

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 3 JUNE 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

Paul Vergotis	Chair
Marcus Sainsbury	Environmental Expert
Brian Kirk	Town Planner
Ray Mathieson	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 3 June 2020
Commencing at 1.00pm**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 20 May 2020	
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3.1	DA2020/0234 - 25-33 Robertson Road, Scotland Island - Demolition works and construction of a new jetty, pontoon and associated works	5
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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 20 MAY 2020

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 20 May 2020 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	DA2020/0234 - 25-33 ROBERTSON ROAD, SCOTLAND ISLAND - DEMOLITION WORKS AND CONSTRUCTION OF A NEW JETTY, PONTOON AND ASSOCIATED WORKS
AUTHORISING MANAGER	ANNA WILLIAMS
TRIM FILE REF	2020/312403
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building of Clause 4.3 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/0234 for demolition works and construction of a new jetty, pontoon and associated works at Lot 10 DP 1106130, 25-33 Robertson Road, Scotland Island subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0234
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Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot 10 DP 1106130, 25 - 33 Robertson Road SCOTLAND ISLAND NSW 2105
Proposed Development:	Demolition works and construction of a new jetty, pontoon and associated works
Zoning:	E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Far East Land & Housing Development Company PTE LTD
Applicant:	Far East Land & Housing Development Company PTE LTD

Application Lodged:	10/03/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/03/2020 to 10/04/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 17%
Recommendation:	Approval

Estimated Cost of Works:	\$ 358,000.00
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The proposal is for the construction of a boat shed and associated works and involves a variation to the Height of Buildings development standard of the Pittwater Local Environmental Plan 2014 (PLEP 2014) of 17%. Despite the numeric non-compliance, the proposal is not considered to result in unreasonable bulk, scale or amenity impacts as viewed from the adjoining Pittwater Waterway or adjoining properties.

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

The proposed development is generally compliant with the numeric controls under the Pittwater 21 Development Control Plan (P21 DCP).

The application is referred to the Northern Beaches Local Planning Panel for determination due to the

contravention of the Height of Buildings development standard exceeding 10%.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent to reconstruct the jetty and boat shed for the property at a higher level due to inundation.

In particular, the application includes:

- The refurbishment of the existing boat shed by raising the entire structure by 360mm. The existing boat shed finished floor level measures RL 1.35 with the new boat shed finished floor level to measure RL 1.7.
- A new jetty, two (2) pontoons, skid ramp, stairs and associated decking along the northern and western side of the boat shed will be demolished and replaced like for like. All new structures within the waterway will be of timber construction and of a similar dimension to what is existing. The jetty will be raised in height at the north western end by 210mm. The height of the new piles at the north western end of the jetty will remain as existing.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - D8.9 Landscaped Area
Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark
Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 10 DP 1106130 , 25 - 33 Robertson Road SCOTLAND ISLAND NSW 2105
Detailed Site Description:	<p>The subject site is located on the northwest foreshore of Scotland Island facing Lovett Bay. The site comprises two (2) separate allotments, being 25 - 33 Robertson Road (Lot 10, DP1106130) and 35 Robertson Road (Lot 135, DP 12749). Scotland Island. Both sites form part of a residential estate, commonly known as 'Yamba'. The site is associated with Crown Licence LIC 539 398 for development seaward of the Mean High Water Mark, of which is owned by the Department of Planning, Industry and Environment - Crown Lands and is located within the W1 Natural Waterways zone. The site is located within the E3 Environmental Management zone</p> <p>25-33 Robertson Road has frontages to both Robertson Road (south/south-east) and the Pittwater Waterway (north/north-west), and a total area of 5925m². An existing two-storey dwelling is situated centrally on the site, surrounded by an established garden that is terraced up the slope of the site, containing a mix of established native and exotic canopy trees. A small cabin, referred to as the 'caretaker's cottage', is upslope of the primary residence, situated in the south-western corner of the site. A lease arrangement is currently in place with regard to an existing boat shed and jetty on Crown Land adjacent to 25-33 Robertson Road. The jetty provides for the primary means of access to the site via the Pittwater Waterway.</p> <p>35 Robertson Road also has frontages to both Robertson Road (south-east) and the Pittwater Waterway (north-west), and a total area of 708.22. This portion of the Yamba estate is generally free of development, with the exception of existing terracing and stone retaining walls that form a key part of the design of the established gardens. A number of significant Spotted Gums are located within this portion of the site.</p> <p>Adjoining and surrounding development is characterised by similar scaled low density residential development within landscaped settings, most of which contain waterfront facilities including boat sheds and jetties.</p>

Map:



SITE HISTORY

6 March 1995

Building Application 0165/95 for the demolition of the majority of the existing dwelling and construction of a new dwelling was lodged at Council. At the time the Building Application was lodged, the Yamba estate comprised a total of seven separate allotments;

- . 25 Robertson Road (Lot 139 DP 12749);
- . 27 Robertson Road (Lot 138 DP 12749);
- . 29 Robertson Road (Lot 1 DP 560241);
- . 31 Robertson Road (Lot 137 DP 12749);
- . 33 Robertson Road (Lot 136 DP 12749);
- . 35 Robertson Road (Lot 135 DP 12749); and
- . 37 Robertson Road (Lot 2 DP 560241).

The proposed development was limited to two allotments, being 27 and 29 Robertson Road, and the five remaining lots were to be kept free of development. Upon review of the assessment report, it is apparent that the assessing officer had concerns regarding the scale of the development, and ultimately recommended that some of the remaining vacant lots should be consolidated into the development site to ensure that the visual impact of the large dwelling was adequately minimised. The applicant objected to the imposition of any such condition requiring consolidation and confirmed that there was no intention to develop the vacant sites.

Approval P165/95 was issued on 5 September 1995 with respect to Building Application 0165/95.

25 September 1995

Two of the seven allotments (being 27 and 29 Robertson Road) in the Yamba estate were consolidated to create one lot, Lot 1 DP 852841.

11 December 2006

The consolidated site (27-29 Robertson Road) was further consolidated with 25, 31 and 33 Robertson Road) to create one new allotment, being Lot 10 DP 1106130.

N0162/07 Development Consent was granted for the construction of a detached studio/cabin, situated upslope of the existing primary residence, at 25-33 Robertson Road. 16 July 2007

N0066/15 25 - 33 and 35 Robertson Road, Scotland Island. DA Withdrawn 11 June 2015.

N0303/16 Development Consent was granted for the Removal of existing rainwater tank and installation of two (2) new rainwater tanks and landscaping works on 14 October 2016

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application (prepared by Bushfire Planning and Design, dated 11 November 2019) stating that the development conforms to the relevant specifications and requirements within Planning for Bushfire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (unsewered lands)	<p>General Comments</p> <p>Environmental Health has been requested to provide comment on the proposed development of refurbishment and raising the existing waterfront structures at 25-33 Robertson Road. As part of this referral Environmental Health has considered Wastewater and Acid sulfate soils.</p> <p>There is not mention of any connection to wastewater from the boat shed in the SEE or associated documents provided. The wastewater report by Blue mountains Geological consulting provided as part of DA N0066/15 showed no connection of wastes from the boatshed.</p> <p>The SEE provided with the development notes that "no excavation is required for this proposal." "it is simply raising and refurbishing the existing long standing structures"</p> <p>As such Environmental Health has no objections.</p> <p>Recommendation</p> <p>APPROVAL - no conditions</p>
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the following provisions:</p> <ul style="list-style-type: none"> - SEPP (Coastal Management) - Coastal Environment Area - Pittwater LEP Clause 7.6 (Biodiversity Protection) - Pittwater DCP Clause B4.7 (Pittwater Spotted Gum Forest EEC) - NSW Biodiversity Conservation Act 2016

Internal Referral Body	Comments
	<p>The property is mapped as containing Pittwater Spotted Gum Forest Endangered Ecological Community (EEC). While the proposal will result in the removal of two trees diagnostic to this community, replacement planting will enable the objective of no net native tree loss to be achieved. Accordingly, the proposal can be supported, subject to measures to safely retain other significant trees.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by SDG Land Development Solutions dated 23 April 2018 and Council accepts the assessment. The DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p>

Internal Referral Body	Comments
	<p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>Estuarine Risk Management</p> <p>In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.73m AHD would apply at the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.07m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m.</p> <p>However, the applicant submitted an Estuarine Risk Management Report prepared by Salients Pty. Ltd. dated 26 February 2020 proposed an Estuary Planning Level of 2.52m AHD considering design life of the boatshed as 25 years and proposed to raise the floor level of the existing boatshed from 1.35m AHD to 1.70m AHD. This has been incorporated in the design and supported in Geotechnical Assessment prepared by Ascent Geotechnical Consulting dated 13 November 2019.</p> <p>Estuarine Planning Level does not apply to Jetties, Bridging Ramps or Pontoons (seaward of the foreshore). The analysis is therefore limited to the boat sheds, adjacent timber boardwalks and skids, and the seawall and beach.</p> <p><u>Proposed development below the derived EPL</u></p> <p>As assessed in the submitted Estuarine Risk Management Report prepared by Salients Pty. Ltd dated 26 February 2020 and Council accepts the assessment. The ground floor level for the proposed boatshed is below the derived EPL of 2.52mAHD for the site.</p> <p>The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP.</p>

Internal Referral Body	Comments					
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against:</p> <p>State Environment Planning Policy (Coastal Management) 2018:</p> <p>Part 2, Division 1, Clause 13</p> <p>Pittwater 21 Development Control Plan</p> <p>B8.2 Erosion and Sediment Management</p> <p>B4.19 Estuarine Habitat</p> <p>B4.20 Protection of Estuarine Water Quality</p> <p>B4.16 Seagrass Conservation</p> <p>This application proposes the construction of a jetty using the same footprint as the existing jetty. The application does not include dredging works and should these be required an application must be made to Council with an accompanying integrated development referral to Department of Primary Industries (fisheries). To prevent damage to seagrass environmental safeguards such as silt curtains, are to be used and maintained during the construction and no items are to be placed on the seagrass beds. All precautions must be taken to avoid the spread of the invasive algae <i>Caulerpa taxifolia</i> which is already present at the site.</p> <p>With the addition of these conditions the application is unlikely to cause and adverse impacts to the integrity and resilience of the biophysical, hydrological and ecological environment.</p>					
Strategic and Place Planning (Heritage Officer)	<table><tr><th>HERITAGE COMMENTS</th></tr><tr><td>Discussion of reason for referral</td></tr><tr><td>The proposal has been referred to Heritage as it was identified by the community as being of potential significance under a previous development application on the site.</td></tr><tr><td>Details of heritage items affected</td></tr><tr><td>The property is not a listed heritage item and there is no statement of heritage significance.</td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as it was identified by the community as being of potential significance under a previous development application on the site.	Details of heritage items affected	The property is not a listed heritage item and there is no statement of heritage significance.
HERITAGE COMMENTS						
Discussion of reason for referral						
The proposal has been referred to Heritage as it was identified by the community as being of potential significance under a previous development application on the site.						
Details of heritage items affected						
The property is not a listed heritage item and there is no statement of heritage significance.						

Internal Referral Body	Comments
	Other relevant heritage listings
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
	Australian Heritage Register
	NSW State Heritage Register
	National Trust of Aust (NSW) Register
	RAIA Register of 20th Century Buildings of Significance
	Other
	Consideration of Application
	The proposal seeks consent to reconstruct the jetty and boatshed for the property at a higher level due to inundation. The subject property is not a heritage item but was previously identified by the community as being of potential significance. As these works seek to remove and then reinstate ancillary structures in the same form and materials, they are considered to effectively be a 'like for like' replacement. Thus the works are viewed as having no impact upon any potential heritage significance.
	Therefore Heritage raises no objections and requires no conditions.
	Consider against the provisions of CL5.10 of PLEP.
	Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No
	Further Comments
	COMPLETED BY: Brendan Gavin, Principal Planner
	DATE: 7 May 2020

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.
Integrated Development – NSW Fisheries	The application constitutes Integrated Development under s201 (dredging or reclamation work) of the Fisheries Management Act 1994, DPI Fisheries has reviewed the proposal (20 March 2020). No

External Referral Body	Comments
	objections were raised, subject to the proponent meeting the General Terms of Approval which have been included as conditions of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

Comment:

The development is accompanied by an Estuarine Risk Management Report prepared by Salients Pty Ltd dated 26 February 2020, a Marine Habitat Survey prepared by H2O Consulting Group dated 7 February 2018 and an Arborist Impact Assessment Report prepared by H2O Consulting Group dated 16 February. The reports have been reviewed by the relevant referral bodies within Council with no objections raised subject to conditions. Council Natural Environment Coastal section supports the assessment of the proposed development on land within the coastal environment area as discussed within the Statement of Environmental Effects prepared by SDG Land Development Solutions dated 23 April 2018. The proposed development is not considered likely to negatively impact upon the matters raised in subclause (1).

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

Comment:

The development will be located within its existing location with the new works being slightly raised to reduce tidal inundation. The proposal is accompanied by supporting documentation as discussed above and which is supported by Council. The proposed development is not considered likely to negatively

impact upon the matters raised in subclause (1).

14 Development on land within the coastal use area

(1)

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

Comment:

The proposed development will maintain existing public access along the foreshore and due to the structures being located within existing location there will be no additional amenity impacts towards adjoining properties. The site has no heritage significance and will not impact on the visual amenity when viewed from the waterway. as the development is considered to be in keeping with the visual character of Pittwater and in particular Scotland Island. The development is therefore not likely to cause an adverse impact on the matters referred to above.

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

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

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

Comment:

As discussed above, the environmental reports accompanying the application have been reviewed and are supported by the relevant referral bodies within Council. Council's Natural Environment - Coastal section raises no objection to the proposed works and have been sited to ensure there is an unlikely increased risk of coastal hazards on that land or other land.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
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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:	W1 Zone - 4.0m E3 Zone - 8.5m	4.68m	17%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	4.0m
Proposed:	4.68m (above 1.17AHD)*
Percentage variation to requirement:	17%

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

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The proposed development is for the refurbishment of an existing jetty and boat shed and will present as a development of compatible scale to neighbouring development.
- The required raising of the jetty and boat shed is to reduce any water inundation of the existing jetty during high tides.
- The structures will maintain the same footprint as to what is existing and area at low level relative to the neighbouring waterfront structures and dwellings on nearby land. The retention of the footprint will ensure no further impact on the natural environment.
- The increase in the overall height of the structure is considered negligible in regard to the surrounding development with the generous width of the site when viewed from the waterway and the proposed side setbacks of the jetty and boat shed, ensuring any amenity impacts are further reduced.
- The retention of the boat shed is worthy due to the history of the subject site and will retain this

historic character.

It is agreed that the development is visually consistent in terms of height, bulk and scale of surrounding waterproof development, and that the breach of the height limit will not result in any unreasonable impacts to surrounding properties.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposal seeks a maximum building height of 4.68m (5.85 AHD), thereby contravening the numeric control by 17% (0.68m). The minor height departure will not contribute to an adverse building bulk and scale. The proposal will be retaining the existing boat shed and therefore will be consistent with the existing design and scale of the structure. The boat shed will not create a visually dominant structure and is in keeping with surrounding boat sheds located on the foreshore of Scotland. . Boat sheds are common development within the Lower Western Foreshores and Scotland Island precinct. The height and scale of the proposal is consistent with

the design parameters prescribed within Clause D15.15 of P21 OCP and is not dissimilar to that of surrounding development. In turn, the proposed development is considered to be consistent with the desired character of the locality.

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

Comment:

The encroachment of the height of buildings development standard will not be discernible when viewed from the Pittwater Waterway. The height departure is substantially attributed to the existing ground levels within the rear portion of the site in conjunction with the matter of water inundation. The development comprises a finished floor level of 1.70 AHD as so to ensure the boat shed is not likely to be subject to inundation. Further, the development comprises a height and scale that is in keeping with that of surrounding development within the Scotland Island precinct and those within the wider Pittwater locale.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposal will not unreasonably impact neighbouring properties in terms of solar access, given the siting of the boat shed, decking and jetty are located entirely beyond the MHWL in conjunction with the cross fall of the topography of the adjoining sites. It is also noted the boat shed will be offset from adjoining built structures, which furthermore assists in the maximisation of solar accessibility and amenity.

d) to allow for the reasonable sharing of views,

Comment:

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

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

Comment:

Significant excavation is not required in order to facilitate the new works. The development will sit comfortably within its context in terms of scale, massing and form and the variation will provide for a well composed, articulated structure that provides good amenity and function for the dwelling occupants whilst respecting the natural topography of the site and surrounds.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,

Comment:

The subject site is not located within proximity to a heritage conservation area or item. The proposal was referred to Heritage as it was identified by the community as being of potential significance under a previous development application on the site.

The subject property is not a heritage item but was previously identified by the community as being of potential significance. As these works seek to remove and then reinstate ancillary structures in the same form and materials, they are considered to effectively be a 'like for like' replacement. Thus the works are viewed as having no impact upon any potential heritage significance. Further, the development as stated above, has been sited and designed appropriately within the context of the site to ensure the visual impact of the development is reasonable and minimised as viewed from the Pittwater Waterway and adjoining and surrounding properties.

Zone objectives

The underlying objectives of the W1 Natural Waterways zone:

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

Comment:

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

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

Comment:

The proposal has been reviewed by Council's Biodiversity, Riparian and Coastal Officers, having regard to the management of the natural environment and have raised no objection to the development subject to conditions. Further, the proposal has also been reviewed by DPI

Fisheries who are also satisfied with the proposal. It is considered no unreasonable effects will be inflicted on the natural values of the waterway.

