

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 24 JUNE 2020



Ashleigh Sherry
Manager Business Systems and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 24 June 2020

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 10 JUNE 2020

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 10 June 2020 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2020/0302 - 41 UPPER CLIFFORD AVENUE, FAIRLIGHT - DEMOLITION WORKS AND CONSTRUCTION OF MULTI DWELLING HOUSING
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2020/350391
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2020/0302 for demolition works and construction of multi dwelling housing on land at Lot 6 Sec H DP 3742, 41 Upper Clifford Avenue, Fairlight, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0302
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 6 DP 3742, 41 Upper Clifford Avenue FAIRLIGHT NSW 2094
Proposed Development:	Demolition works and construction of multi dwelling housing
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Phillip Leonard Cox Julie Anne Cox
Applicant:	H P G Fairlight Project Pty Ltd & Carl O Peterson
Application Lodged:	24/03/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	04/04/2020 to 22/04/2020
Advertised:	04/04/2020
Submissions Received:	9
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 3,800,000.00

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application DA2020/0302 for demolition works and construction of multi dwelling housing at 41 Upper Clifford Avenue, Fairlight. The proposal is referred to the Development Determination Panel (DDP) for review and determination, given the number of objections received and the estimated cost of works.

The proposed development is compliant with the development standards of the *Manly Local Environmental Plan 2013* (MLEP 2013). The proposed development required a merit assessment in relation to wall height, number of storeys, side setbacks, and parking controls of the Manly Development Control Plan 2013 (MDCP 2013), though the non-compliant elements were minor in nature and acceptable on merit.

The proposed development received nine objections in relation to view loss, loss of property value, built form non-compliance, traffic and parking, geotechnical concerns, impacts to privacy impacts and sunlight, lack of neighbour consultation, and inadequate information.

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 for a multi dwelling housing development, as follows:

- Building A - Fronting Upper Clifford Avenue:
 - Detached two-storey dwelling with double garage:
 - Unit 1 Lower FFL RL 54.93
 - Unit 1 Upper FFL RL 58.03 (Entry at FFL RL 59.53)
 - Garage FFL RL 59.90
- Building B - Fronting Lauderdale Avenue:
 - Basement car parking for four cars, storage and services (FFL RL 33.45);
 - Two x two-storey attached dwellings:
 - Unit 3 Lower: FFL RL 41.59
 - Unit 3 Upper: FFL RL 44.69
 - Unit 2 Lower: FFL RL 47.79
 - Unit 2 Upper: FFL RL 50.69
- Stormwater works; and
- 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

Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot 6 DP 3742 , 41 Upper Clifford Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Upper Clifford Avenue, Fairlight with a secondary frontage to Lauderdale Ave to the south.</p> <p>The site is irregular in shape with frontages of 15.24m along Upper Clifford Avenue and 15.575m along Lauderdale Avenue, with an average depth of 50m. The site has a surveyed area of 770.2m².</p> <p>The site is located within the R1 General Residential zone and accommodates a two-storey detached dwelling.</p> <p>The site slopes steeply (approximately 18m) from north to south, and includes a mixture of vegetation types.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwelling houses and residential flat buildings of varying (multiple) levels.</p>

Map:



SITE HISTORY

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

- Pre-lodgement Meeting PLM2019/0201 was held on 10 October 2019 discuss construction of a multi dwelling housing development.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <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 Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and</p>

Section 4.15 Matters for Consideration'	Comments
	proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 9 submission/s from:

Name:	Address:
Mrs Mary Monica Thwaites	48 Upper Clifford Avenue FAIRLIGHT NSW 2094
Mr Bruno Cara	39 Upper Clifford Avenue FAIRLIGHT NSW 2094
Mr Michael John Gale Kerstin Gale	3 / 43 Upper Clifford Avenue FAIRLIGHT NSW 2094
Ms Vanessa Lansdown Andrew Keayes	50 Upper Clifford Avenue FAIRLIGHT NSW 2094
Mr Simon John Phillips Jody Phillips	42 Upper Clifford Avenue FAIRLIGHT NSW 2094
Mr Graeme Robert Plowman Mrs Jo-Ann Chris Plowman	46 Upper Clifford Avenue FAIRLIGHT NSW 2094
Mr Benedict Anselm Krupowicz	2 / 43 Upper Clifford Avenue FAIRLIGHT NSW 2094
Ms Katherine Margaret Kulaga	1 / 43 Upper Clifford Avenue FAIRLIGHT NSW 2094
Watermark Planning	PO Box 445 FORESTVILLE NSW 2087

The following issues were raised in the submissions:

- Plan and documentation deficiencies:

- Distance between new works and boundaries (and any non-compliances) are not shown.
- Wall structure type and thicknesses are not shown.
- Elevations and sections do not show reduced levels (RLs) for structures or ground, or are incorrect.
- Plans do not show roof pitch or eave width.
- Survey does not demonstrate the existing cliff on the subject site.
- Digital view perspectives and height impressions are incorrect.
- Plans show the garage fronting Upper Clifford Avenue at two different heights.
- Existing buildings on the site are not shown for comparison.
- Demolition plans are not provided.
- The height of building breaches the development standard, but no written request to vary the development standard has been provided.
- The proposal breaches the maximum number of storeys allowable.
- Excessive floor space ratio, adding bulk and scale.
- Non-compliant front and side setbacks.
- View loss resulting from the proposed built form and proposed trees.
- Concern regarding visual privacy impacts.
- Concern regarding noise impacts from the bin storage area fronting Upper Clifford Avenue.
- Concern regarding overshadowing impacts.
- Concern regarding construction traffic in Ashley Parade and Upper Clifford Avenue.
- Loss of on-street parking to Upper Clifford Avenue.
- The proposed garage fronting Upper Clifford Avenue blocks ventilation screens at 39 Upper Clifford Avenue.
- Lack of consultation with neighbours.
- Concern regarding geotechnical stability.
- The void in Building B may be converted into habitable space.
- Loss of property value.

The matters raised within the submissions are addressed as follows:

Plan and Documentation Deficiencies

Comment:

The specific matters listed in submissions as plan and documentation deficiencies are addressed as follows:

- In relation to the dimensions of a proposed development (such as setbacks and height), the Assessing Officer carries out their own measurements. These measurements are relied upon for ascertaining any non-compliances and for assessment of the proposed development.
- The wall thicknesses shown on plans are taken to be true and correct, though there is no control relating to minimum or maximum wall thickness or acceptable wall structure types to be considered as part of this assessment.
- Plans demonstrate a suitable amount of information in relation to RLs for the Assessing Officer to ascertain the heights of the development relative to the ground levels.
- Plans do not demonstrate roof pitch or eave width because a flat roof form is proposed, with no eaves.
- The survey is prepared by a registered surveyor, so can be relied upon for assessment. The survey identifies the rock cliff.
- Digital view perspectives and height impressions are for indicative purposes only, and are not relied upon for assessment.
- The submitted plans relied upon for assessment consistently demonstrate the garage fronting Upper Clifford Avenue at the same height, being 3.1m above finished floor level (equating to RL 63.00), and 1.3m lower than the garage at 39 Upper Clifford Avenue. The garage height shown

on view perspectives is not relied upon for assessment.

- Existing structures on the site are shown on the survey, site analysis plan and site plan. This provides sufficient information for the Assessing Officer to carry out a full assessment.
- Demolition plans are not considered necessary as all structures existing on site are to be demolished.

Built Form - Height / Storeys / Floor Space Ratio / Setbacks

Comment:

The proposed development compliance with the height of building development standard set by Clause 4.3 of the Manly Local Environmental Plan 2013, in accordance with the interpretation set by the NSW Land and Environment Court, which stipulates height is to be taken from the level of the land in an undisturbed state (i.e. before any excavation or fill). The proposed development is also compliant with the floor space ratio development standard set by Clause 4.4 of the Manly Local Environmental Plan 2013. The proposed development includes front setbacks to both Lauderdale Avenue and Upper Clifford Avenue that are consistent with the prevailing building lines along each frontage. The development's non-compliance with maximum number of storeys and side setbacks are addressed in the sections of this report relating to Clauses 4.1.2 and 4.1.4 of the Manly Development Control Plan 2013, respectively.

Amenity - View Loss / Privacy / Noise / Overshadowing

Comment:

The proposed development acceptable in relation to solar access, visual privacy, and view loss, as detailed in the sections of this report relating to Clauses 3.4.1, 3.4.2, and 3.4.2 of the Manly Development Control Plan 2013, respectively. The bin storage area fronting Upper Clifford Avenue is allocated to Unit 1 only, being a single dwelling. As such, use of that area will not raise any noise or traffic concerns above that expected of a single residential dwelling.

Traffic and Parking - Upper Clifford Avenue

Comment:

The Traffic Management Plan has been reviewed by Council's Traffic Engineer, who raises no concern regarding the proposed construction traffic management measures proposed, subject to conditions of consent.

Concern was raised about loss of on-street parking to Upper Clifford Avenue. The wider driveway crossing is proposed to the Upper Clifford frontage amounts to a loss of approximately one half of a parking space, but allows for an additional one off-street parking space. As such, there is greater benefit to widening the driveway to provide two off-street parking spaces.

It is understood the existing garage structure outline shown dotted on plans is incorrect, in that it is portrayed higher than in reality. However, using extrapolated reduced levels, it can be established that the proposed garage fronting Upper Clifford Avenue is proposed to be approximately 61cm above the existing garage, reaching a height of RL 63.00. The proposed garage fronting Upper Clifford Avenue is 1.27m lower than the parapet level of the existing garage at 39 Upper Clifford Avenue, and does not block the existing ventilation screens on its western facade.

Neighbour Consultation

Comment:

There is no legislative requirement for an Applicant to engage in consultation with neighbouring or surrounding properties prior to lodgement of a development application. Neighbours are notified of development applications and provided opportunity to comment via Council's notification process.

Geotechnical Stability

Comment:

The proposed development and the submitted geotechnical report have been reviewed by Council's

Development Engineer, who raises no concern about the site's stability and capability to support the proposed development, subject to conditions of consent.

Building B Void

Comment:

A condition of consent has been recommended, requiring that the void remain as such and not be used as habitable space, without prior consent.

Property Value

Comment:

Change in property value as a result of development is not a matter for consideration under the *Environmental Planning and Assessment Act 1979*.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposed development is for the proposed demolition of the existing site structures and the construction of multi dwelling housing on the site comprising 3 dwellings with integrated carparking and landscape works.</p> <p>Council's Landscape Referral section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically: 3.3.1 Landscaping Design; and 4.1.5 Open Space and Landscaping.</p> <p>A Landscape Plan and Arboricultural Impact Assessment are submitted in accordance with Council's DA Lodgement Requirements.</p> <p>The existing site landscape contains one existing Cheese Tree of a height greater than 5 metres and this has been heavily pruned in the past for views, diminishing its amenity value, and is located within the building footprint, various smaller mixed planting under 5 metres in height that are exempt species, and scattered rock outcrops. The Cheese Tree, smaller vegetation and rock outcrops are proposed for removal and a landscape scheme is proposed enhancing the landscape amenity of the site.</p> <p>The landscape component of the application is supported subject to tree protection measures to ensure the protection of existing trees within adjoining properties, and the completion of landscape works including tree planting with conditions imposed on the height of selected trees no higher than adjoining building heights, in consideration of 3.3.1 Landscaping Design b) iii) trees should be positioned in locations that minimise significant impacts on neighbours in terms of blocking winter sunlight to either living rooms, private open space or solar collectors; or where the proposed location of the tree may be otherwise positioned to minimise any significant loss of views.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to conditions of consent.
Road Reserve	No objection to impact on existing footpath. Development

Internal Referral Body	Comments
	Engineering to ensure requirement for Road Act approval for footpath bridging is included in the consent conditions.
Strategic and Place Planning (Urban Design)	The proposed design has addressed the issues highlighted in the Pre-Lodgement Meeting satisfactorily with reduction in: apartment yield from 4 to 3, building height, excavation and the maintenance of a single storey presentation to Upper Clifford Avenue. The proposed built forms provide appropriately for spatial separation, deep soil landscape opportunity, privacy, solar access and view sharing.
Traffic Engineer	<p>Demolition of the existing building and construct 3, three (3) bed room apartments at 41 Upper Clifford Avenue, Fairlight.</p> <p>Total area 770m²</p> <p>Traffic:</p> <ul style="list-style-type: none"> Site has two (2) frontages about 15m <ul style="list-style-type: none"> Upper Clifford Avenue – Northern frontage - Local Road- 2way 2 lane Rd, 50km/h Lauderdale Avenue – Southern frontage - Regional Road Traffic Management Plan: <p>TMP has been submitted includes demolition, excavation and construction</p> <ul style="list-style-type: none"> Demolition – 3 weeks; max size of vehicle: Heavy Rigid 12.5m length, average 1 vehicle movements (in and out) / day Excavation – 7 weeks; max size of vehicle: Heavy Rigid 12.5m length, average 2 vehicle movements (in and out) / day Construction – 60 weeks; max size of vehicle: Heavy Rigid 12.5m length, average 3 vehicle movements (in and out) / day during concrete pour max 10 concrete trucks. All concrete pours within construction zone. Ingress (Sydney Rd – Woods Pde- Hilltop Cr-Fairlight St- Ashley Pd – Upper Clifford Ave) & Egress (Ashley Pd – Hilltop Cr – Hill St- Sydney Rd) routes are ok. Development requires 15m construction zone and B class hoarding on Upper Clifford Ave.

Internal Referral Body	Comments
	<ul style="list-style-type: none"> - Loading and unloading within the workzone at Upper Clifford Ave – Vehicles managed by traffic controllers – maintained no queuing. - No road closures. - Workers have been encouraged to use public transport. - No impacts on public transport or emergency vehicles. - Try to avoid peak hour traffic. - TCPs on different phase looks OK. However relevant permits to be obtained. - Swept paths are satisfied. <p>CTMP looks satisfactory and it should be implemented accordingly.</p> <ul style="list-style-type: none"> • Traffic generation: <p>Negligible and no concern.</p> <p>Public transport</p> <p>Available and no impacts.</p> <p>Parking:</p> <ul style="list-style-type: none"> • Required <ul style="list-style-type: none"> - Parking Rate According to Manly DCP: - 1 resident space per apartment plus - 0.5 resident spaces per 3 bed apartment plus - 0.25 visitor spaces per apartment - Spaces <ul style="list-style-type: none"> - 3 x Three-bedroom apartments = 3 X 1.5 = 4.5 spaces

Internal Referral Body	Comments
	<p>round off to 5 space</p> <p>- Visitors (3 apartments) = 0.75 space round off to 1 space</p> <p>Total required spaces = 6</p> <ul style="list-style-type: none"> • Provided 6 spaces including 1 visitor parking space • Bicycles: <p>Provision for bicycles at the residents' store area.</p> <p>Parking provisions satisfy the requirements.</p> <p>Access and circulation swept paths:</p> <ul style="list-style-type: none"> • Access: <ul style="list-style-type: none"> - Reconstructing the existing driveway at Upper Clifford Ave with a combined width of 6m. - Providing a new combined driveway of 6m wide at Lauderdale Ave. - exit/entry in a forward direction - Vehicular crossing and driveway should comply with AS2890. <p>Two (2) driveways proposed for the development. By considering the site constraints and each driveway in each frontage this can be accepted.</p> <ul style="list-style-type: none"> • Roller door at basement level. • Swept paths <ul style="list-style-type: none"> - Generally satisfied. <p>Pedestrian safety: No concerns.</p> <p>Servicing: Loading and unloading with small vehicles can use visitor parking.</p>

Internal Referral Body	Comments
	<p>Waste collection and other larger vehicles use on-street parking.</p> <p>Ongoing</p> <p>All facilities should be maintained throughout the lifetime of project.</p> <p>Conclusion</p> <p>In view of the above, the development proposal can be approved with conditions.</p>
Waste Officer	Proposal is approved with conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response in an email stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1073822M dated 16 March 2020). The BASIX Certificate indicates that the development will achieve the following:

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who provided a response in an email stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Building A: 8.4m Building B: 7.9m	-	Yes

Floor Space Ratio	0.6:1 (462.12sqm)	0.59:1 (461.4sqm)	-	Yes
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Building A - Fronting Upper Clifford Avenue (Unit 1)
Building B - Fronting Lauderdale Avenue (Units 2 and 3)

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

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

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

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

Comment:

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

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

Comment:

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

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

Comment:

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

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

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties.

Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

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

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

Comment:

Conditions are included in the recommendation of this report that will minimise the impacts of the development.

6.4 Stormwater management

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

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

Comment:

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

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

Comment:

On-site stormwater retention has been incorporated into the development.

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

Comment:

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

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

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

Comment:

The proposed development shall have no unreasonable impact on the visual aesthetic amenity of the area. The proposed development does not unreasonably impact upon views, is suitably designed to protect and impact the scenic quality of the coastline, is suitable for the site and its relationship to the foreshore due to its design and finishes, and does not result in any conflict between land-based and water-based coastal activities.

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable vehicular access.*

Comment:

The subject site is currently supplied with water, electricity and sewage services. The proposed development is supported by suitable stormwater management and vehicular access arrangements.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 770.2sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Min. 250sqm per dwelling	3 dwellings on 770.2sqm lot (256.73sqm per dwelling)	-	Yes
	Dwelling Size: Unit 1: Min. 90sqm Unit 2: Min. 100sqm Unit 3: Min. 100sqm	Unit 1: Min. 161.3sqm Unit 2: Min. 150.6sqm Unit 3: Min. 149.5sqm	-	Yes
4.1.2.1 Wall Height	Building A East:	Building A East:	-	Yes

	Max. 8m (based on gradient >1:4) Building A West: Max. 8m (based on gradient >1:4)	3.5m to Lower Ground 6.2m to Ground Floor Building A West: 3.5m to Lower Ground 6.2m to Ground Floor		
	Building B East: Max. 8m (based on gradient >1:4) Building B West: Max. 8m (based on gradient >1:4)	Building B East: Ground Floor underground 3.2m to First Floor 5.8m to Second Floor 6.2m to Third Floor Building B West: 2.9m to Ground Floor 6.3m to First Floor 6.2m to Second Floor 9m to Third Floor	Building B East: - Building B West: 12.5% (Building B West Third Floor)	Yes No
4.1.2.2 Number of Storeys	Max. 2 Storeys	Building A: 2	-	Yes
		Building B: 6	200%	No
4.1.2.3 Roof Height	Height: Max. 2.5m	Building A: 2.1m	-	Yes
		Building B: 1.9m	-	Yes
	Pitch: Max. 35 degrees	Building A: 14.5 degrees	-	Yes
		Building B: 9.5 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Building A: 0m to Garage 6m to Building	-	Yes - Consistent with streetscape
		Building B: 0m to Basement 6.1m to Building	-	Yes - Consistent with streetscape

4.1.4.2 Side Setbacks and Secondary Street Frontages	Building A East: 1.17m to Lower Ground 2.07m to Ground Floor Building A West: 1.17m to Lower Ground 2.07m to Ground Floor	Building A East: 1.3m to Lower Ground 1.3m to Ground Floor 400mm to Stairs 0m to Garage Building A West: 2.9m to Lower Ground 2.9m to Ground Floor	Building A East: 37.19 to Ground 65.8% to Stairs 100% to Garage Building A West: -	Building A East: No Building A West: Yes
	Building B East: 1.17m to First Floor 1.93m to Second Floor 2.07m to Third Floor Building B West: 960mm to Ground Floor 2.1m to First Floor 2.07m to Second Floor 3m to Third Floor	Building B East: 3.4m to First Floor 3.4m to Second Floor 3.4m to Third Floor 900m to Stairs Building B West: 1.1m to Ground Floor 1.1m to First Floor 1.1m to Second Floor 1.8-2.6m to Third Floor	Building B East: 23% to Stairs Building B West: 47.6% to First Floor 46.8% to Second Floor 40% to Third Floor	No
	Windows: Min. 3m	Min. 2.9m	3.3%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space: Min. 55% of site area (423.61sqm)	69.3% (533.6sqm)	-	Yes
	Above Ground: Max. 40% of TOS (213.44sqm)	33% (176.3sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 35% of TOS (186.76sqm)	54% (288.6sqm)	-	Yes
	3 native trees	3 trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm per dwelling	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% frontage, up to 6.2m	Building A: 43.3% / 6.6m	6%	No
		Building B:	-	Yes

		39.8% / 6.2m		
Schedule 3 Parking and Access	Residential: 1 space per dwelling: 3 0.5 spaces per 3-bed dwelling: 1.5 = 2 Total: 5 spaces Visitor: 0.25 visitor spaces per dwelling; 0.75 = 1 Total: 1 space	Residential: 5 spaces Visitor: 1 space	-	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Shadow diagrams for the winter solstice demonstrate that the subject site and adjacent sites are almost completely overshadowed during mid-winter, with the existing development. The proposed development results in a minor increase to that overshadowing. It should be noted that the subject site and adjacent sites are particularly vulnerable to overshadowing, particularly in winter. This is directly attributable to the orientation of the lots (being generally north-south, and the topography of the land, which falls steeply to the south. The subject sites and adjacent sites experience a significant level of self-shadowing. The proposed development is considered in relation to the relevant objectives of this clause as follows:

Objective 1) To provide equitable access to light and sunshine.

Comment:

The submitted shadow diagrams demonstrate that the proposed development will not lead to an unreasonable increase to overshadowing of the subject site or adjacent sites, attributable to the significant break in built form through the centre of the block, and compliant height and bulk. In that way, the proposed development allows equitable access to light and sunshine for the subject site and adjacent sites.

Objective 2) To allow adequate sunlight to penetrate:

- private open spaces within the development site; and
- private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.

Comment:

The proposed development allows adequate sunlight to penetrate living/habitable rooms and principal outdoor areas of adjacent properties, as a result of the centre break in built form, and the compliant height and bulk.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The proposed development modulates the bulk of the development as it steps with the topography of the land and includes a significant break in the built form through the centre of the block, as well as the compliant height and bulk.

3.4.2 Privacy and Security

The proposed development is assessed as acceptable in relation to this control. However, objections from adjoining properties raised concern about privacy. As such, the objectives are addressed in relation to development as follows:

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

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

Comment:

The proposed development is appropriately designed to minimise the loss of privacy to adjacent and nearby development with the inclusion of privacy screening where appropriate, and generally restricting the location of windows and balconies to the front and rear elevations. Where windows are orientated to the sides, they are narrow and screened, in accordance with the requirements of this control. Given these design features, the proposed development mitigates direct viewing between windows and outdoor areas of the subject site and adjacent sites.

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

Comment:

As above, the proposed development is suitably designed to provide adequate privacy for adjacent sites without compromising access to light and air for the subject site. The outlook and views from habitable rooms and private open space is balanced in that overlooking is minimised, but views from the subject site are still available.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development includes windows, balconies and terraces orientated to the street frontages, thereby encouraging awareness of neighbourhood security through passive surveillance.

3.4.3 Maintenance of Views

Nine surrounding neighbours have objected to the proposal on the grounds of view loss, from their own properties, and from the public domain. As such, the development is considered against the objectives of the control:

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

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and

from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths). Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

The objectives of the control are taken to be addressed by assessment of the relevant NSW Land and Environment Court (LEC) planning principles detailed below.

Assessment of Views - Private Property

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

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

Comment:

Step 1 is addressed collectively with Steps 2 and 3 for each individual objecting property below.

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:

Step 2 is addressed collectively with Steps 1 and 3 for each individual objecting property below.

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

Comment:

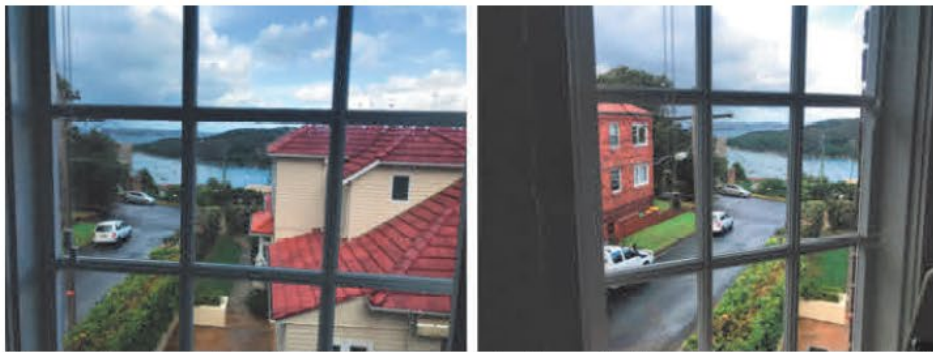
Step 3 is addressed collectively with Steps 1 and 2 for each individual objecting property below.

1 Ashley Parade, Fairlight:

The affected view is available from the ground floor living room and sun room, and the first floor master bedroom and study, from standing and seated positions, across the southern side boundary. The affected view contains other properties, North Harbour, Dobroyd Head, distant views of South Head, and the interface between those heads and the harbour. The harbour and heads are considered locally iconic elements of the view. At the ground floor of the affected property, the proposed development will likely cause the loss of the majority of the lower harbour view, but the view to Dobroyd Head, South Head and the upper portion of harbour be retained. At the first floor of the affected property, the proposed development will likely cause the loss of a small portion of the lower harbour view, but the view to Dobroyd Head, South Head, and the interface between those heads and the harbour will be retained. The overall loss of view is considered moderate, given the reasonableness of the development as detailed below at Step 4.



Above: The views from the ground floor living room (left) and sunroom (right) at 1 Ashley Parade, from a standing position, looking south towards the subject site.



Above: The views from the first floor master bedroom (left) and study (right) at 1 Ashley Parade, from a standing position, looking south towards the subject site.

