



northern  
beaches  
council

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

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

**WEDNESDAY 22 JULY 2020**

**Ashleigh Sherry**  
**Manager Business Systems and Administration**





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

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Development Determination Panel held 9 July 2020	
<b>3.0</b>	<b>DEVELOPMENT DETERMINATION PANEL REPORTS .....</b>	<b>5</b>
3.1	DA2020/0612 - 19 Sandy Bay Road, Clontarf - Alterations and additions to a dwelling house .....	5
3.2	DA2019/0887 - 2 Macpherson Street, Warriewood - Subdivision of land into 24 community title lots comprising 22 residential lots and 2 residue lots .....	57
3.3	DA2019/1512 - 140 Ocean Street, Narrabeen - Demolition and construction of multi dwelling housing .....	110
3.4	DA2020/0337 - 8 Monash Parade, Dee Why - Demolition works and construction of a dwelling house .....	152
3.5	DA2020/0382 - 11 West Street, Balgowlah - Demolition of existing structures and construction of a multi dwelling development (3 dwellings) .....	187

## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 9 JULY 2020**

---

#### **RECOMMENDATION**

That the Panel note that the Minutes of the Development Determination Panel held 9 July 2020 were approved by all Panel Members and have been posted on Council's website.

---

### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2020/0612 - 19 SANDY BAY ROAD, CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Matthew Edmonds
TRIM FILE REF	2020/410027
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

#### PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the floor space ratio.

---

#### RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2020/0612 for alterations and additions to a dwelling house on land at Lot 173 DP 9999, 19 Sandy Bay Road, Clontarf, subject to the conditions outlined in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0612
<b>Responsible Officer:</b>	Thomas Burns
<b>Land to be developed (Address):</b>	Lot 173 DP 9999, 19 Sandy Bay Road CLONTARF NSW 2093
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Christopher Blair Harmsen Karen Hafey Harmsen
<b>Applicant:</b>	Christopher Blair Harmsen
<b>Application Lodged:</b>	10/06/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	23/06/2020 to 07/07/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 80%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 99,000.00

This report is submitted to the Northern Beaches Development Determination Panel for consideration of Development Application DA2020/0612 for alterations and additions to an existing dwelling.

The proposed development is non-compliant Clause 4.4 Floor space ratio of the Manly Local Environmental Plan 2013 (MLEP 2013). The site is located within 'Area B' on the Floor Space Ratio Map, which is subject to a 0.4:1 Floor Space Ratio (FSR) development standard. The proposed FSR for the site is 0.72:1 (201sqm of gross floor area), which represents an 80% variation from the development standard.

The application has been assessed against the Manly Development Control Plan 2013 (MDCP 2013). In relation to the MDCP 2013, the proposal does not comply with the numerical requirements stipulated within Clause 4.1.3 Floor Space Ratio (FSR), Clause 4.1.4 Setbacks (front, side and rear) and Building

Separation, Clause 4.1.5 Open Space and Landscaping and Clause 4.1.6 Parking, Vehicular Access and Loading (including Bicycle Facilities).

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan and received zero (0) submissions.

It is recommended that the Northern Beaches Development Determination Panel approve the application, subject to the conditions attached to this report.

### **PROPOSED DEVELOPMENT IN DETAIL**

The applicant seeks development consent for alterations and additions to an existing detached dwelling house. Specifically, the proposed works are as follows:

#### Level 1

- Extension of the living area towards the rear of the dwelling; and
- New store room within the subfloor.

#### Level 2

- Removal of the existing split-level bedroom located over the living room. The removed bedroom will provide a void over the level 1 living area.

#### Level 3

- No works

#### Level 4

- A new bathroom within the footprint of the existing dwelling; and
- Rear extension to provide an additional bedroom with an attached deck.