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

Comment:

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

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

Comment

The proposal has been reviewed by DPI Fisheries who have raised no objection to the proposal.

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

Comment

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

-

Conclusion:

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	N/A	N/A	N/A
Rear building line	Foreshore Building Line applies	Wholly below FBL	N/A	N/A
Side building line	South West 2.5m	40.8m - Boat Shed 41.3 - Deck	N/A	N/A
	North East 1m	21.5m - Boat Shed 19.0m - Deck	N/A	N/A
Building envelope	3.5m	Within envelope	N/A	N/A
	3.5m	Within envelope	N/A	N/A
Landscaped area	The development is seaward of the Mean High Water Mark (MHWM) and therefore this calculation is negligible	N/A	N/A	N/A

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	Yes	Yes
D8.6 Side and rear building line	Yes	Yes
D8.8 Building envelope	Yes	Yes
D8.9 Landscaped Area	No	Yes
D8.15 Site disturbance	Yes	Yes
D8.16 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	No	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	No	Yes

Detailed Assessment

D8.9 Landscaped Area

The development in its entirety is located seaward of the mean high water mark. It is acknowledged that the site currently does not comply with the required landscaped open space requirement. However given the proposed works do not alter the existing calculation, this existing non-compliance with the landscaped open space is negligible in this instance.

D15.12 Development seaward of mean high water mark

Description of works

The proposed development is located entirely seaward of the Mean High Water Mark (MHWM). The controls state that all new buildings are to be located landward of the MHWM. The development does not propose to demolish the existing boat shed and will retain and reuse the existing boat shed in its existing location. The development proposes to raise the structure by 250mm to reduce the occurrence and effect of tidal inundation. The jetty will also be raised. The other structures including the jetty, pontoons, skid ramp and stairs are to be demolished and relocated in the exact same location. A condition is imposed in the consent prior to issue of a construction certificate that a qualified Structural Engineer shall certify that the existing boat shed structure is able to be retained through the construction process.

Merit consideration:

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

To ensure minimal adverse impact on the water quality hydrodynamics and estuarine habitat of Pittwater. (En)

Comment:

The development application was referred to Department of Primary Industries with no objection raised subject to conditions. The application provided an Estuarine Risk Management Report and a Geotechnical Assessment Report which both supported the proposed works. An Estuarine Risk Management Report prepared for the site was assessed against the Pittwater LEP 2014 and Pittwater 21 DCP and supported by Council's Natural Environment - Coastal Section subject to conditions.

To ensure new buildings are not susceptible to flooding. (S)

Comment:

The development proposes to raise the finished floor level of the boat shed by 250mm to reduce the effect of tidal inundation on the structure. The development also proposes to raise the level of the jetty and associated structures. The development does not propose to encroach further onto the waterway with all new structures measuring like for like in the exact location. The works will improve the longevity of the structures whilst having a minimal impact on the visual amenity of the foreshore.

To ensure public access is maintained and provided for along the foreshore (En)

Comment:

The proposal will retain the location of the existing boat shed and therefore will ensure public access is maintained and provided along this portion of the foreshore of Scotland Island.

D15.15 Waterfront development

Description of non-compliance

a) Jetties, Ramps and Pontoons

The Control stipulates that the construction of "L" or "T" ends or other types of elongations or steps at right angles to jetties shall not be permitted.

The application proposes to maintain the existing boat shed and raise it by 360mm in its exact location. Other works propose to demolish and construct the jetty, stairs, pontoons, ramp, skid ramp and stairs in the exact location also. Whilst the development proposes to demolish and construct these structures in the exact location, the above control stipulates that the new works must not result in the construction of "L" or "T" ends or other types of elongations or steps at right angles to jetties. To ensure compliance with this control a condition is imposed to delete the stairs and balustrade located at the north western end of the jetty and for the jetty end to be reduced in width to measure no wider than the existing jetty.

Merit consideration

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

Waterfront development does not have an adverse impact on the water quality and estuarine habitat of Pittwater.

Comment:

The application is supported with a Marine Habitat Survey (prepared by H2O Consulting, dated 07 February 2018) which denotes the proposed works would be of a low risk of impact on seagrass beds or plants. Further, given the application constitutes integrated development under s201 of (dredging or reclamation work) of the Fisheries Management Act 1994, DPI Fisheries have reviewed the proposal and have raised no objections subject to conditions. Council's Bushland and Biodiversity, Riparian Lands and Creeks and Coastal Officers have also reviewed the proposal having regard to water quality and habitat and have raised no objections subject to conditions included in the recommendation of the report.

It is therefore considered the proposal will not have an adverse impact on the water quality or estuarine habitat of Pittwater.

Public access along the foreshore is not restricted.

Comment:

The proposed development comprises retaining the existing boat shed in its exact location with all other works located seaward of the mean high water mark. Public access along the foreshore will therefore not be hindered as a result of the development.

Waterfront development does not encroach on navigation channels or adversely affect the use of ferries and service vessels or use of the waterway by adjoining landowners.

Comment:

Correspondence submitted with application from Roads and Maritime Services advises that an inspection/ assessment has been conducted by the local Boasting Safety Officer and that there are no navigational concerns regarding the designated proposal.

Structures blend with the natural environment.

Comment:

The proposed waterfront facilities will blend with the surrounding natural environment as a result of the site specific design remaining as existing. A condition is imposed in the consent to ensure the materials used for the proposed works are like for like.

Structures are not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway.

Comment:

The proposed development will be visually consistent and comparable with existing adjoining and surrounding waterfront development. The increased height of the boat shed is considered negligible given the large width of the site. The development proposes to replace like for like and with a condition imposed for the deletion of the stairs and balustrade at the north western end of the jetty and for the jetty to be reduced in width no wider than the existing jetty. It is therefore considered that the visual quality of the development will be improved. The proposal does not comprise a permanent berth thereby minimising development and associated impacts upon the estuarine environment. It is considered the proposed development will not be detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway, subject to conditions included in the recommendation of this report.

To promote a mix of commercial waterfront development for the accommodation of boats, their repair and maintenance, and for organised waterfront development.

Comment:

Not applicable, given the subject proposal is for residential waterfront development only.

Waterfront development which does not comply with the outcomes of this clause are removed.

Comment:

As detailed above, the proposed development satisfies the underlying objectives of the Control. A condition to delete the stairs and balustrade and to ensure the width of the proposed jetty does not exceed the width of the existing jetty will ensure the proposal satisfies the underlying objectives of the control.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, subject to conditions, 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 \$3,580 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$358,000.

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

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

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

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

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

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

The proposal includes a numeric non-compliance with the following PLEP 2014 Clause:
4.3 Height of Buildings.

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

D15.12 - Development seaward of mean high water mark; and
D15.15 - Waterfront development.

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

The proposal includes a more significant non-compliance in relation to Building Height. The proposed

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

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

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

RECOMMENDATION

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/0234 for Demolition works and construction of a new jetty, pontoon and associated works on land at Lot 10 DP 1106130, 25 - 33 Robertson Road, SCOTLAND ISLAND, 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
A101 Rev 1	6 March 2020	Sam Crawford Architects
A110 Rev 1	6 March 2020	Sam Crawford Architects
A111 Rev 1	6 March 2020	Sam Crawford Architects
A112 Rev 1	6 March 2020	Sam Crawford Architects
A201 Rev 1	6 March 2020	Sam Crawford Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment (Ref: AG 19208)	13 November 2019	Ascent Geotechnical Consulting
Estuarine Risk Management Report for "Yamba", 23 & 25 - 33 Robertson Road, Scotland Island, NSW 2105	26 February 2020	Dr David Wainwright
Bushfire Report (Ref: 79BA - 1430)	11 November	Planning for Bushfire

	2019	Protection
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b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

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
DPI Fisheries	Response Fisheries Referral	20 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)

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) 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.

5. **Use of Boast Shed**

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

Reason: To ensure compliance with relevant planning controls.

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$3,580.00 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 \$358,000.00.

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

adjusted.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

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

8. **Amendments to the approved plans**

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

- Delete the stairs and balustrade located at the north western end of the jetty.
- Reduce the width of jetty at the north western end to measure no wider than the proposed jetty.

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.

9. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified

person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

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

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

10. **Estuarine Hazard Design Requirements**

The following applies to all development:

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

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

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

11. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 2.52m AHD has been justified by the client through an Estuary Risk Management Report prepared by Salients Pty. Ltd dated 26 February 2020 for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below 2.52m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.52m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.52m AHD.
- All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.52m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.52m AHD to avoid the likelihood of contact with splashing waves and spray.

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

12. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Salients Pty. Ltd. dated 26 February 2020 and these recommendations are to be incorporated into construction plans.

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

13. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life taken to be 25 years justified and accepted by Council, the development is able to withstand the wave impact forces and loadings identified in the approved Estuarine Risk Management Report prepared by Salients Pty. Ltd. dated 26 February 2020..

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

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

14. **Engineers Certification of Plans**

The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

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

15. **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.

16. **Structural Integrity of Boat Shed**

A suitably qualified Structural Engineer shall certify that the existing boat shed structure is able to be retained through the construction process.

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

Reason: To ensure that the boat shed can be retained in its existing location.

17. **Waste Management Plan**

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

accordance with the Development Control Plan.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **Dredging works**

Dredging is not included in this application and as such an application is to be made to council and an integrated development referral to Department of Primary Industries (fisheries) if dredging is required.

Reason: Protection of the environment.

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

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

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

20. **Environmental Safeguards**

Environmental safeguards (e.g. silt curtains) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms. The silt curtains must be carefully placed and secured properly to ensure they do not drag over the nearby seagrass beds and damage the seagrass. The safeguards must be regularly maintained and removed once the works are completed.

Reason: Protection of seagrass

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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. **Preventing the spread of invasive alga**

The invasive marine alga, *Caulerpa taxifolia*, is present at the work site. This alga must not be removed from the work site. All tools, machinery and environmental control devices must be inspected and cleaned thoroughly prior to leaving the site. Any *Caulerpa* removed from the waterway should be tightly sealed in a plastic bag and disposed in general waste. *Caulerpa* is listed under the Biosecurity Act 2015 for all NSW waters. It is illegal to possess or sell the alga and heavy fines apply.

Reason: Protection of the environment

23. **Environmentally sensitive construction**

To prevent damage to the seagrass no anchoring or placement of objects is to occur on the seagrass. Furthermore boats and barges must ensure the impact from the movement of the barges and boats, particularly from the propeller, does not damage the seagrass meadows (especially during low tide).

Reason: Protection of seagrass

24. **Materials and Construction**

All materials and construction of approved works are to be like for like.

Reason: To ensure the development is consistent with the existing development and the visual prominence of the development is minimised.

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

25. **Arborist's recommendations to be implemented**

All recommendations outlined in Section 5 of the submitted arboricultural impact assessment (H2O Consulting Group, February 2018) are to be implemented at the appropriate stage of development. Compliance with this condition is to be certified by the consultant arborist and written evidence provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To safely retain significant trees of the Pittwater Spotted Gum Forest endangered ecological community.

26. **Post Construction Coastal certificate**

Prior to the issue of the Occupation Certificate, a Post Construction Coastal Certificate shall be submitted to the Principal Certifying Authority (Form No. 3 of the Coastline Risk Management Policy for Development in Pittwater - Appendix 6 of P21 DCP) that has been prepared and signed by a specialist coastal engineer who is a registered professional engineer with chartered professional status (CP Eng) and coastal engineering as a core competency and who has an appropriate level of professional indemnity insurance.

Reason: To ensure the development has been constructed to the engineers requirements

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

27. **General Foreshore Matters**

Unless in accordance with the approved works the Consent holder must ensure that:

- a) No materials or cleared vegetation that may obstruct flow or cause damage to the foreshore are left within the coastal foreshore area.
- b) All drainage works must not obstruct flow of water within the coastal waters. Drain discharge points are stabilised to prevent erosion. Any excavation must not result in diversion of any foreshore bank instability or damage to native vegetation.
- c) The foreshore is graded to enable the unimpeded flow of water and retaining structures result in a stable foreshore banks.
- d) Any vegetation or other material removed from the area of operations shall be disposed of lawfully. Burning of the material is not permitted.
- e) The foreshore is to function as an ecological system and as such, all works, access, roads, recreational areas, service easements and any other non-ecologically functioning work or activity are to be located beyond the foreshore other than provided by the consent.

Reason: Environmental protection, monitoring and enhancement of the foreshore.

28. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

29. **Dead or Injured Wildlife**

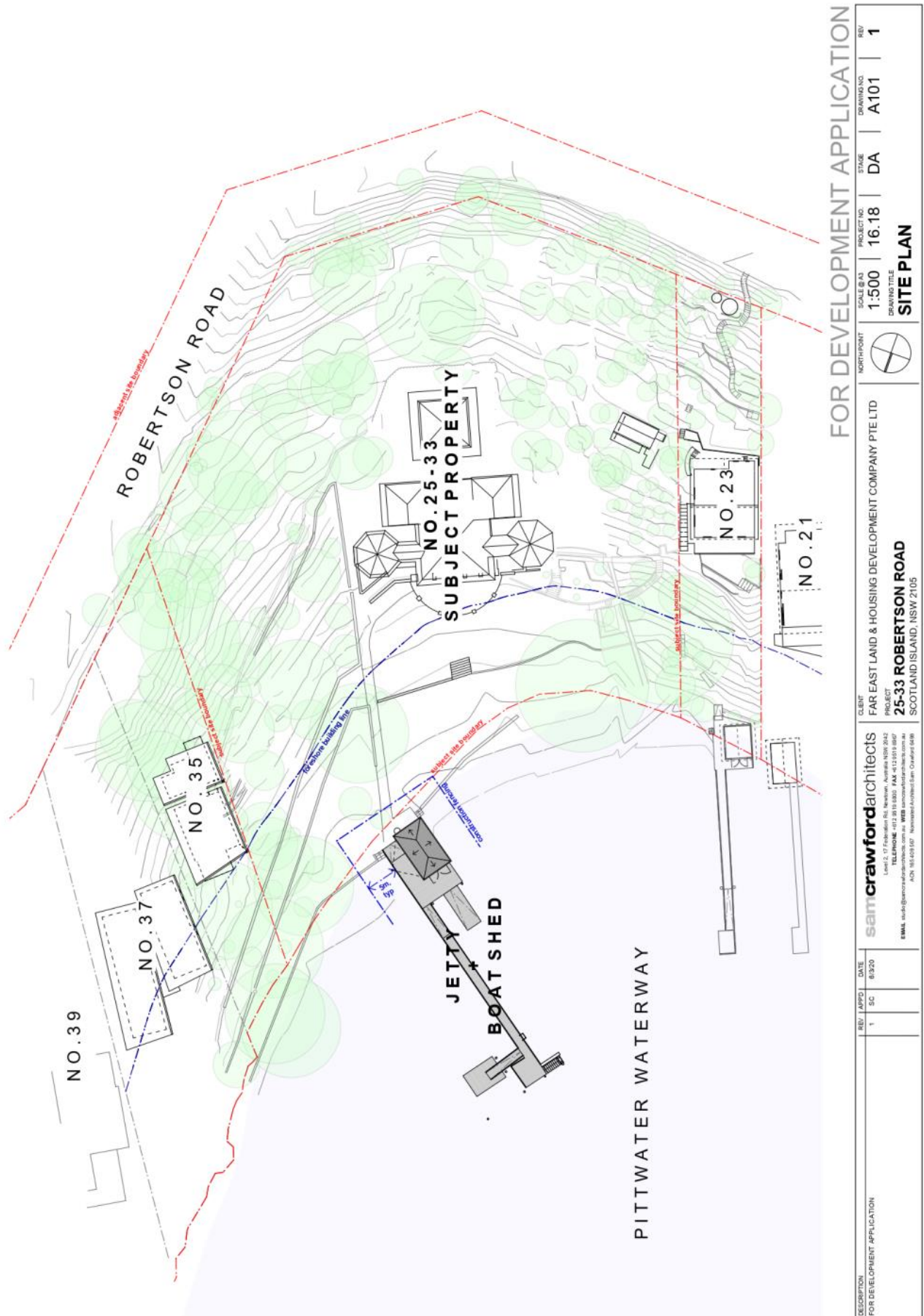
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

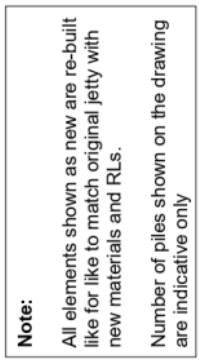
Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

30. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Salients Pty. Ltd. dated 26 February 2020 and these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment





FOR DEVELOPMENT APPLICATION

DESCRIPTION	REV / AMPD	DATE	CLIENT	NORTH POINT	SCALE @ A3	PROJECT NO.	STAGE	DRAWING NO.	REV
FOR DEVELOPMENT APPLICATION	1	0/3/20	samcrawfordarchitects Level 2, 17 Federation Rd, Newmarket, Australia NSW 2042 TELEPHONE +61 2 9619 6800 FAX +61 2 9619 6807 EMAIL info@samcrawfordarchitects.com.au www.samcrawfordarchitects.com.au A/CN 365/62/03/07/07 Newmarket (Site) Original (6/8/18)		1:100	16.18	AA	A201	1



25-33 Robertson Road, Scotland Island

Clause 4.6 Exceptions to Development Standards

This clause 4.6 exception is provided to supplement the Statement of Environmental effects prepared by SDG dated 23 April 2018. The clause 4.6 relates specifically to the height of the boathouse, in relation to the proposed development, which is to refurbish and raise the existing waterfront structures at 25-33 Robertson Road, Scotland Island.