39 Upper Clifford Avenue, Fairlight

The affected view is a corridor view available from a window at the ground floor living area, from standing and seated positions, across the western side boundary. The affected view contains the existing rooftop at the subject site, North Harbour, Dobroyd Head, and the interface between the head and the harbour. The harbour and head are considered locally iconic elements of the view. The proposed development will likely cause a portion of view loss to this corridor, due to the proposed lower and upper southern balconies of Unit 1 on the subject site. However, the affected property retains a panoramic view towards the south, across the rear boundary, from standing and seated positions from the kitchen, living room, dining room, and balcony. This view contains Smedley's Point, North Head, Quarantine Station, South Head, Dobroyd Head, North Harbour, North Harbour Reserve, and the distant ocean horizon between the heads. These elements are considered iconic, and more valuable than the corridor view, as they are unobstructed and likely to remain largely unaffected in perpetuity. As such, the overall loss of view is considered negligible.



Above: The view from the ground floor living area at 39 Upper Clifford Avenue, from a standing position, looking south-west across the subject site.



Above: The whole view from the balcony of 39 Upper Clifford Avenue, from a standing position, looking south-east, south, and south-west.

42 Upper Clifford Avenue, Fairlight

The affected view is available from the master bedroom and associated terrace, from a standing position, across the southern front boundary. The affected view contains other properties, large mature trees, and largely obstructed glimpses of North Harbour and North Harbour Reserve, through the foliage of those trees. The proposed development will likely cause the loss of one of those corridor glimpses. However, the view to North Harbour Reserve will be retained. Additionally, the affected property benefits from views to Smedley's Point, North Head, Quarantine Station, and North Harbour to the south-east, which will remain unaffected by the proposed development. As such, the overall loss of view is considered negligible.



Above: The views from the master bedroom terrace at 42 Upper Clifford Avenue, from a standing position, looking south-west towards the subject site.



Above: The view from the master bedroom terrace at 42 Upper Clifford Avenue, from a standing position, looking south-east away from the subject site.

Unit 1, 43 Upper Clifford Avenue, Fairlight

There are two affected views from this property. The first affected view is a corridor view from the third bedroom, from a standing position, across the eastern side boundary. The affected view contains partial views of North Harbour, Dobroyd Head, and South Head in the distance, obscured by the existing development on the subject site, other properties, and some vegetation. The second affected view is a panoramic view towards the south across the secondary street frontage (Lauderdale Avenue), available from standing and seated positions, from the kitchen, living room, dining room and balcony. This view contains Smedley's Point, North Head, Quarantine Station, South Head, Dobroyd Head, North Harbour, North Harbour Reserve, and the distant ocean horizon between the heads. Like at 39 Upper Clifford Avenue, these elements are considered iconic, and more valuable than the bedroom corridor view, as they are unobstructed and likely to remain largely unaffected in perpetuity. The proposed development is likely to obscure only a small portion of the view, and the portion lost is of other properties only, rather than any iconic elements. As such, the overall loss of view is considered negligible.



Above: The view from the third bedroom window of Unit 1, 43 Upper Clifford Avenue, from a standing position, looking south-east to the subject site.



Above: The view from the balcony of Unit 1, 43 Upper Clifford Avenue, from a standing position, looking south-east, south, and south-west.

Unit 2, 43 Upper Clifford Avenue, Fairlight

The affected view is a panoramic view towards the south across the secondary street frontage (Lauderdale Avenue), available from standing and seated positions, from the living room and balcony. This view contains Smedley's Point, North Head, Quarantine Station, South Head, Dobroyd Head, North Harbour, North Harbour Reserve (obscured by a mature pine tree), and the distant ocean horizon between the heads. Like at Unit 1 of 43 Upper Clifford, these elements are considered iconic. However, these elements are generally unobstructed and likely to remain largely unaffected in perpetuity. The proposed development is likely to obscure only a small portion of the view towards the east, and the portion lost is of other properties only, rather than any iconic elements. As such, the overall loss of view is considered negligible.



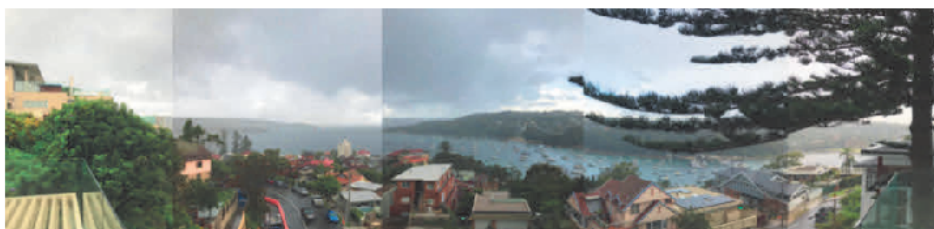
Above: The view from the balcony of Unit 2, 43 Upper Clifford Avenue, from a standing position, looking south-east, south, and south-west.

Unit 3, 43 Upper Clifford Avenue, Fairlight

There are two affected views from this property. The first affected view is from the master bedroom, from standing and seated positions, across the secondary street frontage (Lauderdale Avenue). This view contains this view contains Smedley's Point, North Head, Quarantine Station, South Head, Dobroyd Head, North Harbour, North Harbour Reserve (obscured by a mature pine tree), and the distant ocean horizon between the heads. The second affected view is a panoramic view towards the south across the secondary street frontage (Lauderdale Avenue), available from standing and seated positions, from the living room and balcony. This view contains the same elements as the master bedroom view, but in a wider capacity. Like at Units 1 and 2 of 43 Upper Clifford, these elements are considered iconic. However, these elements are generally unobstructed and likely to remain largely unaffected in perpetuity. The proposed development is likely to obscure only a small portion of the view towards the east for both available views, and the portion lost is of other properties only, rather than any iconic elements. As such, the overall loss of view is considered negligible.



Above: The view from the master bedroom of Unit 3, 43 Upper Clifford, from a standing position, looking south-east towards the subject site. It is important to note that this is not the whole view from the master bedroom. The view extends around to the south, and south-west, similar to that show below, but from a lower vantage point (as it is at the floor level below).



Above: The view from the balcony of the living room at Unit 3, 43 Upper Clifford Avenue, from a standing position, looking south-east, south, and south-west.

46 Upper Clifford Avenue, Fairlight

There are four affected views from this property. The first affected view is from the front terrace, from standing and seated positions, across the primary street frontage. This view contains South Head, Dobroyd Head, North Harbour, North Harbour Reserve, the distant ocean horizon between the heads and a small glimpse of North Head. The view is partially obstructed by mature vegetation and existing developments. The proposed development is likely to reduce the view to the harbour by approximately

half from this position, as a result of Building B. That said, the view to the remainder of the harbour, the heads and horizon is anticipated to be retained. The view may be further impacted in coming years by proposed vegetation along the northern portion of the western side boundary as it grows. The second available view is from the ground floor living room, from a standing position. The view is already predominantly obscured from a seated position. This view contains South Head, Dobroyd Head, North Harbour, and the distant ocean horizon between the heads. The proposed development is likely to result in a small portion of view loss from this position. The third affected view is a corridor view from the ground floor secondary living area, from a standing position. The view is already predominantly obscured from a seated position. This view contains a predominantly obscured view of South Head, Dobroyd Head, North Harbour, and the distant ocean horizon between the heads. The proposed development is likely to reduce the view to the harbour by approximately half from this position, as a result of Building B, and in time, vegetation. However, as above, the view to the remainder of the harbour, the heads and horizon is anticipated to be retained. The fourth view is from the first floor master bedroom, from standing and seated positions, across the primary street frontage. This view contains similar elements to the other views, though from a higher vantage point. The proposed development is likely to result in a small portion of view loss of water only, and not of heads or the horizon. The overall loss of view is considered minor for the living and bedroom areas, and moderate for the front terrace area, given the reasonableness of the development as detailed below at Step 4.



Above: The view from the front terrace of 46 Upper Clifford Avenue, from a standing position, looking south-east, south, and south-west.



Above: The view from the ground floor living room of 46 Upper Clifford Avenue, from a standing position, looking south-east.



Above: The view from the ground floor secondary living room of 46 Upper Clifford Avenue, from a standing position, looking south-east.



Above: The view from the first floor master bedroom of 46 Upper Clifford Avenue, from a standing position, looking south-east.

48 Upper Clifford Avenue, Fairlight

The affected view is from the front living/sun room and terrace, from standing and seated positions, across the primary street frontage at an angle. This view contains South Head, Dobroyd Head, North Harbour, North Harbour Reserve, the distant ocean horizon between the heads and a small glimpse of North Head. The view is partially obstructed by mature vegetation and existing developments. The proposed development is likely to reduce the view to the harbour in a minor way, as a result of Building B. However, the view to the remainder of the harbour, the heads and horizon is anticipated to be retained. The view may be further impacted in coming years by proposed vegetation along the northern portion of the western side boundary as it grows. The overall view loss is considered minor.



Above: The view from the front terrace of 48 Upper Clifford Avenue, from a standing position, looking south-east, south, and south-west.

50 Upper Clifford Avenue, Fairlight

The affected view is available from the ground floor master bedroom, and the first floor living area, from standing and seated positions, across the southern front boundary at an angle. This view contains Smedley's Point, North Head, Quarantine Station, South Head, Dobroyd Head, North Harbour, North Harbour Reserve, and the distant ocean horizon between the heads. The proposed development is likely to reduce the view to the harbour in a minor way, as a result of Building B. However, the view to the remainder of the harbour, the heads and horizon is anticipated to be retained. The view may be further impacted in coming years by proposed vegetation along the northern portion of the western side boundary as it grows. The overall view loss is considered minor.



Above: The view from the ground floor master bedroom of 50 Upper Clifford Avenue, from a standing position, looking south-east, south, and south-west.



Above: The view from the first floor living room of 50 Upper Clifford Avenue, from a standing position, looking south-east, south, and south-west.

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 subject site is currently underdeveloped, as it contains a part one-storey, part two-storey detached dwelling house on a large lot. This is particularly clear when the proposed development is viewed in the context of the adjoining and surrounding sites, which contain residential flat buildings, dual occupancies, and large-scale, multi-storey dwelling houses (in some cases, on smaller lots). It is pertinent to note that the MDCP 2013 envisages a density of one dwelling per 250sqm of land in this locality. This indicates that the site is prime for redevelopment into greater density, naturally requiring greater built form. The subject site, being 770.2sqm in area, is capable of containing three dwellings in accordance with the density control. Accordingly, this is the number of dwellings proposed in this application. Given this anticipated density, it is established that the proposed development is (at the very least, in principle) reasonable in the context of the area.

The proposed development is compliant with the height of buildings and floor space ratio development standards of the MLEP 2013. The proposed development is predominantly compliant with, and otherwise acceptable in relation to, the built form controls of the MDCP 2013, as demonstrated throughout this report. These factors indicate that the development is of a bulk, scale and footprint anticipated for the subject site. This is reinforced by the expert advice of Council's Senior Urban Designer, who supports the proposed development, stating that "the proposed built forms provide appropriately for spatial separation, deep soil landscape opportunity, privacy, solar access and view sharing". As stipulated above, where a development complies with built form controls, the question of whether a more skilful design would yield the Applicant the same development potential and amenity, while reducing the view impact is considered. An assessment of this is as follows:

The overall design is demonstrated to be generally skilful in that it includes two distinct building pavilions, separated by a generous landscaped courtyard in the centre of the site. As above, both Buildings A and B of the proposed development are compliant with the applicable height of building development standard, as they step down with the topography of the land. This design best responds to the site characteristics and constraints and limit the impacts to adjoining properties, as demonstrated throughout this report. There is one portion of the overall development that may not be considered skilful in relation to its future impact to view loss. The vegetation proposed along the northern portion of the western side boundary is comprised of some species that are expected to grow to 5-10m in height in maturity. This means, at maturity, the vegetation may further impeded on views to some properties, as noted above. This is managed by the inclusion of a recommended condition of consent requiring that vegetation along the northern half of the western side boundary be limited to species that are anticipated to grow to a maximum of 5m in height. This solution provides a reasonable level of built form softening, shade, and natural landscaping, without resulting in future undesirable impacts.

Building A, which fronts Lauderdale Avenue, is set at the southern-most portion of the site, adjacent to (and of lesser bulk than) 54 Lauderdale Avenue. Building A is skilfully designed in that the prevailing front building line is adhered to, and the majority of the building bulk is set further north from that building line, as well as partially underground. Building B, which fronts Upper Clifford Avenue, contains one dwelling, and logically appears just so. Building B consists of a double garage to the street frontage, and a two-storey dwelling house set further to the south on lower land. This is consistent with (and in fact of lesser bulk than) the predominant built form along the southern side of Upper Clifford Avenue. The design of Building B is demonstrated to be skilful in that it consolidates the required parking to the north-east corner (where the single garage currently exists), and limits the dwelling bulk visible from the streetscape to one storey. The views currently enjoyed over the subject site from properties to the north are particularly vulnerable, given they are the result of the site remaining in an underdeveloped state for an extended period of time. In this case, views can only be retained in their entirety if the site remains in its current, underdeveloped state, or if the site is redeveloped to the same density as existing. However, this does not provide the same

development potential to the Applicant, and does not achieve the development height and scale envisaged for the site, so cannot be considered skilful. Such a design response is not a reasonable or just in consideration of the anticipated density for the site, and the existing developments along Upper Clifford Avenue.

In conclusion, given the proposed development results in view loss of negligible to moderate impact only (and the moderate view loss is not reasonable to retain), the development as proposed is acceptable as proposed.

Assessment of Views - Public Domain

In determining the extent of potential view loss from the public domain, the planning principles outlined within the Land and Environment Court Case of *Rose Bay Marina Pty Limited Vs Woollahra Municipal Council and anor (213) NSWLEC 1046* are applied to the proposal.

The first step is to identify the nature and scope of the existing views from the public domain, including, but not limited to:

- *Any existing obstructions of the view;*
- *Composition of the view;*
- *Are existing obstructions permanent or temporary; and*
- *The curtilages of important elements within the view.*

Comment:

The public domain currently benefits from views from Upper Clifford Avenue to the south. The views contain North Harbour, Dobroyd Head, and distant views to South Head and the horizon of the ocean between North and South Heads (though North Head is not visible). The views are currently partially obstructed by existing developments and vegetation. The built obstructions are permanent in nature, except as proposed to be altered by this development application. The vegetation obstructions are subject to change over time. The view is somewhat static in its nature, in relation to the heads, the harbour and the horizon. However, the eastern corridor view contains the occasionally dynamic element of boat movement. The photographs below demonstrate the curtilage of the important elements of the view.



Above: The view from the median strip of Upper Clifford Avenue, from a standing position looking south.



Above: The view from the southern footpath of Upper Clifford Avenue, from a standing position at the north-eastern corner of the site looking south.



Above: The view from the median strip of Upper Clifford Avenue, from a standing position at the north-western corner of the site looking south.

The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed.

Comment:

The affected views are available from the footpath along Upper Clifford Avenue to the north of the subject site, at the north-eastern and north-western corners of the subject site.

The third step is to identify the extent of the obstruction at each relevant location. The impact on appreciation of a public domain view should not be subject to any eye height constraint. A public domain view is one that is for the enjoyment from many positions by all people.

Comment:

The obstructions of the view corridors are not subject to eye height restrictions. A front fence exists along Upper Clifford Avenue at a height of approximately 1m. However, this fence is chain-link construction, so the view can be seen through this fence.

The fourth step is to identify the intensity of public use of those locations where enjoyment of the view will be obscured, in whole or in part, by the proposed development.

Comment:

The intensity of the use of the location for public enjoyment is unclear. On the day of assessing the view, no members of the public were seen observing the view. However, this may be as a result of the poor weather conditions on that day. Objectors noted that on a clear day (particularly in summer), a number of people walk along this street and stop to observe the view. It should be noted that this is anecdotal evidence. Upper Clifford Avenue is a no-through road for vehicles, accessible via Ashley Parade to the north. Pedestrians can access the street via Ashley Parade, or via a path connecting to Clifford Avenue to the east. However, it can be established that through traffic (both pedestrian and vehicular) is not possible, so it is unclear how often the view would be observed by those other than residents and their visitors.

The final step to be identified is whether there is any document that identifies the importance of the view to be assessed, such as international, national, state or local heritage recognition, or where the relevant planning controls promote or specifically requires the retention or protection of public domain views.

Comment:

The view contains some iconic features (Dobroyd Head, South Head and North Harbour). However, the view is not of any heritage significance, nor documented in local planning policy as of particular importance for protection.

Overall Public Domain View Comment:

The views currently enjoyed from the public domain are not likely to be retained, given the proposed development. However, as detailed above, the subject site is currently underdeveloped. The views currently enjoyed over the subject site from the public domain are particularly vulnerable, given they are the result of the site remaining in an underdeveloped state for an extended period of time. The affected views can only be retained in their entirety if the site remains in its current, underdeveloped state, or if the site is redeveloped to the same density as existing. However, this does not provide the same development potential to the Applicant, and does not achieve the development density, height and scale envisaged for the site. This cannot be considered a reasonable design response, particularly in consideration of the existing developments along Upper Clifford Avenue.

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

While the overall development is compliant with the maximum building height development standard set by Clause 4.3 Height of Buildings of the MLEP 2013, Building B includes two elements that are not compliant with the building height development controls of the MDCP 2013. Building B includes a maximum western wall height of 9m, where Clause 4.1.2.1 allows 8m, and is up to six storeys in height (stepped), where Clause 4.1.2.2 allows 2 storeys. Clauses 4.1.2.1 and 4.1.2.2 rely on the objectives of Clause 4.3 Height of Buildings of the MLEP 2013. The objectives are addressed in relation to development as follows:

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

Comment:

The proposed development is compliant with the height of building and floor space ratio development standards within Clause 4.3 and Clause 4.4 (respectively) of the MLEP 2013. The proposed development and roof form are of a comparable bulk, scale and style to existing development in the vicinity, so are complementary in the streetscape. The development is, in fact, of lesser bulk and scale than the existing developments at 39 Upper Clifford Avenue and 54 Lauderdale Avenue (when considered in conjunction for comparable lot size), as a direct result of the compliant building height, and generous central landscaped area, which assists in providing visual relief to the built form. The proposed development is also of lesser bulk and scale than the development at 43 Upper Clifford Avenue, which includes a larger building footprint, and greater overall height than the proposed development. The roof form is compliant with Clause 4.1.2.3 of the MDCP 2013 in relation to roof height, in that a flat form is proposed for each element of the development to reduce overall bulk. The

proposed development is generally compliant with the required setback controls, with the exception of some minor encroachments. These encroachments are acceptable for the reasons detailed in the section of this report relating to Clause 4.1.4 Setbacks of the MDCP 2013. As such, and in conjunction with the generous central landscaped area, the proposed development demonstrates suitable articulation of the bulk of the development.

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

Comment:

The proposed development is of an acceptable bulk and scale in that it is compliant with the development standards of the MLEP 2013, and is almost entirely compliant with the built form controls of the MDCP 2013. The proposed building bulk is demonstrated to be consistent with existing and recently approved development in the locality (as above), despite the two non-compliant height elements. The wall height non-compliance of Building B is a result of the topography of the land, which slopes away towards the west. The eastern elevation of the same building is compliant with the maximum wall height, as its corresponding ground level is higher. The total number of storeys at Building B is also a result of the topography of the land, as the development steps down the steep slope towards the south. However, the total number of storeys are generally not read, as the street level at Lauderdale Avenue, to which Building B fronts, is lower than the building itself, thereby preventing direct viewing of the whole development from the street. Further, from the side elevations, a significant portion of the development is set underground, and therefore not read. As such, the bulk and scale of the building is suitably controlled by design.

(c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

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

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

Comment:

The proposed development is acceptable in relation to solar access for the reasons detailed in the section of this report relating to Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP 2013.

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

Comment:

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

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

The proposed development includes non-compliant side setbacks to the eastern elevation of Building A, and both eastern and western elevations of Building B, as detailed in the Built Form Controls table of this report. The objectives are addressed in relation to development as follows:

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

Comment:

The proposed side setbacks are consistent with the existing developments within the immediate vicinity, and introduces an improved landscape treatment to the front setback area. As such, the

proposed development maintained the existing desired spatial proportions of the street, the street edge and the landscape character of the street, despite the non-compliant side setbacks.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The sunlight access, privacy, maintenance of views and streetscape character impacts resulting from the proposed development are acceptable for the reasons detailed in the section of this report relating to Part 3 General Principles of Development of the MDCP 2013. The proposed development does not impact upon traffic conditions.

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

Comment:

The proposed development is adequately sited in order to provide an appropriate level of amenity to the subject site and adjacent sites.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development provides adequate landscaping and planting and does not unduly detract from the context of the site. The subject site does not contain urban bushland.

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

Comment:

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

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The proposed development includes a double garage (to Building A) to a total width of 6.6m, where Clause 4.1.6.1 allows a maximum width of a garage to be 50 percent of the frontage, up to a maximum width of 6.2m. The proposed development is considered in relation to the relevant controls, as follows:

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposed development provides five residential parking spaces, and one visitor parking space, in exact accordance with the requirements of the MDCP 2013. Parking is configured to provide three

residential spaces for the two units fronting Lauderdale Avenue, accessed via a basement (that also contains the visitor space), and the remaining two residential spaces for the unit fronting Upper Clifford Avenue, access via a double garage. It is this double garage that is not compliant with the maximum width under this clause. Given the development's compliance with the number of parking spaces required by the MDCP 2013, it can be established that the development provides accessible and adequate parking on the site, relative to the proposed multi dwelling housing use.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The creation of the two parking areas (being the basement to Lauderdale Avenue, and the widened garage to Upper Clifford Avenue) results in a loss of on-street parking of approximately two parking spaces (being just greater than one space's width on Lauderdale Avenue, and less than one space's width on Upper Clifford Avenue). However, the proposed development provides six parking spaces, being the exact required number of spaces for users of the site. As such, the development does not lead to a shortfall of parking overall, and reduces the demand for on-street parking, as all users can park on site.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed parking areas to both Lauderdale Avenue and Upper Clifford Avenue are designed in accordance with Council requirements, and demonstrate safe, efficient off-street vehicular access and parking. The parking areas are of designs consistent with other developments in Lauderdale Avenue and Upper Clifford Avenue, and with the remainder of the development, thereby demonstrating a suitable visual response to their respective streetscapes.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The garage to Building B is located such that minimal excavation is required. The basement to Building A (and building A itself) requires significant excavation, as a result of the steep topography of the land. However, this design response is supported by a geotechnical report, which demonstrates risks are suitably managed. The design response has also been employed elsewhere along the street, including at 54 Lauderdale Avenue (existing) and at 52 Lauderdale Avenue (under construction).

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

The proposed development includes two driveway crossings, being one per street frontage, which is a suitable and acceptable response.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

All parking spaces are screened from view, as they are located within the basement (Building B), or in the double garage (Building A). The basement to Building B is integrated into the existing sandstone wall, providing suitable surrounding natural form. The garage to Building A is offset by landscaping to its west. The proposed development limits impervious area by providing adequate open space, and consolidating parking for each street frontage.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and

promote clean air.

Comment:

The proposed development is not located in a Centre. However, the proposed development limits onsite parking to the exact requirements, rather than providing excessive parking. As such, the proposal demonstrates a suitable parking response relative to its location.

4.1.8 Development on Sloping Sites

The development is assessed as consistent with this control. However, as significant excavation is proposed, the objectives are addressed in relation to development as follows:

Objective 1) To ensure that Council and the community are aware of, and appropriately respond to all identified potential landslip & subsidence hazards.

Objective 2) To provide a framework and procedure for identification, analysis, assessment, treatment and monitoring of landslip and subsidence risk and ensure that there is sufficient information to consider and determine DAs on land which may be subject to slope instability.

Objective 3) To encourage development and construction this is compatible with the landslip hazard and to reduce the risk and costs of landslip and subsidence to existing area

Comment:

The proposed development is supported by a Geotechnical Report that demonstrates the site can be developed in accordance with plans, without resulting in unreasonable risk of landslip or subsidence hazards. This Geotechnical Report has been reviewed by Council's Development Engineer, who raised no objection to the proposal, subject to conditions of consent. As such, the proposed development appropriately responds to the site's landform characteristics. The design of the proposed development (and level of excavation) is consistent with a number of existing developments and recent approvals in the immediate vicinity, including at 52 and 54 Lauderdale Avenue, being immediately to the east of the subject site.

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 \$38,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,800,000.

CONCLUSION

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

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

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

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

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

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

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

- Sunlight Access and Overshadowing: Objections raised concern about potential overshadowing to adjacent properties.
- Privacy and Security: Objections raised concern about potential privacy impacts to adjacent properties.
- Maintenance of Views: Several objections raised concern about potential view loss as a result of both the built form and the landscaping, from both private and public land.
- Setbacks, Wall Height and Number of Storeys: The proposed development included minor non-compliances with the maximum wall height, number of storeys and setbacks controls.
- Vehicular Access: The proposed development includes a garage to Upper Clifford Avenue that is marginally wider than the control envisages.

