2020 to 8.2.2020
<b>Advertised:</b>	18 January 2020
<b>Submission Received:</b>	121
<b>Clause 20 Variation:</b>	<ul style="list-style-type: none"> <li>Building Height</li> <li>Side Boundary Setback</li> </ul>
<b>Recommendation:</b>	REFUSAL
<b>Estimated Cost of Works:</b>	\$9,625,000

### Executive Summary

This report is an assessment of a proposal to construct 13 additional industrial/warehouse units with ancillary office space and basement parking on the site of an industrial/warehouse development currently under construction, known as the “Meatworks Site”.

The site is located within an area identified as “Deferred Lands” under Clause 1.3(1A) of the Warringah Local Environmental Plan 2011. The site is located within the B2 Oxford Falls Valley locality under Warringah Local Environmental Plan 2000 (WLEP 2000). The proposal is classified as Category Three development in the B2 Locality.

The site is the subject of a prior approval for an industrial/warehouse development under DA2011/0985. The DA was initially refused by the former Warringah Development Assessment Panel (WDAP), but subsequently approved, in a lesser size and scale by the Land and Environment Court (LEC) in April 2013. The approval by the LEC was based on amended plans that were submitted as part of the proceedings, which reduced the overall size and scale of the development, such that it was sited within the already disturbed areas of the former industrial/waste management site. It was agreed in the court proceedings that the areas of the site that are environmentally sensitive, were to be

retained and protected, through special conditions of consent, namely Condition 26 of DA2011/0985.

The current scheme has been developed around the fact that the LEC has already granted approval for industrial/warehouse units on the site and this new development scheme is an expansion to that approval by increasing the intensity and impacts. This report focuses on the merits of the current application, and whilst recognising that the previous approval has been granted, the current proposal is a different concept, in terms of the size, scale and the intensity of the development and its associated impacts.

The proposal seeks approval for 13 industrial/warehouses units and ancillary buildings which equates to approximately 4,105.50m<sup>2</sup> of Gross Floor Area (GFA) beyond what the Court approved for the site, which comprises 30 light industrial units. The increase in the number of units from 30 to 43 is a 40% increase and represents a significant intensification of a Category 3 use on this site, which is identified as only allowing low impact and low intensity forms of development.

The proposal is inconsistent with the previous approval of the site and specifically Condition No. 26 of Development Consent No. DA2011/0985 as detailed throughout this report.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal does not satisfy the applicable controls and so the application is recommended for refusal for the reasons detailed within the recommendation attached to this report.

In accordance with the requirements of Clause 15 of WLEP 2000, the application is presented for an independent public hearing to be conducted and that their findings and recommendations be presented to the Northern Beaches Local Planning Panel for determination of the application.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application proposes demolition and excavation works and the construction of 13 additional industrial/warehouse units (referred to in the DA as "*commercial/industrial buildings*") with ancillary office space and basement parking.

The floor space for this new stage (Stage 2) of development is as follows:

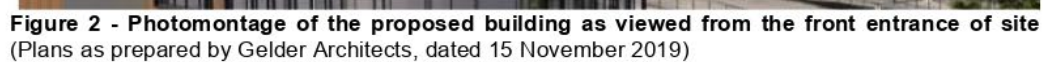
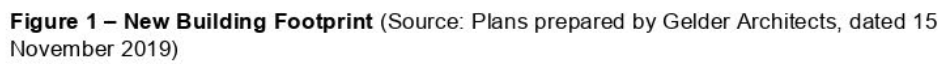
<b>Commercial/industrial Building</b>	<b>Ancillary Building</b>
<b>Level 1</b> – 540.86m <sup>2</sup>	<b>Ground Level</b> – 110.06m <sup>2</sup>
<b>Roof Terrace Level</b> – 445m <sup>2</sup>	<b>Carpark Level</b> – 108.96m <sup>2</sup>
<b>Upper Roof Level</b> – 437m <sup>2</sup>	<b>Level 1</b> – 145.69m <sup>2</sup>
<b>13 Additional Units</b> - 2,317.93m <sup>2</sup>	-
<b>Total</b> - 3,740.79m <sup>2</sup>	<b>Total</b> – 364.71m <sup>2</sup>

The additional industrial/warehouse units referred as Units 30-42 have a total area of **2,317.93m<sup>2</sup>**, which has the following floor areas allocated to each unit:

<b>Unit 30</b> – 152.38m <sup>2</sup>
<b>Unit 31</b> – 151.43m <sup>2</sup>
<b>Unit 32</b> – 151.43m <sup>2</sup>
<b>Unit 33</b> – 151.43m <sup>2</sup>
<b>Unit 34</b> – 152.13m <sup>2</sup>
<b>Unit 35</b> – 120.58m <sup>2</sup>
<b>Unit 36</b> – 120.13m <sup>2</sup>
<b>Unit 37</b> – 120.13m <sup>2</sup>
<b>Unit 38</b> – 120.13m <sup>2</sup>
<b>Unit 39</b> - 120.82m <sup>2</sup>
<b>Unit 40</b> - 397.78m <sup>2</sup>
<b>Unit 41</b> – 278.69m <sup>2</sup>
<b>Unit 42</b> -280.87m <sup>2</sup>

Ancillary floor space (364m<sup>2</sup> over 3 levels) is located at the western end of the proposed building, which the application states is to be used as a café (the occupation to be subject to separate approval) and communal lounge/meeting room areas. A large roof top communal open space is also proposed.

The proposed building footprint is shown in grey tones in Figure 1 below.



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## ASSESSMENT INTRODUCTION

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

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

## SITE DESCRIPTION

The subject site is legally described as Lot 100 DP 1023183, known as Lot 100 Meatworks Avenue, Oxford Falls identified with a yellow flag below. The subject site forms part of a larger collective of lots, identified with red hatching under a Permissive Occupancy of 3 parcels (lots 1046, 1047 and 1053) of Crown land. The proposed development is only located on Lot 100. The subject site is an irregularly shaped allotment with the total site area of 34,120m<sup>2</sup> (3.412ha) and is located at the northern end of Meatworks Avenue, as shown in Figure 3 below.



**Figure 3 - Site Map**

The subject site is a sloping allotment having a fall from south to north and from west to east, with a large rock escarpment traversing the southern portion of the site. The area to the south of the escarpment comprises dense remnant bushland. The northern part of the site is under construction as part of Development Consent No. DA2011/0985 and contains a number of other buildings and uses, comprising:

- Public Weighbridge
- Dwelling House
- Administration Building
- A storage building

The existing dwelling house (brick building) is located adjacent to the southern boundary of the site and a fibro building used for storage is situated to its north, which are both proposed to be demolished as part of this application.

Vehicular access to the site is currently via Meatworks Avenue, which terminates at the front boundary of the site. A central driveway traverses the centre of the site then gives access throughout the newly constructed development with secondary access roads accessing the upper and lower portions of the site.

The subject site is surrounded by large vacant allotments that are covered in dense bushland. Immediately to the northwest of the site is Public Open Space, which is also located within the B2 Locality and is an identified Conservation Area. The B2 locality is generally rural/residential in character in the immediate vicinity of the subject site and contains a range of other land uses comprising:

- Undeveloped native bushland to the north and east of the site.
- Detached dwelling houses on large allotments to the south and west of the site.

- Educational establishments fronting Wakehurst Parkway to the south and south-west of the site.

## Site History

### *Original 1991 Land Use*

The site was used as a waste management facility operating pursuant to Development Consent No. 91/130. The facility accepted non-putrescible domestic, construction and commercial wastes as well as construction/ demolition waste.

### *2013 Court Approval (DA2011/0985)*

On 26 April 2013, the Land and Environment Court (LEC) granted development consent to an application proposing the construction of a light industrial/ warehouse development with ancillary office space on the subject site (proceedings 10526 of 2012). The works associated with this consent have been physically commenced and are well advanced. The relevant Construction Certificates are CC2018/0420 and CC2019/0078.

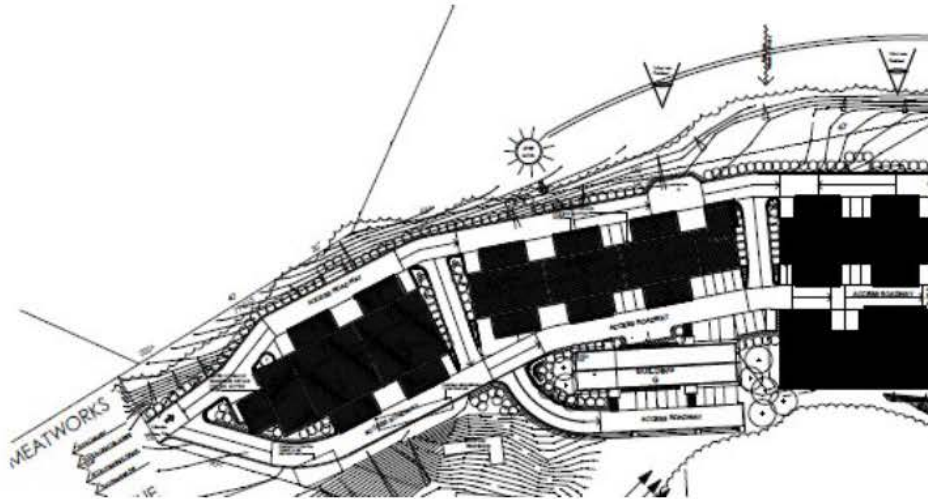
In the LEC proceedings, the applicant agreed to amended the plans in response to concerns raised by Council, which resulted in a significantly reduction in the building area to ensure the development would be confined to previously disturbed areas of the site. It was agreed between the experts in the proceedings that the development (as amended) would be confined to the area on the low side (north) of the escarpment, which has been previously cleared and levelled into a series of terraces and was occupied by large industrial buildings and waste management areas.

The amended proposal was conceived on the basis that it would replace the long established waste management facility use of the site, replace the large industrial buildings, would facilitate the rehabilitation of disturbed perimeter bushland and would provide for substantial improvement in terms of environmental outcomes. Therefore, it was found by the experts that the scaled down development was consistent with the provisions of WLEP 2000.

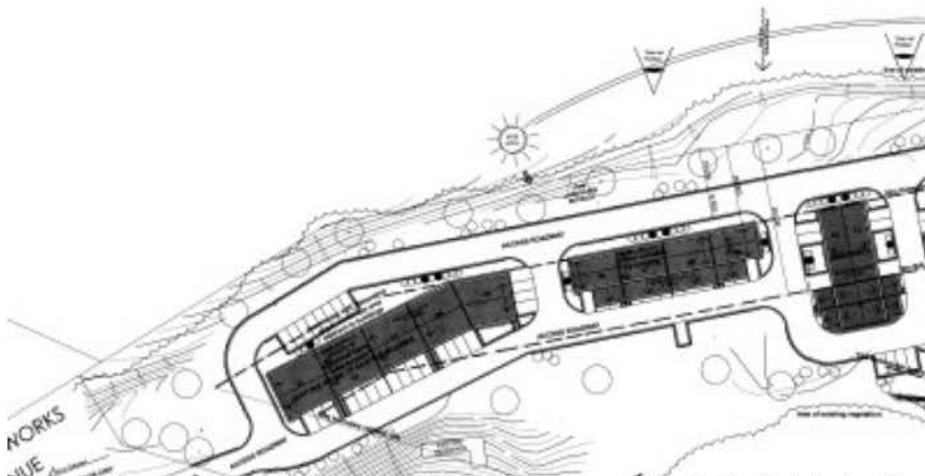
The LEC was satisfied with the expert's findings on the matter and granted Development Consent subject to conditions of consent, which directly related to the protection of the environmental features of the site. In addition, Condition No. 68 was also imposed on the consent to restrict the hours of operation to ensure the acoustic and amenity of the adjoining development was protected. The hours of operation were restricted to:

- 7.00am to 6.00pm – Monday to Friday
- 8.00am to 2.00pm – Saturday
- No Sunday operations

The approved development footprint, as submitted with DA2011/0985, and as amended through the LEC proceeding, is shown in Figures 4 and 5 below.



**Figure 4 - Plans Originally Lodged with DA2011/0985** (Source: Plans prepared by Gelder Architects, dated February 2010)



**Figure 5 - Plan approved by the LEC** (Source: Plans prepared by Gelder Architects, dated 18 December 2012)

#### **2019 Pre-Lodgement Meeting (PLM2019/0088)**

A pre-lodgement meeting was held with Council on 21 May 2019 in relation to the current proposal. The critical planning and environmental advice provided to the Applicant was that the proposal should be confined to the areas of the site that are already disturbed, the conclusion reading:

*"The proposal is not acceptable and requires redesign prior to submission.*

*The most critical aspect of the proposal is that any additions must only be contained within the already disturbed areas of the site.*

*Encroachments into the parts of the site that contain bushland or other unique environmental features will not be supported."*

## DEVELOPMENT APPLICATION HISTORY

On 26 November 2019, the current application (DA2019/1340) was lodged with Council.

On 2 April 2020, the Applicant filed a Class 1 application with the Land and Environment Court against the deemed refusal of the DA.

The Section 34 conciliation conference date is scheduled for 6 July 2020.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on Environmental Planning Instruments within this report
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	None Applicable
Section 4.15 (1) (a)(iiia) - Provisions of any Planning Agreement or Draft Planning Agreement	<p>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 site is the subject of an approval for industrial/warehouse development.</p> <p>The proposed development retains the approved industrial use of the site, and is not considered a contamination risk, as discussed under SEPP 55 of this report.</p>
Section 4.15 (1) (a)(iv) - Provisions of the regulations	<p>Clause 98 of the Environmental Planning and Assessment Regulation 2000 states that a prescribed condition of consent is that the work is to be undertaken in accordance with the Building Code of Australia (BCA). If the application is approved a condition of consent could be included in the recommendation to ensure that the proposal complies with the BCA.</p> <p>Clause 93 and 94 of the EPA Regulations 2000 requires the consent authority to consider fire safety and structural issues. Accordingly, appropriate conditions of consent are recommended for imposition should this application be considered worthy of approval for existing buildings that are proposed to be retained.</p>
Section 4.15(1) (b) – The likely impacts of the development, including environmental impacts on the natural and built environment	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the

Section 4.15 'Matters for Consideration'	Comments
<p><b>and social and economic impacts in the locality.</b></p>	<p>General Principles of Development Control table in this report. In summary, a number of inconsistencies with the relevant controls have been identified which indicate the impact of the development on the natural and built environment is not acceptable.</p> <p>(ii) The development will provide for additional industrial/warehouse development on the site and will generate employment for the locality. The proposed development will not therefore have a detrimental social impact on the locality.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the industrial nature of the proposed land use.</p>
<p><b>Section 4.15 (1) (c) – The suitability of the site for the development.</b></p>	<p>The site is not considered suitable for the size and scale of the additional development proposed, the application having been assessed as being inconsistent with certain provisions of WLEP 2000.</p> <p>On this basis, the site is not considered suitable for the proposed development.</p>
<p><b>Section 4.15 (1) (d) – Any submissions made in accordance with the EP&amp;A Act or EP&amp;A Regulation</b></p>	<p>In regards to public submissions, refer to the discussion on "Notification &amp; Submissions Received" within this report. In summary, the public submissions received raise a number of relevant issues which warrant the refusal of the application.</p>
<p><b>Section 4.15 (1) (e) – The public interest</b></p>	<p>The public interest has been considered as part of the application process. Overall, the public interest is best served by the consistent application of the requirements of the relevant planning controls, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised and/or managed.</p> <p>The proposal has been assessed against the provisions of the relevant planning controls and is unacceptable in terms of its impact on the natural and built environment.</p> <p>On this basis, the proposal is not considered to be in the public interest.</p>

#### **EXISTING USE RIGHTS**

Existing Use Rights do not apply 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 Northern Beaches Community Participation Plan.

The application was notified twice:

***First Notification***

4 December 2019 to 15 January 2020 - notification letters sent to 10 adjoining properties.

***Second Notification***

18 January 2020 to 8 February 2020 - notifications letters sent to 39 surrounding properties.

A notice was placed in the Manly Daily on 18 January 2018 and signs were placed upon the site.

As a result of the public exhibition process, Council is in receipt of 121 submissions, all of which raised objection to the proposed development.

The issues raised in the submissions are addressed in the following discussion:

- **The development will worsen traffic congestion and reduce safety on the local road network**

Concerns are raised that the development will increase traffic congestion on the local road network and reduce safety, particularly with regards to the nearby school. The objectors have raised concern that the Traffic Report submitted with the application has not adequately address the direct conflict of School pick up and drop off and the increased traffic associated with the proposed use.

**Comment:** Council's Traffic Engineer has reviewed the application and concludes that the Traffic Report submitted with the application is inadequate and does not allow a proper determination of the impact of the development on the local road network.

The concerns are concurred with and form a reason for refusal.

- **Impact of construction on existing residents and uses (noise, dust, amenity)**

Concern is raised regarding excavation and construction impacts associated with the development and the potential impact of delivery of trucks using the road network during school hours. Concerns have also been raised in relation to proposed construction hours and the potential for those hours to impact on the operation of the nearby school and other developments within the locality.

**Comment:** With regards to excavation and construction management, appropriate conditions can be imposed on a consent, should the application be considered for approval.

The construction hours imposed on consents are the standard hours for all construction activity, which are in accordance with the Interim Construction Noise Guidelines established by NSW Department of Planning, Industry and Environment.

Therefore, this issue should not be given determining weight.

- **Inconsistency with the Desired Future Character (DFC) Statement for the B2 Oxford Falls Valley Locality**

Concerns have been raised that the proposal is not consistent with the DFC of the Oxford Falls Valley Locality Statement, as in that it is not in-keeping with the character of the local area and will destroy the environmental features of the site.

**Comment:** The proposal's consistency with the DFC statement is addressed in the 'WLEP 2000' section of this report. In summary, the proposed development has been found to be inconsistent with the DFC statement for the B2 Locality.

The concerns are concurred with and form a reason for refusal.

- **Inconsistent with the General Principles under WLEP 2000**

Several submissions received have raised concerns that the development does not comply with several of the General Principles of Development Control as contained in Part 4 of WLEP 2000.

**Comment:** The issues raised have been addressed under the General Principles of WLEP 2000 section in this report. In summary, it has been found that the development is inconsistent with a number of the general principles and these have included as a reason for refusal.

- **Non-compliance with Built Form Controls**

Concerns have been raised that the proposed development does not comply with the applicable built form controls for the site.

**Comment:** The non-compliances of the proposal in relation to the built form controls is discussed throughout this report and forms a reason for the refusal of the DA. In summary, the development does not comply with built form controls that relate to building height and side setbacks.

The concerns are concurred with and form a reason for refusal.

- **Excessive Environmental Impacts**

A significant number of submissions raised concerns in relation to the impact of the development on the natural environment. Concerns have also been raised that there are inconsistencies between the experts reports submitted with the application.

**Comment:** This issue is addressed in the relevant sections addressing WLEP 2000 in this report and within the Referrals Section; specifically, Landscape and the Natural Environment (Biodiversity) Section. In summary, the impact on the natural environment is found to be unsatisfactory.

The concerns are concurred with and form a reason for refusal.

- **Approval would set an Undesirable Precedent**

The submissions raise concern that approving the development would set an undesirable precedent for similar types and/or scales of development in the area that are unsuitable and inappropriate.

**Comment:** In accordance with the provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000, Council is required to assess all development applications on their individual merits and against the relevant planning controls which apply to site at the time.

Accordingly, the issue in relation to precedent does not warrant the refusal of the application.

- **Insufficient Community Consultation**

Concerns have been raised that the proposed development has not undergone sufficient community consultation. In particular, concern is expressed that the application was not notified to a sufficient number of local residents.

**Comment:** The Northern Beaches Community Participation Plan requires adjoining properties to be notified by letter and the advertising of the application in the local newspaper. The time periods and extent of notification can be extended at the discretion of authorised officer should it be warranted, which is mainly due to the potential impacts of the development.

The notification of the DA was extended to properties that were deemed to be directly or indirectly impacted by the development. Residents and other uses were more broadly captured by the advertising in the Manly Daily.

This issue has been further resolved by re-notifying the application and sending notification letters to those residents who adjoin the site or are nearby.

Therefore, this matter does not warrant the refusal of the application.

- **Bushfire Hazard**

Concern has been raised over the threat of bushfires in the area and the suitability of such a use in this location.

**Comment:**

The development is accompanied by a Bushfire Risk Assessment report prepared by Blackash Bushfire Consultant. In the report, recommendations are provided to ensure the safety of the development, in accordance with the provisions of *'Planning for Bushfire Protection 2006'* as published by the NSW Rural Fire Service (NSWRFS).

The application was also referred to the NSWRFS (see External Referrals section in this report), who had not provided comments at the time of finalising this report. The application should not be approved until the comments (and conditions should the proposal be supported) have been received from the NSWRFS.

The concerns are noted and the absence of the RFS response warrants the refusal of the application.

- **Acoustic Impacts and Insufficient Information**

Concern is raised that the increased size, scale and intensity of the development above the existing approved development will have an adverse impact upon the acoustic amenity of adjoining and nearby development.

**Comment:** This issue is addressed in the Clause 43 of WLEP 2000 section of this report. In summary, the applicant has provided insufficient acoustic assessment to properly determine the acoustic impact of the development.

The concerns are concurred with and form a reason for refusal.

- **Inadequate Geotechnical Report**

Concerns have been raised that the proposal development involves a significant excavation of the site and there is no detailed geotechnical report submitted with the application to address the implications of the excavation.

**Comment:** The plans submitted with the application indicate a rock face excavation of up to 9.5m in height to accommodate up to three levels of basement parking. The applicant has submitted an experts report, prepared by Greg Dalls Consulting Engineer, which is a single page of information that simply states the design is adequate.

The report submitted with the application is insufficient, inadequate and does not provide any information relating to the stability of this portion of the site and the risk level of such a deep excavation.

The concerns are concurred with and form a reason for refusal.

- **Impact upon Existing Utilities and Infrastructure**

Submissions raise concerns that existing utilities and infrastructure will not be able to support a total development of this increased scale.

**Comment:** The provision of infrastructure is managed by the relevant service providers (i.e. telecommunications, water, electricity, roads, drainage etc.). In this regard, it is unlikely that the development would impose a strain upon the provision of those utilities and infrastructure.

If the application was recommended for approval, conditions would be included which would require approval by Sydney Water for access to Sydney Water's sewerage infrastructure prior to the issuing of a Construction Certificate.

Therefore, this issue should not be given determining weight.

- **Omissions in Supporting Documents**

The submissions raise the issue that the documentation accompanying the DA omits major areas of assessment and details, including:

- There are major inconsistencies within the reports submitted with the application
- The flora and fauna report did not list all the endangered species within the area and the report does not mention the Duffy's Forest Endangered Ecological Community

- Inaccurate Statement of Environmental Effects
- Inaccurate Traffic Report
- Inaccurate Geotechnical Report

**Comment:** The documentation submitted with the DA describes the proposed development and provides a level of information for Council to determine whether the proposal complies with all relevant controls.

Council undertakes its own assessment of the proposal and in the process of making such findings, considers the expert reports provided by the applicant. In this regard, the information provided by the applicant is not always agreed with or relied upon. Where Council cannot complete the assessment due to insufficient or inadequate information, the applicant may be requested to provide additional details or that issue may be included as a reason for refusal.

In the circumstances of this DA, the assessment has identified a number discrepancies within the application and there is conflicting information in relation to various reports and plans. In addition, there is lack of information to undertake a proper and complete assessment of the application.

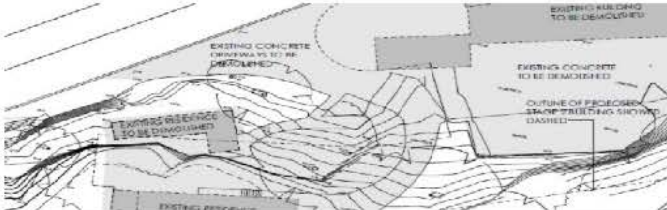
The concerns are concurred with and where validated form a reason for refusal.