Clause 4.6 of the Pittwater Local Environmental Plan 2014 (PLEP 2014) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* being:

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



The aims and objectives of Pittwater LEP 2014 Clause 4.6 are as follows:

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

Under Clause 4.6(3) and (4) of the PLEP 2014, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

- (3)(a) *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (3)(b) *there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4)(a)(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,*

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

It is of interest that the consent authority specifies a number of development standards that cannot be varied under Clause 4.6, listed in Clause 4.6(8). Clause 4.3 - Height of buildings is not one of the standards excluded, it must therefore be assumed that the standard for height of buildings, is one of the development standards that can have an appropriate degree of flexibility applied under clause 4.6.

1. Environmental Planning Instrument Details (Pittwater LEP 2014)

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

Pittwater Local Environmental Plan 2014 (PLEP 2014)

1.2 What is the zoning of the land?

W1 Natural Waterways

1.3 What are the objectives of the zone?

- *To protect the ecological and scenic values of natural waterways.*
- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*
- *To provide for sustainable fishing industries and recreational fishing.*
- *To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.*



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

1.4 What is the development standard being varied?

Cl 4.3 of the Pittwater Local Environmental Plan 2014, Height of Buildings

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

Cl 4.3 of the Pittwater Local Environmental Plan 2014

1.6 What are the objectives of the development standard?

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

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

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

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 4m.

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

The numeric value of the development standard in this development application is a maximum of 4.68m calculated from the Highest Astronomical Tide.

The existing boatshed will be raised by 0.36 metres to prevent water inundation, with the maximum RL raising from RL5.49 to RL5.85.

building height (or ***height of building***) means:



- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

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

The percentage variation sought is 17%

2. NSW Land and Environment Court Case Law

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

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

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

The five ways outlined in *Wehbe* include:

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



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

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

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

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

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

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

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

2.4 Zhang v City of Ryde

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

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



are sufficient environmental planning grounds to justify contravening the development standard.

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

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

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

3. Consideration

The following section addresses the provisions of clause 4.6 of the PLEP 2014 together with principles established in the NSW Land and Environment Court Case Law outlined above.

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

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

The five ways outlined in *Wehbe* include:

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

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

The objectives of the standard are:

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

The proposed development, being for the refurbishment of an existing jetty and boatshed, will present with a development of compatible scale to neighbouring development. The development involves the minor raising of an existing boatshed. The height of the jetty will be consistent with neighbouring development and entirely in character with its surrounds. The need for the level change and small height noncompliance results from the inundation of the existing jetty during high tides. The small departure will not be obvious from the immediate area given that the structures will



remain in the same footprint and at a low level relative to the neighbouring waterfront structures and dwellings on the island.

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

The variation is minimal at only 0.68 metres. The increase in floor level proposed is only 0.36 metres greater than the existing level. The impact of the limited raising of an existing structure above the high water line will be negligible when considered with regards to its surrounding development. The impacts of the height of the proposal will not be to the detriment of neighbours with similar jetties evident immediately neighbouring and access to the site improved.

The generous width of the site also aids in ensuring that the impacts are further reduced for neighbours with the overall development proposal being a positive addition to the water access of the site.

(c) to minimise any overshadowing of neighbouring properties,

The proposed raising of the jetty will have no impact on any neighbouring properties solar access.

(d) to allow for the reasonable sharing of views,

The proposed raising of the jetty will have no impact on any neighbouring properties views.

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

The existing jetty is to be retained, with the minimal height increase proposed for safety and security reasons. The building will continue to respond to the waterfront site and the character of the island will be retained.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The 0.68 metre height variation will be appropriate when considered in the context of its environment. There will be no detriment to the natural surrounds or any item of heritage significance.

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

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

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

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



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

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

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

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

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

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

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

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

- The existing boatshed has unique qualities which are worthy of retention and accordingly the development has used this existing structure and is constrained by its historic levels.
- The design has retained the footprint of the existing structure to avoid impacting upon the surrounding natural environment.
- The variation is very minor in nature and will not be easily discernible, particularly when considered in the context of surrounding development.
- The area of variation will be of negligible impact to neighbours being a great distance for the site, with no views, privacy or solar access implications.
- The minor variation is required to ensure safety and security as a result of water inundation currently experienced for the existing jetty.

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

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

Zone – W1 Natural Waterways

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



Consistent.

The proposal is for raising the existing waterfront structures and there will be no increase in the footprint on the waterway as a result.

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

Consistent.

The proposal is for raising the existing waterfront structures and will not result in changes to the natural, environmental and aquatic environment.

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

Consistent.

The development will have a nil impact on fish stock when completed. All works will be undertaken in accordance with relevant requirements and conditions of consent to ensure no detriment to aquatic life.

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

Consistent

The proposal is for raising the existing waterfront and will have no impact on navigation.

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

Consistent.

The works related to privately owned land has not impact on public waterway access. Access to the waterway in this area is unaffected with the minimal additional height being for raising of an existing structure and no footprint increase resulting.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effect as the variation is minimal, and due to rising water levels. The development will present to the waterway as a barely discernible change, complementary to the locality and its character.

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

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

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



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

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

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

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

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

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

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

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

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

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

Strict compliance with the 4 metres height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, protecting the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats and promoting good design and amenity of the built environment.*



The proposed development is for the raising of existing waterfront structures on land zoned W1 Natural Waterways.

The proposed alterations and additions are located within the footprint of the existing structures, to avoid impacting upon the surrounding natural environment.

The height non-compliance proposed by development will not alter public views as it is located over water adjacent to the site and is due to rising water levels.

There will be no impact on private views with works within the existing locations and of minimal impact.

From no perspective will the structure present with excessive bulk. The retention of the existing boatshed is to the vast benefit of the character of the site and the Scotland island waterfront.

The proposed structures will not result in any overshadowing or privacy impacts to surrounding properties.

The Estuarine Risk report accompanying the application specifies that the structure is unsafe at its current height with risk of water inundation inevitable multiple times per year. It encourages a higher floor level to allow for a reasonable lifespan for the works and supports the development in its current form.

The proposed raising of the existing boatshed will result in significant improvement to safety and security, and improved access to the site. The proposed structure provides access without concern for tidal variations and is appropriate and worthy of consent.

ITEM 3.2

**DA2019/0755 - 32 WESTMINSTER AVENUE, DEE WHY -
DEMOLITION WORKS AND CONSTRUCTION OF A
RESIDENTIAL FLAT BUILDING**

AUTHORISING MANAGER RODNEY PIGGOTT

TRIM FILE REF **2020/312543**

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 development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and is 4 or more storeys in height.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0755 for demolition works and construction of a residential flat building at Lot CP SP 22024 & Lot 1 SP 22024 & Lot 2 SP 22024, 32 Westminster Avenue, Dee Why subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0755
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Responsible Officer:	Daniel Milliken
Land to be developed (Address):	Lot CP SP 22024, 32 Westminster Avenue DEE WHY NSW 2099
Proposed Development:	Demolition Works and construction of a residential flat building
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	The Owners of Strata Plan 22024
Applicant:	Anchor Properties Australia Pty Ltd

Application Lodged:	17/07/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	24/04/2020 to 13/05/2020
Advertised:	24/04/2020
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 4,161,506.00
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EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application No. DA2019/0755 for demolition works and construction of a residential flat building at No. 32 Westminster Avenue, Dee Why.

The subject site is zoned R3 Medium Density Residential under the provisions of the Warringah Local Environmental Plan 2011 (WLEP 2011), and the proposed development is permissible with consent.

A series of amendments have been made to the plans during the assessment. The final set of plans (that this report is based on) were renotified from 24 April 2020 to 13 May 2020.

The public exhibition period generated 1 submission during the original notification period and no submissions during the second period. The submission raised concerns regarding traffic and parking, noise and pollution, privacy, overshadowing, and the removal of trees. These concerns have been addressed within the report, and overall, there were no matters raised that would warrant the refusal of the application in the public's interest.

The key assessment issue is solar access (and the related non-compliances) and the impact of the development on the private open spaces (balconies and terraces to the apartments) of No. 30 Westminster Avenue, to the south. The final amendments made to the plans, which included raising the building in order to comply with the driveway gradients, will impact on the overshadowing. The site has constraints that make full compliance with the solar access control difficult. Due to these constraints, exceptions to the control do apply and therefore a merit assessment was required in relation to solar access.

The landscaped treatment of the site, particularly in relation to the raised planter beds and how visible they would be from the street and the neighbouring properties, was also a concern during the assessment process. Design amendments have been made during the assessment process to attempt to resolve these concerns.

The proposed development is a high quality architectural response to the context and constraints of the site that will be compatible with the height, bulk and scale of surrounding residential flat buildings. The resultant development will provide a high level of amenity for future occupants, an upgraded streetscape, an increase in the number of canopy trees on the site, and will not result in any unreasonable impacts upon the character of the locality or the amenity of adjoining properties.

As such, the proposal has been found to be consistent with the relevant provisions of SEPP 65, the WLEP 2011 and the Warringah Development Control Plan.

The application has been referred to the Northern Beaches Local Planning Panel because SEPP 65 applies to the development.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes:

- The demolition of all structures on site which includes an attached dual occupancy containing two units.
- Excavation works and site preparation.
- The construction of a basement containing 10 car parking spaces, storage areas, a bulky goods waste room and, a lift and access core.
- The construction of a three storey residential flat building containing 6 x two bedroom units with an access stairwell on the southern side.
- The construction of large raised planter beds.
- The construction of a bin enclosure.
- The construction of a new driveway and works to the footpath.
- Associated landscaping works.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.1 Acid sulfate soils
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot CP SP 22024 , 32 Westminster Avenue DEE WHY NSW 2099
Detailed Site Description:	<p>The site is located on the western side of Westminster Avenue, has an area of 697sqm and slopes gently down towards the north east.</p> <p>The site has an angled eastern front boundary of 17.31m, a northern side boundary of 43.745m, a southern side boundary of 39.435m and a western rear boundary of 16.765m.</p> <p>Existing on the site is a two storey flat building with two detached parking structures and two small sheds in the rear yard.</p> <p>The surrounding development consists of residential flat buildings within an R3 Medium Density Residential zone.</p>

Map:



SITE HISTORY

PLM2019/0003

This was a prelodgement meeting held to discuss the proposal. Relevant comments from the meeting included:

"The main issues with this development stem from the basement being too large. It is noted that the proposal provides excess parking and this is a positive given the high demand for on-street parking in the vicinity. However, this excess parking has resulted in the landscaped open space on the site being mostly provided within raised planter beds, not at ground level.

It is recommended that stacker spaces be considered for this development (i.e. 12 spaces in 6 stackers) in addition to a visitor space that is actually usable for visitors. This will also free up space within a smaller basement for better storage and services.

The other main recommended change is to the stairwell. It must be reduced in size (height, depth and width) and the treatment of the southern façade (of the whole elevation) must be high quality and reduce the visual impact to the neighbours.

It is also strongly recommended that a full compliance be achieved for the front and rear setbacks."

The proposal was partly redesigned prior to lodgement and during the assessment to resolve these issues. In addition, further information and justification was provided to Council to assist the assessment.

Amendments to the plans

The key change between the plans originally lodged and the plans that are the subject of this report, is the raising of the building by 600mm in order to comply with the driveway gradients in the Australian Standards.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the bulk of the building, particularly in relation to minimising overshadowing and the landscape treatment, and the driveway design.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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 1 submission/s from:

Name:	Address:
Alan Kwan	30 Westminster Avenue DEE WHY NSW 2099

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

- **Traffic and parking**
- **Noise and pollution**
- **Privacy**
- **Overshadowing**
- **Removal of trees**

The matters raised within the submissions are addressed as follows:

- **Traffic and parking**

The submissions raised concerns that the proposal would contribute to more traffic congestion, increase the demand for already limited on-street parking and, that the proposed development does not provide adequate parking.

Comment:

The proposal meets the minimum parking requirements and the basement includes dedicated storage areas to help ensure that the parking spaces are used for cars (and not storage as is a common problem).

The development will increase the number of cars in the area and it is acknowledged that this will increase the demand, all be it slightly, for on street parking. However, the site is zoned R3 Medium Density Residential and an apartment building is a permitted use (just as it is on all the surrounding sites).

In this regard, as the development provides sufficient parking to comply with the control, this matter does not warrant refusal of the application.

- **Noise and pollution**

The submissions raised concerns that the development would result in more noise and pollution, particularly from the lift.

Comment:

The site is zoned R3 Medium Density Residential and an apartment building is a permitted use (just as it is on all the surrounding sites). The development is set back sufficiently from all boundaries and will therefore provide sufficient spatial separation to minimise noise. The proposed lift is located in the centre of the building and should not be able to be heard from the neighbouring properties.

Conditions have been included in the consent to managed waste and pollution during demolition and construction.

This matter does not warrant refusal of the application.

- **Privacy**

The submissions raised concerns that the proposal will result in unreasonable privacy impacts.

Comment:

The proposed balconies will not result in unreasonable privacy impacts due to privacy screens on the western elevations of the two upper balconies (to screen the neighbouring building to the west) and the balconies being orientated to the north (thereby protecting the southern neighbour).

The building to the north (No. 34 Westminster Avenue) has all its non-habitable rooms facing south and so the northern orientated balconies on the proposed development will not have any direct views into private open spaces or vulnerable windows.

The proposal has placed only screened bedroom windows or obscure glass bathroom windows on the southern elevation, thereby minimising any impacts to No. 30 Westminster Avenue.

This matter does not warrant refusal of the application.

- **Overshadowing**

The submissions raised concerns that the proposal would result in unreasonable overshadowing to No. 30 Westminster Avenue, to the south of the subject site.

Comment:

This matter is discussed in more detail under D6 Solar Access, below in this report. In summary, there will be shadow, from the non-compliant envelope breach, cast onto No. 30 Westminster Avenue. Due to the east-west orientation of the sites, protection of sunlight to No. 30 Westminster Avenue is extremely difficult, even with a fully compliant design.

The development has incorporated a lower height than the development standard allows (11.2m instead of 12m) and a stairwell that is as minimal as possible (and was further reduced through amendments during the assessment process). This means that the differences in solar access are negligible when comparing the proposed design with a fully compliant design. As such, the overshadowing impact is not considered to be unreasonable.

This matter does not warrant refusal of the application.

- **Removal of trees**

The submissions raised concerns that five trees will be removed to construct the building.

Comment:

It is correct that five trees will be removed. However, they will be replaced by 18 trees and many more smaller shrubs and other plants.

This will be an upgrade to the site and to the canopy cover in the area (once the trees have grown).

This matter does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Acid Sulphate)	<p>General Comments</p> <p>This site is designated Class 5 Acid Sulfate and is approximately 100m from a Class 3 designated area.</p> <p>There is substantial excavation involved however Environmental Health has established that the Water Table is not likely to be impacted due to the relative elevation of the site.</p> <p>Recommendation</p> <p>APPROVAL with conditions</p>
Landscape Officer	<p>The Arborist's Report and Landscape Plans provided with the application are noted.</p> <p>No objections are raised to approval subject to conditions as recommended.</p>
NECC (Development Engineering)	<p>Comments 29/4/20.</p> <p>The site plan has now been amended to include driveway splays at the front boundary to comply with AS/NZ 2890.1 2004 (Off Street Carparking code). No objections to the development subject to conditions.</p> <p>Comments 27/4/20</p> <p>The driveway gradients are now compliant with the Australian standard AS/NZS 2890.1, however the applicant has not provided splays to the driveway walls at the front boundary as required by the AS/NZS 2890.1. These splays need to be incorporated into the design plans.</p> <p>Comments from Development Engineering and Certification Team:</p> <p>The proposed driveway long section submitted by Watershed design has been reviewed and cannot be supported because the profile does not comply with Clause 3.3(a) in AS/NZS 2890.1:2004. (Off street carparking). The gradient for the first 6m into the car park driveway must not exceed 1 in 20 (5%).</p>

Internal Referral Body	Comments
	<p>Compliance with the standard is critical given the use of the footpath and proximity to a public school. The re-alignment of the footpath in isolation is also not supported .</p> <p>Comments for Development Engineers:</p> <ol style="list-style-type: none"> 1. Public transport can be easily accessed. 2. The site drains to the front. The site is unlikely to be impacted by overland flow. 3. The proposed OSD design seems to be satisfactory. The proposed crossing is 5m wide. 4. The proposed crossing shall be located at least 1 meter away from the stormwater lintel. <p>Development Engineers have assessed the application and cannot support it due to the following reason.</p> <p>The driveway gradients are unsatisfactory. For at least the first 6m into the car park, the driveway gradients must not exceed 1 in 20 (5%) in accordance with Clause 3.3(a) in AS/NZS 2890.1:2004. A traffic report is likely to be required for assessment.</p>
Strategic and Place Planning (Urban Design)	<p>Urban Design Comments - 18/12/2019</p> <p>The applicant has made some amendments to the design which have addressed item 1 of the previous set of comments. However item 2 and 3 have not been addressed.</p> <p>Item 2 - Balconies proposed should be behind the 6m rear setback to achieve the building separation of 8.864m with the existing apartment block next door (No.2 Lismore Avenue).</p> <p>Item 3 - Deep soil provision for taller tree to be planted in the middle of the north elevation has been made. However the continuous concrete hoods could have a break in the middle where there are no windows proposed to:</p> <ol style="list-style-type: none"> a. provide more room for the proposed tree canopy. b. provide better security interface between units on the same floor as it is possible to climb onto the hood to break into the next door unit. c. provide more articulation for the building facade. <p>Urban Design Comments made previously:</p> <p>The proposal cannot be supported for the following reasons:</p> <ol style="list-style-type: none"> 1. The 5m 45 degree building envelope and setback controls on the southern boundary have been breached and have resulted in loss of solar access to some of the residential units in the southern neighbouring apartment block. The stairwell roof area should be redesigned to not exceed the 5m 45 degree envelope to maximise the sunlight access to the neighbouring units. The blank wall proposed should be treated as a feature wall with some opening relief or green wall treatment. 2. The western boundary setback has been breached with the

Internal Referral Body	Comments
	<p>proposed balconies resulting in building separation distance of 7.2m to the neighbouring apartment block to the west. Apartment Design Guide requires 12m separation distance between habitable spaces to achieve visual and acoustic privacy which cannot be reasonably achieved. Nonetheless the proposal should comply strictly with the 6m back boundary setback.</p> <p>3. Facade articulation: Privacy window treatments have been considered for all windows facing the surrounding apartment windows and balconies however the proposed concrete hoods on the north facade can be made less monotonous by having a break in the middle section for landscape/ trees interface. The break can also be further enhanced with a change in material finish and colour scheme.</p> <p>Planning Comment:</p> <p>It is noted that Council's Urban Designer is still recommending:</p> <ul style="list-style-type: none"> Balconies should be behind the 6m rear setback, and The continuous concrete hoods could have a break in the middle where there are no windows proposed to: <ul style="list-style-type: none"> provide more room for the proposed tree canopy. provide better security interface between units on the same floor as it is possible to climb onto the hood to break into the next door unit. provide more articulation for the building facade. <p>If the balconies are reduced back to the 6.0m setback line, they will not comply with the minimum private open space requirements of the ADG. This change is not recommended.</p> <p>While it is possible to have a break in the concrete hoods, and a condition could be imposed to achieve this, Council's Landscape Officer has not raised an issue with the survival of the tree, and the hoods serve to provide additional sun protection to minimise direct heating of the external walls. This change is not recommended but could be conditioned if the Local Planning Panel have a mind to do so.</p>
Traffic Engineer	Based on the triggers list, traffic referral is not required.
Waste Officer	Waste Services has no objection to the proposal subject to conditions.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**SEPP 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 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

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

As previously outlined, the proposed development is for the erection of a three storey residential flat 'housing' development plus basement car parking for the provisions of six self-contained dwellings.