### **ASSESSMENT INTRODUCTION**

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

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

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation  
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils  
 Manly Local Environmental Plan 2013 - 6.2 Earthworks  
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management  
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity  
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area  
 Manly Development Control Plan - 3.7 Stormwater Management  
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)  
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 173 DP 9999 , 19 Sandy Bay Road CLONTARF NSW 2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the northern side of Sandy Bay Road, Clontarf. The site is devoid of any off-street parking or vehicular access, with pedestrian access being provided by external stairs within the road reserve. The rear of the site backs onto the unformed Farmer Road, which currently comprises a large rock escarpment and vegetation.</p> <p>The site is regular in shape with a frontage of 10.06m and a depth of 27.57m. The site has a surveyed area of 279sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to the Manly Local Environmental Plan 2013 (MLEP 2013) and accommodates a two storey detached dwelling house with split levels comprising four separate levels. Other development on the site comprises a detached outbuilding within the rear yard.</p> <p>Landscape treatments on the site are confined to the rear yard, and comprise lawn areas and garden beds with various shrub planting. A paved terrace is also located within the rear yard between the dwelling and outbuilding.</p> <p>The site experiences a fall of approximately 9.5m that slopes from the north-western rear corner towards the south-</p>



eastern front corner, representing an approximate slope of 23%.

The site is identified within the 'Class 5' area on the Acid Sulfate Soils Map pursuant to the MLEP 2013. Moreover, the site is identified within the 'Terrestrial Biodiversity' area and 'Foreshore Scenic Protection Area' pursuant to the MLEP 2013.

The site is mapped within the 'Coastal Use Area' and 'Coastal Environmental Area' under the provisions of the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP).

The site is identified within the 'Foreshores and Waterways Area' pursuant to the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP SHC).

The site is not flood prone, however is bushfire prone.

The site is not affected by any easements or restrictions imposed by Council or other Government Agencies.

#### **Detailed Description of Adjoining and Surrounding Development**

The locality is characterised by multi storey detached dwelling houses and public open space. The site is within close proximity to Heritage Item No. I1 'Harbour foreshores' and Heritage Item No. I272 'Fisher Bay Reserve', as identified within Schedule 5 of the MLEP 2013.

Map:



## **SITE HISTORY**

The site has been used for residential purposes for a significant period of time. A search of Council's records has revealed the following relevant history:

- Development Application No. 74/96 for internal alterations approved by Council on 12 April 1996;
- Development Application No. 579/99 for rear addition to first floor and alterations approved by Council on 11 January 2000; and
- Development Application No. 198/2017 for alterations and additions to the existing dwelling house approved by Council on 6 November 2017.

It is noted that the works approved under Development Application No. 198/2017 pertain to a timber walkway between the rear terrace and dwelling, including a pergola roof structure over the paved terrace. The timber walkway will be replaced by the bedroom extension on the upper level proposed under this application, however the applicant intends to still construct the pergola structure under the previous approval.

### Site Visits

A site visit was undertaken at the subject site on 2 July 2020.

### Application History

A preliminary assessment of the application determined that the applicant had discrepancies on the architectural plans, with the rumpus room on level 4 being labeled as a bedroom on a separate drawing sheet. Moreover, the preliminary assessment found that the applicant had failed to include the gross floor area of the existing outbuilding within the Floor Space Ratio calculations.

The applicant subsequently submitted the following revised documents in response to the initial concern:

- Revised Architectural Plans;
- Revised Statement of Environmental Effects; and
- Revised Clause 4.6 written request to justify the contravention of the Floor Space Ratio Development Standard.

The requested amendments were submitted to Council prior to the commencement of the Public Notification Period.

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

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

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
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	Draft State Environmental Planning Policy (Remediation of Land)



Section 4.15 Matters for Consideration'	Comments
of any draft environmental planning instrument	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 2013 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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&amp;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&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended Architectural Plans, an amended Statement of Environmental Effects and an amended Clause 4.6 written request to justify the contravention of the Floor Space Ratio Development Standard.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This</p>

Section 4.15 Matters for Consideration'	Comments
	clause is not relevant to this application.
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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

#### **BUSHFIRE PRONE LAND**

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

A Bushfire Assessment Statement was submitted with the application that included a certificate (prepared by Building Code & Bushfire Hazard Solutions dated 24 April 2020) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

The application was not referred to the NSW Rural Fire Service for comment.