## **REFERRALS**

<b>Internal Referral Body</b>	<b>Comments</b>
<b>Building Assessment - Fire and Disability upgrades</b>	<p><b>Supported subject to conditions</b></p> <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>
<b>Environmental Health (Industrial)</b>	<p><b>Supported subject to conditions</b></p> <p>Environmental Health has reviewed this proposal for construction of industrial units on land currently used as a waste management facility. Two main points of concern are dust from the excavation and construction works and management of any contaminated land or ground water.</p>
<b>Landscape Officer</b>	<p><b>Not Supported</b></p> <p>The Landscape Plans and Arborist's Report submitted with the application are noted.</p> <p>The proposed works require excavation into previously undisturbed areas of the site and removal of rock outcrops and native vegetation.</p>

	<p>The Arborist's Report indicates that 25 trees are to be removed. Of these, 16 are local native species with another 6 non local native species. Lower understorey shrubs and ground covers are also required to be removed in the excavated areas.</p> <p>The Landscape Plan provided indicates replanting of only 2 local native trees and 6 non local native trees.</p> <p>The proposal therefore clearly impacts upon existing natural features of the site.</p> <p>It is noted that a previous approval has been granted on the site by the Land and Environment Court.</p> <p>The SEE provided addresses the judgement and notes at Page 16:</p> <ul style="list-style-type: none"> <li><i>In these proceedings it was agreed between the parties that the light industrial/ warehouse development with ancillary office space was appropriately described as a low intensity and low impact use consistent with the existing and desired future character (DFC) for the B2 Oxford Falls Valley Locality. In forming this opinion, consideration was given to the fact that the proposed works were confined to previously disturbed areas of the site, would facilitate the cessation of the long established waste management facility use of the site, would facilitate the rehabilitation of disturbed perimeter bushland and would provide for substantial betterment in terms of environmental outcomes and consistency with the DFC.</i></li> </ul> <p>The works the subject of this application seek to extend development beyond previously disturbed/developed parts of the site. The site is within the B2 Locality under WLEP2000. The LEP makes specific mention of environmental features in the Locality, including retention of unique environmental features, minimising excavation and preservation of natural vegetation as per extracts below (italicised emphasis added):</p> <p>Warringah Local Environmental Plan 2000</p> <p><u>Part 4 Division 4 Clause 56</u></p> <p>56 Retaining distinctive environmental features on sites <i>Development is to be designed to retain and complement any distinctive environmental features of its site and on adjoining and nearby land. In particular, development is to be designed to incorporate or be sympathetic to environmental features such as rock outcrops, remnant bushland and watercourses</i></p> <p><u>Part 4 Division 4 Clause 57</u></p> <p>57 Development on sloping land <i>On sloping land, the height and bulk of development, particularly on the downhill side, is to be minimised and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope.</i> <i>In particular—</i></p> <ul style="list-style-type: none"> <li><i>the amount of fill is not to exceed more than 1 metre in depth, and</i></li> <li><i>fill is not to spread beyond the footprint of the building, and</i></li> </ul>
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	<ul style="list-style-type: none"> <li>• <i>excavation of the landform is to be minimised.</i></li> </ul> <p>The geotechnical stability of sloping land to support development is to be demonstrated. Consent must not be granted for development involving the erection of a structure, including additions to an existing structure, on land identified as being potentially subject to landslip on the Landslip Hazard Map unless the consent authority has considered a report from a suitably qualified engineer as to the geotechnical stability of the land to support such development and an assessment of stormwater prepared by a suitably qualified hydraulic engineer.</p> <p><u>Part 4 Division 4 Clause 58</u> 58 Protection of existing flora <i>Development is to be sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species.</i></p> <p>DESIRED FUTURE CHARACTER</p> <p>The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.</p> <p>Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway. <i>The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services.</i> Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged. A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.</p> <p>Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.</p> <p>It's difficult to reconcile the proposed works with the development controls and Court consideration as described above.</p> <p>The proposal is therefore not supported with regard to landscape issues due to the extended development in to previously undisturbed areas. A development that was confined to existing disturbed areas only may be more acceptable in relation to the issues raised above.</p>
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<p><b>NECC (Bushland and Biodiversity)</b></p>	<p><b>Not Supported</b></p> <p>While the proposed development will not trigger the NSW Biodiversity Offset Scheme, as concluded by the Flora and Fauna Assessment, the proposal does not avoid or minimise impacts to the biodiversity values of the site. The proposed development will directly and indirectly impact the limited areas of native vegetation and fauna habitat remaining on the site, is not in keeping with the natural landscape of the locality, and will impact areas protected by a bushland covenant applying to the site relating to the previous development consent. Therefore the development is not supported.</p> <p>I have reviewed the following documents and plans in preparing the following comments:</p> <ul style="list-style-type: none"> <li>• Statement of Environmental Effects – Boston Blyth Fleming November 2019</li> <li>• Flora and Fauna Assessment – Ecoplaning 15 October 2019</li> <li>• Bushfire Risk Assessment – Blackash 18 November 2019</li> <li>• Gelder – Architectural Plans Revision C dated 31/10/19</li> <li>• NSW LEC Case 10526 of 2012, including Condition 26 Bushland Covenant.</li> </ul> <p>The development has been assessed against clauses 56 and 58 and the B2 Oxford Falls Valley locality statement of Warringah Local Environmental Plan 2000, and the requirements of Warringah Development Control Plan 2000.</p> <p><u>Flora and Fauna Assessment</u>  <i>The data within Table 4.1 and Figure 4.1 is unclear as the definition of the 'subject site' is inconsistent between the information submitted supporting the application. The extent of the subject site that will be directly impacted by the Asset Protection Zone has been limited to the boundary of Lot 100. The APZ doesn't extend beyond the site boundary, and this is identified within the Bushfire Hazard Assessment (Figure 6). Therefore while the area of impact (APZ) depicted in figure 4.1 of the flora and fauna assessment is potentially overstated, the area of native vegetation within Lot 100 that will be directly impacted will be larger when expressed as a percentage of the area of native vegetation remaining on the site. It is unclear if the areas within Table 4.1 relate to Lot 100 only, or the larger 'subject site' as defined by Ecoplaning.</i></p> <p>Section 4.3.1 Vegetation clearing lists the measures taken to avoid</p>

	<p>and mitigate impacts. However, the measures proposed only relate to the mitigation of impacts, and the avoid/minimise/offset hierarchy has not been satisfactorily considered and does not satisfy local planning controls (see below).</p> <p><u>DA2011/0985 Consent</u> The NSW Land &amp; Environment Court s34 agreement for DA2011/0985 included Condition 26 requiring a Bushland Covenant to manage and protect bushland within the area. The proposed development will directly impact a portion of the site identified for the protection of bushland. Any development of the site should avoid impacts to native bushland.</p> <p><u>Warringah Local Environmental Plan 2000</u> Clause 56 Retaining distinctive environmental features on sites The development has not been designed to retain and complement distinctive environmental features of the site, and does not incorporate or be sympathetic to environmental features such as rock outcrops, remnant bushland and watercourses.</p> <p><u>Clause 58 Protection of existing flora</u> The development has not been sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species.</p> <p><u>Locality B2 Oxford Falls Valley</u> The development is not in keeping with the desired future character of the Oxford falls Valley as the natural landscape including landforms and vegetation remaining on the site will not be protected or enhanced. The development is not entirely located in an area that will minimise disturbance of vegetation and landforms.</p>
<b>NECC (Development Engineering)</b>	<p><b>Supported Subject to conditions</b></p> <p>It is noted that Riparian / Water Quality section has not supported the application as no water quality measures have been proposed for the development. Any amendments to the current stormwater strategy will require a re-referral to Development Engineering for review.</p> <p>No objections are raised to the proposed development, subject to conditions.</p>
<b>NECC (Riparian Lands and Creeks)</b>	<p><b>Not Supported</b></p> <p>The proposed work site is located outside riparian zone and has no direct impact on the riparian land.</p> <p><u>Water Quality</u> Warringah LEP 2000 is specifying the Water quality control measures are to be provided in accordance with the Northern Beaches Stormwater Management Plan (now updated to the PL 850 Water Management Policy). PL 850 is defining the water quality requirements and control for the site.</p> <p>The proposal <u>is not</u> demonstrating compliance with the relevant stormwater performance requirements:</p>

	<ul style="list-style-type: none"> <li>No stormwater treatment devices are shown on the stormwater management plan.</li> <li>MUSIC water quality model, or approved equivalent, must be provided to support the application.</li> </ul>
<b>NECC (Stormwater and Floodplain Engineering – Flood risk)</b>	<b>Supported</b> The proposed works are located above the Flood Planning Level, no flood related development controls applied.
<b>Strategic and Place Planning (Urban Design)</b>	<p><b>Not Supported</b></p> <p>The application proposes the expansion of the previously court approved light industrial/ warehouse development with ancillary office space and seeks the construction of an additional 16 industrial/ warehouse units with ancillary office space and associated basement parking. The development also incorporates ancillary floor spaces at the western end of the main building which are intended to be used for as a café (subject to separate approval) and communal lounge/ meeting room areas. A large roof top communal open space is also proposed.</p> <p>The Desired Future Character Statement for the B2 Oxford Falls Valley Locality is as follows:</p> <p><i>Future development will be limited to new houses conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway. The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services.</i></p> <p>The approved scheme is a two storey built form in pavilion forms located on the flatter section of the site. The new proposal seeks to build on the hill slope with a three/four storey building forms and will result in an unacceptable visual compatibility with the approved two storey and less bulky built forms. Furthermore, the new building forms are located on a slope where landforms are not meant to be disturbed and to make matter worse, with a deep three storey excavation into the hill slope. The extent of excavation will give rise to significant environmental impacts.</p> <p>The proposed industrial/warehouse building has a variable height above ground level of between 5 and 7.5 metres along its southern edge and up to a maximum of 11.5 metre measured to the roof of the ancillary facilities/ service hub. The proposal also exceeds the 7.2 metre wall height control. The extent of overall building height noncompliance is unacceptable. The proposed buildings display and height, visual bulk and an architectural scale that is not consistent with the industrial/ warehouse buildings previously approved. The non-compliant building height elements will be discernible as viewed from the surrounding public places. The proposed built form will not complement those previously approved for the stage 1 industrial/ warehouse development on the site.</p> <p>The proposed building maintains a 7.5 metre setback to the western</p>

	<p>boundary which does not comply minimum 10 metre setback with the side and rear boundaries. The rear and side setback areas are to be landscaped and free of any structures, car parking or site facilities other than driveways and fences.</p> <p>The proposal requires the removal of a number of trees which was assumed to be a good balance of built forms and vegetation in the approved scheme.</p> <p>The proposed works require excavation into previously undisturbed areas of the site and removal of rock outcrops and native vegetation. The additional vegetation and landform impacts that arise as a consequence of the works proposed is not acceptable.</p> <p>The development design is not sensitive to environmental conditions and site attributes including size, shape and design of allotments, the position of buildings, the size (bulk, height, mass), form, appearance and design of buildings.</p> <p>As described above, the proposed development is not a low intensity and low impact use and therefore the proposed development is not consistent with the desired future character of the B2 Oxford Falls Valley Locality.</p>
<b>Traffic Engineer</b>	<p><b>Not Supported</b></p> <p>The application is for the consolidation of sites to construct 7 buildings with a total of 30 industrial units.</p> <p><b>Traffic:</b> The numbers included in the assessment do not coincide with one another. The report mentions a generation rate of <b>40 vehicles</b> in the peak PM and then references <b>68 vehicles</b> in the peak movement. The data is not consistent and should be amended accordingly. There is no emphasis on a public transport modal shift. The applicant has identified that the area has poor serviceability. Noting that Council is to install a bus stop on the north-east corner of Dreadnaught Road and Wakehurst Parkway, the applicant is to demonstrate public transport access, particularly for staff, via a footpath connection from the bus stop location to the site. The footpath construction will be at the cost of the applicant.</p> <p><b>Parking:</b> Parking numbers are deemed acceptable. A reduction will be recommended once footpath access is provided from the proposed bus stop. The report should be revised with a reduction taken into consideration.</p> <p><b>Accessibility:</b> The car park arrangement should be in accordance with AS2890. Driveway widths appear to be appropriate. Car parking spaces appear to be designed appropriately.</p> <p>Vegetation adjacent to parking spaces shall be kept clear of the sight visibility splays.</p> <p>No provision has been made for servicing of the site. Further detail is required. The applicant has mentioned the truck size of 6.4m to be utilized, however has failed to indicate servicing times and locations.</p>

	<p><b>Pedestrian:</b> The site shall be signposted as a 10km/h slow speed environment. This will provide adequate safety for pedestrians moving within the carpark/access road.</p> <p><b>Conclusion:</b> Based on the Traffic, Parking and Accessibility concerns raised, the application cannot be supported in its current form. Further information is required.</p>
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External Referral Body	Comments
<b>Ausgrid: (SEPP Infra.)</b>	<p><b>No response received</b></p> <p>The application was referred to Ausgrid under clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007.</p> <p>To date, no response has been provided and it is assumed that no objection is raised concerning the proposal and hence there are no specific Ausgrid requirements to be imposed on any consent.</p>
<b>Aboriginal Heritage Office</b>	<p><b>Supported</b></p> <p>The Aboriginal Heritage has advised that 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>
<b>NSW Rural Fire Services (NSW RFS)</b>	<p><b>No response received</b></p> <p>The application was also referred to the comments.</p> <p>To date, no response has been provided. The application cannot be approved until the comments from the NSW RFS have been received.</p>

#### 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 Policy No. 55 – Remediation of Land

SEPP No. 55 – Remediation of Contaminated Lands establishes State-wide provisions to promote the remediation of contaminated land.

The SEPP states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before

the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals.

Clause 7 of the SEPP requires that a consent authority must not grant consent to a development if it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

In response to these requirements, the applicant submitted a Site Contamination Assessment Report, prepared by Goe-Environmental Engineering, dated 5 February 2020 for the proposed development. The report concludes that *"there is no widespread contamination issue on the site"*.

The application was also referred to Council's Environmental Health Officer who has reviewed the report and raised no objection to the proposal subject to conditions.

Accordingly, based on the information submitted, the requirements of the SEPP have been satisfied and the land can be made suitable for the purpose for which the development is proposed to be carried out.

#### **SEPP (Infrastructure) 2007**

Clause 45 of SEPP Infrastructure 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; or*
- *Within 5m of an exposed overhead electricity power line.*

The application was referred to Ausgrid under clause 45(2) of SEPP Infrastructure. To date, no response has been received and it is assumed that Ausgrid do not raise any objection nor impose any conditions.

#### Clause 102 - Roads and Maritime Service (RMS)

With regards to requirements of Clause 104(2) (b) and Schedule 3 of the SEPP, the development does not have a capacity for 200 or more motor vehicles. Therefore, the SEPP Infrastructure does not apply in this respect and does not require the referral of the application to Transport NSW (Former RMS).

#### **SEPP 44 – Koala Habitat Protection**

The provisions of this policy apply as the site is greater than one hectare in size. The site does not represent potential or core koala habitat.

Accordingly, no further consideration of the policy is required  
**Warringah Local Environmental Plan 2011 (WLEP 2011)**

The B2 Oxford Falls Valley and C8 Belrose North Localities (which cover the land subject to this Application) under the WLEP 2000 were proposed to be zoned E3 Environmental Management in the draft 2009 version of Warringah's standard instrument. This was based on a detailed translation methodology that was applied to all land within the former Warringah LGA.

In December 2011, the Minister for Planning and Infrastructure *deferred* land in the Oxford Falls Valley and Belrose North areas from the Warringah Local Environmental Plan 2011 (WLEP 2011) in response to stakeholder concern regarding the adequacy of consultation during the preparation of WLEP 2011.

Accordingly, WLEP 2011 and the current Warringah Development Control Plan 2011 do not apply to this application.

### **Warringah Local Environmental Plan 2000 (WLEP 2000)**

#### **Desired Future Character**

WLEP 2000 applies to the subject land and the DA is made pursuant to this instrument. Under WLEP 2000, the subject site is within the B2 Oxford Falls Valley Locality and the proposed development, being development for the purposes of industrial/warehouse, is classified as a Category 3 Development.

Pursuant to clause 12 of WLEP 2000, before granting consent for development, the consent authority must be satisfied that the development is consistent with any relevant General Principles of Development Control in Part 4 of WLEP 2000, and any relevant State Environmental Planning Policy described in Schedule 5 (State Policies).

Furthermore, clause 12 indicates that before granting consent for development, the consent authority must be satisfied that the development will comply with the relevant requirements made by Parts 2 and 3, and the development standards for the development set out in the Locality Statement for the locality in which the development will be carried out.

Finally, clause 12 states that before granting consent for development classified as Category Two or Three, the consent authority must be satisfied that the development is consistent with the Desired Future Character (DFC) described in the relevant Locality Statement.

The DFC statement for the B2 locality states as follows:

#### ***B2 Oxford Falls Valley Locality***

*The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.*

*Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.*

*The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access*

*roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.*

*A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.*

*Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its Catchment and will ensure that ecological values of natural watercourses are maintained.*

Each element of the desired future character statement is discussed as follows:

***The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows:***

When the DFC discusses the 'present character', it is reflective of the character that should not be altered from the time the instrument was gazetted (being that stipulated above). At which point a 'Desired Future Character' was set (being that land to be developed in accordance with the future directions stipulated within the DFC statement).

The present character of the Oxford Falls Valley is best described as:

- Predominantly natural landforms (which can include ridgetops and rock outcrops), remnant bushland (remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species), habitat for fauna, natural drainage lines and watercourses (including the catchments); and
- Interspersed rural-residential dwelling-houses (with associated ancillary structures) on allotments which have a density in the order of 1 dwelling/20 hectares and other occasional developments in the form of two schools and a recreation facility (tennis academy).

Post the making of WLEP 2000, there has been a child care centre and medical centre approved and a seniors housing (residential care facility) development approved (but not constructed), as well as the approved industrial/warehouse development on the subject site.

The proposed development does not adequately provide for the preservation of the "present character" despite the fact that the subject site is already significantly cleared and being developed for warehouse development as discussed in the following sections of the DFC.

***Future development will be limited to new detached style housing conforming to the housing density standards set out below and low intensity, low impact uses.***

This component of the DFC requires that new development that is not housing should be limited to low intensity and low impact uses. The statement "low intensity, low impact uses" is directly applicable to such uses other than "housing" that may be permissible in the locality, such as the proposed development.

The term "low intensity" and "low impact" are not defined in the dictionary of WLEP 2000. However, in the matter of *Vigor Master P/L v Warringah Council [NSWLEC 1128]*, Commissioner Hussey gave weight to the evidence of the Council Planner who sought to give meaning and understanding to the term "intensity" and "Impact". In this regard, the following characterisation was given:

*"Intensity: is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore, "low intensity" would constitute a development which has a low level of activities associated with it."*

*"Impact: is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore 'low impact' would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality."*

Further, the Commissioner made the important observation that *"any development must also satisfy a qualitative assessment as well as the quantitative controls so as to achieve a reasonable degree of consistency with the DFC for the locality"*.

The following assessment provides a detailed planning assessment of "low intensity" and "low Impact" as it relates to the proposed development.

**(a) Is the proposed development a "Low Intensity" use?**

Further to the background information above, a *"low intensity use"* is a use which would be typified as having a low level of activities associated with it. The extent of activities associated with the operation of a particular use is largely determined by the following:

- The amount of traffic movements (cars, delivery and service vehicles),
- The number of pedestrian movements (internal and external)
- The physical size of the business (floor space, height, scale, building footprint amount of landscaping),
- The hours of operation of a business,
- The noise generation of the business,
- The light emitted by the business (internal, floodlighting and signage).

Based on the following assessment, the proposed warehouse/industrial and office development is not considered to be a low intensity use as the proposal introduces a large building onto the site that will result in an visual, acoustic and traffic intensification of the level of buildings and activities conducted on this site which cannot be classified as a "low intensity" use for the following reasons:

**(i) Traffic Movements**

The proposal development seeks consent for an additional 111 carparking spaces on the site, when the parking controls only require 77 parking spaces, representing a significant oversupply and hence impact on the site and traffic movements. The Traffic and Parking Assessment Report submitted with the application indicates that the higher number of car parking spaces is warranted due to the availability of land and also in response to the lack of alternative forms of transport servicing the site due to the isolation of the site.

It is considered that the size of land and the isolation of the site are not adequate planning grounds to have such a significant increase in the amount of parking and associated traffic movements (i.e. 111 cars that ingress and egress from the site) over and above the Stage 1 development which is estimated to be 68 vehicle movements. No rationale has been submitted to indicate how this figure was derived and there is no mechanism described in the

DA documentation to indicate how the traffic impact associated with the proposed development on the surrounding residential and non-residential developments, will be minimised and mitigated.

Further, it is also noted that the documentation submitted with the DA does not provide any details in relation to the number of trucks and large servicing vehicles associated with the proposed development and its impact on traffic movements and amenity.

**(ii) Pedestrian Activity**

There is insufficient information submitted with the DA for Council to accurately determine the intensity of pedestrian activities associated with the proposed development. The following information is considered essential for the proposed development for Council to make an accurate assessment with regards to pedestrian activities:

- The individual uses of the proposed warehouse units and office space;
- The number of staff associated with each individual unit/office space; and
- The number of deliveries associated with each individual use.

In the absence of the required information, Council is unable to make an accurate assessment of the intensity associated with pedestrian activities.

**(iii) Noise and Lighting Impact**

There is insufficient information submitted with the DA, in the form of an acoustic report, to determine the acoustic impact of the proposed development associated with traffic movements and the operation of the business.

Further, there is also insufficient information submitted with the DA to determine the lighting impact of the proposed development given the use of the individual units is unknown and the proposed hours of operation are in direct conflict with the Stage 1 approval on the site.

**(b) Is the proposed development a “Low Impact” use?**

Further to the background information above, a “low impact use” is a use which would be typified as having a minimal, minor or negligible level of impact and would be unlikely to significantly change the amenity of the locality and can largely be determined by considering the following:

- The amenity of adjoining properties (in terms of privacy, solar access, and visual amenity)
- The bulk and scale of the development and how it relates to the streetscape and adjoining properties
- The removal of any existing vegetation from the site as result of the proposed development (taking into any proposed landscaping)

The assessment of the application has found that the proposed development is not considered to be ‘low impact’ for the following reasons:

- The built form of the proposed development will be visually incompatible with the dominant non urban character of the built and natural environment of the B2 Oxford Falls Valley Locality that surrounds the site, given that the proposed development is

significantly larger in terms of its size and scale in comparison to the existing development on subject site,

- The proposal would generate onsite activities (i.e. vehicles, trucks and trailer movements, loading and unloading, people activity, movement of large and small machinery and equipment) that will have an adverse impact on the amenity of nearby residential development,
- The form of the proposed buildings and associated works including access roads and car parking spaces have not been designed to minimise the size, scale and area of the built forms and site cover on the site,
- The proposed development will result in a significant impact upon the natural features of the site, including drainage features, vegetation and topography, through the removal of a large number of significant trees and areas of remnant bushland as a result of the provision of APZs within the site and excavation into the rock outcrops on the site,
- The proposed buildings and associated works including access roads and services have not been designed to minimise disturbance of vegetation and landforms.

**(c) Conclusions on Low-Intensity and Low Impact:**

The proposed development is therefore not consistent with this element of the DFC statement relating to the requirement for the development to be a low intensity and low impact use.

***There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.***

Given the location of the subject site, the proposed development does not disrupt the skyline when viewed from Narrabeen Lagoon and Wakehurst Parkway as the site cannot be seen from those vantage points.

For the above reason, the proposed development is consistent with this component of the DFC.

***The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services.***

The applicant's Flora and Fauna Assessment, prepared by Ecoplaning notes that the subject site constitutes approximately 0.68 hectares of land, of which 0.36 hectares will be directly impacted by the current proposal and further 0.3 hectares will be impacted to accommodate the proposed APZ's.



**Figure 6 – Showing the Development Footprint over the Mapped Vegetation** (source: Flora and Fauna Assessment, prepared by Ecoplanning)

As noted in the Referrals section of this report, Council's Natural Environment Unit (Biodiversity Section) and Landscape Officer have determined that the proposed development will result in a significant impact upon the site, including its natural drainage features, vegetation and topography, through the removal of a significant number of trees and the modification of significant portion of the vegetation on the site for the proposed development and the provision of APZ's.

The proposal also involves a significant extent of excavation into the natural landforms of the site. The location and extent of the new buildings do not reflect a grouping to minimise disturbance, in fact the outcomes will be to the contrary.

The proposed development is therefore assessed as not being consistent with the DFC statement of the locality relating to the requirement of protecting natural landforms and vegetation.

***Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.***

The external finishes submitted with the application indicate that the proposed development will blend with the natural landscaping of the site and surroundings. The proposed development is therefore consistent with this component of the DFC.

***Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its Catchment and will ensure that ecological values of natural watercourses are maintained.***

As noted in the detailed comments by the Council's Natural Environment Unit (Riparian Section), the proposed development is inconsistent with the above component of the DFC.

In this respect, insufficient information has been provided with the application to enable Council to assess and ascertain what, if any, impacts would occur as a result of the development.

Therefore, the development is not considered to satisfy this element of the DFC statement.

### Conclusions on Consistency with the DFC Statement

Based upon the above assessment, the development is found to be inconsistent with the DFC statement for the B2 Oxford Falls Valley locality. It is found not to involve a low intensity and low impact form of development on the site, in terms of the form, scale and siting of the development, particularly in relation to the unacceptable impacts on the natural landforms and native vegetation (through excessive excavation and placement of out of scale building forms) and the associated visual impacts and increases in traffic and noise.

### Built Form Controls for Locality B2 Oxford Falls Valley

The following table outlines compliance with the Built Form Controls of the above locality statement:

Built Form Standard	Required	Proposed	Compliance
Building Height	8.5m (overall)	7.5m to 11.5m	NO
	7.2m (floor to underside of ceiling)		
Front building setback	20 metres	Approximately 90m from Meatworks Avenue	YES
Rear building setback	10 metres	Exceeds 90m	YES
Side boundary setback	10 metres	7.5m (western) No new works are proposed on the eastern boundary	NO
Landscaped open space	50% of the site area.	54% (18500m <sup>2</sup> )	YES

The proposed development fails to satisfy the Locality's Building Height and Side Boundary Setback Built Form Controls. Accordingly, further assessment is provided against the applicability of Clause 20(1).

### Clause 20(1) stipulates:

*"Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the General Principles of Development Control, the Desired Future Character of the locality and any relevant State Environmental Planning Policy."*

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

### **1. General Principles of Development Control**

The proposal fails the test of consistency with several General Principles of Development Control and accordingly fails to qualify to be considered for a variation to the development standards under the provisions of Clause 20(1). (See the discussion on "General Principles of Development Control" in this report for a detailed assessment on consistency).

### **2. Desired Future Character of the Locality**

The proposal is inconsistent with the DFC Statement for the B2 Oxford Falls Locality and accordingly fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1). (See discussion on "Desired Future Character" in this report for a detailed assessment on consistency).

### **3. Relevant State Environmental Planning Policies**

The proposal is assessed as being consistent with applicable State Environmental Planning Policies. (Refer to earlier discussion under 'State Environmental Planning Policies').

In order to fully consider the merits of the application, the following provides an assessment of the non-compliances with the Building Height and Side Setback Built Form Controls (note: in accordance with Clause 20(1) of WLEP 2000. The following assessment does not constitute a consideration for variations to the respective Built Form Controls due to the inconsistencies noted above.

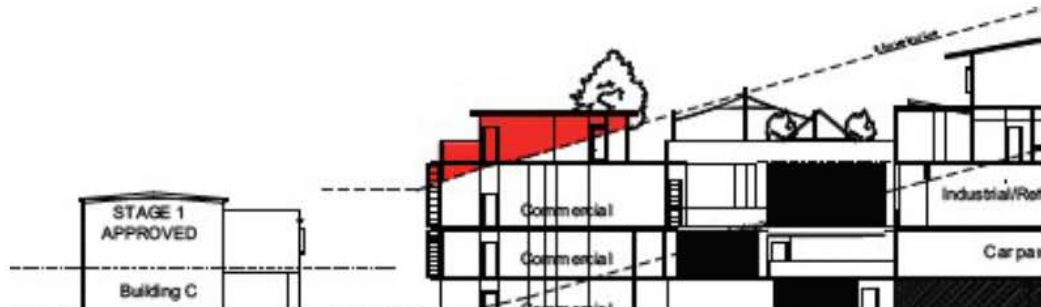
#### **Building Height**

The building height control for the B2 locality states that buildings are not to exceed 8.5 metres in height, where height is the distance measured vertically between the topmost point of the building and the natural ground level below.

In addition to the above, the control requires that developments are not to exceed 7.2 metres in height, where height is the distance measured from natural ground level to the underside of the ceiling on the uppermost floor of the building.

#### **Area of Non-compliance**

The proposed building has a variable height above ground level of between 7.5m along its southern edge up to a maximum of 11.5m measured to the roof of the ancillary facilities/service hub. The proposal also exceeds the 7.2 metre wall height control.



**Figure 7: View of Non-compliant Building Height** (Plans as prepared by Gelder Architects, dated 15 November 2019, with extent of non-compliance added in red)

#### ***Merit consideration of Non-compliance***

In assessing this element of the proposal, it is necessary to consider the merit considerations of the Building Height control. Accordingly, consistencies with the merit considerations are addressed below:

- ***Ensure that development does not become visually dominant by virtue of its height and bulk***

The proposed height is considered excessive and will set an undesirable precedent for the locality that envisages a low-scale and low density character. Accordingly, the height of the proposed development is not compatible and would be excessive in terms of its scale as compared to other developments in the surrounding locality.

The combination of the vertical and horizontal massing of the front and side elevations of the building in conjunction with the proposed side setbacks results in visually dominant building bulk that is not sympathetic to the bulk of surrounding development or development that was approved on the subject site as part of Stage 1.

- ***Preserve the amenity of the surrounding land.***

The non-compliance with the height standard will not result in inconsistencies with this objective as adjoining and nearby development will not experience adverse impacts with regards to views, privacy and loss of solar access.

It is noted that there is limited visual exposure of the site when viewed from surrounding properties, however the visual quality of the built form in this setting is inappropriate.

The impacts associated with this proposal have not been “minimised” and a compliant building would achieve greater consistency with this objective.

The visual impact of the development is found to be unacceptable in its current form.

- ***Ensure that development responds to site topography and minimises excavation of the natural landform;***

The proposed side setbacks does not respond to the topography of the site, as the development requires a significant excavation into the large rock escarpment traversing the

southern portion of the site, and impacting on dense natural bushland that is located to the south of the escarpment.

### ***Conclusion on Building Height Variation***

The development is not consistent with the objectives underlying the Building Height control. In this respect, the variation to the Building Height control is not supported.

### **Side Boundary Setback Built Form Control**

#### ***Area of Non-compliance***

The development is non-compliant 10m requirement, providing a 7.5m setback to the western boundary.

#### ***Merit Consideration of Non-compliance***

In assessing this element of the proposal, it is necessary to consider the merit considerations of the Side Boundary Setback Built Form Control. Accordingly, consistencies with the merit considerations are addressed below:

- **Ensure that development does not become visually dominant by virtue of its height and bulk**

The non-compliances occur throughout the entire length of the western elevation and will have a visual impact in terms of the height and bulk of the development.

- **Preserve the amenity of the surrounding land**

Whilst, the extent of the non-compliance will not significantly impact on views, privacy or solar access of the adjoining property to the west, the visual impact of the development is unacceptable in its current form

- ***Ensure that development responds to site topography***

The proposed side setbacks do not respond to the topography of the site, as the development requires a significant amount of excavation into the large rock escarpment traversing the southern portion of the site, and impacting into dense natural bushland which is located to the south of this escarpment.

