

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

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

WEDNESDAY 1 JULY 2020

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



Peter Robinson
Executive Manager Development Assessment

Panel Members

Lesley Finn	Chair
Steve Kennedy	Urban Design Expert
Brian Kirk	Town Planner
Lloyd Graham	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 1 July 2020
Commencing at 1.00pm**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 17 June 2020	
3.0	DEVELOPMENT APPLICATIONS	5
3.1	MOD2019/0639 - 15 Addison Road, Manly - Modification of Development Consent DA2018/2027 granted for alterations and Additions to an existing dwelling house.....	5
3.2	MOD2020/0113 - 43 Booralie Road, Terrey Hills - Modification of Development Consent DA2016/0523 granted for demolition works construction of a service station and signage.....	29
3.3	DA2020/0090 - 20 Westminster Avenue, Dee Why - Demolition works and construction of a Boarding House	46
3.4	MOD2020/0119 - 133-139 Pittwater Road, Manly - Modification of Development Consent DA213/2017 granted for demolition and construction of a service station.....	96

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 17 JUNE 2020

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 17 June 2020 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	MOD2019/0639 - 15 ADDISON ROAD, MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA2018/2027 GRANTED FOR ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE
AUTHORISING MANAGER	ANNA WILLIAMS
TRIM FILE REF	2020/367418
ATTACHMENTS	1 ↓ Assessment Report

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. Mod2019/0639 for Modification of Development Consent DA2018/2027 granted for alterations and additions to an existing dwelling house at Lot C DP 316879, 15 Addison Road, Manly for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0639
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot C DP 316879, 15 Addison Road MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2018/2027 granted for Alterations and Additions to an existing dwelling house
Zoning:	Manly LEP2013 - Land zoned E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	Michael Jeffrey Hunter Susanne Hunter
Applicant:	Ardill Payne & Partners

Application Lodged:	17/12/2019
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/01/2020 to 10/02/2020
Advertised:	11/01/2020
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

EXECUTIVE SUMMARY

The original consent (DA2018/2027) was issued by the Northern Beaches Local Planning Panel (NBLPP) on 26 November 2019. As the original consent was issued by the NBLPP and the current modification application has been made under Section 4.55(2) of the EPA Act, it is referred back to the NBLPP for determination.

The modification application, as submitted, proposed the deletion of condition No. 8 and the amendment of condition No. 18 to allow the construction of the proposed sandstone wall and lift, and the addition of external doors to the existing boat shed. However, the proposed works to the boat shed are not considered to be substantially the same development as those to which consent was granted under the original application, and therefore are not considered as part of this assessment.

The subject site is mapped as an "Area of outstanding biodiversity value" (AOBV) under the NSW Biodiversity Conservation Act 2016. As such, the application is classed as "threatened species development" and requires advertising for a period of 28 days under Clause 89 of the EPA Regulation 2000.

One submission was received by way of objection in response to the notification/advertising of the application, relating to the impact of the sandstone wall, lift and boatshed works on the Little Penguin population of Manly.

The application was referred to Council's Biodiversity Officer for comment, who recommended that the proposal be refused due to non-compliance with mandatory assessment requirements under the NSW Biodiversity Conservation Act, as well as likely impacts to known and potential nesting, moulting and loafing habitat. A video conference was held between Council Officers (from both Development Assessment and Natural Environment and Climate Change - Biodiversity), the Applicant, and the Applicant's consultant on 23 April 2020 to discuss the relevant Biodiversity matters. Following this conference, Council's Biodiversity team completed further referral assessment and comments in relation to the proposed development. These comments concluded that Council's remains unsatisfied in relation to the impacts of the development despite the information provided by the Applicant, and that the provision of additional information is unlikely to alter the Council's position.

Based on the potential impact to the Little Penguin population/habitat as assessed by Council's Biodiversity team, the deletion of condition No. 8 is not supported, and subsequently the modification application is recommended for refusal.

As of 9 June 2020 the owner has lodged an appeal in the NSW Land and Environment Court.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification seeks the deletion of condition No. 8 and the amendment of condition No. 18. The intention of these changes to conditions is to allow the construction of the proposed sandstone wall and lift, and the addition of external doors to the existing boat shed.

Condition No. 8 reads as follows:

8. Proposed sandstone wall and elevator/lift

The proposed construction of the sandstone wall and elevator/lift are to be deleted.

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

Reason: To minimise the risk/impact of the development on the endangered Little Penguin population.

Condition No. 18 reads as follows:

18. Proposed boat shed works

All works to the existing boat shed, including refurbishment/remediation, are excluded from this consent.

All references to these works are to be deleted from the plans prior to the issue of a Construction Certificate.

Reason: To ensure no consent is granted for works undertaken illegally on the site.

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 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
 Manly Development Control Plan - 5.4.2 Threatened Species and Critical Habitat Lands

SITE DESCRIPTION

Property Description:	Lot C DP 316879 , 15 Addison Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern-western side of Addison Road.</p> <p>The site is a battle axe lot with an access handle 22.645m long from Addison Road. The site has a frontage of 5.18m along Addison Road and a depth of approximately 28m beyond the access handle. The site has a surveyed area of 518.5m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates an existing dwelling house.</p> <p>The site slopes 13m from front (southeast) to rear (northwest), including a steep cliff section at the harbour frontage of the existing dwelling.</p> <p>The site contains a variety of small trees and planted vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwellings, dual occupancies and residential flat</p>

buildings.

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:

DA2018/2027 - Alterations and additions to an existing dwelling house - Approved 25 November 2019.

DA0330/2016 - Alterations and additions to the existing dwelling house - Withdrawn.

Further to the above site history, an appeal was lodged in the NSW Land and Environment Court on 9 June 2020.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the

Assessment Report for DA2018/2027, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/2027 for the following reasons:</p> <p><i>"(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—</i></p> <p><i>(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and"</i></p> <p><u>Comment:</u></p> <p>The proposed modification, as submitted to Council, relates to two (2) approved conditions of consent. The modifications seeks the deletion of condition No. 8 to allow the inclusion of the proposed sandstone wall and lift, and the amendment of condition No. 18 to allow the addition of doors to the existing boat shed.</p> <p>The proposed sandstone wall and lift are considered to be ancillary structures/components of the existing dwelling, to which substantial works were approved under DA2018/2027. As the consent as originally granted relates to the dwelling, these ancillary works may be considered as part of this assessment.</p> <p>With regard to the proposed deletion of condition No. 8, the consent as proposed to be modified is substantially the same development as that for which the consent was originally granted. The proposed development retains a single residential use and does not alter the intent of the lot to be developed. The development is materially the same as originally approved, albeit with the addition of the proposed sandstone wall and lift components.</p>

Section 4.55 (2) - Other Modifications	Comments
	<p>However, condition No. 18 of DA2018/2027 specifically excludes all proposed works to the boat shed from approval under that consent. As the consent as originally granted does not relate to the boat shed structure, no works to the boat shed may be included as part of this modification application. Given the above, the proposed amendment of condition No. 18 will not be considered in the assessment of this modification application.</p> <p>As such, the modified application being the deletion of condition No. 8, but not the proposed amendment to condition No. 18, is “substantially the same development” as the originally approved development and therefore may be considered under Clause 4.55 (2).</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2018/2027 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2013 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in

determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><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 in the original 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 in the original 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 in the original consent.</p>

Section 4.15 'Matters for Consideration'	Comments
	<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 in the original 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 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 unsuitable 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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Manly LEP and DCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Charles Murray Sharp	1 / 205 Woodland Street BALGOWLAH NSW 2093

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

- Impact of proposed sandstone wall, lift and boat shed works on Little Penguin population and habitat.

The matters raised within the submissions are addressed as follows:

- Impact of proposed sandstone wall, lift and boat shed works on Little Penguin population and habitat.
Comment:
Based on the assessment undertaken, the proposed deletion/amendment of condition Nos. 8 and 18 is not supported. The proposed wall and lift works associated with condition No. 8 are considered likely to adversely impact the penguin population/habitat, and the boat shed works associated with condition No. 18 are not considered to be substantially the same as the approved development.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p><u>Biodiversity Referral Comments - 6 March 2020</u></p> <p>The proposal is recommended for refusal due to non-compliance with mandatory assessment requirements under the NSW <i>Biodiversity Conservation Act 2016</i> (BC Act) and <i>Biodiversity Conservation Regulation 2017</i> (BC Reg).</p> <p>The subject property is identified by the NSW Department of Planning, Industry and Environment (DPIE) as being located within the Little Penguin Area of Outstanding Biodiversity Value (AOBV; formerly Critical Habitat) and the NSW Biodiversity Values Map, as declared under Division 3.2 and Part 7 of the BC Reg respectively.</p> <p>The proposed modification (being works to the boatshed and deletion of Condition 8 to enable construction of a lift shaft and enclosing wall) is likely to result in prescribed impacts to known and potential nesting, moulting and loafing habitat of the endangered population of Little Penguins at Manly. Impacts prescribed under Clause 6.1 of the BC Reg which are relevant to the proposed modification include:</p> <ul style="list-style-type: none"> • The impact of development on threatened species habitat including rocks, crevices and human-made structures; • The impacts of development on the connectivity of different areas of habitat of threatened species that facilitates the

Internal Referral Body	Comments
	<p>movement of those species;</p> <ul style="list-style-type: none"> • The impacts of development on movement of threatened species that maintains their lifecycle. <p>In accordance with assessment requirements of the BC Act, a Biodiversity Development Assessment Report (BDAR) (Total Earth Care, December 2018) was submitted in support of the original application DA2018/2027. However, given that the modification includes works which may result in additional impact to known penguin habitat (i.e. additional boat shed works), does not include recent (<2 years old) survey data, and does not account for current patterns of penguin habitat use on the site and adjoining properties (including a new active nest site in near proximity to the proposed lift shaft), the impacts of the modification cannot be assessed based on the information provided.</p> <p>Furthermore, the modification proposal does not include detailed plans of the proposed boat shed works, without which the potential impacts to penguin nesting habitat cannot be determined.</p> <p>The modification proposal also fails to address compliance with relevant local planning provisions including:</p> <ul style="list-style-type: none"> • Manly LEP Clause 6.5 - Terrestrial Biodiversity • Manly DCP Clause 5.4.2 - Threatened Species and Critical Habitat Lands (including requirement for submission of an Assessment of Significance Report with the DA). <p>The application as submitted is therefore recommended for refusal.</p> <p>In order to fulfill assessment requirements of Section 7.17 of the BC Act and relevant local controls, the following information is required:</p> <ul style="list-style-type: none"> • A Biodiversity Development Assessment Report (BDAR), prepared by an accredited assessor in accordance with the Biodiversity Assessment Method (BAM). The BDAR is to be based on the actual plans submitted in support of the modification and recent survey undertaken in accordance with best practice survey methods for Little Penguins. • Statement addressing compliance with Manly LEP Clause 6.5 is to be included in the Statement of Environmental Effects <p><u>Updated Biodiversity Referral Comments - 2 June 2020</u></p> <p>The referral response follows further consideration of the application and the information submitted by the applicant's consultants Peter Parker Environmental Consultants (dated 29 October 2019). The</p>

Internal Referral Body	Comments
	<p>report by Peter Parker Environmental Consultants (including letter in Appendix 1) provides a detailed analysis of the NSW Government's mapping of 'Areas of Outstanding Biodiversity Value' (AOBV) and former 'Critical Habitat' which warrants due consideration by the panel. A video conference was held between Council officers, the applicant, and the applicant's consultant on 23 April 2020 to discuss the relevant Biodiversity matters.</p> <p>Council's Biodiversity and Planning remain opposed to the modification proposal due to:</p> <ul style="list-style-type: none"> • Inconsistency with the objectives and requirements of Manly LEP Clause 6.5 - Terrestrial Biodiversity • Manly DCP Clause 5.4.2 - Threatened Species and Critical Habitat Lands (including requirement for submission of an Assessment of Significance Report (former '7 part test') with the DA). • Non-compliance with mandatory assessment requirements under the NSW Biodiversity Conservation Act 2016 (BC Act), the Biodiversity Conservation Regulation 2017 (BC Reg), and local planning controls. • The degree of uncertainty that the erection of the contemplated external works will not have any adverse effects on the little penguin habitat(s), despite the applicant's further submission. <p>The boundary of the subject property on the harbour foreshore is identified by the NSW Department of Planning, Industry and Environment (DPIE) within the Little Penguin Area of Outstanding Biodiversity Value (AOBV) and the NSW Biodiversity Values Map, as declared under Division 3.2 and Part 7 of the BC Reg respectively. It is noted under Division 3.2 (a) of the BC Reg that the published map provides an indicative map of the spatial extent of the AOBV area.</p> <p>The proposed modification (deletion of Condition 8 to enable construction of a lift shaft and enclosing wall) is in close proximity to the mapped boundary of the AOBV and has the potential to result in prescribed impacts to previously recorded nesting sites of little penguins located proximal to the proposed works. The subject property is also considered as potential moulting and loafing habitat for this species.</p> <p>As noted in the previous referral, impacts prescribed under Clause 6.1 of the BC Reg are considered relevant to the proposed modification and include:</p> <ul style="list-style-type: none"> • The impact of development on threatened species habitat including rocks, crevices and human made structures; • The impacts of development on the connectivity of different areas of habitat of threatened species that facilitates the

Internal Referral Body	Comments
	<p>movement of those species;</p> <ul style="list-style-type: none"> The impacts of development on movement of threatened species that maintains their lifecycle. <p>In accordance with assessment requirements of the BC Act, a Biodiversity Development Assessment Report (BDAR) (Total Earth Care, December 2018) was submitted in support of the original application DA2018/2027. The applicant also submitted an ecology assessment report (Peter Parker Environmental Consultants Pty Ltd dated 29 October 2019) to respond to additional information contained within the Preliminary 2019/20 Penguin Breeding Season Monitoring Report (DoPIE 18 September 2019) and the Manly Little Penguin Recovery Program 2018/19 Monitoring Report (OEH Received 31 May 2019).</p> <p>However, given that the modification includes works which may result in additional impact to known penguin habitat and does not account for current (seasonal) patterns of penguin habitat use on the site and adjoining properties (including recently active nest site in proximity to the proposed lift shaft), Council's concerns in relation to the development are not satisfied. It is Council's view that additional information is unlikely to alter the current assessment and as such, additional information has not been requested from the applicant.</p>
NECC (Coast and Catchments)	<p><u>Coastal Officer Comments</u></p> <p>The modification application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP2013 and Manly DCP2013.</p> <p>The application has also been assessed using Northern Beaches SREP assessment template.</p> <p>The proposal is sought to modify the terms and conditions of DA 2018/2027 and involves the deletion of condition No. 8 which relates to the construction of the sandstone wall and elevator/lift and the amendment of condition No.18 which relates to the proposed boat shed works.</p> <p><u>Coastal Management Act 2016</u></p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p>

Internal Referral Body	Comments
	<p><u>State Environmental Planning Policy (Coastal Management) 2018</u></p> <p>As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p><u>Comment</u></p> <p>On internal assessment, the DA satisfies requirements under Clause 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p><u>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005</u></p> <p>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area and adjacent to W2 Zone: Environmental Protection. Hence both the Sydney Regional Environment Plan (Sydney Harbour Catchment) 2005 and Sydney Harbour Foreshores Waterways Area Development Control Plan 2005 apply for assessment of this application</p> <p>As per Part 3. Division 5, clause 39A (1) of the Sydney Regional Environment Plan (Sydney Harbour Catchment) 2005, structural repairs to, the replacement of, or the carrying out of maintenance works in relation to existing lawful boat sheds, mooring pens, private landing facilities, private landing steps, skids or slipways that are not used for a commercial purpose is complying development if— (a) the development meets the standards specified in subclause (2), and (b) the development is not carried out on a heritage item or a draft heritage item.</p> <p>As per the Sydney Regional Environment Plan (Sydney Harbour Catchment) 2005, boatshed is listed under Schedule 2: Development to be referred to Foreshores and Waterways Planning and Development Advisory Committee. Further, as per Division 3, Clause 29 of the Sydney Regional Environment Plan (Sydney Harbour Catchment) 2005, the consent authority must not grant development consent to the carrying out in the Foreshores and Waterways Area of development listed in Schedule 2, unless—(a) it has referred the development application to the Advisory Committee (the Foreshores</p>

Internal Referral Body	Comments
	<p>and Waterways Planning and Development Advisory Committee) , and (b) it has taken into consideration any submission received from the Advisory Committee within 30 days after the date on which the application was forwarded to the Committee.</p> <p><u>Comment</u> Amendment of condition No.18 of determination to DA2018/2027 is not supported for lack of information.</p> <p>However, amendment of condition No.18 of determination to DA2018/2027 can be supported subject to obtaining further information</p> <ul style="list-style-type: none"> a) evidence that existing boatshed is lawful, b) substantiate that proposed measures on the existing boatshed will 'protect and improve scenic qualities' and more importantly provide safety c) substantiate that proposed development/repair of boatshed has followed design guidelines for boatsheds provided in Section 5.12 of the Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. <p>Meantime, Council to refer this Modification application to and receive submission from the Foreshores and Waterways Planning and Development Advisory Committee.</p> <p><u>Manly LEP 2013 and Manly DCP</u></p> <p>Foreshore Area</p> <p>The subject development site is mapped as "Land below Foreshore Building Line" and according to Part 6, Clause 6.10 (5) in Manly LEP 2013, the land between the foreshore building line and Mean High Water Mark (MHW) of the nearest natural waterbody is defined as foreshore area. Hence, the subject site is subjected to clause 6.10 Limited Development on Foreshore Area of the Manly LEP 2013.</p> <p><i>Limited Development on Foreshore Area (Clause 6.10) of the Manly LEP2013</i></p> <p>(1) The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.</p> <p>(2) Development consent must not be granted to development on land in the foreshore area except for the following purposes—</p> <ul style="list-style-type: none"> (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, (b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so, (c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycle ways,

Internal Referral Body	Comments
	<p>walking trails, picnic facilities or other recreation facilities (outdoors). (3) Development consent must not be granted under this clause unless the consent authority is satisfied that— (c) the development will not cause environmental harm such as— (i) pollution or siltation of the waterway, or (ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or (iii) an adverse effect on drainage patterns,</p> <p><u>Comment</u> Deletion of condition No.8 of determination to DA2018/2027 is not supported which relates to the construction of the sandstone wall and elevator/lift, structures not listed under clause 6.10 Limited Development on Foreshore Area of the Manly LEP 2013</p> <p>Foreshore Scenic Protection Area</p> <p>The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. According to Clause 6.9 of the Manly LEP 2013, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters—</p> <p>(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,</p> <p>(b) measures to protect and improve scenic qualities of the coastline,</p> <p>(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,</p> <p>(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.</p> <p>According to Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013, development in the Foreshore Scenic Protection Area must not detrimentally effect the ‘visual or aesthetic amenity of land in the foreshore scenic area nor must the development similarly effect the views of that land, including ridgelines, tree lines and other natural features viewed from the Harbour or Ocean from any road, park or land in the LEP for any open space purpose or any other public place.</p> <p><u>Comment</u> Deletion of condition No.8 of determination to DA2018/2027 is not</p>

Internal Referral Body	Comments
	<p>supported which relates to the construction of the sandstone wall and elevator/lift, in area identified as 'Foreshores Scenic Protection Area' of the Manly LEP 2013.</p> <p><u>Final Conclusion</u></p> <p>1) Deletion of condition No.8 of determination to DA2018/2027 is not supported which relates to the construction of the sandstone wall and elevator/lift, Reason: a) Construction is proposed in area identified as 'Foreshores Scenic Protection Area' of the Manly LEP 2013. b) proposed structures are not among the list that can be constructed under clause 6.10 Limited Development on Foreshore Area of the Manly LEP 2013</p> <p>2) Amendment of condition No.18 of determination to DA2018/2027 is not supported for lack of information.</p> <p>However, amendment of condition No.18 of determination to DA2018/2027 can be supported subject to obtaining further information a) evidence that existing boatshed is lawful, b) substantiate that proposed measures on the existing boatshed will 'protect and improve scenic qualities' and more importantly provide safety c) substantiate that proposed development/repair of boatshed has followed design guidelines for boatsheds provided in Section 5.12 of the Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005.</p> <p>Meantime, Council to refer this Modification application to and receive submission from the Foreshores and Waterways Planning and Development Advisory Committee.</p> <p><u>Planning Comments</u></p> <p>The deletion of condition No. 8 is not supported in accordance with the assessment of Council's Natural Resources - Biodiversity Officer.</p> <p>Further, the amendment of condition No. 18 cannot be considered as part of this modification application, as discussed under Section 4.55 (2) and Section 4.15. As such, the application has not been referred to the Foreshores and Waterways Planning and Development Advisory Committee and no additional information has been requested, as was recommended by Council's Coastal Officer.</p>
NECC (Riparian Lands and Creeks)	It is not believed that this modification application will have any impact on water quality and there is no impact to a creek riparian area. Any impact to the coast will be considered under the NECC (Coast and

Internal Referral Body	Comments		
	Catchments) referral.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to Heritage as it is located in the coastal protection area <i>11 Harbour foreshores</i> and within the vicinity of heritage items <i>12 All stone kerbs</i> and <i>168 Mandalay (former private hospital and dwelling)</i> .		
	Details of heritage items affected		
	Details of the items as contained within the Manly Heritage Inventory are:		
	<i>11 Harbour foreshores</i> <u>Statement of significance:</u> Natural landscape type - Aesthetic. <u>Physical description:</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.		
	<i>12 All stone kerbs</i> <u>Statement of significance:</u> Stone kerbs are heritage listed. <u>Physical description:</u> Sandstone kerbing to streets relating to paving and kerbing of the streets in the nineteenth century. Mostly located within Manly village area and adjacent lower slopes of Eastern Hill and Fairlight.		
	<i>168 Mandalay (former private hospital and dwelling) - 2 Addison Road, Manly</i> <u>Statement of significance:</u> Large distinctive Federation Arts and Crafts style building in landmark location. <u>Physical description:</u> Two storey Federation Arts and Crafts style building with hipped and gabled slate roof, walls in roughcast stucco. Features prominent curved timber brackets to wide eaves. Three gable ends facing the street in the centre of the building, group of three leadlight windows over entry. 1920's style garage and fence to match the style of the building.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No		
NSW State Heritage Register	No		

Internal Referral Body	Comments						
	<table border="1"> <tr> <td>National Trust of Aust (NSW) Register</td><td>No</td></tr> <tr> <td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td></tr> <tr> <td>Other</td><td>No</td></tr> </table>	National Trust of Aust (NSW) Register	No	RAIA Register of 20th Century Buildings of Significance	No	Other	No
National Trust of Aust (NSW) Register	No						
RAIA Register of 20th Century Buildings of Significance	No						
Other	No						
	<p>Consideration of Application</p> <p>The application is to modify the terms and conditions of DA 2018/202, involving the deletion of condition (No. 8) which relates to the deletion of the sandstone wall and elevator/lift and the amendment of condition (No.18) which relates to the proposed boat shed works. It is recommended to retain the existing rock face and sandstone wall as much as possible (which was noted in the approved DA drawings), as this will minimise the adverse impact of the proposal upon the heritage listed Harbour Foreshores.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of MLEP.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A</p>						
	<p>Further Comments</p> <p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 29 January 2020</p>						

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

application hereunder.