#### **NOTIFICATION & SUBMISSIONS RECEIVED**

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

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

#### **REFERRALS**

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The site is located on the Manly Local Environment Plan 2013 (MLEP 2013) Terrestrial Biodiversity Map and thus requires consideration of Clause 6.5(3) and (4) of the MLEP 2013. The current proposal has no impacts upon biodiversity values of the site or surrounds.
NECC (Coast and Catchments)	<p>The 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 LEP and DCP.</p> <p>The application has also been assessed using Northern Beaches SREP assessment template.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b> 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>Comment:</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>

Internal Referral Body	Comments
	<p><b>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</b></p> <p>Harbour Foreshores &amp; Waterways Area</p> <p>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 2, Clause 14 and Part 3, Division 2 apply in assessing this DA.</p> <p>On internal assessment, it is determined that the Planning Principles and Matters for Consideration of the Area have been met.</p> <p><b>Manly LEP 2013 and Manly DCP</b></p> <p>The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s 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.</p> <p><b>Foreshores Scenic Protection Area Management</b></p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by David Hunt dated 15 May 2020 , the DA satisfies requirements under 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.</p> <p>As such, it is considered that the application does comply with the requirements of the 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.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.

Internal Referral Body	Comments		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to Heritage as the property is within proximity to a heritage item		
	I272 Fisher Bay Reserve		
	Details of heritage items affected		
	Details of the item as contained within the Manly heritage inventory is as follows:		
	Statement of significance: Natural bushland, aesthetic and scientific		
	Physical description: Permanent bushland with creek, tidal flats, young mangroves. Bushland has a formed walking rack of timber deck construction due to steep slopes and vulnerability to erosion.		
	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	N/A	
Consideration of Application			
The proposal seeks consent for alterations and additions to the rear of the property where it faces towards Farmer Road. The heritage item is located to the south west of the property adjoining the end of Sandy Bay Road. Given the works are to the rear of the property and the separation afforded by the road reserve, the works are considered to not impact upon the heritage item or its significance.			
Therefore Heritage raises no objections and requires no conditions.			
Consider against the provisions of CL5.10 of MLEP.			
Is a Conservation Management Plan (CMP) Required? No			
Has a CMP been provided? No			
Is a Heritage Impact Statement required? No			



Internal Referral Body	Comments
	Has a Heritage Impact Statement been provided? No
	Further Comments
	COMPLETED BY: Brendan Gavin, Principal Planner
	DATE: 7 July 2020

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Recommendations were made in 2017 for DA2017/198 regarding the sandstone on the property. The recommendations are still valid for this Development Application.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, the Department of Planning, Industry and Environment (DPIE) and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***

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

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

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

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

#### **SEPP 55 - Remediation of Land**

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

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX Certificate has been submitted with the application (see Certificate No. A375860 dated 29 April 2020). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

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

##### Ausgrid

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

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

##### Comment:

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

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

The site is identified within the 'Foreshores and Waterways Area' pursuant to the SREP SHC. Accordingly, the proposal is considered against the relevant provisions of this policy as follows:

### **2 Aims of plan**

*(1) This plan has the following aims with respect to the Sydney Harbour Catchment—*

*(a) to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained—*

*(i) as an outstanding natural asset, and*

*(ii) as a public asset of national and heritage significance,*

*for existing and future generations,*

*(b) to ensure a healthy, sustainable environment on land and water,*

*(c) to achieve a high quality and ecologically sustainable urban environment,*

*(d) to ensure a prosperous working harbour and an effective transport corridor,*

*(e) to encourage a culturally rich and vibrant place for people,*

*(f) to ensure accessibility to and along Sydney Harbour and its foreshores,*

*(g) to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,*

*(h) to provide a consolidated, simplified and updated legislative framework for future planning.*

*(2) For the purpose of enabling these aims to be achieved in relation to the Foreshores and Waterways Area, this plan adopts the following principles—*

*(a) Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good,*

*(b) the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,*

*(c) protection of the natural assets of Sydney Harbour has precedence over all other interests.*

Comment:

The works are relatively minor and are not likely to detract from the ecological, cultural and commercial values of the Foreshores and Waterways Area. Therefore, it is considered that the proposal satisfies the relevant provisions within Clause 2.