- **Provide separation between buildings**

Given the size and scale of the development, there is insufficient separation to the western boundary of the subject site. If the development was designed to achieve compliance with the DFC statement, and was broken up to minimise the building bulk, then this could be considered a sufficient mitigation that may warrant some variation to the side boundary setback.

- **Provide opportunities for landscaping**

Given the non-compliance through the entire length of the development, the non-compliant side setbacks are considered to have a significant impact on the provision of landscaping for the site.

- **Create a sense of openness**

The non-compliant building height indicates unreasonable massing within close proximity to the side boundary to the west. The visual impact and general lack of articulation to the side elevation is unsatisfactory.

#### **Conclusion on Side Setback Variation**

The development is not consistent with the objectives underlying the Side Boundary Setback Built Form Control. In this regard, the variation to the Side Boundary Setback Built Form Control is not supported.

#### **GENERAL PRINCIPLES OF DEVELOPMENT CONTROL**

The General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development. The relevant general principles are addressed below.

<b>General Principles</b>	<b>Applies</b>	<b>Comments</b>	<b>Complies</b>
CL38 Glare & reflection	YES	Issues of glare and reflection, including building colours and materials, internal and external lighting of the buildings and flood lighting of the site will be the subject of conditions if the application was recommended for approval requiring: <ul style="list-style-type: none"> <li>• Compliance with the approved colours and materials as shown on the submitted sample board which is considered satisfactory;</li> <li>• Full details of lighting in the form of a Lighting Strategy which is to minimise impacts on the night time's amenity adjoining residential properties.</li> </ul>	YES (subject to condition)
CL39 Local retail centres	NO	The site is not located within a Local Retail Centre.	Not Applicable
CL40 Housing for Older People and People with Disabilities	NO	No Comment	Not Applicable
CL41 Brothels	NO	No Comment	Not Applicable
CL42 Construction Sites	YES	The potential exists for the future demolition, excavation and construction to have an adverse impact upon surrounding locality in terms of traffic, noise, dust, parking, accessibility and sediment.  Therefore, comprehensive conditions of consent will be required to be imposed for Construction Management Plan to be submitted, should this application be approved. Issues to be addressed include stormwater and wastewater disposal, waste management, air	YES (Subject to conditions)

General Principles	Applies	Comments	Complies
		quality, noise management and truck movement, frequency and parking.  Subject to addressing the imposed conditions, the application is considered capable of satisfying the provisions of this General Principle.	
CL43 Noise	YES	Insufficient information has been submitted with the application (i.e. an acoustic report) for Council to determine the proposal's compliance with the requirement of this Clause.  Further to the above, It is also considered that the acoustic impact arising from vehicles accessing the development is not in keeping with the rural and residential nature of the locality or that of a 'low intensity, low impact' use as discussed in the DFC section of this report.  This issue has been included as a reason for refusal.	NO
CL44 Pollutants	Yes	The proposed use increases the population density of the site and introduces additional warehouse facilities. Therefore, the development has the potential to introduce new pollutants into the local environment through increased the disposal of grey water and through the possible discarding of industrial type of waste.  In this regard, appropriate conditions could be imposed, should this application be approved, to address these additional impacts of the proposed development to ensure that the operation of these facilities does not have any adverse impact upon the Environment.	Yes (Subject to conditions)
CL45 Hazardous Uses	NO	No Comment	Not Applicable
CL46 Radiation Emission Levels	NO	No Comment	Not Applicable
CL47 Flood Affected Land	NO	The site is not located within, or near to, any identified flood affected land.	Not Applicable
CL48 Potentially Contaminated Land	YES	The requirements of Clause 48 have been addressed under 'State Environmental Planning Policy No.55 – Remediation of Land' in this report.	Yes
CL49 Remediation of Contaminated Land	NO	No Comment	Not Applicable
CL49a Acid Sulfate Soils	NO	The site is not located within, or near to, any land categorised as containing acid sulphate soil.	Not Applicable
CL50 Safety & Security	YES	The proposed development will provide adequate surveillance.	YES

General Principles	Applies	Comments	Complies
		Accordingly, the proposed development is considered to be consistent with the requirements of Clause 50.	
CL51 Front Fences and Walls	No	No front fence is proposed.	Not Applicable
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	No	<p>Clause 52 requires that Development adjacent to parks, bushland reserves and other public spaces, including land reserved for public open space, it to complement the landscape character and public use and enjoyment of that land.</p> <p>The subject site adjoins Middle Creek Reserve (No. 2 Wakehurst Parkway) to the north of the subject site. The proposal will provide adequate separation of the site from the surrounding public open space. The proposal is therefore considered to satisfy the requirements of Clause 52.</p>	Yes
CL53 Signs	NO	No signage is proposed as part of this application. A condition can be included in the consent if the application was recommended for approval to require a separate development application to be lodged for signage where required under the provisions of WLEP 2000.	Not Applicable
CL54 Provision and Location of Utility Services	YES	Conditions could be imposed if the application was approved requiring connection to all utility services including an approved telecommunications provider, energy, water and sewerage.	YES (Subject to condition)
CL55 Site Consolidation in 'Medium Density Areas'	NO	No Comment	Not Applicable
CL56 Retaining Unique Environmental Features on Site & CL58 Protection of Existing Flora	YES	<p>As noted in the referral section of this report, by Council's Natural Environment Unit (Biodiversity Section) and the Landscape Officer, the proposed development will result in a significant impact upon the site including its natural drainage features, vegetation and topography through the removal of significant number of trees and the modification of significant portion of the site area for the proposed development and the provision of APZs within the site. The proposed also proposes significant excavation into the site.</p> <p>This issue has been included as a reason for refusal.</p>	No
CL57 Development on Sloping Land	YES	<p>Clause 57 requires that the geotechnical stability of sloping land to support development is to be demonstrated.</p> <p>Clause 57 specifically indicates that consent must not be granted for development involving the erection of a structure, including</p>	No

General Principles	Applies	Comments	Complies
		<p>additions to an existing structure, on land Identified as being potentially subject to landslip on the Landslip Hazard Map unless the consent authority has considered a report from a suitably qualified engineer as to the geotechnical stability of the land to support such development and an assessment of stormwater prepared by a suitably qualified hydraulic engineer.</p> <p>Therefore, a Geotechnical report that addresses the proposed development within the subject site has not been prepared or submitted with the application and therefore Council is unable to confirm the geotechnical stability of the land and the proposed development.</p> <p>This issue has been included as reason for refusal.</p>	
CL59 Koala Habitat Protection	YES	There no koala activities identified on site and therefore the proposed development is consistent with the requirement of this Clause.	YES
CL60 Watercourses & Aquatic Habitats	YES	<p>The application was referred to the Riparian Section of Council's Natural Environment Unit who advises (see 'Internal Referrals' in this report) that insufficient information has been submitted with the application to determine compliance with the requirement of this Clause.</p> <p>Based on the above advice, the proposed development is therefore not consistent with the requirement of this Clause and this issue has been included as a reason for refusal.</p>	NO
CL61 Views	YES	<p>Due to the topography and location of the site, it is unlikely that the proposed development will affect any significant views.</p> <p>In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, were applied to the proposal. While no objections regarding view loss were received, the view assessment has been undertaken to have regard to all surrounding properties and the proposal is satisfactory in providing reasonable view sharing.</p>	YES
CL62 Access to sunlight	YES	Given the location of the subject site, the proposed development will achieve compliance with the requirement of this Clause.	YES
CL63 Landscaped Open Space	YES	Clause 63 required that Landscape open space is to be such dimensions and slope and of such characteristics that it will:	NO

General Principles	Applies	Comments	Complies
		<ul style="list-style-type: none"> <li>• Enable the establishment of appropriate plantings to maintain and enhance the streetscape and the desired future character of the locality;</li> <li>• Enable the establishment of appropriate plantings that are of a scale and density commensurate with the building height, bulk and scale;</li> <li>• Enhance privacy between dwellings;</li> <li>• Accommodate appropriate outdoor recreational needs and suit the anticipated requirements of dwelling occupants;</li> <li>• Provide space for service functions, including clothes drying;</li> <li>• Facilitate water management including on-site detention and the infiltration of stormwater;</li> <li>• Incorporate the establishment of any plant species nominated in the relevant Locality Statement;</li> <li>• Enable the establishment of indigenous vegetation and habitat for native fauna;</li> <li>• Conserve significant features of the site.</li> </ul> <p>Whilst the development complies with the numeric requirement, it is considered that the landscaped area does not meet the requirements of the desired future character statement that is commensurate with the scale of the development. As such the development is not considered to be consistent with the requirements of Clause 63 and this issue has been included as reason for refusal.</p>	
CL63A Rear Building Setback	YES	The building is setback in access of 10m from the rear boundary which compliance with the built form control relating to the rear setback and therefore the proposed development is consistent with the requirement of this Clause.	YES
CL64 Private open space	No	No comment	Not Applicable
CL65 Privacy	YES	Given the proximity and use of the adjoining lands from the proposed development no adverse privacy impacts will result from the proposed development.	YES
CL66 Building bulk	YES	Clause 66 requires buildings to have a visual	No

General Principles	Applies	Comments	Complies
		<p>bulk and an architectural scale consistent with structures on adjoining or nearby land.</p> <p>The vertical and horizontal massing of development, when viewed from the public domains of Meatworks, and from the side elevations, results in visually dominant building bulk that has no sympathy or relationship to the bulk of surrounding residential development.</p>	
CL67 Roofs	YES	The proposed roof form is considered to be satisfactory and is integral to the style of the buildings proposed.	YES
CL68 Conservation of Energy and Water	YES	If the application is approved, conditions can be included in the consent, which requires that the proposed development is connected to appropriate services	YES (subject to conditions)
CL69 Accessibility – Public and Semi-Public Buildings	YES	A condition could be included in the consent if the application is recommended for approval to ensure the development complies with the intent of the DDA and the requirements of the BCA and AS1428.2.	YES (subject to condition)
CL70 Site facilities	YES	<p>No details have been provided within documentations submitted with the application in relation to how the general waste and recycling storage will be located on site.</p> <p>Notwithstanding the above, it is considered that the site as whole contains adequate space for general waste and recycling storage that can readily achieve compliance with the requirement of this Clause.</p> <p>Accordingly, the proposed development is satisfactory with regards to this Clause.</p>	YES
CL71 Parking facilities (visual impact)	YES	The parking facilities (being basement level) are sited and designed to not dominate the street frontage or other public spaces and is satisfactory in addressing the General Principle.	YES
CL72 Traffic access & safety	YES	<p>Clause 72 requires that vehicle access points for parking, servicing or deliveries, and pedestrian access, are to be located on such a way to minimize:</p> <ul style="list-style-type: none"> <li>• <i>Traffic hazards, and</i></li> <li>• <i>Vehicles queuing on public roads, and</i></li> <li>• <i>The number of crossing places to a street, and</i></li> <li>• <i>Traffic and pedestrian conflict, and</i></li> <li>• <i>Interference with public transport facilities.</i></li> </ul> <p>Council's Traffic Engineer has reviewed the proposal and has indicated that based on the information, the application cannot be supported on Traffic grounds.</p>	No

General Principles	Applies	Comments	Complies
		This issue is therefore included as reason for refusal.	
CL73 On-site Loading and Unloading	YES	All loading and unloading will occur within the boundaries of the subject site and therefore considered to be satisfactory in relation to this Clause.	Yes
CL74 Provision of Car parking	YES	<p>Clause 74 stipulates that adequate off-street car parking is to be provided to serve a development and that the application must be assessed against the provisions of Schedule 17 of WLEP 2000.</p> <p><b>Assessment under the provisions of Schedule 17</b></p> <p>Schedule 17 stipulates the following relevant parking rates:</p> <p><b><i>“Warehouse/industrial Development - 1.3 spaces per 100m<sup>2</sup> GFA (including up to 20% of floor area as office space component)”.</i></b></p> <p>The proposal according to the Traffic proposes:</p> <p>Industrial units 13 units (2,318m<sup>2</sup>) - 31 spaces Commercial/industrial (1,423m<sup>2</sup>) - 36 spaces Ancillary building (365m<sup>2</sup>) - 10 spaces</p> <p><b>Total parking required: 77 spaces</b></p> <p>The proposed development provided a total of 111 spaces which exceeds the requirement of schedule 17.</p>	YES
CL75 Design of Carparking Areas	YES	<p>The car parking area is accommodated within a basement parking area, which is incorporated into the design of the development. Access/egress is provided to the variable width driveway.</p> <p>The design of the carpark and driveway will enable safe and convenient pedestrian and traffic movement and will enable vehicles to enter and leave the site in a forward direction.</p>	YES
CL76 Management of Stormwater	YES	<p>Council's Development Engineer has reviewed the proposal and raised no objection to the proposed development subject to conditions of consent.</p> <p>Should the application be approved, the conditions as recommended by Council's Development Engineers.</p>	Yes (subject to conditions)
CL77 Landfill	YES	No significant landfill is proposed as part of the proposed development and therefore the requirement of this Clause is achieved.	YES
CL78 Erosion &	YES	Appropriate conditions associated with	YES

General Principles	Applies	Comments	Complies
Sedimentation		management of erosion and sedimentation can be included on the consent if the application is worthy of approved.	(subject to conditions)
CL79 Heritage Control	NO	No Comment	Not Applicable
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	NO	No Comment	Not Applicable
CL81 Notice to Heritage Council	NO	No Comment	Not Applicable
CL82 Development in the Vicinity of Heritage Items	Yes	The adjoining land on the northwest of the subject site is identified as Conservation Area. The proposed development does not extend into the Conservation area and therefore, the proposal will have no impact upon the significance of the heritage conversation area.  The proposed development is consistent with the requirement of this Clause.	Yes
CL83 Development of Known or Potential Archaeological Sites	YES	The Aboriginal Heritage office has reviewed the proposal and has raised no objection to the proposed development.	Yes

#### **Schedule 8 - Site analysis**

Adequate site analysis documentation has been submitted with this application.

#### **Schedule 15 - Statement of Environmental Effects**

Under Clause 15 of WLEP 2000, there are specific provisions relating to Category 3 development.

Pursuant to Clause 15 of WLEP 2000, consent may be granted to development classified as Category Three, only if the consent authority has considered a Statement of Environmental Effects that includes the items in Schedule 15.

The applicant has submitted a Statement of Environmental Effects which addresses the items listed in Schedule 15 of WLEP 2000. An assessment of the Category 3 elements of the proposal against the provisions of Schedule 15 is provided below:

(1) Summary of the statement of environmental effects	A Statement of Environmental Effects (SEE) has been submitted with the application, as prepared by Boston Blyth Flemming Town Planner.  <b>Comment:</b> The statement submitted adequately addresses the proposal's consistency with all relevant planning controls.
(2) Consistency of the proposal with the Desired Future Character Statement and General Principles of	The applicant has addressed the consistency of the proposal with the desired future character statements for the B2 Locality and the General Principles of Development Control. In summary, the applicant has concluded that the proposal is consistent with DFC statements for the B2 Locality and the development is also consistent with the General

Development Control established by the plan	<p>Principles as contained in Part of the WLEP 2000.</p> <p><b>Comment:</b> An assessment of the proposal with all relevant controls in WLEP 2000 is detailed in this report. The assessment has found that the proposal is inconsistent with the DFC for the B2 Locality and the number of the General Principles as contained within WLEP 2000.</p>
(3) Objectives of the proposed development	<p>The applicant has advised that the primary objectivities of the proposed development are to:</p> <p><i>The objective of the proposed development is to provide for the orderly and economic use and development of the land and in doing so meet a clear demand for industrial/ warehouse development in this locality and within the Northern Beaches LGA generally.</i></p> <p><b>Comment:</b> The objectives of the development are considered to have been sufficiently discussed and documented. Although it is not necessarily agreed (through the lack of supporting evidence) that the development will for orderly and economic use of the land.</p>
(4) An analysis of feasible alternatives including the consequences of not carrying out the development and the reasons justifying the carrying out of the development.	<p>The applicant has provided the following comments in regard to the possibility of feasible alternatives;</p> <p><b>(a) The consequences of not carrying out the development</b></p> <p><i>The consequence of not carry out the development would be that an opportunity to meet a clear demand for warehouse/ industrial development in this area would be missed with market feedback being that the proposal warehouse/ industrial building typology proposed provides a superior built form/ land use/ amenity outcome than existing industrial zoned land within the LGA.</i></p> <p><b>(b) The reason justifying the carrying out of the development.</b></p> <p><i>The development provides for the orderly and economic use and development of the land and in doing so meets a clear demand for industrial/ warehouse development in this locality and within the Northern Beaches LGA generally.</i></p> <p><i>The same land use with similar building typology and environmental outcomes has previously been approved on the subject site and as such found to be consistent with the DFC. The expansion of this approved development utilises a majority of the previously approved infrastructure without compromising the enhanced environmental and land use outcomes afforded through approval of the previous application which required the cessation of the long established waste management land use operating on the site.</i></p> <p><b>Comment:</b> The applicant's comments in regard to the possibility of feasible alternatives, and the consequences of not carrying out the development, are not concurred with as the site can be developed in manner that achieves compliance with requirement of relevant planning controls.</p> <p>Further to the above, the site is already developed for industrial/warehouse development and it's reached at its capacity.</p>
(5) Development and context analysis	<p>The applicant has provided a context analysis of the development.</p> <p><b>Comment:</b> The SEE has provided an appropriate description of the development and an analysis of the context of the site.</p>

(6) The reasons justifying the carrying out of the development in the manner proposed having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development	<p>The applicant states:</p> <p><i>The development has been designed to minimise the impact of the proposed on the biophysical environment.</i></p> <p><i>The development will generate employment during construction and post occupation. In this regard, the development will have a positive economic impact.</i></p> <p><i>The development provides for the orderly and economic use and development of the land and in doing so will meet a clear demand for industrial/ warehouse development in this locality and within the Northern Beaches LGA generally. In this regard, the development will result in a positive social impact.</i></p> <p><i>The proposed development provides for environmental sustainability and the proper management of stormwater, drainage and bushland on and adjoining the site and the maintenance of the water and bushland quality of the catchment overall.</i></p> <p><b>Comment:</b> Given the long-standing industrial character of the site the development is unlikely to have any significant impact on the biophysical, economic and social environment.</p>
(7) Measures to mitigate any adverse effects of the development on the environment	<p>The applicant within Section D of the SEE provides an explanation of the proposed to mitigate any adverse effects of the development on environment.</p> <p><b>Comment:</b> The measures proposed to mitigate any adverse impacts on the environment are considered satisfactory. If the application was recommended for approval, conditions should be included to minimise the adverse effects of the development on the environment.</p>
(8) Other approvals required	<p>The comments received external bodies have been addressed elsewhere in this report.</p>

### Schedule 17 – Car parking Provision

For further details please refer to 'Clause 74 Provision of car parking' in the General Principles of Development Control table in this report.

### 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 \$96,250 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$9,625,000.

### 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 2000;
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects and all other documentation supporting the application and public submissions.

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

- 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

The assessment of the application has revealed that the application cannot be supported for a number of critical planning reasons and deficiencies in the accompanying documentation.

The assessment of the proposed development has found it is inconsistent with the Desired Future Character as outlined in the B2 Oxford Falls Locality and as a Category 3 development, should the Panel also find that the proposal is inconsistent, consent cannot be granted by the consent authority on this basis.

The proposal is also found to be inconsistent with the number of General Principles of Development Control as contained in Part 4 of Warringah Local Environment Plan 2000.

The assessment of the DA against the provisions of WLEP 2000, found that the proposal does not comply with the Building Height and Side Setback Built Form Controls. Because of the inconsistency of the proposal with the Desired Future Character statement and the General Principles of Development Control, it is not able to be considered for a variation under the provisos in Clause 20 of WLEP 2000.

The public exhibition of the DA resulted in a significant response from the community, which included 121 written submissions, all which objected to the proposal. The fundamental concerns raised in the submissions related to traffic issues, inconsistency of the development with the DFC and that the development is an inappropriate development for this locality having regard to the environmental sensitive nature of the subject site and the nature of surrounding development.

The issues raised in the public submissions have been addressed in detail in the "Public Notification Section" of this report and many are concurred with and where relevant constitute reasons for refusal of the application.

The assessment of this application concludes that the proposal has not responded adequately to its context and the elements that make up the existing and Desired Future Character of the site and its locality under the B2 Locality of the WLEP 2000. For these reasons, it is considered that the proposal is an inappropriate and unsuitable development for the site, insofar as it is unable to satisfactorily reconcile its impact on the site and the character of the Oxford Falls Valley locality.

Accordingly, the application is referred to an independent public hearing with a recommendation for refusal.

#### **RECOMMENDATION (REFUSAL)**

##### Part A:

That the Independent Hearing Panel make its findings and recommendations on Development Application No. DA2019/1340 for alterations and additions to the existing premises on land at Lot 100 DP 1023183 Meatworks Ave, OXFORD FALLS having regard to the assessment and recommendation for REFUSAL in the Assessment Report and the associated draft reasons for refusal attached to this report.

##### Part B:

That the outcome of the Independent Hearing Panel's findings and recommendations be reported to the Northern Beaches Local Planning Panel, as the consent authority, for determination of Development Application No. DA2019/1340.

**Draft Reasons for Refusal**

1. Pursuant to Section 4.15 (1) (a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2000*, in that the development is inconsistent with the Desired Future Character statement in the B2 Oxford Falls Valley Locality.
2. Pursuant to Section 4.15 (1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2000*, in that the proposed development is does not comply with the Building Height and Side Boundary Setback Built Form Controls.
3. Pursuant to Section 4.15(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2000*, in that the development is inconsistent with the following 'General Principles of Development Control':
  - a. Clause 43 Noise
  - b. Clause 56 Retaining Unique Environmental Features
  - c. Clause 57 Development on Sloping Land
  - d. Clause 58 Protection of Existing Flora
  - e. Clause 60 Watercourses & Aquatic Habitats
  - f. Clause 63 Landscaped open space
  - g. Clause 66 Building Bulk
  - h. Clause 72 Traffic and Access and Safety
4. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not considered to be in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and locality.



# MINUTES

## **NORTHERN BEACHES INDEPENDENT PUBLIC HEARING PANEL MEETING**

held in the Council Chambers, Civic Centre, Dee Why on

**WEDNESDAY 6 MAY 2020**



MINUTES OF NORTHERN BEACHES INDEPENDENT PUBLIC  
HEARING PANEL MEETING

6 MAY 2020

**Minutes of a Meeting of the Northern Beaches Independent Public  
Hearing Panel**

**held on Wednesday 6 May 2020**

**Commencing at 10.30am**

**ATTENDANCE:**

**Panel Members**

Lesley Finn	Chair
Steve Kennedy	Urban Design Expert
Graham Brown	Town Planner
Nick Lawther	Community Representative

## **1.0 APOLOGIES AND DECLARATIONS OF INTEREST**

Nil

## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES INDEPENDENT PUBLIC HEARING PANEL HELD 6 NOVEMBER 2019**

The Panel note that the Minutes of the Northern Beaches Local Planning Panel held 6 November 2019 were adopted by the Chairperson and have been posted on Council's website.

### 3.0 CATEGORY 3 APPLICATIONS

#### 3.1 DA2019/1340 - LOT 100/ MEATWORKS AVENUE, OXFORD FALLS - ALTERATIONS AND ADDITIONS TO THE EXISTING PREMISES

##### PROCEEDINGS IN BRIEF

The application proposes demolition and excavation works and the construction of 13 additional industrial/warehouse units with ancillary office space and basement parking.

The Panel viewed the site and its surrounds. At the public meeting which followed the Panel was addressed by 6 residents and 1 representative of the applicant.

##### ASSESSMENT OF NORTHERN BEACHES INDEPENDENT PUBLIC HEARING PANEL

That the Northern Beaches Independent Public Hearing Panel, on behalf of Northern Beaches Council as the consent authority, recommend **refusal** of Application No. DA2019/1340 for alterations and additions to the existing premises at Lot 100 DP 1023183, Lot 100/ Meatworks Avenue, Oxford Falls for the following reasons:

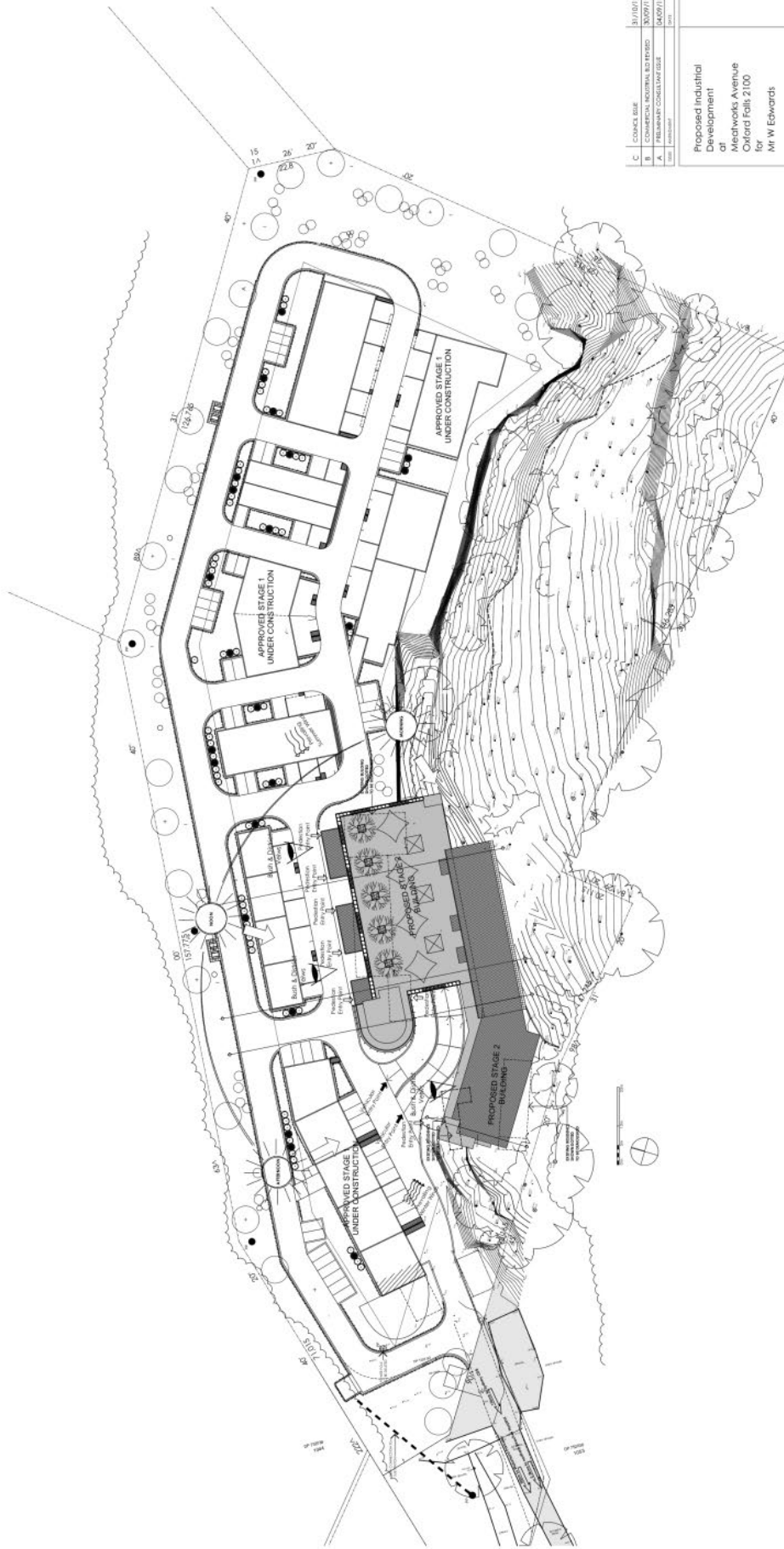
1. Pursuant to Section 4.15 (1) (a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000, in that the development is inconsistent with the Desired Future Character statement in the B2 Oxford Falls Valley Locality in that the development unacceptably impacts on the natural landscape including landforms and vegetation.
2. Pursuant to Section 4.15 (1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000, in that the proposed development is does not comply with the Building Height and Side Boundary Setback Built Form Controls.
3. Pursuant to Section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000, in that the development is inconsistent with the following 'General Principles of Development Control':
  - a. Clause 43 Noise
  - b. Clause 56 Retaining Unique Environmental Features
  - c. Clause 57 Development on Sloping Land
  - d. Clause 58 Protection of Existing Flora
  - e. Clause 60 Watercourses & Aquatic Habitats
  - f. Clause 63 Landscaped open space
  - g. Clause 66 Building Bulk
  - h. Clause 72 Traffic and Access and Safety
4. The proposed development provides insufficient information to properly address the following matters under Schedule 15:
  - a. Traffic, access and safety
  - b. Geotechnical stability
  - c. Water Management
  - d. Acoustic impacts

5. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and locality.