Each matter is acceptable on merit for the reasons detailed in the relevant sections of this report. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/0302 for Demolition works and construction of multi dwelling housing on land at Lot 6 DP 3742, 41 Upper Clifford Avenue, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 01 Site Plan	March 2019 Issue F	Platform Architects
DA 02 Basement Floor Plan	March 2019 Issue F	Platform Architects
DA 03 Ground Floor Plan	March 2019 Issue F	Platform Architects
DA 04 First Floor Plan	March 2019 Issue F	Platform Architects
DA 05 Second Floor Plan	March 2019 Issue F	Platform Architects
DA 06 Third Floor Plan	March 2019 Issue F	Platform Architects
DA 08 Ground Floor Plan - Garden	March 2019 Issue F	Platform Architects
DA 09 First Floor Plan	March 2019 Issue F	Platform Architects
DA 10 Second Floor Plan	March 2019 Issue F	Platform Architects
DA 11 Roof Plan - Sheet 1	March 2019 Issue F	Platform Architects
DA 12 Roof Plan - Sheet 2	March 2019 Issue F	Platform Architects
DA 13 Elevation 1 South	March 2019 Issue F	Platform Architects
DA 14 Elevation 2 - North	March 2019 Issue F	Platform Architects
DA 15 Elevation 3 - South	March 2019 Issue F	Platform Architects
DA 16 Elevation 4 - North	March 2019 Issue F	Platform Architects
DA 17 Elevation 5 - North	March 2019 Issue F	Platform Architects
DA 18 Sectional Elevation 6 - East Sheet 1	March 2019 Issue F	Platform Architects
DA 19 Section Elevation 6 - East Sheet 2	March 2019 Issue F	Platform Architects
DA 20 Sectional Elevation 7 - West Sheet 1	March 2019 Issue F	Platform Architects
DA 21 Sectional Elevation 7 - West Sheet 2	March 2019 Issue F	Platform Architects
DA 22 Section AA Sheet 1	March 2019 Issue F	Platform Architects
DA 23 Section AA Sheet 2	March 2019 Issue F	Platform Architects
DA 24 Section B-B	March 2019 Issue F	Platform Architects
External Finishes Schedule	Undated	Platform Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
C1 Cover Sheet & Notes	24 February 2020	ACOR Consultants
C2 Stormwater Management Plan - Basement	2 March 2020	ACOR Consultants
C3 Stormwater Management Plan - Ground	24 February 2020	ACOR Consultants
C4 Stormwater Management Plan - Ground	24 February 2020	ACOR Consultants
C5 Stormwater Management Detail Sheet No. 1	24 February 2020	ACOR Consultants

C6 Stormwater Management Detail Sheet No. 2	24 February 2020	ACOR Consultants
C7 Stormwater Management Detail Sheet No. 3	2 March 2020	ACOR Consultants
C8 Erosion & Sediment Control Plan	24 February 2020	ACOR Consultants
C9 Erosion & Sediment Control Notes	24 February 2020	ACOR Consultants
C10 Erosion & Sediment Control Detail Sheet	24 February 2020	ACOR Consultants

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1073822M	16 March 2020	Credwell Energy
NatHERS Certificate No. 4673150	16 March 2020	Credwell Energy
NCC Assessment Report C19314-NCC-r2	11 March 2020	Credwell Consulting
Arboricultural Impact Assessment Report	February 2020	Axiom Arbor Tree Services
Construction Methodology Plan	Undated	TQM Design & Construct
Report on Geotechnical Site Investigation	26 February 2020	Crozier Geotechnical Consultants
Traffic Management Plan	19 February 2020	PW Traffic Plans
Traffic and Parking Assessment	March 2020	Transport and Traffic Planning Associates

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan	26 February 2020	Paul Scrivener Landscape Architects
Planting Plan	26 February 2020	Paul Scrivener Landscape Architects

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	March 2019	Platform Architects

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

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

approved plans.

2. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of multi dwelling housing, defined by the Manly Local Environmental Plan 2013 as follows:

Multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

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

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

3. Prescribed Conditions

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

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

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

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

- (e) Development that involves an excavation that extends below the level of the base of

the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$38,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$3,800,000.00.

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.

6. **Security Bond**

A bond (determined from cost of works) of \$5,000 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.

7. **Construction, Excavation and Associated Works Security Bond**

The applicant is to lodge a Bond of \$10,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

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

Reason: Protection of Council's infrastructure.

8. **On-slab Landscape 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 garage concrete slab, 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 type, planting, automatic irrigation, services connections, and maintenance activity schedule.

c) The following soil depths are required to support landscaping as proposed:

- 300mm for lawn
- 600mm for shrubs
- 1000mm for trees

d) Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the concrete slab is designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

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

9. **Geotechnical Report**

The applicant must submit a geotechnical report and certificate, prepared by an appropriately qualified geotechnical engineer containing the following:

- (a) certification that the existing rock formations and substrate on the site are capable of

withstanding the proposed loads to be imposed;

- (b) the extent of the proposed excavation, including any requirements for excavation methodology and shoring works that are necessary to ensure the stability of the excavation;
- (c) required protection for adjoining properties;
- (d) the provision of appropriate subsoil drainage during and upon completion of construction works.

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

Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process.

10. **Boundary Identification Survey**

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

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

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

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

11. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003, and generally in accordance with the concept drainage plans prepared by Acor Consultants Pty Ltd, Project No. CC200036, drawing number C1 -C4, Rev c, dated 24/2/2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer.

The drainage plans must address the following:

- i. Maximum discharge to street kerb is 25 l/s

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

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

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

An Application for Works to be approved within Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the retaining walls through the nature strip, driveway crossing and footpath which are to be

generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and/or Council's Minor Works Policy. The plan shall be prepared by a qualified structural engineer. The design must include the following information:

- 1) The proposed retaining wall shall be designed in complies with Australian Standard: Earth retaining Structure AS 4678-2002
- 2) An appropriate drainage system for the retaining wall shall be designed and included on the drawing
- 3) All Public and private utility services are to be located on the plan and cross-section plan. All costs related to any relocation of utility service shall be borne by the applicant.
- 4) The proposed footpath must be designed with Council's standard and satisfaction

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

Reason: To provide public and private safety.

13. Tanking of Basement Level

The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, 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 Environment and Heritage. 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 Council's Road Reserve (Temporary road anchors)

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be

submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

16. **Compliance with Standards**

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

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

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

17. **Amendment to Landscape Plan and Planting Plan**

The approved Landscape Plan and Planting Plan are to be amended to replace (where necessary) vegetation along the northern half of the western side boundary (adjacent to Unit 1) with species that are anticipated to grow to a maximum of 5m in height at maturity. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To allow reasonable sharing of views.

18. **Vehicle Access & Parking**

All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards). Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009

With respect to this, the following revision(s) must be undertaken;
All internal driveways and vehicle access ramps must have ramp grades and transitions complying with AS 2890.1. To ensure the gradient requirements and height clearances are satisfied, a driveway profile must be prepared for all internal ramps showing ramp lengths, grades, surface RL's and overhead clearances, taken from the crest of the ramp to the base. The driveway profile must be taken along the steepest grade of travel or sections having significant changes in grades, where scraping or height restrictions could potentially occur and is to demonstrate compliance with AS 2890 for the respective type of vehicle.

Plans prepared by a suitably qualified Engineer shall be submitted to the accredited certifier prior to the issue of a Construction Certificate.

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

19. **Visitor Parking Spaces**

The installation of any security roller shutter for parking areas shall not restrict access to any designated visitor car parking space. In the event that the approved visitor car parking spaces are located behind any proposed security roller shutter, an intercom system is required to be installed to enable visitor access into the basement car parking area. This requirement is to be reflected on the Construction Certificate plans and any supporting documentation for the endorsement of the Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure visitor car parking is accessible to visitors.

20. **Waste and Recycling Requirements**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation):

- 54 Lauderdale Avenue
- 39 Upper Clifford Avenue
- 43 Upper Clifford Avenue

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.

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

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

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

22. **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.

23. **Tree Removal Within the Property**

The following tree located on the property and assessed as impacted by development, and without an alternative design layout to retain the tree, as assessed and recommended in the Arboricultural Impact Assessment prepared by Axiom Arbor Tree Services, is granted approval for removal:

- Tree 5 Cheese Tree (subject to tree replacement within the site)

Note: Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by a AQF level 5 Arborist that determines that the tree presents an imminent risk to life or property.

Exempt Species located within the site do not require consent for removal.

24. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit if it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site. Separate application is required with a Traffic Management / Control Plan for standing of construction vehicles in a trafficable lane.

Reason: To ensure Work zones are monitored and installed correctly.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

25. **Road Reserve**

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

Reason: Public safety.

26. **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.

27. **Traffic Control During 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 and to the satisfaction of the Roads 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.

28. Excavation Works Supervision

All excavation works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising geotechnical engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure safety of the excavation works.

29. Tree Protection Measures / Project Arborist

A Project Arborist with AQF minimum Level 5 qualification in arboriculture/horticulture is to be appointed to supervise and certify tree protection measures for existing trees to be retained and protected, requiring site attendance during excavation and construction works, in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4, and the recommendations of the Arboricultural Impact Assessment prepared by Axiom Arbor Tree Services dated February 2020.

This shall include all tree sensitive works in the vicinity of the existing trees that have been identified for retention in the Arboricultural Impact Assessment, and in particular the following trees: T1, T2, T3 and T4 (all Broad Leaf Paperbark) located on adjoining property.

The following activities as listed in the Arboricultural Impact Assessment shall be specifically supervised and certified as approved following attendance on site, review of the works and acceptance of the works. A Project Arborist shall be appointed prior to the commencement of works in accordance with the Arboricultural Impact Assessment section 6 Recommendations, including the actions detailed under the following:

- i) 6.1 Assigning a site arborist,
- ii) 6.2 Tree works,
- iii) 6.3 Tree Protection Fencing,
- iv) 6.4 Mulching within a TPZ,
- v) 6.5 Supervision of excavation works and demolition within the TPZ of protected Trees,
- vi) 6.6 Plantings within Tree Protection Zones,
- vii) 6.7 Restricted activities,
- viii) 6.8 Site Materials Storage, and
- ix) 6.9 Hold Points.

The Arborist shall submit certification to the Certifying Authority that the works and activities described in the above sections have been correctly installed and adhered to during the construction period.

The tree protection measures specified in this clause must:

- x) be in place before work commences on the site, and
- xi) be maintained in good condition during the construction period, and
- xii) remain in place for the duration of the construction works.

The Certifying Authority or a Project Arborist AQF Level 5 must ensure that:

- xiii) the activities listed in section 4.2 of AS4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and
- xiv) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: To ensure tree protection is provided and maintained.

30. Tree and Vegetation Protection - General

a) Existing trees and vegetation shall be retained and protected as identified in the Arboricultural Impact Assessment prepared by Axiom Arbor Tree Services, including:

- i) all trees and vegetation within the site not approved for removal, excluding exempt vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties, and in particular Tree 1, 2, 3 and 4 located on the neighbouring site of 43 Upper Clifford Avenue,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be generally undertaken as follows:

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

c) All protected trees are to be retained for the life of the development, or for their safe natural

life. Trees that die or are removed by approval must be replaced with a locally native canopy tree

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

31. **Implementation of Traffic Management Plan**

All works including Demolition, Excavation and Construction activities are to be undertaken in accordance with the approved Traffic Management Plan (TMP).

All controls in the TMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation.

Should the implementation or effectiveness of the TMP be impacted by surrounding major development not encompassed in the approved TMP, the TMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved TMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Traffic Management procedures agreed and are held liable to the conditions of consent.

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

During demolition and/or construction the proposal/works shall be generally consistent with the approved Waste Management Plan.

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

33. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling – timber – bricks – tiles – plasterboard – metal – concrete, and evidence of disposal for recycling is to be retained on site.

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

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

34. **Landscape Works Completion**

Landscape works are to be implemented in accordance with the Landscape Plans numbered Sheet 1 of 2 and Sheet 2 of 2, prepared by Paul Scrivener Landscape, inclusive of the following requirements:

i) the proposed Tuckeroo (*Cupaniopsis anacardoides*) tree planting within the Unit 1 garden level (RL 52.15) shall be deleted and replaced with a non invasive seeding native tree suited to the site location, listed either in Manly DCP Schedule 4, Part B - Native Tree Selection, or in Council's Tree Guide, such as Blueberry Ash (*Elaeocarpus reticulatus*) or Snow-in-Summer (*Melaleuca linariifolia*), or as selected by the Landscape Architect, to attain a height of approximately 6 metres at maturity, equal to the roof parapet height of No. 43 Upper Clifford Avenue (RL 58.70), (*)

ii) the proposed Cheese Tree (*Glochion ferdinandi*) tree planting within the Unit 1 garden level (RL 52.15) shall be deleted and replaced with a native tree suited to the site location, as listed either in Manly DCP Schedule 4, Part B - Native Tree Selection, or in Council's Tree Guide, such as Blueberry Ash (*Elaeocarpus reticulatus*) or Snow-in-Summer (*Melaleuca linariifolia*), or as selected by the Landscape Architect, to attain a height of approximately 6 metres at maturity, equal to the roof parapet height of No. 43 Upper Clifford Avenue (RL 58.70), (*)

iii) the proposed Lillypilly (*Acmena smithii*) tree planting within the Unit 2 patio garden level (RL 50.79) shall be deleted and replaced with a native tree suited to the site location, as listed either in Manly DCP Schedule 4, Part B - Native Tree Selection, or in Council's Tree Guide, such as Magenta Lillypilly (*Syzygium paniculatum*), Blueberry Ash (*Elaeocarpus reticulatus*) or Riberry (*Syzygium leuhmannii*), or as selected by the Landscape Architect, to attain a height of approximately 8 metres at maturity, equal to the roof parapet height of No. 43 Upper Clifford Avenue (RL 58.70), (*)

iv) all tree planting within the site shall be planted at 75 litre container size, located within natural ground areas of substantial area (minimum 12m²) for each tree, located away from common boundaries, planted at least 4 metres from buildings for medium sized trees and at least 3 metres from buildings for small sized trees, and all at least 4 metres from all other trees.

(*) The above conditions satisfy Manly DCP clause 3.3.1 Landscaping Design, item b) iii) trees should be positioned in locations that minimise significant impacts on neighbours in terms of blocking winter sunlight to either living rooms, private open space or solar collectors; or where the proposed location of the tree may be otherwise positioned to minimise any significant loss of views.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the Landscape Plan and any conditions of consent.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity and soften the built form.

35. Condition of Retained Vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture/horticulture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, identified as trees numbered 1, 2, 3, and 4 located within the adjoining property at No. 43, as a result of the development works, including the following information:

- i) compliance to any Arborist recommendations for tree protection and excavation works,
- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: To retain and protect significant planting on development sites.

36. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports for the properties listed in the condition titled 'Pre-Construction Dilapidation Report', including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The reports must:

- o Compare the post-construction report with the pre-construction report;
- o Clearly identify any recent damage and whether or not it is likely to be the result of the development works; and
- o 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.

37. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

38. **Removal of Redundant Driveways**

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council. All costs associated with the works shall be borne by the applicant. A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

39. **Reconstructing Damaged Road Reserve**

Any damaged Road reserve shall be reconstructed to Council standard. Suitably prepared plans shall be submitted to for an approval under and approved by Council. All costs associated with the works shall be borne by the applicant. A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maintain road reserve to the standards.

40. **Waste/Recycling Compliance Documentation**

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

Reason: To ensure waste is minimised and recycled.

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

41. **Landscape Maintenance**

Any existing landscaping including trees required to be retained together with any additional landscaping required by this consent is to be maintained for the life of the development.

A 12 month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. All planting must be maintained for the life of the development, or for their safe useful life expectancy. Planting that may die or is approved for removal must be replaced.

Reason: To maintain local environmental amenity and ensure landscaping continues to soften the built form.

42. **Building B Void**

The void proposed in Building B (fronting Lauderdale Avenue), above the car park and below the entry level of Unit 3, is to remain a void and is not to be converted to habitable space without prior consent.

Reason: To ensure consistency with approved plans.

43. **Resident Parking Permits**

Any residents and/or tenants of the subject site are not eligible for resident parking permits. This condition is to be provided on the property Title.

Reason: To ensure the tenants are aware that they are not entitled to a permit regardless if they are within a Resident Parking Scheme (RPS).

44. **Fencing Height / Vegetation**

All fencing and/or vegetation along the frontage road(s) shall not impede pedestrian or driver visibility. This requires that vegetation does not exceed one (1) metre in height within the required splay. Appropriate plants shall be selected within the 2.0 x 2.5m splay to ensure this condition is met.

Reason: To ensure maximum vehicular and pedestrian visibility.

45. **Accessibility of Parking Facilities**

The parking facilities including visitor parking are to be accessible and identifiable at all times. Necessary signs and markings have to be maintained throughout the lifetime of the development.

Reason: To ensure residents and visitors are not forced to park on public streets when parking has been provided within the development.

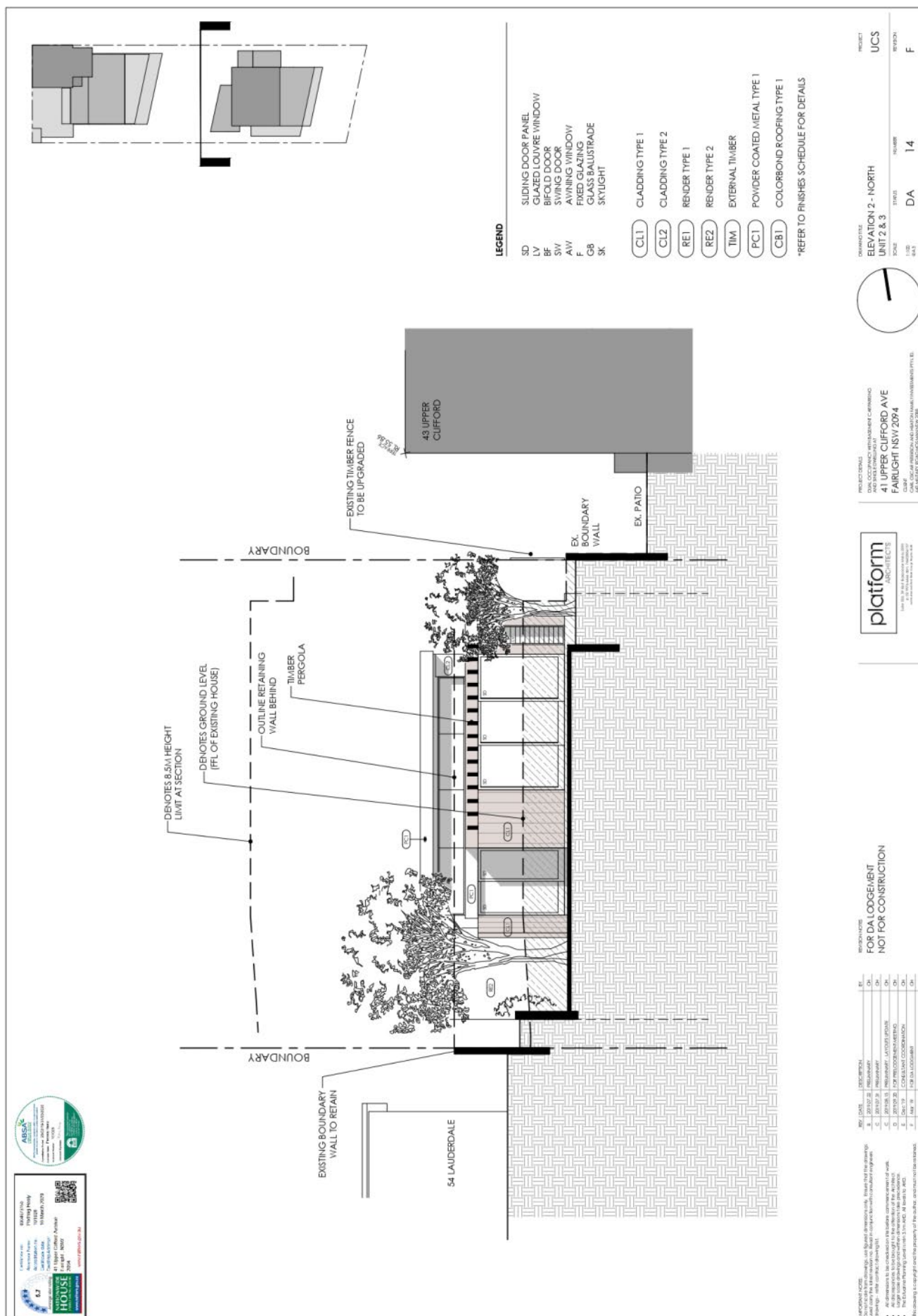
46. **Parking Enclosure**

No parking spaces, or access thereto, shall be constrained or enclosed by any form of structure such as fencing, cages, walls, storage space, or the like, unless consented to under this application, or without prior consent from Council.

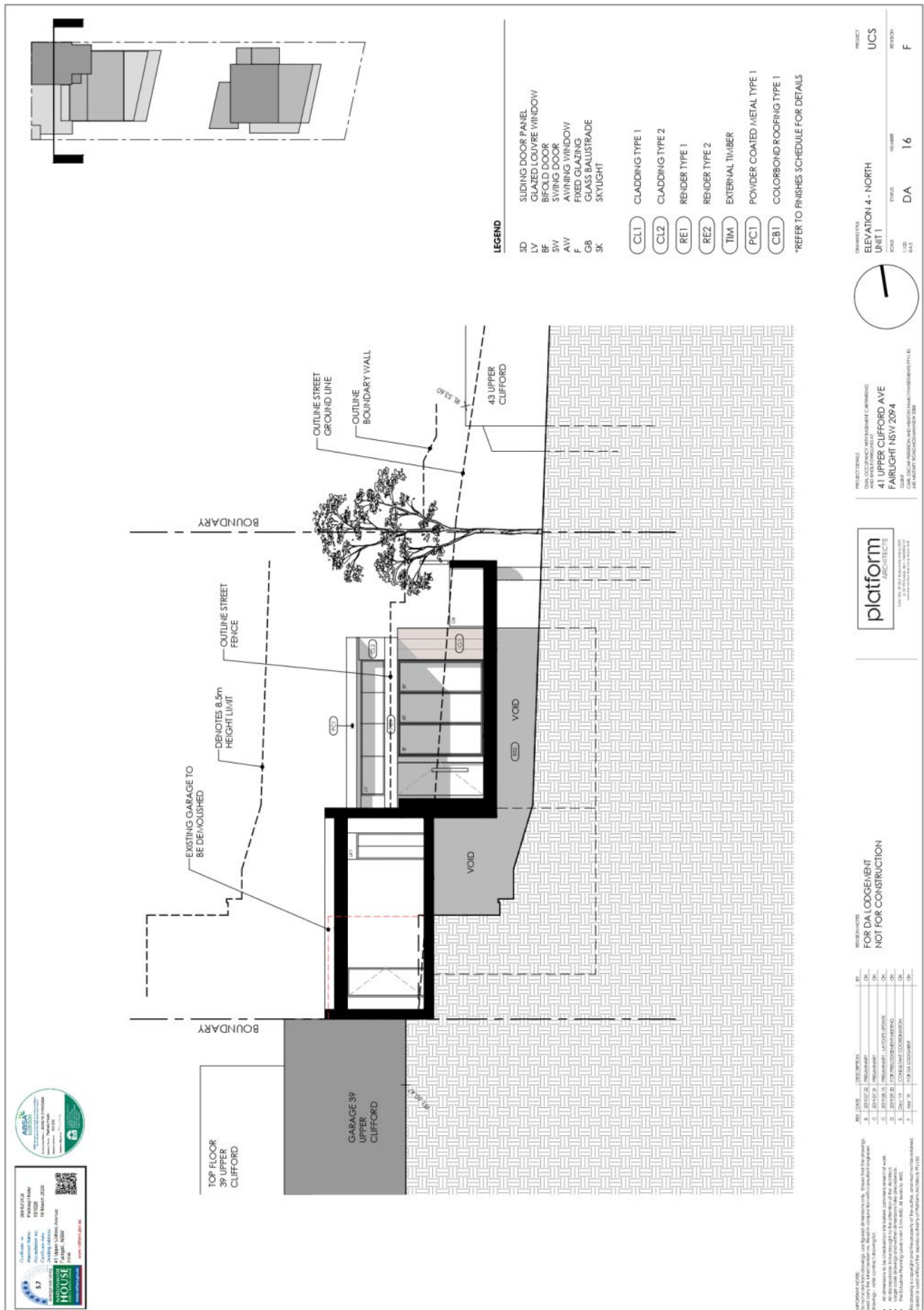
Reason: To ensure accessibility is maintained.