#### **14 Foreshores and Waterways Area**

*The planning principles for land within the Foreshores and Waterways Area are as follows—*

*(a) development should protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshores,*

*(b) public access to and along the foreshore should be increased, maintained and*



*improved, while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,*

*(c) access to and from the waterways should be increased, maintained and improved for public recreational purposes (such as swimming, fishing and boating), while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,*

*(d) development along the foreshore and waterways should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands and foreshores,*

*(e) adequate provision should be made for the retention of foreshore land to meet existing and future demand for working harbour uses,*

*(f) public access along foreshore land should be provided on land used for industrial or commercial maritime purposes where such access does not interfere with the use of the land for those purposes,*

*(g) the use of foreshore land adjacent to land used for industrial or commercial maritime purposes should be compatible with those purposes,*

*(h) water-based public transport (such as ferries) should be encouraged to link with land-based public transport (such as buses and trains) at appropriate public spaces along the waterfront,*

*(i) the provision and use of public boating facilities along the waterfront should be encouraged.*

Comment:

The external works proposed under this application are sited at the rear of the property and not visible from the public domain. As such, the development is not likely to have an adverse impact upon the visual qualities of Sydney Harbour and its foreshores. Moreover, given the works are confined to private property, the development will not compromise access to and along the foreshore. Suitable conditions have been included with this consent requiring sediment and erosion control measures to be in place during construction works to minimise the migration of sediments onto adjoining private lands and public open space. Based on the above, it is concluded that the proposal satisfies the relevant provisions within Clause 14.

## **22 Public access to, and use of, foreshores and waterways**

*The matters to be taken into consideration in relation to public access to, and use of, the foreshores and waterways are as follows—*

*(a) development should maintain and improve public access to and along the foreshore, without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation,*

*(b) development should maintain and improve public access to and from the waterways for recreational purposes (such as swimming, fishing and boating), without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation,*

*(c) if foreshore land made available for public access is not in public ownership, development should provide appropriate tenure and management mechanisms to*

*safeguard public access to, and public use of, that land,*

*(d) the undesirability of boardwalks as a means of access across or along land below the mean high water mark if adequate alternative public access can otherwise be provided,*

*(e) the need to minimise disturbance of contaminated sediments.*

Comment:

As noted above, the development will not compromise access to and along the foreshore for recreational or commercial use. Moreover, the development will not have an adverse impact upon watercourses, wetlands, riparian lands or remnant vegetation.

### **23 Maintenance of a working harbour**

*The matters to be taken into consideration in relation to the maintenance of a working harbour are as follows—*

*(a) foreshore sites should be retained so as to preserve the character and functions of a working harbour, in relation to both current and future demand,*

*(b) consideration should be given to integrating facilities for maritime activities in any development,*

*(c) in the case of development on land that adjoins land used for industrial and commercial maritime purposes, development should be compatible with the use of the adjoining land for those purposes,*

*(d) in the case of development for industrial and commercial maritime purposes, development should provide and maintain public access to and along the foreshore where such access does not interfere with the use of the land for those purposes.*

Comment:

The development will not impact commercial maritime activities.

### **24 Interrelationship of waterway and foreshore uses**

*The matters to be taken into consideration in relation to the interrelationship of waterway and foreshore uses are as follows—*

*(a) development should promote equitable use of the waterway, including use by passive recreation craft,*

*(b) development on foreshore land should minimise any adverse impact on the use of the waterway, including the use of the waterway for commercial and recreational uses,*

*(c) development on foreshore land should minimise excessive congestion of traffic in the waterways or along the foreshore,*

*(d) water-dependent land uses should have priority over other uses,*

*(e) development should avoid conflict between the various uses in the waterways and along the foreshores.*

Comment:

As noted above, the proposal will not have an adverse impact upon commercial or recreational activities along the foreshore.

**25 Foreshore and waterways scenic quality**

*The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows—*

*(a) the scale, form, design and siting of any building should be based on an analysis of—*

*(i) the land on which it is to be erected, and*

*(ii) the adjoining land, and*

*(iii) the likely future character of the locality,*

*(b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,*

*(c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.*

Comment:

The height and density of the proposed development remains consistent with surrounding residential development. Given the proposed works are sited at the rear of the property and not visible from the public domain, the development is unlikely to detract from the scenic qualities of the locality.

**26 Maintenance, protection and enhancement of views**

*The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows—*

*(a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,*

*(b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,*

*(c) the cumulative impact of development on views should be minimised.*

Comment:

The ridge line of the rear extension maintains the existing ridge level of RL22.03. The nearby dwelling located to the north of the site (69 Peronne Avenue) is located on top of a rock escarpment, with the natural ground level below the footprint of the dwelling being between RL30-RL36. The adjoining property currently enjoys views to the south of Clontarf Beach over the top of the site. Given the dwelling retains the existing ridge level, it is not anticipated that the development will compromise views to the foreshore and Sydney Harbour catchment.