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

A previous detailed assessment of this development (DA2018/2027) has been undertaken against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 21 (relating to biodiversity, ecology and environment protection) Clause 25 (relating to foreshore and waterways scenic quality) and Clause 26 (relating to maintenance, protection and enhancement of views).

The proposed modification includes the deletion/amendment of conditions of consent to allow the construction of the proposed sandstone wall and lift, and remediation works to the existing boat shed. The modification results in no material changes to the original development proposed under DA2018/2027. Therefore the previous assessment remains applicable to this proposal, which considered the development to be consistent with the above provisions of the SREP (subject to the inclusion/retention on conditions Nos. 8 and 18).

Notwithstanding this assessment, the proposed sandstone wall and lift remain unsupported by Council due to the potential impact to threatened species resulting from these works.

Further, the proposed works to the existing boat shed structure were not included in the previous consent and so may not be considered as part of this modification application. As such, referral to the Foreshores and Waterways Planning and Development Advisory Committee is not necessary.

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:

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

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

Comment:

The proposal is unlikely to cause increased risk of coastal hazards, and Council's Coastal Officer concluded that the proposal is consistent with the requirements under Clause 15.

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?	No

zone objectives of the LEP?	No
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Principal Development Standards

There are no development standards under Part 4 of the Manly LEP that change from the original approval as a result of the modification proposed. The height and FSR of the proposal remain as approved in the original application.

Compliance Assessment

Clause	Compliance with Requirements
6.5 Terrestrial biodiversity	No
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	No

Detailed Assessment

6.5 Terrestrial biodiversity

Council's Biodiversity Officers concluded that the proposal is inconsistent with Manly LEP Clause 6.5, DCP Clause 5.4.2 and the relevant requirements under the NSW Biodiversity Conservation Act and Regulation. Despite the information provided by the Applicant, Council remains unsatisfied in relation to the potential impacts of the development on the Little Penguin population and habitat.

The deletion of condition No. 8 is not supported and the modification application is recommended for refusal.

6.9 Foreshore scenic protection area

The proposed modification includes the deletion of condition No. 8 to allow the construction of the proposed sandstone wall and lift. The modification results in no material changes to the appearance or bulk of the development as proposed under DA2018/2027. The previous assessment concluded that the development was not considered to result in unreasonable impact in relation to visual aesthetic amenity or views to and from Sydney Harbour, and remains applicable to this proposal.

Notwithstanding, the proposed modification is not supported due to potential impact to the Little Penguin population including known nearby nesting sites.

6.10 Limited development on foreshore area

Council's Coastal Officer commented that the proposed sandstone wall and lift are not structures listed as permitted within the foreshore area under 6.10(2)(c). However, as discussed under the Section 4.55 / Section 4.15 assessment in this report, the proposed sandstone wall and lift are considered ancillary to the existing dwelling. Section 6.10(1)(a) allows for "the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area", and as such, the wall and lift are permitted as ancillary structures under this Clause.

Notwithstanding, the proposed modification is not supported due to potential impact to the Little Penguin population including known nearby nesting sites. In particular, Council is not satisfied that the proposal is able to meet Section 6.10(3)(c)(ii) which requires that the development not cause environmental harm, being an adverse effect on the habitat of the Little Penguin.

Manly Development Control Plan

Built Form Controls

There are no development controls under Part 4 of the Manly DCP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	No	No
5.4.2 Threatened Species and Critical Habitat Lands	No	No

Detailed Assessment

5.4.2 Threatened Species and Critical Habitat Lands

The proposed modification to delete condition No. 8 is not supported due to Council's concerns relating to the potential impact to the Little Penguin population and habitat, including known nearby nesting sites.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Modification Application No. Mod2019/0639 for Modification of Development Consent DA2018/2027 granted for Alterations and Additions to an existing dwelling house on land at Lot C DP 316879, 15 Addison Road, MANLY, subject to the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. Specifically, the retention of condition Nos. 8 and 18 is required in order to maintain consistency with the relevant provisions of the SREP, as assessed under DA2018/2027.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of Zone E4 Environmental Living of the Manly Local Environmental Plan 2013. Specifically, the development is not considered to provide for low-impact residential development in an area with special ecological, scientific or aesthetic values, and will result in adverse effects on the ecological and scientific values of the site.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.5 Terrestrial Biodiversity of the Manly Local Environmental Plan 2013. Specifically, Council remains unsatisfied that the development will not result in prescribed impacts to Little Penguin habitat, including previously recorded nesting sites in the vicinity of the development.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.10 Limited Development on Foreshore Area of the Manly Local Environmental Plan 2013. Specifically, Council is unsatisfied that the development will not cause environmental harm to surrounding flora and fauna habitat, consistent with 6.10(3)(c)(ii)
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 5.4.2 Threatened Species and Critical Habitat Lands of the Manly Development Control Plan.

ITEM 3.2

**MOD2020/0113 - 43 BOORALIE ROAD, TERREY HILLS -
MODIFICATION OF DEVELOPMENT CONSENT DA2016/0523
GRANTED FOR DEMOLITION WORKS CONSTRUCTION OF A
SERVICE STATION AND SIGNAGE**

AUTHORISING MANAGER STEVE FINDLAY

TRIM FILE REF 2020/367420

ATTACHMENTS

- 1 [↓](#) **Assessment Report**
- 2 [↓](#) **Site Plan and Elevations**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. MOD2020/0113 for Modification of Development Consent DA2016/0523 granted for demolition works construction of a service station and signage at Lot 1 DP 545812, 43 Booralie Road, Terrey Hills subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0113
Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 1 DP 545812, 43 Booralie Road TERREY HILLS NSW 2084
Proposed Development:	Modification of Development Consent DA2016/0523 granted for Demolition Works construction of a service station and signage
Zoning:	Warringah LEP2011 - Land zoned IN2 Light Industrial
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Eastden Pty Ltd
Applicant:	United Petroleum Pty Ltd
Application Lodged:	17/03/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	15/04/2020 to 03/05/2020
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Executive Summary

This assessment report is submitted to the Local Planning Panel for the consideration of Modification Application No. Mod2020/0113, which seeks approval to amend Condition No. 1B of Development Consent No. DA2016/0523 in the form of proposing an alternative screening of the canopy downlights.

The application is being referred to the Northern Beaches Local Planning Panel as the previous Independent Panel (NBDAP) determined the development application and the Panel and Condition 1B was imposed as a special condition by the NBLPP when it approved MOD2019/0024 to raise the height of the canopy.

The subject site is zoned IN2 Light Industrial and is adjoined properties zoned R2 Low Density

Residential, RE1 Public Recreation and IN2 zoned.

The proposed modifications are to be made to a "Service Station" as defined under the Warringah Local Environmental Plan (WLEP) 2011, which is a prohibited use in the IN2 Light Industrial zone. However, the site has Existing Use Rights for the purposes of a service station as per Division 4.11 of the Environmental Planning and Assessment Act, 1979. As such, the planning controls apply in respect to the merit assessment of the application.

The proposed screens will be attached to the underside of the existing canopy and will not alter the existing built form.

In relation to the Warringah Development Control Plan (WDGP) 2011, the issue of glare and nuisance from the lighting on the underside of the canopy was assessed and it revealed that there are no unreasonable impacts arising from the alternative light screen design and associated lighting system. Suitable conditions have been imposed.

The proposal was notified and three (3) submissions were received. The issues raised do not warrant the refusal of this modification.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks approval to amend Condition No. 1B, which required the installation of a 500mm screen to shield the visibility of the soffit and lights of the existing service station canopy from the residential property to the south east. The alternative screen solution as proposed includes installing 250mm aluminium light screen boxes around each canopy down-light.

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 - Zone IN2 Light Industrial
 Warringah Development Control Plan - D12 Glare and Reflection

SITE DESCRIPTION

Property Description:	Lot 1 DP 545812 , 43 Booralie Road TERREY HILLS NSW 2084
Detailed Site Description:	<p>The site is located on a corner allotment on the south eastern corner of Booralie Road and Tepko Road.</p> <p>The site is irregular in shape and has a surveyed area of 1088m² with a street frontage to Booralie Road of 31.1m and to Tepko Road of 45.3m.</p> <p>Presently the site accommodates a self-service petrol station with a canopy structure, and signage.</p> <p>The site is upon land zoned for IN2 Light Industrial and is bound by similarly zoned land to the south and west. North and east of the site is land zoned for R2 Low Density Residential development and accommodates residential accommodation of varying forms. A narrow strip of land zoned for RE1 Public Recreation runs along the eastern edge of the site and connects to Myoora Road. This strip of land provides a landscaped buffer between the residential and industrial zones.</p> <p>The allotment is generally flat with no topographical features and does not have any significant or noteworthy vegetation.</p>

Map:



SITE HISTORY

A review of Council records has revealed that the subject site has operated as a service station and associated uses over the past 30+ years.

DA2016/0523

Development Application No. DA2016/0523 for demolition works and construction of a service station and signage was approved by the Northern Beaches Development Assessment Panel (NBDAP) on 12 October 2016.

MOD2016/0324

Modification Application No. MOD2016/0324 sought to change the approved hours of operation and signage illumination approved under DA2016/0523. Due to concerns in relation to impacts on surrounding residential amenity, the NBDAP refused the application.

MOD2017/0223

Modification Application No. MOD2017/0223 sought to change the approved hours of operation and signage illumination. The proposed hours were:

- **Monday to Friday - 5.00am - 11.00pm;**
- **Saturday - 6.00 am - 11.00pm; and**
- **Sunday and Public Holidays - 7.00am - 10.00pm**

The assessment report recommended the proposed hours be reduced and that they should be subject to a 12 month trial period. The recommended hours were:

- **Monday to Friday - 6.00am - 11.00pm;**
- **Saturday - 6.00am - 11.00pm;**
- **Sunday and Public Holidays - 7.00am - 10.00pm**

The application was approved by the NBDAP on 13 December 2017.

MOD2019/0024

Modification Application No. MOD2019/0024 sought a retrospective approval for increasing the height of the service station canopy from 5.5m to 6.0m. The application was approved by the NBLPP on 3 July 2019 with special condition 1B imposed in relation to the installation of shields.

Amendment to the approved plans

The installation of a new screen to shield visibility of the soffit and lights of the existing service station canopy from the south east.

The new screen is to:

- extend for the entire length of the portion of the canopy facing 37 Booralie Road, Terrey Hills
- be located immediately below the existing fascia
- have a finished dimension of not less than 0.5 m below the underside of the existing soffit and fascia
- match the existing fascia in material and colour

- be constructed in a manner that will ensure its long term durability and stability
- be constructed in a manner that will ensure no light can penetrate between it and the existing fascia.

The screen shall be installed by 30 September 2019.

Details of the proposed screen are to be provided to Council for approval by the Manager Development Assessment or Executive Manager Development Assessment no later than 31 August 2019.

Reason: To reduce the effect of the canopy lighting on the adjoining public land and 37 Booralie Road, Terrey Hills to that which would have applied under the pre-existing approval.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2016/0523, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(2) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2016/0523 for the following reasons:</p> <ul style="list-style-type: none"> • The modification proposes an alternative solution for an existing condition, which requires the installation of a screen to shield visibility of the existing service station

Section 96(2) - Other Modifications	Comments
	<p>canopy down-lights.</p> <ul style="list-style-type: none"> The proposed screens will be attached to the underside of the existing canopy and will not alter the proposal's compliance with WDCP's built form controls. The proposal will have a minimal visual impact when viewed from adjoining public and private spaces.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2016/0523 did not require concurrence from the relevant Minister, public authority or approval body.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Public Exhibition" in this report.

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (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 in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</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 in the original 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 in the original 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 in the original consent.</p>
Section 79C (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 development is not considered to give rise to any unreasonable or detrimental social impacts on the locality considering the nature of the existing land use.</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 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	This assessment has found the proposal to be

Section 79C 'Matters for Consideration'	Comments
	consistent with the relevant requirement(s) of the WLEP 2011 and WDCP 2011 and will not result in a development that would give rise to unreasonable amenity impacts or be contrary to the public interest.

EXISTING USE RIGHTS

The use of the land as a Service Station is a prohibited land use under the WLEP 2011. However, the site has Existing Use Rights for the purposes of a service station as per Division 4.11 of the Environmental Planning and Assessment Act, 1979.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Withheld	TERREY HILLS NSW 2084
Mrs Christine Maria Cook	10 Moolah Road TERREY HILLS NSW 2084
Withheld	TERREY HILLS NSW 2084

The matters raised within the submissions are addressed as follows:

- **Lighting**

The submissions have raised concerns that the alternative light screen design will be less effective than the 500mm screen, which was conditioned as part of the Mod2019/0024 approval. In particular, the submissions have suggested that if the 500mm screen is installed along the portion of the canopy facing 37 Booralie Road, then the light produced by both the existing service station canopy and convenience store would be reasonably shielded.

Comment:

Council has conducted an assessment that has involved reviewing architectural plans and site photos from the concerned property, which has revealed that installing the 500mm screen along the canopy's south-east elevation would not screen the shopfront's lighting, when viewed from the first floor of 37 Booralie Road (see photo below). It is acknowledged that the proposal will deviate from the design conditioned within the Mod2019/0024 approval, however, the alternative design will cover each side of every individual downlight, preventing unreasonable light spill from horizontally angles. Overall, the proposal will achieve the level of amenity protection sought to be achieved by the concerned condition.

Therefore, the concern has been addressed by information and conditions and does not warrant refusal of the application.

Area marked in blue is an indicative diagram of the 500mm screen required by Condition No. 1B.



*Please note this is an approximate diagram, as the image has been scaled from the submitted architectural plans.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objections subject to standard consent conditions to ensure compliance with the Building Code of Australia.
Environmental Health (Industrial)	<p>General Comments</p> <p>Environmental Health has been requested to comment on the proposed modification or deletion of Condition of consent 1B from Mod2019/0024 at 43 Booralie Rd Terry Hills 2084. As part of this referral light intrusion or light pollution has been assessed.</p> <p>The condition of consent 1B was added as part of a decision from the Northern Beaches Local Planning Panel Meeting 3 July 2019 and was to be completed by the 30th September 2019. The modification was determined on 03 July 2019, leaving less than 3 months to complete the works.</p> <p>To this date the condition has not been complied with and the applicant now seeks modification or removal of the condition. The applicants justification is that light shielding has been provided to the fittings and therefore further screening is not required. Environmental Health do not deem this shielding to be in the same vain as the screening proposed in the condition of consent and not adequate to protect the amenity of surrounding residents.</p>

Internal Referral Body	Comments
	<p>The Northern Beaches local planning panels decision was based on the development being built 0.5m higher than what was initially approved in DA2016/0523 dated 12 October 2016 and MOD2017/0223 dated 13 December 2017.</p> <p>Further details have been provided with an amended proposal shown in a site plan referenced as TERREY HILLS SITE PLAN (28.05.20). The amended proposal shows an alternate solution as opposed to a 500mm canopy extension. The solution being 250mm boxes surrounding each light fitting. The proposal shows that there will be an extra 450mm of protection from direct light intrusion, which is greater than the original proposal.</p> <p>Based on these matters Environmental Health recommends approval with the inclusion of an amended condition of consent for the installation of the boxes. As 3 months were originally proposed for the completion of works an additional 3 months have been included in the amended condition to complete the works.</p> <p>Recommendation</p> <p>APPROVAL - Subject to conditions</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

The parent application (DA2016/0523) indicated that the site has been used as a service station since at least 1970 and that it was likely the site would contain some subsurface contamination. Council's Environmental Team completed their assessment of the original proposal and raised no objections subject to conditions.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an

application for modification of consent) for any development carried out:

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

Comment:

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

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	6.0m	6.0m	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone IN2 Light Industrial

The current use of the site as a service station is a prohibited use in the IN2 zone under the WLEP 2011, however the site has the benefit of Existing use Rights as a service station, which was confirmed as part of the assessment of the original DA.

Warringah Development Control Plan

Built Form Controls

***The proposed screens will not alter the existing built form.**

Standard	Requirement	Approved	Proposed	Complies
B3 Side Boundary Envelope	South - 4.0m	No encroachment	No encroachment	No change
	East - 4.0m	No encroachment	No encroachment	No change
B5 Side Boundary Setbacks	South - 0.9m	0.9m	0.9m	No change
	East - 0.9m	2.0m	2.0m	No change
B7 Front Boundary Setbacks - Booralie Road	4.5m	Store - 22.5m Canopy - 3.5m	Store - 22.5m Canopy - 3.5m	No change
B7 Secondary Front Boundary Setbacks - Tepko Road	4.5m	Store - 2.0m Canopy - 2.6m	Store - 2.0m Canopy - 2.6m	No change
D1 Landscaped Open Space and Bushland Setting	40%	0.3% (34.7sqm)	0.3% (34.7sqm)	No change

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
E7 Development on land adjoining public open space	Yes	Yes

Detailed Assessment

D12 Glare and Reflection

The proposal seeks approval to amend Condition No. 1B, through installing 250mm aluminium light boxes around all of the canopy lights. The proposed screens will restrict light spill within the horizontal direction, such that there will be an extra 450mm of protection from direct light intrusion, which is greater than the original design.

The revised design has been reviewed by Council's Environmental Health (Industrial) team, who are satisfied that the modified screens will be more effective than one continuous screen along the canopy's south-east elevation.

Additionally, conditions have been imposed that will require compliance with *AS4282-1997: Control of the Obtrusive Effects of Outdoor Lighting*. Overall, it is considered that the minor amendment to the canopy light screen will not cause unreasonable amenity impacts to adjoining residential properties, as a result of excessive glare or lighting nuisance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

The existing development contains a self-service station with a canopy structure, retail shop, concrete forecourt and associated signage.

The current application seeks approval to amend Condition No. 1B of DA2016/0523, which was imposed under Modification Application No. Mod 2019/0024, which required the installation of a 500mm screen along the existing canopy's south-east elevation to shield visibility of the soffit and lights.

The proposed alternative solution includes installing 250mm aluminium light screen boxes around each canopy down-light.