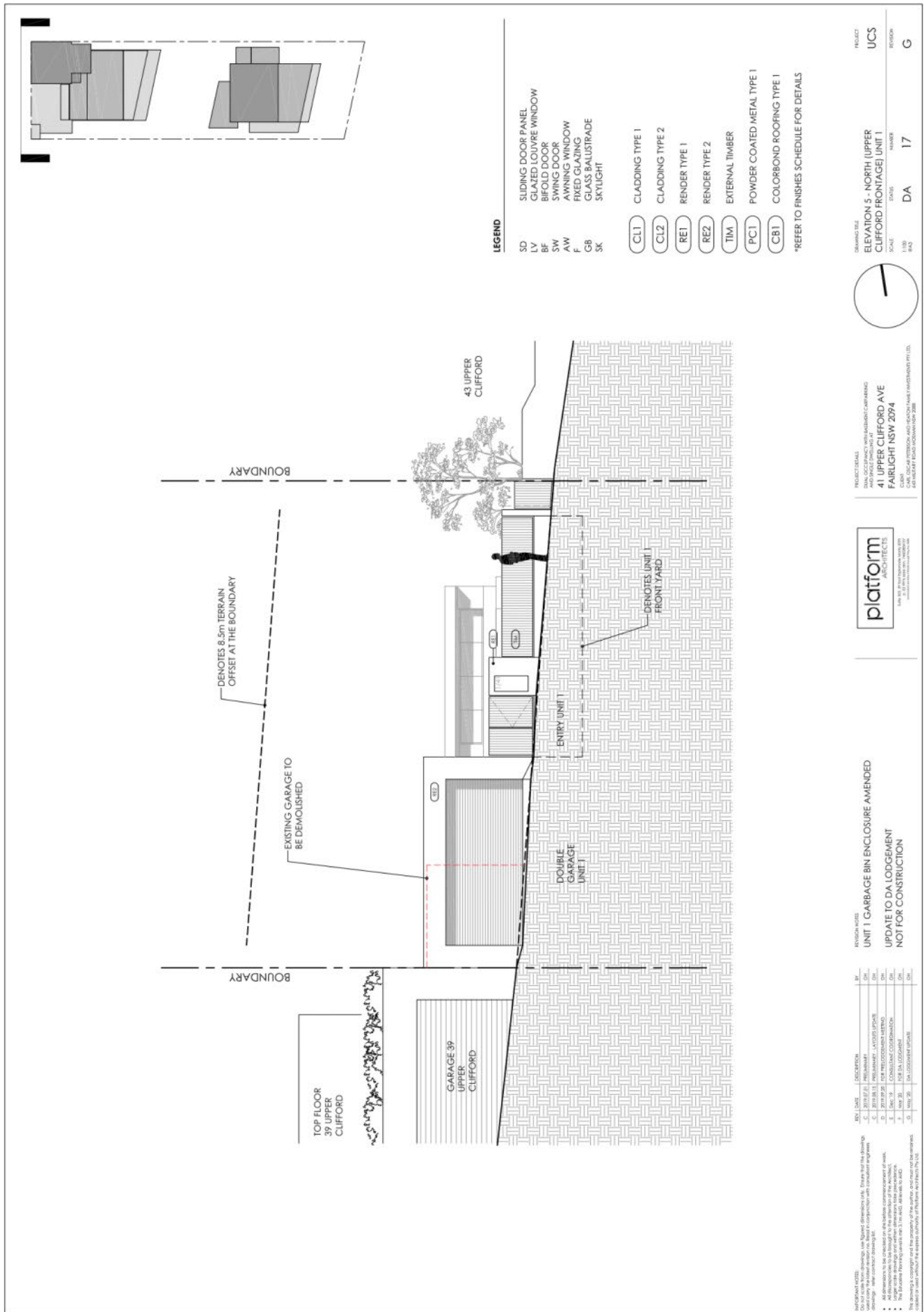












ITEM 3.2	DA2020/0341 - 87 BLACKBUTTS ROAD, FRENCHS FOREST - DEMOLITION WORKS AND CONSTRUCTION OF SENIORS HOUSING
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2020/350404
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2020/0341 for demolition works and construction of seniors housing on land at Lot 2413 DP 752038, 87 Blackbutts Road, Frenchs Forest, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0341
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 2413 DP 752038, 87 Blackbutts Road FRENCHS FOREST NSW 2086
Proposed Development:	Demolition works and construction of Housing for Seniors or People with a Disability
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Khosrow Ataii Mojgan Ataii
Applicant:	Khosrow Ataii Mojgan Ataii
Application Lodged:	09/04/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	24/04/2020 to 13/05/2020
Advertised:	24/04/2020
Submissions Received:	5
Clause 4.6 Variation:	Clause 40(2) Site Size under SEPP (HSPD) 2004
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,050,000.00

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of development application DA2020/0341 for demolition works and construction of seniors housing at 87 Blackbutts Road, Frenchs Forest. The application has an estimated cost of works of more than \$1,000,000 and has received more than three objections, thereby requiring determination by Council's Development Determination Panel (DDP).

The proposal includes a 6.19% variation to the site size development standard set by the *State*

Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. This variation is supported by an adequate written request to vary the development standard, and is acceptable on merit as detailed in this report. The proposal is compliant with the development standards set by the *Warringah Local Environmental Plan 2011*. The proposed is not compliant with the front boundary setback, rear boundary setback, and landscaped area requirements of the *Warringah Development Control Plan 2011*. However, these non-compliant elements are acceptable on merit for the reasons detailed throughout this report.

Five submissions have been received, raising concern about amenity in terms of visual privacy, solar access and noise, and in relation to perceived overdevelopment of the site. These matters are addressed in this report.

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 for the following works:

- Demolition of an existing dwelling house and structures; and
- Construction of a two-storey seniors housing development comprising of:
 - 3 x self-contained three-bedroom (with study) dwellings, each with attached double garages;
 - Driveway; and
 - Supporting waste storage, stormwater and 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

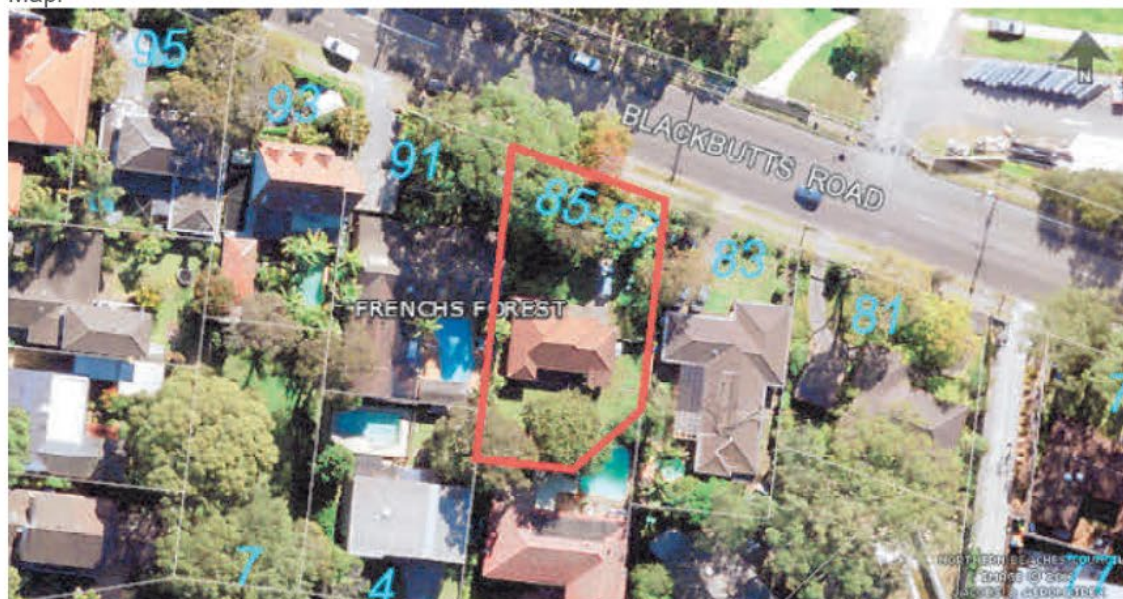
Warringah Local Environmental Plan 2011 - 6.2 Earthworks

Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 2413 DP 752038 , 87 Blackbutts Road FRENCHS FOREST NSW 2086
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Blackbutts Road.</p> <p>The site is irregular in shape with a frontage of 23.595m along Blackbutts Road and a maximum depth of 45.39m. The site has a surveyed area of 938.1m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single-storey detached dwelling house.</p> <p>The site is relatively level and contains a variety of small to large vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one- and two-storey detached dwelling houses to the east, west and south, Glenrose Village Shopping Centre and Glen Street Theatre to the north-west, and Lionel Watts Reserve to the north and north-east.</p>

Map:



SITE HISTORY

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

- Pre-lodgement Meeting PLM2019/0301 was held on 28 January 2020 to discuss construction of a three-unit seniors housing development.

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 clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the</p>

Section 4.15 Matters for Consideration'	Comments
	<p>consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <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 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 5 submission/s from:

Name:	Address:
Ms Katrina Sganzerla	91 Blackbutts Road FRENCHS FOREST NSW 2086
Mrs Annette Maree Mackie	83 Blackbutts Road FRENCHS FOREST NSW 2086
Ms Nana Li	6 Kalgal Street FRENCHS FOREST NSW 2086
Mr Benjamin Marcus Scott King	108 Grace Avenue FORESTVILLE NSW 2087
Jonathan James Fenech	5 Kalgal Street FRENCHS FOREST NSW 2086

The following issues were raised in the submissions:

- Concern regarding amenity impacts in relation to visual privacy, solar access and noise.
- Overdevelopment of the site, considering the site area and proposed setbacks.

The matters raised within the submissions are addressed as follows:

Amenity - Visual Privacy / Solar Access / Noise

Comment:

The proposed development is compliant with the requirements of Clauses D3 Noise and D6 Access to Sunlight of the Warringah Development Control Plan 2011. The proposed development is acceptable in relation to privacy for the reasons detailed in the section of this report relating to Clause D8 Privacy of the Warringah Development Control Plan 2011.

Overdevelopment

Comment:

The proposed development is acceptable in relation to the proposed front and rear setbacks for the reasons detailed in the sections of this report relating to Clauses B7 Front Boundary Setback and B9 Rear Boundary Setback of the Warringah Development Control Plan 2011. The non-compliance with the required site area is acceptable for the reasons detailed in the section of this report relating to Clause 4.6 Exceptions to Development Standards.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>

Internal Referral Body	Comments
Landscape Officer	<p>The application is for the proposed demolition of existing structures and construction of a new Seniors Housing development, under the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.</p> <p>The Landscape Referral is assessed against the Seniors Housing SEPP and the following landscape objectives of Warringah DCP 2011:</p> <ul style="list-style-type: none"> • B9 Rear Boundary Setbacks • D1 Landscaped Open Space and Bushland Setting • D9 Building Bulk • D13 Front Fences and Front Walls • E1 Preservation of Trees or Bushland Vegetation <p>An Arboricultural Impact Assessment report is provided with the recommendation to remove all vegetation within the site, consisting of one high retention value Oak and various other species that are Exempt. The Oak can't be retained and the recommendations of the report are accepted, subject to tree replacement within the site.</p> <p>A Landscape Concept Plan is provided with the application. Whilst sufficient deep soil areas are provided, the landscape design does not satisfactorily provide adequate provision of landscaping to satisfy B9, D1 and D9, and a Amended Landscape Plan shall be submitted prior to the issue of a Construction Certificate to satisfy the relevant conditions of consent.</p> <p><u>Assessing Officer's Comment:</u> Council's Landscape Officer also recommended inclusion of 3m-high shrubs to the front boundary. With agreement from Council's Landscape Officer, this has been reduced to 1m, to allow passive surveillance from the dwellings.</p>
NECC (Development Engineering)	<p>The submitted drainage plan including OSD and connection via an extension to the existing Council drainage system has been assessed and is satisfactory subject to conditions. The proposed new driveway crossing and internal driveway grades are also satisfactory. In accordance with clause 26 of the SEPP, the existing pram ramps adjacent to the refuge island in Blackbutts Rd will need to be reconstructed to meet the grade requirements and a landing slab will be required at the existing bus stop. These requirements have been conditioned to suit.</p> <p>No objection to approval, subject to conditions as recommended.</p>
Strategic and Place Planning (Urban Design)	<p>The proposed development at 87 Blackbutts Road Frenchs Forest has been lodged under the Seniors State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (the Seniors SEPP). The proposed development was the subject of a pre-</p>

Internal Referral Body	Comments
	<p>lodgement meeting PLM 2019/0301 which identified several recommendations for consideration when lodging further applications for development of the site; bulk and scale, character and locality and general controls under the WLEP 2011 and DCP 2011.</p> <p>The drawings received generally address the recommendations from Council's Urban Design officer which sought to reduce bulk and scale of the development through consideration of materials, articulation and modulation and a considered response to the character of the residential area.</p> <p>In terms of application of the recommendations the referral officer is satisfied the proposed development has adequately addressed the recommendations.</p> <p>As such the proposed developed is able to be supported.</p>
Traffic Engineer	<p>The proposed development has the following characteristics relevant to traffic generation as advised by the client:</p> <ul style="list-style-type: none"> • A total of three (3) independent two-storeys and three (3) bedroom dwellings; • A proposed vehicular access driveway from Blackbutts Road, providing access to three (3) separate residential double-garages: • A total of six (6) residential car parking spaces provided onsite. <p>Traffic: RMS Guide to Traffic Generating Developments specifies a trip value of 0.4 vehicles per dwelling. With 3 units being proposed, this equates to 2 vehicles being generated from the development. This is considered negligible on the local road network.</p> <p>No objections are raised.</p> <p>Parking: In accordance with the SEPP, the development requires 0.5 car spaces per bedroom. With 3 units, each containing 3 bedrooms, there is a total of 9 bedrooms. This equates to a need for 5 spaces (rounded up to the nearest whole number). The development is proposing 6 car spaces in total which is deemed appropriate.</p> <p>No objections are raised.</p> <p>Accessibility: The car park layout is deemed compliant with AS2890.1. Noting that the car park is at grade, and sight visibility is maintained from the rear of the site to the street, the proposed 3.6m wide driveway with adjoining 1.9m wide pedestrian path is deemed acceptable in this instance.</p>

Internal Referral Body	Comments
	<p>No objections are raised.</p> <p>Servicing: Waste collection services are proposed on-street with the bin storage area within 15m of the kerb. As the Council waste truck is required to collect from the bin storage area, the applicant will be required to provide parking restrictions to enable the waste truck to park along the frontage of the site.</p> <p>No objections are raised.</p> <p>Conclusion: No objections are raised regarding the application, subject to conditions.</p>
Waste Officer	Proposal is supported, subject to conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response in an email stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1086254M dated 24 March 2020). The BASIX Certificate indicates that the development will achieve the following:

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

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

SEPP (Housing for Seniors or People with a Disability) 2004

The development application has been lodged pursuant to *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (SEPP HSPD) as the development is for three self-contained dwellings for seniors.

Chapter 1 Preliminary

The aims of the Policy are set out in Clause 2 and are as follows:

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- (b) make efficient use of existing infrastructure and services, and*
- (c) be of good design.*

Comment:

The proposed development is consistent with the above aims.

Chapter 2 Key Concepts

Clause 13 Self-contained dwellings

(1) General term: "self-contained dwelling" In this Policy, a self-contained dwelling is a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis.

(2) Example: "in-fill self-care housing" In this Policy, in-fill self-care housing is seniors housing on land zoned primarily for urban purposes that consists of 2 or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, nursing care.

(3) Example: "serviced self-care housing" In this Policy, serviced self-care housing is seniors housing that consists of self-contained dwellings where the following services are available on the site: meals, cleaning services, personal care, nursing care.

Comment:

The proposed development is consistent with the definitions of 'self-contained dwelling' and 'in-fill self-

care housing' above.

Chapter 3 Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria		
Clause	Requirement	Comment
PART 2 - Site Related Requirements		
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	The subject site is approximately 200m from Glenrose Village Shopping Centre, which provides shops, banks, and other retail and commercial services. The subject site is within 400m of public transport (bus) routes that provide access to the remaining services at 26(1). The pedestrian routes from the subject site to Glenrose Village Shopping Centre and the relevant bus stops are via pedestrian paths of compliant gradients.
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site; or (b) there is a public transport service available to the residents not more than 400 metres away; and access to those services or public transport is of acceptable gradients.	
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	The subject site is not classified as bushfire prone land.
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	The subject site is serviced by existing water and sewerage infrastructure.
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b) (i), (iii), and (v): i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed	i) The proposed development is compatible with surrounding land uses, as the residential use of the site is retained. iii) Services and infrastructure available to the site are capable of sustaining the demands of the proposed development. v) The proposed development is not anticipated to result in any unreasonable impact on existing, approved and future uses of the land and surrounding land, by way of its bulk, scale, built form, and character.

Development Criteria		
Clause	Requirement	Comment
	development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	
PART 3 - Design Requirements – Division 1		
30	A site analysis is provided.	A site analysis is provided.

Clause 31 Design of in-fill self-care housing

Pursuant to Cause 31, in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004. The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	<p>Built Environment New development is to follow the patterns of the existing residential neighbourhood in terms of built form.</p> <p>Policy Environment Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.</p>	<p>The proposed development demonstrates a suitable response to the surrounding built form of the locality. This is supported by Council's Urban Designer.</p> <p>The proposed development is assessed in relation to the relevant controls of the Warringah Development Control Plan 2011 within this report.</p>
2. Site Planning and design	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> - Minimise the impact of new development on neighbourhood character - Minimise the physical and visual dominance of car parking, garaging and vehicular circulation. 	<p>The proposed development is suitably designed and sited so as not to result in any unreasonable impacts on neighbourhood character, and in order to minimise the development's visual dominance. The proposed garage structures are suitably incorporated into the building so as not to be visually dominant.</p>
3. Impacts on streetscape	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> -Minimise impacts on the 	<p>The proposed development includes suitable setbacks so as to respect the existing building line within the</p>

Section	Requirements	Comment
	existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape.	streetscape. The proposed garage structures are suitably incorporated into the building so as not to be visually dominant, and the proposal utilises a single driveway, so as to consolidate, and minimise the impact of, vehicular entries and exits.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	The proposed development is generally in accordance with the requirements of this section, as supported by the merit assessment of the application in relation to amenity under the Warringah Development Control Plan 2011.
5. Internal site amenity	Objectives of this section are to: - Provide safe and distinct pedestrian routes to all dwellings and communal facilities.	The proposed development includes dedicated pedestrian paths that are adjacent to, but separate to, the vehicular driveway, thereby providing suitable pedestrian access.

Clause 32 Design of residential development

In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Clause	Requirement	Proposed	Compliance
33 Neighbourhood amenity and streetscape	(a) Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	(a) The desirable elements of the existing local character are the established landscaped settings created by the lots along Blackbutts Road and the detached style housing on these lots. The proposed side setbacks (being far greater than the 900mm required) and resultant built form allow for suitable landscaping to soften the development and minimise its impacts on the local character. The desirable elements of the locality remain protected and enhanced.	(a) Complies (b) Complies (c) Complies (d) Complies (e) Complies (f) Complies (g) Complies
	(b) Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that are identified in a local environmental plan.		
	(c) Maintain reasonable neighbour amenity and appropriate residential	(b) The subject site and surrounding sites are not heritage listed, nor within a heritage conservation area.	

Clause	Requirement	Proposed	Compliance
	<p>character by;</p> <p>(i) providing building setbacks to reduce bulk and overshadowing</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development,</p> <p>(iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours.</p> <p>(d) Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,</p> <p>(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.</p> <p>(f) retain , wherever reasonable, major existing trees, and</p> <p>(g) be designed so that no building is constructed in a riparian zone.</p>	<p>(c) The proposed development includes generous side setbacks, as well as front and rear setbacks capable of achieving the objectives of their respective controls. These setbacks allow for suitable built form without resulting in unreasonable bulk and overshadowing impacts. The proposed development is set on a relatively level block, and the land's form is respected by the development in that the proposal is compliant with the maximum building height controls, compatible and consistent with surrounding development. The proposed development does not include any walls on common boundaries.</p> <p>(d) The building (exclusive of the bin storage area) is set back in compliance with the requirement under the WDCP 2011, consistent with the setbacks of other developments in the existing streetscape.</p> <p>(e) The proposed development is supported by a suitable landscape plan, consisting of species and design complementary to the existing streetscape.</p> <p>(f) The subject site does not contain significant mature vegetation, and is supported by a suitable landscape plan.</p> <p>(g) The subject site does not contain riparian land.</p>	
34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy	(a) The proposed development is suitably designed and sited so as to provide adequate privacy to	<p>(a) Complies</p> <p>(b) Complies</p>

Clause	Requirement	Proposed	Compliance
	<p>of neighbours in the vicinity and residents by:</p> <p>(a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and</p> <p>(b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</p>	<p>the subject site and adjacent sites.</p> <p>(b) The proposed bedrooms are suitably set away from noise sources.</p>	
35 Solar access and design for climate	<p>The proposed development should:</p> <p>(a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and</p> <p>(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.</p>	<p>(a) The proposed development is compliant with the solar access requirements of the WDCP 2011 and the SEPP HSPD.</p> <p>(b) The proposed development provides suitable natural ventilation, heating and lighting. The proposed development is supported by a BASIX Certificate demonstrating these matters.</p>	<p>(a) Complies</p> <p>(b) Complies</p>
36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where	The proposed development is supported by engineering plans demonstrating suitable stormwater management	Complies

Clause	Requirement	Proposed	Compliance
	practical include on-site detention and water re-use.	measures.	
37 Crime prevention	<p>The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:</p> <p>(a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and</p> <p>(b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and</p> <p>(c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.</p>	<p>(a) The proposed development is designed in such a way that occupants of the dwellings are able to observe approaching visitors from inside the dwelling.</p> <p>(b) The proposed development does not include shared entries to the dwellings.</p> <p>(c) The proposed development is designed in such a way that occupants of the dwellings are able to observe approaching visitors from inside the dwelling, without opening the door.</p>	Complies
38 Accessibility	<p>The proposed development should:</p> <p>(a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and</p>	<p>(a) The proposed development provides safe and generally level pedestrian access to nearby public transport services.</p> <p>(b) The proposed development provides a pedestrian path separate to the proposed driveway.</p>	Complies

Clause	Requirement	Proposed	Compliance
	(b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.		
39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The proposed development is supported by acceptable bin storage.	Complies

Part 4 Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause. The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1,000sqm	The subject site has an area of 938.1sqm.	Does not comply. See discussion in the section of this report relating to Clause 4.6 of the WLEP 2011.
Site frontage	20 metres	The subject site has a frontage of 23.595m.	Complies
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	The maximum building height of the proposed development is 7m.	Complies
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	The proposed development is single-storey as it presents to each boundary, and is no more than two storeys in height overall.	Complies
	A building located in the rear 25% of the site must not exceed 1 storey in height (development within 15.51 metres of the	The proposed development does not exceed one storey in height for the rear 25% of the site.	Complies

Control	Required	Proposed	Compliance
	rear boundary).		

Clause 41 Standards for hostels and self contained dwellings

Clause 41 prescribes various standards concerning accessibility and useability having regard to relevant Australian Standards. The Applicant has submitted a report and checklist prepared by an accredited access consultant verifying that the proposal will comply with the relevant standards. These standards will be reinforced via suitable conditions of consent.

Part 5 Development on land adjoining land zoned primarily for urban purposes

This part is not applicable to the subject site.

Part 6 Development for vertical villages

This part is not applicable to the proposed development.

Part 7 Development standards that cannot be used as grounds to refuse consent

Clause 46 states that nothing in Part 7 permits the granting of consent pursuant to the Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	The proposed maximum building height is 7m.	Complies
Density and scale	0.5:1	The proposed development includes 428.6sqm of floor space area, equating to a floor space ratio of 0.457:1	Complies
Landscaped area	30% of the site area is to be landscaped	The proposed development has a landscaped area of 296sqm, equating to 31.7% of the site.	Complies
Deep soil zone	15% of the site area Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a	The proposed development includes 256sqm of deep soil area (with minimum dimensions of 3m), equating to 27.3% of the site. Approximately one third of the proposed	The proposal does not technically comply in relation to the location of the deep soil areas. However, the control requires two thirds of 15% of the site area

Control	Required	Proposed	Compliance
	minimum dimension of 3 metres.	deep soil (97sqm) is located in the rear yard.	to be provided as deep soil in the rear yard. 15% of 938.1sqm is 140.7sqm. Two thirds of 140.7sqm is 93.8sqm. The proposed development provides 97sqm of deep soil in the rear yard, thereby achieving the intention of the control.
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	The proposed development locates living rooms so as to achieve 3 hours of direct sunlight between 9am and 3pm, for each dwelling.	Complies
Private open space	<p>(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and</p> <p>(ii) in the case of any other dwelling, there is a balcony with an area of not</p>	<p>(i) The proposed development includes private open spaces for each dwelling, of greater than 15sqm, with minimum dimension of 3m.</p> <p>(ii) Not applicable.</p>	Complies

Control	Required	Proposed	Compliance
	less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area		
Parking	(i) 0.5 car spaces for each bedroom where the development application is made by a person other than a social housing provider, or (ii) 1 car space for each 5 dwellings where the development application is made by, or is made by a person jointly with, a social housing provider.	(i) The proposed development is comprised of three 3-bed dwellings, each with two parking spaces. (ii) Not applicable.	Complies

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who provided a response in an email stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

Warringah Local Environmental Plan 2011

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Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Site size under Clause 40(2) of the <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i>
Requirement:	1,000sqm
Proposed:	938.1sqm
Percentage variation to requirement:	6.19%

Assessment of request to vary a development standard:

The following assessment of the variation to the site size development standard under Clause 40(2) of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* ('the SEPP') has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

(2) Development consent may, subject to this clause, be granted for development even though the

development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 40(2) of the SEPP is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary, and the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6 (3)(a).

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not

defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act

The objects of this Act are as follows:

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

The Applicant's written request details that the impacts of the proposal are not unreasonable, outlines the proposed development's good design qualities. The provided justification is agreed with by the Assessing Officer. In this regard, the Applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying Clauses 1.3(c) and (g) of the EPA Act. As such, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6 (3)(b). Therefore, Council is satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

Clause 40(2) of the SEPP does not express any objectives. In this case, the Aims of the SEPP are addressed as follows:

- (1) This Policy aims to encourage the provision of housing (including residential care facilities) that*

will—

(a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and

Comment:

The proposed development increases the residential density on the site from one dwelling to three, with each dwelling being for the purpose of seniors housing. As such, the proposed development increases the supply and diversity of residences that meet the needs of seniors in the locality.

(b) make efficient use of existing infrastructure and services, and

Comment:

The proposed development demonstrates efficient use of existing infrastructure and services by way of its location. The subject site is already supplied with access to all essential services (water, electricity, sewerage, stormwater drainage and vehicular access), and is closely located to shopping, medical, community service, and recreational facilities, as required by the SEPP.

(c) be of good design.