**27 Boat storage facilities**

*The matters to be taken into consideration in relation to boating facilities are as follows—*

- (a) development should increase the number of public boat storage facilities and encourage the use of such facilities,*
- (b) development should avoid the proliferation of boat sheds and other related buildings and structures below the mean high water mark,*
- (c) development should provide for the shared use of private boat storage facilities,*
- (d) development should avoid the proliferation of private boat storage facilities in and over the waterways by ensuring that all such facilities satisfy a demonstrated demand,*
- (e) boat storage facilities should be as visually unobtrusive as possible,*
- (f) in the case of permanent boat storage, the safety and utility of the development should not be adversely affected by the wave environment, and the development should avoid adverse impacts on safe navigation and single moorings.*

Comment:

No boat storage facilities are proposed.

Having regard to the above assessment, it is concluded that the proposal demonstrates consistency with the relevant provisions within the SREP SHC. Given the scale of the proposed modification and the works proposed, referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

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

The site is mapped within the 'Coastal Use Area' and 'Coastal Environmental Area' under the provisions of the CM SEPP. Accordingly, the development is considered against Clauses 13,14 and 15 of the policy as follows:

#### **13 Development on land within the coastal environment area**

*(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public,*



*including persons with a disability,*

*(f) Aboriginal cultural heritage, practices and places,*

*(g) the use of the surf zone.*

*(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.*

*(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).*

Comment:

The site is identified within the 'Foreshores and Waterways Area' pursuant to the SREP SHC. As such, the provisions of this clause do not apply to the development.

**14 Development on land within the coastal use area**

*(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*

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

*(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

*(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*

*(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*

*(iv) Aboriginal cultural heritage, practices and places,*

*(v) cultural and built environment heritage, and*

*(b) is satisfied that—*

*(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*

*(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*

(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

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

(2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).

Comment:

The site is identified within the 'Foreshores and Waterways Area' pursuant to the SREP SHC. As such, the provisions of this clause do not apply to the development.

**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:

Having regard to the nature and scale of the proposed works, it is not anticipated that the development will increase the risk of coastal hazards within the locality.

**Manly Local Environmental Plan 2013**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.65m (rear extension on level 4)	-	Yes
Floor Space Ratio	FSR:0.4:1 (111.6sqm of gross floor area)	FSR: 0.72:1 (201sqm of gross floor area)	80%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

#### Detailed Assessment

#### **4.6 Exceptions to development standards**

##### Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1
Proposed:	0.72:1
Percentage variation to requirement:	80%

The proposed FSR for the site measures at 0.72:1 (201sqm of gross floor area), which results in an 80% variation from the applicable FSR development standard of 0.4:1 (111.6sqm of gross floor area). The additional gross floor area on the site resulting from the proposal equates to 12sqm. It is noted that the existing FSR on the site measures at 0.68:1 (189sqm of gross floor area), which contravenes the development standard.

The additional floor space is located within the extended living room and new store room on level 1 and the new bedroom on level 4. It noted that the bedroom on level 2 will be removed, thereby resulting in a void above level 1.

The removed and additional floor space is depicted in Figures 1, 2 and 3.