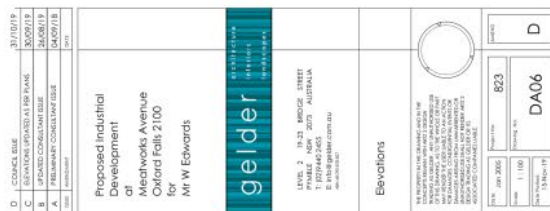
Vote: 4/0

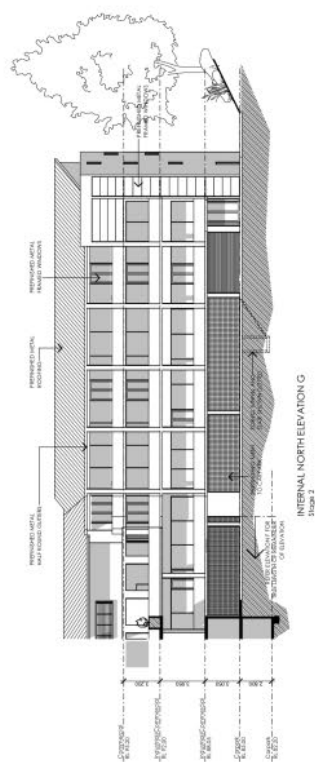
*The meeting concluded at 12.15pm*

This is the final page of the Minutes comprising 5 pages  
numbered 1 to 5 of the Northern Beaches Independent Public Hearing Panel meeting  
held on Wednesday 6 May 2020.



C	CONTRACT NO.	30/03/19
B	CONTRACT NO. FOR THE	30/03/19
A	PRELIMINARY CONSULTANT'S	04/07/18
D	DATE	04/07/18
E	DATE	04/07/18
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ED		



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## 4.0 REVIEW OF DETERMINATIONS

ITEM 4.1	REV2020/0006 - 79A LAUDERDALE AVENUE, FAIRLIGHT - REVIEW OF DETERMINATION OF APPLICATION DA2019/0342 FOR ALTERATIONS AND ADDITIONS TO AN EXISTING RESIDENTIAL BUILDING TO CREATE AN ATTACHED DUAL OCCUPANCY AND STRATA SUBDIVISION
AUTHORISING MANAGER	STEVE FINDLAY
TRIM FILE REF	2020/274584
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - Height of Building 4 Clause 4.6 - Floor Space Ratio

### PURPOSE

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

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building and Floor Space Ratio Development Standards of Clause 4.3 and 4.4 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. REV2020/0006 for Review of Determination of Application DA2019/0342 for alterations and additions to an existing residential building to create an attached dual occupancy and strata subdivision at Lot 11 DP 867302, 79A Lauderdale Avenue, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.
-

## REVIEW OF DETERMINATION ASSESSMENT REPORT

<b>Application Number:</b>	REV2020/0006
<b>Responsible Officer:</b>	Claire Ryan
<b>Land to be developed (Address):</b>	Lot 11 DP 867302, 79 A Lauderdale Avenue FAIRLIGHT NSW 2094
<b>Proposed Development:</b>	Review of Determination of Application DA2019/0342 Alterations and Additions to an existing residential building to create an attached dual occupancy and strata subdivision
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Stepping Stone Custodian Pty Ltd
<b>Applicant:</b>	Stepping Stone Custodian Pty Ltd
<b>Application Lodged:</b>	17/02/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	12/05/2020 to 19/05/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 2.35% 4.4 Floor space ratio: 100%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 1,200,000.00

### EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of review application REV2020/0006 for Review of Determination of Development Application No. DA2019/0342 for alterations and additions to an existing residential building to create an attached dual occupancy and strata subdivision at 79A Lauderdale Avenue, Fairlight. The application seeks a review of the determination (refusal) of DA2019/0342 made by the Northern Beaches Local Planning Panel (NBLPP), so is referred to the NBLPP (comprised of alternate Panel members) for determination.

The proposal results in a significant variation to the floor space ratio development standard of the Manly

Local Environmental Plan 2013 (MLEP 2013). However, this non-compliance is largely due to the retained built form and is acceptable on merit, as described throughout this report. The proposal also results in a minor variation to the height of buildings development standard of the MLEP 2013, though this too is acceptable on merit. The proposal is not compliant with the residential density, wall height, number of storeys, and side setback controls set by the Manly Development Control Plan 2013 (MDCP 2013), though, again these breaches are acceptable on merit.

Three (3) submissions have been received raising concern that the proposal was inconsistent with the previous NSW Land and Environment Court judgements in relation to this site, that the proposal results in unacceptable view loss, and that the proposal is excessive in height, which will lead to an undesirable precedent. These matters are addressed in this report.

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

## PROPOSED DEVELOPMENT IN DETAIL

This application seeks a review of the refusal of Development Application No. DA2019/0342, which sought to regularise development consent granted through an agreement reached under Section 34 of the *Land and Environment Court Act 1979*, for the matter relating to DA0326/2016, as modified by conditions of consent agreed to under a Supreme Court appeal.

The Section 34 agreement for the matter relating to DA0326/2016, granted development consent for alterations and additions to an existing residential building to create an attached dual occupancy and strata subdivision.

Following the granting of consent under the Section 34 agreement, an objector to DA0326/2016 lodged an appeal via the Supreme Court, in relation to dissatisfaction with the upper level deck and associated structures. The Supreme Court appeal proceedings were withdrawn upon agreement between the relevant parties regarding conditions of consent that would be applied via a subsequent development application. The additional agreed conditions of consent are as follows:

- 13E *Prior to the issue of a construction certificate, the applicant is to voluntarily surrender development consent DA 2016/326 (Development Application) in accordance with section 4.63 of the Environmental Planning and Assessment 1979 (NSW) and provide the Affected Neighbours with proof of such surrender.*
- 26A *Except as depicted on the Plan the maximum height of any building, improvement, structure or erection, vegetation or planting shall not exceed AHD RL 32.55.  
A certificate of compliance from a registered surveyor certifying that this condition has been complied with must be submitted to the Principal Certifying Authority prior to the issue of any occupation certificate.  
Reason: To ensure that the height of the approved second floor level is constructed and planting is carried out in accordance with the levels shown on the Plan.*
- 26B *All dimensions of the second floor level are to be strictly in accordance with the Plan.*
- 30 *The area on the second floor level marked with small south facing arrows outside the area marked deck is to be non-trafficable. No movable or immovable structures or erections (including, but not limited to, balustrades or railings; shade structures (including screens); furniture; planter boxes; plants and ornamental trees) or any other object, shall be placed upon the non-trafficable area of the second-floor level of 79A Lauderdale Avenue.*

*Reason: To ensure that views from neighbouring properties are not impacted by access of persons on, structures and vegetation placed on non-trafficable area.*

The numbers above relate to the condition numbering applied to the consent for DA0326/2016. Should this application be approved, numbering of conditions of consent may differ, as needed for addition/alteration of conditions under this review, and modification of condition formatting to suit an updated application assessment system (introduced since the previous condition set was drafted).

The plans relevant to this application are those approved by the Section 34 Agreement for the matter relating to DA0326/2016, as supplemented by new plans submitted with this review application. The plans demonstrate the following works:

- Demolition of the existing pitched roof to allow for construction of an additional storey;
- Internal reconfiguration to allow for two residential units (of three and four bedrooms), forming an attached dual occupancy;
- Changes to windows, doors and balconies;
- Addition of a bin store area;
- Landscaping works;
- Front fence; and
- Strata subdivision.

## 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

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area  
 Manly Local Environmental Plan 2013 - 6.12 Essential services  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 3.4.3 Maintenance of Views  
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size  
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)  
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

#### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 11 DP 867302 , 79 A Lauderdale Avenue FAIRLIGHT NSW 2094
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the southern side of Lauderdale Avenue.</p> <p>The site is irregular in shape with a frontage of 13.055m along Lauderdale Avenue and an average depth of 20.6m. The site has a surveyed area of 264.8m<sup>2</sup>.</p> <p>The site is located within the R1 General Residential zone and accommodates a two- and three-storey residential building.</p> <p>The site slopes approximately 5m from north east to south west, and does not contain any significant vegetation.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by detached dwelling houses of varying heights, and multi-storey residential flat buildings.</p>

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:

**DA0326/2016** - Alterations and additions to an existing Residential Flat Building was refused on 8 September 2017 by the Development Determination Panel.

**DA0326/2016 (Part 2)** – Review of Determination of refused alterations and additions to the existing building and use as a dual occupancy (attached) and strata subdivision was withdrawn by the Applicant on 5 December 2017.

The refusal of DA0326/2016 was appealed through the NSW Land and Environment Court. An agreement between the Applicant and Respondent (Northern Beaches Council) under Section 34 of the *Land and Environment Court Act 1979* was reached on 7 December 2018.

An objector to DA0326/2016 lodged an appeal as a third party via the Supreme Court, in relation to the approved upper level deck structure and its potential impacts. The parties agreed that several conditions of consent would satisfy the Appellant. The parties agreed upon withdrawal of the appeal, subject to lodgement of a development application to formalise the agreed conditions of consent.

**DA2019/0342** - Alterations and Additions to an existing residential building to create an attached dual occupancy and strata subdivision was refused on 27 November 2019 by the Northern Beaches Local Planning Panel.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination

of a development application, other than for a complying development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The DA was determined on 27 November 2019 and the Notice of Determination was issued on 16 December 2019. The review was lodged on 12 February 2020 and is to be considered by the Northern Beaches Local Planning Panel on 20 May 2020, which is within 6 months of the date of determination.

Section 8.3 (3) provides that the Council 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 '*Detailed Description of Works*' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Therefore, it is concluded that the amended scheme is substantially the same as the original proposal.

Accordingly, it is considered that the proposal satisfies the requirements of Section 8.3 (3) of the Act.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Ms Patricia Ann Rochester	6 / 76 Lauderdale Avenue FAIRLIGHT NSW 2094
Mrs Michelle Montgomery	72 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Benjamin Mark Neighbour	5 / 78 Lauderdale Avenue FAIRLIGHT NSW 2094

The following issues were raised in the submissions:

- The Review application is not consistent with the agreement under the Land and Environment Court decision or the agreement reached in order to address the Supreme Court appeal made by an objector.

- The conditions agreed to under the Supreme Court appeal must be applied to this consent.
- The application claims a submission lodged for a previous application (DA2019/0342) has been withdrawn, which is not factually correct.
- The upper level sets an unwanted height precedent, particularly in relation to potential future additional structures like chairs or shade structures.
- The proposal will cause unreasonable view loss.
- The proposal will reduce surrounding property value.
- The upper level deck may result in unreasonable noise impacts.
- The proposal includes no parking for visitors.

The matters raised within the submissions are addressed as follows:

#### **Previous Land and Environment Court Judgement**

##### Comment:

The proposal relies on the stamped plans approved in accordance with the agreement reached under Section 34 of the *Land and Environment Court Act 1979*, plus supplementary plans. The supplementary plans demonstrate one inconsistency in relation to the depth of the deck at the uppermost level. This is proposed to be corrected by way of a recommended condition of consent.

#### **Supreme Court Appeal Conditions**

##### Comment:

The Supreme Court appeal lodged following the approval of DA0326/2016 was withdrawn following agreement between parties that certain conditions be applied. The conditions that were included in the Supreme Court matter are included in the recommended set of conditions of consent.

#### **Withdrawal of Previous Objection**

##### Comment:

It is acknowledged that no submissions made in relation to DA2019/0342 have been withdrawn. Submissions made in relation to this review application are considered in this report.

#### **Undesireable Building Height Precedent**

##### Comment:

The proposed development is of an acceptable height for the reasons detailed throughout this report, with particular reference to the comments made in the section relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013. The proposal includes a minor breach to the height of building development standard, which is acceptable on merit and in the circumstances of the case. Any future development applications on adjoining or nearby sites seeking similar height would be assessed on their own individual merits. The height of structures on the second floor level deck and surrounding non-trafficable area is to be restricted by way of condition of consent.

#### **View Loss**

##### Comment:

The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP 2013.

### Impact on Property Value

#### Comment:

Property value is not a matter for consideration under the *Environmental Planning and Assessment Act 1979*.

### Noise Impacts (Deck)

#### Comment:

The deck at the uppermost level is reduced by way of a recommended condition of consent to ensure consistency with the previous Land and Environment Court judgement and the agreement between the neighbours as a result of the Supreme Court appeal. This reduced deck is acceptable in relation to noise, given its reduced dimensions, separation from adjoining neighbouring sites, and subsequent reduced usability. Additionally, it is noted that the deck is to be used by one unit only, so is not for common use of all residents of the proposed development. Finally, a condition of consent has been applied to ensure the use of the deck shall not give rise to offensive noise.

### Lack of Parking

#### Comment:

The proposed development provides three (3) parking spaces for residents, which is compliant with the dwelling requirement, but no visitor parking spaces, where one is required. However, in accordance with the conditions applied to the previous development application (DA0326/2016) to which this application relates, a condition of consent has been applied to allocate a parking space for visitor use.

### 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 Review of Determination is noted. The landscape component of the proposal is acceptable subject to the completion of landscaping. Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically 3.3.1 Landscaping Design.</p> <p>No objections to approval subject to conditions as recommended.</p>
NECC (Development	Development Engineering has no objection to the application subject

Internal Referral Body	Comments
Engineering)	to recommended conditions of consent.
Traffic Engineer	No comment required.
Waste Officer	The DA/REV consists of a dual occupancy and should not have triggered a referral to waste services, as it does not contain 3 or more dwellings. The development is considered acceptable from a waste services perspective subject to recommended conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Ausgrid has provided comment on the proposal. A condition of consent can be applied requiring compliance with the advice provided.

#### **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**

BASIX certificates have been submitted with the application (see Certificate Nos. A367187 and A367190 dated 20 December 2019). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

##### **SEPP (Infrastructure) 2007**

###### Ausgrid

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

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

Comment:

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

### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development. An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), and Clause 26 (relating to maintenance, protection and enhancement of views) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

### **SEPP (Coastal Management) 2018**

The site is classified as coastal environment area and coastal use area under Clauses 13 and 14 (respectively) the *State Environmental Planning Policy (Coastal Management) 2018*. However, Clauses 13 and 14 of the SEPP do not apply to land within the Foreshores and Waterways Area within the meaning of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* (the SREP), such as this site. An assessment of the proposal is carried out in the section of this report relating to the SREP.

### **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	8.7m	2.35%	No
Floor Space Ratio	0.5:1 (132sqm)	1:1 (265sqm)	100%	No

#### Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

#### Detailed Assessment

#### 4.6 Exceptions to development standards

##### HEIGHT OF BUILDINGS

##### Description of Non-compliance:

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	8.7m
Percentage variation to requirement:	2.35%

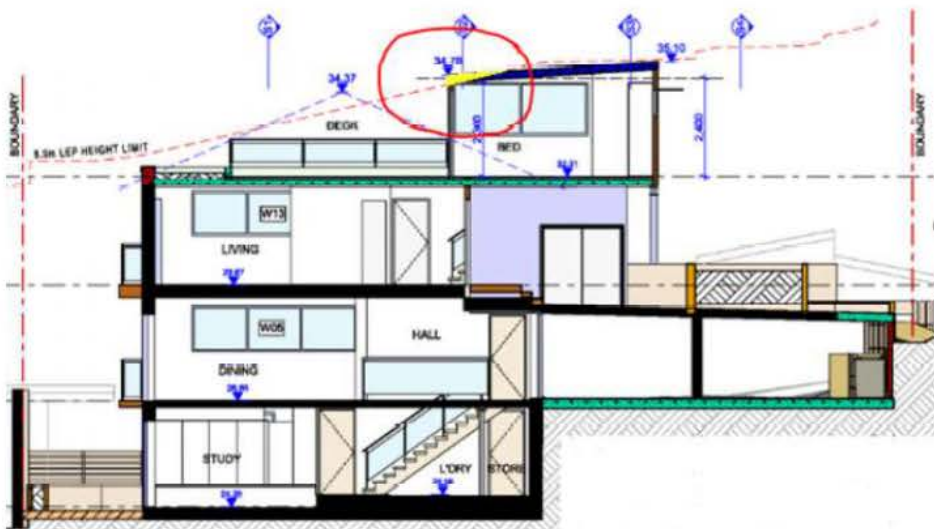


Figure: The extent of the height of building breach (shown in yellow and circled in red).

**Assessment of Request to vary a Development Standard:**

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

**Clause 4.6 Exceptions to Development Standards:**

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

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

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

**Comment:**

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

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

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

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

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

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

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

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

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

Comment:

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

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

Comment:

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

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

Section 1.3 of the EPA Act reads as follows:

**1.3 Objects of Act**

*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.*

**Applicants Written Request**

The Applicant's written request argues, in part:

- *On the eastern and western sides of the site, the removal of the roof form results in the existing height being reduced by the proposal. Such height reduction is considered to achieve a modest upper level addition which reduces the visual bulk and view impacts (and increases views) from*

- certain apartments and dwellings surrounding the site.*
- *Views gained are greater than views which are affected (which is now negligible if at all) by the slight increase above the existing ridge height.*
  - *The minor extent of height increase provides for a 2-storey built form as viewed from the public domain along Lauderdale Avenue which is consistent with the scale of development anticipated by the 8.5m height control.*
  - *It is acknowledged that the overall height of the building will be visible from the driveway on the western side of the site, however, such vantage point is limited to a minor portion of the public domain.*
  - *A significant proportion of the built form/height is concealed from the public domain being sited below the built form as viewed from the street frontage.*
  - *The proposed height increase provides for enhanced amenity to the upper level unit as it converts the roof form to a habitable space which offers an extensive outlook and views.*
  - *The proposed height is also modest when compared with the height of buildings located on Lauderdale Avenue.*
  - *Compatible streetscape outcome with a limited/reduced extent of built form on the upper level as the removal of the roof reduces the visible bulk on the western side whilst the proposed form represents a reasonable increase from the existing roof form on the eastern side.*
  - *Absence of shadow impacts.*
  - *No unreasonable overlooking impacts.*
  - *No unreasonable view impacts, noting that some views are improved by the proposal.*

The above comments are concurred with. In this regard, the Applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design, that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying Clauses 1.3 (c) and (g) of the EPA Act. Therefore, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6 (3)(b).

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

**Objectives of the Development Standard**

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

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

Comment:

The proposed development retains the general built form of the existing building (which already exceeds the floor space ratio), but also includes removal of the existing high pitched roof with an upper storey. The proposed upper storey is 720mm above the existing roof ridge RL, but is of a lesser width than the existing roof form, stepping in from the setbacks of the lower levels. The upper level roof form is flat in nature in order to respond to and protect existing views towards the south from properties to the north. This roof form is consistent with, and complementary to, that of existing developments in the immediate vicinity, which include a mix of low-pitched and flat roof forms.

The proposed development respects the topographic landscape of the locality by generally retaining the existing building form, and requires earthworks for landscaping only. The proposed height of the development will generally appear from the street level as two (2) storeys, being consistent with anticipated development in this area, in consideration of the maximum height of building of 8.5m. This is complementary to Lauderdale Avenue, which (despite this 8.5m limit), contains developments ranging in height between two (2) and five (5) storeys.

As such, the proposed development provides for a building height and roof form that is consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.

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

Comment:

The proposed development maintains a similar bulk and scale to the existing development. In fact, as viewed from the north, the proposed development involves a reduction in bulk and scale, as the high pitched roof form is replaced with an upper storey of lesser width. The proposed development is demonstrated to be of suitable bulk and scale on the site and in the context of the locality, as detailed below in relation to the variation to the floor space ratio development standard, which controls bulk and scale. The proposed development generally retains existing setbacks and building footprint, with the exception of minor intrusions from window boxes. These intrusions are minor in nature, and add dimension to the development without resulting in unreasonable visual dominance or unreasonable amenity impacts for the subject site or adjacent 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 unreasonably impact upon views to, from, or between public or private spaces, as demonstrated in the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP 2013.

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

Comment:

The proposed development, being located on a north-south orientated block, and by including only a minor increase to building height, is compliant with the requirements of Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP 2013. In this way, the proposed development retains suitable sunlight access to the subject site and adjacent sites. The proposed development does not impact upon sunlight access to public spaces.

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

Comment:

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

**R1 Zone Objectives**

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

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

Comment:

The proposed development formalises use of the site for two dwellings, thereby providing for the housing needs of the community.

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

Comment:

The proposed development formalises a dual occupancy use of the subject site, amongst a variety of residential types in the locality.

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

Comment:

Not applicable. The proposed development retains the residential use of the site.

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

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of Buildings development standard is assumed by the delegate of Council (NBLPP) as the development contravenes a numerical standard by less than or equal to 10%.

**FLOOR SPACE RATIO**

**Description of Non-compliance:**

Development standard:	Floor Space Ratio
Requirement:	0.5:1 (132sqm)
Proposed:	1:1 (265sqm)
Percentage variation to requirement:	100%

**Assessment of Request to vary a Development Standard:**

The following assessment of the variation to Clause 4.4 Floor space ratio has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

**Clause 4.6 Exceptions to Development Standards:**

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

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

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

**Comment:**

Clause 4.4 Floor Space Ratio is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

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

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request,

seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two separate matters for consideration contained within Clause 4.6(3) and these are addressed as follows:

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

Comment:

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

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

Comment:

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

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

Section 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

## Applicants Written Request

The Applicant's written request argues, in part:

- *The increase in FSR from the existing building represents a minor increase from the existing building whilst the recessed form of the addition on the upper level provides for a modest height and bulk increase when compared with the existing roof form.*
- *The minor extent of height, bulk and scale beyond that existing provides for a 2-storey built form as viewed from the public domain along Lauderdale Avenue which is consistent with the scale of development anticipated by the 8.5m height control.*
- *The compact nature of the overall building, combined with the recessed form of the addition, ensure that the bulk and scale is of a modest nature.*
- *A significant proportion of the built form is concealed from the public domain being sited below the built form as viewed from the street frontage.*
- *There are numerous garages built to the boundary and other car ports and dwellings which are more prominent when viewed from Lauderdale Avenue ... the proposed streetscape character is considered to be contextually compatible.*
- *The proposed FSR increase provides for enhanced amenity to the upper level unit as it converts the roof form to a habitable space which offers an extensive outlook and views, thereby representing a more sustainable use of the roof space.*
- *The [increased] FSR is associated with a compact upper level.*
- *The combination of the limited building form above the public domain and the landscaped front setback suitably mitigate the perception of bulk and scale when viewed from the public domain and from the properties along the northern side of Lauderdale Avenue.*
- *The proposed bulk and scale is also modest when compared with the bulk and scale of buildings located on the opposite side of Lauderdale Avenue. The northern side of Lauderdale Avenue includes substantially scaled 3-4-storey residential flat buildings and 3-storey dwelling houses sited atop a sandstone podium.*
- *The proposed bulk and scale would not appear excessive from other dwellings to the east, west or south as their primary aspect is to the south towards the harbour views and not towards the subject built form.*
- *Compatible streetscape outcome with a limited/reduced extent of built form on the upper level as the removal of the roof reduces the visible bulk on the western and eastern sides.*
- *Absence of shadow impacts.*
- *No unreasonable overlooking impacts.*
- *No unreasonable view impacts, noting that some views are improved by the proposal.*

The above comments are concurred with. In this regard, the Applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying Clauses 1.3 (c) and (g) of the EPA Act. Therefore, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6 (3)(b).

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

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

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

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of*

*the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

**Objectives of the Development Standard**

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

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

Comment:

The proposed development includes removal of the high pitched roof form, and replacement with an upper level with a flat roof form. This equates to a numerical increase in calculable gross floor area and a higher floor space ratio. However, given the upper level is in place of the existing roof form, the additional level does not markedly increase the perceptible bulk and scale of the building.

The upper level increases the overall height of the development by 720mm above the existing roof ridge level. However, the upper level does not extend to the side elevations to the same extent as the existing roof form. That is, the upper level is more centralised on the building, and opens corridors to either side of it. Further to this, development on both the northern and southern sides of Lauderdale Avenue is comprised of generally large-scale residential buildings.

The streetscape contains detached dwellings of varying heights, and multi-storey residential flat buildings up to five storeys in height. Additionally, the proposed development is consistent with the objectives of Clause 3.1 Streetscapes and Townscapes of the MDCP 2013. In this way, the proposed development is consistent with the existing and desired streetscape character.

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

Comment:

The proposed development does not unreasonably impact upon views to, from, or between landscape or townscape features, as demonstrated in the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP 2013.

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

Comment:

The subject site does not contain mature vegetation, and includes a significant variation to the required landscaped area. The proposed development improves on this outcome by introducing an enhanced landscape treatment to the lower courtyard. As such, the proposed development is consistent with (and

an improvement on) the existing character and landscape of the area.

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

Comment:

Given its lack of unreasonable impacts on the amenity of the subject site and adjacent sites, the proposed development minimises adverse environmental impacts, and allows for full use and enjoyment of adjoining and nearby land, as well as the public domain.

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

Comment:

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

### **R1 Zone Objectives**

The underlying objectives of the R1 General Residential zone are addressed above in relation to the variation to the height of buildings development standard.

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

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

### **6.1 Acid sulfate soils**

Clause 6.1 Acid Sulfate Soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map. No works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is proposed. As such, no further assessment is required.

### **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 any fill to be of a suitable quality.

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

Comment:

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

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

Comment:

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

*(f) the likelihood of disturbing relics*

Comment:

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

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

Comment:

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

*(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.

#### **6.4 Stormwater management**

Under Clause 6.4 Stormwater Management, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

*(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*

Comment:

The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the existing site characteristics affecting on-site infiltration of water.

*(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*

Comment:

On-site stormwater retention is not required for the subject development.

*(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

Comment:

The proposal has been assessed by Council's Development Engineers, who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

#### **6.9 Foreshore scenic protection area**

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

*(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including*

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

Comment:

The proposed development is set well above the foreshore area, and view to the site is disrupted from view by other developments and significant vegetation. Notwithstanding this, the proposed development is designed so as to retain the visual amenity of the foreshore area, without unreasonable overshadowing or view loss impact. The proposal is designed and sites to improve the scenic quality of the coastline by upgrading the existing building. The proposed development is permissible in this zone, and is therefore suitable in its type, location, and design, as well as its relationship with the foreshore. The proposed development will not impact upon, or result in conflict between, land-based and water-based coastal activities.

## 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 subject site has existing water, electricity, sewerage, and stormwater connections, as well as vehicular access. The proposed development retains these connections.