Comment:

The proposed development is of good design, demonstrated by way of its compliance with planning controls (or acceptability on merit where a non-compliance is proposed), and by way of its minimisation of impacts on amenity. As detailed throughout this report, the proposed development does not result in any unreasonable impacts in relation to noise, privacy, solar access, views, or other factors contributing to the amenity of the subject site and adjacent sites. This is supplemented by Council's Urban Designer, who is supportive of the proposed development, specifically in relation to its good design.

Zone Objectives

The underlying objectives of the R2 Low Density Residential zone are addressed as follows:

To provide for the housing needs of the community within a low density residential environment.

Comment:

The proposed development provides three new dwellings for the purpose of seniors housing. As such, the proposed development provides for the housing needs of the community in the low density locality.

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

Comment:

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

To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

Comment:

The proposed development is suitably supported by landscaping and design in keeping with the character and natural environment of the locality.

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

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS 18-003 dated 21 February 2018 issued by the NSW Department of Planning & Infrastructure, 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 development standard under Clause 40(2) of the SEPP is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

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 an suitable quality.

- (f) the likelihood of disturbing relics*

Comment:

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

- (g) the proximity to and potential for adverse impacts on any 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.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.9m	-	Yes
B3 Side Boundary Envelope	East: 4m	Within envelope	-	Yes
	West: 4m	Within envelope	-	Yes
B5 Side Boundary Setbacks	East: 900mm	900mm	-	Yes
	West: 900mm	6.3m	-	Yes
B7 Front Boundary Setbacks	0m to bins / letterboxes	0m	-	Yes
	6.5m to building	6.8m	-	Yes
B9 Rear Boundary Setbacks	6m	3m	50%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (375.24sqm)	27.3% (256sqm)	31.8%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B7 Front Boundary Setbacks

The proposed development provides a compliant front setback to the building proper. The proposed bin storage area and letterboxes are located with a nil setback to the front boundary, though this is acceptable under the control.

B9 Rear Boundary Setbacks

The proposed development includes a rear setback of minimum 3m, where 6m is required by this control. The development is considered against the underlying objectives of the control as follows:

To ensure opportunities for deep soil landscape areas are maintained.

Comment:

The proposed development retains adequate deep soil area in the rear yard with minimum dimensions of 3m (as well as along the western side boundary and in the front yard) for planting of a variety of vegetation species, including large canopy trees. The proposed development is compliant with the requirement for 30% of the site to be landscaped, in accordance with Clause 50(c) of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* ('the SEPP').

To create a sense of openness in rear yards.

Comment:

The proposed development, while including an element of non-compliance with the rear setback control, retains a suitable sense of openness in the rear yard. This is achieved in that the development steps (in a 'saw-tooth' manner) along the boundary, so is not one bulky element, and is only single-storey to the rear, compliant with the requirement of Clause 40(4)(b) of the SEPP. This equates to a 6m separation between the proposed development and the dwelling to the south. The proposed first floor is setback 8.8m from the rear boundary to the stairway, and 12.1m to the habitable rooms, providing suitable separation. To supplement this, the proposed development includes suitable area in the rear yard for the planting of a variety of vegetation species, which can assist in further softening the built form.

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

Comment:

The proposed development is adequately designed and sited so as not to result in any unreasonable amenity impacts between dwellings, including suitable setbacks, vegetation, and a solid brick fence separating the rear interface of the proposed development to the property to the south (rear). The proposed development is assessed as acceptable in relation to privacy in the section of this report relating to Clause D8 Privacy of the WDCP 2011.

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

Comment:

The proposed development provides greater built form on the subject site than on adjacent sites. However, this built form does not result in any unreasonable amenity impacts, and is not visually imposing from any elevation, despite its non-compliance with the rear setback control. As such, the proposed development does not result in unreasonable interruption to the visual continuity and pattern of buildings, gardens and landscaped elements in the streetscape.

To provide opportunities to maintain privacy between dwellings.

Comment:

The proposed development is adequately designed and sited so as not to result in any unreasonable privacy impacts between dwellings. This is detailed in the section of this report relating to Clause D8 Privacy of the WDCP 2011.

D1 Landscaped Open Space and Bushland Setting

This control requires 40% of the site (375.24sqm) to be landscaped area, and those landscaped areas are to have a minimum dimension of 2m. The proposed development provides 27.3% of the site as landscaped area, being 256sqm of areas with a minimum dimension of 2m.

It is important to note that Clause 50(c)(ii) of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* ('the SEPP') provides that a consent authority must not refuse consent to a development application for the purpose of self-contained dwellings on the basis of landscaped area, if a minimum of 30% of the area of the site is to be landscaped. The proposed development is compliant with this requirement, in that no minimum dimension for landscaped area is set by the SEPP, and all landscaped area can be included in calculations. The subject site provides a total of 296sqm of landscaped area, when including those areas with dimensions of less than 2m. This equates to 31.5% of the site area.

As per Clause 5 of the SEPP, the SEPP prevails in the event of any inconsistency with another environmental planning instrument. As such, the proposed development cannot be refused on the basis of the proposed non-compliance with the WDCP 2011 in relation to landscaped area. Notwithstanding this, the development is considered against the underlying objectives of the control as follows:

To enable planting to maintain and enhance the streetscape.

Comment:

The proposed development includes generous area in the front setback to be used for the purpose of landscaping. This acts to maintain and enhance the streetscape along Blackbutts Road.

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

Comment:

The subject site does not contain any significant indigenous vegetation, topographical features, or habitat for wildlife. The proposed development is supported by landscaped areas of suitable dimensions and species.

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 proposed development includes a range of landscaped areas, capable of supporting low and medium shrubs, as well as canopy trees.

To enhance privacy between buildings.

Comment:

The proposed development is adequately designed and sited so as not to result in any unreasonable amenity impacts between buildings. The proposed development is assessed as acceptable in relation to privacy in the section of this report relating to Clause D8 Privacy of the WDCP 2011.

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

Comment:

The proposed development incorporates private open space areas of suitable dimensions to meet the recreational needs of the occupants.

To provide space for service functions, including clothes drying.

Comment:

The proposed development incorporates space areas of suitable dimensions to meet the service functions of the occupants, including covered terraces, suitable for clothes drying.

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

Comment:

The proposed development is supported by suitable stormwater management measures to manage on site detention, and significant areas of deep soil to allow for on site infiltration.

D8 Privacy

A number of objections have raised concern about the impacts the proposed development may have on privacy. The proposed development includes windows to habitable rooms within 9m of the windows and private open space on the adjacent site to the west at 91 Blackbutts Road, as follows:

- 3.9m from first floor west-facing bedrooms to the boundary; and
- 5.9m from first floor west-facing secondary living rooms to the boundary.

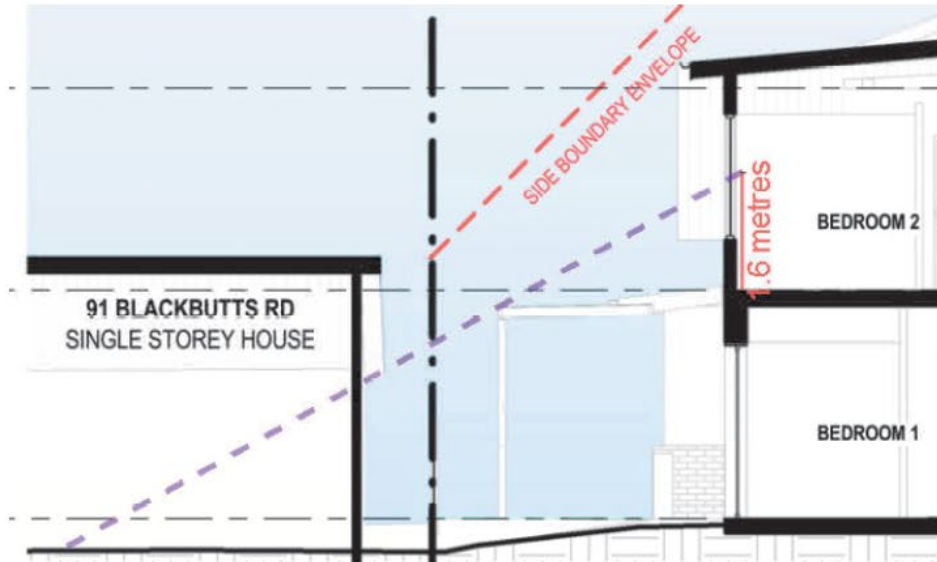
It should be noted that the adjacent property to the west contains only one ground floor window within close proximity to the boundary facing the subject site.

The proposed development is otherwise compliant with the requirements of this control, as remaining habitable rooms and private open spaces are setback well beyond 9m, or are obscured by fencing and landscaping. The development is considered against the underlying objectives of the control as follows:

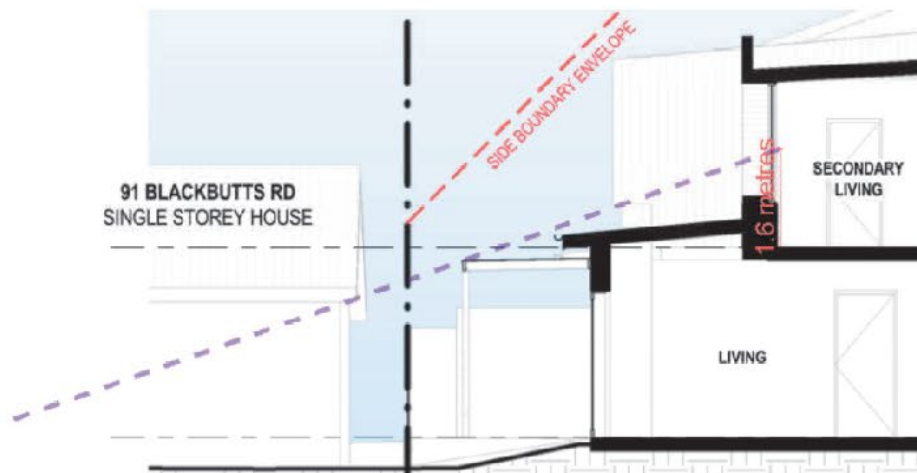
To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.

Comment:

The proposed development includes windows to the western elevation of the upper level that are within 9m of the east-facing windows and private open space of the dwelling on the adjacent site at 91 Blackbutts Road. However, from an average standing eye level of 1.6m, the angle of views available to the west are impeded by the inclusion of pergolas at the lower level of the subject site. As such, a significant portion of the adjacent site to the west (including all its east-facing windows) is obscured.



Above: The angle of view from the proposed upper level bedrooms from an average standing eye height of 1.6m, shown with a pink dashed line.



Above: The angle of view from the proposed upper level secondary living rooms from an average standing eye height of 1.6m, shown with a pink dashed line.

Given this, the proposed upper level windows do not pose a significant imposition to the visual privacy of the adjoining neighbour to the west. Further, it should be noted that the proposed room uses at the upper level are frequented less than those at the lower level. Bedrooms are typically used for rest, and the secondary living area would see lesser use than the open plan main living, kitchen and dining areas. As such, the upper level rooms inherently present a lesser imposition to privacy.

To encourage innovative design solutions to improve the urban environment.

Comment:

The proposed development demonstrates innovative design in that it achieves a suitable yield for the subject site with increased residential density, without resulting in any unreasonable amenity impacts.

To provide personal and property security for occupants and visitors.

Comment:

The proposed development provides suitable separation and demarcation between the subject site and adjacent sites in order to provide personal and property security for all occupants and visitors.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$10,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,050,000.

CONCLUSION

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

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

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

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

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

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

- Non-compliance with the minimum site area set by the *State Environmental Planning Policy*

(Housing for Seniors or People with a Disability) 2004;

- Non-compliance with the front boundary setback, rear boundary setback and landscaped area set by the Warringah Development Control Plan 2011; and
- Objectors' concerns regarding amenity impacts and overdevelopment of the site.

Each matter is acceptable on merit for the reasons detailed in the relevant sections of this report. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/0341 for Demolition works and construction of Housing for Seniors or People with a Disability on land at Lot 2413 DP 752038, 87 Blackbutts Road, FRENCHS FOREST, 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
DA020 Demolition Plan	16 March 2020 Rev A	Walsh2 Architects
DA100 Site Plan	16 March 2020 Rev A	Walsh2 Architects
DA101 Ground Plan	16 March 2020 Rev A	Walsh2 Architects
DA102 Level 1 Plan	16 March 2020 Rev A	Walsh2 Architects
DA102 Roof Plan	16 March 2020 Rev A	Walsh2 Architects
DA200 Sections	16 March 2020 Rev A	Walsh2 Architects
DA201 Sections	16 March 2020 Rev A	Walsh2 Architects
DA300 Elevations	16 March 2020 Rev A	Walsh2 Architects
DA301 Elevations	16 March 2020 Rev A	Walsh2 Architects
DA800 External Finishes	16 March 2020 Rev A	Walsh2 Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
D00 Cover Sheet, Legend & Drawing Schedule	7 January 2020 Issue A	Smart Structures Australia
D01 Ground Floor Stormwater Drainage Plan	20 March 2020 Issue C	Smart Structures Australia
D05 Stormwater Drainage Sections and Details	20 March 2020 Issue B	Smart Structures Australia
D10 Erosion and Sediment Control Plan	7 January 2020	Smart Structures

Sheet 1	Issue A	Australia
D11 Erosion and Sediment Control Plan Sheet 2	7 January 2020 Issue A	Smart Structures Australia

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1086254M	24 March 2020	Building Sustainability Assessments
Geotechnical Assessment	4 December 2019	Ascent Geotechnical Consulting
Access Report	30 March 2020	BCA Logic
Arboricultural Impact Assessment Report	13 December 2019	Hugh the Arborist
Traffic Impact Statement	18 March 2020	McLaren Traffic Engineering

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L001 Landscape Concept Plan	16 March 2020 Rev A	Walsh2 Architects

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	20 March 2020	Applicant

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	5 May 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. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of seniors housing, as follows:

Seniors housing means a building or place that is—

- (a) a residential care facility, or*
 - (b) a hostel within the meaning of clause 12 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, or*
 - (c) a group of self-contained dwellings, or*
 - (d) a combination of any of the buildings or places referred to in paragraphs (a)–(c), and that is, or is intended to be, used permanently for—*
 - (e) seniors or people who have a disability, or*
 - (f) people who live in the same household with seniors or people who have a disability, or*
 - (g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place,*
- but does not include a hospital.*

(Dictionary, Warringah Local Environmental Plan 2011)

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

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

4. **Prescribed Conditions**

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

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

- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

5. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until

the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$10,500.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,050,000.00.

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

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

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

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

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

8. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$40,000 as security against any damage or failure to complete the construction of stormwater drainage works that revert to Council's care and control as part of this consent.

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

Reason: Protection of Council's infrastructure.

9. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**

The applicant is to lodge a Bond of \$30,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

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

Reason: Protection of Council's infrastructure.

10. **Construction, Excavation and Associated Works Bond (Maintenance for civil works)**

The developer/applicant must lodge with Council a maintenance bond of \$5,000 for the construction of the civil works associated with the development that revert to Council's care and

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

Reason: To ensure adequate protection of Council infrastructure.

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

11. **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.

12. **Boundary Identification Survey**

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

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

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

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

13. **On-site Stormwater Detention Details and Certification**

The Applicant is to provide a certification and drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Warringah Water Management Policy PL850 and generally in accordance with the concept drainage plans prepared by Smart Structures Australia, drawing number 190373 D00A, D01C and D05B dated January 2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for Civil Engineering.

The drainage plans must address the following:

- i. The outlet for the OSD system is to be designed for tailwater conditions.
- ii. The OSD basin is to include a minimum of 20% additional volume to the required volume to cater for the proposed landscaping.

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

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

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

The Applicant is to submit an application with Council for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the driveway crossing, footpath, kerb and gutter, bus stop slab and pram ramp reconstruction which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified Civil Engineer. The design must include the following information:

1. 5 metre wide driveway crossing in accordance with Council drawing A4/3330/1 N.
2. 150mm kerb and gutter for the entire frontage of the site in accordance with Council drawing A4/2276/A.
3. 1500mm wide concrete footpath for the entire frontage of the site in accordance with Council drawing A4/10536.
4. 2000mm wide concrete slab 100mm thick between the existing footpath and the kerb adjacent to the existing bus stop in front of 95 Blackbutts Road.
5. Removal and reinstatement of the pram ramps and associated footpath on either side of the existing refuge island in front of 97 Blackbutts Road in accordance with Council drawing A4/7284.
6. 1.8 metre lintel with 900mm grated kerb inlet pit in front of the site with a 375mm RCP extension at 1% minimum grade to the existing Council drainage pit in front of 91 Blackbutts Road in accordance with Council drawing A2/5476/A.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

15. **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.

16. **Amended Landscape Plan**

Amended Landscape Plans shall be submitted to the Certifying Authority for approval prior to

the issue of a Construction Certificate, and shall document the following landscape design outcome:

- i) two (2) Eucalytus haemastoma shall be planted within the front yard at 75L container size,
- ii) the front boundary shall support shrub screen planting capable of attaining to 1m in height,
- iii) the western boundary shall consist of a continuous 1.0m wide garden and shall support shrub screen planting capable of attaining to at least 3 metres in height, with all planting to be a 300mm container size at installation and planted no more than 1m apart,
- iv) the southern rear boundary shall consist of a continuous 1m wide garden and shall support shrub screen planting capable of attaining to at least 3 metres in height, with all planting to be a 300mm container size at installation and planted no more than 1m apart,
- v) two (2) small native trees shall be planted within the rear yard of Unit 3, and shall be selected from the following list: Eucalytus haemastoma, Elaeocarpus reticulatus, Hymenosporum flavum, Callistemon viminalis, or Syzygium leuhmannii,
- vi) all other planting shall be in accordance with the Landscape Concept Plan L001 prepared by Walsh Architects.

Reason: To soften the built form and improve streetscape amenity.

17. **Compliance with Standards**

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

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites**
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 - 2009* Design for access and mobility - General requirements for access - New building work**
- (m) AS 1428.2 - 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website [www.hreoc.gov.au/disability rights /buildings/good.htm](http://www.hreoc.gov.au/disability%20rights/buildings/good.htm). <www.hreoc.gov.au/disability%20rights%20/buildings/good.htm>

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

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

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

18. 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.

19. External Finishes to Roof

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

20. Requirements for Seniors Housing or Housing for Persons with a Disability

The development is for the purposes of Seniors Housing or Housing for Persons with a Disability and is required to comply with all the standards specified in Schedule 3 - "*Standards concerning accessibility and useability for hostels and self-contained dwellings*". Details demonstrating compliance with the above requirement are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure public safety and equitable access for seniors or people with a disability.

21. Construction Traffic Management Plan.

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

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity

- of the site are not permitted unless approved by Council prior.
- Specify that, due to the proximity of the site to Davidson High School, no heavy vehicle movements are permitted along Blackbuts Road, west of Athol Street.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties.
- The location and operation of any on site crane.

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

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

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

22. **Submission of Engineering Plans**

The submission is to include four (4) copies of Civil Engineering plans for the design of:

- footpaths upgraded to a minimum width of 1.5m for the full length from the site to the specified Bus Stops.

- upgrade of the bus stops to be DDA compliant

These are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Section 138 and/or 139 applications are to be submitted to Council for Local Traffic Committee approval.

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

23. **Waste and Recycling Requirements**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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. **Tree Protection Measures**

A Project Arborist with AQF Level 5 qualifications shall be engaged to undertake tree protection measures in accordance with the Arboricultural Impact Assessment Report prepared by Hugh The Arborist, under the following sections:

- o 10 Recommendations
- o 11 Tree protection requirements
- o 12 Hold points

The works shall be undertaken to protect the existing street tree identified as T13, and existing trees on adjoining property identified as T1, T2, T3 and T6.

The Project Arborist shall submit certification that the works and activities described in the above sections have been correctly installed and adhered to during the construction period.

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.

The Certifying Authority or a Project Arborist AQF Level 5 must ensure that:

- iv) the activities listed in section 4.2 of AS4970- 2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and
- v) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: To ensure tree protection is provided and maintained.

26. Tree Removal Within the Property

The following existing trees are approved for removal based on the assessment and recommendations of the Arboricultural Impact Assessment submitted by Hugh The Arborist:

- o Tree 4: Common Oak
- o Tree 8: Black Bean
- o Tree 9: Jacaranda
- o Tree 10: Mulberry
- o Tree 11: Sweet Pittosporum
- o Tree 12: Jacaranda

27. Pedestrian Sight Distance at Property Boundary.

A pedestrian sight triangle of 2.0 metres by 2.5 metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas.

Reason: To maintain pedestrian safety.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

28. Road Reserve

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

Reason: Public safety.

29. 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.

30. 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.

31. Property Boundary Levels

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

32. Civil Works Supervision

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practicing Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

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

33. Footpath Construction

The applicant shall reconstruct the footpath to 1500mm wide for the entire frontage of the site, construct a slab adjacent to the existing bus stop in front of 95 Blackbutts Road and remove and reinstate the pram ramps and associated footpath on either side of the existing refuge island in front of 97 Blackbutts Road. The works shall be in accordance with the following:

- (a) All works are to be constructed in accordance with Section 138 Road Act approval.
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Section 138 Road Act approval for footpath. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

34. Notification of Inspections (infrastructure works to be handed over to Council)

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of stormwater gully pits

- (d) Prior to pouring of kerb and gutter, footpath and driveway crossing
- (e) Subgrade level / basecourse level / subbase
- (f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

35. 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 Roads 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.

36. Vehicle Crossings

The Applicant is to construct one vehicle crossing 5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. The redundant layback and crossing are to be restored to kerb, footpath and grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

37. Kerb and Gutter Construction

The Applicant is to construct 150mm kerb and gutter and associated works along the entire frontage of the site in accordance with Northern Beaches Council Drawing No. A4/2276/A. Prior to the pouring of concrete, the works are to be inspected by Council and an approval issued.

The approval is to be submitted to the Principal Certifying Authority.

Reason: To facilitate the preservation of on street parking spaces.

38. Stormwater Connection

The applicant shall connect the pipeline in accordance with the Section 138 Roads Act approval 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 works. All works shall be undertaken at the applicant's cost.

Reason: To ensure compliance of drainage works with Council's approved plans.

39. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected as follows:

- i) all trees and vegetation located on adjoining properties,
- ii) all road reserve trees and vegetation.

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- iv) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained, and in particular the existing trees within adjoining properties and the existing street tree,
- v) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,
- vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist,
- viii) should either or all of v), vi) and vii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- ix) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
- x) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

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

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

During demolition and/or construction the proposal/works shall be generally consistent with the approved Waste Management Plan.

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

41. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling – timber – bricks – tiles – plasterboard – metal – concrete, and evidence of disposal for recycling is to be retained on site.

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

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

42. **Landscape Works Completion**

Landscaping is to be implemented in accordance with the approved Amended Landscape

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

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

43. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan) and Hydraulic Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user for the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be obtained.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

44. **Certification of Council Drainage Works and Works as Executed Data**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed Council drainage works have been constructed in accordance with this consent and the approved Section 138 approved plans. The certification and Works as Executed data (details overdrawn on a copy of the approved drainage plans) certified by a Registered Surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Stormwater Assets' shall be submitted to Council for their written acceptance.

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

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

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

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

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

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

46. Garbage and Recycling Facilities

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

47. Occupation of Seniors Housing or Housing for Persons with a Disability

A positive covenant pursuant to Section 88E of the Conveyancing Act 1919 is to be registered on the title of the land to which this development consent applies. The covenant shall stipulate that Council is the sole authority to release or modify the covenant and that the development is only permitted to be occupied by persons detailed as follows:

- (a) seniors or people who have a disability;
- (b) people who live within the same household with seniors or people who have a disability;
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

(Note: Under State Environmental Planning Policy (Housing for Seniors or People with a Disability 2004):

Seniors are people aged 55 or more years, people who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 <http://www.comlaw.gov.au/> of the Commonwealth) is provided and/or people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

AND

People with a disability are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.)

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

Reason: Statutory requirements.

48. Signage and Linemarking – External.

A plan demonstrating the proposed signage and line marking within Council's Public Domain shall be prepared by a suitably qualified person and submitted to and approved by the Local Traffic Committee prior to the issue of any Occupation Certificate.

Note: The applicant is advised that the plan will require approval by the local Traffic Committee if the proposal requires change in existing parking conditions and hence, adequate time should be allowed for this process

Reason: To ensure consistent parking amenity.

49. **Waste/Recycling Compliance Documentation**

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

Reason: To ensure waste is minimised and recycled.

50. **Positive Covenant for Waste Services**

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

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

51. **Authorisation of Legal Documentation Required for Waste Services**

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

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

Reason: To create encumbrances on the land.

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

52. **Landscape Maintenance**

A 12 month establishment period shall apply for all new landscaping within the site. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. All planting must be maintained for the life of the development, or for their safe useful life expectancy. Planting that may die or is approved for removal must be replaced.

Reason: To maintain local environmental amenity and ensure landscaping continues to soften the built form.





1. EAST ELEVATION
Scale: 1:100 @ A1



2. WEST ELEVATION
Scale: 1:100 @ A1

Project: **SENIORS HOUSING**
85-87 BLACKBUTTS RD, FRENCHS FOREST
Client: **ATAI INVESTMENTS**

Walsh²
Architects

Registered Architect
ACT 2624 NSW 10386
scot@walsharchitects.com.au
0486 049 860

Scale
1:100 @ A1

Sheet Name
ELEVATIONS

Number
DA300

No.
A
Description
FOR DEVELOPMENT APPLICATION

Date
16.03.20
Rev.
A

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1 NORTH ELEVATION
1:100 @ A1



2 SOUTH ELEVATION
1:100 @ A1

Project: **SENIORS HOUSING**
85-87 BLACKBUTTS RD, FRENCHS FOREST
Client: **ATAI INVESTMENTS**

Walsh²
Architects

Registered Architect
ACT 2624 NSW 10386
scott@walsharchitects.com.au
0486 049 860

Scale
1:100 @ A1

Sheet Name
ELEVATIONS

No. **A**
Description
FOR DEVELOPMENT APPLICATION

Number
DA301

Date
16.03.20
Rev.
A



Suite 1, 9 Narabang Way Belrose NSW 2085 | Phone: (02) 9986 2535 | Fax: (02) 9986 3050 | www.bbfplanners.com.au

27 March 2020

Submission - Clause 4.6 Exception to a Development Standard

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 - Clause 40(2) site area 85-87 Blackbutts Road, Frenchs Forest

1 Request for exception to Clause 40(2) site area

1.1 Overview

Clause 4.6 of Warringah LEP 2011 provides a mechanism to allow an exception to a development standard.