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

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment

Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

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

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:

The proposal is for a three storey residential flat building on a site that is surrounded by other residential flat buildings (mostly three storey) in an R3 Medium Density Residential zone.

The proposal is a well designed architectural response to the site that maintains the qualities of the established local character of landscaped front yards, buildings that are sufficiently set back from the side boundaries and that provide parking within a basement.

This site is one of the last in this area to be developed and as such, the development will be suitable for the context and neighbourhood character and meets this principle.

Principle 2: Built Form and Scale

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

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

Comment:

The proposal includes several non-compliances with setback controls, however, the site is relatively small and the building will remain well under the height limit.

The alignments and proportions of the building will fit well on the site and will be compatible with the surrounding residential flat buildings. The use of design elements, colours and materials will enhance the site and the local area.

The proposal meets this principle.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:

The proposal will provide six, two bedroom units. This number of units is similar to most surrounding developments on similar sized sites and is not considered to be excessive.

The site is the last to be developed along this part of Westminster Avenue as it does have constraints.

The development is located in close proximity to Dee Why town centre where public transport, access to jobs and community facilities can be found. The site is also near a large park and walking distance to Dee Why Beach.

Principle 4: Sustainability

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

Comment:

The development more than meets BASIX targets and includes a large rain water tank. In addition, the demolition and construction waste will be recycled where possible.

The proposal meets this principle.

Principle 5: Landscape

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

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar

access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment:

The development includes much of its landscaped open space (LOS) in raised planter beds. This is largely a result of the size of the site (both width and length) and the need for a basement to cater for the number of parking spaces. The basement must be wide enough for cars to manoeuvre but cannot be too deep otherwise the access ramp will be too steep.

To minimise the deep soil LOS areas, the basement has numerous indents (i.e. there are no excess void areas in the basement), creating actual deep soil areas. Outside these areas, the planter beds are deep enough to contain substantial planting to contributing to the landscape character of the site, the streetscape and the neighbourhood.

The development includes a suitable landscape plan to make the best use of these planter beds and a condition of consent has been included to ensure the indents to create the deeper soil garden beds are constructed.

Overall, while the outcome is not ideal, the proposal is not an overdevelopment of the site and the design solution will meet this principle.

Principle 6: Amenity

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

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

Comment:

The internal amenity of the apartments will be of a high quality due to their layout, floor-to-ceiling heights, orientation, provision of balconies and other design features. The development provides suitable private open space for the residents.

The amenity of the neighbouring properties has been protected by keeping the development well below the height limit (to minimise overshadowing to the southern neighbouring building) and orientating all living areas and balconies to the north where they face the "rear" of the neighbouring building to the north (that has also orientated their living areas and balconies north).

The proposal meets this principle.

Principle 7: Safety

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

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

and purpose.

Comment:

The development allows casual surveillance of the street and secure access for residents and visitors.

The proposal meets this principle.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

Six, two bedroom apartments is appropriate and expected for the site. While the development does not provide a variety of apartment sizes, two bedroom apartments are acceptable in this circumstance.

The proposal meets this principle.

Principle 9: Aesthetics

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

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

Comment:

The development is a good design that will result in a positive upgrade for the site. The new building will be compatible with the other surrounding developments in the area and will enhance the streetscape.

The proposal meets this principle.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Complies/Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Yes
Orientation	Does the development respond to the streetscape	Yes, the site is orientated

	and site and optimise solar access within the development and to neighbouring properties?	east-west, making the protection of solar access to the southern neighbour difficult. This has been suitably achieved by keeping the development well under the height limit and minimising the size of the stairwell core.												
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Yes												
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	The development provides approximately 120sqm of private open space at ground level, behind the building line, and that achieves sufficient sunlight. This is 17.2% of the site. Given the nature of these small scale residential flat buildings, the communal open space will not be heavily used and therefore the non-compliance is supported.												
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	Yes, the development provides 30% deep soil zones (211sqm).
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows:	No, but variation supported.												

	<table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>The proposed setbacks are 4.5m.</p> <p>All balconies and habitable rooms are orientated to the north (non-habitable rooms face south and have minimal windows) where they face the "rear" of No. 34 Westminster Avenue. This will mean that they do not result in unreasonable privacy impacts as No. 34 Westminster also orientates their living areas and balconies to the north and their non-habitable rooms to the south.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	Yes												
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	Yes												
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p>	Yes, adequate car parking has been provided.												

	Visual and environmental impacts are minimised.	
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. 	Yes, 100% of apartments will receive 2 hours direct sunlight between 9 am and 3 pm at mid winter to their living rooms and private open spaces.
	<ul style="list-style-type: none"> A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. 	Yes, no apartments will receive no direct sunlight.
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. 	Yes, all apartments are naturally ventilated.
	<ul style="list-style-type: none"> Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line. 	Yes
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	Yes, all apartments have 2.7m floor-to-ceiling heights.
	Minimum ceiling height	
	Habitable rooms	
	Non-habitable	
	For 2 storey apartments	
	Attic spaces	
	If located in mixed used areas	

Apartment Size and Layout	Apartments are required to have the following minimum internal areas:	Yes, all apartments (2 bedroom) are a minimum of 93sqm.												
	<table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²			
	Apartment type	Minimum internal area												
	Studio	35m ²												
	1 bedroom	50m ²												
	2 bedroom	70m ²												
	3 bedroom	90m ²												
	The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.													
	A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.													
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Yes												
Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Yes													
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Yes													
Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	Yes													
Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Yes													
Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments	Yes													
The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Yes													
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td></td><td></td><td></td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m				Yes, all apartments have balconies of between 10sqm and 13sqm.
Dwelling Type	Minimum Area	Minimum Depth												
Studio apartments	4m ²	-												
1 bedroom apartments	8m ²	2m												

	<table><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m					
2 bedroom apartments	10m ²	2m										
3+ bedroom apartments	12m ²	2.4m										
	The minimum balcony depth to be counted as contributing to the balcony area is 1m											
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Yes										
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Yes, only two apartments on each level.										
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A										
Storage	<div>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</div> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table> <div>At least 50% of the required storage is to be located within the apartment.</div>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	Yes, each apartment has both internal storage and allocated storage spaces within the basement.
Dwelling Type	Storage size volume											
Studio apartments	4m ²											
1 bedroom apartments	6m ²											
2 bedroom apartments	8m ²											
3+ bedroom apartments	10m ²											
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Yes										
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Yes										
Configuration												
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Yes										
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Yes										
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Yes										

Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Yes, the roof design is flat to minimise overshadowing.																																			
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Yes																																			
Planting on Structures	<div>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</div> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		Yes, the planter beds all contain deep soil areas that will allow substantial planting to surround the building.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																																	
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent																																	
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Shrubs			500-600mm																																		
Ground Cover			300-450mm																																		
Turf			200mm																																		
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	Yes																																			
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	N/A																																			
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain?	N/A																																			

	Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	N/A
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Yes
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Yes
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Yes
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Yes

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment:

The proposal is recommended for approval.

(2) Development consent must not be granted if, in the opinion of the consent authority, the

development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

The above assessment has outlined that this development is consistent with the design quality principles, and meets the objectives specified in the Apartment Design Guide for the relevant design criteria. In this regard, the proposal is worthy or support.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1003671M dated 19 June 2019).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	93

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

Comment:

The site is well inland from the coast and is surrounded by other similar sized (or larger) residential flat buildings. In this regard, the proposed development is unlikely to cause an adverse impact on any of the above matters.

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

Comment:

Given the location of the site, the proposed works and the surrounding buildings, Council can be satisfied that the development is designed, sited and will be managed to avoid an adverse impact on the matters in subclause (1).

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

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

Comment:

Given the location of the site, the proposed works and the surrounding buildings, Council can be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	12m	11.2m	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

6.1 Acid sulfate soils

Under Clause 6.1 (6), development consent is not required if:

- (a) the works involve the disturbance of less than 1 tonne of soil, and*
- (b) the works are not likely to lower the watertable.*

Comment:

The proposed development involves disturbance of at least 1 tonne of soil and may lower the water table. As such, 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.

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 required to be assessed to determine if any impact will occur.

The development is more than 5.0m above Australian Height Datum and therefore does not require further assessment.

6.2 Earthworks

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

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

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

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

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 an suitable quality.

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

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

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

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

(f) the likelihood of disturbing relics

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

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

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

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

6.4 Development on sloping land

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

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

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

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

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

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

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development

Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	3	3	N/A	Yes
B3 Side Boundary Envelope	North - 5m	One encroachment of between 850mm and 1.8m in height for a length of 29.1m	5% - 24%	No
	South - 5m	One encroachment of between 320mm and 3.7m in height for a length of 27.2m	0% - 62%	No
B5 Side Boundary Setbacks	North - 4.5m	Main building - 4.5m	N/A	Yes
	Basement - 2.0m	Bin store - 1.2m Basement - Minimum of 0.78m	73.33% 61%	No No
	South - 4.5m	Main building - 4.5m	N/A	Yes
	Basement - 2.0m	Access core - Minimum of 2.0m Basement - Minimum of 0.78m	55.56% 61%	No No
B7 Front Boundary Setbacks	East - 6.5m	Minimum of 5.33m	18%	No
B9 Rear Boundary Setbacks	West - 6m	Main wall - 6.0m Ground floor terrace - 4.36m Upper level balconies - 4.36m	N/A 27.33% 27.33%	Yes No No
	Basement - 2.0m	Basement - Minimum of 0.3m	85%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	50%	47.3% (330sqm)	5.4%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D19 Site Consolidation in the R3 and IN1 Zone	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

The proposal includes the following non-compliances:

Northern elevation - One encroachment of between 650mm and 1.8m in height for a length of 29.1m.
Southern elevation - One encroachment of between 320mm and 3.7m in height for a length of 27.2m.

The southern elevation includes the stairwell that protrudes from the main building and results in the larger breach of the envelope.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying

Objectives of the Control as follows:

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

Comment:

The development reaches a maximum of 11.2m, which is below the 12m height limit. This factor assists in reducing the visual dominance of the development. In addition, the site is surrounded by other similar sized residential flat buildings, all with similar (if not greater) heights and dimensions, meaning that the development will have an acceptable bulk and scale.

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

Comment:

The envelope non-compliances do not result in any direct privacy impacts as they do not include any windows or balconies (which are all set back the required 4.5m from the boundary).

In relation to overshadowing, this matter is discussed in more detail under D6 Solar Access, below in this report. In summary, there will be shadow, from the non-compliant envelope breach, cast onto the property to the south. Due to the east-west orientation of the sites, protection of sunlight to the southern property is extremely difficult, even with a fully compliant design. The development has incorporated a lower height than the development standard allows and a stairwell that is as minimal as possible. This means that the differences in solar access are negligible when comparing the proposed design with a fully compliant design. As such, the overshadowing impact is not considered to be unreasonable.

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

Comment:

The site is relatively flat and the building remains well under the height limit. As such, the development responds appropriately to the topography of the site.

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

B5 Side Boundary Setbacks

Description of non-compliance

On the northern side, the bin store is set back 1.2m and the basement 0.78m from the boundary.

On the southern side, the access core is set back a minimum of 2.0m and the basement 0.78m from the boundary.

The control requires setbacks of 4.5m for above ground structures and 2.0m for the basement using variations in the control which state:

"Variations will be considered for existing narrow width allotments, where compliance is unreasonable"

in the context of surrounding medium density development for basement carparking and private open space.

Basement car parking may extend:

- *Up to 2 metres from the side boundary, and*
- *No more than 1 metre above ground level (existing)*

Private open space may extend:

- *Up to 3.5 metres from a side boundary"*

The main walls of the development meet the 4.5m setback requirement.

Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

Comment:

This matter is discussed in detail under Part D1 Landscaped Open Space, below in this report. In summary, the proposal includes sufficient space and soil depth to accommodate appropriate planting in a curtilage around the development.

- *To ensure that development does not become visually dominant.*

Comment:

The development sits below the 12m height limit. This factor assists in reducing the visual dominance of the development.

The basement is mostly below ground level, with the front part of the basement protruding the highest (approximately 1.5m at the entrance) above the ground. The setbacks of the basement do come within 780mm of both side boundaries (only for portions).

In order to ensure full compliance with the 2.0m basement variation, two units would need to be deleted from the scheme. This would result in the loss of a floor, to a development that does not exceed the height limit. As the basement is not readily visible, the landscaped treatment of the site is acceptable, the development is between 0.8m and 2.2m below the maximum height limit, and the surrounding development consists of similar sized buildings with similar numbers of units, deleting two units from the proposal is not considered to be reasonable.

Overall, the site is surrounded by other similar sized residential flat buildings, all with similar (if not greater) heights and dimensions. This factor assists in reducing the visual dominance of a development that will sit comfortably within its context.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The development sits below the 12m height limit. The basement is mostly below ground level, with the front part of the basement protruding the highest (approximately 1.5m at the entrance) above the ground. The setbacks of the basement do come within 780mm of both side boundaries (only for portions).

In order to ensure full compliance with the 2.0m basement variation, two units would need to be deleted from the scheme. This would result in the loss of a floor, to a development that does not exceed the height limit. As the basement is not readily visible, the landscaped treatment of the site is acceptable, the development is between 0.8m and 2.2m below the maximum height limit, and the surrounding development consists of similar sized buildings with similar numbers of units, deleting two units from the proposal is not considered to be reasonable.

The site is surrounded by other similar sized residential flat buildings, all with similar (if not greater) heights and dimensions, meaning that the development will have an acceptable scale and bulk.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The main building complies with the 4.5m side setback requirements.

On privacy, the proposed balconies will not result in unreasonable privacy impacts due to privacy screens on the western elevations of the two upper balconies (to screen the neighbouring building to the west) and the balconies being orientated to the north (thereby protecting the southern neighbour).

The building to the north (No. 34 Westminster Avenue) has all its non-habitable rooms facing south and so the northern orientated balconies on the proposed development will not have any direct views into private open spaces or vulnerable windows.

The proposal has placed only screened bedroom windows or obscure glass bathroom windows on the southern elevation, thereby minimising any impacts to No. 30 Westminster Avenue.

These design elements and the compliance for the main walls of the development, will ensure that adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is provided.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The proposal will not result in any unreasonable view impacts.

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

B7 Front Boundary Setbacks

Description of non-compliance

The development is set back a minimum of 5.33m.

The control requires a minimum of 6.5m.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The site has an angled front boundary, meaning that while a corner of the building is 5.33m from the front boundary, other elements are set back greater than 6.5m. Along with the proposed landscaping in the front yard, this variation will create a reasonable sense of openness.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The neighbouring buildings have an average setback of less than 6.5m. In this regard, the varied front setback of the proposal and the landscaping that will occur in the front yard, will maintain the visual continuity and pattern of buildings and landscape elements that exist in the street.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The development will be an upgrade to the site that will provide a modern building and suitable landscaping. In this regard, the proposal will protect and enhance the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment:

The proposal will not result in any unreasonable view impacts.

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

B9 Rear Boundary Setbacks

Description of non-compliance

The proposal includes the following rear setbacks:

- Ground floor terrace - 4.36m
- Upper level balconies - 4.36m
- Basement - Minimum of 0.3m

The control requires a minimum of 6.0m.