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 264sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Max. 1 dwelling per 300sqm	2 dwellings per existing 264sqm site	100%	No
	Dwelling Size: Unit 01: Min. 107sqm	Unit 01: 153.8sqm	-	Yes
	Unit 02: Min. 95sqm	Unit 02: 111.2sqm		
4.1.2.1 Wall Height	East: Max. 8.0m (based on 1:3 gradient)	7.9m	-	Yes

	West: Max. 8.0m (based on 1:3 gradient)	9.3m	16.25%	No
4.1.2.2 Number of Storeys	Max. 2 storeys	4 storeys	100%	No
4.1.2.3 Roof Height	Height: Max. 2.5m	300mm	-	Yes
	Parapet Height: Max. 0.6m	200mm	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6.0m	0m to carport and bins	100%	No - Existing
		6.8m to dwellings	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: Min. 2.63m (based on wall height)	700mm to box windows	73.38%	No
		900mm to lower ground	65.8%	No - Existing
		900mm to ground floor		
		900mm to first floor		
		3m to second floor	-	Yes
	West: Min. 3.1m (based on wall height)	700mm to box windows	77.4%	No
		900mm to lower ground	70.9%	No - Existing
		900mm to ground floor		
		900mm to first floor		
		3m to second floor	3.2%	No
	Windows: 3m	700mm	90%	No
4.1.4.4 Rear Setbacks	Min. 8.0m	2.9m	63.75%	No - Existing
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS13	Total Open Space: Min. 55% of site area (145.64sqm)	39.27% (104sqm)	28.6%	No - Improvement on existing
	Open Space Above Ground: Max. 40% of total open space (41.6sqm)	29.7% (30.9sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 35% of total open space (50.97sqm)	8.5% (12.4sqm)	75.6%	No - Improvement on existing
	2 native trees	0 trees	100%	No - Existing
4.1.5.3 Private Open Space	18sqm per dwelling	Unit 01:	-	Yes

		36.2sqm		
		Unit 02: 30.9sqm		
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% of frontage (Up to 6.2m)	100% (12.5m)	100%	No - Existing
Schedule 3 Parking and Access	Residential: 1 space per dwelling, plus 0.5 spaces per 3-bed dwelling Total: 3 spaces	3 spaces	-	Yes
	Visitor: 0.25 spaces per dwelling Total: 0.5 spaces = 1 space	0 spaces	100%	No - Existing

**\*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	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 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
4.1 Residential Development Controls	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	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
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

#### **3.4.2 Privacy and Security**

##### **Description of Non-compliance:**

The proposed development includes windows on the eastern and western side elevations at 900mm from their respective side boundaries. The existing development includes windows at this same setback on the eastern and western elevations, though the proposed development alters their configuration. Additionally, while this is non-compliant with numerical controls, the proposal includes an upper level deck 3.0m from the side boundaries and 3.424m from the rear boundary (as modified by conditions of consent).

##### **Merit Consideration:**

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

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

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

##### **Comment:**

The proposed development includes reconfiguration of the window arrangement on both the eastern and western side elevations. In doing so, the proposed development results in a somewhat enhanced privacy outcome for the subject site and adjacent sites.

On the western elevation, the existing building includes six (6) windows within 900m of the property boundary (adjacent to the driveway of the battleaxe block to the south). The proposed development

retains the same number of windows, but increases the sill height of two of those windows to be 1.8m above finished floor level to mitigate direct viewing. Other windows are reconfigured for a more modern finish and greater access to light and air, with greater glazing area. This equates to an equivalent level of privacy to the western elevation, given the reduction to some windows, and the increase to others.

On the eastern elevation, the existing dwelling includes eight (8) windows within 900m of the property boundary. Windows are proposed to be reconfigured to include four windows with a minimum sill height of 1.8m above finished floor level, thereby decreasing the level of viewing from the subject site.

Additionally, the remaining windows are offset from those on the property to the east, to reduce direct viewing. This results in an overall enhancement to privacy to the eastern elevation, which is pertinent given the close relationship between the subject site and the site to the east.

The upper level is designed such that no person can within 3m of the property boundary and look over to adjoining properties. The non-trafficable area surrounding the deck assists in reducing direct viewing of neighbouring dwellings and instead encourages lesser-angled district and harbour views. As such, the proposed development is design for privacy, and mitigates direct viewing between properties.

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

Comment:

The proposed development includes reconfigured windows to allow for greater access to light and air without resulting in unreasonable privacy outcomes, and while retaining suitable outlooks and views.

*Objective 3) To encourage awareness of neighbourhood security.*

Comment:

The proposed development retains windows to the northern (front) elevation, thereby allowing passive surveillance and encouraging awareness of neighbourhood security.

### **3.4.3 Maintenance of Views**

The review application received one objection relating to view loss, from the owner of Unit 6, 76 Lauderdale Avenue. The owner of Unit 6, 76 Lauderdale Avenue requested an assessment of the view from Unit 1, 76 Lauderdale Avenue be carried out (with that owner's permission), despite no objection being formally lodged in relation to that property.

Merit Consideration:

The development is considered against the objectives of the control:

*Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

*Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

*Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

In determining the extent of potential view loss to adjoining and nearby properties, the four planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

***The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.***

Comment:

Units 1 and 6, 76 Lauderdale Avenue benefit from panoramic views of North Harbour, Dobroyd Head, North Head, South Head, the interface between a significant portion of land and water, the horizon between the heads, and other properties (including the subject site) and vegetation. These views are considered whole. For each unit, the affected view is a small portion of the whole view. The actual loss of view to Unit 1 is of water only. The actual loss of view to Unit 6 is of existing vegetation beyond the subject site. The proposed development does not impact upon the interface between land and water, the view to the heads, or the horizon. See photographs below:



**Figure :** The affected view, from a standing position on the terrace of Unit 1, 76 Lauderdale Avenue, looking south towards the view over the subject site. The subject site is identifiable by the red bricks and pitched roof form. It is worth noting that the view is not limited to what is shown in this photograph, and extends to the east and west.



**Figure :** The affected view, from a standing position on the terrace of Unit 6, 76 Lauderdale Avenue, looking south towards the view over the subject site. The subject site is identifiable by the red bricks and pitched roof form. It is worth noting that the view is not limited to what is shown in this photograph, and extends to the east and west.

**The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.**

Comment:

The views from Units 1 and 6, 76 Lauderdale Avenue are available from the living room and balcony of each unit, from a standing or seated position, across the front (southern) boundary.

**The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.**

Comment:

It is understood that the views available to Units 1 and 6, 76 Lauderdale Avenue are valuable, given their availability from seated and standing positions, from key living areas, across the front boundary. However, in consideration of the proportion of view lost to view retained, and that the lost portion is not of great significance, the overall view loss is considered minor in both cases.

***The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.***

Comment:

The proposed development relies on the consent authority supporting the non-compliance with the height of building development standard. Removal of the portion of the development that is non-compliant with the maximum building height is unlikely to result in any perceptible difference to the view loss, given the angle from which views are obtained. To require redesign of the proposed development to result in zero view loss is not considered reasonable, given the minimal extent of that view loss, given the reasonableness of the proposed height of building, and given that there is no entitlement for any one party to wholly retain views (just to suitably share views).

Additionally, the proposed development demonstrates "skilful design" by replacing the pitched roof form with a narrower upper level and flat roof form, in order to reduce the impact on views. Finally, the proposed development results in an improved design outcome, in that the subject site is able to gain substantial views, without more than minor view loss to other properties. This is in keeping with the principles of view sharing.

Therefore, the proposed development is reasonable in relation to maintenance of views.

#### **4.1.1.1 Residential Density and Dwelling Size**

**Description of Non-compliance:**

The proposed development includes two dwellings on the existing 264sqm site, where a maximum of 1 dwelling per 300sqm is allowed.

**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 promote a variety of dwelling types, allotment sizes and residential environments in Manly.*

Comment:

The proposed development contributes to the variety of dwelling types in the locality, without resulting in unreasonable impacts or a reduction in lot size.

*Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.*

Comment:

The subject site does not include any significant vegetation. The proposed development results in an enhances landscape outcome, with a reconfiguration of the rear courtyard area, and does not require significant earthworks. In this way, the proposed development does not have an unreasonable impact on existing vegetation, waterways, riparian land or topography.

*Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.*

Comment:

The proposed development includes two residential units of good internal and external amenity in order to contribute to housing diversity and variety without unreasonable impacts.

*Objective 4) To maintain the character of the locality and streetscape.*

Comment:

The proposed development is consistent with the objectives of Clause 3.1 Streetscapes and Townscapes of the MDCP 2013, so assists in maintenance of the character of the locality and streetscape.

*Objective 5) To maximise the use of existing infrastructure.*

Comment:

The proposed development is for alterations and additions to the existing building, rather than demolition and new construction. In this way, the development maximises use of existing services and infrastructure such as water, electricity, sewerage, stormwater assets, and vehicular access.

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

The proposed development includes a breach of the maximum wall height and the maximum number of storeys set by this clause. This clause relies upon the objectives of Clause 4.3 Height of Buildings of the MLEP 2013. These objectives are addressed in relation to the proposal in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013.

#### **4.1.3 Floor Space Ratio (FSR)**

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

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

Description of Non-compliance:

The proposed development includes walls within 900mm of the eastern and western side boundaries, which breach the minimum requirements. However, these non-compliant setbacks are existing and unchanged. The proposed development further encroaches on the side setbacks only by the inclusion of window boxes to the reconfigured windows on the eastern and western elevations, to within 700mm of the boundaries.

**Merit Consideration:**

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

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

**Comment:**

The proposed development is consistent with the objectives of Clause 3.1 Streetscapes and Townscapes of the MDCP 2013. The proposed development generally retains the existing building footprint and form, which in turn respects the existing and desired spatial proportions of the street, the street edge and the landscape character of Lauderdale Avenue.

*Objective 2) To ensure and enhance local amenity by:*

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

**Comment:**

The proposed development suitably maintains privacy as detailed in the section of this report relating to Clause 3.4.2 Privacy and Security of the MDCP 2013. The proposed development is compliant with the requirements of Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP 2013, thereby providing equitable access to light and air. The proposed development is acceptable in relation to view sharing principles, as detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP 2013. The proposed development suitably maintains the character, rhythm and pattern of spaces in the streetscape by predominantly retaining the existing building footprint and form. The proposed development does not alter traffic conditions.

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

**Comment:**

The proposed development demonstrates flexibility in that the side setbacks allow for an improved design outcome for the site, while protecting the amenity of adjacent sites.

*Objective 4) To enhance and maintain natural features by:*

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

Comment:

The proposed development includes an enhancement of the existing landscaping treatment to the site. The proposed development does not include any (and is not in close proximity to) open space lands, national parks or bushland.

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

Comment:

Not applicable. The subject site is not classified as bushfire prone land.

### **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 \$12,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,200,000.

### **CONCLUSION**

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

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

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

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

- Consistent with the objectives of the DCP

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

Council is satisfied that:

1) The Applicant's written requests under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify contravention of Clauses 4.3 Height of Buildings and 4.4 Floor Space Ratio have adequately addressed and demonstrated that:

a) Compliance with the standards is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contraventions.

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

In summary, a detailed assessment has been undertaken in relation to the following issues:

- Non-compliance with built form controls relating to floor space ratio, height of buildings, density and side setbacks;
- View loss; and
- Consistency with previous relevant applications.

These issues have been satisfactorily addressed or are resolved by way of recommended conditions of consent, as discussed through the report.

The recommended conditions of consent are consistent with those included in the Section 34 Agreement relating to DA0326/2016, as modified by the agreed conditions relating to the Supreme Court appeal, and as superseded by new internal referral body recommendations.

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

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary the development standards under Clauses 4.3 Height of Building and 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the MLEP 2013, as the Applicant's written requests have adequately addressed the merits required to be demonstrated by subclause (3), and the proposed development will be in the public interest, and the proposed development is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to REV2020/0006 for Review of Determination of Application DA2019/0342 Alterations and Additions to an existing residential building to create an attached dual occupancy and strata subdivision on land at Lot 11 DP 867302, 79 A Lauderdale Avenue, 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-11 Site Plan Revision L	18 December 2019	Chapman Architecture
DA14 Lower Ground Floor Plan Issue L	7 December 2019	MM+J Architects
DA15 Ground Floor Plan Issue L	7 December 2019	MM+J Architects
DA16 First Floor Plan Issue L	7 December 2019	MM+J Architects
DA17 Second Floor Plan Issue L	7 December 2019	MM+J Architects
DA-20 Section 2 (Proposed Cross Section) Revision L	18 December 2019	Chapman Architecture
DA23 Section 6 Issue L	7 December 2019	MM+J Architects
DA24 Sections 7 & 8 Issue L	7 December 2019	MM+J Architects
DA25 North Elevation Issue L	7 December 2019	MM+J Architects
DA26 South Elevation Issue L	7 December 2019	MM+J Architects
DA27 East Elevation Issue L	7 December 2019	MM+J Architects
DA28 West Elevation Issue L	7 December 2019	MM+J Architects
DA31 3D Views 2 Issue L	7 December 2019	MM+J Architects
DA32 3D Views 3 Issue L	7 December 2019	MM+J Architects
DA74 Section 31 Issue L	7 December 2019	MM+J Architects
CDH08 View From 72 Lauderdale Avenue Issue L	7 December 2019	MM+J Architects
Plan Reference No. 21254 ('The Plan')	9 September 2018	Bee & Lethbridge

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A367187	20 December 2019	Chapman Andrew
BASIX Certificate No. A367190	20 December 2019	Chapman Andrew

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

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

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

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	Ausgrid Referral Response	2 March 2020

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dual occupancy (attached), in accordance with the Manly Local Environmental Plan 2013, as follows:

*Dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.*

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

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

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

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

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

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

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

Reason: Legislative requirement.

## 5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) 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.

#### 6. **Alteration / Demolition of Existing Building**

Alteration and demolition of the existing building is limited to that documented on the approved plans (by way of notation). No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is not shown to be altered or demolished.

Reason: To ensure compliance with the approved development.

## FEES / CHARGES / CONTRIBUTIONS

### 7. Policy Controls

#### Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$12,000.00 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 \$1,200,000.00.

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](http://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.

### 8. Security Bond

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

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

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://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****9. On Slab Landscape Planting and Associated Works**

- a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.
- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.
- c) The following soil depths are required in order to be counted as landscaping:
  - 300mm for lawn
  - 600mm for shrubs
  - 1 metre for trees

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

**10. Stormwater Disposal**

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

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

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

**11. Stormwater Management Plan**

A Stormwater Management Plan (SWMP) in line with Council's stormwater management guidelines and signed off by a practising Chartered Professional Engineer on the National Professional Engineer's Register (NPER) at Engineers Australia is to be submitted to the Council/Accredited Certifier, prior to issue of the Construction Certificate. The SWMP is to include but is not limited to the following:

- o Increase in the impervious area (m<sup>2</sup>)
- o Impervious percentage (%) post development
- o Demonstration of no-adverse flooding issues to the downstream and upstream properties
- o Peak flow rate to street drainage system in a 1:100 Average Recurrence Interval (ARI) flood event
- o Connection details and location of the outlet drainage pipe, if applicable.
- o If it is an absorption trench zone (Zone 2 as per Storm Water Management guidelines), then the detail calculations along with the soil report to be submitted for review by demonstrating no-adverse drainage issues due to this development.
- o Details of the Chartered Engineer including full name, signature and registration number is required.

Reason: To ensure appropriate provision is made for the disposal and management of

stormwater generated by the development, and to ensure public infrastructure in Council's care and control is not overloaded.

12. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

13. **Amendment to the Approved Plans**

The following amendments are to be made to the approved plans:

- o The second floor plan (DA 17) is to be amended by reducing the length of the deck from 5.424m to 4.0m. The area where the deck is reduced is to be non-trafficable.
- o The first floor plan (DA 16) are to be amended to:
  - a) increase the height of the first section of the planter boxes on each side of the car space (being the section closest to the Lauderdale Avenue street frontage) to provide 450mm of soil depth in the first step (terrace) of each planter;
  - b) add a boundary fence commencing at the western corner of the planter box on the western side of the car space, the top of which fence is to be the height of the wall of the adjoining planter box and continuing westward.

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.

14. **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.

15. **BCA Report**

A 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' from an appropriately qualified Accredited Certifier\* will need to be submitted with the Construction Certificate application addressing the following:

The report is to detail the extent to which the proposed building does or does not comply with the deemed-to-satisfy provisions of Sections C, D, E and F of the Building Code of Australia. The report is to also provide recommendations with respect to the building works required to ensure that the specified measures and facilities for the proposed development are appropriate

for its intended use to:

- i) restrict the spread of fire from the building to other buildings nearby, and
- ii) protect persons using the building, and to facilitate their egress from the building in the event of fire, and
- iii) where appropriate, provide access for persons with a disability, and
- iv) provide facilities and services appropriate for the development

\*To be regarded as an "appropriately qualified accredited certifier" the certifier must hold the relevant level of accreditation that would enable the certifier to issue a construction certificate for the subject building.

The 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' is to be submitted to the Certifying Authority with the Construction Certificate application.

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

16. **Shoring On or Supporting Council Property**

Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings and specifications certifying the shoring will be adequate for their intended purpose and must be submitted to the Council/Accredited Certifier for approval with the Construction Certificate. The documentation prepared and certified by an appropriately qualified and practicing structural engineer is to show all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements. A copy of this documentation must be provided to the Council for record purposes at the time of Construction Certificate application.

Reason: To ensure the protection of existing public infrastructure and adjoining properties.

17. **Certificate of Adequacy**

A Certificate of Adequacy signed by a practising structural engineer stating the existing structure is capable of supporting the proposed additions, is to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: The existing building must be able to support proposed additional loading.

18. **Engineering Drawings**

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

19. **Detailed Stormwater Management Plan**

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer with experience in hydrology and hydraulics.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

20. **Waste Management Plan**

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013. The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

21. **Landscape Plan**

A detailed landscape plan providing a species list, pot size and mature heights of the species used and planter box details, must be provided for approval by the Council's Landscape Officer. Species are to be selected to not cause view loss from neighbouring properties. Evidence of Council's approval must be provided to the principal certifying authority prior to the issue of any Construction Certificate.

22. **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.

23. **Surrender of Consent**

Prior to the issue of a Construction Certificate, the applicant is to surrender development consent DA0326/2016 in accordance with Section 4.63 of the Environmental Planning and Assessment 1979 (NSW) and provide the affected neighbours with proof of such surrender.

24. **Construction Traffic Management Plan**

A construction traffic management plan (CTMP) is to be submitted for approval prior to release of construction certificate outlining the following:

- a) how the development will be constructed,
  - b) what truck movements are anticipated to and from the site and at what stage of the project,
  - c) any traffic control measures that will be required to facilitate construction noting that No Parking and Bus Zone restrictions currently exist in the vicinity on the frontage of the site.
- The CTMP is also to outline how pedestrian and vehicular access will be maintained to 79B Lauderdale Avenue throughout all stages of the project and to clearly outline any points within the construction schedule when vehicular access will be impacted. The CTMP to be prepared in liaison with the owners of 79B Lauderdale Avenue and submitted for approval prior to commencement.

Reason: To ensure appropriate management of traffic during construction.

25. **Driveway Plans**

Additional plans are to be prepared and submitted for approval prior to construction of the driveway showing how the sandstone steps adjacent to the driveway will be reconstructed and

indicating the proposed width of the steps and the remaining width of driveway adjacent to those steps. The new steps and any related driveway adjustments are to be completed at the Applicant's cost. Any adjustment to the steps or the common driveway serving 79A and 79B Lauderdale Avenue required as a result of this development be completed at full cost to the applicant.

Reason: To ensure the stairs are adequately maintained.

26. **Security Deposit**

Pursuant to Section 97 of the Local Government Act 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Security Deposit as per the current rates in Council's Fees and Charges. The deposit is required as security against reconstruction or damage to Council property during works on the site. The Applicant must bear the cost of all restoration works to Council's property damaged or requiring reconstruction during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the Applicant's interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to or reconstruction of Council property.

27. **No Encroachment**

No portion of the proposed building or works, as approved within the subject site, are to encroach upon any road reserve or other public land except as may be permitted by the Local Government Act 1993. This includes the opening and closing of gates and doors which must open and close within the subject site.

Reason: To ensure structures are contained within the site.

28. **Parking Facilities**

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

29. **Driveway / Car Parking Areas / Pedestrian Paths Surface**

All driveways, car parking areas and pedestrian paths are to be suitably surfaced. Details of the treatment to these areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff

30. **Disturbance of Soil Surface and Vegetation**

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council

accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

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

31. **Swept Path Plan**

A plan depicting swept paths demonstrating that the car spaces which form part of the development are compliant with AS 2890.1-2004 (Parking Facilities) must be provided for approval by Council's Driveway Engineer. Evidence of Council's approval must be provided to the principal certifying authority prior to the issue of any Construction Certificate.

32. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, including the required Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate. The document is available at the following link <https://www.northernbeaches.nsw.gov.au/services/rubbish-and-recycling/building-waste>

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

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

33. **Security Fence**

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

34. **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 the MDCP 2013 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.

35. **Road Reserve Consent**

In accordance with the Roads Act 1993, written consent from Council must be obtained and must be in hand prior to any track equipped plant being taken in or onto any roadway, kerb & gutter, footway, nature strip, or other property under Council's control.

Reason: To ensure appropriate protection of public infrastructure and facilitate access for public and vehicular traffic.

36. **Construction Zone on Local Road**

Applications for a construction zone on a local road require 28 days' notice to Council indicating location and length. All construction zones require the approval of the Manly Traffic Committee.

Reason: To ensure Council and the Traffic Committee have sufficient time and information to assess the traffic and access implications of a proposed construction zone and to develop appropriate responses to those implications.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

37. **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.

38. **Survey Certificate**

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

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with

levels indicated on the approved plans.

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

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

39. **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.

40. **Retaining Walls**

Retaining walls being constructed in conjunction with excavations must be in accordance with structural engineer's details. Certification by a suitably qualified structural engineer that the constructed works comply with the structural detail must be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure the structural adequacy of the retaining walls.

41. **Asbestos Removal, Repair or Disturbance**

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- o The Work Health and Safety Act 2011.
- o The Work Health and Safety Regulation 2011.
- o How to Safely Remove Asbestos Code of Practice – WorkCover 2011.

The owner or occupier of the premises must consult an appropriately qualified and Australian Institute of Occupational Hygienists registered professional to undertake an assessment of the site to determine the potential for contamination. The owner or occupier must develop a management plan and be issued with Clearance Certificate before the commencement of any work.

Reason: To ensure the health of site workers and the public.

42. **Tree Retention During Works**

The following precautions must be taken when working near trees to be retained:

- o harmful or bulk materials or spoil must not be stored under or near trees,
- o prevent damage to bark and root system,
- o mechanical methods must not be used to excavate within root zones,
- o topsoil from under the drip line must not be added and or removed,
- o ground under the drip line must not be compacted, and
- o trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible

damage.

43. **Tree Protection During Works**

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree/s unless in conformity with this approval or subsequent approval is prohibited. It is noted that this consent does not give approval for the removal of any trees, except that would be otherwise exempt for removal.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.

44. **Stamped Approved Plans**

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.

45. **During Demolition, Construction and Other Works**

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601- 2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of

obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.

16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system. 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.

18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

46. **Audible Site Works Hours**

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays. Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

47. **Disturbed Surfaces**

All disturbed surfaces on the land resulting from the building works authorised by this approval must be revegetated and stabilised to prevent erosion either on or adjacent to the land.

Reason: To prevent/contain erosion.

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

During demolition and/or construction the proposal/works shall be generally consistent with the Waste Management Plan prior to issue of Construction Certificate

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

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

49. **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) Tree planting shall comply with 3.3.1 Landscaping Design, section b) item iii) where trees should be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight as described in the clause, or where the proposed tree locations may otherwise be positioned to minimise any significant loss of views

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

50. **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.

51. **Second Floor Level**

All dimensions of the second floor level are to be strictly in accordance with the Plan.

52. **Fire Safety Matters**

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

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

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

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

53. **Maximum Height**

Except as depicted on the Plan the maximum height of any building, improvement, structure or erection, vegetation or planting shall not exceed AHD RL 32.55. A certificate of compliance from a registered surveyor certifying that this condition has been complied with must be submitted to the Principal Certifying Authority prior to the issue of any occupation certificate.

Reason: To ensure that the height of the approved second floor level is constructed and planting is carried out in accordance with the levels shown on the Plan.

54. **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.

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

55. **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.

56. **Use and Occupation of the Building**

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.

57. **Visitor Parking**

The space behind the car space allocated to Unit 02 on the Ground Floor is to be kept available for visitor parking and is to be signposted as such.

58. **Residential Parking**

The tandem spaces on the Ground Floor are to be allocated to Unit 01.

59. **Second Floor Level Non-Trafficable Area**

The area on the second floor level on The Plan, marked with small south facing arrows outside the area marked deck is to be non-trafficable. No movable or immovable structures or erections (including, but not limited to, balustrades or railings; shade structures (including screens); furniture; planter boxes; plants and ornamental trees) or any other object, shall be placed upon the non-trafficable area of the second-floor level of 79A Lauderdale Avenue.

Reason: To ensure that views from neighbouring properties are not impacted by access of persons on, structures and vegetation placed on non-trafficable area.

60. **Noise**

The use of the deck on the second floor shall not give rise to offensive noise.

**CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA  
SUBDIVISION OR SUBDIVISION CERTIFICATE**

61. **Submission of Subdivision Plan**

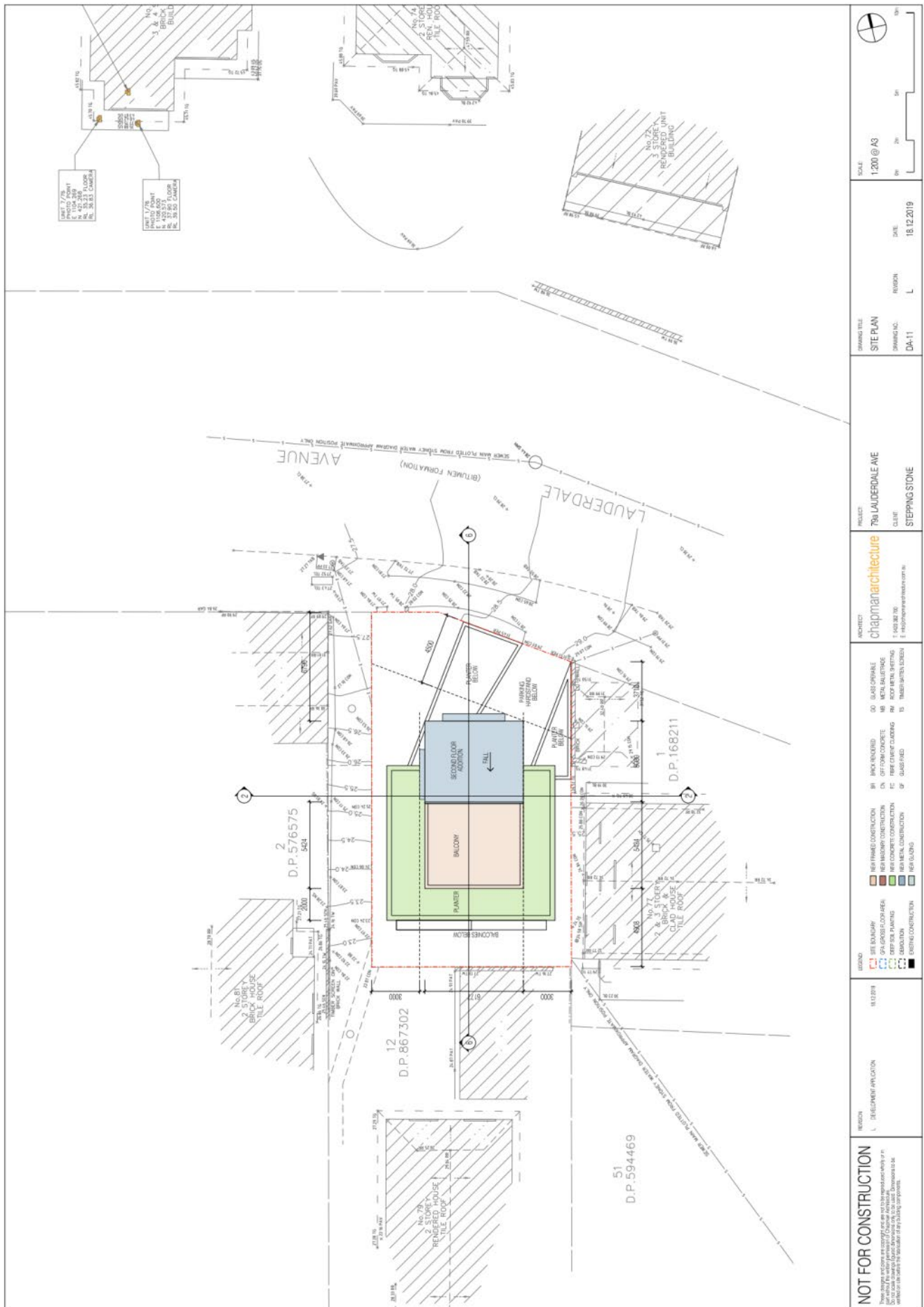
Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Five copies of the final plan of subdivision are to be submitted (one original and four copies).