In relation to the WDCP 2011, the issue of glare and nuisance from the lighting on the underside of the canopy was assessed and it revealed that there are no unacceptable impacts arising from the alternative light screen design and associated lighting system. Suitable conditions have been imposed in this regard.

The notification of the application resulted in three (3) submissions, which do not warrant the refusal of this modification.

Overall, it is considered that the modification is reasonable and satisfactory on its merits.

Accordingly, the application is recommended for approval subject to the modified conditions. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2020/0113 for Modification of Development Consent DA2016/0523 granted for Demolition Works construction of a service station and signage on land at Lot 1 DP 545812,43 Booralie Road, TERREY HILLS, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
TP03 Rev A	28 May 2020	United Petroleum P/L

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

B. Amend Condition 1B- Amendments to the approved plans, which reads as follows;

The installation of a new screens to shield visibility of the soffit and lights of the existing service station canopy from the south east.

The new screen is to:

- Be installed around each light fitting on the existing soffit and fascia in accordance with the submitted plans referenced as TERREY HILLS SITE PLAN (28.05.20)
- Have a finished dimension of not less than 0.25 m below the underside of the existing soffit and fascia
- Match the existing fascia in material and colour
- Be constructed in a manner that will ensure its long term durability and stability
- Be constructed in a manner that will ensure no light can penetrate between it and the existing fascia.

The screen shall be installed by 30 September 2020.

Reason: To reduce the effect of the canopy lighting on the adjoining public land and 37 Booralie Road, Terrey Hills to that which would have applied under the pre-existing approval.



ITEM 3.3	DA2020/0090 - 20 WESTMINSTER AVENUE, DEE WHY - DEMOLITION WORKS AND CONSTRUCTION OF A BOARDING HOUSE
AUTHORISING MANAGER	STEVE FINDLAY
TRIM FILE REF	2020/367422
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/0090 for Demolition works and construction of a Boarding House at Lot 15 DP 9125 and Lot A DP 392346, 20 Westminster Avenue, Dee Why for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0090
Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot 15 DP 9125, 20 Westminster Avenue DEE WHY NSW 2099 Lot A DP 392346, 20 Westminster Avenue DEE WHY NSW 2099
Proposed Development:	Demolition works and construction of a Boarding House
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	Susanna Amelia Ambrosius
Applicant:	ACN 637 462 250 Pty Ltd
Application Lodged:	04/02/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	22/02/2020 to 14/03/2020
Advertised:	22/02/2020
Submissions Received:	21
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 3,216,262.00

EXECUTIVE SUMMARY

This report provides an assessment of a boarding house development at 20 Westminster Avenue, Dee Why. The site is located on the western side of Westminster Avenue and is one (1) block west of Pittwater Road. The site is zoned R3 Medium Density Residential under WLEP 2011.

The proposed development includes demolition of all structures on the site and construction of a four (4) storey boarding house containing twenty-three (23) boarding rooms and an on-site Managers residence with basement parking for twelve (12) cars.

The public exhibition of the development resulted in twenty one (21) submissions, all objecting to the proposal and raising concerns relating to amenity (noise and privacy), traffic and parking, character, density, height (number of storeys), tree removal and compliance with relevant legislation. These concerns have been addressed within this report and provide the basis for certain matters that warrant the refusal of the application.

The assessment of the application has found that the proposal cannot be supported, as it fails to comply with a number of planning controls; including, the number of storeys, side boundary envelope, side setback and landscape open space.

The application is currently the subject of a Class 1 Appeal in the NSW Land and Environment Court.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal does not satisfy the appropriate controls.

Accordingly, it is recommended that the NBLPP, as the determining authority, refuse the application for the reasons detailed within the recommendation section of this report, and any amendments to those reasons, which will constitute the contentions in the defence of the Court Appeal.

PROPOSED DEVELOPMENT IN DETAIL

Development Application No. DA2020/0090 seeks consent for the following:

- Demolition of existing structures on the site and construction of a part three and part four storey, split-level boarding house building containing twenty-three (23) double rooms and basement level parking.
- Earthworks and excavation
- Associated civil infrastructure, including on-site stormwater detention and a new driveway centrally located on the boundary.

The boarding house development is comprised of the following:

Basement Level (RL 11.050)

- Twelve (12) parking spaces including one (1) manager's space and one (1) accessible space
- Six (6) motorbike parking spaces
- Five (5) wall mounted bicycle parking spaces
- Accessible WC
- Lift access

Ground Floor Level (RL 14.00 and RL 14.850)

- Rooms 1, 2, 3 and 4
- Managers residence with private bathroom and kitchen facilities
- Waste/bin storage

First Floor Level - Level 1 (RL 16.80 and RL17.650)

- Rooms 6, 7, 8, 9, 10, 11 and 12

Second Floor Level - Level 2 (RL 19.90 and RL 20.450)

- Rooms 13, 14, 15, 16, 17, 18 and 19

Third Floor Level - Level 3 (RL 23.00 and RL 23.250)

- Rooms 20, 21, 22 and 23
- Communal Common Room (44.4m²)
- Roof terrace (32m²)

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 Development Control Plan - A.5 Objectives
Warringah Development Control Plan - B2 Number of Storeys
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C9 Waste Management
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D3 Noise

Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D11 Roofs
Warringah Development Control Plan - D14 Site Facilities

SITE DESCRIPTION

Property Description:	<p>Lot 15 DP 9125 , 20 Westminster Avenue DEE WHY NSW 2099</p> <p>Lot A DP 392346 , 20 Westminster Avenue DEE WHY NSW 2099</p>
Detailed Site Description:	<p>The site comprises two (2) lots and is legally identified as follows:</p> <p>(a) Lot 15 DP 9125; (b) Lot A DP 392346.</p> <p>The site currently contains a single storey brick dwelling house with a separate brick garage and carport located on the northern boundary.</p> <p>Existing vehicular access to and from the site is via a single driveway crossing at the northern end of the site onto Westminster Avenue. The combined site is regular in shape with a frontage of 20.05m to Westminster Avenue and an average depth of 36.64m. The site has a surveyed area of 789.3m². The site is generally level with a gentle fall from the rear western boundary to the front of the site of approximately 1.5m (3.5%).</p>

Map:



SITE HISTORY

Development Application No. DA2020/0090 for demolition of existing structures and construction of a boarding house was lodged with Council on 4 February 2020.

No pre-lodgement meeting was held in relation to the proposed development.

On 15 April 2020, Class 1 proceedings were commenced in the Land and Environment Court appealing Council's deemed refusal of the application.

A search of Council's records has revealed that there are no further relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

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 2011 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 may be addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
	<p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely 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 use of the development as a boarding house will not in itself result in a detrimental social impact, given boarding houses are permissible in the zone and locality and the residents of the boarding house would reside there in accordance with an adopted Operational Plan of Management and their lease agreements. Overall, the proposal will not have a detrimental social impact.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the affordable housing nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	<p>The site is considered suitable for a boarding house development. However, the intensity of the proposal in its current form is considered an inappropriate and unsuitable development of the site, constituting an overdevelopment of the site.</p>
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	<p>See discussion on “Notification & Submissions Received” in this report.</p>
Section 4.15 (1) (e) – the public interest	<p>This assessment has found the proposal to be contrary to the relevant requirement(s) of the Side Boundary Setbacks, Side Boundary Envelope, Landscaped Open Space, Private Open Space and Privacy, and will result in a development which will result in unacceptable impacts and create an undesirable precedent, such that it would undermine the desired future character of the area and be contrary to</p>

Section 4.15 Matters for Consideration'	Comments
	the expectations of the community. In this regard, the approval of the development, as currently proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 21 submission/s from:

Name:	Address:
David Scott Cooper	10 / 2 - 10 Hawkesbury Avenue DEE WHY NSW 2099
Mrs Jan Olver	15 / 2 - 10 Hawkesbury Avenue DEE WHY NSW 2099
Catherine Roma Hodgkinson	8 / 19 Westminster Avenue DEE WHY NSW 2099
Miranda Venaruzzo	3 / 22 Westminster Avenue DEE WHY NSW 2099
Mr John Bruno Klune	13 / 16 Moore Road FRESHWATER NSW 2096
Helen Spasojevic	5 / 22 Westminster Avenue DEE WHY NSW 2099
Mr Richard Harvey Layton	6 / 22 Westminster Avenue DEE WHY NSW 2099
Mrs Janice Kaye Turpie	2 / 22 Westminster Avenue DEE WHY NSW 2099
Ms Elizabeth Rhiannon Cook	6 / 5 Westminster Avenue DEE WHY NSW 2099
Mrs Belinda Kari Nowell	5 Loch Street FRESHWATER NSW 2096
Kym Lang	4 / 20 - 22 Dee Why Parade DEE WHY NSW 2099
Kadie Greally	Address Unknown
Mrs Lorna Mary Pearce	18 Westminster Avenue DEE WHY NSW 2099
Dominique Elizabeth Pardon-Opdam	4 / 23 - 25 Westminster Avenue DEE WHY NSW 2099
Mr Stephen Alexander Pardon	4 / 23 - 25 Westminster Avenue DEE WHY NSW 2099
Amanda Lorraine Wright	6 / 2 - 10 Hawkesbury Avenue DEE WHY NSW 2099
Paul Gregory Dodds	12 Westminster Avenue DEE WHY NSW 2099
Ms Adrienne Jane Stone	17 / 18 Redman Road DEE WHY NSW 2099
Mrs Zdenka Novak	6 / 19 Westminster Avenue DEE WHY NSW 2099
Mr John Colin Hayes	102 Bantry Bay Road FRENCHS FOREST NSW 2086
Paul Stinson	Address Unknown

The following issues were raised in the submissions:

- Amenity Impacts
- Traffic
- Location and Character
- Devaluation of property
- Loss of light and privacy
- Density
- Height
- Community Benefit
- Compliance with legislation
- Tree Removal
- Affordable Housing
- Mental Health Impacts

The matters raised within the submissions are addressed as follows:

- **Amenity impacts - Noise and Privacy**
Loss of privacy from short term tenant movements
Outdoor terrace open until 10.30pm
Top floor entertaining area
Location of air conditioner units.

Comment:

Noise and privacy impacts generally are a concern with any boarding house due to the short term nature of the tenancies and will depend to a large extent on how robust and well applied the Operational Management Plan for the premises is.

In terms of the roof terrace, this area has not been designed to its optimal potential. The design of the terrace will expose the occupants of the adjoining northern development and will intrude into the private open space of the apartments on the opposite side of Westminster Avenue (No. 2-10 Hawkesbury Avenue and 17 Westminster Avenue) due to its elevated and overlooking position on fourth floor level. The outdoor roof terrace in its current configuration is not supported.

The location of the air conditioning condenser units on the roof of the building is not considered a suitable location. This type of mechanical equipment should be considered in the design and accommodated within the basement or other area where it is not visible and is easy to access.

- **Traffic**
Buses in Westminster Avenue
Inadequate parking. No visitor parking. On-street parking shortage already which will be further reduced.
Pedestrian crossing 20m south of property will result in at least 8 less parking spaces.
Construction traffic impacts on parking and sight lines.
Traffic report inaccurate. Refers to Pittwater Road to the west of the site when it is to the east.
References only that there will 23 rooms not potentially 46 people.
The driveway has two crossovers taking up additional street parking.

Comment:

While the development provides adequate parking in accordance with the requirements of SEPP (ARH) in the form of twelve (12) spaces and no visitor parking, it is understandable that concerns relating to parking have been raised in nearly every submission, given how congested Westminster Avenue on-street parking is at any time. Further, there is no allowance in the SEPP (ARH) in relation to rooms with two (2) occupants, usually adults. The required parking rate is set per room. An equivalent apartment building with 23 one bedroom or studio units would require twenty-seven (27) parking spaces (including 4 visitor spaces).

In terms of impacts on parking and sight lines during construction, these issues would be required to be addressed in a Construction Traffic Management Plan, should the application be approved.

The proposed driveway crossing and double access is not supported. The design as provided includes two x 3.0m wide driveway crossings when a single 5.5m wide driveway crossing would satisfy the requirements and not result in the loss of an additional on-street parking space.

- **Location**

This boarding house is around the corner from a primary school.

Out of character with surrounding residential and school buildings.

Boarding houses are commercial not residential.

Surrounding area is 3 storey residential with garages below, not 4 stories of accommodation.

The flat roof design is not compatible with surrounding buildings which are pitched.

Comment:

The proposed development for a boarding house is permissible within the R3 Medium Density Residential Zone pursuant to WLEP 2011 and also pursuant to SEPP (ARH). There are no exclusions applied to the location of boarding houses in areas where this form of development is permissible.

In terms of the proximity to Dee Why Public School, which is to the west at the end of Holborn Avenue and Fisher Road, there is no evidence to suggest that a boarding house will result in increased risk to the safety of school children passing the site.

This assessment concurs with the assertion that the development, being four (4) storeys in form and height, is not consistent with the broadly established character of the area or the desired future character of the area informed by the controls contained within WDCP 2011. This is addressed in further detail within Part B2 of WDCP 2011 in this report.

Likewise, the proposed roof form is assessed within Part D11 of WDCP 2011 in this report. The roof form provided in this instance is not considered an architectural feature, more a necessity to ensure the overall height of the building does not breach the maximum building height limit with a four (4) storey development.

- **Devaluation of property**

Comment:

Property values are not a relevant consideration under Section 4.15 of the EP & A Act, 1979.

- **Loss of light and privacy from overlooking**

Natural light to stairway windows to No. 22 Westminster will be blocked making the stairs dark.

Loss of sunlight to ground floor unit at 22 Westminster.

Comment:

The adjoining property at No. 22 Westminster Avenue is located to the direct north of the subject site. Accordingly, there is no overshadowing from the proposed development on No. 22 Westminster Avenue. Notwithstanding this, given the height of the development, the bulk and scale proposed is likely to impact on ambient light and the current sense of openness available to this property.

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• **Density inconsistent**

Proposal is for 23 rooms where most sites contain only 12 units.

Micro units ranging from 18-24 sqm are inconsistent with surrounding unit size character.

Comment:

While there is evidence to suggest that the density of development within individual properties surrounding the subject site contain smaller numbers of units than the 23 rooms proposed, including a recent approval for six (6) apartments at No. 32 Westminster Avenue, there is no density requirement with SEPP (ARH) for boarding houses in an R3 zone. It is pertinent to note that the development results in a number of non-compliances with the built form controls, including side boundary envelope and side setbacks, which provide some substance to the proposal being an over-development of the site.

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• **Height**

Building is 4 storeys. Bulk inconsistent with adjoining property.

Comment:

The developments non-compliance with the number of storeys requirement under WDCP has been addressed in further detail under Part B2 of WDCP 2011 in this report.

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• **No community benefit**

Who will the occupants be? Is this to be for rehabilitation of people from jail or with drug addictions?

Will this be short term holiday accommodation?

Comment:

A variety of persons are likely to reside in the boarding house and for a variety of reasons. The occupants will most likely represent a cross section of the community. There is no evidence to suggest that boarding house residents will be more likely to be responsible for adverse social impacts in the area.

Further, were the application to be approved, an Operational Plan of Management (PoM) for the boarding house would form part of the consent. This PoM would address residents behaviour (including smoking, noise, visitors, occupancy of boarding rooms, use of outdoor areas, drugs and alcohol) and require agreement with the 'House Rules' to ensure the amenity and safety of the neighbourhood is not adversely impacted.

In the event that resident behaviour disturbs local amenity or raises safety concerns, the Boarding House Manager will be responsible for implementing the PoM and addressing

the agreed House Rules in accordance with their lease agreement. Beyond this, it would be appropriate for the Police to be notified.

Boarding houses are designed for minimum three (3) month stays and are not backpacker or hostel accommodation. A minimum three month stay can be enforced as a condition of consent should the application be approved but is implied by any approval for a Boarding House pursuant to SEPP (ARH). The application seeks consent for 23 boarding rooms, plus an on-site managers unit. All of these units are able to accommodate two people. The total maximum occupancy would be forty-six (46) boarding residents and up to two (2) people in the on-site managers unit. There is no ability for the boarding rooms to contain any more beds than those approved.

- **Consideration of all legislation including EP&A Act, WLEP, WDCP not just SEPP (Affordable Rental Housing) 2009.**

Development is not permissible for the following reasons:

- a. *Clause 30(1) of SEPP provides a consent authority must not consent to a development unless it satisfies each of the paragraphs in clause 30.*
 - b. *Paragraph 30(1)(b) provides no boarding room will have a gross floor area of more than 25 square meters.*
 - c. *Paragraph 30(1)(e) provides that if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager.*
 - d. *The proposal provides for one of the boarding rooms (the managers room) to have a gross floor area of 32.4 square meters and exceeds the limit of 25 square meters set out in clause 30(1)(b).*
- Not compatible with LEP and DCP controls.*

Comment:

A detailed assessment of the development's compliance with SEPP (ARH), WLEP 2011 and WDCP 2011 has been provided within this report. The proposal satisfies the numeric requirements under the SEPP for room sizes and is compliant with WLEP 2011 in terms of height. The application has various non-compliances with WDCP 2011 which demonstrate the proposal is not acceptable in its current form.

- **Tree removal**

Five (5) trees including three (3) Category A trees to be removed.

Impacts to trees on side boundaries and lack of deep soil for new landscaping.

Landscaping in the front setback inadequate due to large driveway and location of detention basin.

New street trees at the front of the site unlikely because of the driveway and power pole.

Comment:

Council's Landscape Officer has reviewed the Arborist report for tree removal and the proposed replanting plans and has not raised any issues. As identified elsewhere in the report, concerns are raised in relation to the ability of the development to sustain appropriate canopy trees. The area within the northern corner of the site, identified as deep soil landscaping, contains the underground detention tank for the stormwater. These tanks are not usually suitable for larger trees due to the shallow depth of soil. In this instance, there is no section provided through the tank, only a detail provided with the stormwater design that confirms the maximum depth of soil would be around 0.8m. The landscaping on the site is considered insufficient and not supported.

- **Affordable Housing**

No evidence provided that it will be 'affordable housing'.

There is nothing to stop the owner selling the ground floor units as one bedroom garden flats or combining them as two bedroom units.

Comment:

While the development is not by or on behalf of a social housing provider, if the development were it to be approved it would not be able to be strata subdivided and a condition of consent in relation to the use as 'boarding house' would be applied.

- **Mental Health Impacts**

Mental health issues with living in such confined spaces. The rooms are too small and claustrophobic.