*Figure 1 - Removed gross floor area highlighted in red*

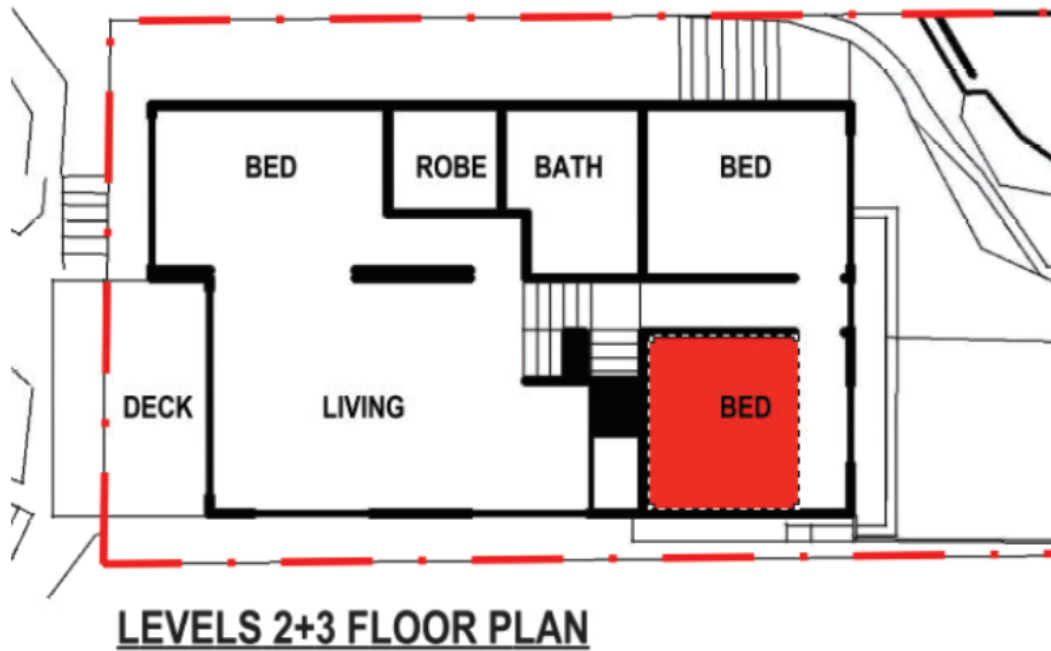


Figure 2 - New gross floor area on level 1 highlighted in blue

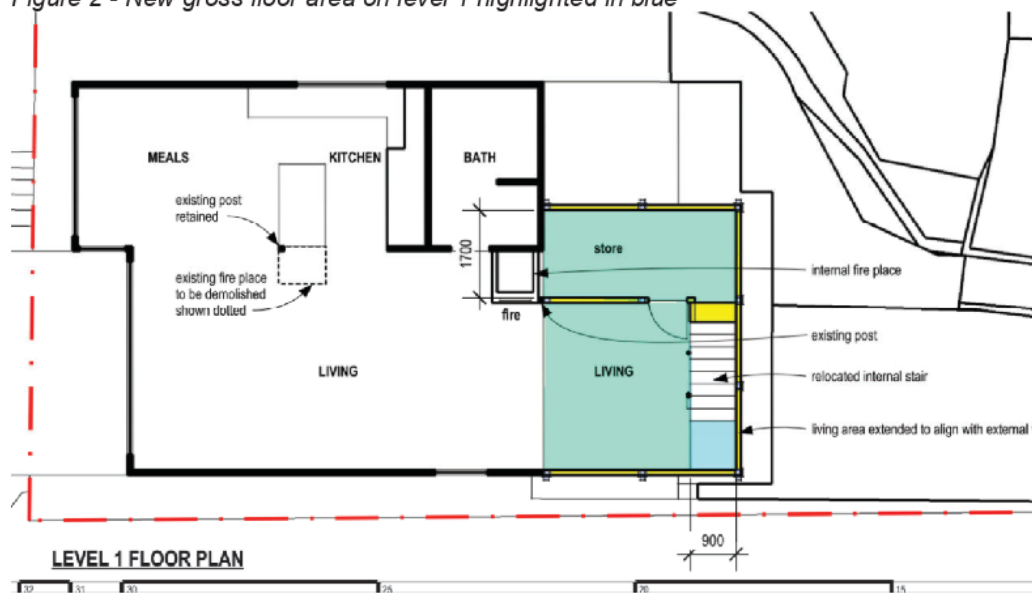
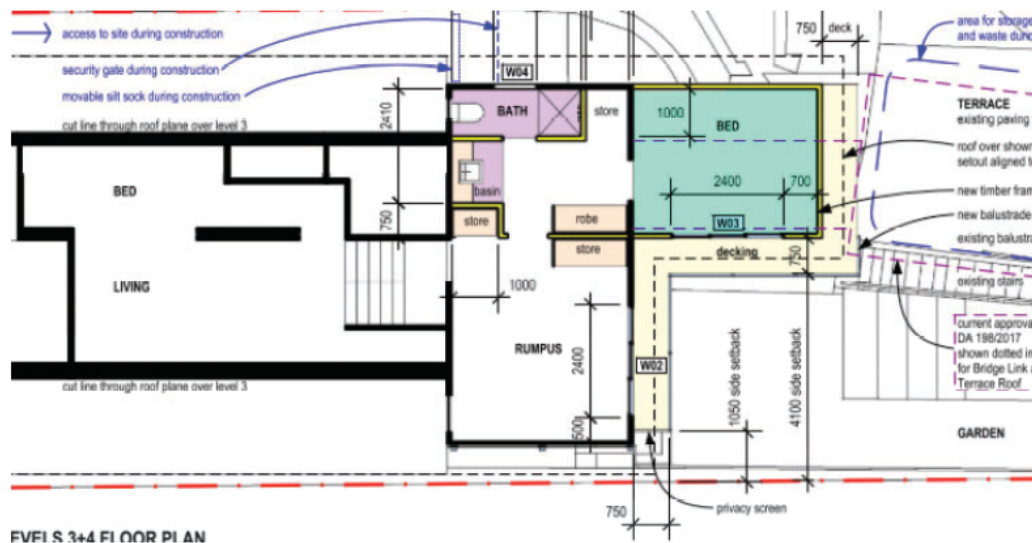