As identified, the proposal contravenes Clause 40(2) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (the SEPP). Clause 40(2) relates to the area of the allotment. It states in 40(2) Site size – *'The size of the site must be at least 1,000 square metres'*. This is a development standard and an exception is sought.

As required by clause 4.6 (3) the following is a written request to justify this contravention for the consent authority's consideration.

1.2 Site details

The site is located at 85 – 87 Blackbutts Road, Frenchs Forest. The site is legally described as, Lot 2413 in Deposited Plan 752038. The site has an area of 938.1 m² (by survey). The site is slightly irregular in shape with dimensions as follows:

- Street frontage to Blackbutts Road 23.595m
- East side: 30.48m
- West side: 45.39m
- South rear: 13.845 & 13.245m

1.3 Proposed development and the nature and extent of exception sought

The application seeks development consent, for demolition of existing structures, a Seniors and Disabled Housing development, under the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 for 3 dwellings in a 1 to 2 storey built-form. The proposal is for *Infill self-care* housing for independent living.

The exception relates to Clause 40(2) of the SEPP in relation to the site area being 1,000m². The clause states (our emphasis added):

'Development standards—minimum sizes and site size, (2) Site size - The size of the site must be at least 1,000 square metres'

Being 938.1m² the site area demonstrates a 6.2% / 61.9m² exception to the lot size standard. Clause 4.6 of Warringah LEP 2011 (LEP) provides a mechanism to allow an exception to a development standard.

Clause 40(2) of the SEPP is a development standard and is applicable to the assessment of the proposal. This clause 4.6 submission is made to address the statutory provisions of the Act and the LEP and there is no statutory impediment to the consideration of this submission under clause 4.6.

As required by clause 4.6 (3) the following is a written request for the proposed development to exceed the development standard for the consent authority's consideration.



Figure 1 – excerpt of the site plan showing the location of the site, the proposed development footprint, the subdivision pattern and the location of surrounding development. The exception relates to the area of the allotment which is 938.1m²

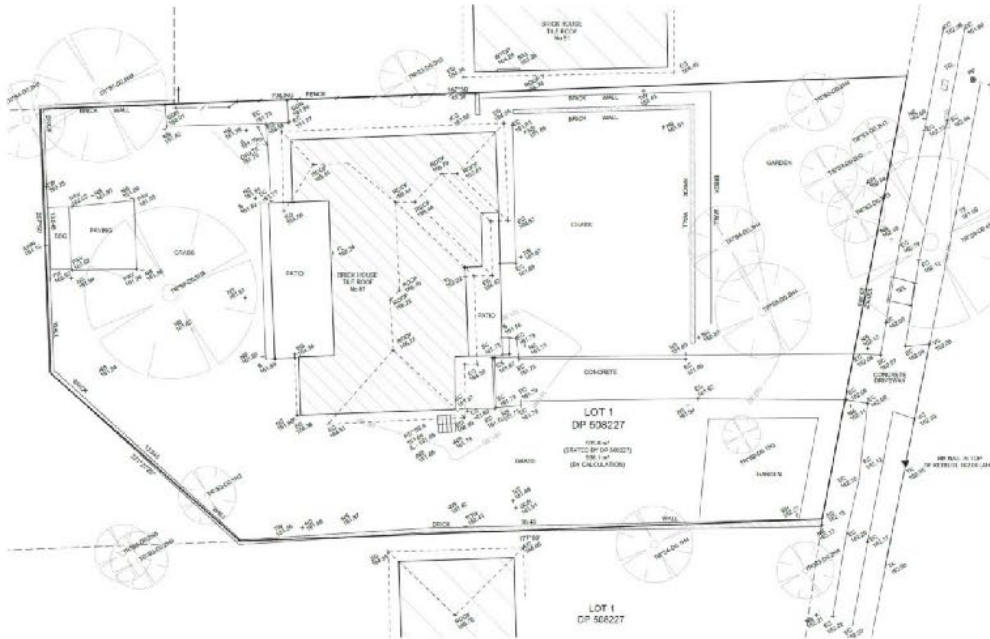


Figure 2 – excerpt of the site survey



Figure 3 – excerpt of the site survey

2 Clause 4.6

Relevant to the subject matter, Clause 4.6 states:

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

In response to the provisions of Clause 4.6, and with the guidance provided by the above judgements, the matters in support of the proposal are documented with this *written request* to justify this contravention of the development standard.

3 Context and Format

This "*written request*" has been prepared having regard to "*Varying development standards: A Guide*" (August 2011), issued by the former Department of Planning, and relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*

- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7;
- *Moskovich v Waverley Council* [2016] NSWLEC 1015; and
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.
- *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130
- *Hansimikali v Bayside Council* [2019] NSWLEC 1353

In response to the provisions of Clause 4.6, and with the guidance provided by the above judgements, the matters in support of the proposal are documented with this *written request* to justify this contravention of the development standard.

4 Assessment

4.1 Compliance is unreasonable or unnecessary in the circumstances

Subsection 3 (a) of Clause 4.6 states:

(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

Guidance is provided by the following court judgement in establishing what the relevant considerations are in assessing what is 'unreasonable or unnecessary in the circumstances of the case'.

In addressing the requirements of Clause 4.6 (3) (a), the accepted five possible approaches for determining whether compliance is unnecessary or unreasonable were established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council*. Whilst at the time, this was specific to SEPP 1, in the matter of *Four2Five* (2007) LEC 827, the Commissioner stated within the judgement the following, in reference to a variation:

"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."

In the decision of *Wehbe vs Pittwater Council* (2007) LEC 827, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are:

1st *The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.

2nd *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

3rd *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

4th *A fourth way is to establish that 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.*

5th *A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

In response to the 5 Wehbe principles it is assessed that the second and third principles are relevant to the subject matter. Our assessment of the proposal under clause 4.6(3)(a) finds that:

Having regard to the second principle of Wehbe, compliance with the development standard is unreasonable and unnecessary in the circumstances of the case because, despite the proposed site size exception, the proposal satisfies the various design quality and built form provisions of the SEPP, noting:

- The proposal demonstrates that the site area can physically accommodate the footprint, intensity and scale of the proposed development without having any unreasonable or excessive physical impacts on the neighbouring properties or the streetscape quality.
- The proposal incorporates appropriate compensatory design measures, in that:
 - The proposal provides generous boundary setbacks that, in various instances, significantly exceed the minimum setbacks.
 - The proposed development will not be incompatible or out of context with the visual scale and character of established development in the location.
 - The proposal complies with, and is considerably under the SEPP's height standard.
 - The proposal complies with SEPP's FSR standard.

- The proposal complies with SEPP's Landscaped area standard.
- The proposal reflects the pattern of development within the location.
- The proposal will result in high internal amenity to the future dwelling occupants.
- The proposed site size exception will have an insignificant impact in terms of its physical effects on adjoining land in the areas of shadowing, privacy, bulk, scale and view impacts.
- The proposed site size exception will not result in significant or inappropriate visual impacts on the streetscape or public spaces.

These matters are further explained within this submission.

Having regard to the third principle of Wehbe, compliance with the development standard would defeat the underlying aims of the SEPP, if compliance was required, noting that:

- The proposal will increase the supply and diversity of residences that meet the needs of seniors or people with a disability;
- The proposal makes efficient use of existing infrastructure and services;
- The proposal is of good design;
- The site is positioned in an ideal location accessible to various shops, recreation, transport links and community services.;
- The proposed site size exception will have an insignificant impact in terms of its physical impacts on adjoining land in the areas of shadowing, privacy, bulk, scale and view impacts.

In these circumstance, strict application of the standard would result in the aims of the SEPP being defeated by a proposal of high merit that satisfies the other provisions of the SEPP.

For these reasons, in the circumstances, insistence upon strict compliance with the standard would be *unreasonable or unnecessary*. For these reasons it is assessed at the requirements of clause 4.6(3)(a) are satisfied and Council has the authority to grant approval to the proposal.

5 Environmental planning grounds

Subsection 3 (b) of Clause 4.6 states:

(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:

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

The proposed exception to the site size *development standard* does not undermine or disrespect the relevance of the control or its objectives. There are sufficient environmental planning grounds to justify contravening the development standard in the particular circumstances on the basis of the following considerations:

- The proposed exception does not result in an excessive visual building bulk or scale, maintaining an appropriate building presentation to the street frontage and neighbouring properties.

- The proposed exception in the minimum site size development standard is modest in its extent (6.2%) and it would not be perceivable in the visual presentation of the property to surrounding properties or the streetscape.
- The proposed exception does not result in a significant reduction in the quality of the proposed built form will not significantly alter the spatial characteristics of the property.
- The proposed exception will not result in unreasonable or excessive physical impacts on the neighbouring properties or the streetscape quality of the property.
- The proposed exception is capable of being accommodated on the site without imposing any significant or adverse impacts on the amenity of the surrounding land, or the scenic quality of the wider locality.
- Strict compliance with the minimum site size development standard would be unreasonable and unnecessary to the extent that the site would be unable to accommodate a form of development that is consistent with the aims and objectives of the SEPP, in circumstances where the building form does not impose any significant or adverse impacts on the amenity of surrounding land.
- The extent of the proposed development is not excessive as a result of this exception, and the development-to-land ratio proposed, as evidenced by the proposal's compliance with the suite of built form controls relating to car parking, boundary setbacks, private open space, deep soil landscaped area, building height and floor space ratio. It is compatible to the extent of development that can be reasonably expected upon land within the the R2 zone generally.
- The proposed dwellings will not result in a significant reduction in landscaped areas on the property. There remain appropriately located landscaped areas for vegetation and private recreational use. For these reasons the proposal will achieve a suitable balance between landscaped areas and the built form despite the site size exception.

5.1 Unreasonable burden

The exception has minimal impact given that the proposal demonstrates that the site area can physically accommodate the footprint, intensity and scale of the proposed development, in a manner that is compliant with the SEPP, without having any unreasonable or excessive physical impacts on the neighbouring properties or the streetscape quality.

There are positive impacts achieved by the development. It is therefore appropriate that the merits of the proposal on environmental planning grounds be balanced with the impact that strict compliance with the standard places on the site, and whether such strict compliance would result in a better or neutral planning outcome. The proposed exception will provide a compatible development outcome consistent with various local and State planning provisions that relate to the site.

Strict compliance in the circumstances would not achieve any significant gains with regards to the objectives for supplying a diversity of housing specific to the needs of older people and people with a disability in the R2 zone or relevant aims of the SEPP. In fact, strict compliance would defeat the aims of the SEPP which are to increase the supply of this form of housing, within accessible locations.

Based on the above, strict compliance would result in an unreasonable burden on the proposed development with insufficient environmental planning outcomes.

5.2 How does the proposed development / exception relate to the objectives of the Act?

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the built form outcomes achieved through the minor redistribution of site sizes and footprints across the site are consistent with the following objectives at clause 1.3 of the Environmental Planning and Assessment Act 1979 (the Act) noting the following:

- In response to objective 1.3(c), the exception results in a proposed residential development that will promote the orderly and economic use and development of the land in an efficient manner by a design that is responsive to its development context that will increase the supply of housing, specific to the needs of older people and people with a disability in the R2 zone, close to public transport and a local centre, in a manner that is entirely consistent with the SEPP.
- In response to objective 1.3(g), the proposed development results in a residential development that will promote good design and amenity of the built environment. The built form outcome has been developed through detailed site, context, privacy, and shadow analysis to ensure an appropriate contextual and streetscape fit. The building footprint has been designed to reflect the shape and orientation of the site, creating an interesting, site-specific building design that presents appropriately to each of its boundaries. The proposed development maintains high levels of residential amenity to adjoining properties by concentrating living spaces at ground floor level, minimising its height, by generous boundary setbacks and through the quality of its surrounding landscape spaces.

5.3 Conclusion

The proposal is entirely consistent with the aims of the SEPP because it will increase the supply of housing specific to the needs of older people and people with a disability in the R2 zone, close to public transport and a local centre. Based on the above, there are appropriate circumstances to support the proposed development based on the site suitability and the extent of development proposed. Conversely, there are insufficient grounds to refuse the proposal based on its site size deficit. For these reasons the proposed exception is assessed as being appropriate to the circumstances of the site, and its context. It is assessed that there are appropriate and sufficient environmental planning grounds to support the proposed exception.

6 Public Interest Considerations

6.1 Objectives of the development standard

In accordance with 4.6 (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the development standard. The objectives of Clause 40(2) are not specifically expressed in the SEPP, however the aims of the SEPP are to increase the supply and diversity of residences that meet the needs of seniors or people with a disability, make efficient use of existing infrastructure and services, and be of good design.

It is also reasonable to conclude that the objectives of the site size control are to ensure that sites are of sufficient size to provide for buildings, vehicular access, landscaping / deep soli area, private open space, solar access and retention of natural topographical features in a manner that is positive for the future occupants of the land. Furthermore, that the property is able to be developed without incurring any reasonable physical impacts on neighbouring properties in terms of shadowing, privacy, visual impact, view loss or the natural environment.



The following submissions are made in response to the above objectives.

Compensatory design measures

Being 938.1m² the site area demonstrates a 6.2% / 61.9m² exception to the lot size standard. In response to this characteristic of the site, the following key compensatory design measures have been incorporated to address this issue and provide an appropriate building form on the site:

- **Lower building height** – The proposed building height ranges from 6.2m to 6.9mm, as measured to the ceiling level. The height of the building is up to 1.8m lower than the height permitted under the Seniors SEPP (8.0m).
- **Increased eastern and western side setbacks** - The side setbacks have been increased and range between approx. 6.4 to 9.6m (approx.) on the east side and between approx. 3.0 to 5.9m on the west side; the outcome being generous separation distances to adjoining dwellings. It is noted that each of these setbacks are significantly greater than a development permitted in the R2 zone under the local planning controls.
- **Compliant rear setback** - The proposed building is compliant with the SEPP's rear setback requirement, thereby providing an appropriate shading and visual impact on the land that adjoins the rear of the site.
- The proposed setbacks assist in achieving a compatible relationship with the neighbouring properties ensuring existing dwellings retain a high level of solar access, privacy and amenity levels.
- The proposed side setbacks exceed both the Seniors SEPP and the DCP's side setback requirements. Furthermore, the proposed side setbacks meet and exceed the DCP's minimum side boundary envelope requirement.

By lowering the height of the building and increasing its setbacks to adjoining residential allotments the potential amenity impacts (privacy, shading and visual) of the proposed development on the adjoining neighbours are reduced in accordance with the SEPP's aims and objectives.

Generous spatial separation is provided and high internal amenity levels to the proposed dwellings are achieved, despite the site being 938.1m² and less than 1,000m²

- Despite the site being 938.1m² and less than 1,000m², the proposal achieves a generous amount of spatial separation around the proposed building. The side setbacks have been increased and range between approx. 6.4 to 9.6m (approx.) on the east side and between approx. 3.0 to 5.9m on the west side; the outcome being generous separation distances to adjoining dwellings.
- The proposed setbacks assist in achieving a high internal amenity levels to the proposed dwellings each dwelling meeting (and in the case of the front dwelling, exceeding) the SEPP's minimum solar access requirements. This is achieved despite the site being 938.1m² and less than 1,000m².
- The proposed side setbacks facilitate appropriate levels of solar access to the site and high levels of privacy in relation to neighbouring properties.

Generous landscaping and deep soil areas are provided that exceed the minimum controls, despite the site being 938.1m² and less than 1,000m²

- Despite the site being 938.1m² and less than 1,000m², the proposal achieves a landscaping and deep soil outcome that meets and exceeds the planning controls under the Seniors SEPP and DCP.
- The design provides a landscape setting complemented by a landscaping plan that will enhance the amenity of the site to the benefit of future occupants and the surrounding amenity. 297.4m² or 31.7% of the site is proposed to be landscaped area (the minimum requirement being 30%), within which the proposed building will be sited. 27.4% / 256m² of the site is proposed to be deep soil landscaped area having a minimum dimension of 3m (the minimum requirement being 15%). Each of these landscaped areas exceed the SEPP's minimum requirement).

No significant physical impacts, despite the site being 938.1m² and less than 1,000m²

Despite the site being 938.1m² and less than 1,000m², the proposal will not result in any inappropriate physical or amenity impacts on the streetscape or adjoining land noting that:

- the proposal achieves a generous spatial separation around the proposed building. The side setbacks have been increased and range between approx. 6.4 to 9.6m (approx.) on the east side and between approx. 3.0 to 5.9m on the west side; the outcome being generous separation distances to adjoining dwellings.
- The physical impacts of the proposal, including, overlooking, overshadowing, visual impact and view loss have been considered. It is assessed that the proposal will not unreasonably impact upon the existing amenity or physically constrain the future development potential of the surrounding land.

In relation to shadowing impacts –

Shadow diagrams accompany and support the proposal and demonstrate that the compliance with the DCP is achieved. The following key aspects are noted:

The site and the adjoining properties have a south to north orientation to Blackbutts Road. As a result, shade will be relatively evenly shared between (mainly) the rear yard of each adjacent property. The shadow diagrams demonstrate that shade will be cast over the rear yard, eastern side and southern portions of the dwelling at 91 Blackbutts Road in the morning time period, then over the rear yard, western side and southern portions of the dwelling at 83 Blackbutts Road during the afternoon time period. This reflects the existing development & shading pattern for properties along the southern side of Blackbutts Road, and provides a relatively even distribution of shade, consistent with the development pattern along the street.

The DCP requires:

'2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21'.

In accordance with Clause D6 of the DCP, the sunlight available to the private open space of adjoining the dwellings will not be impacted by more than 3 hours between 9am and 3pm on 22 June.

It is assessed that, whilst shade onto adjoining properties will be moderately increased above the current levels, the extent of the increase is within reasonable limits, and satisfies the DCP. Therefore, it is concluded that the proposal will not significantly or unreasonably reduce the available sunlight to the adjoining properties and the provisions of the control are satisfied.



Figure 3 – the proposed shading impact at 9am



Figure 4 – the existing and proposed shading impact at 12pm



Figure 5 – the existing and proposed shading impact at 3pm

In relation to privacy impacts -

Privacy has been considered in the proposed design and satisfies the DCP's objectives. The following aspects of the proposal are noted:

- The site is significantly setback from all of its boundary's. The adjacent roadway and playing fields opposite provide a significant separation to the north. Compliant setbacks are proposed to each boundary and provide generous building separation to adjoining dwellings. The proposed setbacks assist in achieving a compatible relationship with the neighbouring properties ensuring existing dwellings retain a high privacy and amenity levels.
- Window and door openings within the side elevations have been designed to provide high levels of privacy. A modest extent of glazing is proposed within the side elevations. In relation to the upper levels, these windows are principally associated with bedrooms and bathrooms.
- No first-floor balconies are proposed.
- The location and design of principal living areas, particularly with respect to their associated outdoor spaces is such that direct lines of sight have been minimised or avoided.
- Private open spaces are appropriately located with respect to neighbouring development, will be screened by dividing fencing and enhanced by a new landscaping regime for the property.

Considering these matters, it is concluded that the proposal will not significantly or unreasonably affect the visual privacy of the neighbouring properties.

6.2 Zone Objectives

The proposed development will be in the public interest because it is consistent with the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out. These are stated and responded to as follows:

- (a) *To provide for the housing needs of the community within a low density residential environment.*

Response -

The proposal it will contribute to the variety and supply of housing within the zone and is consistent with this objective. Further, the proposed development serves the public interest by providing additional residential accommodation within an established residential environment, offering high levels of internal amenity without imposing any significant or adverse impacts on the amenity of surrounding land.

- (b) *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah*

Response -

The proposed development is not antipathetic to this objective of the zone.

- (c) *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah*

Response -

The proposed development appropriately complies with the front building line in the street.

The design provides a landscape setting complemented by a landscaping plan that will enhance the amenity of the site to the benefit of future occupants and the surrounding amenity. 297.4m² or 31.7% of the site is proposed to be landscaped area (the minimum requirement being 30%), within which the proposed building will be sited. 27.4% / 256m² of the site is proposed to be deep soil landscaped area having a minimum dimension of 3m (the minimum requirement being 15%). Each of these landscaped areas exceed the SEPP's minimum requirement).

In conclusion it is assessed that the proposal is consistent with or not antipathetic to the objectives of the zone.

7 Conclusion

The purpose of this submission is to formally request a exception to the minimum site size development standard in Clause 40(2) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.



The proposed exception is modest, and strict compliance with the control is unreasonable on the basis that the objectives are achieved anyway, and unnecessary on the basis that no beneficial planning purpose would be served.

The cl 4.6 request is well founded and compliance with the site size development standard would be unreasonable and unnecessary in the circumstances. There are sufficient environmental planning grounds to justify the contravention of that standard and that the proposed building would be consistent with the objectives of the standard and the zone and thereby be in the public interest.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Michael Haynes'.

Michael Haynes
Director - BBF Town Planners

ITEM 3.3 **DA2020/0330 - 4 NORTH HARBOUR STREET, BALGOWLAH -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING SWIMMING POOL**

REPORTING MANAGER **Steve Findlay**
TRIM FILE REF **2020/350418**
ATTACHMENTS **1 Assessment Report**
 2 Site Plan & Elevations
 3 Clause 4.6

PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the floor space ratio.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2020/0330 for alterations and additions to a dwelling house including swimming pool on land at Lot 1 DP 543563, 4 North Harbour Street, Balgowlah, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0330
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 1 DP 543563, 4 North Harbour Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Nicholas Victor Reader Karen Jane Reader
Applicant:	Nicholas Victor Reader Karen Jane Reader
Application Lodged:	07/04/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/04/2020 to 13/05/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 70%
Recommendation:	Approval
Estimated Cost of Works:	\$ 850,000.00

EXECUTIVE SUMMARY

The proposal is for alterations and additions to the existing dwelling which includes the relocation of the garage and a new swimming pool.

The proposal does not comply with the development standard for Floor Space Ratio. However, a written request by the applicant has sufficiently justified varying the standard. The addition of the floor space relates to the conversion of the existing garage in to a store. This results in a variation to the development standard of 70%. However, this is only an increase from the 61% variation of the existing building.



There have not been any submissions received for the application.

The application was assessed against the planning controls of the MDCP 2013 and development standards under the Manly LEP 2013, and whilst there are variations to the setback controls, open space, parking and swimming pool numerical controls, these have been found to be consistent with the objectives and requirements of the controls and standard (subject to conditions). In this regard, the siting and built form will provide appropriate separation and design to minimise privacy impact, other amenity impacts, and will provide an appropriate visual presentation.

The vegetation to the front of the property is to be maintained so that the site will have a similar presentation to the street as exists.

The assessment concludes that the proposed design is appropriate for the streetscape and would not have any unreasonable impacts on privacy, views or any other unreasonable amenity or visual impact.

Therefore, it is recommended that the application be approved, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves alterations and additions to the existing dwelling. In detail, this includes:

Ground Floor

- New kitchen and foyer
- Linen
- Laundry
- Robe to Bedroom 4
- Refurbishment of Bath 1
- Alterations to windows and stairs

First Floor

- Alterations to master bedroom
- New robe to Bedroom 2
- Alterations to windows

External

- New Driveway
- New double garage
- New patio
- New stairs
- New swimming Pool

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act



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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 1 DP 543563 , 4 North Harbour Street BALGOWLAH NSW 2093
Detailed Site Description:	<p>The subject site consists of an allotment located on the western side of North Harbour Street.</p> <p>The site is an irregular shape with a frontage of 21m along North Harbour Street and a depth of 15.24m. The site has a surveyed area of 700m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house on site.</p> <p>The site has a minor slope from the rear of the property down to the street and contains vegetation to surround the existing dwelling.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development.</p>

Map:



SITE HISTORY

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

- DA5075/91 - Alterations and additions approved on 13 December 1991.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED



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

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

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	An old drainage easement is found on the eastern side of the property where the proposed works are located. This issue has been raised with Council's Stormwater Assets Team and they are currently assessing an application to extinguish this easement through the property. As such a deferred commencement condition has been provided for this issue. The proposal does not require OSD and connection to the kerb is satisfactory. The proposed new driveway crossing and garage levels are satisfactory. No objection to approval, subject to conditions as recommended.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The property is not tagged as flood affected.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating a decision is not required as there are no Ausgrid assets near the proposed development.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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



SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A373502_02).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who provided a response stating a decision is not required as there are no Ausgrid assets near the proposed development.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8m (new skylight)	N/A	Yes
Floor Space Ratio Site area: 325.4m ²	FSR: 0.45:1 (146.4m ²)	FSR: 0.76:1 (248.9m ²) Existing: FSR: 0.72:1 (235.6m ²)	70% Existing variation: 61%	No (see comments)

Compliance Assessment



Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-Compliance:

Development Standard:	Floor space ratio
Requirement:	FSR: 0.45:1 (146.43m ²)
Proposed:	FSR: 0.76:1 (248.9m ²)
Percentage variation to requirement:	70%
Percentage variation of existing dwelling	61%

Assessment of Request to vary a Development Standard:

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

Clause 4.6 Exceptions to Development Standards:

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

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

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

Comment:



Clause 4.4 - Floor space ratio 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.*

Applicants Written Justification

The applicants written request argues, in part:

The minor increase in floor area is provided in conjunction with a lower pitched roof and further modulation of the building. As such, the overall proposal will provide a further distribution of building bulk.