Reason: Statutory requirement of the Conveyancing Act 1919.

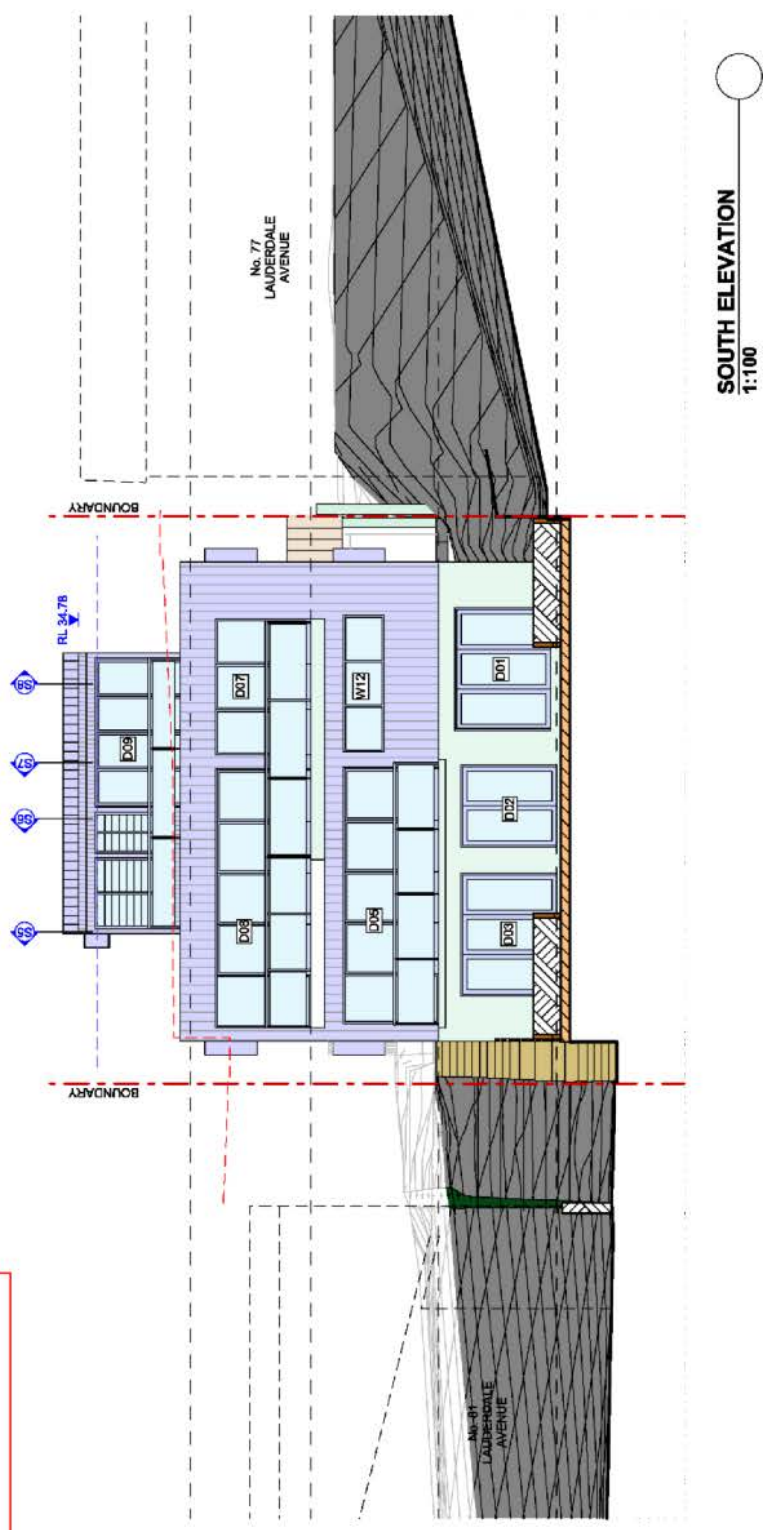
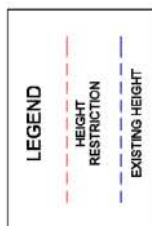
62. **Visitor Parking - Common Property**

The approved visitor parking is to be shown as common property on the Subdivision Plan.

Reason: To ensure common access is available to the visitor parking space.

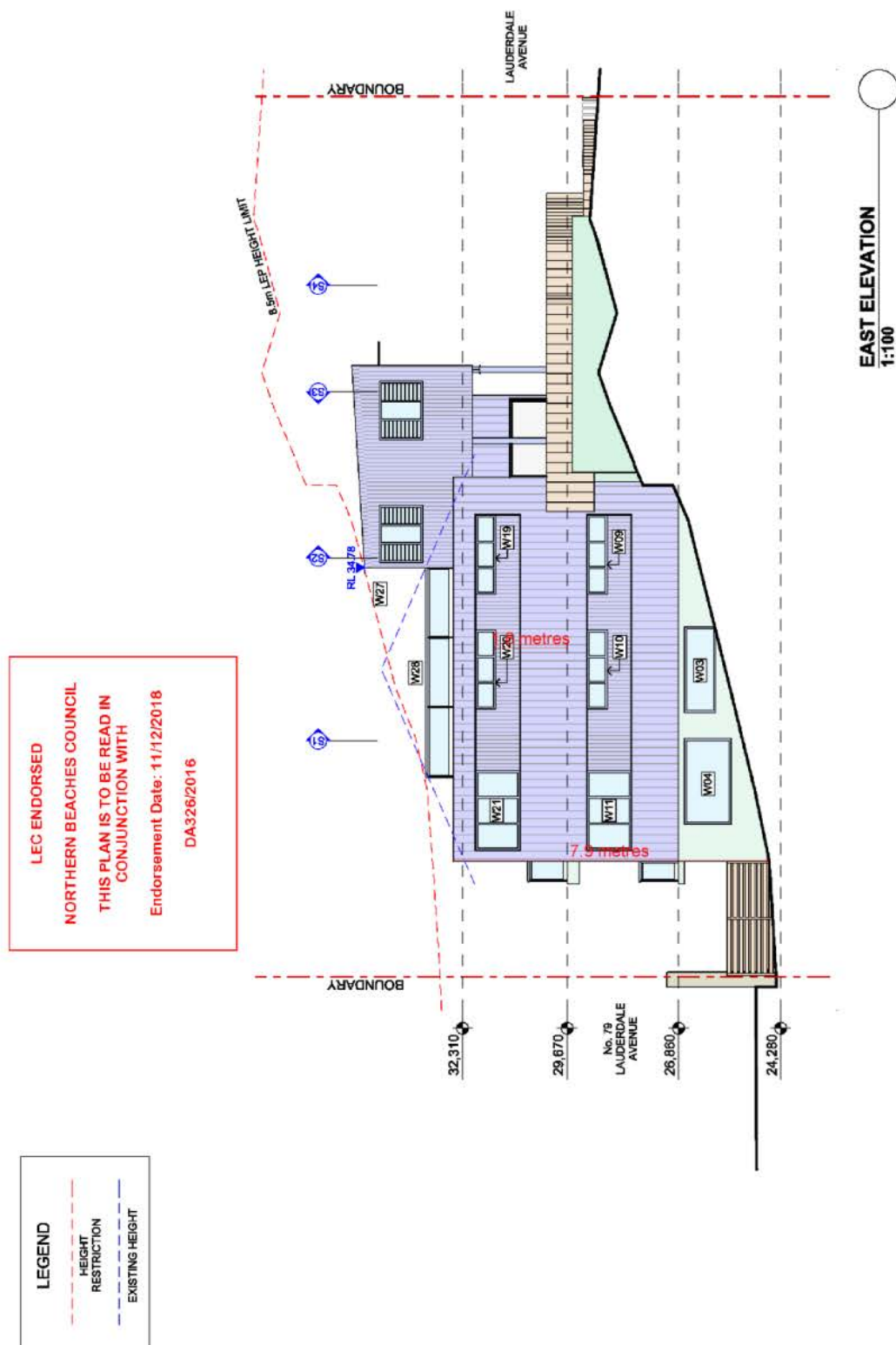







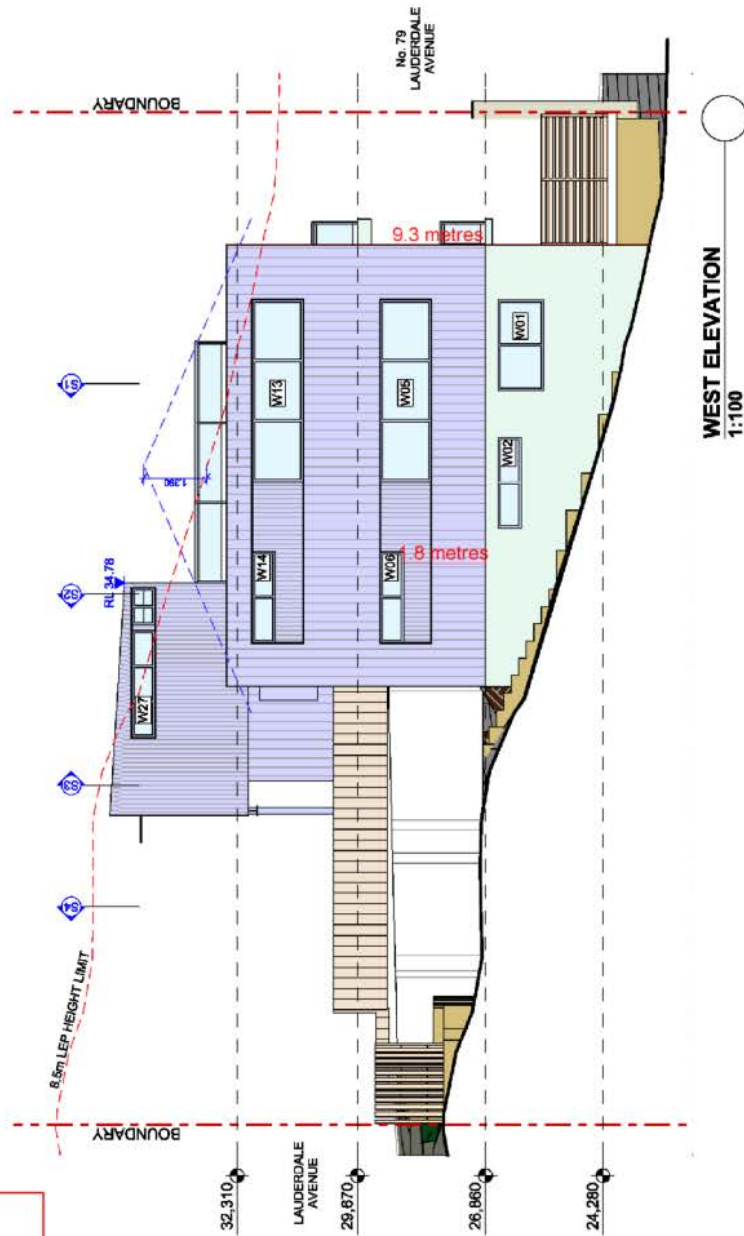
DA326/2016

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Notes	May	Date	Amendment	mm+J architects		clients: <b>Stepping Stone</b> perfect additions and alterations to multi residential building at <b>79A Lauderdale Ave Fairlight</b> 79A <b>FAST FIVATION</b> 8-6-1, 35-45 RIVINGTON ROAD MARYLENE 2096 06-0073 1079-5, step@steppingstone.com.au	scale: 1:100 other: BEJ date: 17/12/2018 job no.: <b>1545</b> issue: <b>L</b> drawing number: <b>DA27</b>
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	J	05/12/18	AMENDED DEVELOPMENT APPLICATION - REVISED COUNCIL MEDIATION				
	K	08/12/18	AMENDMENTS TO DESIGN				
PAGE/NUMBER: 003/003							

LEC ENDORSED  
NORTHERN BEACHES COUNCIL  
THIS PLAN IS TO BE READ IN  
CONJUNCTION WITH  
Endorsement Date: 11/12/2018  
DA326/2016



Notes	Rev	Date	Amendment	Issue	Scale	DA	DA28	DA28	DA28
This document and contents copyright and is the property of mm+J architects. It may not be reproduced or used in any form without written consent. The drawings shall be used for construction purposes.	0	03/07/18	AMENDED DEVELOPMENT APPLICATION - COUNCIL MENTION	0	1:100	BEJ	7/12/2018	1545	L
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## **APPENDIX 1**

### **CLAUSE 4.6 TO CLAUSE 4.3 OF MANLY LEP 2013 EXCEPTIONS TO DEVELOPMENT STANDARDS – HEIGHT VARIATION**

Alterations and additions to the existing building and use as a dual occupancy with strata subdivision

79A LAUDERDALE AVENUE, FAIRLIGHT

PREPARED BY

ABC PLANNING PTY LTD

JANUARY 2020

**MANLY LEP 2013 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS**

This Clause 4.6 submission has been prepared to accompany the development application for the alterations and additions to the existing building and use as a dual occupancy with strata subdivision at 79a Lauderdale Avenue, Fairlight.

Clause 4.6 of the Manly LEP 2013 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Initial Action Pty Ltd v Woollahra Council* [2017] NSWLEC 1734.

**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.
- (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 Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

### Development Standard to be Varied

The proposal seeks a variation to the development standard contained within clause 4.3 of the *Manly LEP 2013* - maximum height of 8.5m, demonstrated on the LEP map in Figure 1 below.

The proposed maximum height of 10.2m represents a variation of 1.7m from the numerical height standard in the LEP. Such height has been calculated from the existing ground level of RL24.54 to the height of RL34.78.

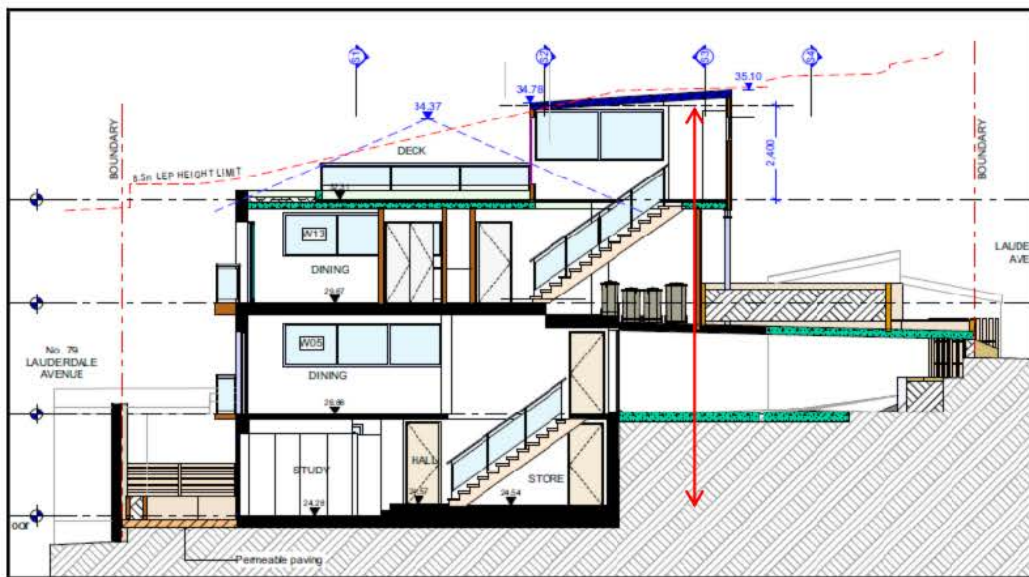
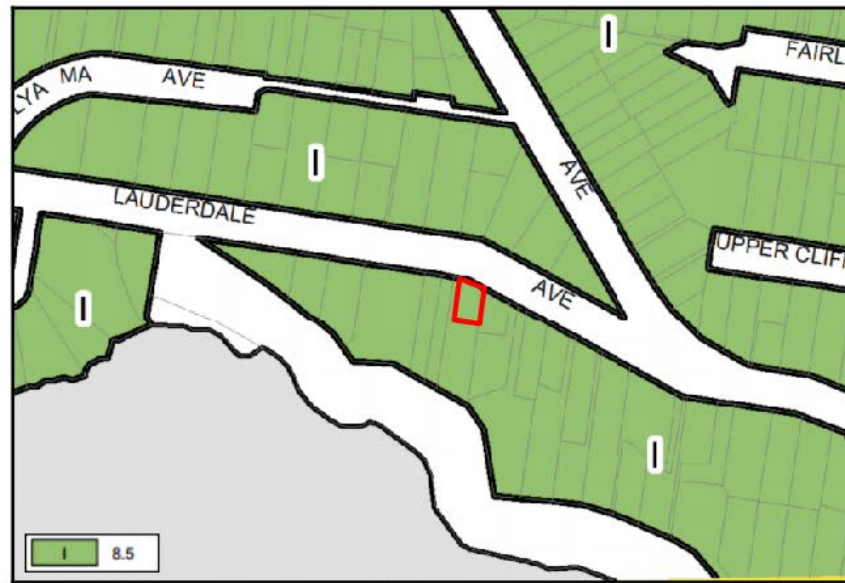


Figure 3: Section 1 excerpt which shows the maximum height variation to be 1.7m above the 8.5m height limit (i.e. a maximum height of 10.2m). The diagram also shows that the majority of the addition is below the height limit and that the variation is generated by the already excavated nature of the lowest level.



**Figure 4: LEP Height Map**

**Justification for Contravention of the Development Standard**

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

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

**Assessment:** It is considered that strict compliance with the development standard for height on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- On the eastern and western sides of the site, the removal of the roof form results in the existing height being reduced by the proposal. Such height reduction is considered to achieve a modest upper level addition which reduces the visual bulk and view impacts (and increases views) from certain apartments and dwellings surrounding the site. Such increase in views (as viewed from the lower level of 72 Lauderdale Avenue, is demonstrated below In Figure 5 below. It is noted that the owners of 72 Lauderdale Avenue do not object to DA2019/0342:



**Figure 5: View analysis**

- The section below shows the lowered roof height which is achieved by removing the pitched roof forms from the western and eastern sides of the built form. Such improvements are evident from the view analysis which, in my opinion, demonstrates that the views gained are greater than views which are affected (which is now negligible if at all) by the slight increase above the existing ridge height.
- The increase in height from the existing building represents a minor increase from the existing building (410mm) whilst the limited form of the addition on the upper level provides for a modest height and bulk increase when compared with the existing roof form. The minor extent of height increase provides for a 2-storey built form as viewed from the public domain along Lauderdale Avenue which is consistent with the scale of development anticipated by the 8.5m height control.
- It is acknowledged that the overall height of the building will be visible from the driveway on the western side of the site, however, such vantage point is limited to a minor portion of the public domain, being in front of the 3-metre wide driveway. The extent of built form has been diminished by the reduction in bulk and scale on the western side.

- It is also noted that a significant proportion of the built form/height is concealed from the public domain being sited below the built form as viewed from the street frontage.
- The proposed height increase provides for enhanced amenity to the upper level unit as it converts the roof form to a habitable space which offers an extensive outlook and views, thereby representing a more sustainable use of the roof space.
- The height is associated with a compact upper level (5.2m x 5.9 = 30.68sqm).
- The proposed height is also modest when compared with the height of buildings located on the opposite side of Lauderdale Avenue. The northern side of Lauderdale Avenue includes 3-4-storey residential flat buildings and 3-storey dwelling houses sited atop a sandstone podium. The proposed height is also compatible with the height and scale of other dwellings located on the southern/same side of Lauderdale Avenue. The proposed height (2-storeys above the footpath level) will thereby sit comfortably in its context. It is also noted that the proposed height would not appear excessive from other dwellings to the east, west or south as their primary aspect is to the south towards the harbour views and not towards the subject built form.



**Figure 6: The dwellings on the high (left) side Lauderdale Avenue consist of 3-4 storey residential flat buildings and substantial dwelling houses (3-storeys) which are elevated and more visually prominent when compared with the built forms on the lower southern (right) side of Lauderdale Avenue.**



**Figure 7: The compact nature of the upper level and minor increase in height when compared with that existing will be compatible with the scale of development evident above the public domain along the southern side of Lauderdale Avenue**



**Figure 8: Photo of the subject and adjoining site to the east which demonstrates that the limited extent of the additional built form beyond that existing, combined with additional landscaping in the front setback would sit comfortably in the streetscape.**



Figure 9: Flat buildings to the west which are evident from the public domain. It is acknowledged that these built forms are set further back than that proposed, however, they are considered to be more evident due to the overall height, bulk and scale

- The proposed height is associated with significant improvements to the setting of the property due to replacement of the unsightly carport structure with a more integrated landscape/car parking solution. The proposed height is thereby associated with a positive visual impact for the property.
- Absence of environmental and amenity impacts also justifies the proposed height variation:
  - The proposed height will not be responsible for any adverse or unreasonable shadow impacts to any residential neighbour, noting the similarity of the proposed height, bulk and scale with the existing built form. Shadows will primarily fall over the garage and roof of the neighbouring dwellings to the south, noting that their primary aspect and openings is to the south towards harbour views. Such assessment is consistent with Council's assessment in its report dated 8 September 2017:  
*"The proposed top floor is setback from the lower floor and as a result has no unreasonable impact in regards to solar access. The physical separation that the driveway to the west provides and the lack of significant impact to any living room windows to 77 Lauderdale Avenue allows for sufficient provision of sunlight for neighbouring dwellings."*
  - The proposed height is not responsible for any adverse or unreasonable privacy impacts, noting the recessed nature of the upper level from the rear and side. The passive nature of the upper level and its increased setback from the southern neighbours when compared with the living room windows below confirm that the additional openings on the upper level are not unreasonable. It is also noted that the views to the south are out and over the

buildings to the south and that there is also a substantial degree of mutual overlooking due to the mutual desire to achieve harbour views. Overlooking has also been minimised to limiting the deck to be on the southern side of the new bedroom with no protrusion to the west of the built form.

- The proposed height is not considered to be responsible for any unreasonable view impacts to the dwelling houses and residential apartments along the northern side of Lauderdale Avenue. View impacts are considered to be of a negligible nature with the majority of views being preserved whilst in some instances improved. The latest version of plans is considered to provide additional views beyond that which exist which is an exceptional outcome. Direct panoramic views from the living rooms and balconies of the properties in the residential flat buildings at 76 and 78 Lauderdale Avenue are considered to be maintained, noting that only angled views are affected. View impacts are limited to a minor proportion (less than 5%) of the overall views which are available. The views from the primary living and balcony area from the dwelling opposite at 72 Lauderdale are maintained with no impact to the secondary lower ground floor area. Views are in fact enhanced by the proposed side setbacks/deletion of part of the existing roof form. The proposal is thereby considered to be in accordance with view sharing principles.
- Inspection of the potentially affected apartments was conducted on 29 November 2018 and the following assessment is provided:
- Unit 3- 78 Lauderdale- extensive panoramic views looking directly south to harbour views are maintained from living room, balcony and bedroom areas (standing and sitting). Only angled/diagonal views to the south-east are affected but are compensated by the improvement of water view which is in the foreground. The sliding forward of the upper level and associated reduction in height is now likely to retain the view to north head, noting that such view is not in the direct outlook from the primary living and balcony areas. No iconic views are affected, noting that land-water interface views are maintained (see view analysis CDH01).
- Unit 4-78 Lauderdale - access to this unit was not available in November 2018. Nevertheless, reference to the previous view analysis from June 2018 demonstrates that there would be some view improvement through the removal of the roof form on the western side. In my opinion, the increase in height on the eastern side would not affect any water views whilst there would be view improvement on the western side.
- Unit 1-76 Lauderdale - as above for 4-78 Lauderdale.

- 72 Lauderdale – 3-level residence immediately to the north of the subject site. The dwelling comprises (approved TV room- utilised as a secondary dwelling) at ground floor, 1<sup>st</sup> floor living and balcony areas and 2<sup>nd</sup> floor bedroom and balcony. It was noted that the site inspection that the upper level bedroom also contained a large lounge whereby unaffected views are achieved. Views from the primary living area internal ground (middle level) floor and balcony accessed from the living area which includes outdoor seating are maintained to the harbour including land-water interface either side of the proposed built form. There will be a view gain from the proposal which confirms the reasonable nature of the proposal. It is noted that the owners of 72 Lauderdale do not object to DA2019/0342 and the applicant has agreed to the imposition of conditions of consent should the application be approved. The applicant invites Council to impose the conditions of consent agreed between the applicant and the owners of 72 Lauderdale Avenue.