The application fails to consider Section 1.3 (b) of the EP&A Act as there are no documents to address social considerations

Comment:

The minimum room sizes for double boarding rooms which this development contains is 16m². Each room in this development is larger than the minimum size required.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>SUPPORTED, subject to conditions</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p>NOT SUPPORTED</p> <p>The proposal is for a boarding house consisting of 22 boarding rooms, one communal room and one managers residence.</p> <p>Facilities & Accommodation:</p> <p>Each of the 22 boarding rooms are provided with a private kitchenette, bathroom and laundry facilities. A communal area</p>

Internal Referral Body	Comments
	<p>exists with cooking facilities and a connecting terrace on the uppermost level.</p> <p>SEE states following regarding compliance with State Environmental Planning Policy (Affordable Rental Housing) 2009:</p> <p><i>The proposed rooms range in floor area from approximately 19 to 25m². All rooms comply with the minimum square metre requirement enabling 1 or more lodgers. The proposed manager's residence is slightly larger at 33.2m² which is acceptable because it is not a boarding room as defined.</i></p> <p><i>Each boarding room has the capacity to accommodate 2 lodgers. The boarding rooms will not be occupied by more than 2 lodgers satisfying (clause 30(1)(c)).</i></p> <p><i>The proposed development will have the capacity to accommodate more than 20 lodgers, and as such an operational manager's residence is provided within ground floor level of the proposed development (room 1). The internal floor area of the room is 31.29m²; it is connected to the rear garden area of approximately 54m² (with integrated landscape planting). These provisions satisfy clause 30(1)(e).</i></p> <p><i>No boarding rooms within the development have a gross floor area exceeding 25m² (excluding any area used for the purposes of private kitchen or bathroom facilities), in strict accordance with this development standard satisfying (clause 30(1)(b)).</i></p> <p>Based on the information provided in the SEE the proposed application appears adequate in regards to room sizes and the facilities provided.</p> <p>The application has also provided a boarding house plan of management.</p> <p>Noise:</p> <p>A number of written submissions have been received regarding the potential for noise impacts from the proposed development including:</p> <ul style="list-style-type: none"> • Social noise from lodgers including noise from the communal balcony; and • Noise from the air conditioning condenser units that will be located on the rooftop. <p>Other potential noise sources include noise from other mechanical ventilation i.e. ventilation for car park.</p> <p>As part of the submission, an Operational Management Plan was provided that included noise control measures. However, an Acoustic Assessment by a suitably qualified and experienced</p>

Internal Referral Body	Comments
	<p>Acoustic Engineer is required in order to undertake a full assessment of the noise impacts from the proposed application.</p> <p>The Acoustic Assessment and Report is to consider at least the following:</p> <ul style="list-style-type: none"> • Acoustic impacts of the development; • Impacts of likely internal and external noise sources (including persons and structures/mechanical plant/equipment) and receivers of potential noise including neighbouring premises; • Reference to the use of the external balconies to each boarding house room plus the proposed top floor communal area including external terrace; • Measures in place to protect the developments future residents amenity from existing noise impacts from neighbouring properties, Pittwater Road and other nearby developments; and • The Acoustic Assessment is to include any recommendations including treatment/control measures to be imposed for the benefit of neighbourhood and lodger amenity in accordance with NSW EPA guidelines. <p>Any relevant recommendations from the Acoustic Assessment should also be included in an updated Operational Management Plan for the boarding house.</p>
Landscape Officer	<p>SUPPORTED, subject to conditions</p> <p>The Arborist's Report and Landscape Plans provided with the application are noted.</p> <p>The Arborist's Report indicates that 5 trees are to be removed from the site to accommodate the proposed works. 5 other trees on the site are to be retained. The trees to be removed are not considered to be of such significance to warrant refusal of the application.</p> <p>The Landscape Plans indicate 14 additional trees to be planted with numerous other shrubs and groundcovers.</p> <p>It is also recommended that if approved, the Management Plan for the site include requirements for the approved landscaping to be maintained in accordance with the approved landscape plans.</p> <p>No objections are raised with regard to landscape issues subject to conditions as recommended.</p>
NECC (Development Engineering)	<p>NOT SUPPORTED</p> <p><u>Driveway:</u></p> <p>The proposed driveway arrangement is not satisfactory. Council will only permit one vehicular crossing for the development.</p> <p>Please refer to further comments from Traffic Engineering section</p>

Internal Referral Body	Comments
	<p>related to impact to on-street parking.</p> <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> • Vehicle access for the development in accordance with clause C2 Traffic, Access and Safety.
Strategic and Place Planning (Urban Design)	<p>NOT SUPPORTED</p> <p>The proposal cannot be supported for the following reasons:</p> <ol style="list-style-type: none"> 1. The side boundary building envelopes have been breached. The additional building mass will result in a bigger building bulk and cast additional shadow on the neighbouring property to the south. The applicant should explore making the proposal appears as a three storey building with a roof form. The top level should be setback from the edges of the floor below and clad with a roofing material so that it read as a roof form. 2. In terms of facade articulation, more vertical elements in the form of variations to facade material finishes and fenestration treatment could be introduced to break the horizontal proportions. 3. The roof terrace area should primarily face the street boundary. Overlooking/privacy issues to the nextdoor neighbours from this highly used communal area could be improved with wider planters and screenings. 4. Privacy screens should be architecturally incorporated to upper floor windows and balconies to minimise overlooking/ privacy issues to next door neighbours. 5. A/C condenser units located on the top roof area should be located in the centre of the roof area with a low screen to create a better impression when viewed from higher surrounding developments.
Traffic Engineer	<p>NOT SUPPORTED</p> <p>The proposed development has the following characteristics relevant to traffic and parking:</p> <ul style="list-style-type: none"> • 23 x boarding rooms including one (1) managers room; • 12 x car parking spaces (including one (1) disabled space); • Five (5) x bicycle storage spaces; • Five (5) x motorcycle spaces <p>The site layout includes a basement car park with vehicular access via two (2) one-way driveways from Westminster Avenue and a combined two-way internal ramp.</p>

Internal Referral Body	Comments
	<p>Parking: All parking provisions are in accordance with the SEPP. No objections are raised.</p> <p>Traffic: The assumptions in the report are deemed acceptable. The anticipated 12 vehicles are considered to have a negligible impact on the local road network.</p> <p>Accessibility and car park layout: The layout does not demonstrate that all vehicles can enter and exit in a forward direction, particularly when all spaces are occupied. Further detail is required.</p> <p>Servicing: Comments to be provided by Waste Services Team. Note that on street collection will require signage changes. This can be conditioned.</p> <p>Conclusion: Based on the car park and accessibility concerns, Council's Traffic Team cannot support the application in its current form.</p>
Waste Officer	<p>NOT SUPPORTED Specifically: The waste bin storage room is not large enough to contain the required number of bins. The room is required to be large enough to contain 20 x 240 litre bins.</p> <p>Information to be passed to applicant with regards to waste generation rates: Council produces guidelines of waste generation rates for developments within the Northern Beaches LGA. Boarding houses are considered to be residential premises (because people live there). They are <u>not</u> commercial or industrial premises for the purposes of determining waste generation rates. Please use the appropriate Council guidelines when determining the number of bins required to be accommodated at the property.</p> <p>Reference has been made to the approval of DA2018/1663 as a precedent for using the commercial and industrial premises generation rates. Council's waste officer refused this DA because the applicant had used the commercial and industrial premises generation rates when determining the number of bins required. No precedent has been set to use anything other than Council's guidelines when determining the number of bins required at residential premises.</p>
External Referral Body	Comments

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Affordable Rental Housing) 2009

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

Division 3: Boarding houses

Clause 25: Definition

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

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

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

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

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	Consistent The site is located within the R3 Medium Density Residential Zone and, as such, the proposed use is permissible with consent under WLEP 2011.

Clause 27: Development to which this Division applies

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

Requirement	Comment
(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area. Note: Accessible area means land that is within: (c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.	Consistent The site is located within the R3 Medium Density Residential zone and is situated not more than 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.
(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the	Not applicable. The site is located within the Sydney region.

development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.	
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Clause 28: Development may be carried out with consent

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

Clause 29: Standards that cannot be used to refuse consent

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

	<p>plus:</p> <p>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or</p> <p>(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</p>		
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) building height	if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	The building height limit under WLEP 2011 is 12.0m.	Compliant
(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	The adjacent and surrounding streetscape include predominantly older style (60's and 70's) residential flat buildings. The overall character in terms of landscaping is low fence lines with a variety of landscape treatments and evenly distributed canopy trees. The property to the north, No 22 Westminster Avenue is the most recent development constructed around 2008.	Inconsistent The proposed development proposes a dominant driveway with dual kerb crossings onto Westminster Avenue. The width of the dual access equates to approximately 46% of the front setback.
(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	The primary communal area in the development is located on Level 3 and includes an internal common room and roof terrace. Both areas provide an easterly and northerly orientation and receive	Consistent

		direct sunlight in the morning from 9am to midday.	
(d) private open space	<p>if at least the following private open space areas are provided (other than the front setback area):</p> <p>(i) one area of at least 20m² with a minimum dimension of 3.0m is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m² with a minimum dimension of 2.5m is provided adjacent to that accommodation,</p>	The development includes areas identified on the plans as private open space at the rear of the site and for the boarding house manager along the northern boundary.	Compliant
(e) parking	<p>if:</p> <p>(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at</p>	<p>The proposed development is not by or on behalf of a social housing provider and is therefore required to provide 0.5 parking spaces for each boarding room and 1.0 space for the boarding house manager.</p> <p>The development for 22 rooms requires twelve (12) spaces. Twelve (12) parking spaces are provided.</p>	Compliant

	<p>least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p>		
(f) accommodation size	<p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	The proposed development provides twenty three (23) double boarding rooms all with more than 16m ² of gross floor area.	Compliant
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	Each boarding room provides a private kitchen and bathroom facilities.	Consistent
	(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	Not Applicable	Consistent

Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is		

satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	The development provides a single common room on the top floor roof level.	Compliant
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m ² ,	The floor areas of each boarding room do not exceed 25m ² .	Compliant
(c) no boarding room will be occupied by more than 2 adult lodgers,	The application was accompanied by an Operational Plan of Management which identifies that each lodger will be provided with a 'Resident Information Brochure' as part of their lease which states that no more than 2 adult residents may occupy any room.	Compliant
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Each boarding room contains independent cooking facilities. In addition, the common room at Level 3 provides communal cooking facilities.	Consistent
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The boarding house has a maximum capacity of forty-six (46) lodgers within twenty-three (23) boarding rooms. A separate managers apartment is identified on the Ground Floor Level opposite the main entrance.	Consistent
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	The proposed boarding house is located within a residential zone (R3 Medium Density Residential). Accordingly, this clause does not apply.	Consistent
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	As there are twenty three (23) boarding rooms, the development requires at least five (5) motorcycle and bicycle parking spaces. The basement provides space for five (5) motorcycles and bicycles.	Compliant
(2) Subclause (1) does not apply to development for the purposes of minor alterations or	This clause does not apply.	Consistent

additions to an existing boarding house.		
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Clause 30AA: Boarding houses in Zone R2 Low Density Residential

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

Comment:

Not applicable. The subject site is zoned R3 Medium Density Residential.

Clause 30A: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

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

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

Comment:

The surrounding area is characterised by a predominance of three (3) storey residential flat buildings dating from the 1960's, 1970's and 1980's. While there are other varied residential flat buildings sprinkled around the locality, the consistent theme of development is reflective of the controls future vision for three (3) storey apartment buildings.

The proposed development presents a four (4) storey development particularly to surrounding properties and the northern and southern approaches to the site. While the roof terrace fronting the street does not in itself make the development incompatible with the character of the local area, the resulting side boundary envelope non-compliance is not considered to produce the desired outcome for this site.

In this regard, it is considered that the scale of the development in its current form is incompatible with the streetscape and inconsistent with the first principle.

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

Comment:

This development is one of the few modern redevelopments within this street and will be a marker for future developments. It is therefore considered that the overall bulk and articulation, particularly with the top half of the development requires further resolution. In addition, due to the extension of the basement and arrangement of the landscaping, the landscaping as proposed is not considered to satisfy the intent of breaking up the building form.

In this regard, the development is considered to be incompatible with the scale of surrounding development and inconsistent with the second principle.

- ***The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.***

Comment:

While the site does not include any topographic features that would benefit the development, the siting of the building is not considered to provide any advantage with the raised fill required around the site above the basement. This detail is not desirable and is considered to create further emphasis on overlooking and building bulk.

In this regard, it is not considered that effective methods have been employed in the design of the development to reduce its visual dominance and is inconsistent with the third principle.

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

Comment:

As there are no specific materials beyond face brick which would be considered reflective of a predominant character in this street, the proposed materials palette which includes a modern take on face brick is considered to complement the setting. The appearance of the fourth floor and bulky side facades requires further resolution both in physical and material articulation to provide a more consistent building form.

In this regard, the development is considered to be inconsistent with the fourth principle.

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

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

Comment:

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

Constraints on the development potential of surrounding sites

Certain details of the development are considered to create adverse impacts on adjoining properties in terms of amenity of noise. The proposal is not considered to result in any adverse impact on the development potential of surrounding sites.

Privacy

The development includes a roof terrace within the fourth floor level which is considered to contribute unacceptable privacy and noise impacts on the neighbouring apartments (refer to detailed assessment within Clause D8 Privacy). The development also includes numerous windows directly facing into adjoining apartment buildings

Overshadowing

As the site is oriented with a street frontage to the east, the property directly to the south, No.18 Westminster Avenue will receive increased overshadowing as a result of development of the subject site beyond the height of the existing single storey dwelling.

Noise

While the use of the site as a boarding house is permissible within the zone, the site as proposed to be developed provides a number of departures from the development controls which seek to guide the future redevelopment of this location. The required setbacks for the site are 4.5m. The proposed basement seeks a 100% variation on the side setback for the full length of the northern and western extent of the basement structure. In addition, the development identifies key areas of private open space within the side setback area of the development which will likely result in a substantial dilution of landscape treatment in this area to prioritise the area as private open space above a landscape separation.

Conclusion to Character Assessment

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

This matter warrants the refusal of the Development Application.

Conclusion

The proposed development is not supported.

SEPP (Building Sustainability Index: BASIX) 2004

The Applicant in their Statement of Environmental Effects provides the following:

"Based on recent court judgements, the proposal is BASIX affected development. A BASIX assessment report accompanies the application and satisfies the SEPP in terms of the DA assessment."

A BASIX certificate (No.1072073M) has been submitted with the application.

SEPP (Infrastructure) 2007Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

10 Development on certain land within coastal wetlands and littoral rainforests area

(1) The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:

(a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,

(b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,

(c) the carrying out of any of the following:

(i) earthworks (including the depositing of material on land),

(ii) constructing a levee,

(iii) draining the land,

(iv) environmental protection works,

d) any other development.

Comment:

The site is not identified on the coastal wetlands or littoral rainforest map.

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

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 site is not located in proximity to coast wetlands or littoral 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
 - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, or
 - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal
- (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 site is not identified within the coastal vulnerability area.

13 Development on land within the coastal environment area

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

Comment:

The proposed development has provided a geotechnical engineering and stormwater assessment to support the proposed excavations on the site and is not considered to impact on any aspects of the biophysical, hydrological or ecological environment within the coastal environment area.

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

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1) , or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposed development is considered suitable to be managed to avoid any adverse impacts on the coastal environment.

14 Development on land within the coastal use area

(a) has considered whether the proposed development is likely to cause an adverse impact on the following:

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for recreation;*
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
- (iv) Aboriginal cultural heritage, practices and places,*
- (v) cultural and built environment heritage, and*

(b) is satisfied that:

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1) , or*
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The site is located within the coastal use area. The proposed development will not impact on the surrounding coastal and built environment.

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

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

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

Comment:

The proposed development is not considered to cause any adverse impact on coastal hazards.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

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

Compliance Assessment

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	3	4	N/A	No
B3 Side Boundary Envelope	5.0m (north)	Outside Envelope	27.8%	No
	5.0m (south)	Outside Envelope	17%	No
B5 Side Boundary Setbacks	4.5m (north)	Nil to basement 3.4m to access stairs 4.7m to building	100% 24.4% N/A	No No Yes
	4.5m (south)	1.3m to access stairs 4.7m to building	71% N/A	No Yes
B7 Front Boundary Setbacks	6.5m	6.5m	N/A	Yes
B9 Rear Boundary Setbacks	6.0m	Nil to basement 6.2m	100%	No Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	50%	43.4%	N/A	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
B2 Number of Storeys	No	No
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	No
C2 Traffic, Access and Safety	No	No
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	No	No
D1 Landscaped Open Space and Bushland Setting	No	No
D2 Private Open Space	No	No
D3 Noise	No	No
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	No	No
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	No	No
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

A.5 Objectives

The proposed development is not considered to provide the best outcome for the site in responding to the characteristics of the site and surrounding development which is evident in the number of non-compliance with the local controls and number of objections received.

B2 Number of Storeys

Description of non-compliance

The proposed development seeks consent for a four (4) storey boarding house in a location where three (3) storeys is the height control. With regard to the consideration for a variation, the

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

- ***To ensure development does not visually dominate its surrounds.***

Comment:

While the subject site is surrounded by a varying range of size of buildings, including a single dwelling to the south, a three (3) storey residential flat building to the north and a much older four (4) storey residential flat building to the west, the proposed development is four storeys above a basement garage. The additional storey creates a non-compliance with the side boundary envelope control and results in a development that is considered unnecessarily bulky and more visually dominant in the street and locality than is necessary in this location.

- ***To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.***

Comment:

The additional storey of development and lack of articulation and setbacks at the top half of the building will create an adverse visual impact on the adjoining properties who will be overlooked. The proposed design is not considered to minimise these impacts.

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

Comment:

There are no views identified that would be impacted by the proposed development.

- ***To ensure a reasonable level of amenity is provided and maintained to adjoining and nearby properties.***

Comment:

The development is considered to result in a number of adverse amenity impacts on the adjoining properties in terms of privacy, noise and overlooking. The design is not considered to satisfactorily provide a compromise for these issues.

- ***To provide sufficient scope for innovative roof pitch and variation in roof design.***

Comment:

The development includes a flat roof design which barely stays within the height control of 12.0m. While there is some merit in having a terrace facing the street, this element has not been sufficiently resolved and requires greater setbacks from the side neighbours and more extensive planting areas to provide screening and soften its presence. The roof design as proposed results in additional bulk and scale due to its non-compliance with the building envelope and is not considered to satisfy this objective.

- ***To complement the height of buildings control in the LEP with a number of storeys control.***

Comment:

While the development appears to comply with the maximum building height for the site, it is squeezing the minimum floor to ceiling heights in order to push a fourth floor into this development. The number of storeys for development in this residential zone is three (3). The proposed development is not considered to complement the height controls.

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

B3 Side Boundary Envelope

Description of non-compliance

The fourth floor proposed in this development results in a significant non-compliance with the side boundary envelope control, as depicted in the following figures:



South Elevation



North Elevation

Merit consideration

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

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

Comment:

The development fails in achieving this objective with the additional building form adding substantial bulk.

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

Comment:

The development fails to provide any increased separation as the building height has increased. While this would not provide any additional relief at ground level, it will certainly provide a greater sense of openness and separation from the adjoining properties.

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

Comment:

While the site is relatively flat, the excavation of the site to accommodate the basement has resulted in an increase in the finished ground levels and an unnecessary difference in ground levels between the site and the northern neighbour of up to 1.8m. The development has not established a good response to the topography and how it relates to the adjoining site.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B5 Side Boundary Setbacks

Description of non-compliance

The proposed development seeks substantial variations with the side boundary setback requirements of WDCP. The proposed basement includes a nil setback for the full basement length along the northern boundary (28.5m), western boundary (13.2m). The basement provides further non-compliance with the entire basement stairs setback 0.4m from the southern boundary, extending 5.6m and the remainder of the southern basement wall setback 3.1m.

Above ground, the development continues the non-compliance with individual privatised private open space for Bedroom 1 and the Boarding House Manager's Private Open Space entirely located within the side setback to the north, private open space for Bedroom 4 to the south and the stair exit from the basement extending into the side setback and continuing an access path with no setback for landscaping along the southern boundary.

While the controls incorporate special provisions within the R3 Medium Density Residential Zone for

basement parking to encroach up to 2.0m from the boundary and private open space up to 3.5m from the boundary, the proposed development seeks 100% encroachment of these areas which is not supported. The control and the special provisions state:

"On land within the R3 Medium Density Residential zone, above and below ground structures and private open space, basement car parking, vehicle access ramps, balconies, terraces, and the like shall not encroach the side setback."

Variations will be considered for existing narrow width allotments, where compliance is unreasonable in the context of surrounding medium density development for basement carparking and private open space.

- *Basement car parking may extend:*
 - *Up to 2 metres from the side boundary, and*
 - *No more than 1 metre above ground level (existing)*
- *Private open space may extend:*
 - *Up to 3.5 metres from a side boundary "*

Merit consideration

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

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

Comment:

The section drawings through the site which intersect the Managers courtyard indicate that there is approximately 950mm of fill above the basement structure. This area is elevated above existing ground level with a finished height approximately 1.6m higher than the finished level of the adjoining property. Notwithstanding, the depth is considered insufficient to support planting that is commensurate with the building height, as this area has been identified as private open space for the Manager, it is unlikely to contain any useful planting that would serve to offset the bulk and scale of the building.

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

Comment:

While the rendered drawings indicate that there will be substantial trees along each side of the building, in reality the area identified for these to be located are sharing a purpose and priority as private open space for the individual rooms, which appear to fence off a space and contains insufficient soil depth above existing ground levels. There can be no reliance on effective landscaping serving to reduce the dominance of this building or offer any landscaped buffer separating the occupants from the adjoining properties.

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

Comment:

As identified above, the development is seeking variations with the number of storeys and building envelope on the supposition that the development provides adequate and suitable

setbacks containing substantive landscape screening which will soften the building in its setting. The physical form of the building fails to minimise bulk and scale of the development and based on the reasons provided is unlikely to be offered any relief from the landscape design.

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

Comment:

The physical separation of the building facade from the boundaries is considered generally acceptable. The building does not however seek to avoid direct overlooking both to and from the development within the design incorporating substantial windows and some balconies which directly face into the neighbouring properties. A distinct sense of overlooking has been identified by the surrounding affected properties which will be exacerbated at ground level where the proposed finished ground level will be approximately 1.6m higher than the adjoining northern development.

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

Comment:

There are no views which have been identified as affected by the proposed development.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B9 Rear Boundary Setbacks

Description of non-compliance

The proposed development includes excavation of a basement which extends approximately 800mm at the northern and southern retaining walls into the rear boundary setback. With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

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

Comment:

The proposed development maintains a rear setback which can be considered deep soil area.

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

Comment:

While the encroachment of the basement structure is minor, the development does not achieve an effective openness in the rear yard due to the fences separating off areas for private open space. The entire rear yard should be considered as one space and landscaped accordingly in order to satisfy this objective.