Figure 3 - New gross floor area on level 4 highlighted in blue





#### Assessment of request to vary a development standard:

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

#### Clause 4.6 Exceptions to development standards:

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

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

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

#### Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

*(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental*

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

The applicant's written request argues, in part:

- *"The proposed additions cannot be viewed from the street and do not alter the bulk, scale or character of the existing streetscape.*
- *The proposal does not obscure any landscape or townscape features from anywhere surrounding the site.*
- *There is no proposed changes to landscaping with the proposal, with the existing landscape features and character remaining unchanged.*
- *The proposal results in minimal to no impact on the amenity of the adjacent properties.*
- *The public domain is at the front of the property, with the proposed works behind the building they cannot be seen, and will not adversely impact the public domain".*

Comment:

It is agreed that the additional gross floor area on the subject site will not adversely detract from the streetscape. This argument is validated, considering the additional gross floor area will be located within the existing subfloor on the ground floor and at the rear of the property with the rear bedroom addition. The works are not visible from the public domain and the facade of the dwelling will remain unchanged. As such, it is considered that the development will have no apparent impact upon the streetscape.

It is also accepted that despite an increase in gross floor area, the development will not obscure any important landscape and townscape features, given the development will not result in the removal of trees or significant topographic features. It is noted that the footprint of the new bedroom addition will be over an existing sandstone rock outcrop. Despite this, the footprint is not visible from the public domain or adjoining properties and does not form a distinct natural feature within the streetscape. As such, this addition is not considered to obscure any important landscape or townscape features.

It is also agreed that the development will not significantly impact upon the amenity of adjoining properties. This is achieved as the development retains the existing ridge level, which ensures that no unreasonable view loss impacts arise. Moreover, the additional shadows resulting from the development are minor and do not represent unacceptable overshadowing. The new rear balcony includes a 1.5m high privacy screen on the easternmost elevation (adjoining rumpus room) to mitigate direct downward overlooking into the private open space at 18 Sandy Bay Road (eastern adjoining property). Other portions of the decking are devoid of screening, however are setback 4.1m from the eastern side boundary. The decking between the bedroom and rear terrace will primarily be used as access between the dwelling and rear terrace, which will ensure no unreasonable overlooking or



acoustic impacts arise. Based on the above, it is considered that the amenity impacts will be acceptable.

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

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

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

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

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

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

Comment:

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

**Objectives of the Development Standard**

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

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

Comment:

The development will remain two storeys in building height, which is compatible with surrounding residential developments. It is noted that the FSR non-compliance is exacerbated by the constrained 279sqm allotment, with a prescribed FSR of 0.4:1 typically being applied to allotments greater than 1000sqm in area. Despite the large variation to the FSR development standard, the density of the proposed development is consistent to surrounding residential developments, noting available Development Consents for residential development at 20 and 16 Sandy Bay Road indicate the following housing densities:

- 20 Sandy Bay Road FSR: 0.78:1 (221.91sqm of gross floor area); and
- 16 Sandy Bay Road FSR: 0.65:1 (218.92sqm of gross floor area).