Given the latest amendments which virtually remove all impact and that views are improved, the following comments in Council's assessment report are considered to highlight the reasonable nature of the amended proposal- under Part 3.4.3 Maintenance of Views assessment in the report dated 8 September, 2017. Council considered the view impacts to be minor and included the following conclusion:

*"The proposed development is non-compliant with building height under the Manly LEP 2013. However, as a result of the impact on views being minor the non-compliance is reasonable. In addition the land-water interface being largely retained and extensive water views being maintained, a complying proposal would have no substantial improvement in the impact of views. Additionally, the design provides a situation in which extensive views can be obtained reasonably from both the proposed development and all neighbouring dwellings. As a result, both the impact on views and the provision of views sharing is reasonable"*


- Council's assessment report, dated 8 September 2018, also supported the proposed height, on the following basis:

*"Compliance with the development standard for height is unreasonable in this circumstance due to the lack of unreasonable impact to surrounding development and the reasonable visual impact that comes as a result of the alterations and additions. The topographical nature of the site, narrow allotment and physical*

*separation provided by the battle-axe driveway to the west contribute minimising the impact of the proposed bulk. The lack of unreasonable impact along with the appropriate outcome in development provides sufficient planning grounds to justify contravening the development standard."*

- In my opinion, the proposal has virtually removed all view impact (and in some instances provided for increased views) thereby satisfying the Planning Principle for View Sharing- Tenacity Consulting v Warringah SC.
- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Consistency with the objectives of the LEP height standard and zoning in the LEP	
4.3 Height Objectives	Assessment
4.3(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,	<p><b>Complies</b> - The recessed and compact nature of the upper level addition provides for a reasonable built form which is compatible with the scale of development along the southern side of Lauderdale Avenue which includes developments of a similar height, bulk and scale.</p> <p>It is noted that the built form of the upper level sits forward of the existing building, however, given its limited footprint, virtually compliant height, compliant side setbacks which are beyond that of the existing building and increased landscaping in the front setback, the proposed height is considered to sit comfortably in the streetscape. The lightweight materials and finishes combined with the compact form are considered to achieve a satisfactory streetscape outcome. The provision of 4.5m-7m front setback for the upper level component, along with extensive (increased from existing) landscaping within the front setback and removal of the existing car port, combine to achieve a suitable streetscape outcome.</p> <p>It is also noted that there are numerous garages built to the boundary and other car ports and dwellings which are more prominent when viewed from Lauderdale Avenue. On this basis, the proposed streetscape character is considered to be contextually compatible.</p> <p>The objectives takes topography into account and it is noted that Council's assessment also concurs that the proposed height and building form is consistent with the topographic landscape, prevailing height and desired future character, in particular, the slope of the site along with the prevailing building height of development to the east provides a situation in which the proposed building would achieve the characteristics desirable for the future streetscape.</p>
4.3(b) to control the bulk and scale of buildings,	<p><b>Complies</b> – The proposed modest nature of the addition along with the recessed nature of the upper level from the western side achieves a reasonable bulk and scale which is compatible with the streetscape.</p> <p>The lightweight/clad treatment of the upper level as it will</p>

<p>4.3(c) to minimise disruption to the following:</p> <ul style="list-style-type: none"> <li>(i) views to nearby residential development from public spaces (including the harbour and foreshores),</li> <li>(ii) views from nearby residential development to public spaces (including the harbour and foreshores),</li> <li>(iii) views between public spaces (including the harbour and foreshores),</li> </ul>	<p>present to Lauderdale Avenue, along with the reduction in bulk from the existing roof form ensures that the bulk and scale will sit comfortably in the streetscape. .</p> <p><b>Complies</b> – The height does not unreasonably impinge upon view to nearby residential development from any public space including footpaths along both sides of Lauderdale Avenue, public stairways and footpath to the north along Rosedale and Willyama Avenues.</p> <p>The proposed height also maintains views to public spaces from nearby residential development due to the compact nature of the built form and substantial separation from surrounding residential development. North Harbour Reserve and Wellings Reserve as well as North Harbour will remain in view of surrounding residential properties. The proposal does not affect views between public spaces, thereby confirming that the proposed height satisfies this objective. It is also reiterated that there will be a degree of view improvement from certain vantage points.</p> <p>Inspection from Wellings Reserve opposite the waterway to the south confirmed that the proposal would not generate any adverse public view impacts, as the built form (indicated by red arrow) will appear in the distance against the backdrop of taller buildings higher up the hillside to the north of the site. The latest plan sites the built form away from the south as viewed from the Reserve which thereby diminishes its perception.</p>
	
<p>4.3(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,</p>	<p><b>Complies</b> – The proposed height variation does not reduce solar access to any public space. Furthermore, the proposed height does not unreasonably reduce solar access to private open space and habitable rooms of adjacent dwellings, noting that the majority of primary openings are oriented south towards the harbour views. The recessed nature of the addition from the sides and rear minimises overshadowing impacts as most</p>

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79a Lauderdale Avenue, Fairlight

	shadows will fall over the roof of the existing building.
4.3(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.	<b>Not Applicable</b> – The subject site is not located in a recreation or environmental protection zone.
<b>Consistency with the objectives of the R1 General Residential zone</b>	
<b>Objectives</b>	<b>Assessment</b>
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community.</li> <li>To provide for a variety of housing types and densities.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul>	<p><b>Complies</b> - The proposed height does not generate any inconsistency with the objectives of the R1 General Residential zone as it enables the provision of 2 high quality dwellings which represent a significant improvement from the amenity of the existing 3 apartments.</p> <p>The design allows for 2 x 2 storey dwellings which is appropriate for the site as it links the lower level with the ground level for the lower dwelling whilst the additional area in place of the roof form allows for a dwelling over 2 levels between the 1<sup>st</sup> floor and new part 2<sup>nd</sup> floor.</p> <p>Both dwellings will have access to 2 parking spaces, solar access, ventilation, private open space and views, unlike the existing 3 units on the site.</p>

The above assessment demonstrates that the development standard is unreasonable and unnecessary in the circumstances of this application. The height variation is associated with particular site circumstances noting the steep slope of the site, the lack of perception of the overall building height, the absence of environmental and amenity impacts, compact nature of the upper level associated with the height variation and the minimal height increase when compared with the existing building height. The improved amenity for the subject building associated with the additional height by converting a roof form to a bedroom/deck area with internal access to the level below is also confirmed which highlights the positive aspects of the variation in this instance. Furthermore, the retention of views and in some instances view improvements highlights the reasonable nature of the proposed height.

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

**Assessment:** It is considered that there are sufficient environmental planning grounds to justify varying the building height development standard.

The above assessment provides a comprehensive analysis which demonstrates that there are sufficient environmental grounds given:

- Compatible streetscape outcome with a limited/reduced extent of built form on the upper level as the removal of the roof reduces the visible bulk on the western side whilst the proposed form represents a reasonable increase from the existing roof form on the eastern side.
- Absence of shadow impacts
- No unreasonable overlooking impacts
- No unreasonable view impacts, noting that some views are improved by the proposal

The above assessment confirms that the proposed height will not be responsible for any unreasonable environmental impacts to surrounding properties in relation to overshadowing, privacy and view loss. Such assessment is consistent with Council's original assessment of the proposed height variation.

#### **Other Matters for Consideration**

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

**Assessment:** The above assessment demonstrates that the proposed height satisfies the objectives of the height standard and the R1 General Residential zone.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the height variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the height control.

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

*Statement of Environmental Effects**79a Lauderdale Avenue, Fairlight*

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

**Assessment:** The proposed height variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The proposed height allows for achievement of a compatible building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the area. The proposed height is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional densities near transport and established services.

*(b) the public benefit of maintaining the development standard*

**Assessment:** There is no public benefit in maintaining the height standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

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

**Assessment:** There are not considered to be any additional matters to consider beyond those discussed above

## Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 79a Lauderdale Avenue, Fairlight and is requested to be looked upon favourably by the consent authority.

## **APPENDIX 2**

### **CLAUSE 4.6 TO CLAUSE 4.4 OF MANLY LEP 2013 EXCEPTIONS TO DEVELOPMENT STANDARDS – **FSR VARIATION****

Alterations and additions to the existing building and use as a dual occupancy with strata  
subdivision

**79A LAUDERDALE AVENUE, FAIRLIGHT**

PREPARED BY

ABC PLANNING PTY LTD

FEBRUARY 2020

### **MANLY LEP 2013 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS**

This Clause 4.6 submission has been prepared to accompany the development application for the alterations and additions to the existing building and use as a dual occupancy with strata subdivision at 79a Lauderdale Avenue, Fairlight.

Clause 4.6 of the Manly LEP 2013 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Initial Action Pty Ltd v Woollahra Council* [2017] NSWLEC 1734.

#### **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.
- (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 Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

#### **Development Standard to be Varied**

The proposal seeks a variation to the development standard contained within clause 4.4 of the *Manly LEP 2013* - maximum FSR of 0.5:1, demonstrated on the LEP map in Figure 3 below.

The proposed FSR of 1:1 represents a variation of 0.5:1 from the numerical FSR standard in the LEP, however, it is noted that the FSR represents an increase of 30.6sqm above that

existing, as shown on Plan DA12H, dated 18 July 2018. The extent of the existing breach is noted, however, it is noted that the additional FSR is not significant.

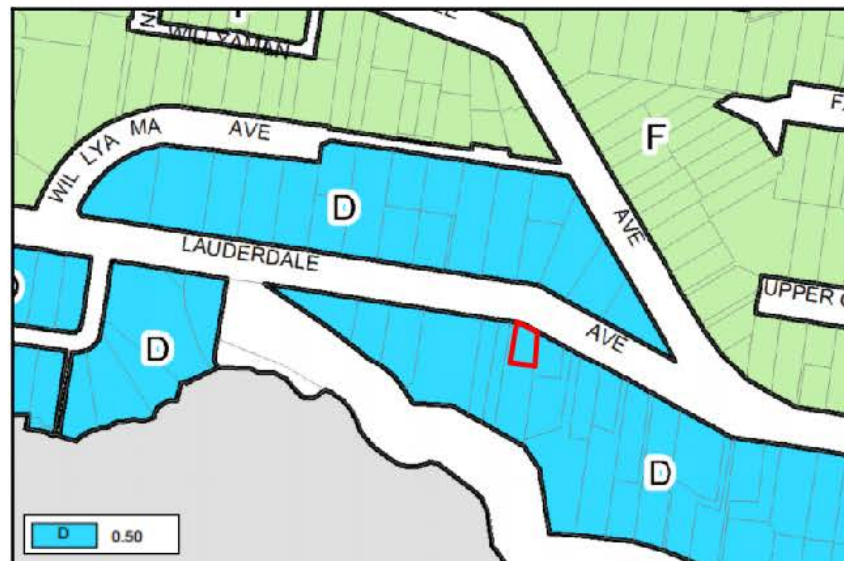


Figure 10: FSR Map

#### Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

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

**Assessment:** It is considered that strict compliance with the development standard for FSR on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- The increase in FSR from the existing building represents a minor increase from the existing building whilst the recessed form of the addition on the upper level provides for a modest height and bulk increase when compared with the existing roof form. The minor extent of height, bulk and scale beyond that existing provides for a 2-storey built form as viewed from the public domain along Lauderdale Avenue which is consistent with the scale of development anticipated by the 8.5m height control as well as being compatible with the bulk and scale of surrounding dwellings.

- The compact nature of the overall building, combined with the recessed form of the addition, ensure that the bulk and scale is of a modest nature. A significant proportion of the built form is concealed from the public domain being sited below the built form as viewed from the street frontage. The reduction of built form on the western side through replacement of the pitched roof form with a flat roof form is responsible for achieving a compatible streetscape outcome whilst, in some instances, achieving view improvements. The built form is now set in to be compliant with the side setback requirements, being 3m and is recessed from the existing built form from the sides and rear. It is noted that the built form of the upper level sits forward of the existing building, however, given its limited footprint, virtually compliant height, compliant side setbacks which are beyond that of the existing building and increased landscaping in the front setback, the proposed height is considered to sit comfortably in the streetscape. The lightweight materials and finishes combined with the compact form are considered to achieve a satisfactory streetscape outcome. The provision of 4.5m-6.2m front setback for the upper level component, along with extensive (increased from existing) landscaping within the front setback and removal of the existing car port, combine to achieve a suitable streetscape outcome.
- It is also noted that there are numerous garages built to the boundary and other car ports and dwellings which are more prominent when viewed from Lauderdale Avenue. On this basis, the proposed streetscape character is considered to be contextually compatible.
- The proposed FSR increase provides for enhanced amenity to the upper level unit as it converts the roof form to a habitable space which offers an extensive outlook and views, thereby representing a more sustainable use of the roof space.
- The FSR is associated with a compact upper level.
- The combination of the limited building form above the public domain and the landscaped front setback suitably mitigate the perception of bulk and scale when viewed from the public domain and from the properties along the northern side of Lauderdale Avenue.
- The proposed bulk and scale is also modest when compared with the bulk and scale of buildings located on the opposite side of Lauderdale Avenue. The northern side of Lauderdale Avenue includes substantially scaled 3-4-storey residential flat buildings

and 3-storey dwelling houses sited atop a sandstone podium. The proposed height, bulk and scale is also compatible with the height and scale of other dwellings located on the southern/same side of Lauderdale Avenue. The proposed built form (2-storeys above the footpath level) will thereby sit comfortably in its context. It is also noted that the proposed built form would not appear excessive from other dwellings to the east, west or south as their primary aspect is to the south towards the harbour views and not towards the subject built form.



**Figure 11: The dwellings on the high (left) side Lauderdale Avenue consist of 3-4 storey residential flat buildings and substantial dwelling houses (3-storeys) which are elevated and more visually prominent when compared with the built forms on the lower southern (right) side of Lauderdale Avenue.**



**Figure 12: The compact nature of the upper level and minor increase in height when compared with that existing will be compatible with the scale of development evident above the public domain along the southern side of Lauderdale Avenue**



**Figure 13: Flat buildings to the west which are evident from the public domain. It is acknowledged that these built forms are set further back than that proposed, however, they are considered to be more evident due to the overall height, bulk and scale**

- It is also noted that the proposed bulk and scale would not appear excessive from other dwellings to the east, west or south as their primary aspect is to the south towards the harbour views and not towards the subject built form.
- Absence of environmental and amenity impacts also justifies the proposed FSR variation.
  - The proposed FSR will not be responsible for any adverse or unreasonable shadow impacts to any residential neighbour, noting the similarity of the proposed bulk and scale with the existing built form. Shadows will primarily fall over the garage and roof of the neighbouring dwellings to the south, noting that their primary aspect and openings is to the south towards harbour views. Such assessment is consistent with Council's assessment in its report dated 8 September 2017:  
*"The proposed top floor is setback from the lower floor and as a result has no unreasonable impact in regards to solar access. The physical separation that the driveway to the west provides and the lack of significant impact to any living room windows to 77 Lauderdale Avenue allows for sufficient provision of sunlight for neighbouring dwellings."*
  - The proposed FSR is not responsible for any adverse or unreasonable privacy impacts, noting the recessed nature of the upper level which converts the roof space to a habitable bedroom/deck area in a compact part additional level. The passive nature of the upper level and its increased setback from the southern neighbours when compared with the living room windows below confirm that the additional openings on the upper level are not unreasonable. It is also noted that the views to the south are out and over the buildings to the south and that there is also a substantial degree of mutual overlooking due to the mutual desire to achieve harbour views.
  - The proposed FSR/built form is not considered to be responsible for any unreasonable view impacts to the dwelling houses and residential apartments along the northern side of Lauderdale Avenue. View impacts are considered to be of a minor nature with the majority of views being preserved and in some instances, increased. This represents an exceptional outcome.
  - Inspection of the potentially affected apartments was conducted on 29 November 2018 and the following assessment is provided:

- Unit 3- 78 Lauderdale- extensive panoramic views looking directly south to harbour views are maintained from living room, balcony and bedroom areas (standing and sitting). Only angled/diagonal views to the south-east are affected but are compensated by the improvement of water view which is in the foreground. The sliding forward of the upper level and associated reduction in height is now likely to retain the view to north head, noting that such view is not in the direct outlook from the primary living and balcony areas. No iconic views are affected, noting that land-water interface views are maintained (see view analysis CDH01).
- Unit 4-78 Lauderdale - access to this unit was not available in November 2018. Nevertheless, reference to the previous view analysis from June 2018 demonstrates that there would be some view improvement through the removal of the roof form on the western side. In my opinion, the increase in height on the eastern side would not affect any water views whilst there would be view improvement on the western side.
- Unit 1-76 Lauderdale - as above.
- 72 Lauderdale – 3-level residence immediately to the north of the subject site. The dwelling comprises (approved TV room- utilised as a secondary dwelling) at ground floor, 1<sup>st</sup> floor living and balcony areas and 2<sup>nd</sup> floor bedroom and balcony. It was noted that the site inspection that the upper level bedroom also contained a large lounge whereby unaffected views are achieved. Views from the primary living area internal ground (middle level) floor and balcony accessed from the living area which includes outdoor seating are maintained to the harbour including land-water interface either side of the proposed built form. There will be a view gain from the proposal which confirms the reasonable nature of the proposal, as shown below:



PHOTO WITH EXISTING MODEL



PHOTO WITH PROPOSED MODEL

- Council's assessment report, dated 8 September 2018, also supported the proposed FSR increase, on the following basis:

*"Compliance with the development standard for floor space is unreasonable in this circumstance due to the lack of unreasonable impact to surrounding development and the reasonable visual impact that comes as a result of the alterations and additions. The topographical nature of the site, narrow allotment and physical separation provided by the battle-axe driveway to the west contribute minimising the impact of the proposed bulk. The lack of unreasonable impact along with the appropriate outcome in development provides sufficient planning grounds to justify contravening the development standard."*

- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Consistency with the objectives of the LEP FSR standard and zoning in the LEP	
4.4 FSR Objectives	Assessment
4.4(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character	<p><b>Complies</b> - The proposed bulk and scale is of a similar nature to the existing built form on the site which ensures that the proposed FSR is consistent with the existing streetscape character. The proposal is also consistent with the desired future character given that the presentation of 2-storeys to the street is consistent with the scale of development anticipated by the 8.5m height limit.</p> <p>A substantial portion of the built form/FSR is located below street level and to the rear of the site which limits the perception of the overall built form which ensures that the extent of variation would be indiscernible. Such assessment is also consistent with Council's assessment.</p>
4.4(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features	<p><b>Complies</b> - It is reiterated that the proposal reduces the number of dwellings from 3 down to 2. The proposed FSR provides for 2 high quality dwellings which will enjoy solar access, daylight, ventilation private open space, views and 2 car spaces each.</p> <p>The high internal amenity and lack of external amenity impacts demonstrates that the density is appropriate for the site area. Furthermore, the proposed building bulk does not obscure any important landscape and townscape features.</p>
4.4(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area	<p><b>Complies</b> - The modest nature of the additional floor space (and overall built form and FSR) through the recessed form of the addition from the sides and rear limits the extent of built form to a reasonable extent and in some instances, reduces the visual bulk. The marginal increase in height and bulk maintains an appropriate visual relationship between the new development and the existing character of the area. The scale of the built form is compatible with other dwellings along the southern side of Lauderdale Avenue and subservient to the elevated larger dwellings on the high/northern side of the street. The proposed FSR does not affect the landscape of the area. It is noted that the latest scheme introduces a significant extent of landscaping which will soften the visual appearance of the building and will represent a significant improvement from the existing condition which is dominated by an unsightly car port structure.</p>
4.4(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,	<p><b>Complies</b> - The proposed FSR will not be responsible for any adverse or unreasonable shadow impacts to any residential neighbour, noting the similarity of the proposed height, bulk and scale with the existing built form. Shadows will primarily fall over the garage and roof of the neighbouring dwellings to the south, noting that their primary aspect and openings is to the south towards harbour views. Such assessment is consistent with Council's assessment in its report dated 8 September 2017:</p> <p><i>"The proposed top floor is setback from the lower floor and as a result has no unreasonable impact in regards to solar access. The physical separation that the driveway to the west provides and the lack of significant impact to any living room windows to 77 Lauderdale Avenue allows for sufficient provision of sunlight for neighbouring dwellings."</i></p> <p>The proposed FSR is not responsible for any adverse or unreasonable privacy impacts, noting the recessed nature of the upper level which converts the roof space to a habitable bedroom/deck area in a part additional level. The passive nature of</p>

	<p>the upper level and its increased setback from the southern neighbours when compared with the living room windows below confirm that the additional openings on the upper level are not unreasonable. It is also noted that the views to the south are out and over the buildings to the south and that there is also a substantial degree of mutual overlooking due to the mutual desire to achieve harbour views.</p> <p>The proposed FSR/bulk and scale is not considered to be responsible for any unreasonable view impacts to the dwelling houses and residential apartments along the northern side of Lauderdale Avenue. View impacts (if any) are considered to be of a negligible nature with the majority of views being preserved and in some instances improved,</p> <p>It is therefore considered that the absence of environmental and amenity impacts, as demonstrated above, justifies the proposed FSR variation.</p>
4.4(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.	<b>Not Applicable</b> – The subject site is not located in a business zone.
<b>Consistency with the objectives of the R1 General Residential zone</b>	
<b>Objectives</b>	<b>Assessment</b>
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community.</li> <li>To provide for a variety of housing types and densities.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul>	<p><b>Complies</b> – The proposed FSR does not generate any inconsistency with the objectives of the R1 General Residential zone as it enables the provision of 2 high quality dwellings which represent a significant improvement from the amenity of the existing 3 apartments.</p> <p>The design allows for 2 x 2 storey dwellings which is appropriate for the site as it links the lower level with the ground level for the lower dwelling whilst the additional area in place of the roof form allows for a dwelling over 2 levels between the 1st floor and new part 2nd floor. Both dwellings will have access to 2 parking spaces, solar access, ventilation, private open space and views, unlike the existing 3 units on the site.</p>

The above assessment demonstrates that the development standard is unreasonable and unnecessary in the circumstances of this application.

The FSR variation is associated with particular site circumstances noting the steep slope of the site, the lack of perception of the overall built form, the absence of environmental and amenity impacts, compact nature of the upper level associated with the FSR beyond that which exists and the minimal numeric FSR increase when compared with the existing built form.

The improved amenity for the subject building associated with the additional floor space by converting a roof form to a bedroom/ensuite area (in a part additional level) with internal access to the level below is also confirmed which highlights the positive aspects of the variation in this instance.

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

**Assessment:** The above assessment confirms that the proposed FSR will not be responsible for any unreasonable environmental impacts to surrounding properties in relation to overshadowing, privacy and view loss.

The above assessment provides a comprehensive analysis which demonstrates that there are sufficient environmental grounds given:

- Compatible streetscape outcome with a limited/reduced extent of built form on the upper level as the removal of the roof reduces the visible bulk on the western and eastern sides.
- Absence of shadow impacts
- No unreasonable overlooking impacts
- No unreasonable view impacts, noting that some views are improved by the proposal

Such assessment is consistent with Council's assessment of the proposed FSR variation from the original DA assessment.

#### **Other Matters for Consideration**

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

**Assessment:** The above assessment demonstrates that the proposed FSR satisfies the objectives of the FSR standard and the R1 General Residential zone.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the FSR variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the FSR control.

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

*(a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning*

**Assessment:** The proposed FSR variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The proposed FSR allows for achievement of a compatible building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the area. The proposed FSR is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional densities near transport and established services.

*(b) the public benefit of maintaining the development standard*

**Assessment:** There is no public benefit in maintaining the FSR standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

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

**Assessment:** There are not considered to be any additional matters to consider beyond those discussed above

## Conclusion

The above assessment demonstrates that the proposed FSR variation is justified on numerous grounds and that it is thereby appropriate to apply a degree of flexibility to the FSR standard.

*Statement of Environmental Effects*

*79a Lauderdale Avenue, Fairlight*

The proposed FSR does not generate any adverse or unreasonable streetscape or amenity (internal or external) impacts and accords with the zone objectives and does not generate any inconsistency with the objectives of the FSR standard.

It is confirmed that there are circumstances particular to this application which allow for a flexible approach whilst there would be no public benefit in maintaining the FSR development standard in this instance.

**ITEM 4.2**

**REV2020/0004 - 22 WATTLE AVENUE, FAIRLIGHT - REVIEW OF DETERMINATION OF APPLICATION DA2019/0795 FOR DEMOLITION WORKS AND CONSTRUCTION OF A DUAL OCCUPANCY (ATTACHED) AND SWIMMING POOLS**

**AUTHORISING MANAGER ANNA WILLIAMS**

**TRIM FILE REF 2020/274683**

**ATTACHMENTS**

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

**PURPOSE**

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

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. REV2020/0004 for Review of Determination of Application DA2019/0795 for demolition works and construction of a dual occupancy (attached) and swimming pools at Lot 26 DP 11828, 22 Wattle Avenue, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.

## REVIEW OF DETERMINATION ASSESSMENT REPORT

<b>Application Number:</b>	REV2020/0004
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<b>Responsible Officer:</b>	Renee Ezzy
<b>Land to be developed (Address):</b>	Lot 26 DP 11828, 22 Wattle Avenue FAIRLIGHT NSW 2094
<b>Proposed Development:</b>	Review of Determination of Application DA2019/0795 for demolition works and construction of a dual occupancy (attached) and swimming pools
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Stuart Peter Angus Rebecca Emiko Angus-Smith
<b>Applicant:</b>	Stuart Peter Angus Rebecca Emiko Angus-Smith

<b>Application Lodged:</b>	05/02/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	24/02/2020 to 09/03/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	6
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 1,500,001.00
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### Executive Summary

This report provides an assessment of a Review of Determination Application for demolition works and construction of a dual occupancy (attached) with swimming pools. Each dwelling consists of four (4) bedrooms, single garage with a car stacker and a swimming pool. The site is located on the northern side of Wattle Avenue, Fairlight and is a regular shaped allotment with a total site area measuring 455.3m<sup>2</sup>.

On 27 November 2019, the Northern Beaches Local Planning Panel refused DA2019/0795 for demolition works and construction of a dual occupancy (attached) with swimming pools. The reasons

for refusal of the application focus on the lack of connection with surrounding building character, materials and finishes and the cumulative impact of numerous non-compliances with the controls.

On 5 February 2020, the Section 8.2 Review of Determination application was lodged with Council, accompanied by a modified set of plans. The main changes to the development include the following:

- Improved passive surveillance to the street with new windows at the front of the site
- Increased open space and landscape areas across the site
- Change in building materials to incorporate face brick, timber screening and cladding
- Additional design elements included with highlight windows over the entry to provide a distinction between the dwelling and the garage structures
- Relocating the driveways and garages centrally on the site to provide additional landscaping area to each side boundary
- Increasing the amount of landscaped area

Pursuant to Section 8.2 of the Act, the applicant seeks a review of all aspects of the refusal of DA2019/0795. Clauses 8.3 and 8.10 of the Act requires that for the review to be made, it must be determined within 6 months after the notice of determination was issued. The application was determined on 27 November 2019 and the notice of determination issued on 2 December 2019. The request for review was lodged on 5 February 2020 and the review must be determined by 2 June 2020 to fall within the statutory time frame.

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

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

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposed development, as revised, comprises an attached dual occupancy development with each dwelling incorporating the following:

### **Ground Floor Level (RL16.9)**

- Single garage (RL16.4) at street level with car stacker below (two spaces)
- Three (3) bedrooms, main bedroom with ensuite and walk-in-robe
- Study
- Separate bathroom at entry

### **Lower Ground Floor Level (RL13.10)**

- Car stacker (RL14.29)
- OSD
- Rumpus

- Laundry
- Separate WC
- Kitchen, dining, living with adjoining north facing terrace (9.5m<sup>2</sup>)
- Central courtyard (east facing)
- Swimming pool

## **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**

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size

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**

<b>Property Description:</b>	Lot 26 DP 11828 , 22 Wattle Avenue FAIRLIGHT NSW 2094
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Wattle Avenue.</p> <p>The site is regular in shape with a frontage of 12.8m along</p>

Wattle Avenue and a depth of 35.6m. The site has a surveyed area of 456m<sup>2</sup>.

The site is located within the R1 General Residential zone and accommodates a single storey dwelling house and detached garage.

The site has a gradual fall from the northern boundary to the southern boundary, falling 3m across the site. There is an existing retaining wall along the front boundary of approximately 1m in height.

The site is clear of any canopy trees and consists only of grass landscaped area, low lying shrubs and bamboo plants along the site and rear boundary.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by a mixture of detached dwellings, semi-detached dwellings and residential flat buildings. Adjoining the site to the east is a two storey dwelling, to the west is a 3 storey residential flat building and to the north is a two storey dwelling. Across the road (to the south) are two storey dwellings with detached garages.

Map:



#### **SITE HISTORY**

##### **DA2019/0795**

Development Application No. DA2019/0795 for demolition works and construction of a dual occupancy (attached) and swimming pools was lodged with Council on 26 July 2019. The application received ten

(10) submissions and was reported to the Northern Beaches Local Planning Panel on Wednesday 27 November 2019 with a recommendation for refusal. The application was determined by the Panel by way of refusal for the following reasons:

*1. Pursuant to Section 4.15(1)(e) the proposal has a number of non-compliances with the current development controls, the cumulative effect of which results in the proposal being an over development of the site and therefore not suitable in the current context of the locality and is not in the public interest.*

*2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.1.1 Streetscape (Residential areas) of the Manly Development Control Plan. The proposal is not considered to complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality.*

*3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.10 Safety and Security of the Manly Development Control Plan. The proposal fails to provide an adequate level of passive surveillance upon the street.*

*4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan. Specifically, the front setback of the garages are not consistent with the prevailing building lines and landscape setting of the immediate vicinity.*

*5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan.*

The Notice of Determination was issued to the Applicant on 2 December 2019.

#### **REV2020/0004**

Review of Determination Application No. REV2020/0004 for a review of the refusal of DA2019/0795 was lodged with Council on 5 February 2020. This application is the subject of this assessment report.

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 27 November 2019 and the notice of determination was issued on 2 December 2019. The review was lodged on 5 February 2020 and is to be considered by NBLPP on 22 May 2020, which is within 6 months of the date of determination.