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

Comment:

The apartment to the west of the subject site is a long standing structure probably constructed in the 1970's. The development provides balconies which extend along the full face of the eastern facade facing into the subject site. Existing canopy trees at the rear of the subject site provide significant screening to the occupants of these apartments from the current single dwelling. Four of the six trees are identified to be retained. No additional canopy trees are proposed along the rear boundary. It is considered that additional canopy trees are required in this area to provide a more suitable buffer and screen between the sites.

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

Comment:

The separation of the rear setback into fenced areas is not supported. The rear setback should be maintained as a single area of landscaping to provide a consistent pattern of development.

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

Comment:

Additional landscape treatments are considered necessary within the rear of the site to ensure that a satisfactory separation and buffer can be provided for the privacy of adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C2 Traffic, Access and Safety

Merit consideration

The proposed development includes a double driveway crossing into Westminster Avenue. This results in a conflict with two (2) of the objectives of this control:

- ***To minimise the number of vehicle crossings in a street.***

Comment:

The double crossing is not supported and is inconsistent with other development within the street.

- ***To minimise the loss of "on street" kerbside parking.***

Comment:

The site currently contains a single driveway crossing at the northern end of the site which allows three on-street parking spaces between the driveway of No. 20 and No. 18. The proposed driveway layout will result in the removal of one parking space and is not supported.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C9 Waste Management

The proposed development has been assessed as unsatisfactory by Council's Waste Officer. Refer to referral comments for full details.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposed development as calculated by this assessment provides 43.4% of the site as included landscaping.

Merit consideration

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

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

Comment:

The design of the development includes a split driveway access which creates an area of approximately 60m² (46%) within the front setback area as hard paving driveway. The photo montages of the landscaping indicate that there will be two (2) trees within the front setback which are intended to enhance the streetscape appearance of the development. The planting indicated on the northern side of the front setback is questionable given that this garden bed is located above the on-site stormwater detention tank. It is considered unlikely that a substantial canopy tree will reach a mature height located within a concrete tank with only 800mm of soil.

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

Comment:

Council's Landscape Architect has assessed the Arborist Report provided with the application which recommends the removal of five (5) trees and replacement planting of fourteen (14) new trees and raised no objection to this recommendation.

- ***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 landscaped area on the site is split into two distinct areas, the front landscaping and the rear/side landscaping. The front landscaping consists of a 4.0m x 12.0m section along the front northern corner of the site and two smaller areas in the south-eastern corner of the site. While these areas are not compromised by the basement structure, only the area along the south-eastern side of the site is considered likely to comfortably support some decent trees and vegetation. While these areas provide some softening within the frontage of the site, it is considered that this could be significantly improved with a better designed driveway accessing the basement.

The second area identified as landscaping on the site is predominantly around the northern and western boundary of the site and is compromised by the basement structure below and also the reliance on these spaces as private open space for the Managers residence and three (3) units. The area has been delineated into small privatised areas of private open space which is therefore unlikely to sustain sufficient vegetation and trees suitable to screen and offer a sense of separation from the development. Of particular concern is the reliance of the area adjacent to the Managers residence to satisfy the requirements under SEPP (ARH). Given the configuration of separated areas, the landscaping around the perimeter of the site is not considered likely to provide a cohesive and consistent level of landscaping which could be adequately maintained. The proposed development is considered unacceptable in this regard.

- ***To enhance privacy between buildings.***

Comment:

The planting to be provided around the perimeter of the site does not provide any details of the type, size or actual plant locations. These spaces are considered likely to become unmaintained and provide no privacy buffer between the site and the neighbouring buildings due to their intended use as private open space attached to individual rooms. The development is considered inconsistent and deficient in satisfying this objective.

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

Comment:

The proposed development is for a boarding house and includes a roof terrace and a number of fenced off areas likely to be in shadow for the best part of the day due to their orientation and location to the south of other developments. Given the large number of neighbouring properties adjoining this site, it is considered that a more centralised courtyard or entertaining space for use by the short term occupants of this development which would provide minimal impact should have been a key consideration of the design process. The short term occupants of a boarding house have no vested interest in establishing good relations with neighbouring properties and the impacts of this form of development on the neighbours is a fundamental concern in this type of medium density living arrangement. The layout of the ground floor landscaping in terms of accommodating outdoor recreational opportunities in this instance are considered inappropriate.

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

Comment:

The accompanying Statement of Environmental Effects states that each room will contain private laundry facilities. Nothing has been identified on the plans in this regard. No further space is provided outside the building for clothes drying.

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

Comment:

While Council's Development Engineers have not raised any issues with the proposed stormwater management on site, they have not provided any conditions in relation to this aspect of the development as their overall position on the development is unsupportable.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D2 Private Open Space

Merit consideration

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

- ***To ensure that all residential development is provided with functional, well located areas of private open space.***

Comment:

While individual private open space allocations are not required under SEPP ARH, the development has provided a number of areas for this purpose. The primary open space area for the occupants of the development is identified at the fourth floor level with a common room and outdoor terrace facing Westminster Avenue. The site also provides ground level private open space areas within the side and rear setbacks which are fenced to belong to particular units.

- ***To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings.***

Comment:

The location of private open space adjoining living areas is a requirement designed for residential flat buildings and dwellings. Boarding houses are not required under SEPP (ARH) to demonstrate this desirable element. Notwithstanding, it is noted that the only useful communal open space provided in this development is located on the fourth floor.

- ***To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces.***

Comment:

The proposed roof terrace has not been adequately resolved and does not provide sufficient screening and setbacks from the adjoining side properties.

- ***To ensure that private open space receives sufficient solar access and privacy.***

Comment:

As identified elsewhere in this report, the area within the rear and side setbacks at ground level will receive little meaningful solar access due to the orientation of the site and the location of adjoining developments. The fourth floor terrace will receive adequate solar access with its eastern orientation. Issues associated with privacy from the roof terrace have been detailed in other sections of this report.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D3 Noise

Merit consideration

The proposed development for a boarding house containing 23 rooms and up to 46 people contains details which raise significant concerns. The design includes a substantial roof terrace which represents the main outdoor private open space to be shared by all occupants. Concerns are raised with the lack of protection incorporated by visually and aurally for the surrounding neighbours from this area. In addition, the location of twenty four (24) air conditioning condenser units on the roof of the development is not considered an integrated design selection and is likely to cause significant noise disruption to adjoining properties.

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

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

Comment:

A more sophisticated resolution of the roof terrace and how it relates to the surrounding properties is required in order to establish this detail as a suitable location for this type of development.

In addition, the positioning of the air-conditioner condenser units on the roof of the development which is already at maximum height and with envelope breaches is not an integrated design approach to a new development.

- ***To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.***

Comment:

The roof terrace and air-conditioner condenser units require further consideration and resolution to ensure this development does not create an adverse impact on its neighbours.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D8 Privacy

Merit consideration

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

Comment:

The proposed development includes numerous windows along the northern facade and windows and balconies on the western facade which provide no protection to or from the adjoining properties in terms of privacy. At the rear of the site, the development faces the main balconies of twelve (12) residential apartments.

At the front of the site, the development includes a large roof terrace approximately 33m² in size which overlooks No. 22 Westminster and due to its height will overlook the street into the private open space balconies of apartments on the opposite side of Westminster Avenue. No features have been included to address privacy and overlooking to and from these areas.

- ***To provide personal and property security for occupants and visitors.***

Comment:

While internal security for the development will be acceptable with a secure front door and basement, the direct overlooking of all facades of the development into the neighbouring properties is not considered a good solution for the occupants of those developments.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D9 Building Bulk

Merit consideration

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

- ***To encourage good design and innovative architecture to improve the urban environment.***

Comment:

While the street presence of the proposal provides an adequate form of design which is representative of a modern architectural detail, the development on balance fails to focus adequate emphasis on the other facades of the building or the roof and fourth floor. The development will create additional overlooking of adjoining properties and fails to provide an adequate level of internal amenity for the future occupants of the development.

- ***To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.***

Comment:

The proposed development is inadequate in minimising visual bulk. The built form presents overwhelming facades which offer little articulation or relief, compounded further by an additional non-compliant fourth floor which creates substantial building envelope breaches.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D11 Roofs

Merit consideration

The development is considered against the underlying Objectives of the Control. The location of twenty four (24) air conditioning condenser units along the edge of the roof form in close proximity to the southern and western boundaries and neighbouring apartment developments is not considered to provide an innovative design solution seeking to conceal plant equipment or complement the roof structure and local skyline.

Given the scale of the development, greater consideration and detail should be afforded to the location and integration of these elements within the design.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D14 Site Facilities

The proposed development does not provide adequate space to accommodate the required bins on site. This is detailed within the Waste Officers referral comments.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

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 and all other documentation supporting the application and public submissions. In this regard, the application is not considered to be acceptable and is recommended for refusal.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP 55, SEPP Affordable Rental Housing, SEPP Infrastructure, WLEP 2011, the relevant codes and policies of Council, and the relevant provisions of the WDCP 2011.

The application was referred to internal departments and external authorities. In the responses, Council's Urban Designer, and Traffic Engineer each raised fundamental concerns with the proposal. Council's Waste Management section has indicated that insufficient information has

been provided to adequately address the requirements of the proposal.

The development attracted 21 individual submissions. The submissions raised concerns with regards to the proposed density and scale, safety and traffic and parking. Other issues raised include the impact of the development upon existing on street parking, and the impacts on the neighbouring properties in relation to amenity issues including privacy, noise and overshadowing. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report.

The assessment of the application against the provisions of SEPP Affordable Rental Housing found that the proposal is unsatisfactory with a number of the requirements.

The assessment of the proposed development against the provisions of WDCP 2011 found that the proposal is not consistent with Clauses B2, B3, B5, D1, D2, D3, D6, D8, and D9.

Based on the assessment contained in this report, it is recommended that the Northern Beaches Local Planning Panel refuse the application for the reasons detailed within the recommendation attached to this report, and any amendments to those reasons, which would constitute the contentions in defence of the Court appeal.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/0090 for the Demolition works and construction of a Boarding House on land at Lot 15 DP 9125,20 Westminster Avenue, DEE WHY, Lot A DP 392346,20 Westminster Avenue, DEE WHY, for the reasons outlined as follows:

1. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009:
 - o Clause 29(2)(b).- the landscaped area is considered inconsistent.
 - o Clause 30(A) - The proposal is inconsistent in character

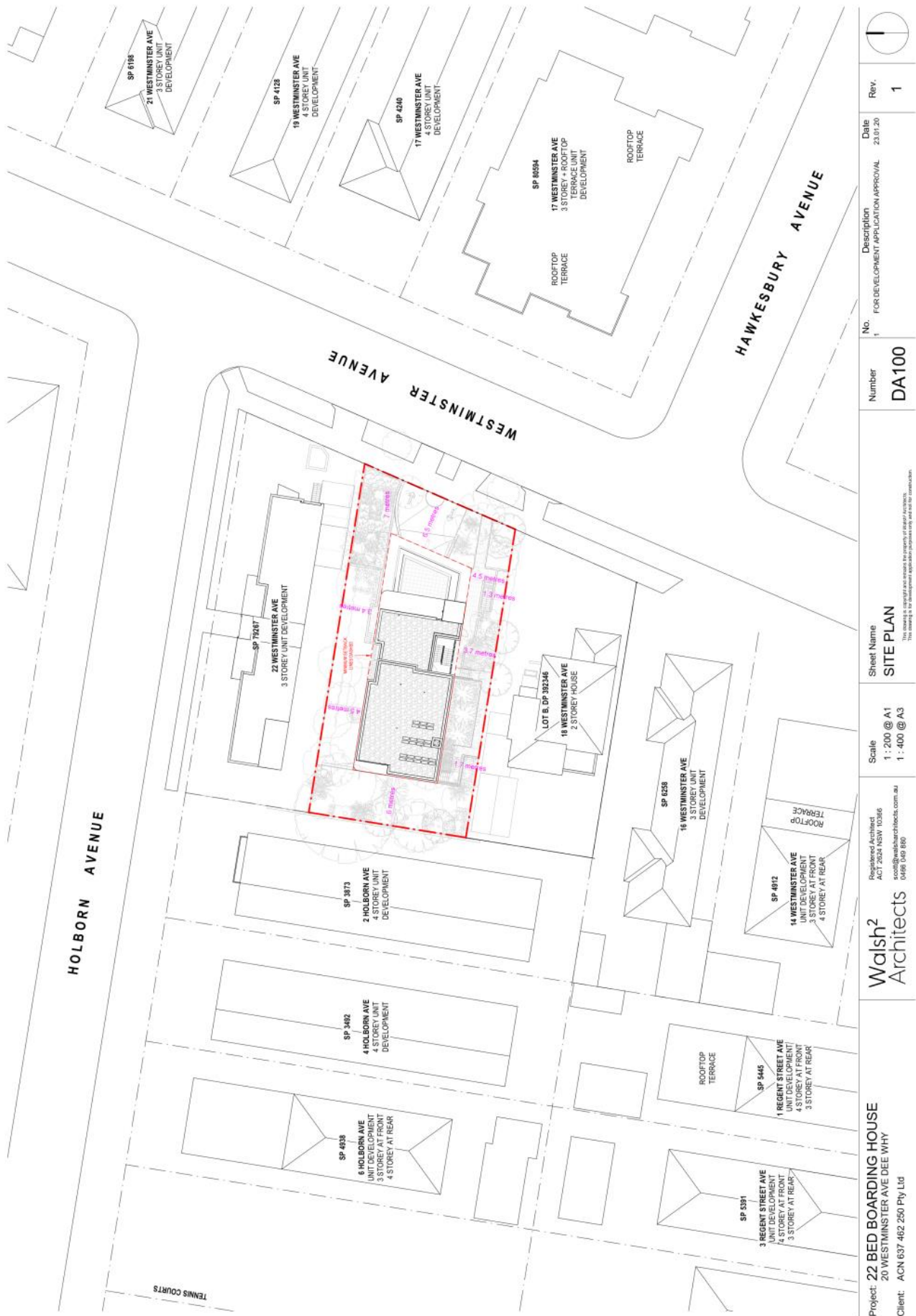
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Warringah Local Environmental Plan 2011:
 - o Clause 1.2 Aims of The Plan
 - o Clause 2.3 Zone Objectives

3. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 the proposed development is considered an overdevelopment of the site.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the relevant provisions of the following clauses of the Warringah Development Control Plan:
 - a. B2 Number of Storeys
 - b. B3 Side Boundary Envelope
 - c. B5 Side Boundary Setback
 - d. B9. Rear Boundary Setback
 - e. C2. Traffic, Access and Safety
 - f. C9. Waste Management
 - g. D1 Landscaped Open Space and Bushland Setting
 - h. D2 Private Open Space
 - i. D3 Noise
 - j. D8 Privacy
 - k. D9 Building Bulk
 - l. D14 Site Facilities

5. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not in the public interest.

2.





Project: 22 BED BOARDING HOUSE 20 WESTMINSTER AVE DEE WHY Client: ACN 637 462 250 Pty Ltd	Walsh ² Architects	Registered Architect ACT 2524 NSW 10366 swalsh@walsharchitects.com.au 0468 048 880	Scale 1 : 100 @ A1 1 : 200 @ A3	Sheet Name ELEVATIONS <small>This drawing is copyright and cannot be copied or used in any way without the written permission of Walsh Architects. This drawing is for development application purposes only and not for construction.</small>	No. 1 Number DA300	Description FOR DEVELOPMENT APPLICATION APPROVAL	Date 23.01.20	Rev. 1
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1 WEST ELEVATION
Scale: 1 : 100 @ A1



2 NORTHERN ELEVATION
Scale: 1 : 100 @ A1

Project: 22 BED BOARDING HOUSE
20 WESTMINSTER AVE DEE WHY
Client: ACN 637 462 250 Pty Ltd

Walsh²
Architects

Registered Architect
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Scale
1 : 100 @ A1
1 : 200 @ A3

Sheet Name
ELEVATIONS

Number
DA301

No. 1
Description
FOR DEVELOPMENT APPLICATION APPROVAL
Date
23.01.20
Rev.
1

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ITEM 3.4

**MOD2020/0119 - 133-139 PITTWATER ROAD, MANLY -
MODIFICATION OF DEVELOPMENT CONSENT DA213/2017
GRANTED FOR DEMOLITION AND CONSTRUCTION OF A
SERVICE STATION.**

AUTHORISING MANAGER ANNA WILLIAMS

TRIM FILE REF 2020/367424

ATTACHMENTS

- 1 [↓](#) Assessment Report**
- 2 [↓](#) Site Plan and Elevations**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. MOD2020/0119 for Modification of Development Consent DA213/2017 granted for demolition and construction of a service station at Lot 133 DP 1264470, 133-139 Pittwater Road, Manly subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0119
Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 133 DP 1264470, 133 - 139 Pittwater Road MANLY NSW 2095
Proposed Development:	Modification of Development Consent No.213/2017 granted for demolition and construction of a service station.
Zoning:	Manly LEP2013 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Jasbe Manly Pty Ltd
Applicant:	MCHP Architects Pty Ltd
Application Lodged:	25/03/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Industrial
Notified:	13/04/2020 to 01/05/2020
Advertised:	Not Advertised
Submissions Received:	35
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Executive Summary

DA213/2017 granted the approval of the demolition of the existing service station and construction of a new service. Condition 27 of DA213/2017 restricts trading to between 7.00 am to 10.00 pm Sunday to Wednesday and 7.00 am to 12.00 am (midnight) Thursday to Saturday. This modification seeks trial consent for extended trading 6.00 am to 12.00 midnight seven nights a week (amended from 24 hours a day seven days a week). A 3.9m acoustic wall is proposed along the western boundary.

The application, as amended, is generally consistent to that approved by the Land and Environment Court in 2013 which upheld the appeal against the refusal of DA130/2012 by the Manly Independent Planning Panel for 24 hour trading of the former service station. The Court approved trading between 6.00am to 12.00 midnight for a 12 month trial period subject to acoustic measures, testing and reporting, compliance with a Plan of Management and other conditions to reduce acoustic impacts.

The subject application differs from the Court consent in that it includes the construction of a 3.9m high acoustic wall along the western boundary and the application relates to a new service station with an alternative layout.

Principle assessment issues with the subject modification include acoustic and light spill impacts on neighbouring residents, operational and management issues and issues with respect of the design of the 3.9m high acoustic wall on the heritage significance of the conservation area.

Thirty-five (35) submissions have been received following notification of the original modification for 24/7 trading. In addition to the issues listed above, the following issues were raised: safety and security concerns, management issues, contrary to B1 (Neighbourhood Centre) zone objectives, no demand for 24/7 trading, increased litter and graffiti in the area and insufficient consultation / notification on the application. The amended proposal has not been re-notified as there will be no new environmental issues.

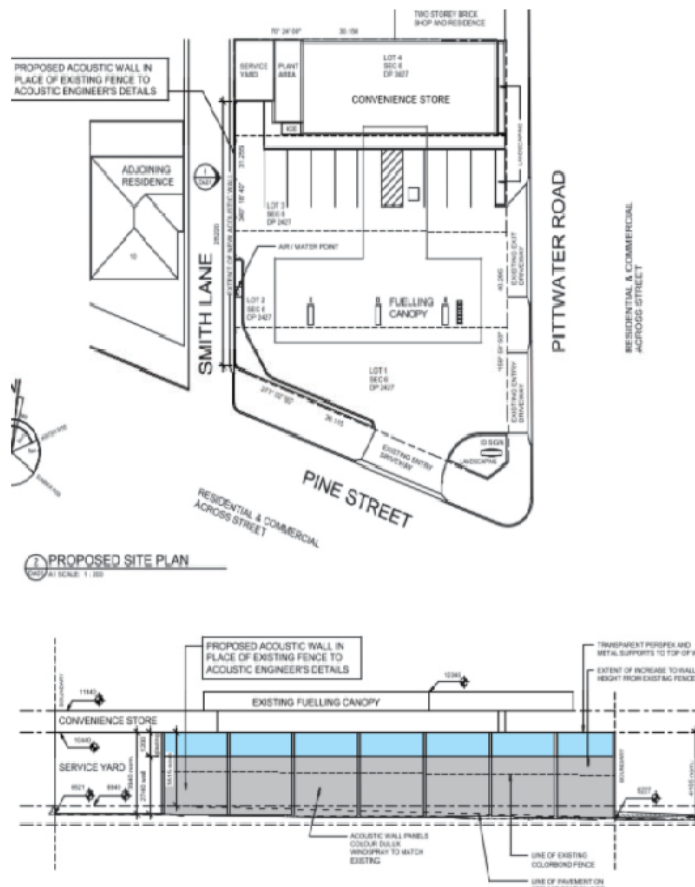
The proposal, as amended, complies with the objectives of the B1 zone and the impacts on residential amenity will be considerably less than 24 hour trading (it is noted that the service station currently trades until midnight Thursdays, Fridays and Saturdays). Conditions are recommended to appropriately address those concerns raised in the public submission including relevant conditions imposed by the Land and Environment Court relating to acoustic testing (including testing at 141 Pittwater Road and six other locations) and reporting during the 12 month probationary period and compliance with an approved Plan of Management. In addition, amenity concerns relating to lighting will be addressed with a light impact assessment and a subsequent management plan that addresses these issues.