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

While the proposal does not reach the 50% minimum landscaped area, the development will incorporate a curtilage of landscaping including substantial areas of deep soil. The front and rear yards will be compatible with the streetscape and the pattern of development in the area. In this regard, suitable opportunities for deep soil landscape areas will be provided.

- *To create a sense of openness in rear yards.*

Comment:

Only the open balconies, the ground floor terrace and the below ground basement encroach into the rear setback area. The main wall of the building complies with the setback. In this regard, the proposal will create a suitable sense of openness.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The non-compliant balconies will not result in unreasonable privacy impacts due to privacy screens on the western elevations of the two upper balconies (to screen the neighbouring building to the west) and the balcony being orientated to the north (thereby protecting the southern neighbour). The building to the north has all its non-habitable rooms facing south and so the northern orientated balconies on the proposed development will not have any direct views into private open spaces or vulnerable windows.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The dimensions, alignments and setbacks of the proposed development will be very similar to the surrounding developments and the subject site will present a suitable landscaped setting. As such, the existing visual continuity and pattern of buildings, rear gardens and landscape elements will be achieved.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

As above, the proposal incorporates design elements and screening that will maintain privacy for neighbouring properties.

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

C3 Parking Facilities

Merit consideration

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

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Residential flat building	1.2 spaces per 2 bedroom dwelling plus 1 visitor space per 5 dwellings	6 dwellings x 1.2 + 2 visitor spaces = 9.2 spaces	10 spaces	+ 0.8

The proposal provides sufficient on-site parking.

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

Comment:

The parking spaces are provided in a basement and will therefore have a minimal visual impact on the street frontage.

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

Comment:

The parking spaces are provided in a basement and will not dominate the street frontage.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposal includes 47.3% (330sqm) of landscaped open space (LOS) that meets the criteria of the control. Nearly half of this area is provided in 1.0m deep planter beds.

The control requires a minimum of 50%.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The proposal will provide a landscaped front yard with large deep soil areas suitable for planting to maintain and enhance the streetscape. The front setbacks of the development are acceptable and the proposal will be compatible with surrounding similar apartment buildings.

Concerns were raised with the applicant regarding the raised planter beds and how visible they would be from the street and the neighbouring properties. Following this, the design was amended slightly to increase the planting in front of these beds, as well as adjust the basement to incorporate more deep soil areas. Due to these changes, and in particular the landscape plan showing the planting that will be used to partially screen these beds, the proposal will be acceptable when viewed from the streetscape and from the neighbouring properties.

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

Comment:

While the proposal does not reach the 50% minimum landscaped area, the development will incorporate a curtilage of landscaping including substantial areas of deep soil. The front and rear yards will be compatible with the streetscape and the pattern of development in the area. In this regard, indigenous vegetation and habitat will be enhanced.

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

Comment:

The development will incorporate a curtilage of landscaping including substantial areas of deep soil planting. These areas, along with the planter beds, will be capable of providing for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.

- *To enhance privacy between buildings.*

Comment:

The curtilage of landscaping will allow sufficient space for landscape planting, and spatial

separation, to enhance privacy between buildings.

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

Comment:

Each apartment includes sufficient private open space for the residents. The curtilage of landscaping around the building will allow for adequate outdoor recreational opportunities that meet the needs of the occupants.

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

Comment:

There is sufficient space for service functions, including clothes drying.

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

Comment:

All the landscaped areas are deep enough to accommodate the infiltration of stormwater to assist with on-site water management. Council's Engineers have raised no objections to the stormwater design.

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

D6 Access to Sunlight

Merit consideration

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

- *To ensure that reasonable access to sunlight is maintained.*

Comment:

The control requires that at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21. However, the control does allow exceptions to this requirement where:

- i) the slope or topography of the site or adjoining property makes compliance impractical; and*
- ii) other design options have been investigated which would comply but would unreasonably constrain the development of an otherwise compliant building.*

The site is orientated east-west, making the protection of sunlight to the southern neighbour, on June 21, very difficult, even with a fully compliant design. In this regard, the exceptions to the solar access clause apply in this case.

The property to the south (no. 30 Westminster Avenue) has three levels. The two upper levels

each have three balconies on the northern elevation. The ground floor apartments have terraces. It is these balconies and terraces that are the critical areas of private open space. The shadow diagrams provided with the amended plans assist in understanding the impacts to these areas of No. 30 Westminster Avenue.

The proposed design (i.e. post the amendments that have resulted in the 600mm increase in height) will result in the following impacts:

The proposal will not cast any shadow onto the upper level balconies between 9am and 3pm on June 21. The middle level will be overshadowed at 9am but will mostly be in sunlight at 12pm and will have complete sunlight at 3pm on June 21.

The lower level terraces will not receive any direct sunlight at 9am. At approximately 11am the western most terrace will begin to receive direct sunlight with this increasing until 2:30pm when shadow cast by another neighbouring building begins to impact. The eastern terraces on the lower level will not receive any direct sunlight between 9am and 3pm on June 21.

The 11.2m height (compared with the limit of 12m) and a stairwell that is as minimal as possible after being reduced in size through amendments during the assessment process, are the two main design elements that have resulted in minimising the impacts.

Certified shadow diagrams have been submitted that show that the proposed design will have very similar solar access to a fully compliant design. These diagrams show that the proposal will have a slightly lesser impact at 9am, and slightly worse impacts at 12pm and 3pm.

Given the similar level of impacts between the proposal and a fully compliant design, and the constraints of the site, the overshadowing impact is not considered to be unreasonable.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The design elements incorporated into the proposal to minimise overshadowing are reasonably innovative and overall, the development will improve the urban environment.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

Comment:

The development has orientated the living areas and balconies to the northern side, thereby maximising the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.

- *To promote passive solar design and the use of solar energy.*

Comment:

As above, the layout of the apartments will promote passive solar design and the use of solar energy.

- *To minimise the need for artificial lighting.*

Comment:

As above, the layout of the apartments will minimise the need for artificial lighting.

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

D9 Building Bulk

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*
- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The proposal does not incorporate substantial articulation along the elevations (in terms of varied side setbacks). This appears to result in a building that does meet a number of the requirements of this control, in particular:

1. *Side and rear setbacks are to be progressively increased as wall height increases.*
8. *Articulate walls to reduce building mass.*

However, upon a closer assessment of the design, the following elements have been included to break up the facade and minimise the bulk.

Firstly, the southern elevation has been articulated by the access core, which will be finished in a different material than the rest of the building. The southern elevation also contains numerous windows that have been appropriately screened to both protect privacy and to further break up this facade,

Secondly, the northern elevation contains strong vertical articulation, using balconies, awnings, windows and a mix of different colours and materials to break up this facade.

Finally, landscape plantings will be provided to reduce the visual bulk of the development, in a curtilage around the building.

Overall, the design is considered to be a modern, innovative, response to a relatively small site that will sit well within its context.

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 \$41,615 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,161,506.

CONCLUSION

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

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

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

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

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

This assessment has found that the proposed development is a high quality architectural response to the context and constraints of the site that will be compatible with the height, bulk and scale of surrounding residential flat buildings. The resultant development will provide a high level of amenity for future occupants, and will not result in any unreasonable impacts upon the character of the locality or the amenity of adjoining properties.

The assessment of the solar access concerns has found that there will be shadow cast onto various units within No. 30 Westminster Avenue between 9am and 3pm on June 21. Due to the east-west orientation of the sites, protection of sunlight to No. 30 Westminster Avenue is extremely difficult, even with a fully compliant design.

The development, even after raising the building to meet the driveway gradients, has incorporated a lower height than the development standard allows (11.2m instead of 12m) and a stairwell that is as

minimal as possible (and was further reduced through amendments during the assessment process). This means that the differences in solar access are minimal when comparing the proposed design with a fully compliant design. Given this, and the constraints of the site, the overshadowing impact is not considered to be unreasonable.

The landscaped treatment of the site, particularly in relation to the raised planter beds and how visible they would be from the street and the neighbouring properties, has been carefully considered. These concerns were raised with the applicant early in the assessment process. The applicant amended the design to increase the planting in front of these beds, as well as adjust the basement to incorporate more deep soil areas. Due to these changes, and in particular the landscape plan showing the planting that will be used to partially screen these beds, the proposal will be acceptable when viewed from the streetscape and from the neighbouring properties.

Conditions of consent have been included in the recommendation to minimise the impact of construction and the on-going operation of the development.

Overall, the proposal has been found to be consistent with the relevant provisions of the WLEP 2011 and the Warringah Development Control Plan and has been recommended for approval.

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 DA2019/0755 for Demolition Works and construction of a residential flat building on land at Lot CP SP 22024, 32 Westminster Avenue, DEE WHY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02 Issue J	28 April 2020	Watershed Design
DA03 Issue J	28 April 2020	Watershed Design
DA04 Issue J	28 April 2020	Watershed Design
DA05 Issue I	8 April 2020	Watershed Design
DA06 Issue I	8 April 2020	Watershed Design
DA07 Issue I	8 April 2020	Watershed Design
DA08 Issue I	8 April 2020	Watershed Design
DA09 Issue I	8 April 2020	Watershed Design
DA10 Issue J	28 April 2020	Watershed Design
DA11 Issue J	28 April 2020	Watershed Design
DA19 Issue G	2 July 2019	Watershed Design
Landscape Site Plan Issue C	3 December 2019	Paul Scrivener Landscape Architecture
Planting Plan and Details Issue C	3 December 2019	Paul Scrivener Landscape Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation(including comments on updates to plans)	17 June 2019 and 26 November 2019	White Geotechnical Group
Design Compliance Assessment	19 March 2019	BCA Vision

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

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

--

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	2 July 2019	Anchor Properties

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

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

2. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the

- excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

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

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

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

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

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

Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$41,615.06 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$4,161,506.00.

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

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

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

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

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

5. Security Bond

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

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

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

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

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

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

6. On slab landscape planting and associated works

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

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

7. 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.

8. Updates to the approved plans

The landscape plans (Landscape Site Plan, and Planting Plan and Details, Both Issue C, dated 3 December 2019 and prepared by Paul Scrivener Landscape Architecture) are to be updated to reflect the latest amendments to the architectural plans (listed in condition 1).

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.

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, referenced in Condition 1 of this consent.

Details demonstrating compliance are to be submitted to the Principal 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 Compliance**

Certification from a suitably qualified civil engineer that the Stormwater Drainage plans detailing the provision of On-site Stormwater Detention are in accordance with Northern Beaches Council's , WARRINGAH WATER MANAGEMENT POLICY PL850, and the concept drawing by Stellen, drawing number DR 001,002,003,004 dated 29/5/19. Certification demonstrating compliance is to be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate

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

11. **Pump-Out System Design for Stormwater Disposal**

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

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

12. **Vehicle Driveway Gradients and Splays.**

Driveway gradients within the private property are to comply with AS/NZS 2890.1 2890.1 2004 Parking Facilities (Off street carparking) and be in accordance with the driveway longsection detailed in the amended plan provided by Watershed Design DA07 Issue H. The driveway splays are to be in accordance with the site plans provided by Watershed Design DA02 J, DA03 J, DA04 J. Certification of these requirements is to be provided from a Traffic Engineer demonstrating compliance and submitted to the Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure suitable vehicular access to private property

13. **Tanking of Basement Level**

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

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

14. **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.

15. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings.

Council approval is required if temporary ground anchors are to be used within Council land. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

16. **Vehicle Crossings Application**

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid.

Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

17. **Construction Management Program**

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

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

18. **Asbestos**

Before the commencement of any demolition work:

Where asbestos is found or likely to be disturbed the owner or occupier of the premises must consult an appropriately qualified professional registered with the Australian Institute of Occupational Hygienists to undertake an assessment of the site to determine the potential for contamination.

The owner or occupier must then develop a management plan which will require the issue of a Clearance Certificate.

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Work Cover NSW.

Before starting work, a work site-specific permit approving each asbestos project must then be obtained from Work Cover NSW. A permit will not be granted without a current Work Cover 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, and
- o How to Safely Remove Asbestos Code of Practice –published by WorkCover NSW.

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

19. **Pre-commencement Dilapidation Report**

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

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

20. **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.

21. **Sydney Water "Tap In"**

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

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

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

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

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

22. **Deep Soil Landscaping**

The indents in the basement, to create the deeper soil garden beds, must be incorporated into the Construction Certificate plans to ensure they are built.

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

Reason: To ensure deep soil landscaped areas remain on site, as proposed.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

23. **Pre-Construction Dilapidation Report**

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

Property / Properties: Nos. 30 and 34 Westminster, and No. 2 Lismore Avenue

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 and advise the affected property owner of the reason for the survey and that these steps have failed. Written correspondence from the owners of the affected properties or other evidence must be obtained and submitted to the Principal Certifying Authority in such circumstances that demonstrates such documentation has been received. 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 arising 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.

24. **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.

25. **Excavation Noise**

Prior to commencement of excavation neighbouring property occupiers shall be notified advising of proposed date of excavation works and duration of this work. A contact phone number is to be provided to occupiers for enquiries or complaints.

Best practice excavation methods, which may include acoustic shielding, rock saws and similar are to be used to reduce the noise impact to adjoining residential receivers.

Reason: To minimise the disturbance to neighbours during excavation.

26. **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
 - iii) all road reserve trees and vegetation.
- (b) Tree protection measures:
 - i) No tree roots greater than 25mm diameter are to be cut from protected trees
 - ii) All structures are to bridge tree roots greater than 25mm diameter unless directed
 - iii) All tree protection is to be in accordance with the Arboricultural Impact Assessment
 - iv) The tree protection measures specified in this clause must:
 - (i) be in place before work commences on the site, and
 - (ii) be maintained in good condition during the construction period, and
 - (iii) remain in place for the duration of the construction works.
 - v) No excavated material, building material storage, site facilities, or landscape material
 - vi) All tree pruning within the subject site is to be in accordance with the relevant standards
 - vii) any tree roots exposed during excavation with a diameter greater than 30mm

Reason: Tree protection

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

27. **Road Reserve**

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

Reason: Public Safety.

28. **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.

29. **Installation and Maintenance of Sediment Control**

Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.

Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until all development activities have been completed and the site fully stabilised.

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

30. **Stormwater Connection**

Where connection to Council's nearest stormwater drainage system is required, the applicant shall connect the pipeline in accordance with Council's specification for engineering works and shall reconstruct all affected kerb and gutter, bitumen reinstatements, adjust all vehicular crossings for paths, grass verges and household stormwater connections to suit the kerb and gutter levels. All works shall be undertaken at the applicant's cost, and upon completion certified by an appropriately qualified and practicing Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

31. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

32. **Vehicle Crossings**

The provision of one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ Normal and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

33. **Excavation and Erosion Control**

The following measures shall be implemented in the sequence given below, to minimise soil erosion:

Approved runoff and erosion controls shall be installed before site vegetation is cleared (other than that associated with the construction of the controls). These shall be as shown on an ESCP approved by council. Topsoil shall be stripped only from approved areas and stockpiled for re-use during site rehabilitation and landscaping. Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage line or easement, waters, footpath, kerb or road surface and shall have measures in place to prevent the movement of such materials onto the areas mentioned. All stockpiled materials are to be retained within the property boundaries. Uncontaminated runoff shall be intercepted up-site and diverted around all disturbed areas and other areas likely to be disturbed. Diversion works shall be adequately stabilised. Runoff detention and sediment interception measures shall be applied to the land. These measures will reduce flow velocities and prevent topsoil, sand, aggregate, or other sediment escaping from the site or entering any downstream drainage easements or waters. The capacity and effectiveness of runoff and erosion control measures shall be maintained at all times to conform to the specifications and standards quoted and to any conditions of approval of those measures. Measures shall be applied, to the satisfaction of council, to prevent site vehicles tracking sediment and other pollutants onto any sealed roads serving the development. Measures required in permits issued under the Rivers and Foreshores Improvement Act shall be implemented. This Act requires that people obtain approval for any proposed excavation or fill in or within 40 metres of a watercourse. Permits should be sought from the Department of Natural Resources.

Reason: To minimise soil erosion

34. **Maintenance of Sediment**

Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.

Reason: To ensure sediment controls are effective

35. **Erosion and Sedimentation Responsibilities**

Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.

Reason: To ensure sediment and erosion controls comply with standards

36. **Site Entry Access way**

An all-weather access way at the front of the property consisting of 50-75mm aggregate or similar material at a minimum thickness of 200mm and 15metres long laid over geotechnical fabric is to be constructed prior to commencement of works and maintenance over the works period.

Reason: To reduce sediment being taken offsite

37. **Protection of Adjoining Property - Excavation**

Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.

Reason: To ensure private and public safety

38. **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.

39. **Acid Sulfate Soil Management**

Any new information which comes to light during excavation or construction works which has the potential to alter previous conclusions about the uncovering of Acid Sulfate Soil must be notified to the Certifier as soon as reasonably practicable. This will also require an Acid Sulfate Soil Management Plan, including disposal of affected soil to an approved facility, to be submitted to the certifier, before work continues.

Reason: To ensure potential Acid Sulfate Soil is appropriately managed.

40. **Dust minimisation**

Dust control measures including best practice, and in accordance with NSW Workplace Health and Safety Regulations and the Protection of the Environment Operations Act 1997, shall be implemented to minimise dust to neighbouring residents and businesses and ensure any airborne substance is kept within the boundaries of the site

Measures may include but not be limited to:

- o Water sprays
- o Bunker storage
- o Limiting size of stockpiles and covering stock piles
- o Vertical barriers eg fencing with fine mesh attached
- o Exhaust and capture

Reason: To minimise dust to neighbouring residents and businesses and avoid air pollution.