Section 8.3 (3) provides that the Council 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 'Detailed Description of Works' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly, it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

### **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*

#### **Comment**

This application was determined by the Northern Beaches Local Planning Panel (NBLPP) and is being referred to an alternate panel of the NBLPP for review and 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*
  - 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)*
  - 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 DA2019/0795. 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 27 November 2019 and the notice of determination issued on 2 December 2019. The application requesting a review was lodged on 5 February 2020 and so must be considered and determined by NBLPP by 2 June 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 provide greater landscaped open space and improved streetscape continuity. 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 an attached dual occupancy;
  - The proposed design changes result in a reduction in the bulk and scale of the building; and
  - 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 DA2019/0795**

##### **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 DA2019/0795 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)(e) the proposal has a number of non-compliances with the current development controls, the cumulative effect of which results in the proposal being an over development of the site and therefore not suitable in the current context of the locality and is not in the public interest.***

##### **Comment**

The proposed development has been modified to provide an increase to the Total Open Space

requirement from 40% to 44% which, while still a 6% non-compliance with the control, is considered a material improvement that satisfies the objectives. In addition, the development has been modified to provide greater landscaping and casual surveillance to the street with two (2) single car spaces centrally located on the front boundary.

The development retains a setback of 1.0m to the side setbacks of the building. A condition has been recommended to step-back the rear 6.0m of the first floor area of the building on both the eastern and western facades removing the void and providing greater articulation of the facades in this location. Subject to conditions, the modifications made to the proposal are considered to reduce the previous non-compliances to an extent that is no longer considered unacceptable in this location.

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)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.1.1 Streetscape (Residential areas) of the Manly Development Control Plan. The proposal is not considered to complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality.***

Comment

The design of the proposal has been modified in both form and finish to provide a more consistent transition with the varied building styles and finishes within this streetscape. The facade addressing the street will now incorporate a timber batten feature in both the garage door and the fencing with face brick and a painted cladding to the address the street and provide an empathetic connection with building materials and styles within the street. While the proposed development does not include traditional pitched roof forms or replicate older traditional building styles, the design contributes an integrity in its own right of architectural expression and is considered to be an appropriate response to the mix of styles surrounding the site.

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

***3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.10 Safety and Security of the Manly Development Control Plan. The proposal fails to provide an adequate level of passive surveillance upon the street.***

Comment

The amended building form introduces sight lines from the street toward the front entry of the dwellings with a window within the southern facade adjoining the study providing improved casual surveillance to Wattle Avenue. Amendments to the design to provide the entry visible from the street is not considered a good design response likely to provide any greater casual surveillance in this instance. The inclusion of a window adjoining a study is considered to provide greater surveillance than a door and entry hall. The amended design includes some detailed screening which extends from the outside corners of the study walls back toward the garage offering some privacy to and from the entry of each dwelling and the adjoining properties. These screens are shown at a length of approximately 2.3m which will partly overlap the study window. It is recommended that a condition of consent be included to reduce the length of these screens to 1.5m to ensure the sight lines from the study window remains unobstructed.

Further, the front of the sites provide open palisade style fencing which will allow these sight lines to the public domain within Wattle Avenue. The interaction of the dwelling with the street is characteristic of many of the dwellings on the northern, lower side of Wattle Avenue where the dwellings are predominantly recessive to the garage or carport structure with limited windows visible from the street. The facade of the dwelling has been further activated with highlight windows above the entry foyer of both dwellings which will be visible from the street across the garage roof line.

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

**4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan. Specifically, the front setback of the garages are not consistent with the prevailing building lines and landscape setting of the immediate vicinity.**

Comment

The location of the garages on the front boundary line has been discussed in more detail under Clause 4.14 Setbacks. This amended proposal maintains a nil front setback which is considered consistent with the prevailing pattern of garages surrounding the site. The established pattern of development within Wattle Avenue demonstrates a strong inclusion of garage structures both single and double located on the front boundary with a nil setback and the dwelling located behind.



**Aerial Photo** - Garages with nil setback along Wattle Avenue. (Red arrows double, yellow arrows single).

Source: Statement of Environmental Effects prepared by City Planning Works.

In terms of the side and rear setbacks, the rear setback of 8.3m complies and is considered acceptable. The side setback has been addressed in further detail and is generally considered acceptable on this site subject to a minor amendment to the rear first floor level which is conditioned for the removal of the void area to provide an increased setback in this location on the eastern side.

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

**5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan.**

Comment

While it is acknowledged that the Total Open Space provision for the site is marginally below the DCP requirement of 55% at 49%, this equates to a shortfall of approximately 29sqm. On balance, the landscaping on the site is considered to be better located for maximum functionality and improved amenity for both the occupants of the development and the adjoining properties.

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

**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 Antonio Natalino Di Meola	3 / 26 Wattle Avenue FAIRLIGHT NSW 2094
Mrs Diane Dennis	14 Wattle Avenue FAIRLIGHT NSW 2094
Robert Frank Hurst	75 Balgowlah Road FAIRLIGHT NSW 2094
Mr Graeme John Turner	1 Roselands Avenue FRENCHS FOREST NSW 2086
Mr Daniel Patrick Fraser	16 A Wattle Avenue FAIRLIGHT NSW 2094
Guy Holley	Address Unknown

The following issues were raised in the submissions:

- Non-compliance with open space
- Loss of on-street parking space
- Driveway width non-compliant with <50% of frontage
- Side Setback non-compliance
- Excavation greater than 1.0m
- Swimming pools non-compliant with setbacks
- Bamboo planted along boundaries
- Inconsistency with streetscape and single dwellings
- Stormwater runoff
- Site does not meet the minimum lot size requirement
- Front setback non-compliance
- Loss of solar access to bathroom window

The matters raised within the submissions are addressed as follows:

- ***Non compliance with open space requirement of total site area.  
Proposal counts joining the garages as open space.  
Development seeks to diminish amount of open space and greenery.***

Comment:

The proposed development provides 49% of the site as total open space with a dimension greater than 3.0m in width. While this is a non-compliance of 6% with the requirements of MDCP, it satisfactorily meets the objectives of the control. This has been assessed in light of the objectives of the control under the MDCP section of this report. This issue does not warrant refusal of the application.

- ***Loss of one on-street parking space to accommodate additional driveway.  
Street parking is a premium.  
Car stacker wont be used.***

Comment:

The proposed development is not considered to result in an unacceptable increase in car movements within Wattle Avenue. Council's Development Engineers have not raised any concerns with the proposed additional driveway crossing or the loss of a car space within the street. The proposal will provide two (2) legitimate parking spaces on the site for each dwelling which is a substantial improvement to the existing parking provision of the site which involves one (1) garage space only.

There is no evidence to justify any commentary around the use of this form of infrastructure in low density residential development. This issue does not warrant refusal of the application.

- ***Driveway width non compliant with <50% of the frontage.  
Revised plans claim tree planting will conceal non-compliant garages.***

Comment:

The proposed development has been amended by relocating the garages which now extend for a distance of 6.4m which is 50% of the site width and compliant. This issue is does not warrant refusal of the application.

- ***Side setback non-compliance***

Comment:

The proposed development has been assessed on its merits in terms of the side setbacks. This issue is dealt with in greater detail within Clause 4.14 of the MDCP within this report. The proposal is generally acceptable in relation to the proposed setbacks, with the exception of the the rear eastern and western facades. There is an opportunity in this location for the first floor wing at the rear to be stepped-in off the boundary a further 0.65m, through the removal of the void space on the each elevation. As the development does not create any negative impact in relation to privacy or overshadowing, this minor amendment will provide some marginal improvement for the adjoining eastern property in relation to spatial separation and the perception of bulk and scale. Accordingly, a condition of consent has been recommended in this respect to amend this area of the building form. This issue does

not warrant refusal of the application.

- ***Excavation greater than 1.0m at 1.5m-2.0m.  
Damage to neighbouring property from excavation of pools***

Comment:

The applicant has provided an addendum report with this review of determination which clarifies that the maximum excavation for the pool structures will be no greater than 1.0m.

In relation to any potential damage to adjoining properties as a result of excavation on the site, conditions of consent are recommended which require a pre and post dilapidation survey be undertaken of the neighbouring properties to document the condition of these sites. This issue does not warrant refusal of the application.

- ***Swimming pools non-compliant with setback.  
Too close to neighbouring property and with loud pumps***

Comment:

The swimming pool concourse as proposed will provide a setback to the side property boundary of only 0.5m, with the waters edge being setback 1.7m. While the DCP controls require a 1.0m setback to the concourse, the overall objectives of this control are considered suitably met, as the site is separated by 0.5m of screen planting and a 1.8m high fence to the west and 2.1m high fence to the east. The location of the proposed swimming pools are considered acceptable.

The applicant has indicated that any pool equipment will be located within an acoustic enclosure away from property boundaries and not under the pool structure. A condition of consent has been included to reinforce this commitment.

- ***Bamboo planted along site boundary***

Comment:

No objection has been raised by Council's Landscape Architect in relation to the existing Bamboo screen planting on the site. Provided that the species is a "clumping" version and not a listed noxious weed species, Council has no further issues with the existing planting on the site.

- ***Inconsistent with streetscape and single dwellings***

Comment:

It is noted that the proposed dual occupancy is a permissible form of development within the R1 Residential Zone. The development presents as a single storey dwelling from Wattle Avenue and is considered to be satisfactory in this regard.

- ***Drainage and runoff to downstream property.  
Concern about the level spreader being only 1300mm from boundary  
Surface flow should go into the existing drainage system at the front of the site.***

Comment:

Council's Development Engineers have reviewed the proposed development and have raised no objections to the proposed stormwater design.

In relation to the location of the level spreader, it is proposed and has been assessed as being acceptable and located 2.0m from the rear boundary of the site.

Drainage in this instance using a charged system to drain to Wattle Avenue is not supported by Council. The applicant has pursued other options for drainage including easements across neighbouring properties which were declined. As a result, Council's Development Engineers have supported an hydraulic design where stormwater is captured in On-Site Detention tanks and released via a level spreader toward the rear of the site. This issue has been satisfactorily resolved and does not warrant refusal of the application.

**- Site does not meet the minimum lot size**

Comment:

The proposed development is for a dual occupancy development and does not seek Torrens Title Subdivision under Clause 4.1 of MLEP 2014.

**- Front setback non-compliance**

Comment:

The development maintains a setback of 5.5m to what is technically the front of the dwelling being the bathroom attached to the rear of the garage structure. Further, the proposal includes a double width garage within the front setback which is consistent with Clause 4.1.4 of MDCP Street Front Setbacks. The location of the garage within the front setback is considered to be consistent with Clause 3.1.1.4 MDCP - Garages and carports and is compatible with the streetscape. The street has a prevailing character of garage structures on the front boundary line. No objection is raised in relation to the front setback of the development.

**- Loss of solar access to bathroom window of No. 20 Wattle Street.**

Comment:

Assessment of overshadowing impacts on adjoining properties is considered in relation to private open space and main living areas. The window of concern in this instance is to a bathroom window. As this facade faces west, additional overshadowing of this dwelling occurs after midday to 3.00pm. These windows are not service living areas, accordingly the additional overshadowing in this instance is not considered a material impact. This issues does not warrant refusal of the application.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported</b></p> <p>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.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be</p>

Internal Referral Body	Comments
	determined at Construction Certificate stage.
Landscape Officer	<p><b>Supported</b></p> <p>The application seeks approval to construct a new dual occupancy and associated works.</p> <p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation, and the completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p> <p>There are no significant trees within the site impacted by the works. An Arboricultural Impact Assessment is submitted with the application that satisfies the DA Lodgement Requirements. This addresses the impact and protection of existing palms within adjoining property in close proximity to the works. All existing trees and vegetation shall generally be protected during all stages of works.</p> <p>A Landscape Plan is submitted that generally satisfies the DA Lodgement Requirements, subject to conditions.</p>
NECC (Development Engineering)	<p><b>Supported</b></p> <p>The proposed spreader must be located at least two meters away from the rear boundary.</p> <p>A condition will be placed to address the issue. Development engineering has no objection to the application subject to the following condition of consent.</p>
Strategic and Place Planning (Urban Design)	<p><b>Not Supported</b></p> <p>There are still a number of non-compliances, although reduced in severity but taken in totality, will still be an overdevelopment of the site. Some suggestions to reduce building bulk and increase landscape area are:</p> <ol style="list-style-type: none"> <li>1. Side setback control - there is a possibility of reducing the width of the upper floor bedroom area as the house step down the slope to comply with the side setback as the linear void proposed can be deleted in front of bedroom 1 and 2. The lower level living area will still get adequate sunlight from the remaining courtyard and the shortened linear void.</li> <li>2. The landscape area calculation can also be improved by deleting the smaller courtyard between the study and bedroom 3 and the windows to these rooms reorientated to the side boundaries with privacy screens incorporated. The rear setback can then be increased by shortening the total length of the house.</li> </ol>

Internal Referral Body	Comments
	<p>3. The car stackers/ garages proposed should be deleted and converted into open-air parking spaces to reduce street front built form impact. The garage height clearance as drawn will not work as more headroom will be required when the car stacker is in the 'up' position.</p> <p><b>Assessing Officer Comments</b></p> <p>In response to the Urban Design comments, it is considered that some minor changes may be incorporated in the proposal by condition in order to address some of these concerns. The following response is provided in relation to these suggestions:</p> <p>1. A condition of consent has been imposed requiring the upper level rear eastern and western facade of each dwelling be stepped in by approximately 650mm by deleting the void which extends the length of Bedroom 1 and the Walk-in-Robe. This modification to the facade will break up the height of this wall and provide some relief in the perception of bulk from the adjoining dwellings.</p> <p>2. The deletion of the courtyard between the study and bedroom 3 is not supported. The removal of this space will force the relocation of windows to the study and bedroom 3 to the side facade of the building. This is a design element that has been carefully considered to eliminate any overlooking between properties, particularly on the western dwelling which has numerous windows facing into it from the residential flat building adjoining. The net gain to the landscape calculation will be negligible as a result and not provide any greater benefit to the design or the neighbouring properties.</p> <p>3. The removal of the car stacker to provide all parking as open air spaces is not considered to assist the development or the on-street parking concerns raised by the neighbours. The use of a stacker on the site will enable four (4) vehicles to be parked on the site where the alternative would accommodate only two (2) vehicles. The single garage structure is considered an acceptable building element in this location and is replicated on many properties within Wattle Avenue. In relation to the operation of the stacker, the project Architect has provided additional technical details from the manufacturer of the <i>Levnapaark stacker</i> certifying that there will be no requirement for the roof height of the garage to be increased for this to operate as designed.</p> <p>In summary, the minor change to the rear eastern and western facade is considered an achievable and worthwhile amendment to the proposal and has been addressed through a condition of consent. The remaining suggestions for changes to the development are not considered issues to justify refusal of the 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.

#### 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. 1007361m\_02 dated 3 February 2020).

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

Commitment	Required Target	Proposed
Water	40	43
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.

**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	7.86m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1	FSR: 0.6:1	N/A	Yes

**Compliance Assessment**

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.1 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: 455.3m <sup>2</sup>	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling/ 250sqm	1 dwelling/ 228sqm	9%	No
	Dwelling Size: 112sqm (minimum)	136.45sqm	N/A	Yes
4.1.2.1 Wall Height	East: 7.2m (based on gradient 1:9)	7.34m	1.9%	No
	West: 7.2m (based on gradient 1:9)	7.5m	4.2%	No
4.1.2.2 Number of Storeys	2 storey	2 storeys	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.6m	N/A	Yes
	Pitch: maximum 35 degrees	10 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6.0m	5.5m, to front facade Nil setback to garage, consistent with surrounding garage setbacks	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.5m - 1.8m (based on wall height)	West - 1.0m East - 1.0m	60%	No
	Windows: 3.0m	No windows located on side facades	N/A	Yes
4.1.4.4 Rear Setbacks	8.0m	8.3m to dwelling	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space above ground 55% of total open space (250.4m <sup>2</sup> )	49% (221.3m <sup>2</sup> )	6%	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (88m <sup>2</sup> )	44% (113m <sup>2</sup> )	N/A	Yes
	1 native tree (Area C)	3 trees	N/A	Yes
4.1.5.3 Private Open Space	12m <sup>2</sup> each dwelling	79.5m <sup>2</sup>	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	6.4m (50%)	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1.0m height above ground	0.61m	N/A	Yes
	1.0m curtilage/1.5m water side/rear	1.0m to deck 2.2m to water edge	N/A	Yes Yes

	setback			
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces per dwelling	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 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
3.5.1 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
3.6 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
4.1 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	No	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
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	Yes	Yes

#### Detailed Assessment

#### **3.1.1 Streetscape (Residential areas)**

##### **Mainly DCP 3.1.1 Streetscape (Residential Areas)**

The predominant character of the streetscape is defined by various period type developments dating from the 1920's, through to contemporary style recent developments of an understated nature. There is an obvious use of face brick masonry with timber architectural detail across various architectural periods in time.

The modified development, while maintaining a more contemporary form of design has incorporated aspects of some of these common features into the proposal. In addition, the design has incorporated changes to the volumetric form of the facade incorporating chamfered corners and extruded front sections which house highlight windows over the entry breaking the building elements and providing visual separation between the two dwellings and the garage structures and the dwelling. These elements are considered to complement the existing character in the street.

##### **3.1.1.1 Complementary Design and Visual Improvement**

The DCP requires that development in the streetscape should be designed to:

- i) *Complement the predominant building form, distinct building character,*

#### Council's Comment:

The proposed development is a low density dual occupancy development which presents as a single storey building form from the street with two (2) parking spaces in front. This is a building form clearly identifiable within the Wattle Avenue streetscape. The modifications to the proposal include changes to the materials selected which now include face brick, timber cladding and timber batten features. The movement of the garage structures centrally located across the site has provided a more traditional reflection of building styles while maintaining the integrity of the contemporary architectural style.

The proposed development is not incongruous with more modern development in the locality and is considered acceptable.

- vi) *Visually improve existing streetscapes through innovative design solutions.*

#### Council's Comment:

The proposed design is considered to provide a visual connection with the streetscape and will

provide an improved level of design and finish within the streetscape.

- vii) incorporate building materials and finishes complementing those dominant in the locality.*

Council's Comment:

As identified, the modified building finishes are considered to provide a complimentary addition to the streetscape.

- b) In lower density areas including LEP Zones R2, E3 & E4, setbacks sho*

Council's Comment:

The proposed development provides a 6.0m setback to the front of the dwelling being the bathroom wall. While the single garage for each dwelling is centrally located on the greater site frontage, improved areas to each side of the garages has been incorporated to facilitate improved landscape plantings to soften the development. While the entire frontage does not provide a 6.0m setback to structures, the inclusion of the car spaces within the front setback is a consistent element within this street and is considered acceptable.

**3.1.1.3 Roofs and Dormer Windows**

- a) Roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings.*

Council's Comment:

As indicated in the previous assessment of the building form, the modified proposal now includes face brick work instead of standing seam Colorbond cladding to provide a greater acknowledgement of the streetscape character.

**3.1.1.4 Garages, Carports and Hardstand Areas**

- a) Garages, carports and hardstand areas must be designed and sited in a manner that does not dominate the street frontage by:*
  - i) its roof form, material choice and detailing by being subserviatned to the associate dwelling;*
  - ii) being compatible with the streetscape and the location in relation to front setback criteria.*

Council's Comment:

The relocation of the garage structures centrally within the front setback (2 x single garages) is supported. The movement of bulk into a centralised location has provided the permeability and

reduced bulk and scale to the street frontage which was lacking in the previous application.

The proposed development on balance is now considered to provide an appropriate presentation within the existing streetscape and is supported.

#### **4.1.1.1 Residential Density and Dwelling Size**

The subject land is located within the residential density area D3 which requires a maximum density of one (1) dwelling per 250sqm of site area. The proposed dual occupancy would result in a density of one (1) dwelling per 228sqm of site area. This is a variation of approximately 9%.

Although non-compliant with the control, a dual-occupancy is a permissible form of development within the R1 General Residential Zone and Council has no fundamental issue with the construction of a dual occupancy on the subject site.

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

The proposal has a minor non-compliance with regard to wall height on the western facade, with the requirement being 7.2m (based on a slope of 1:9) and the proposed wall height of 7.3m on the east and 7.5m on the western facade.

The minor non-compliance does not present an unreasonable impact with regard to overshadowing, view loss or considered incompatible with regard to the height of the adjoining property to the west. Notwithstanding, there is an opportunity to step the first floor of the development at the rear, on the eastern and western facades by removing the void area adjoining the master bedroom and walk-in-robe. By stepping the facade back, the depth of the void (approx. 650mm) in this location on the first floor will have a more discernible physical separation from the adjoining properties at 1.65m from the boundary. Subject to condition, the development in this regard is considered acceptable.

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

The DCP requires that front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity. The proposed development has two garages with zero setback to the front boundary located centrally on the site allowing landscaping to the east and west for landscape plantings.

When considered in the context of Wattle Avenue, the main dwelling connects at the rear of the garage with a 5.5m setback to the bathroom at the entry and is splayed in toward the main front facade visible from the street being the study wall at 8.8m. In terms of the garages, there is an established pattern of development where these structures are located with a nil setback.

The proposed development consists of two garages located centrally on the site and connects to the dwelling as a single storey development when viewed from the street. The amended design has provided an improved opportunity for landscaping to the east and west of the garages within the front setback area. The proposed front setback of the garages and improved landscaping within the front setback of the development is considered consistent with the streetscape and for this reason, the development is supported.

#### **4.1.5 Open Space and Landscaping**

##### Description of non-compliance

The proposed development seeks a minor variation to the Total Open Space control. For Area OS3, a total of 55% (250.4m<sup>2</sup>) of the site is required as Total Open Space with area dimensions of 3.0m x 3.0m. The proposal provides approximately 49% (221.3m<sup>2</sup>) of the site as Total Open Space meeting this requirement.

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:

There are no important landscape features identified on this site which require retention.

*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 site provides approximately 44% of the required Total Open Space as soft landscaping which is in excess of the 35% required by the controls. The proposal includes a landscape plan which incorporates numerous new trees and maintenance of existing boundary planting.

*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 has been designed to meet the expectations of modern family living providing ground floor living areas which interconnect with the rear landscaped yard. The rear of the site is oriented to the north and will benefit from excellent sunlight access all year round. The intricacies in the design of the architecture has ensured that development does not create any adverse overlooking to adjoining properties and resolves existing long standing issues with overlooking into the site.

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

Comment:

Council's Development Engineers have reviewed the proposed hydraulic design and support the OSD and level spreader concept.

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

Comment:

The site does not currently have issues with weed infestation and the proposed landscaping plan provides an acceptable range of native plant species.

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

Comment:

The proposed new native trees are considered suitable for providing habitat and attracting wildlife.

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 \$15,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,500,001.

### **CONCLUSION**

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP

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

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, Manly LEP 2013 and the relevant codes and policies of Council.

The amendments to the proposal and new documentation have satisfactorily resolved the character, built form and landscape issues forming the basis for the reasons for refusal of the Development Application.

Based on a detailed review of the amended plans and additional supplementary documentation, the applicant has satisfactorily addressed all the reasons for refusal provided.

The reasons for refusal of DA2019/0795 should therefore not be maintained and the review application approved subject to conditions.  
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to REV2020/0004 for Review of Determination of Application DA2019/0795 for demolition works and construction of a dual occupancy (attached) and swimming pools on land at Lot 26 DP 11828, 22 Wattle Avenue, 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
S8.2/01 - Site Plan & Site Analysis	January 2020	Marston Architects
S8.2/02 - Demolition & Excavation Plan	January 2020	Marston Architects
S8.2/03 - Lower Ground Floor Plan	January 2020	Marston Architects
S8.2/04 - Ground Floor Plan	January 2020	Marston Architects
S8.2/05 - Roof Plan	January 2020	Marston Architects
S8.2/06 - Elevations South & North	January 2020	Marston Architects
S8.2/07 - Elevation East	January 2020	Marston Architects
S8.2/08 - Elevation West	January 2020	Marston Architects
S8.2/09 - Section A-A	January 2020	Marston Architects
S8.2/10 - Section A-A	January 2020	Marston Architects
S8.2/14 - Landscape Plan	January 2020	Marston Architects
S8.2/16 - Schedule of Materials and Finishes	January 2020	Marston Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Hydraulic Engineering Design (Ref:P170550-LT-CV-001-0)	4 February 2020	Stellen Civil Engineering
Geotechnical Investigation (Ref:2019-019.1) and Addendum Geotechnical Letter	24 July 2019 3 February 2020	Crozier Geotechnical Consultants
BASIX Certificate No. 1007361M_02	3 February 2020	Damian OToole Town Planning

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

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

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

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

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

## 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	19/03/2020

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

#### 5. Sewer / Water Quickcheck (Crown Land Only)

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- ☐ Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- ☐ Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- ☐ Or telephone 13 20 92.

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

### FEES / CHARGES / CONTRIBUTIONS

#### 6. Policy Controls

#### Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$15,000.01 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 \$1,500,001.00.

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](http://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](http://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. Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

**9. 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.

**10. 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 Stellen Consulting, drawing number DR-000 to DR-004, dated 04/02/2020.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer. The drainage plans must address the following:

- i. The spreader must be at least 2 metres away from the rear boundary.

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.

**11. 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.

**12. 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.

**13. Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

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

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

**14. 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.

**15. Setback of Ground Floor Eastern and Western Wall**

The rear eastern and western facades of the dwellings at ground floor level shall be stepped back for the length of the Bedroom 1 and Walk-in-Robe the full depth of the void.

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

Reason: To ensure adequate spatial separation is provided to the adjoining property.

**16. Reduction in length of privacy screen to front door**

The slatted privacy screening extending from the outside corner of each study is to be reduced in length to 1.5m to ensure adequate sight lines are maintained from the study window to the front of the site. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure adequate casual surveillance is maintained.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

**17. Pre-Construction Dilapidation Report**

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

- ☐ No. 20 Wattle Avenue, Fairlight
- ☐ No. 24 Wattle Avenue, Fairlight (applies to whole property)

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

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

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

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

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

**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.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK****19. 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.

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

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

- ☐ Work Health and Safety Act;
- ☐ Work Health and Safety Regulation;
- ☐ Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];

- ❑ Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- ❑ Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- ❑ The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

**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. Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

**23. Vehicle Crossings**

The Applicant is to construct one vehicle crossing 6 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.

**24. 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.

**25. Tree and vegetation protection**

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

- i) all trees and vegetation within the site over 5 metres in height, excluding trees approved by Council for removal, and 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.

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

##### **26. Post-Construction Dilapidation Report**

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

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

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

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

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

**27. 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.

**28. 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) and hydraulic engineers' certification of the completed works.

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.

**29. Retaining wall**

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety

### 30. Landscape works

Landscaping is to be implemented in accordance with the Landscape Plan numbered S8.2/14, prepared by Marston Architects dated January, 2020, inclusive of the following requirements:

- i) all tree planting is to be installed at 75 litre container size,
- ii) all tree planting to the rear shall have a minimum individual soil area wholly within the site of 3 metres x 3 metres, and shall be located a minimum of 5 metres from existing and proposed built dwellings, or minimum of 3 metres where pier and beam footings are used,
- iii) one (1) street tree shall be planted in the road verge between the two driveways, consisting of a 75 litre *Callistemon viminalis* (Bottlebrush), matching the existing street tree planting theme, installed into a 500 x 500 x 500mm deep tree pit, infilled with sandy loam soilmix, mulched with a 75mm layer, and double staked.

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 plan and inclusive of any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity and soften the built form.

### 31. 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)

### 32. 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.

### 33. Sydney Water

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-

ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

**34. Finished height of the garages**

The finished height of the garage structures is to be RL 19.20. Survey details demonstrating compliance are to be provided to the certifying authority prior to the issue of an Occupation Certificate.

Reason: To ensure the height of the garage is not constructed higher than approved.

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

**35. 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.

**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.