It is agreed that the addition of floor area (the store to the lower floor level) is a minor increase and that the associated refurbishment will provide improvements in terms of presentation of bulk.

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 R2 Low Density Residential zone. An assessment against these objectives is provided below.

The underlying objectives of the standard, pursuant to Clause 4.4 – ‘Floor space ratio’ of the MLEP 2013 are:

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

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

Comment:

The proposal maintains the bulk existing dwelling and adds a garage to the front of the site. Along with this, there is additional floor space located in the position of the existing garage. This floor space is within the existing building and will not contribute to a further bulk and scale. Furthermore, the proposed garage is suitable given the character of the street which has an established pattern of built form at the front boundary. As such, the proposed alterations are consistent with the existing and desired streetscape character.

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

Comment:

The proposal maintains the front setback to the dwelling and relocates the garage and pool at the front of the site. These changes will not obscure important landscape or townscape features.

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

Comment:

The proposal maintains landscaping to the front and sides of the dwelling. Along with this, the proposed garage and swimming pool are consistent with the form in the area.

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

Comment:

The proposed floor space is within the existing building (see image below) and would not result in any unreasonable amenity impact to adjoining land or the public domain.

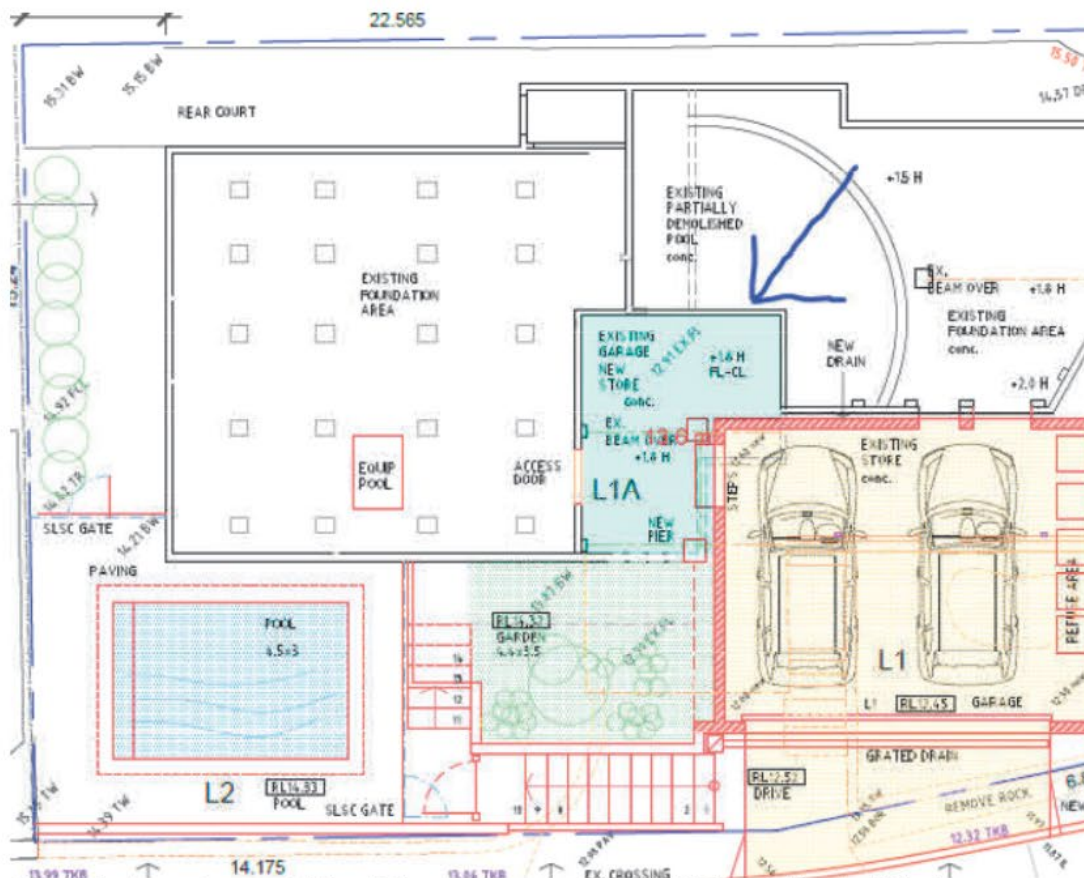


Figure 1: Area where additional floor space proposed (within existing building)

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

Comment:

Not applicable.

Zone Objectives

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposal provides alterations and additions to an existing dwelling. this contributes to housing needs.

It is considered that the development satisfies this objective.

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



residents.

Comment:

Not applicable

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 325.4m²	Requirement	Proposed	% Variation*	Complies
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	5.2m (dwelling) 0.5m-2m (garage) 1.5m (pool)	13%-75%	No (see comments)
4.1.4.2 Side Setbacks and Secondary Street Frontages	1m (based on wall height of garage)	Garage: 0.5m	50%	No (see comments)
	Windows: 3m	1-1.2m	66%	No (see comments)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (178.97m ²)	35% (115m ²)	35.7%	No (see comments)
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (40.25m ²)	28% (32m ²) Existing landscaped area: 55m ²	20%	No (see comments)
4.1.5.3 Private Open Space	18sqm	18sqm	N/A	Yes



4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	7m	N/A	No (see comments)
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.1m	N/A	Yes
	1m curtilage	0m	100%	No (see comments)
	1.5m water side	1.5m		
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.2 Alterations and Additions	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.1.3 Floor Space Ratio (FSR)



Clause 4.1.3.1 provides for exceptions to FSR for undersized lots is relevant and the control is outlined below:

DCP FSR Control (for Area I)	Requirement	Propo
Calculation of FSR based on 500 sqm lot size/ site area	0.45:1 (225sqm)	0.49:1 (248.9

This control does not override the Manly LEP development standard and a full assessment can be found under the Clause 4.6 assessment in this report. However, the lesser extent of the percentage variation does give a context to Floor Space Ratio at this site.

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

Description of non-compliance

The proposal does not comply with the front setback control (6m). In this regard, the proposal involves a varied front setback of 1.5m-5.2m.

The proposed garage does not comply with the side setback control. The control based on the wall height of the garage is 1m and the proposed garage is 0.5m.

The proposal also involves new windows which have a setback of 1m-1.2m from the boundary. This does not comply with the requirement for windows to be 3m from the boundary.

Merit consideration:

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

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

Comment:

The proposal maintains the existing front building line to the dwelling and introduces a garage that is close to the front boundary. This style of car parking is consistent with the established character of the street. Furthermore, the maintenance of the trees to the front of the property will contribute to ensuring an appropriate balance of built form and natural features.

Objective 2) To ensure and enhance local amenity by:

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



Comment:

The proposal involves the introduction of a pool area to the front and also introduces some new windows. As a result of the physical separation provided between these features and the neighbouring living spaces, acoustic and visual privacy will be maintained to a reasonable extent. Furthermore, the new window (window 1) on the northern elevation is angled so as to be not directly face the boundary to minimise opportunity for overlooking.

The single storey nature of the garage and separation from neighboring dwelling also ensures adequate sunlight access and air movement is maintained.

The proposal would also have no unreasonable impact on views, traffic or streetscape character.

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

Comment:

Flexibility to allow the garage and pool to be within the front setback is warranted given the complementary nature of the structures with the established character of the street.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal maintains the large trees to the front of the site and this allows for an appropriate balance between natural features and built form.

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

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposal involves a total open space of 35%. This does not comply with the control of 55%.



The proposal involves a landscaped area of 35%. This does not comply with the control of 28%.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal maintains the vegetation to the front the property to provide an appropriate outcome for flora and fauna.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposal maintains the existing trees and provides landscaped areas to each side boundary as well as the front of the dwelling. Given the existing siting of the dwelling including that there is little opportunity for landscaping to the rear, this is an appropriate provision of landscaped area.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

The proposal maintains the existing vegetation to the front of the property. This includes the large trees the screen the existing house and would assist in screening the proposed pool. Furthermore, the layout of open space on the property is generally maintained along with the introduction of a swimming pool and the relocation of the garage. This provides a suitable amenity outcome for the site.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

The proposal maintains landscaping to the front and sides of the site. Along with the permeable surface provided by the swimming pool, this provides a reasonable outcome for water infiltration and stormwater.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposal does not include the introduction of any weeds.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:



The proposal maintains an open corridor to the front of the site and this provides sufficient opportunity for wildlife habitat and the potential for wildlife corridors.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Description of non-compliance

The proposal involves a garage with a width of 7m. This does not comply with the numerical control of 6.2m.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposal involves a garage structure with two car parking spaces and access to the dwelling. The structure is also complementary with the built form in the street. As such, this is an adequate form of parking for the site.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances and,

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposal provides 2 spaces which complies with the requirement for number of spaces under the Manly DCP. An exception to the requirement in the width of the car parking space is warranted in this circumstance due to the consistency in the style of parking with the street, the integration of landscaping, and the modulation of surrounding structures.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposed car parking does not involve an unreasonable extent of excavation.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

The proposed crossing is an adequate width for two car parking spaces.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces



and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The vegetation to the front of the site is maintained and landscaping is also provided to the north of the proposed garage. This provides for an appropriate integration of landscaping with the built form.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

Not applicable.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The proposal does not comply with the control which requires swimming pools to be in the rear setback.

The proposal does not comply with the control for setbacks to the curtilage of the swimming pool. In this regard, the proposal provides a setback of 0m from the curtilage of the pool to the southern boundary of the site.

Merit consideration

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

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

The proposal provides landscaped area for screening to front of the site and the swimming pool is also in a location that is well separated from neighbouring living areas. Along with a condition which requires appropriate location and treatment of associated mechanical equipment, this will result in an outcome in which reasonable levels of privacy will be maintained.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

Comment:

The proposed pool within the front setback is consistent with the established character of the street. The vegetation to the front of the site also assists in screening the pool area. This ensures that there would be no adverse impact on the streetscape.

Objective 3) To integrate landscaping; and



Comment:

The proposal provides for sections of landscaping to the north and west of the swimming pool. This results in an appropriate integration of landscaping.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

The swimming pool would be capable of being used as an emergency water resource .

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$8,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$850,000.

CONCLUSION

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

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

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



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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

Conclusions on the Assessment of the Application

The proposal involves changes to the dwelling that do not add any unreasonable bulk and do cause an unreasonable visual or amenity impact.

The addition of the pool and garage (to provide a compliant number of parking spaces) to the front of the site is suitable given the style of development forms and the established character of the street.

On balance, the proposal should be approved as the design is reasonable for the site and locality by virtue of a presentation which is consistent with characteristics of the area and also provides sufficient spacing and modulation to reduce any unreasonable impact caused by building bulk.

Therefore, the application is recommended for approval.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes the proper and orderly planning for the site or the locality. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause Clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2020/0330 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 1 DP 543563, 4



North Harbour Street, BALGOWLAH, subject to the conditions printed below:

DEFERRED COMMENCEMENT CONDITIONS

1. Stormwater Drainage Easement Extinguishment

The existing Drainage Easement Benefiting Council, burdening the site, is to be extinguished. The applicant must provide Council with evidence of the extinguishment of the easement via a title search in order to activate the consent.

Reason: To ensure the proposed development works are not constructed within a Council drainage easement.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. 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
Sheet 02- Site Plan - Levels 1-4	March 2020	Paul Carrick
Sheet 03- Lower Plan	January 2020	Paul Carrick
Sheet 04- Floor Plan & Living - L2, L3	March 2020	Paul Carrick
Sheet 05- Floor Plan Bedrooms- L4	March 2020	Paul Carrick
Sheet 06- Roof Plan	March 2020	Paul Carrick
Sheet 07- Elevation Front- East	March 2020	Paul Carrick
Sheet 08- Elevation Front- East	March 2020	Paul Carrick
Sheet 09- Elevations Side- North + South	March 2020	Paul Carrick
Sheet 10 - Elevation Rear West Section at L2	March 2020	Paul Carrick
Pool Sections	March 2020	Paul Carrick

Engineering Plans		
Drawing No.	Dated	Prepared By
C01- Driveway access Plans	Jan 2020	NB Consulting Engineers



C02- Proposed Contour Layout Plan	Jan 2020	NB Consulting Engineers
C03- Longitudinal Sections - Sheet 1	Jan 2020	NB Consulting Engineers
C04- Longitudinal Sections - Sheet 1	Jan 2020	NB Consulting Engineers

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Sheet 11- Landscape Plan	March 2020	Paul Carrick

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plans	12.3.20	Paul Carrick

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.

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.

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$8,500.00 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 \$850,000.00.

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.

6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

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. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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



Reason: To provide public and private safety.

9. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

10. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

11. **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.

12. **Sydney Water "Tap In"**

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

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

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

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

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

13. **Mechanical equipment associated with Swimming pool**

Any mechanical plant associated with the swimming pool and spa shall be centrally located within the site, away from the boundaries and acoustically treated so the noise from the



machinery is not above 5dBA from neighbouring habitable rooms. Details are to be submitted to the certifier prior to the issue of the Construction Certificate.

Reason: To ensure the acoustic amenity of the neighbouring residents.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. **Road Reserve**

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

Reason: Public safety.

15. **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 Roads 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.

16. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5.8 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N, the driveway levels application approval and the engineering plans by NB Consulting Engineers drawing number 200120 C01 to C04 Issue A dated 28/01/2020. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. The redundant layback and crossing are to be restored to kerb, footpath and grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

17. **Waste Management During Development**

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

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

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

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

18. **Stormwater Disposal**

The stormwater drainage works shall be connected to the kerb in North Harbour Street and shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified



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

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

19. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the 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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life (DACPLF09)

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Steven Findlay, Manager Development Assessments

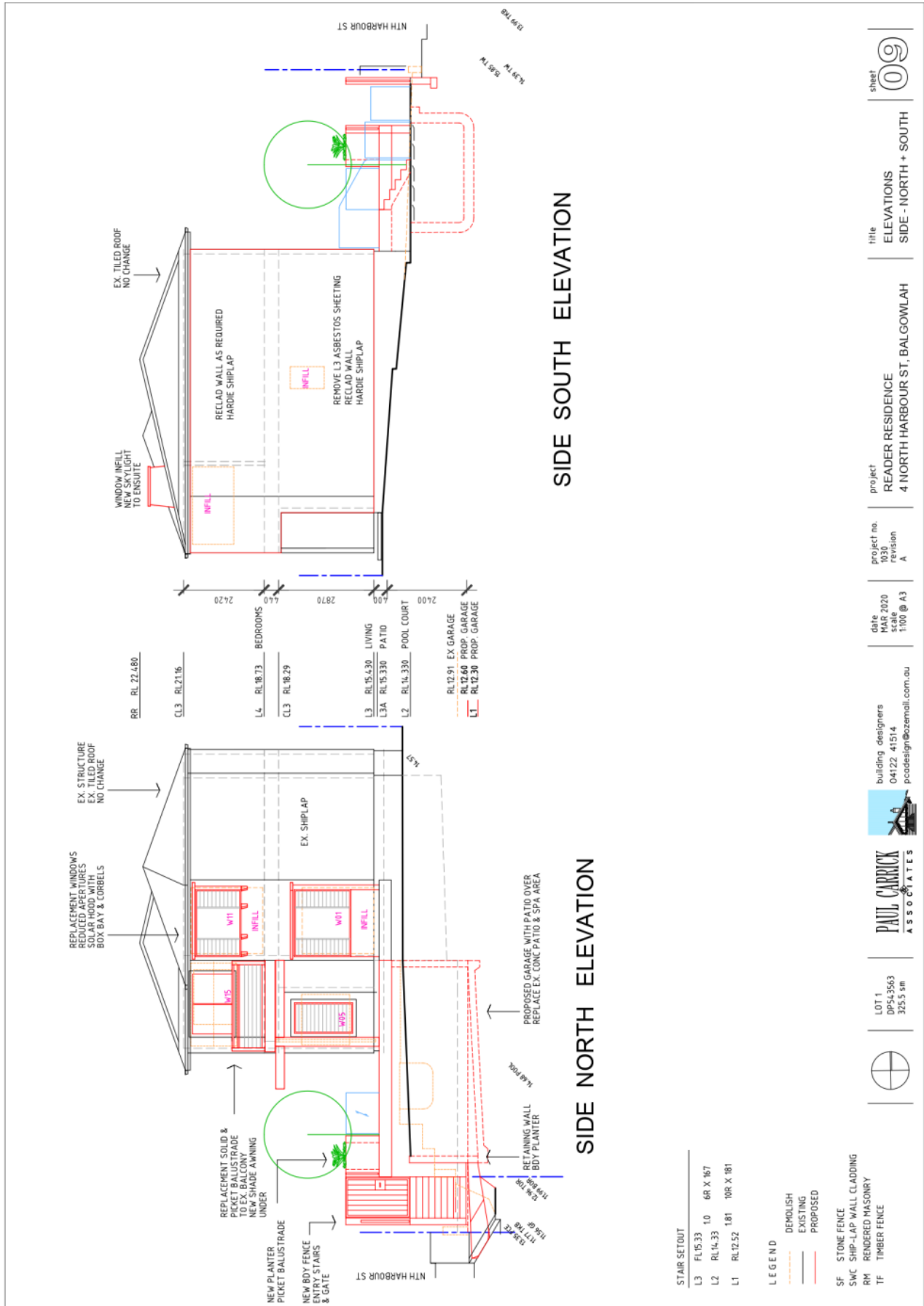
The application is determined on //, under the delegated authority of:

Steven Findlay, Manager Development Assessments









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APPENDIX 1
CLAUSE 4.6 – FLOOR SPACE RATIO

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**WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

4 NORTH HARBOUR STREET, BALGOWLAH

ADDITIONS AND ALTERATIONS TO AN EXISTING DWELLING

**VARIATION OF A DEVELOPMENT STANDARD RELATING TO COUNCIL'S FLOOR SPACE RATIO
CONTROL AS DETAILED IN CLAUSE 4.4 OF THE MANLY
LOCAL ENVIRONMENTAL PLAN 2013**

For: Additions and alterations to an existing dwelling
At: 4 North Harbour Street, Balgowlah
Owner: Mr & Mrs Reader
Applicant: Mr & Mrs Reader
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum floor space ratio development standard as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.4 restricts the maximum floor space area control within this area of the Balgowlah locality and refers to the floor space ratio noted within the "*Floor Space Ratio Map*."

The relevant maximum floor space control in this locality is 0.45:1 or for this site with an area of 325.4m², the maximum gross floor area is 146.43m² and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The existing dwelling on the site presents a gross floor area of 253m² or 0.77:1.

Due to the extent of existing development on site, the proposed new works will present a minor increase in floor area of 7m² or to a maximum of floor area of 260m² or 0.799:1, and therefore presents a variation of 113.57m² or 0.4 to the control.

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

It is noted that the Council's Manly Development Control Plan 2013 Amendment 14 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is less than

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minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 500m² and when calculated against this required lot size, the development prescribes a FSR of 0.52:1, which is a reduced non-compliance compared to the control.

Is clause 4.4 of MLEP a development standard?

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act includes:

"(d) the cubic content of floor space of a building."

- (b) Clause 4.4 relates to floor space of a building. Accordingly, clause 4.4 is a development standard.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

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Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP provides:

- (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.*

Clause 4.4 (the FSR development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

- (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.

The proposed development does not comply with the FSR development standard pursuant to clause 4.4 of MLEP which specifies an FSR of 0.45:1 however as the proposal will result in a very minor increase in the calculable floor area of 7m² when compared to the current dwelling, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

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Clause 4.6(4) of MLEP provides:

(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 Planning Secretary has been obtained.

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained.

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

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

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

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Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes, in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum floor space ratio, together with the fact that the development will result in a very minor increase in the calculable gross floor area of 7m² when compared to the current development, the new works will provide attractive alterations and additions to a residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed alterations and additions will not see any adverse impacts on the views enjoyed by neighbouring properties.

The works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in North Harbour Street & from the surrounding private properties will be largely maintained.

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5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the FSR development standard contained in clause 4.4 of MLEP.
- 5.2 Clause 4.4 of MLEP specifies an allowable gross floor area for a site in this part of Balgowlah of 0.45:1 or for this site, the allowable gross floor area is 146.43m².
- 5.3 The subject site has an area of 325.4m².
- 5.4 The existing dwelling has a gross floor area of 253m² or FSR of 0.777:1. The proposal has a calculable gross floor area of 260m² or FSR of 0.799:1. The proposal will see a minor increase in the calculable floor area of 7m² when compared to the current dwelling.
- 5.4 The total non-compliance with the FSR control is 113.57m² which equates to 77.5%.
- 5.5 When assessed against a minimum lot area of 500 m², the proposal presents an FSR of 0.52:1, which is a reduced extent of non-compliance with the control.

6.0 Relevant Caselaw

- 6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:
 - 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
 - 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
 - 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
 - 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence*

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compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the R2 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

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5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

7.0. Request for Variation

7.1 Is clause 4.4 of MLEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:

“(d) the cubic content of floor space of a building.”

- (b) Clause 4.4 relates to floor space of a building. Accordingly, clause 4.4 is a development standard.

7.2 Is compliance with clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the FSR standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The objective of Clause 4.4(1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The proposal provides for alterations and additions to an existing dwelling which largely maintain the built form of the existing development on site.

The contemporary building form with a low profile roof and earthy external finishes are considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade, together with the retention of the existing side setbacks and recessive external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as such, will not be a visually dominant element in the area.

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

The proposal will not see the loss of any significant vegetation. The built form of the existing dwelling remains largely unchanged, and is therefore not considered to result in any adverse effects on the scenic qualities of the foreshore.

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

The site is considered to be sufficient to provide for the proposed works, with the dimensions of the lot to be unchanged.

The proposal will retain an appropriate area of soft landscaping, and the site will maintain an appropriate balance between the landscaping and the built form.

On the basis that the proposal maintains the majority of the existing landscaped area, the site is considered to maintain an appropriate balance between the site's landscaping and the built form.

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

The proposed works are wholly contained within the site and will not result in any adverse impacts for any adjoining land.

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

The site is not located within a business zone and by providing for the construction of alterations and additions to an existing dwelling, is not contrary to the viability of any local business activity.

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7.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *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.*

In Initial Action the Court found at [23]-[24] that:

23. *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.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the*

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development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

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

The aspect of the development which is considered to contravene the development standard is a modest addition of 7m² to the rear of the first floor level of the dwelling. The low pitch roof form further introduces modulation and architectural relief to the building's facade, which further distributes any sense of visual bulk.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The new floor area which contravenes the development standard are at the existing rear of the first floor level and introduce modulation and architectural relief to the building's facade, which further distributes any sense of visual bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).
- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of North Harbour Street which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new works which exceed the gross floor area control and FSR standard of 0.45:1 are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act. This is a suitable environmental planning ground which justifies the flexible application of the development standard.
- The alterations demonstrate good design and improves the amenity of the built environment by creating improved and functional living area and also maintains the amenity of the existing dwelling house and neighbours in terms of views by locating the new floor area at the first floor level, where it will not obstruct views across the site and will maintain the views from the site (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants whilst reducing the calculable gross

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floor area and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R2 Low Density Residential zone?

- (a) Section 4.2 of this written request suggests the 1st test in *Wehbe* is made good by the development.
- (b) Each of the objectives of the R2 Low Density Residential zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone*".

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the modest form of the proposed additions which see a minor increase in the calculable gross floor area of 7m², the proposed

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alterations and additions to the existing dwelling will be consistent with the individual Objectives of the R2 Low Density zone for the following reasons:

- ***To provide for the housing needs of the community within a low-density residential environment.***

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The R2 Low Density Residential Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed alterations and additions to an existing dwelling which will provide for an appropriate level of amenity and in a form, and respect the predominant bulk and scale of the surrounding dwellings.

The development will see a minor increase in floor area of 7m² when compared to the current dwelling. The proposal maintains the existing overall ridge height of the dwelling, together with the general bulk and scale of the existing dwelling.

The non-compliance, which is a result of the existing floor area which does not comply with the standard and the new works including a new modest rear addition, will increase the amenity for the buildings' owners by providing a new living room in a form which complements the architectural style and scale of the surrounding development.

The compatible form and scale of the alterations and additions will meet the housing needs of the community within a single dwelling house which is a permissible use in this low-density residential zone.

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

The subject proposal relates to a residential dwelling and this provision is therefore not relevant.

maintain the built form of the existing development on site.

7.5 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.6 Has the Council considered the matters in clause 4.6(5) of MLEP?

- (a) The proposed non-compliance does not raise any matter of significance

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for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

7.0 Conclusion


This development proposes a departure from the maximum floor space ratio control, with the proposed additions to the existing dwelling to provide a maximum floor space ratio of 0.799:1.