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

41. **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.

42. **Post-Construction Road Reserve Dilapidation Report (Major Development)**

The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

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

43. **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.

44. **Reinstatement of Kerb**

All redundant laybacks and vehicular crossings shall be reinstated 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 any interim / final Occupation Certificate.

Reason: To facilitate the preservation of on street parking spaces

45. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**

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

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

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

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

46. **Post-Construction Dilapidation Report**

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report

must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties

Reason: To ensure security against possible damage to Council and private property.

47. **Restoration of Damaged Public Infrastructure**

Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.

Reason: To ensure public infrastructure is returned to the state it was in prior to development

48. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**

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

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

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

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

49. **Required Planting**

Trees, shrubs, and groundcovers shall be planted in accordance with the Landscape Plan prepared by Paul Scrivener dated June 2019.

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

Reason: To maintain environmental amenity.

50. **Street Tree Planting**

a) Street tree planting shall be provided within the road reserve in accordance with the following schedule:

No. of Trees Required	Species	Location	Minimum Pot Size
1	<i>Callistemon viminalis</i> or cultivar.	Westminster Ave road reserve forward of the	75 litre

	property, clear of driveway sightlines and generally in alignment with other street trees	
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b) all street trees shall be planted into a prepared planting hole a minimum of 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, and mulched to 75mm depth minimum, watered and maintained to ensure establishment

Reason: Preservation of the streetscape character of the area.

51. **Waste Management Confirmation**

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

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

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 Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Interim or Final Occupation Certificate.

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

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

53. **Noise**

Plant, equipment, motors and any mechanical exhaust shall not be audible from any neighbouring property residential habitable room at any time.

Reason: To ensure a noise nuisance is not generated.

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

54. **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.

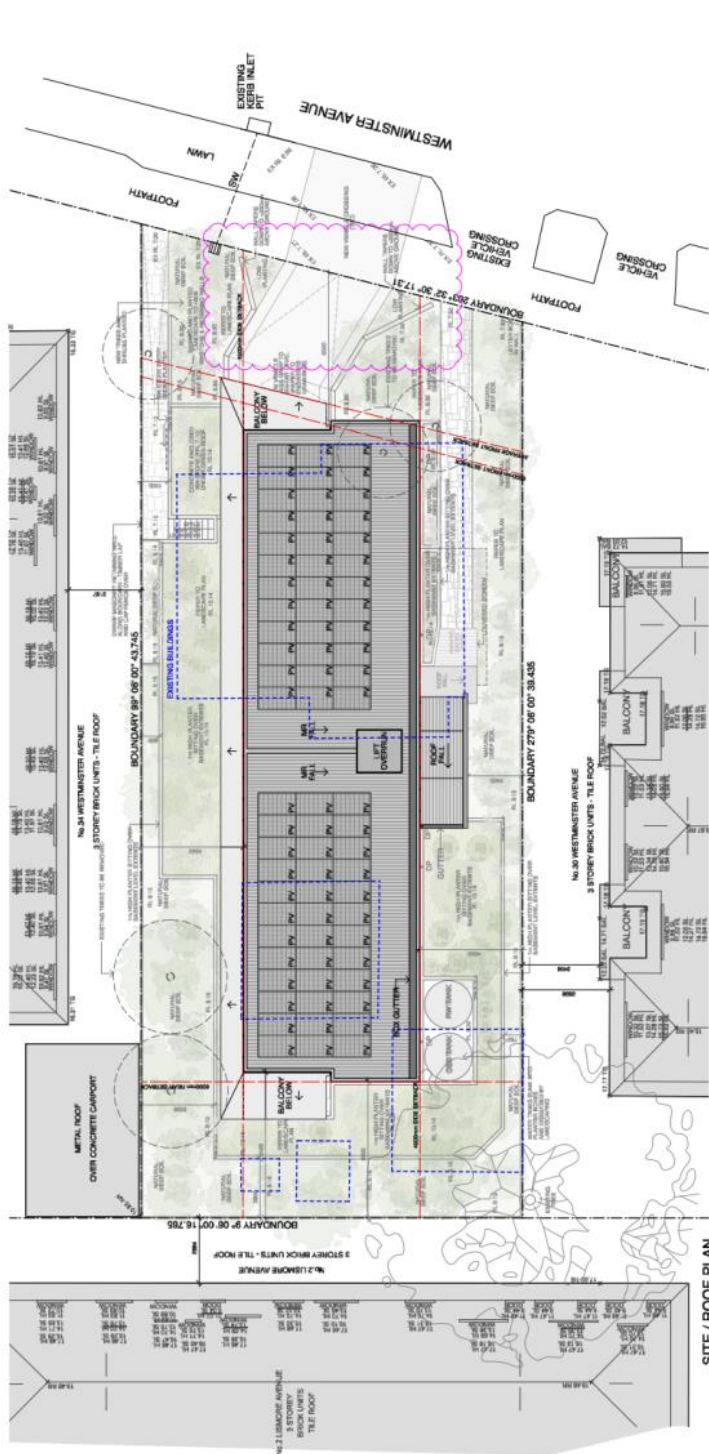
55. **Parking spaces**

10 parking spaces must be available at all times and cannot be used for any other purpose (eg: storage) other than car or motorcycle parking.

At least one of the ten spaces must be available and marked for visitors.

No parking is permitted in the turning bay. This bay must be kept clear.

Reason: To ensure adequate car parking is provided.



SITE / ROOF PLAN



SECTION A-A

[illegible]

CLIENT	Grant Harvey	ADDRESS	32 Westminster Avenue, Dea Why	JOB NO	18020	DRAWING NO	
PROJECT	New Multi-Residential	TITLE	Site / Roof Plan & Long Section	DRAWN	MVG	DA02	
				CHECKED	MK	ISSUE	J
				SCALE	1:200		

W **WATERSHED**
architecture
interiors
landscapes
DESIGN

Phone: 02 9977 1076 Fax: 02 9976 9525 info@watersheddesign.com.au

 true north

NOTES

Any discrepancies to be brought to the Architect's attention immediately upon receipt of the drawings.

Only scale under direction from Architect.

Builder to examine site and verify conditions and dimensions.

This drawing retains the property of the Architects.

Client is granted conditional license to use drawings.

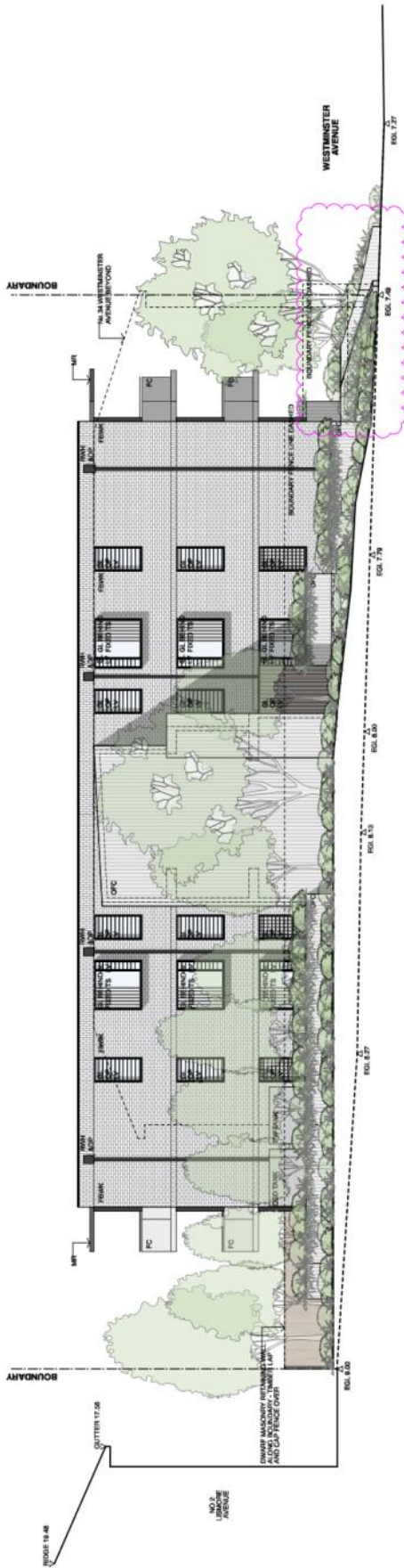
Architect reserves the right to terminate the license.

Reproduction of the drawing in whole or part is prohibited.

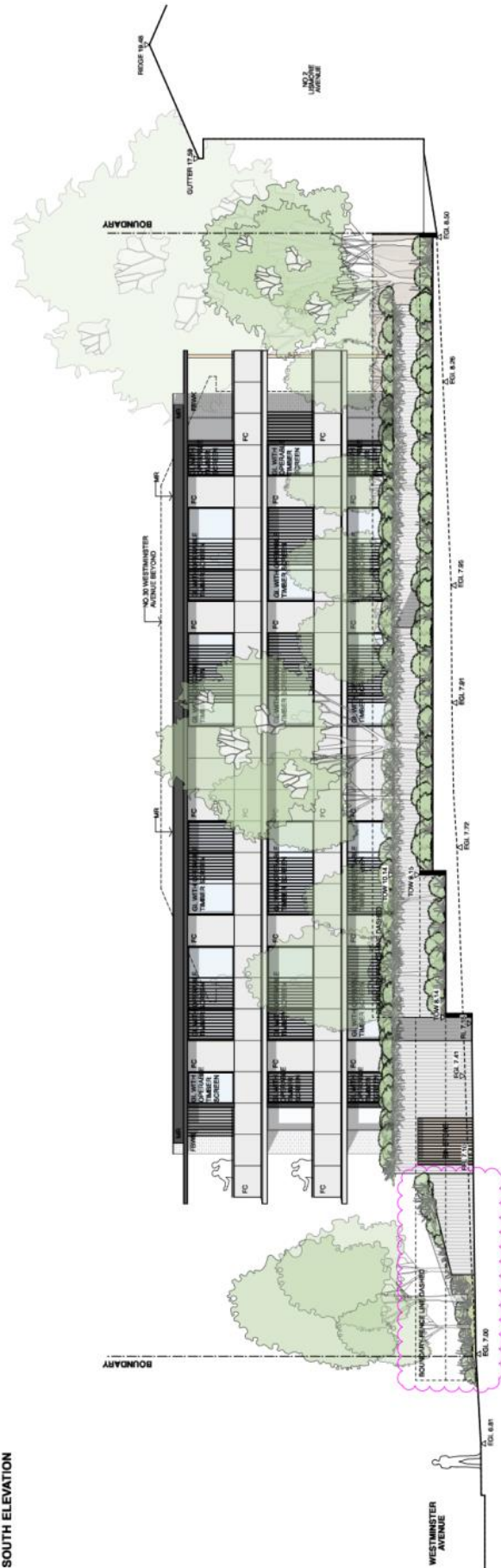
Electronic data transfer should be scanned for viruses before use.

Any loss or damage (incl. consequential damage) caused to the recipient of electronic data, by its direct or indirect use, is not the responsibility of the Architect.

Not to be used as proof for accuracy of electronic data.



SOUTH ELEVATION



NORTH ELEVATION

- NOTES**
- Any discrepancies to be brought to the Architect's attention.
 - Use typeset drawings to prepare final drawings.
 - Builder to ensure all work is in accordance with the drawings.
 - Client to provide conditions of sale to be used in drawings.
 - Client to provide conditions of sale to be used in drawings.
 - Architect reserves the right to terminate the drawings.
 - Architect reserves the right to terminate the drawings.
 - Economic data transfer should be provided for various below use.
 - Architect reserves the right to terminate the drawings.
 - Architect reserves the right to terminate the drawings.
 - Architect reserves the right to terminate the drawings.
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NO.	AMENDMENT	DATE
1	Final Consultant Issue	12.08.19
2	DA Issue - Amended basement	02.07.19
3	DA Issue - Amended basement	22.11.19
4	DA Issue - Amended basement	08.04.20
5	DA Issue - Amended basement	28.04.20

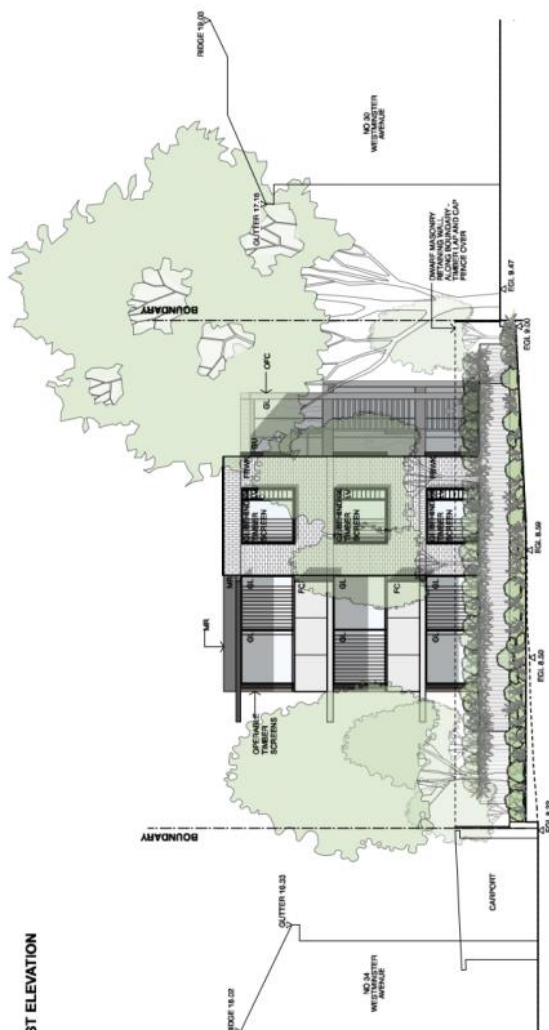
WATERSHED DESIGN architecture
interiors
landscapes

Phone: 02 9977 1076 Fax: 02 9976 6025 info@watersheddesign.com.au

CLIENT	Grant Harvey	ADDRESS	32 Westminster Avenue, Dee Why	JOB NO	18020	DRAWING NO	DA10
PROJECT	New Multi-Residential	TITLE	North & South Elevations	DRAWN	MVG	ISSUE	J
				CHECKED	MK	SCALE	1:150



EAST ELEVATION



WEST ELEVATION

NO	AMENDMENT	DATE
F	Final Consultant Issue	12.08.19
G	DA Issue	02.07.19
H	DA Issue - Amended basement, landscape, lobby and bin store	22.11.19
I	DA Issue - Amended basement, landscape, lobby and height	08.04.20

NOTES

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landscapes

Phone: 02 9977 1076 Fax: 02 9976 0625 info@watersheddesign.com.au

CLIENT	Grant Harvey	ADDRESS	32 Westminster Avenue, Dee Why	JOB NO	18020	DRAWING NO	
PROJECT	New Multi-Residential	TITLE	West & East Elevations	DRAWN	MVG	DA11	
				CHECKED	MK	ISSUE	J
				SCALE	1:150		

ITEM 3.3	DA2020/0107 - 103 NARRABEEN PARK PARADE, MONA VALE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
AUTHORISING MANAGER	STEVE FINDLAY
TRIM FILE REF	2020/312738
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 the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/0107 for alterations and additions to a dwelling house at Lot 2 DP 16692, 103 Narrabeen Park Parade, Mona Vale subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0107
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Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 2 DP 16692, 103 Narrabeen Park Parade MONA VALE NSW 2103
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Robert Stephen Nichols Selina Gioia Buresti
Applicant:	Selina Nichols

Application Lodged:	10/02/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/02/2020 to 10/03/2020
Advertised:	Not Advertised
Submissions Received:	20
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 415,582.00
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EXECUTIVE SUMMARY

The application seeks approval for alterations and additions to the existing dwelling, involving the construction of a double carport to the front of the site.

An assessment of the proposed carport has found that the location, bulk and scale of the structure is unsuitable for the site and the area.

The proposed carport is to be situated at the top of an escarpment above Warriewood Beach, which has a high scenic value. The introduction of a visually prominent built form element in this location, which is not compatible with the predominant character and design of ancillary parking structures in this area, is not a desirable addition to the streetscape or locality.

The application is referred to the NBLPP due to the significant number of submissions received in response to the public notification.

The proposal involves variations to the planning controls; including, front building line, landscaped area (frontage of the site) and building envelope.

Furthermore, the proposal has been assessed in accordance with the View Loss Planning Principle established by the Land and Environment Court, and it has been determined that it would result in a moderate to severe impact on views. The proposal has not demonstrated that it is a reasonable outcome given the opportunity for an alternative and less impacting style of roofed carparking.

The assessment concludes that the proposed visual bulk and prominence of the pitched roof carport would result in an amenity impact and visual impact that is unreasonable and unsuitable.

Therefore, it is recommended that the application be refused.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is primarily for the construction of a pitched roof double carport with a storage room underneath.