Conditions requires the design of the acoustic wall to be amended to address concerns from Council's Heritage Advisor in respect of the visual impact on the Pittwater Road Conservation Area and Council's Engineer in respect of public safety.

On balance, the proposal, as amended, is recommended for conditional approval having considered relevant issues.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent to extend trading hours from 7.00am - 10.00pm Sunday to Wednesday and 7.00am - 12.00am (midnight) Thursday to Saturday to 6.00am to 12 midnight (as amended from 24 hour trading) 7 days a week. In addition, the proposal seeks consent to remove the existing Colorbond fence to Smith Lane and construction of an acoustic wall 2.74m in height with a transparent 1.2m screen for a length of 25.22m along the western boundary to Smith Lane.



Proposed plan and elevation.

The application is supported with an acoustic report prepared by Atkins Acoustic dated February 2020.

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 - Zone B1 Neighbourhood Centre
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Development Control Plan - 3.1.3 Townscape (Local and Neighbourhood Centres)
 Manly Development Control Plan - 3.2 Heritage Considerations
 Manly Development Control Plan - 3.3 Landscaping
 Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)
 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 - 3.8 Waste Management
 Manly Development Control Plan - 3.9 Mechanical Plant Equipment
 Manly Development Control Plan - 3.10 Safety and Security
 Manly Development Control Plan - 4.2.8.6 Hours of Operation
 Manly Development Control Plan - 4.2.8.9 Signage

SITE DESCRIPTION

Property Description:	Lot 133 DP 1264470 , 133 - 139 Pittwater Road MANLY NSW 2095
Detailed Site Description:	<p>The subject property is commonly known as 133-139 Pittwater Road, Manly and legally known as Lots 1-4 Section 6 DP 2427. The site is located on the western side of Pittwater Road. The property is irregular in shape, has a frontage of 40.25m to Pittwater Road, 30.115m to Pine Street and 31.225m to Smith Lane, and an overall site area of 1,117.2sqm. A BP service station with underground fuel tanks, motor fuel dispensing facilities, tyre pump station and a convenience store is located on the site which was constructed under DA213/2017 and MOD2018/0324. Various illuminated and non illuminated signs are located around the site. Access to the site is via Pine Street and exit via Pittwater Road. The service station operates between 7.00am and 10.00pm Sunday to Wednesday and 7.00am to 12.00 midnight Thursday to Saturday. The property is level.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>The adjacent property to the north, at 141 Pittwater Road, is a two-storey terrace dwelling which forms one of a row of eight terrace properties. The other terraces fronting Pittwater Road consists of a mixture of residential and commercial business including a dentist, clothes shop and restaurants. Mixed residential and commercial developments are also located to the east on the opposite side of Pittwater Road. One and two storey dwellings are located to the immediate west on the opposite side of Smith Lane and to the south on the opposite side of Pine Street. A hairdressers and convenience store are located at the intersection of Pine Street and Pittwater Road. The site is</p>

located within the Pittwater Road Conservation Area.



Subject site looking north from the intersection of Pittwater Road and Pine Street (source street view Google maps).



Western boundary to Smith Lane (source street view Google maps)

Map:



SITE HISTORY

The land has been used for commercial purposes, specifically a service station, for an extended period of time. A search of Council's records has revealed the following relevant history:

On 21 February 2013, Application No. DA130/2012, was refused by the Manly Independent Assessment Panel, contrary to the Planners recommendation, for the extension of hours of operation of the existing BP Service Station to 24 hours, 7 days a week. The reasons for refusal are provided below:

(1) Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed works is considered to be inconsistent with the provisions of Part 2 – Development Control Zone 2 – Residential Zone of the Manly Local Environmental Plan 1998 and the Manly Development Control Plan for Residential Zone 2007 – Amendment 2, in that the proposed development is inconsistent with the objectives of the Zone with regards to suitability of the proposed extension of hours in relation to the current activity within the zone.

(2) Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979 the proposed development is likely to have an adverse impact upon the surrounding built environment in that the proposed activities are incompatible with the existing uses in the vicinity.

(3) The proposed development fails to satisfy the objectives as contained within Clause 10 – Residential Zone No 2 – Objectives of zone (d) (f) (h) of the Manly Development Control Plan for the Residential Zone 2007 – Amendment 2.

(4) The proposed development will have a detrimental impact on the surrounding residential dwellings having regard to the relevant matters raised by residential objectors, pursuant to Section 79C(1)(d) of the Environmental Planning and Assessment Act 1979.

(5) The proposal is not in the public interest, having regard to Section 79C(1)(e) Environmental Planning and Assessment Act 1979.

On 20 December 2013, the Land and Environment Court (LEC) upheld an appeal, case number 10615 of 2013, against the refusal of D130/2012 for 24 hour trading. The appeal approved an extension of trading hours between 6am and 12 am (midnight) 7 days a week subject to conditions including:

A 12 month probationary period from the commencement of consent:

During the probationary period the applicant must engage an acoustic consultant to test and report on whether location 4 meets the EPA Intrusive Noise Target of background plus 15 dB(A) when measured as an Leq (15 minutes) outside the rear first floor window at Location 4. The testing to be concluded once each quarter (each 3 months) and the results communicated to Manly Councils within 48 hours after each test. At the conclusion of the probationary period if any two test fail to meet the EPA Intrusive Noise Target the probationary period is extended for a further 6 months. Otherwise the applicant will be deemed to have passed the probationary period and the hours of operation will remain 6am to 12am (midnight) 7 days a week. During the extension of the probationary period if any test fails the applicant shall be deemed to have failed the probation and the hours of operation will be 7am to 10pm Sunday to Wednesday and 7am to 12 am (midnight) Thursday to Saturday. In this event there will be no deliveries outside of the hours 7am and 10pm Monday to Saturday and no deliveries on Sundays or public holidays.

Works to reduce noise impact:

- The tyre pump must not be used from 10pm to 7am;
- The ice machine shall be relocated to the south-east corner or acoustically treated to reduce

noise emission to at least 10db - 44dB;

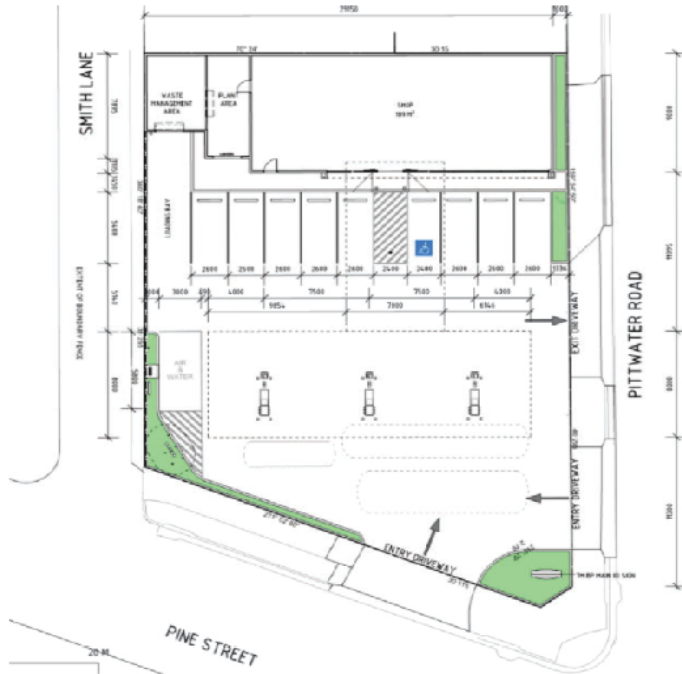
- *The parking spaces at the northern boundary to be signed "no parking" from 10pm each day to 7am. Parking is to be restricted with lockable bollards;*
- *The metal grates in the driveway and the petrol tank caps are to be treated so that impact noise is not generated when cars pass over them;*
- *Collection of waste is restricted to 7am and 8pm weekdays and 8am to 8pm Saturdays;*
- *The ongoing use is to be carried out in accordance with the Plan of Management;*
- *Deliveries - gas bottles are not permitted outside the hours 7.30am to 9pm, all other deliveries between 6am and 10pm;*
- *The use must not give rise to "offensive noise" as defined under the Protection of the Environment Operations Act 1997, and*
- *Activities must not detrimentally affect existing and future amenity of adjoining occupants and neighbours by the emission of noise, smoke, dust, fumes, grit, vibration, smell, vapour, steam, soot waste water, waste products, oil, electrical interference or otherwise.*

The applicant did not taken up the court approval. The former service station to which the court approval relates has since been demolished and a new service station constructed pursuant to DA213/2017. Condition 27 (trading hours) of DA213/2017 is now the relevant condition relating to trading hours (see below).

On 7 March 2018, Application DA213/2017 was approved by the Northern Beaches Local Planning Panel (NBLPP) for the demolition and construction of a new service station. Condition 27 (6BS01) restricted trading to between 7am to 10pm Sunday to Wednesday and 7am to 12am (midnight) Thursday to Saturday. Condition ANS08 restricted the illumination of signage to the approved hours of operation only. It is noted that the original consent included screen planting along the western boundary to Smith Lane.

On 25 October 2018, Modification MOD2018/0324 was approved by the Northern Beaches Local Planning Panel (NBLPP) for the the following changes to development consent 213/2017:

- Removal of outdoor seating;
- Reduction in the number of fuel dispensers;
- Construction of an air and water bay;
- Modification of waste management area to include a plant area;
- Reconfiguration of car parking and
- Changes to signage and branding.



Approved site layout pursuant to MOD2018/0324

The approval including the addition of the following condition:

Condition ANS14 Tyre Air Supply Noise

Use of the tyre air pressure station is to cease from 7pm nightly and may recommence the following morning at open of business.

Reason: To ensure the process of supplying compressed air to tyres does not create a nuisance to any neighbouring premises at night and to maintain residential amenity.

Condition ANS16 Acoustic Wall

A rendered masonry wall is to be constructed around part of the air and water unit as indicated on Swanbury Penglase Architects sketch drawing SK01 dated 8 October 2018. (It is noted that the acoustic wall was not constructed).

Reason: Improvement of acoustic amenity.

History of subject application

On 28 May 2020, the Applicant amended the application to seek approval for an extension of trading between 6.00am and 12 midnight 7 days a week for a trial period. The Applicant has confirmed that they are willing to include the acoustic measurements, testing and reporting in line with the 2013 Land and Environment Court approval.

On 15 June 2020, the Applicant submitted a Plan of Management and a Light Spill Diagram.

On 16 June 2020, the Applicant submitted additional acoustic modelling.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA213/2017, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification for trading between 6.00am to 12 midnight 7 days week for a twelve (12) month trial period is considered to be of minimal environmental impact subject to the imposition of additional conditions, including:</p> <ul style="list-style-type: none"> • Acoustic measures, testing and reporting similar to the 2013 Land and Environment Court approval for trading between 6am and 12 midnight 7 days a week. • The submission to Council and approval of an appropriate Plan of Management which will provided a mechanisms to manage potential impacts to nearby residents. • The submission to Council and approval of an assessment of light spill. • Restricting after hours parking. • Existing conditions restricting the use of the air pump between the hours 10.00 pm and 7.00 am and deliveries after 8.00 pm remain valid.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA213/2017 for the following reasons: The proposal seeks consent for the modification of condition 27 relating to

Section 4.55(1A) - Other Modifications	Comments
consent as originally granted was modified (if at all), and	trading hours. Condition 27 requires: <i>Trading to be restricted to between 7am to 10pm Sunday to Wednesday and 7am to 12am (midnight) Thursday to Saturday.</i> The proposal seeks to modify condition 27 to allow trading between 6.00 am and 12 midnight 7 days a week for a 12 month trial period.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2013 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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 is a service station. The proposal relates to the trading hours of the existing service station, as such, the proposal is not considered to result in any increased contamination

Section 4.15 'Matters for Consideration'	Comments
	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)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original 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. The Applicant was invited to lodge a Plan of Management and a Light Assessment Report.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original 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</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>The proposal has been amended from 24 hour trading 7 days a week to trading between 6.00 am and 12.00 midnight 7 days a week for a 12 month trial period. Subject to conditions, the amended development, can be managed to ensure that the extended use will not result in unacceptable impacts to neighbouring residents.</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 trial extended trading will be subject to conditions relating to acoustic measures, testing and reporting and operational and management measures including compliance with a Plan of Management and Light Assessment Report. Subject to these conditions, the site is considered suitable for the proposed development and can be managed without causing unacceptable impacts on neighbouring residential amenity.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal, subject to conditions, extended trading to between 6.00 and 12.00 midnight can be managed without resulting in unacceptable amenity impacts on neighbouring residential properties.

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 35 submission/s from:

Name:	Address:
Mrs Tracy Lea Woodbury	44 Smith Street MANLY NSW 2095
Mrs Jodie Ellen Obst	15 Pine Street MANLY NSW 2095
Mrs Jeanette Margaret Ferguson Mr Brian William Ferguson	156 A Pittwater Road MANLY NSW 2095
Mr James Patrick Williscroft	21 Pine Street MANLY NSW 2095

Name:	Address:
Mrs Paula Narissa Williscroft	
Mr Timothy Angus Hussey	17 Pine Street MANLY NSW 2095
Ms Giulia Carbone	129 Pittwater Road MANLY NSW 2095
Mr Michael Benito Scali	1D Malvern Avenue MANLY NSW 2095
Ms Beverley Ann Hadgraft	3 Lakeside Crescent NORTH MANLY NSW 2100
Mr Alan James Chenery	40 Smith Street MANLY NSW 2095
Mr John William Groves Mrs Joanne Groves	42 Smith Street MANLY NSW 2095
Mr Harry Norman Rollo Nicholson	12 Pine Street MANLY NSW 2095
Elena Perez Ivan Perez	129 Pittwater Road MANLY NSW 2095
Ms Ursula Brennan	12 Pine Street MANLY NSW 2095
Mr Graham Mawer Ms Nadine Kayron Cattell	23 Pine Street MANLY NSW 2095
Mr John William Hunt	143 Pittwater Road MANLY NSW 2095
Mr Andrew Neil Povah	46 Smith Street MANLY NSW 2095
Mr Ray Fowler	10 Pine Street MANLY NSW 2095
Angela Burke	Address Unknown
Mrs Gail Leslie Fowler	10 Pine Street MANLY NSW 2095
Mrs Catherine Price	18 William Street BELLINGEN NSW 2454
Mr Mark Andrew Williams	37 Collingwood Street MANLY NSW 2095
Mr Peter Clive Barr	41 Alexander Street MANLY NSW 2095
Mr Martin Peter Burton	29 Alexander Street MANLY NSW 2095
Ms Priscilla Anne Longley	20 Golf Parade MANLY NSW 2095
Ms Catherine Joy Hughes	6 / 10 Golf Parade MANLY NSW 2095
Mr Geoffrey Charles Hughes	6 / 10 Golf Parade MANLY NSW 2095
Mr Richard Aikin Van Der Velde	34 Golf Parade MANLY NSW 2095
Ms Nicolle Elizabeth Tessier	24 Golf Parade MANLY NSW 2095
Ms Erica Dale	25 Pine Street MANLY NSW 2095
Mrs Anna Marie Chrysiliou	31 Hunter Street NORTH BALGOWLAH NSW 2093
Mr Jeffrey Ronald Marshall	33 Smith Street MANLY NSW 2095
Ms Michelle Ann Egan	8 Golf Parade MANLY NSW 2095
Mr Mark Toni Leabeater	3 / 71 Golf Parade MANLY NSW 2095
Peter Barr	Address Unknown
Mrs Barr Jeanne	41 Alexander Street MANLY NSW 2095

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

- Acoustic impacts;

- Impacts from light spill;
- Contrary to B1 (Neighbourhood Centre) zone objectives;
- Neighbouring commercial uses serve the local community and do not operate 24/7;
- Poor management;
- History of refusal of 24/7 operation;
- No demand for 24/7 trading and potential for precedent;
- Security, safety, vandalism, graffiti and increased rubbish / litter in the neighbourhood;
- Condition required if approval is granted to address acoustic and management issues;
- The acoustic wall is unsightly and would attract graffiti;
- Insufficient public consultation, and
- The owners are attempting to make the sale of the site more attractive.

It is noted that multiple submissions have been received from a number of properties. The Community Participation Plan (CCP) states that

"all submissions received from the same person will be considered as a single submission. All submissions received by or on behalf of the same dwelling will be considered as a single submission"

Taking this into account while 35 separate submission have been registered a total of 31 submissions have been counted as defined in the CCP.

The proposal has been amended to reduce the proposed trading hours for a 12 month trial period to between 6.00 am and 12 midnight 7 days a week in accordance with the 2013 Land and Environment Court Consent. In line with the amended CCP, the amendment to the application has not been re-notified as the changes would result in a lesser or reduced environmental impact than the original proposal.

The matters raised within the submissions are addressed as follows:

- **Twenty-four hours trading seven days a week would result in unacceptable adverse impact on neighbouring amenity in terms of noise pollution from cars stopping and starting, car doors opening and closing, people talking / gathering to purchase fast food (especially drunk customers), music from cars, the loud speaker, the use of petrol pumps and air pumps, noise from plant and deliveries (including fuel tankers and delivery of gas bottles), emptying rubbish and waste collection.**

The proposal is contrary to Clause 3.4 of the Manly DCP. The soundproof wall is only proposed to one boundary and sound may bounce off the wall and impact on residents located along the other site boundaries.

Insufficient acoustic testing which did not include testing at 141 Pittwater Road which is a residential property that directly adjoins the site and there is no acoustic treatment to protect the amenity of 141 Pittwater Road. The area is already affected by excessive noise.

Comment

It is agreed that 24 hours trading seven days a week has the potential to result in an unacceptable acoustic impact on the amenity of neighbouring residents. The proposal has been amended to reduce the extended trading to between 6.00am and 12.00 midnight seven days a week for a trial 12 month period in line with the Land and Environment Court 2013 consent for extended trading. The Court consent was subject to conditions relating to acoustic management, testing and reporting and compliance with a Plan of Management.

In order to address the concerns raised in the submissions in relation to insufficient acoustic testing the Applicant agreed to conduct further acoustic testing at No. 141 Pittwater Road. The owner of No.141 Pittwater Road however did not agree to this testing due to concerns about impacts to tenants and the accuracy of the reading during Covid restrictions. As an alternative additional acoustic modelling was carried out by the Applicants acoustic consultant which confirmed that the noise levels from the BP site will not adversely impact sleep disturbance, refer to Health comments.

Council's Health Department have confirmed that subject to the additional conditions that acoustic issues can be managed to safeguard and protect existing residential amenity. It is also noted that the current hours of operation allow midnight trading on Thursdays to Saturday. Conditions are recommended in accordance with the 2013 Land and Environment Court consent to address concerns from the public namely, a 12 month trial consent requiring periodic acoustic testing to seven neighbouring properties to ensure compliance with noise standards.

In response to concerns about noise bouncing off the acoustic wall a conditions requires certification from an acoustic engineer that the design and installation of the wall is effective in mitigating noise levels to adjacent residents.

- **Light spill from car lights, the shop, signs and video screens impacts on residential amenity. This light pollution has been made worse with the refurbishment of the service station with the shop orientated to the south. 24/7 trading will intensify the light spill problem.**

Comment

The proposal has been amended to reduce extended trading to between 6.00 am and 12 midnight seven days a week. The service station currently trades until 12 midnight Thursday, Friday and Saturday night which are nights when there is anticipated to be more demand for the service. It is not expected that the demand for the additional two hours trading between 10.00 pm and 12.00 midnight will be as intense on Sunday - Wednesday nights. As such, it is likely that there will be less light spill from cars accessing the site mid-week.

The 3.9m high acoustic wall will provide a shield to some of the light pollution to the residential properties to the west. The applicant has submitted a light spill diagram. In order to address concerns about light spill, it is recommended that a light assessment report be submitted and approved by Council which will make recommendation to minimise the intensity of illumination between the extended trading hours.