As discussed, it is noted that the Council's Manly Development Control Plan 2013 Amendment 14 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is undersized and is less than minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 500m² and when calculated against this required lot size, the development prescribes a FSR of 0.52, which results in a reduced non-compliance with the FSR control comfortably complies with the FSR variation.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner

ITEM 3.4	DA2020/0468 - 29 MOORE ROAD, FRESHWATER - ALTERATIONS AND ADDITIONS TO A HOTEL
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2020/350444
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2020/0468 for alterations and additions to a Hotel on land at Lot 13, 5, 4, 3, 2, Sec 1, DP 7022, 29 Moore Road, Freshwater, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0468
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 13 DP 7022, 31 Moore Road FRESHWATER NSW 2096 Lot 1 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 2 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 3 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 4 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 5 DP 7022, 29 Moore Road FRESHWATER NSW 2096
Proposed Development:	Alterations and additions to a Hotel
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	Yes, under Clause 2.5 of the WLEP
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Harbord Hotel Holdings Pty Ltd
Applicant:	Boston Blyth Fleming Pty Ltd
Application Lodged:	12/05/2020
Integrated Development:	No



Designated Development:	No
State Reporting Category:	Other
Notified:	19/05/2020 to 02/06/2020
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 3,000,000.00
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EXECUTIVE SUMMARY

The proposal is for alterations and additions to the existing hotel which includes internal alterations, changes to windows and changes to stairs.

The hotel is listed as a heritage item and is also located within a residential zone. Under the WLEP, the hotel is an additional permitted use for the zone.

There have been 6 submissions made in relation to ongoing disturbance of neighborhood amenity and concern for operations of the hotel. Conditions have been imposed to mitigate impacts caused by upgrade on neighborhood amenity. Conditions also ensure there will be improvements made to the acoustic treatment of the hotel.

The assessment concludes that the proposed design is appropriate for the given the heritage context, and that conditions will provide an improvement to residential amenity.

Therefore, it is recommended that the application be approved, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves alterations and additions to the existing hotel. In detail this includes:

- Internal reconfiguration with replacement of kitchen, bar and bathroom
- Demolition of external stairs
- Addition of lighting to the courtyard
- New access from Charles Street
- Replacement and upgrading of windows
- Replacement of exhaust and mechanical ventilation

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 - 2.5 Additional permitted uses for particular land
Warringah Local Environmental Plan 2011 - 5.10 Heritage conservation
Warringah Development Control Plan - D3 Noise

SITE DESCRIPTION

Property Description:	<p>Lot 13 DP 7022 , 31 Moore Road FRESHWATER NSW 2096</p> <p>Lot 1 DP 7022 , 29 Moore Road FRESHWATER NSW 2096</p> <p>Lot 2 DP 7022 , 29 Moore Road FRESHWATER NSW 2096</p> <p>Lot 3 DP 7022 , 29 Moore Road FRESHWATER NSW 2096</p> <p>Lot 4 DP 7022 , 29 Moore Road FRESHWATER NSW 2096</p> <p>Lot 5 DP 7022 , 29 Moore Road FRESHWATER NSW 2096</p>
Detailed Site Description:	<p>The subject site consists of an allotment located on the corner of Moore Road and Charles Street.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a hotel on site.</p> <p>The site contains a courtyard to Moore Road and a car park entrance to Charles Street.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development.</p>

Map:



SITE HISTORY

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

- DA1986/209- Alterations to the Harbord Beach Hotel involving tiling of front entrance, additional driveway, games area, new bar and counter space approved on 29 July 1986
- DA2001/0614- Retractable awnings to garden area approved on 16 October 2001.
- DA2005/912- Enclosed vergola over courtyard approved on 26 July 2006.
- DA2006/1130- Addition of a Terrace approved on 19 July 2007.
- DA2015/0061- Alterations and additions to existing commercial building (hotel) approved on 6/05/2015 (replacement of timber lattice with glass structure)

PLM2020/0069

A Pre-Lodgement meeting was held on 16 April 2020. Advice was given in regard to acoustic treatment of the hotel and presentation of the hotel in relation to heritage. There has been adequate consideration of this advice given in the proposed fit out and treatment of the building.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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



Section 4.15 Matters for Consideration'	Comments
environmental planning instrument	Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. / This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
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 6 submission/s from:

Name:	Address:
Mr Jeffrey Kenneth Bembrick	3 / 27 Moore Road FRESHWATER NSW 2096
Anonymous	N/A
Ms Gloria Sunnie Isabel Wright	20 Moore Road FRESHWATER NSW 2096
Withheld Withheld	NSW
Pam Young Barry Young	Address Unknown
Mr Talofa Ki Pangai Pouli	234 Warringah Road BEACON HILL NSW 2100

The matters raised within the submissions are addressed as follows:

- Works that have started prior to a decision being made on this application.**
Comment:
 A site visit conducted by the assessment officer found no evidence of works requiring a consent that were being carried out. Any evidence of works being carried out without a consent (unless accordance with the SEPP Exempt and Complying Development Code 2008), should be sent to Council's Compliance team.
- SEE does not represent potential intensification of use and likely disturbance of neighborhood amenity; SEE does not satisfy requirements of Environmental Planning and Assessment Act; full extent of changes is not clear**
Comment:
 The full extent of changes are provided on the architectural plans. This includes red markings for demolition and hollow black lines for proposed walls. It has been found that the Statement of Environmental Effects sufficiently relates to the proposal and architectural plans.
- Increase to gaming/ poker machines; suggestion that more bathroom facilities could be provided instead of gaming area**
Comment:
 The proposed plans do not involve new poker machines. To provide clarity, a condition has been imposed to state that this consent does not provide approval new poker machines.
- Noise impacts; lack of acoustic glazing along Charles Street; noise impacts from the northern and western windows; noise impact from Charles Street access/entry; Noise**



impact from front courtyard area at night; Request to maintain existing access arrangement

Comment:

Council's Environmental Health officer has provided conditions to ensure appropriate mitigation of acoustic impacts. One of these conditions involves a requirement for windows to be appropriately acoustically treated. Furthermore, a requirement has been put in to the Plan of Management which involves air locking doors while there is entertainment at the hotel. This provides an improvement to acoustic treatment at the hotel.

- **Concern regarding noise caused by patrons leaving the pub**

Comment:

There is no change to the time that patrons will leave the pub. However, the acoustic mitigation measures and the Plan of Management (with airlocks on the doors) will contribute to providing an improved situation in regard to cumulative noise.

- **Hazardous beer glass disposal**

Comment:

The Plan of Management requires all waste to be stored in refuse areas.

- **Clarification regarding upper balcony usage**

Comment:

The proposal does not involve any change to the upper level.

- **Outdated acoustic report; request for updated acoustic report and also a social impact statement**

Comment:

Council's Environmental Health officer has provided a number of conditions which require certification of acoustic standards prior to the issue of an Occupation Certificate. This is to be resubmitted to Council's Environmental Health team.

- **Hours of operation (beyond midnight)**

Comment:

The proposal does not involve any change to hours of operation.

- **Ongoing disturbance issues caused by the pub; request for repair of give way sign**

Comment:

A request has been sent to Council's Maintenance team for repair of the give way sign. Any further ongoing disturbance issues can be reported to Council.

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</p>



Internal Referral Body	Comments
	this however may be determined at Construction Certificate Stage.
Environmental Health (Industrial)	<p>Comments:</p> <p>Council's Environmental Health Team have been engaged to review this referral relating to noise from subject premises, the 'Freshwater Hotel'.</p> <p>While Council is not in receipt of any recent complaints regarding noise, concerns have been raised in submissions regarding the noise generated from the premises. In particular the concerns relate to live/amplified music and noise from 'intoxicated' patrons. Liquor & Gaming NSW are the Appropriate Regulatory Authority (ARA) for noise generated by the premise.</p> <p>An acoustic report was prepared by The Acoustic Group Pty Ltd on 26 April 2020, reference number 50.4539.R2:MSC, to assess potential noise impacts of the development and provide specific recommendations to address internal noise and mechanical plant noise.</p> <p>The noise assessment for the acoustic report has been taken under unusual circumstances, during a closure of the subject premises due to the current COVID-19 restrictions. For this reason only available point source for sound was the mechanical plant which is to operate up to 10pm. The night period as define in the NSW Industrial Noise Policy occurs between 10pm and 7am and is where noise concerns and potential sleep disturbance is of greatest concern.</p> <p>The report provides recommendations to significantly improve sound attenuation, the specifications of which will be conditioned.</p> <p>Patron noise and noise at the boundary of affected residents will be regulated under the existing liquor license LIQH400102917, while Council DA conditions will address Mechanical Plant, internal limitations to Live/Amplified Music, sound attenuation upgrades throughout the premise and operational restrictions in certain areas after 9pm to be consistent with LIQH400102917 and to further protect public amenity from potential sleep disturbance.</p> <p>The acoustic assessment has made assumptions referencing acoustic amplified entertainment and a 'DJ' in the 'courtyard'. The premises advertises a wide variety of live music involving multiple instruments and musicians. An additional item will be added in conditions to comply with the acoustic recommendations that addresses dB(C) for low frequency sound.</p> <p>An assessment of noise in the 'beer garden' or 'courtyard' was not undertaken as part of the assessment and can be regulated under conditions in the existing liquor license LIQH400102917. Notwithstanding, use of a sub-woofer will be not be permitted outdoors to limit low frequency noise impacts.</p>



Internal Referral Body	Comments
	<p>A noise assessment of existing operations couldn't be undertaken due to premises closure. Therefore, the conditions for this development will include confirmation of sound attenuation measures prior to OC to ensure compliance can be achieved and that the use will be able to satisfy noise conditions in LIQH400102917.</p> <p>Further comment 09/06/2020: Council's Environmental Health Team were provided with an amended Plan of Management on 9 June 2020 confirming that airlocks on the Moore Road and Charles Street access would be in place during any entertainment.</p> <p>A condition to comply with amended POM should be included in this development approval.</p> <p>Recommendation: Approval, subject to conditions</p>
Environmental Health (Food Premises, Skin Pen.)	<p>Comments: Environmental Health have reviewed the food premises component of this development. Sufficient detail regarding the fit-out of bars and kitchens have been provided to demonstrate that they will be able to comply with relevant Australian Standards While there are no objections, it must be noted that the AS4674:2004 applies to all food and beverage preparation areas including the kitchen and bar(s). Details of mechanical ventilation exhaust aren't provided however location, operation and power out-put will be addressed in a condition ensuring compliance with AS1668. Sound output to be addressed in a separate condition.</p> <p>Recommendation: Approval - Subject to conditions.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>This application has been referred as it is a listed heritage item, being Item 174 - Harbord Beach Hotel, 29 Moore Street, Freshwater, which is listed in Schedule 5 of Warringah Local Environmental Plan 2011.</p>
	Details of heritage items affected
	<p>Details of this heritage item, as contained within the Warringah Heritage Inventory, are:</p> <p>174 - Harbord Beach Hotel, 29 Moore Street, Freshwater <u>Statement of Significance</u> A rare example of an inter-war hotel building which shows influences of the californian bungalow style. Historically provides evidence of the early development of social & recreational facilities</p>

Internal Referral Body	Comments		
	to serve the growing population. Local landmark.		
	<u>Physical Description</u>		
	Two storey building with rendered masonry walls. Tiled hipped, jerkin headed & gabled roof. Terrace on first floor supported by arcaded verandah. A number of modifications include surrounding wall, beergarden, bottle shop extension & window modifications.		
	<u>Other relevant heritage listings</u>		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	<u>Consideration of Application</u>		
	<p>This application proposes refurbishment works to the Harbord Hotel, within are largely internal. Exterior changes are limited to the addition of a new entry door on the Charles Street facade (replacing a window); festoon lights over the open courtyard areas fronting Moore Street and replacement of glazing on the western and northern facades with double glazing for noise reduction. Internal works are removing most existing fittings and construction of new bars, kitchens, restaurant area etc. It is noted that all internal fabric is not original, with the exception of the stairs to the first floor, which are proposed to be reinstated and restored. It is proposed to repaint the exterior white (as existing) with a 50mm strip around the building facade in Dulux Sunbound. No signage is proposed with this application and it is understood this will be subject to a further application.</p> <p>The application was accompanied by a Heritage Impact Statement by Weir Phillips Heritage and Planning, dated April 2020, which has been reviewed and the conclusions of this report are agreed with.</p> <p>The proposed works are largely internal and based on the fabric assessment included within the HIS, are not affecting any original fabric. It is noted that the work will reveal and restore the detailing of the existing staircase to the 1st floor, which is supported. External charges on Charles Street to introduce an entrance door are considered acceptable, given that it is replacing a modern window, and the fact that originally there was an entrance on Charles Street which was removed in previous renovations. The introduction of festoon lighting is also considered acceptable from a</p>		



Internal Referral Body	Comments
	<p>heritage point of view, as it is a removable addition to the facade treatment and will not affect original fabric. Replacement of glazing with double glazing will not have an impact on the streetscape presence of this heritage building. Proposed external repainting is in keeping with the building and is acceptable. Full details have not been provided on kitchen exhaust and other mechanical equipment, however conditions are proposed to ensure that these structures will not be visibly dominant.</p> <p>The Harbord Hotel has operated continuously as a hotel for nearly 100 years (since 1928) and these alterations will assist in the building continuing to operate as a local hotel and local landmark. In doing so, the social and historical significance of this building will be retained and enhanced. Its aesthetic heritage qualities, as an inter-war hotel, will not be affected by these proposed works.</p> <p>Even though the interior is largely not original, it is recommended that a photographic record be required prior to any works commencing.</p> <p>Therefore, no objections are raised on heritage grounds, subject to a number of conditions requiring:</p> <ul style="list-style-type: none"> • a full photographic record of the building (including interiors) prior to construction commencing; • roof mounted mechanical plant to be screened; • kitchen exhaust to located in same location and be painted white where it extends beyond the building. <p><u>Consider against the provisions of CL5.10 of WLEP 2011</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</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 commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

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:

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

The alterations would not have an unreasonable impact on coastal wetlands or rainforest.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure*



that
there
are
appropriate
responses
to, and
management
of,
anticipated
coastal
processes
and
current
and
future
coastal
hazards.

Comment:

The proposal will not have a detrimental impact on the above.

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 proposal will not have an adverse impact on the above.

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



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

Comment:

The proposal is sufficient for impact to be minimised.

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

Warringah Local Environmental Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
5.10 Heritage conservation	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

2.5 Additional permitted uses for particular land

Under Clause 14 of Schedule 1 on the Warringah LEP, pubs are an additional permitted use for 29 Moore Road, Freshwater.

5.10 Heritage conservation

Council's Heritage Officer finds the proposal acceptable subject to conditions. The proposal is predominantly for internal works and the external works including the exhaust will not provide a bulk, colour or design that would have a detrimental impact on the heritage significance of the item.

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes

Detailed Assessment

D3 Noise

In conjunction with the internal upgrade of the building, Council's Environmental Health officer has provided conditions to ensure noise emission associated with the hotel does not unreasonably diminish the amenity of the area.

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 \$30,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,000,000.

CONCLUSION

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

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

Conclusions on the Assessment of the Application

The proposal involves changes to the hotel that will not cause an unreasonable impact on surroundings (subject to conditions).

On balance, the proposal should be approved as the changes do not result in an intensification that is unsuitable for the site and area. Furthermore, acoustic design and conditions imposed will assist in providing improvements to neighbourhood amenity.

Therefore, the application is recommended for approval.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes the proper and orderly planning for the site or the locality. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/0468 for Alterations and additions to a Hotel on land at Lot 13 DP 7022, 31 Moore Road, FRESHWATER, Lot 1 DP 7022, 29 Moore Road, FRESHWATER, Lot 2 DP 7022, 29 Moore Road, FRESHWATER, Lot 3 DP 7022, 29 Moore Road, FRESHWATER, Lot 4 DP 7022, 29 Moore Road, FRESHWATER, Lot 5 DP 7022, 29 Moore Road, FRESHWATER, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-AXX-001- Site & Roof - Existing and Demolition Plan	20/04/20	Alexander and Co
DA-A00-001- Ground Floor- Existing and	20/04/20	Alexander and Co



Demolition Plan		
DA- A01-001- First Floor - Existing Plan	20/04/20	Alexander and Co
DA- D00-011- Ground Floor - General Arrangement Plan	20/04/20	Alexander and Co
DA- EXX-001- Overall Building - External Elevations 01	20/04/20	Alexander and Co
DA- EXX-002- Overall Building - External Elevations 02	20/04/20	Alexander and Co
DA- FXX-001- Overall Building -Section AA	20/04/20	Alexander and Co
Construction Management Plan	20/04/20	Alexander and Co

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Plan of Management	April 2020	Applicant
Acoustic Report	26 April 2020	The Acoustic group
Access Statement	27 April 2020	Morris Goding Access Consulting
Construction Management Report	-	Applicant

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

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

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

2. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the



work relates (not being the Council) has given the Council written notice of the following information:

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether



the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

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

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall



notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) 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.

4. **Plan of Management**

The proposal is to comply with the *"Plan of Management For Operations of Harbord Beach Hotel"* dated April 2020.

It is noted that this version includes "Point 36" which requires airlocks on Moore Road and Charles Street.

Reason: To ensure continued appropriate operation of the hotel premises and to reduce amenity impact to neighbouring properties.

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$30,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning &



Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$3,000,000.00.

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

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

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

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

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

6. 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

7. Photographic Archival Record

A photographic archival record of the site is to be made of all existing buildings and structures (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by Heritage NSW, Department of Premier & Cabinet.



This record must be submitted and approved by Council's Heritage Advisor prior to commencement of any demolition or works on-site and prior to the issuing of a Construction Certificate.

The photographic record should be made using digital technology, submitted on archival quality CD-R disc, and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets.
- As most changes are to the interior, this photographic record must include full details of all internal areas subject to change as a result of the proposed works.

Reason: To provide an historical record of the heritage building, in particular the interiors, prior to its alteration.

8. Screening of roof mounted mechanical plant

Any roof mounted mechanical plant is to be located within the existing screened mechanical plant area.

Reason: To ensure that the visual impact of roof mounted mechanical plant on the heritage building, is minimised.

9. Kitchen exhaust location and colour

The kitchen exhaust is to be located in the same position as existing and to be painted white.

Reason: To minimise the impact of the kitchen exhaust on the heritage building.

10. Noise fixtures, fittings and equipment prior to CC

Details of the fixtures being used for the windows, internal ceilings, mechanical plant and external doors are to be provided to the PCA for approval prior to the issuing of any Construction certificate. Fixtures are to meet the following minimum requirements as specified in the acoustic report by The Acoustic Group Pty Ltd on 26 April 2020, reference number 50.4539.R2:MSC;

- Windows on Western and Northern façade to be fixed/inoperable double glazing of 10.5mm Viridian VLam Hush or the like, with a 40mm air gap and 8.5mm VLam Hush or the like.
- Acoustic ceiling in the gaming room(s) and Charles Street access way, capable of a Noise Reduction Coefficient of 0.85.
- External doors to be installed with self-closing mechanisms and fitted with perimeter acoustically rated seals.
- Acoustic screening for mechanical plant that achieves sound contributions less than 37 dB(A) at sound assessment locations 1&3, and 38dB(A) at location 2.
- A central noise limiter calibrated to limit amplified entertainment sound.

Reason: To protect surrounding residence from any noise generated by the operation of the development



11. 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 TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. Waste Management During Development

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

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

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

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

13. To Ensure Adequate Building Code of Australia Access Upgrade Requirements

The Building Code of Australia works and access upgrading measures to upgrade the building as detailed and recommended in the Access Report prepared by Morris Goding Access Consulting, dated 27 April 2020 are to be carried out to the building.

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

Reason: To ensure adequate provision is made for Access for building occupant safety.

ate provision is made for fire safety in the premises for building occupant safety.

14. Registration of Food Business

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

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

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

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a person who is eligible as a 'Member' of Environmental Health Australia (EHA) that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

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

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

16. Mechanical Ventilation certification

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from



the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

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

Reason: To ensure that the mechanical ventilation system complies with the design requirements.

17. Certification of minimum acoustic standards

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with recommendations in the report by The Acoustic Group Pty Ltd on 26 April 2020, reference number 50.4539.R2:MSC, including but not limited to:

- Windows on Western and Northern façade to be fixed/inoperable double glazing of 10.5mm Viridian VLam Hush or the like, with a 40mm air gap and 8.5mm VLam Hush or the like.
- Acoustic ceiling in the gaming room(s) and Charles Street access way achieves a Noise Reduction Coefficient of 0.85.
- External doors have self-closing mechanisms and are fitted with perimeter acoustically rated seals.
- The mechanical plant which is to be located on existing plant room decks is acoustically screened to ensure the sound contribution of any plant does not exceed 37dB(A) at sound assessment locations 1&3, and 38dB(A) at location 2.
- A calibrated noise limiter, centrally controlled by hotel management and set to a maximum of 80dB(C) for entertainment noise when measured 5m in front of point source, in addition to dB(A) recommendations in the report, 50.4539.R2:MSC.

The updated acoustic assessment is to be submitted to the satisfaction of Council's Environmental Health Team before providing to the PCA for certification.

Reason: To ensure the premises will satisfy conditions under liquor license LIQH400102917 protect surrounding residence from any noise generated by the operation of the development.

18. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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 bushland management. (DACPLF01)

19. 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.



20. **Fire Safety Matters**

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

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

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

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

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

21. **Outdoor music**

In addition to compliance with noise conditions under liquor license LIQH400102917, the use of a sub-woofer for any amplified music outdoors is not permitted.

Reason: To limit low frequency sound emission and protect surrounding residence from any noise generated by the operation of the development.

22. **Poker Machines**

This consent does not provide approval for new poker machines.

Reason: To provide clarity of proposed internal works.

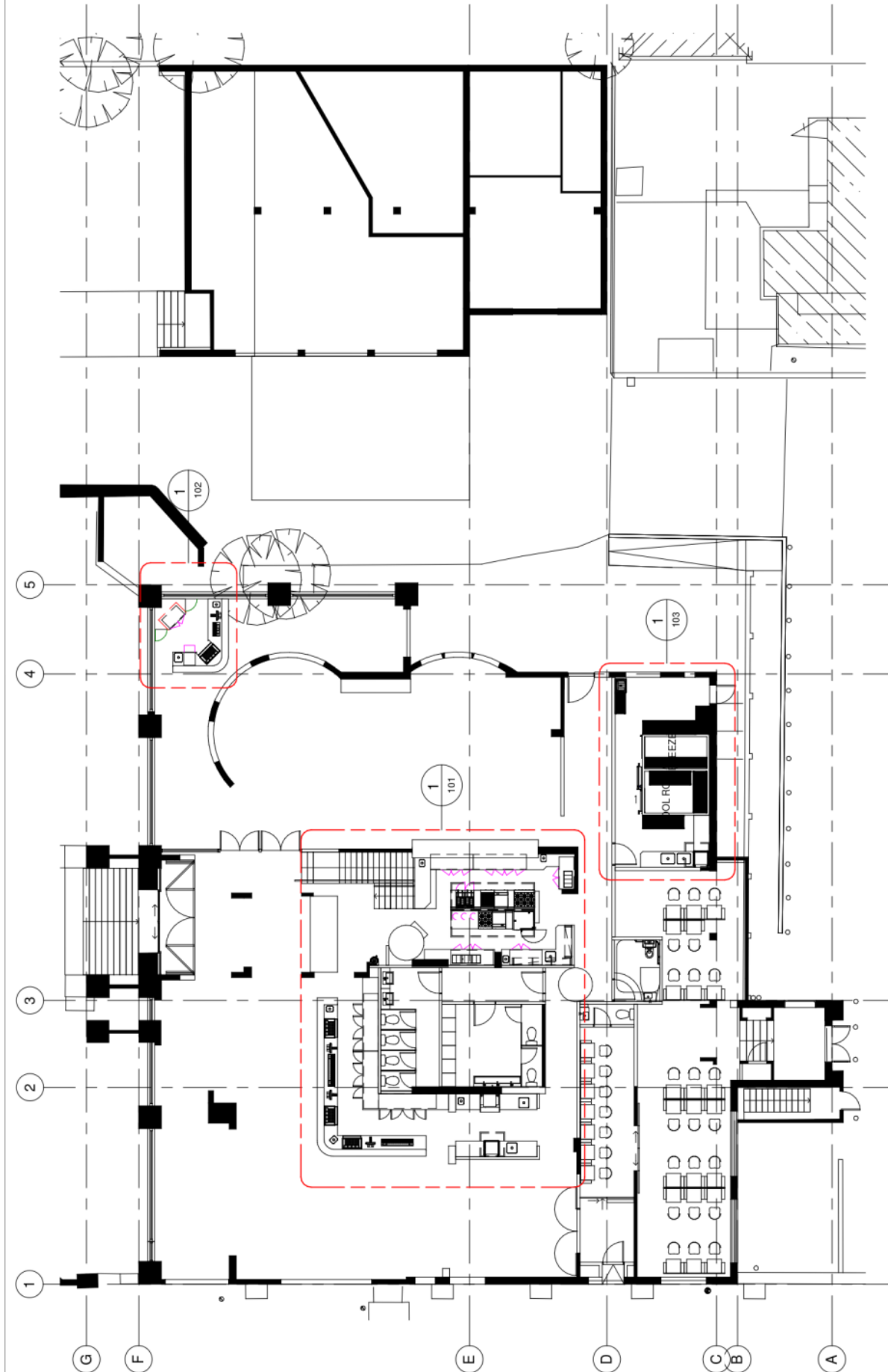
In signing this report, I declare that I do not have a Conflict of Interest.

Signed

Steven Findlay, Manager Development Assessments

The application is determined on //, under the delegated authority of:

Steven Findlay, Manager Development Assessments



CHRIS JEFFARES
CATERBUILD
UNIT 7/3 WARRAH STREET
CHATSWOOD, NSW, 2067
T: 02 8550 7947
M: 0400 004 500

Revisions

Project
KITCHEN & BARS
Address
HARBORD HOTEL

Title
SITE PLAN

Project No. 2008
Drawn by NH
Scale 1 : 150
Sheet size A3

Issue
SKETCH DESIGN

Revision No. 1
Revision date

Drawing number

100

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