The proposal also involves a new driveway, new access stairs and a lift to provide access to the existing dwelling.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.25 Plant, Equipment Boxes and Lift Over-Run
Pittwater 21 Development Control Plan - D14.7 Front building line
Pittwater 21 Development Control Plan - D14.11 Building envelope

Pittwater 21 Development Control Plan - D14.18 Scenic Protection Category One Lands

SITE DESCRIPTION

Property Description:	Lot 2 DP 16692, 103 Narrabeen Park Parade MONA VALE NSW 2103
Detailed Site Description:	<p>The subject site consists of a single allotment located on the southern-eastern side of Narrabeen Park Parade, which is directly above Warriewood Beach.</p> <p>The site is irregular in shape, with a frontage of 18.29m to Narrabeen Park Parade and approximately 60.0m in depth.</p> <p>The site has a surveyed area of 798.2m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a single detached dwelling-house.</p> <p>The site has a slope from front to rear and has a crossfall of approximately 15.0m.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached style housing in landscaped settings.</p> <p>A public pedestrian access-way adjoins the site on its western side.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. The following site history is relevant:

PLM2019/0148

A Prelodgement Meeting was held with Council staff on 1 August 2019, which discussed a proposal for demolition and construction of a new garage, carports and a secondary dwelling at 103 and 105 Narrabeen Park Parade. The following comments were provided in the notes for the meeting:

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

The subject site has significant view corridors through the site and new car parking at this frontage should therefore be carefully designed to minimise view loss. It is noted that a situation in which there would be less view loss involved is if the car parking spaces were to be hardstand spaces.

Any carport structure is likely to have an impact on views and a quantitative analysis of this loss should be made for each design (hard stand space as compared to carport with flat roof and carport with a pitched roof)."

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater

Section 4.15 Matters for Consideration'	Comments
the natural and built environment and social and economic impacts in the locality	Development Control Plan section in this report. In summary, the environmental impacts in relation to views are excessive. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the residential character of the proposal. (iii) Economic Impact The proposed development would not have a detrimental economic impact on the locality considering the residential nature of the use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development in its current form.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report. In summary, the submissions are supported in relation to private and public view impacts.
Section 4.15 (1) (e) – the public interest	The proposal is not in the public interest given the extent of impact on public views (see assessment for "Views" under the section addressing the Pittwater 21 DCP).

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 20 submission/s from:

Name:	Address:
Mr Sammy Graziano	25 Boronia Road INGLESIDE NSW 2101
Ms Dimity Jane Sawyer	56 Narrabeen Park Parade WARRIEWOOD NSW 2102
Simeon Haddad	146 Narrabeen Park Parade MONA VALE NSW 2103
Dr Vijay Solanki	172 Narrabeen Park Parade MONA VALE NSW 2103
Withheld	CHURCH POINT NSW 2105
Jodie Williams Mr Mark James Williams	170 Narrabeen Park Parade MONA VALE NSW 2103
Mrs Simone Vidal Allan	160 Narrabeen Park Parade MONA VALE NSW 2103
Ms Jill Frances Cable	150 Narrabeen Park Parade MONA VALE NSW 2103

Name:	Address:
Mrs Cathy Lou Hall	1 Cooleena Road ELANORA HEIGHTS NSW 2101
Mrs Susanne Beverly Simon Beverly	174 Narrabeen Park Parade MONA VALE NSW 2103
Caroline Davison Mr Paul Davison	23 Careel Bay Crescent AVALON BEACH NSW 2107
Mr Gregory Sidney Hall	1 Cooleena Road ELANORA HEIGHTS NSW 2101
Withheld Mr Richard Jefferson Wilkins	MONA VALE NSW 2103
Withheld Mr Richard Jefferson Wilkins	164 Narrabeen Park Parade MONA VALE NSW 2103
Craig Allen	148 Narrabeen Park Parade MONA VALE NSW 2103
Mr Nicolas Edwin Reynolds	6 / 3 Robertson Street NARRABEEN NSW 2101
Alex Coates	101 Narrabeen Park Parade MONA VALE NSW 2103
Mrs Carole Ann Davis	140 Narrabeen Park Parade MONA VALE NSW 2103
Mr Robert Donald Davis	Po Box 214 MONA VALE NSW 1660
Karen Cutter Mr Aaron Dean Cutter	152 Narrabeen Park Parade MONA VALE NSW 2103
Mr Nigel Richard Sinclair	27 Bakers Road CHURCH POINT NSW 2105
Mr Justin Anthony Hollis Mrs Jenny-Lee Murphy	91 Narrabeen Park Parade MONA VALE NSW 2103

There were 20 submissions received in response to the public exhibition of the application (i.e. 20 individual submissions, authored by separate people and households).

The matters raised within the submissions are addressed as follows:

- **Loss of views from public and private land and loss of views from the public pathway**

Comment:

It is agreed that the proposal will have an unreasonable impact on views. In this report, a detailed assessment of views is made in accordance with the Land and Environment Court's Planning Principle for View Sharing. The concern is concurred with and is included as a reason for refusal.

- **Failure to comply with the planning controls in relation to front setback, scenic protection and landscaped setting**

Comment:

A merit assessment against these provisions of the Pittwater DCP has found the proposal to be unsatisfactory. Concerns in relation to lack of compliance with the planning controls in relation to front setback, scenic protection and landscaped setting are concurred with and are included as reasons for refusal.

- **Request for height poles**

Comment:

In this circumstance, the impact on views could be determined without the need to erect height poles.

- **Notification Sign not being posted onsite and the inappropriate location of the Notification Sign**
Comment:
There has been adequate confirmation that the notification sign was located at the front of the site for the duration of the notification period.

- **Historical policies (LEP and DCP) were put in place to restrict building above the street level and the approval would establish a new and undesirable precedent for similar height structures**
Comment:
The current development standard for building height in this area is 8.0m. This standard is lower than many of the surrounding residential areas, which are generally 8.5m. Although this development complies with the 8.0m maximum building height, it is agreed that the development could set an undesirable precedent, given the high scenic value of the area and character of the street.

- **Unsuitable development for this section of Narrabeen Park Parade, unsuitable streetscape outcome, unreasonable enlargement and impact on natural beauty**
Comment:
It is agreed that the proposal is inappropriate and unsuitable, given its inconsistency with the character of the street, with the desired future character and impact on the scenic values of the area.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Councils Landscape officer provided the following comments:</p> <p><i>"Arboricultural impact Assessment prepared by Tree Consult</i></p> <p><i>6.0 Discussion Tree Impacts by Proposed Works - all other trees not reported due to distance from development works ie. over 5 metres are to be retained, excluding</i></p> <p><i>6.1 Tree 10 Banksia integrifolia located on 105 Narrabeen Park Parade is setback from proposed carport/store wall by 2.4m and corner of lift by 3.2m and is proposed for retention. Following an initial pre-lodgement assessment from Northern Beaches Council, root mapping was undertaken to determine impact from works. In summary trenching some 2.25m from centre of tree (COT) tree 10 revealed the majority of roots present in this area were emanating from tree 11 Norfolk Island Pine proposed for removal. Three roots of 18, 22 & 25mm in diameter originated from tree 10.</i></p> <p><i>The tree 10 has a significant concentration of roots as evidenced surface root plate to northwest of tree which have developed in tension in response to prevailing onshore winds. It is considered the clean cutting of the three roots from T10 is unlikely to de-stabilise or</i></p>

Internal Referral Body	Comments
	<p><i>adversely affect long term health of tree. The proposed works are under the standard AS4970 a major encroachment, however the existing cut currently retained by drystone sandstone flagging and the presence of shallow sandstone bedrock or floater are a natural and existing constraint to root growth much beyond some 2m south of the boundary.</i></p> <p><i>6.2 Tree 11 Araucaria heterophylla (repeatedly lopped/topped) is proposed for removal based on its location within the footprint of the proposed carport.</i></p> <p><i>6.3 Tree 12 Melaleuca quinquenervia is proposed for retention and is setback >8m and is not affected by the proposal.</i></p> <p><i>6.4 Tree 13 Banksia integrifolia is proposed for retention and has a calculated TPZ of 2.4m. The proposed works are a minor encroachment to this specimen with the impact footprint restricted to one pier as part of support for suspended driveway.</i></p> <p><i>6.5 Tree 14 Callistemon citrinus is proposed for retention.</i></p> <p><i>6.6 Trees 15 & 16 Callistemon citrinus & Banksia serrata are proposed for retention.</i></p> <p><i>7.0 Recommendations</i> <i>Specific:</i></p> <ol style="list-style-type: none"> <i>1. Trees 10, 12, 13, 14, 15 and 16 to be retained TPZ fencing and mulch to be installed prior to commencement of any building works as close to calculated TPZ as practicable on site as determined by project arborist.</i> <i>2. Hand excavation to be supervised by project arborist along approved cut for carport adjacent to tree 10 and roots encountered to be cleanly cut.</i> <i>3. Excavation of proposed pier adjacent tree 13 to be supervised by project arborist. Where roots > 25mm in diameter are encountered, footing design to bridge roots so that they are not severed.</i> <i>4. If pruning for clearance from approved works is required for trees 10, 13 or 14 it is to be carried out under supervision of project arborist. Contractor to be insured and AQF Level 3 Arborist and works to be carried out according to AS4373 Pruning amenity trees.</i> <p><i>General:</i> <i>Tree Protection Zone Methodology</i> <i>Tree preservation cannot wait until construction.</i></p> <ul style="list-style-type: none"> <i>• The fencing of tree preservation area should be done before any work is carried out, including clearing and grading. No stockpiling should take place around the root zone of any tree intended for retention.</i> <i>• The inclusion of a mulch layer of composted leaf and woodchip to a depth of 75mm will help retain soil moisture and protect soil from contaminants.</i> <i>• Nothing should occur in the TPZ, so therefore all access to</i>

Internal Referral Body	Comments
	<p><i>personnel and machinery, and storage of fuel, chemicals, cement or site sheds are prohibited.</i></p> <ul style="list-style-type: none"> <i>Tree health is dependent on root health and the majority of non-woody absorption roots are in the top 300mm of soil. Compaction and contamination of this area is a common cause of tree decline and death on development sites.</i> <i>The most appropriate fencing for TPZ is 1.8m chainlink with 50mm metal pole supports. Given the small scale of this development bunting attached to star pickets to delineate TPZ is considered adequate. Signage should explain exclusion from TPZ and carry contact for access or advice.</i> <i>Service trenches should not pass through a fenced area, although if this cannot be avoided, a qualified arborist should be present to supervise excavation, cut torn roots cleanly or redesign around roots.</i> <i>Regular monitoring of protected trees during development works for unforeseen changes or decline, will help maintain healthy trees.</i> <p>8.0 Conclusions:</p> <ul style="list-style-type: none"> <i>Six (6) trees are potentially affected by the proposed works. Trees 12, 15 and 16 are considered setback at distance where no impact will occur.</i> <i>Trees 13 and 14 are subject to a minor encroachment from the proposed works mitigated by existing site conditions and tree sensitive design.</i> <i>Tree 11 is proposed for removal and is a repeatedly topped specimen of poor form located within the proposed carport footprint.</i> <i>Tree 10 is proposed for retention and analysis of root mapping undertaken confirms the tree can be successfully retained subject to adherence to recommended tree protection specifications."</i>
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the following applicable provisions:</p> <ul style="list-style-type: none"> - Pittwater LEP Clause 7.6 (Biodiversity Protection) - Pittwater DCP Clause B4.17 (Littoral Rainforest) - SEPP (Coastal Management) - Littoral Rainforest EEC Proximity Area <p>Compliance with the applicable provisions is dependent upon safe retention of native canopy trees and appropriate sediment/erosion controls to prevent impacts to nearby patches of Littoral Rainforest Endangered Ecological Community (EEC). An arboricultural impact assessment (Tree Consult, December 2019) provides targeted tree protection measures to retain Tree 10 (<i>Banksia integrifolia</i>). Subject to</p>

Internal Referral Body	Comments
	implementation of recommended measures, Council's Biodiversity Section raises no objections. It is noted that further comment/conditions relating to tree protection will be provided by Council's Landscape referral body.
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Proximity to Littoral Forest' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 11,14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clauses 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>However, requirements of the clause 11 will be assessed separately by other branch of the Council</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>
NECC (Development Engineering)	The footpath works were upgraded by Council recently. The concrete pathway denied the established access to this property as identified in the SEE report. No Development Engineering objection subject to conditions.

Internal Referral Body	Comments
NECC (Riparian Lands and Creeks)	<p>Officer comments</p> <p>The application has been assessed in consideration of the State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>The subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Environment Area) is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Proximity to Littoral Forest' and 'Coastal Use Area' maps.</p> <p>It is noted that the project is unlikely to impact the Littoral Forest.</p> <p>On internal assessment, the DA satisfies requirements and no water control conditions applies.</p>
Parks, reserves, beaches, foreshore	<p>The subject property abuts Warriewood Beach Reserve on its south eastern boundary. The topography of the site falls to the south east. To minimise potential erosion impacts on the reserve, sedimentation control has been conditioned.</p> <p>No other issues with the proposal.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</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 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. A366804).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018).

From the perspective of Council's Coastal Officer, it has been stated that the proposal meets the requirements of the SEPP. However, additional planning commentary is provided below:

Accordingly, an assessment under the SEPP has been carried out as follows:

14 Development on land within the coastal use area

(1)

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

- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
- (iv) Aboriginal cultural heritage, practices and places,
- (v) cultural and built environment heritage, and
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal does not satisfy clause 14(1)(a)(iii) above as it does not appropriately minimise impact. As discussed below, the proposal does not satisfy the Land and Environment Court's Planning Principle for View Sharing, from both the public and private realm. Furthermore, the impact can be readily avoided with a design change from a pitched roof to a flat roof, which will not have such a substantial impact on views and scenic amenity.

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

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

Comment:

There is reasonable separation between the dwelling and the ocean so as to appropriately reduce likelihood of increased risk to coastal hazards or other land.

Therefore, the proposal does not comply with all of the requirements (in particular Clause 14) of the State Environmental Planning Policy (Coastal Management) 2018.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.0m	7.7m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.7 Development below mean high water mark	Yes
5.9 Preservation of trees or vegetation	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	1.7m	N/A	NO (see comments)
Side building line	2.5m	8.6m	N/A	YES
	1.0m	1.0m	N/A	YES
Building envelope	3.5m	North: Outside envelope (carport structure and lift)	N/A	NO (see comments)
	3.5m	South: Within envelope	N/A	YES
Landscaped area	50%	63%	N/A	YES

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.3 Greywater Reuse	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	No
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	No	No
D14.1 Character as viewed from a public place	No	No
D14.3 Building colours and materials	Yes	Yes
D14.7 Front building line	No	No
D14.8 Side and rear building line	Yes	Yes
D14.11 Building envelope	No	No
D14.13 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D14.15 Fences - General	Yes	Yes
D14.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D14.18 Scenic Protection Category One Lands	No	No

Detailed Assessment

C1.1 Landscaping

Description of Non-Compliance

Clause C1.1 specifies the following:

"The front of buildings (between the front boundary and any built structures) shall be landscaped to screen those buildings from the street as follows:

- A planter or landscaped area with minimum dimensions of 4m² for shop top housing developments,*
- 60% for a single dwelling house, secondary dwelling, rural workers' dwellings, or dual occupancy, and*
- 50% for all other forms of residential development."*

The proposal involves a landscaped area of 36% in the front of the dwelling, which does not comply with the control.

Merit Consideration

The proposal involves the introduction of a new carport structure adjacent to an existing structure in the frontage. This results in structures occupying the majority of the sites frontage.

As such, the built form will be viewed from the road and public walkway and will not be sufficiently softened and screened by landscaping.

As such, the proposal **does not comply** with the numerical control and is not consistent with the outcomes of the clause.

Therefore, this area of non-compliance is included as a reason for refusal.

C1.3 View Sharing

Merit Consideration

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

- A reasonable sharing of views amongst dwellings.*

Comment:

In determining the extent of potential view loss to adjoining and nearby private properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004), NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

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

Comment:

The proposal involves a carport which is located just below street level in the photo below (taken from the front of 158 Narrabeen Park Parade. The view to be affected is a substantial (or "whole") view of Warriewood Beach which includes the interface of the water with the sand. As such this view is highly valuable from both the front of 103 Narrabeen Park Parade and the

public space (in particular the public walkway).



Photo 1: Taken from 158 Narrabeen Park Parade

2. What part of the affected property are the views obtained

“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is

enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment:

Views are obtained from the front of the property at 158 Narrabeen Park Parade, Mona Vale. These views can be obtained from a front deck area, both from a sitting and standing position.

3. Extent of Impact

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

Comment:

The proposed pitched roof carport will substantially obscure the view of Warriewood Beach from No.158. This involves obscuring of the beach (sand-water interface) by the structure as well as obscuring parts of the water and land. Given the intact nature of the existing view, this impact is assessed as being **moderate to severe**.

4. Reasonableness of the proposal that is causing the impact

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

Comment:

The proposal does not comply with the controls for front building line, building envelope or landscaped area (to the frontage) under the Pittwater 21 DCP. Furthermore, there is the opportunity of modifying the design from a pitched roof (which has greater roof bulk) to a flat roof (which has less roof bulk) and result in substantial improvement to the view sharing. As such, the moderate to severe impact on views caused by the taller and bulkier pitched roof structure is unreasonable.

Note: Further information would be required to determine if a flat roof is acceptable



Figure 1: Montage provided by applicant showing the impact on views and vistas from one angle.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

Comment:

In the circumstances, it is possible to protect, maintain and enhance the views from the scenic walkway and from neighbouring properties with an alternative roof design. As such, views and vistas are not protected maintained or enhanced.

- ***Canopy trees take priority over views.***

Comment:

From the street, the existing view corridors over and around the subject site have a character which is substantially defined by pine trees and other vegetation as well as beach views (see photo 2). The proposed carport would result in an inappropriate visual intrusion of built form into the landscaped setting.



Photo 2: Taken from 158 Narrabeen Park Parade (showing the setting).