- **The subject site is zoned B1 Neighbourhood Centre and the adjoining area is zoned R1 General Residential with many families and elderly residing in the area. The 24 hour trading does not provide small scale retail that serve the needs of people who live or work in the surrounding neighbourhood and is therefore contrary to the objectives of the zone. The 24 hour use will cater for the needs of non-residents travelling through the neighbourhood between 12 midnight and 7.00 am. There is no late night demand from surrounding communities.**

Comment:

It is likely that customers using the service station between 12.00 midnight and 7.00 am may live and work outside the neighbouring residential area and the community response to the subject

application and past applications for 24 hour trading imply that there is no demand for 24/ 4 trading in the immediate area.

As discussed above, the intensification of the use of the existing service station has been reduced as a result of the trading hours being amended to between 6.00 am and 12.00 midnight 7 days a week. Subject to acoustic, lighting and operational conditions the proposal can be managed to reduce impacts to neighbouring residents. As such, it can be argued that the proposal is consistent with the objectives of the B1 zone. Refer to discussion under Section Zone B1 of this report.

- **The DA documentation is inaccurate including reference to the proposal being consistent with other commercial properties on Pittwater Road. The existing surrounding commercial properties on Pittwater Road serve the local community and include hairdressers, restaurants and corner shop. The Unite Petroleum Service Station closes at 11pm every night, the Caltex Service Station is in a different zone and forms part of Manly Urban Town Centre zone.**

Comment

It is agreed that the commercial uses that adjoin the site along Pittwater Road comprises small scale businesses that serve the local community.

A search of Council records confirm that the service station, located at 207-217 Pittwater Road know as Ultra trades until 11.00 pm 7 days a week and is located within a B1 zone.

The Caltex Service station, located at 86 Pittwater Road, trades 24/7 and is located within a R3 zone within the currently Manly DCP 2013.

- **The BP station currently has a poor relationship with neighbouring residents with concerns relating to repeated late night noise complaints, rubbish, unkempt surroundings, high obtrusive light levels and non-compliance with conditions relating to deliveries.**

Comment

A search of Council records confirm that there have been two complaints received relating to the new service station operating before 7.00 am on two occasions. The complaints were dated 20 April 2020 and 14 August 2019. In addition, complaints relating to trading out of hours and early deliveries were recorded during October and November 2013 and January 2014, these complaints related to the former service station.

- **Council has refused 24/7 trading in the past under D130/2012. Mod 2018/0324 (DA213/2017) conditions highlighted that there is noise pollution from the operational areas. The Health issues considered under the assessment of these applications has not changed.**

Comment

On 21 February 2013, Manly Independent Assessment Panel (MIAP) refused DA13/2012 for 24 hour trading 7 days a week. (It is noted that the site was zoned as Residential under the 1998 Manly LEP). The Applicant lodged an appeal against this refusal to the Land and Environment Court (LEC). The LEC upheld the appeal to allow a 12 month trial of trading between 6.00 am and 12.00 midnight 7 days a week subject to conditions including acoustic testing and reporting

and compliance with a Plan of Management. The applicant have not activated the court consent and a new service station has since been constructed under development consent DA213/2017 with a new condition relating to trading hours. As discussed above, the subject application has been amended to seek consent for the same hours and conditions of the 2013 LEC approval.

The conditions attached to DA213/2017 and the later modification reference MOD2018/0324 include condition (15) requiring the use of the tyre air pressure station to cease at 7.00 pm and (16) the construction of a masonry wall to protect residential amenity. It is agreed that the Health issues associated the previous approvals for the new service station remain valid. As discussed elsewhere in this report Council's Health Unit do not object to the amended application to reduce the trading hours in line with the 2013 Land and Environment Court approval, namely 6.00 am to 12 midnight 7 days a week for a 12 month trial. Approval will be subject to conditions relating to acoustic testing and reporting, lighting and compliance with an approved Plan of Management which would be designed to manage impacts on neighbouring resident, refer to Council's Health referral above.

- **No demand - There are 3 service stations 500m apart on Pittwater Road including one trading 24/7 there is no need for a further intensification of the service station use. The subject service station has approval for trading until 12 midnight Thursdays, Fridays, and Saturdays which is not well used. Approval will result in a precedent for other 24 hours trading establishments.**

Comment

It is noted that there are three service stations in close proximity to each other along Pittwater Road, with Caltex trading 24/7. While the "demand" for the service is not strictly a material planning consideration which is a relevant consideration under the Environmental Planning and Assessment Act, 1979 the reduction of trading to between 6.00 am and 12.00 midnight it not anticipated to result in a an undesirable precedent for other uses in the B1 zone.

- **Safety and security issues with the 24/7 operation as evident from the numerous complaints associated with the 24/7 operation of the service station at 86 Pittwater Road. There is also evidence showing that the incidence of service station armed robbery has increased in the past decade, particularly for service stations that operate 24/7.**

Concerns about inappropriate behaviour associated noise, drunken and aggressive customers, increased rubbish, litter and graffiti in the neighbourhood, property damage and vandalism of cars.

Comment

A search of Council records confirm that the 24/ hour use of the Caltex service station at 86 Pittwater Road was approved twenty-three years ago under DA 150/97, there are a limited number of recent complaints registered in relation to the 24 hour use of the Caltex Service Station. While it is acknowledged that there is evidence to correlate crime with the 24 hour operation of service stations the Crime Prevention Officer at Northern Beaches Police have confirmed that there is very little crime in the vicinity of the Caltex Station and there is no evidence that the proposed 24 hour trading of the subject site will generate additional violence / serious crime.

The subject application for a 12 month trial of extended trading to between 6.00 am and 12.00 midnight 7 days a week will be subject to approval and compliance with a Plan of Management approved by Council which will make provisions for the safety and security of staff and

customers. It is noted that the Applicant submitted a Plan of Management on 15 June 2020. The Plan of Management has not included details of the mechanism to address acoustic issues and light spill. As such, a condition requires the submission of an amended Plan of Management that fully addresses all management and operational issues.

- **Should approval be granted conditions are required relating to deliveries, lighting and noise.**

Comment

Conditions have been included in the recommendation in relating to acoustic measures, testing and reporting, lighting and deliveries.

- **The 4m soundproof wall is unsightly which will result in issues with solar access and provide an opportunity to be used to target graffiti.**

Comment

Council's Heritage Advisor has suggested that the masonry wall need to be reduced in height to 2.4m in order to minimise its visual impact on the heritage significance of the conservation area. It is agreed that the wall has the potential to be used as a canvas for graffiti, however, the Plan of Management shall include a requirement for the owner to remove graffiti within 48 hours of its application.

- **Insufficient notification period due to Covid-19 isolation excluding effective communication. No advertisement of the modification and insufficient description of the proposal in the notification letter.**

Comment

The modification was notified in accordance with the Community Participation Plan which requires 14 day notification for applications seeking to modify a development consent including notification letters to be sent to those that made a submission on the original DA. Council has not extended the notification period due to Covid-19, however, all submissions are accepted by Council after the end of the notification period prior to the determination of the application.

- **The current owners are selling and making the sale more attractive for potential buyers.**

Comment:

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>General Comments</p> <p>The proposal is for an extension of existing trading hours (currently 7am-10pm Sunday to Wednesday and 7am-12am (midnight))</p>

Internal Referral Body	Comments
	<p>Thursday to Saturday) to 24 hours 7 days a week.</p> <p>The site has previously unsuccessfully tried to increase to 24 hour trading with DA 130/2012.</p> <ul style="list-style-type: none"> DA 130/2012 Alterations and Additions - Extension of hours of operation of the existing BP Service Station to 24 hours, 7 days a week (operating from 6am to 10pm seven days a week) - Refused MIAP however Approved by the Court on Appeal on condition can operate between the hours of 6am and 12 am (midnight) seven days per week. <p>A new development application DA 213/2017 was lodged and approved for the demolition and construction of a new service station. New service station was built with the following relevant conditions imposed:</p> <ul style="list-style-type: none"> ANS08 Signage is to be illuminated during approved hours of operation only. Reason: To ensure adequate amenity to nearby residential properties. 27 (6BS01) The hours of operation of the premises (i.e. hours open for business) must not exceed 7am-10pm Sunday to Wednesday and 7am-12am (midnight) Thursday to Saturday without the prior approval of Council. Reason: To ensure amenity of the surrounding locality is maintained and hours of operation are consistent with those in surrounding locality. <p>The applicant has provided a Noise Assessment Report by Atkins Acoustics (Ref: 50.7183.R1:GA/DT/2020 Rev 01) with a proposed acoustic wall adjacent to Smith Lane in order to mitigate the noise effects due to changed trading hours. Despite the proposed engineering controls, the majority of noise generated at night time will be as a result of human behaviour when using the service station (i.e. slamming car doors, social noise from groups of people and driver behaviour). Regulating/controlling noise impacts/levels from human behaviour is difficult particularly in an outdoor setting and in the middle of the night.</p> <p>The land is also currently Zoned B1 Neighbourhood Centre with adjacent mixed use including residential premises and is surrounded by residential premises zoned R1 General Residential to the west and R3 Medium Density Residential to the east.</p> <p>The objective of Zone B1 Neighbourhood Centre under the Manly Local Environmental Plan 2013 is the following:</p> <p><i>To provide a range of small-scale retail, business and community</i></p>

Internal Referral Body	Comments
	<p><i>uses that serve the needs of people who live or work in the surrounding neighbourhood.</i></p> <p>It is the opinion of Environmental Health that the proposed change in hours would be against the objectives of Zone B1 Neighbourhood Centre and would have an unacceptable impact on the amenity of the surrounding residences with regards to the illumination of lighting 24/7 and noise impacts of operating 24/7.</p> <p>Additionally, Council has received a number of submissions concerning the potential noise and lighting impacts if the service station was to operate 24/7.</p> <p>The existing hours of operation (Condition 27 (6BS01)) and restriction on illumination of lighting to operating hours (Condition ANS08) within DA 213/2017 were implemented to ensure adequate amenity to nearby residential properties, that the hours of operation were consistent with those in the surrounding area and to maintain consistency with the objective of Zone B1 Neighbourhood Centre.</p> <p>New Information – Additional Review 15/06/2020</p> <p>The applicant had initially sought an extension of existing trading hours to 24 hours 7 days a week.</p> <p>The applicant has now changed their notification for an extension of trading hours to the following:</p> <ul style="list-style-type: none"> · 6am to 12 am (midnight) seven days per week. <p>A new development application DA 213/2017 was lodged and approved for the demolition and construction of a new service station with the current approved hours of 7am-10pm Sunday to Wednesday and 7am-12am (midnight) Thursday to Saturday.</p> <p>The site has previously unsuccessfully tried to increase to 24 hours a week with DA 130/2012.</p> <ul style="list-style-type: none"> • DA 130/2012 Alterations and Additions - Extension of hours of operation of the existing BP Service Station to 24 hours, 7 days a week (operating from 6am to 10pm seven days a week) - Refused MIAP however Approved by the Court on Appeal on condition can operate between the hours of 6am and 12 am (midnight) seven days per week. <p>Environmental Health had previously recommended refusal for 24 hours 7 days a week due amenity impacts on the surrounding residents with regards to the illumination of lighting 24/7 and noise impacts of operating 24/7.</p> <p>The new hours still present with some amenity concerns however, the</p>

Internal Referral Body	Comments
	<p>impact will be considerably less when compared to 24 hour trading. It is also noted that the current hours of operation allow to midnight trading on Thursday to Saturday.</p> <p>Given that, the Land and Environment Court had previously approved 6am to 12 am seven days a week with conditions, any relevant conditions of the Land Environment Court Consent should be considered and incorporated into the modification. This could also include consideration for a trial consent for the trading hours as recommended in the Land Environment Court Consent.</p> <p>Notwithstanding the above, the new hours still present with some amenity concerns with illumination of lighting and noise impacts from the extended hours. These concerns could be addressed through a light impact assessment and a subsequent management plan that addresses noise and light issues.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
NECC (Development Engineering)	<p>The applicant proposed to increase the height of the acoustic wall on the western side of the property.</p> <p>In accordance with Australian Standard, the sufficient visibility must be not blocked on Smith Lane.</p> <p>As such, Development Engineering suggests the last section of the wall shall not exceed 1.0 m in height to increase the visibility of road users on Smith Lane.</p> <p>Please also refer the application to our Traffic section for assessment and condition.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the subject site is located in Pittwater Road Conservation Area and within proximity of a heritage item, being Item I195 - Group of 5 houses - 15–23 Pine Street, Manly.</p>
	Details of heritage items affected
	<p>Details of the conservation area and the heritage item as contained within the Manly Heritage Inventory are:</p> <p>Pittwater Road Conservation Area</p> <p><u>Statement of significance:</u></p> <p>This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now</p>

Internal Referral Body	Comments																					
	<p>names for what were Whistler, Middle Harbour and East Steyne respectively.</p> <p><u>Physical description:</u> The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually signifigant buildings which are listed seperately. Adjacent streets generally comprise a consistant pattern of one and two story residential cottages, with the occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs.</p> <p><i>Item I195 - Group of 5 houses</i></p> <p><u>Statement of significance:</u> Listed as fine examples of five late Victorian cottages. Two groups of two terraced. One free standing.</p> <p><u>Physical description:</u> Four late Victorian cottages terraced in two groups of two. Originally rendered brick (now partly stripped)with late Victorian ornament and architectural device. Also one free standing cottage (no.23). The four terraces have elaborate party wall ornament in render with timber brackets and verandah posts; cottage has mixture of cast iron and timber decoration. All have iron roofs (some re-roofed), rendered chimneys with original pots and new fences.</p> <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table> <p>Consideration of Application</p> <p>This application seeks consent for proposed 7 days 24-hour trading and construction of an acoustic wall to the western boundary adjacent to Smith Lane.</p>	Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	No	
Other relevant heritage listings																						
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No																					
Australian Heritage Register	No																					
NSW State Heritage Register	No																					
National Trust of Aust (NSW) Register	No																					
RAIA Register of 20th Century Buildings of Significance	No																					
Other	No																					

Internal Referral Body	Comments
	<p>A 4.0m high acoustic rated wall on the western boundary is recommended in the Noise Assessment report (submitted with this application) by Atkins Acoustic. The architectural drawing 19-083 DA01 shows this wall being solid up to 2740mm and 1200mm glazing on top. Heritage recommends to reduce the solid wall to 2440mm and increase the glazed upper section by 300mm with an overall height of 4.0m in order to minimise the impact on the historic dwelling across Smith Lane at 10 Pine Street and the conservation area.</p> <p>Therefore, no objections are raised in heritage grounds, subject to a condition.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p> <p>Further Comments</p> <p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 14 May 2020</p>
Traffic Engineer	The proposal is not opposed on traffic grounds.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. A response has been received from Ausgrid offering no objections to the proposal subject to conditions.
NSW Police – Crime Prevention Office (Local Command matters)	<p>There is no evidence that the BP service will generate additional violent/serious crime.</p> <p>In response to issues relating to the 24 hour trading of the Caltex Service Station in Manly the Police note that there is very little crime in the vicinity of the 24 hour service station down the road. Much of the crime in the Manly area is alcohol related, linked to licensed premises</p>
Concurrence – NSW Roads and Maritime Services (s100 – Dev. on proposed classified road)	Roads and Maritime Service have confirmed that the proposal is not integrated development. No objections have been raised.

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 (Exempt and Complying Development) 2008

Clause 2.54A Sub-clause 27A of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 allows:

The carrying out of the retail sale of food, drinks and related products on land from a mobile outlet such as a food truck, van, cart or other similar vehicle is development specified for this code.

The exemption is subject to a number of provisions but essentially allows for food trucks to be located within the ground of the service station. In order to ensure that there is no adverse impact of such food trucks on neighbouring residential amenity a condition is included in the recommendation requiring that no food trucks be permitted on the subject site.

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. A response has been received from Ausgrid offering no objections to the proposal subject to conditions. The Ausgrid conditions will be included in the recommendation.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Shop: 4.5m Canopy: 6m Sign: 6.85m	Acoustic Wall: 3.9m	N/A	Yes
Floor Space Ratio	FSR: 1:1	FSR: 0.169:1	FSR: No change 0.169:1	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.10 Heritage conservation	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone B1 Neighbourhood Centre

The site is zoned B1 (Neighbourhood Centre).

The Objectives of the B1 (Neighbourhood Centre) zone are:

To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

The surrounding neighbourhood comprises residential areas, zone R1 (General Residential) to the west and R3 (Medium Density Residential) to the east.

Comment

The original proposal sought consent to allow 24 hour trading of the existing service station 7 days a week. A number of submissions raised issues with the use of the service station serving the needs of people passing through the area, rather than neighbouring residents, between 12 midnight to 7.00am. The submissions argue that the proposal would therefore not meet the objectives of the B1 zone which requires the zone to provide *a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

The application has been modified to reduce the proposed trading hours to between 6.00 am and 12 midnight 7 days a week in line with the LEC 2013 approval and subject to the same conditions relating to acoustic testing and reporting and the requirement to operate the service station in accordance with a Plan of Management that will be approved by Council. In addition, the subject application proposes the construction of an acoustic wall along the western boundary.

It is noted that the service station currently has consent to trade until 12 midnight on Thursday, Friday and Saturdays which are regarded as busy nights of the week with members of the public stopping to use the service station when passing through the area to and from Manly town centre. It is unlikely that the use of the service station trading an extra two hours until 12 midnight Sunday to Wednesday would attract a high intensity of use from customers outside the area. Similarly, it is unlikely that trading commencing at 6.00 am, as opposed to 7.00 am, would generate a demand for customers living outside the neighbourhood.

In summary, the proposal, as amended, is considered to be meet the objectives of the BI zone and conditions are recommended to ensure that neighbouring residential amenity is protected, refer to discussion elsewhere in this report.

5.10 Heritage conservation

The site is located within the Pittwater Road Heritage Conservation Area and in close proximity to a heritage item, being item I195 - Group of houses 15-23 Pine Street Manly. The proposal includes the construction of a 3.9m high acoustic rated wall on the western boundary, solid up to 2740mm and 1200mm glazing on top. Council's Heritage Advisor recommends that the height of the solid wall be reduced to 2440mm and increase the glazed upper section by 300mm in order to minimise the impact on the historic dwelling across Smith Lane at 10 Pine Street and the conservation area. Subject to this design change the proposal will not result in adverse impact on the heritage significance of the conservation area or neighbouring items in accordance with clause 5.10 of the Manly LEP.

Manly Development Control Plan

Built Form Controls

The proposal relates to the trading hours associated with an existing service station and the replacement of a boundary wall along the western boundary. As such the built form controls do not apply.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3 Landscaping	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.8 Neighbourhood Centres (LEP Zone B1)	Yes	Yes
4.2.8.6 Hours of Operation	Yes	Yes
4.2.8.9 Signage	Yes	Yes
4.2.8.10 Local Character provisions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

Detailed Assessment

3.1.3 Townscape (Local and Neighbourhood Centres)

A 4.0m high acoustic rated wall on the western boundary is recommended in the Noise Assessment report (submitted with this application) by Atkins Acoustic. The architectural drawing 19-083 DA01 shows this wall being solid up to 2740mm and 1200mm glazing on top. Heritage recommends to reduce the solid wall to 2440mm and increase the glazed upper section by 300mm with an overall height of 4.0m in order to minimise the impact on the historic dwelling across Smith Lane at 10 Pine Street and the conservation area. Subject to this condition, the scale and height of the wall will not have a detrimental impact on character of the neighbourhood centre in accordance with Clause 3.1.3 of the manly DCP.

3.2 Heritage Considerations

As discussed under Clause 5.10 of the Manly LEP Council Heritage Advisor has recommended that the design of the acoustic wall requires amendment in order to reduce the minimise the impact on the heritage dwellings across Smith Lane at No.10 Pine Street and the conservation area.

3.3 Landscaping

The objectives of clause 3.3 are:

Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.

Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.

Comment

The original consent for the new BP service station required screen planting along the west, east and southern boundaries. No planting has been provided along the western and southern boundary. In order to reduce the visual impact of the proposed acoustic wall the Applicant is required to landscape the site in accordance with the landscape plan approved under 213/2017. Council's Compliance Unit have been requested to investigate this matter.

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Clause 3.4 (Amenity) requires the following :

Designing for Amenity

- a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is especially relevant in higher density areas, development adjacent to smaller developments and development types that may potentially impact on neighbour's amenity such as licensed premises.*
- b) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.*
- c) The use of material and finishes is to protect amenity for neighbours in terms of reflectivity. The reflectivity of roofs and glass used on external walls will be minimal in accordance with industry standards. See also Council's Administrative Guidelines regards DA lodgement requirements for materials and finishes.*

Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.

Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.

Comment

A significant number of submission (35) have been received that raise issues in regards to the adverse impacts on existing residential amenity as a result of 24 hour trading 7 days a week. The main concerns for neighbours relate to acoustic impacts, impact from light spill and issues relating to the security and management after hours. It is noted that the amendment to reduce trading to between 6.00 am and 12.00 midnight has not been re-notified as it will result in no additional environmental impacts.