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C1.25 Plant, Equipment Boxes and Lift Over-Run

The proposed lift is part of the overall car parking structure. As stated under Clause C1.3, this structure contributes to the unreasonable impact on views.

As such, the proposal does not meet the outcomes of this clause.

D14.7 Front building line

Description of Non-Compliance:

The proposal involves a new carport which has a front building line setback of 1.7m, which does not comply with the numerical control of 6.5m.

Merit Consideration:

Further consideration of the non-compliance will be given in accordance with the outcomes of the control, as below.

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

Comment:

The proposed development is inconsistent with the desired future character of the Warriewood Locality. The location of the carport above the road does not match the predominant form of carparking accommodation in the street. The location and design would have a detrimental impact on the scenic amenity of the area, including interruption of views and vistas.

The proposal **does not comply** with this outcome.

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

Comment:

The proposal will not equitably preserve views and vistas for the surrounding area. This is as a result of the carport structure being in a location in which there are various view corridors towards Warriewood Beach. This is further assessed under Clause C1.3 of this report.

The proposal **does not comply** with this outcome.

- *The amenity of residential development adjoining a main road is maintained.*

Comment:

Not applicable.

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

Comment:

The proposal involves the introduction of a new carport structure adjacent to an existing structure in the frontage. This results in structures being located across the majority of the width of the frontage.

As such, the built form will not be appropriately integrated with landscaping.

The proposal **does not comply** with this outcome.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment:

The proposed works provide for vehicle manoeuvring given the constraints provided by the slope of the site.

The proposal **complies** with this outcome.

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

Comment:

The proposed frontage involves a small pocket of landscaping to the rear of the shed structure and small strips of landscaping to the sides of the site. This does not comply with the numerical control for landscaping (in the frontage) under C1.1, and does not preserve and enhance the character of the escarpment.

The proposal **does not comply** with this outcome.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

Comment:

The proposal involves a carport structure that is above the level of the ridge of the road. This does not complement the predominant form in the area and introducing new built form at this level does not allow natural features to take priority over views and vistas.

The proposal **does not comply** with this outcome.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

The proposal involves a carport structure which is above the ridge of the road. This does not match the predominant form or character of the area and would diminish pedestrian amenity by obscuring views over the escarpment and toward the beach.

The proposal **does not comply** with this outcome.

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

Comment:

The surrounding area is characterised by development which responds to the topography of the land by providing built form generally below the ridge of the road and well integrated with vegetation. The height and scale of the proposed parking structure does not sensitively relate to these spatial characteristics.

The proposal **does not comply** with this outcome.

Based on the above, the proposed development is inconsistent with the outcomes of the control and the non-compliance is not supported.

D14.11 Building envelope

Description of Non-Compliance

The proposal does not comply with the building envelope control on the eastern elevation. This involves a section of the carport and the lift for a length of 600mm.

Merit Consideration

The section of the non-compliant envelope is on the eastern side of the proposed structure and this is in a location that would not have a substantial impact on views (as the main water view corridors are through the centre and west of the site). However, the non-complaint envelope further indicates that a structure with this extent of bulk is incompatible within the scenic area and inconsistent with the desired future character.

As such, the proposal does not meet the outcomes of this clause.

D14.18 Scenic Protection Category One Lands

The location of the proposed carport is within an area of high scenic value as a result of the water views and escarpment characterised by natural features. The proposed carport is above the level of the road and would significantly impact upon the scenic value of the area, including views of the natural environment. In particular, the level of the structure above the street is out of character and contributes to an inappropriate visual impact.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Conclusions on the Assessment of the Application

The proposed carport involves a bulk and scale that is excessive for the streetscape and the context of the area. Furthermore, front setback and height above the road results in a built form that is not complementary and compatible with the established character of the escarpment in the immediate area.

The proposed roof height and roof bulk of the carport would result in an amenity impact and visual impact that is not suitable and appropriate for the area.

On balance, the proposal should be refused as the design is not suitable for the site and locality by virtue of the significant impact on views, vistas and scenic qualities of the area.

Therefore, the application is recommended for refusal.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/0107 for the Alterations and additions to a dwelling house on land at Lot 2 DP 16692, 103 Narrabeen Park Parade, MONA VALE, for the reasons outlined as follows:

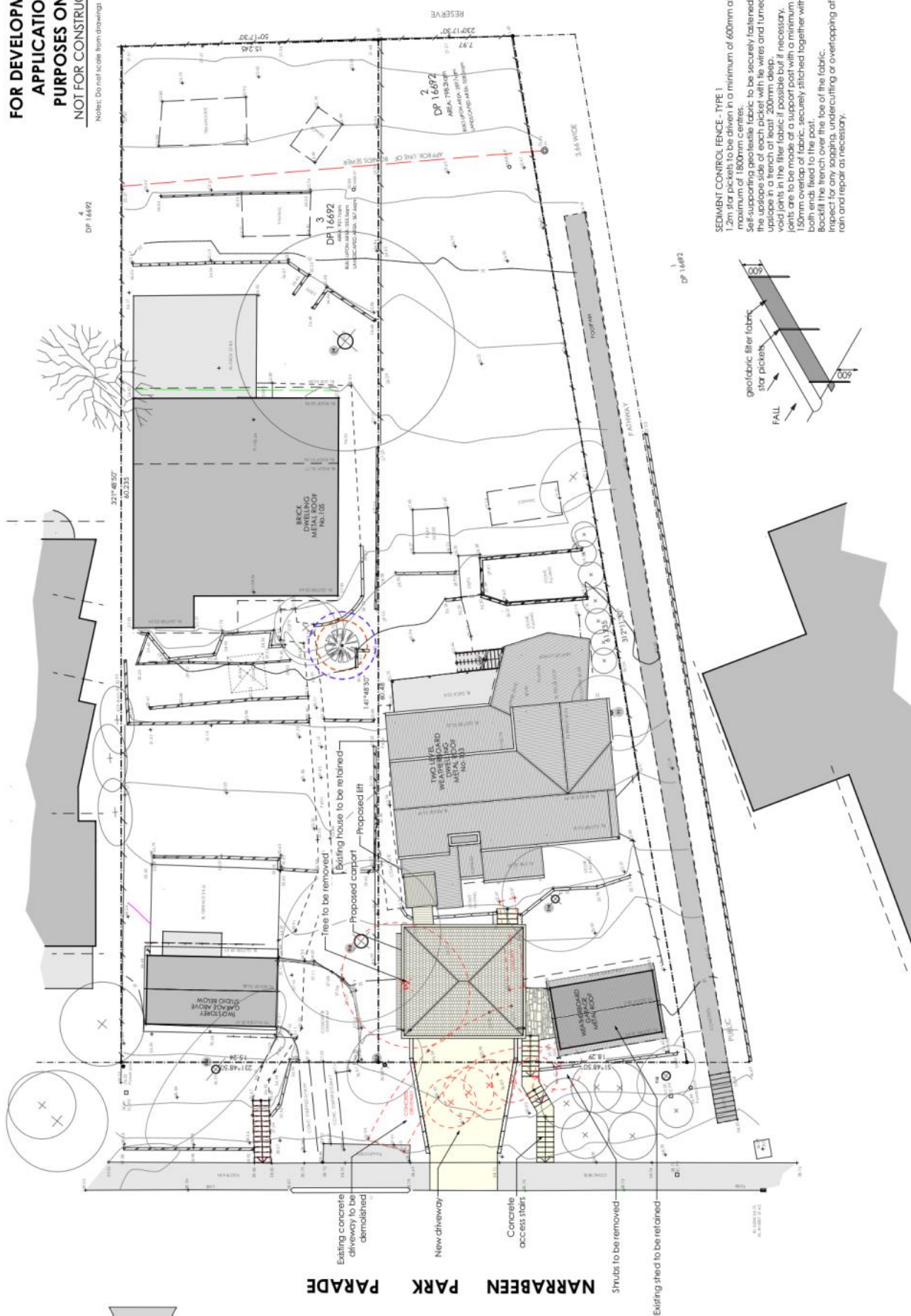
1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.1 Landscaping of the

Pittwater 21 Development Control Plan.

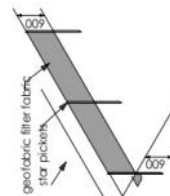
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.3 View Sharing of the Pittwater 21 Development Control Plan.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D14.11 Building envelope of the Pittwater 21 Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D14.18 Scenic Protection Category One Lands of the Pittwater 21 Development Control Plan.

FOR DEVELOPMENT
APPLICATION
PURPOSES ONLY
NOT FOR CONSTRUCTION

Notes: Do not scale from drawings



SEDIMENT CONTROL FENCE, TYPE 1
 1. 12m stakes to be driven in a minimum of 600mm at a maximum of 1800mm centres.
 2. Self-supporting geotextile fabric to be securely fastened to the outside of each stake with the wire and turned up the uplope side of each picket with the wire and turned uplope in a trench at least 200mm deep.
 3. Joint in the filter fabric if possible but if necessary, joints are to be made at a support post with a minimum of 150mm overlap of fabric, securely stitched together with both ends tied over the post.
 4. Backfill the trench over the toe of the fabric.
 5. Inspect for any sagging, undercutting or overlapping after rain and repair as necessary.



DEVELOPMENT APPLICATION

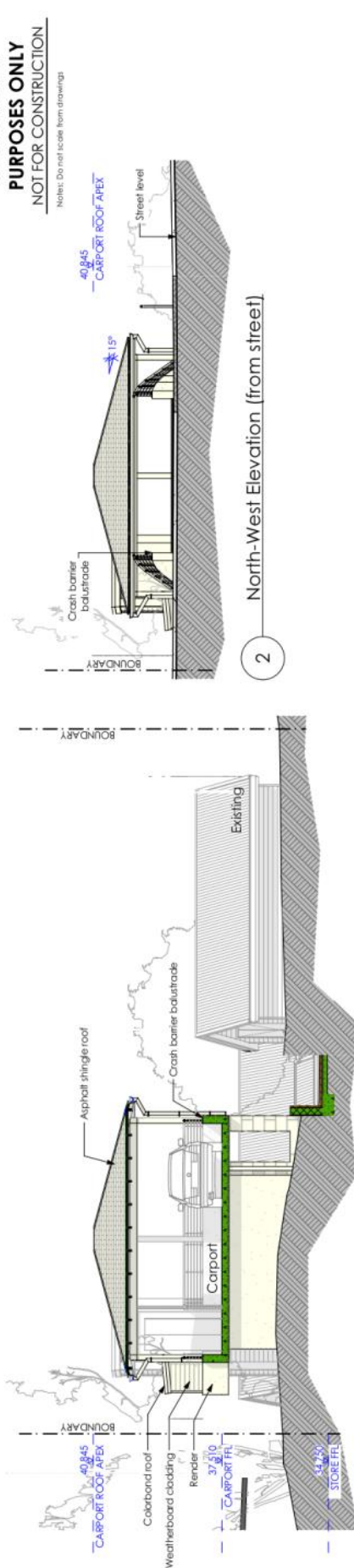
Site Plan Demolition & Sediment Control Plan

Proposed Carport, Store and Lift
at 103 Narrabeen Park Parade Mona Vale NSW 2103
for R & S Nichols

James de Soyres
+ Associates

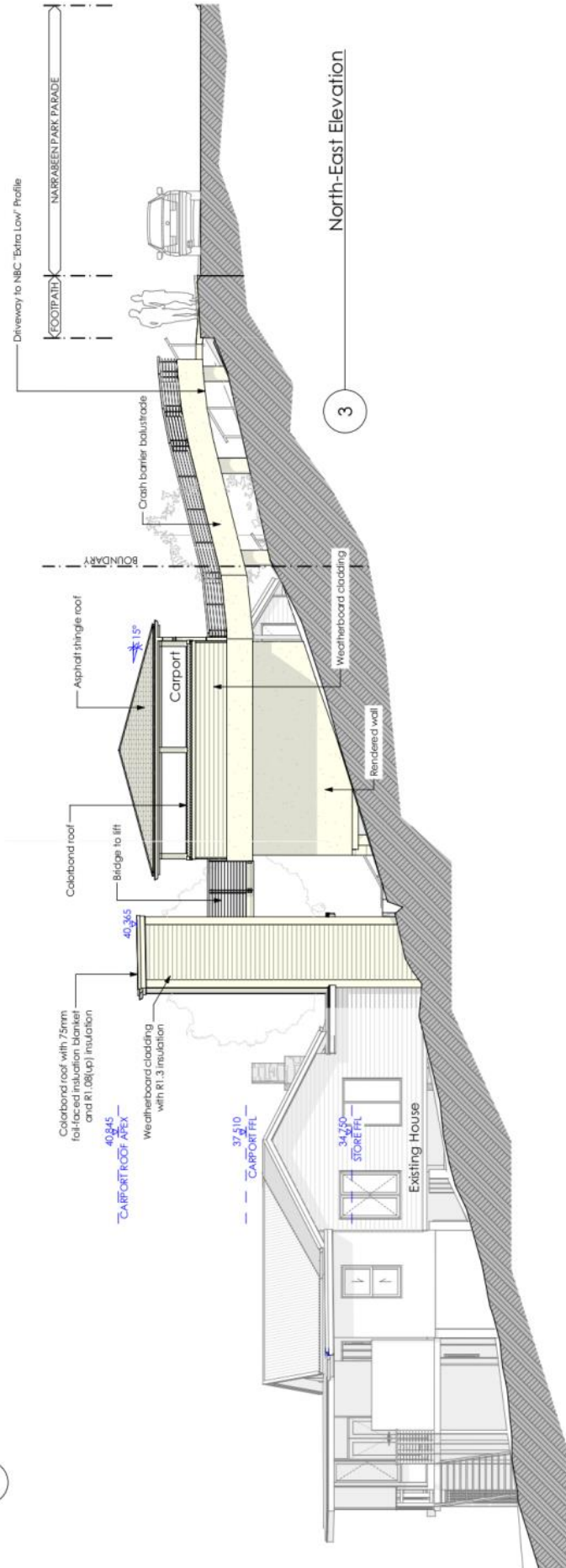
Nominated Architect; Reg. No. 6769
PO Box 657, Newport Beach, NSW 2106
(02) 9979 1823
contact@jdesa.com.au
www.jdesa.com.au

**FOR DEVELOPMENT
APPLICATION
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2 North-West Elevation (from street)

1 North-West Elevation



3 North-East Elevation

Notified Architect Reg. No. 6749
PO Box 457 Newport Beach, NSW 2106
t 02 9979 1823
e contact@jdsra.com.au
www.jdsra.com.au

James de Soyres
+ Associates
a r c h i t e c t s

Proposed Carport, Store and Lift
at 103 Narrabeen Park Parade Mona Vale NSW 2103
for R & S Nichols

DEVELOPMENT APPLICATION

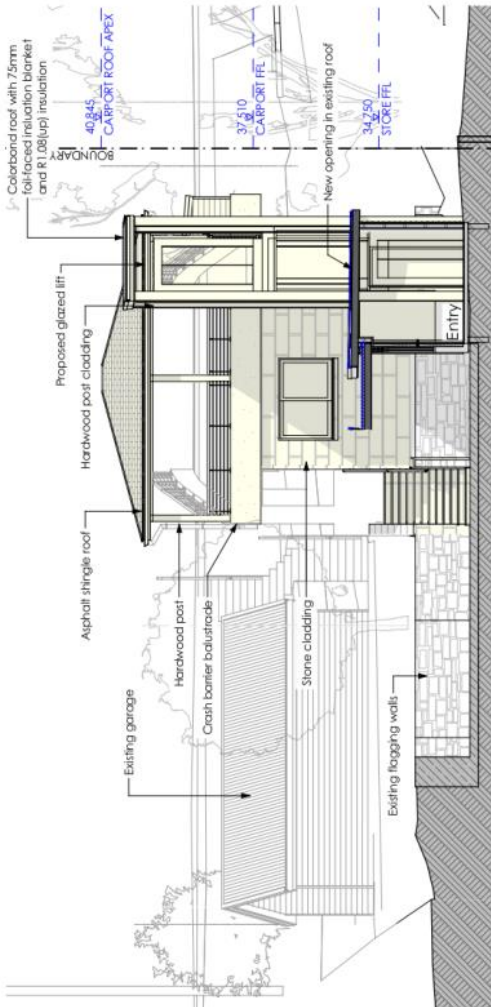
North-West & North-East Elevations

Scale: 1:100
Date: 16/12/2019
Project: 1905a
Drawing: DA-20



FOR DEVELOPMENT
APPLICATION
PURPOSES ONLY
NOT FOR CONSTRUCTION

Notes: Do not scale from drawings



South-East Elevation

2

Driveway to N8C "Extra Low" Profile

NARRABEEN PARK PARADE

TOOTHPATH

Driveway to N8C "Extra Low" Profile

NARRABEEN PARK PARADE

TOOTHPATH

Driveway to N8C "Extra Low" Profile

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NARRABEEN PARK PARADE

TOOTHPATH



ASPHALT SHINGLE ROOF
"Driftwood"



STONE CLADDING
Sandstone



DRIVEWAY
Concrete



ROOF CLADDING
COLORBOND
"Basalt"



FC WEATHERBOARD
CLADDING



RENDER



South-West Elevation

1

James de Soyres
+ Associates
architects

Proposed Carport, Store and Lift
at 103 Narrabeen Park Parade Mona Vale NSW 2103
for R & S Nichols

DEVELOPMENT APPLICATION
South East & South West Elevations, Exterior
Finishes

Scale: 1:100
Date: 16/12/2019
Project: 1905a DA-21