An acoustic wall will be constructed along the western boundary and conditions are recommended similar to the conditions imposed with by the Land and Environment Court including acoustic testing and reporting. The condition requires periodic acoustic testing at 414 Pittwater Road and five other properties, should acoustic testing fail during the probationary period the service station will be required to revert back to the current trading hours.

The trial extension of trading hours to 6.00 am and 12.00 midnight will also be subject to compliance with a Plan of Management approved by Council which will provide a mechanisms to manage potential impacts to nearby residents and will be require to address issues relating to noise, security and

lighting. In addition, a condition requires the approval of a light impact assessment which will provide recommendations to limit the intensity of illumination to neighbouring properties outside the hours which have currently being approved.

In regards to solar access, the conditions recommended by Council's Heritage Advisor and Engineer to reduce the height of the masonry wall will ensure that there will be limited additional shadow cast on the east facing windows of No 10 Pine Street, refer to discussion under clause 3.4.1 of this report.

In summary, the proposal, as amended, and subject to conditions will not result in unreasonable impacts on neighbouring properties by virtue of noise, light spill and solar access. Refer to discussion elsewhere in this report.

3.4.1 Sunlight Access and Overshadowing

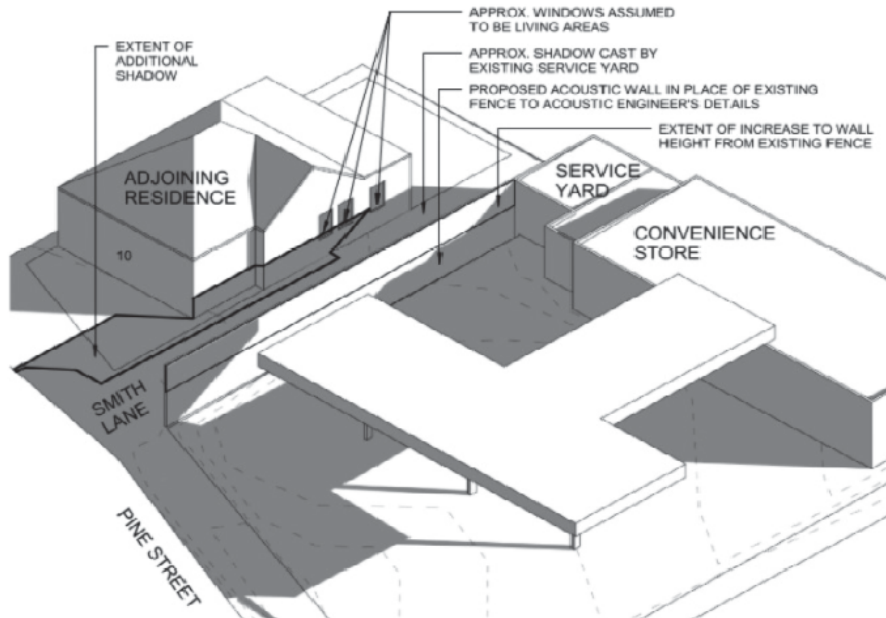
Clause 3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties requires:

In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

- a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);*
- b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);*
- c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.*

Comment

The proposal includes the removal of the existing 2m high colour bond wall on the western boundary and replacement with a 3.94m acoustic wall (2.74m acoustic panels with 1.2m glazing on top). The adjacent dwelling at No 10 Pine Street has a north-south orientation therefore the level of solar access to windows and doors of living rooms must be maintained for a minimum 4 hour period from 9am to 3pm on 21 June. Shadow diagrams have been submitted which show that the windows in the east elevation of No 10 Pine Street enjoy solar access between 9.00am and 12 noon but are cast in shadow at 3pm. The diagrams illustrate that the proposed acoustic wall will cast a small area of additional shadow to the lower portion of two of the east facing windows to No. 10 Pine Street, refer to shadow diagram below. It is noted that both Transport and Heritage require the masonry wall height to be reduce in part. This amendment will reduce the additional shadow cast on the east elevation of No 10 Pine Street to ensure that 4 hours of solar access is retained to these windows in accordance with clause 3.4.1 of the Manly DCP.



Proposed shadows 9am 21 June.

3.4.2 Privacy and Security

3.4.2.3 Acoustical Privacy (Noise Nuisance) requires:

- a) *Consideration must be given to the protection of acoustical privacy in the design and management of development.*
- b) *Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.*
- c) *Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures.*

Comment

The application is supported with a Noise Assessment Report by Atkins Acoustics (Ref: 50.7183.R1:GA/DT/2020 Rev 01) which makes the following recommendations for managing acoustic impacts on neighbouring residential properties.

- Construction of a 3.9m high acoustic rated wall on the western boundary adjacent to Smith Lane, and
- Restricting parking spaces 1 - 3 between 10.00 pm and 7.00 am.

As discussed above, the proposal has been amended from 24/7 trading to a 12 month trial for trading between 6.00 am and 12 midnight 7 days a week. In addition, to the measures recommend in the Atkins Acoustic Report the trial consent is conditional on acoustic testing and reporting from the following residential properties:

- 141 Pittwater Road, Manly
- 148-152 Pittwater Road, Manly and
- 10 and 15 Pine Street, Manly.

Should the acoustic testing fail during the probationary period the operating hours will be require to revert back to the current hours of 7.00 am to 10.00 pm Sunday to Wednesday and 7.00 am to 12 midnight Thursday to Saturday.

In addition, conditions will require the following operational measures to be put in place to reduce noise impacts:

- The type pump is not to be used between 7.00 pm and 7.00 am;
- The three parking spaces located adjacent to the western and eastern boundary are not to be used between 10.00 pm and 7.00 am;
- Certification of the acoustic performance of the wall in mitigating noise to neighbours, and
- Approval and compliance with a Plan of Management.

It is also noted that condition No. ANS11 (6NL03) of the original consent 213/2017 remains valid which requires:

The ongoing use of the premise/ property must not give rise to "offensive noise" as defined under the provisions of the Protection of the Environment Operations Act 1997. Noise exceeding the relevant legislation and guidelines are a matter for Council's Compliance Team for Investigation.

Subject to conditions Council's Health Unit conclude that they have no objections to the amended proposal. In summary, the proposal has been assessed an being compliant to Clause 3.4.2 of the Manly DCP.

3.8 Waste Management

Conditon 33 (6WM02) requires:

Deliveries and waste collection must only occur during the following hours:

Weekdays – 7:00am – 8:00pm

Weekends and Public Holidays – 8:00am – 8:00pm

This condition remains valid to the subject modification.

3.9 Mechanical Plant Equipment

3.9.3 Noise from Mechanical Plant requires:

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

Comment

The Atkins Acoustic report confirm that the main mechanical plant is located in an enclosed ground level plant area between Smith Lane and the convenience store. Site audit measurements have demonstrated that the noise from existing plant at the closest residential receptor range between 40-

45dBA and satisfy the recommended assessment levels for day, evening and night assessment periods.

The Atkins report also recommends the construction of an acoustic wall along the western boundary to protect acoustic privacy of neighbouring residents to the extended operation of the service station.

It is also noted that condition ANS14 of MOD2018/0324 (tyre pump air noise) will remain in place under the subject modification which prohibits the use of the tyre air pressure station from 7pm every evening.

In summary, subject to the recommendations of the Atkins Acoustic report and the existing condition relation to the restricted use of the tyre air pump the plant associated with the service station will not impact on residential amenity in compliance with clause 3.9 of the Manly DCP.

3.10 Safety and Security

The objective of Clause 3.10 require:

Objective 1) To ensure all development are safe and secure for all residents, occupants and visitors of various ages and abilities.

Objective 2) To ensure that the design process for all development integrate principles of 'Safety in Design' to eliminate or minimise risk to safety and security.

Objective 3) To contribute to the safety and security of the public domain.

A condition requires the use of the service station to be operated and managed in accordance with the provisions of an approved Plan of Management. The Plan shall include measures to address safety and security issues associated with the late night use to protect staff and customers. Subject to compliance with the approved Plan of Management the proposal will meet the objectives of clause 3.10 of the Manly DCP.

4.2.8.6 Hours of Operation

Clause 4.2.8.6 Hours of Operation requires:

a) Consideration will be given to the protection of acoustical privacy and the amenity of the residential neighbourhood in the determination and approval of hours of operation including hours for service deliveries and collections.

b) The appropriate hours of operation will be assessed and determined in the DA process stage with particular regard to the proximity to, and the likely impacts on residential accommodation. Also applicants may be required to provide supporting documentation and/or mitigation measures with a DA to justify hours of operation that are considered by the Council to potentially impact on the neighbourhood.

Comment

As discussed elsewhere in this report the application has been amended to seek a 12 month trial consent for trading between 6.00 am and 12.00 midnight 7 days a week consistent with the 2013 Land and Environment Court consent for extended trading. Subject to conditions to address acoustic, lighting and operational issues the proposal can be managed to ensure that the acoustic privacy and amenity of neighbouring residents is protected. The acoustic testing and report required during the probationary period allows Council the opportunity to revoke the extended trading hours should unreasonable acoustic impacts be experienced by neighbouring residents.

In regards to potential impacts from light spill as a result of extended trading a condition require the submission and approval of a light impact assessment which will be required to make recommendations to limit the intensity of illumination to neighbouring properties particularly after 10.00 pm at night and before 7.00 am, in the morning. Any operational requirements to manage light spill are to be included in the Plan of Management. Refer to discussion on these issues elsewhere in this report and the Council Health Referral above.

4.2.8.9 Signage

Sub-clause 4.2.8.9 (h) requires the following;

h) Illumination

i) In considering the illumination of signage care is be given to avoid nuisance from glare and spillage of light which may impact on both residents, particularly in the Residential LEP Zones (including E3 & E4) as well as to passing traffic. Depending on the location, and its relationship to residential premises, Council may require that illumination be controlled by automatic time clocks extinguishing illumination between 10pm and 6am, or as appropriate in the circumstances.

ii) A floodlit sign which projects over a public road must not be illuminated by a lighting medium which is less than 2.6m above the ground. Lighting must not cause distraction or nuisance to neighbouring properties or traffic.

Comment

Condition ANS08 of development consent 213/2017 restricts the illumination of signage to the approved hours of operation. This condition will remain relevant to the subject modification. While the proposal does not include any new signs concerns have been raised about the impact of light spill to residential properties as a result of the extended hours of operation and in turn extended hours of the existing illumination of signs (and other lighting). In order to ensure that illumination from signage (and other lights) as a result the extended hours does not result in any additional impact to adjoining residential properties a condition requires the Applicant to submit a light impact assessment which will provide recommendations to limit the intensity of illumination to neighbouring properties, particularly after 10.00 pm and before 7.00am.

In summary, subject to the approval of the light impact assessment and the implementation of the recommendation of a the assessment illumination from the existing approved sign can be managed to minimise light spill to neighbouring residential properties.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

In summary, the principle issues with the application, including issues raised in the submissions are:

Acoustic Impacts

The application, as amended, is similar to that approved by the Land and Environment Court in 2013 which upheld the appeal against the refusal of DA130/2012 by the Manly Independent Planning Panel for 24 hour trading of the former service station. The Court approved trading between 6.00am to 12.00 midnight for a 12 month trial period subject to acoustic measures, testing and reporting, compliance with a Plan of Management and other conditions to reduce acoustic impacts. The subject application differs from the Court approval in that it includes the provisions of an acoustic wall along the western boundary.

Conditions are recommended to appropriately address acoustic concerns raised in the public submission including relevant conditions imposed by the Land and Environment Court relating to acoustic testing (including testing at 141 Pittwater Road and other locations) and reporting during the 12 month probationary period and compliance with an approved Plan of Management. In addition, conditions restrict the use of the air tyre station to between 7.00 pm and 7.00 am and the three car parking spaces closes to the western boundary of the site between 10.00 pm and 7.00am.

Light Spill Impacts

Concerns relating to lighting will be addressed with a light impact assessment and a subsequent management plan that addresses these issues.

Operational Issues

Concerns relating to security, removal of graffiti and litter, complaint resolution and acoustic and lighting issues will be addressed through the provision of the approved Plan of Management.

Design of the acoustic wall

Conditions requires the design of the acoustic wall to be amended to address concerns from heritage and Council's Engineer in respect of public safety.

In summary, the proposal, as amended, is recommended for approval subject to conditions, provided in accordance with the Environmental Planning and Assessment Act 1979 and Regulations. It is considered that the proposed development satisfies the appropriate controls and that all processes and amendments have been satisfactorily addressed.

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

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2020/0119 for Modification of Development Consent No.213/2017 granted for demolition and construction of a service station. on land at Lot 133 DP 1264470,133 - 139 Pittwater Road, MANLY, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
19-083 DA01 Rev C Existing and Proposed Plans and Elevations	4 December 2019	MCHP Architects

Report No. / Page No. / Section No.	Dated	Prepared By
Noise Assessment Extended Trading Hours BP Service Station 133-139 Pittwater Road, Manly Rev 1	February 2020	Atkins Acoustics
Noise Assessment Extended Trading Hours BP Service Station 133-139 Pittwater Road, Manly Additional Modelling	16 June 2020	Atkins Acoustics

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:

B. Modify Condition 27 (6BS01) to read as follows:

(a) The hours of operation must be restricted to between 7.00 am to 10.00 pm Sunday to Wednesday and 7.00 am to 12 midnight Thursday to Saturday (midnight) seven days per week are subject to a period of probation commencing 12 months from the commencement of this consent ("the probationary period").

(b) Notwithstanding (a) above, the use may operate between 6.00 am to 12.00 am (midnight) seven days per week for a 12 month trial period from the formal notification to Council's Environmental Health Unit of the date of the commencement of the trial hours.

(c) A further application may be lodged to continue the operating hours outlined in (b) above not less than 30 days before the end of the trial period. Council's consideration of the a proposed continuation and / or extension of the trial will be based on, amongst other things, the performance of the operator in

relation to compliance with development conditions, any substantiated complaints received and any views expressed by the Police.

Note: The extended trading hours will be permitted to continue for a further 3 months from the date of registration of the new application. This will allow Council time to assess the new application for the continuation of extended trading.

C. Add Conditions 27 (c) Probationary period to read as follows:

The hours of operation 6am to 12 am (midnight) seven days per week are subject to a period of probation commencing 12 months from the commencement of this consent ("the probationary period").

(1). 24 hours prior to commencement of this development consent, the applicant must notify the Executive Manager Development Assessment of Northern Beaches Council in writing of its intention to commence the modification consent so that the probationary period may be calculated.

(2). During the probationary period the applicant must engage a suitably qualified independent acoustic consultant to test and report on whether the noise at the nearest residential receptors meet the EPA Noise Policy for Industry maximum noise level event assessment noise levels of LAFmax 52 dB(A) or the prevailing RBL plus 15 dB, whichever is the greater.

The testing is to be conducted at the following testing locations:

- Outside of the rear first floor window at 141 Pittwater Road, Manly
- 148 Pittwater Road, Manly;
- 150 Pittwater Road, Manly;
- 152 Pittwater Road, Manly;
- 129 Pittwater Road;
- 10 Pine Street Manly, and
- 15 Pine Street, Manly.

In the event that access for undertaking the acoustic testing is denied by an adjoining owner, the Applicant must demonstrate, in writing to the Executive Manager Development Assessment of Northern Beaches Council that all reasonable steps have been taken to obtain access.

(i) The testing is to be conducted once each quarter (each 3 months) during the probationary period with a final (fourth) test being conducted on the 12 month anniversary of the operation.

(ii) The results of each test are to be submitted to the satisfaction of Northern Beaches Councils Environmental Health Team within 48 hours after each respective test is conducted.

(iii) At the conclusion of the probationary period if any two tests at a testing location fail to meet the EPA Noise Policy for Industry maximum noise level event assessment noise levels of LAFmax 52 dB(A) or the prevailing RBL plus 15 dB, whichever is the greater at the testing location, the applicant shall be deemed to have failed its period of probation and the hours of operation of the service station shall under this consent be as follows: 7 AM to 10 PM Sunday to Wednesday and 7 AM to 12 AM (midnight) Thursday to Saturday.

Reason: to ensure that the hours of operation of the use meet the EPA Intrusive Noise Targets.

C. Add Conditions 27 (c) Plan of Management to read as follows:

(i) Prior to the issue of any Construction Certificate, a Plan of Management is to be prepared and submitted to the Executive Manager Development Assessment for review. The plan shall include details on the management and operation of the service station including hours of trading, delivery and waste collection and measures to maintaining amenity to the surrounding area including measures to address noise, illumination of lighting, fumes, odours and dust, security and safety, litter and graffiti (graffiti to be removed within 48 hours of application) and compliant resolution.

(ii) During the ongoing use of the development the use of the premises must be carried out in accordance with the Plan of Management.

(iii) A copy of the development consent and the approved Plan of Management shall be kept on site and be made available to Council Officers and the Police on request.

(iv) A copy of the approved Plan of Management shall be provided to the following properties:

- 141 Pittwater Road, Manly;
- 148 Pittwater Road, Manly;
- 150 Pittwater Road, Manly;
- 152 Pittwater Road, Manly
- 129 Pittwater Road, Manly
- 10 Pine Street Manly; and
- 15 Pine Street, Manly.

Reason: To maintain a reasonable level of amenity to the area.

D. Add Conditions 27 (d) Light Impact Assessment to read as follows:

Prior to the issue of any Construction Certificate, a light impact assessment prepared by a suitably qualified person is to be prepared for the premises to the satisfaction of Councils Environmental Health Team. The report should include recommendations to limit the intensity of illumination to neighbouring properties particularly after 10pm at night and before 7am in the morning. Any operational recommendations are to be included in the Plan of Management.

Reason: To maintain amenity of the surrounding area.

E. Add Conditions 27 (e) Measures to reduce noise to read as follows:

(i) The three (3) car parking spaces nearest to the eastern boundary and the car parking space for the tyre air supply are to be signed as "no parking" from 10pm each day to 7am the following day. Parking in these spaces is to be restricted by way of lockable bollards which shall be placed in those spaces from 10pm each day to 7am the following day.

(ii) The ice machine shall be relocated to the south-east corner or acoustically treated to reduce noise emission to at least 10db - 44dB;

(iii) The metal grates in the driveway and the petrol tank caps are to be treated so that impact noise is not generated when cars pass over them;

(iv) Activities must not detrimentally affect existing and future amenity of adjoining occupants and neighbours by the emission of noise, smoke, dust, fumes, grit, vibration, smell, vapour, steam, soot waste water, waste products, oil, electrical interference or otherwise.

(v) The use of the tyre air pressure station is to cease from 7pm nightly and may recommence the

following morning from 7am.

(vi) Deliveries including fuel and gas bottle deliveries and waste collection must only occur during the following hours:

- Weekdays – 7:00am – 8:00pm
- Weekends and Public Holidays – 8:00am – 8:00pm

Reason: To minimise noise disruption to neighbouring properties during early or late-night hours of operation.

F. Add Conditions 27 (f) Compliance with Plan of Management and Light impact Assessment to read as follows:

Prior to the issue of any interim / final occupation certificate, documentation is to be submitted to the satisfaction of the Principal Certifying Authority that all recommendations within the Light Impact Assessment and Plan of Management have been implemented.

Reason: To ensure any recommendations and the Plan of Management have been implemented in order to maintain amenity to neighbouring properties.

G. Add Conditions 27 (g) Acoustic Wall to read as follows:

The acoustic wall to be installed along the western boundary shall be amended as follows:

- (i) The last section of the wall (3.2m on the southern edge) shall not exceed 1.0 m in height to increase the visibility of road users on Smith Lane;
- (ii) The solid section of the proposed acoustic rated wall shall be reduced to 2440mm and increase the glazed upper section by 300mm with an overall height of 4.0m;
- (iii) screen planting shall be installed adjacent to the wall as per the the landscape plan approved in the original consent, and
- (iv) Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a suitably qualified professional such as an acoustic engineer that the design and installation of the acoustic wall is effective in mitigating noise levels to the adjacent residences. Certification is to be submitted to the satisfaction of the Principal Certifying Authority and Councils Environmental Health Team.

Reason: In the interest of public amenity and safety and to preserve the overall character of the Pittwater Road Conservation Area and to ensure the impact of the proposal is minimised.

H. Add Conditions 27 (h) neighbourhood amenity to read as follows:

The Management shall ensure that the behaviour of customers entering and leaving the site do not detrimentally impact on the amenity of the neighbourhood.

Reasons: In order to protect residential amenity.

I. Add Conditions 27 (i) food trucks to read as follows:

Food trucks are not permitted to be to be located within the grounds of the service station.

Reasons: In order to protect residential amenity.