The additional floor space on the subject site will be located within the existing subfloor on the ground floor and at the rear of the dwelling in the bedroom addition. The additional floor space will not be visible from the public domain and therefore, will have negligible impacts upon the streetscape. Other external works related to the proposal pertain to unenclosed decking, which do not significantly increase the bulk of the development as presented from adjoining properties.

Based on the above, it is concluded that the bulk and scale of the development is consistent with the existing and desired streetscape character.

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

Comment:

The development does not result in the removal of trees or significant topographic features. It is noted that the footprint of the new bedroom addition will be over an existing sandstone rock outcrop. Despite this, the outcrop is not visible from the public domain or adjoining properties and does not form a distinct natural feature within the streetscape. As such, this addition is not considered to obscure any important landscape or townscape features.

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

Comment:

The existing rock outcrops and vegetation features located within the road reserve remain unaffected by the proposed development. Such features provide a visual buffer between public open space and the adjacent residential development.

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

Comment:

The development will not give rise to unacceptable environmental impacts, noting that no trees or significant topographic features will be impacted upon. Moreover, the proposed development will not compromise the amenity of adjoining properties, specifically having regard to privacy, solar access and views.

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

Comment:

The proposed development maintains a residential use within the R2 Low Density Residential zone.

## Zone objectives

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

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

Comment:

The proposed development retains the residential use of the site.

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

Comment:

The proposal continues to maintain a residential use.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

**5.10 Heritage conservation**

The site is within close proximity to Heritage Item No. I1 'Harbour foreshores' and Heritage Item No. I272 'Fisher Bay Reserve', as identified within Schedule 5 of the MLEP 2013. Accordingly, the application was referred to Council's Heritage Officer for comment.

Council's Heritage Officer has reviewed the proposal against this clause and noted as follows:

*"The proposal seeks consent for alterations and additions to the rear of the property where it faces Farmers Road. The heritage item is located to the south west of the property adjoining the end of Sandy Bay Road. Given the works are to the rear of the property and the separation afforded by the road reserve, the works are considered to not impact upon the heritage item or its significance. Therefore, Heritage raises no objections and requires no conditions".*

Therefore, no further consideration against this clause is required for the purposes of this assessment.

**6.1 Acid sulfate soils**

The excavation works required to accommodate for the development are not significant. As such, the

development is not likely to disturb, expose or drain acid sulfate soils and cause environmental damage.

No further consideration against this clause is required for the purposes of this assessment.

## 6.2 Earthworks

The proposal comprises minor earthworks, representing approximately 0.8m<sup>3</sup> of excavated material. As such, prior to granting development consent, Council must consider the matters specified within Clause 6.2(3).

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

### Comment:

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

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

### Comment:

The proposed development will not preclude future use or redevelopment of the land.

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

### Comment:

The site has been used for residential purposes for an extended period of time, with no prior land use. In this regard, it is not anticipated that the soil will be contaminated. The excavated material will be spread throughout the site in accordance with the approved Waste Management Plan.

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

### Comment:

Given the minor nature of the earthworks, the development is not likely to unreasonably affect the existing and future amenity of adjoining properties.

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

### Comment:

All excavated material will be spread throughout the site in accordance with the approved Waste Management Plan.

*(f) the likelihood of disturbing relics,*

### Comment:

There are no known Aboriginal or archaeological relics on the site.

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

Comment:

Suitable conditions have been included with this consent requiring sediment and erosion control measures to be in place during construction works to minimise the migration of sediments onto adjoining private lands and public open space. Moreover, the development is not located within close proximity to drinking water catchments or riparian lands.

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

Comment:

A Geotechnical Report (prepared by Alliance Geotechnical dated 3 June 2020) has been submitted with this application. The report findings conclude that the geotechnical risks associated with the development are acceptable, subject to compliance with certain recommendations. The recommendations in the report have been included as part of this consent.

Having regard to the above assessment, it is concluded that the proposal satisfies the relevant provisions within Clause 6.2 of the MDCP 2013.

#### **6.4 Stormwater management**

Council's Development Engineer has reviewed the proposal with respect to stormwater management and raised no objections, subject to conditions. Subject to compliance with the conditions of consent, the proposal will adequately manage stormwater.

#### **6.5 Terrestrial biodiversity**

Council's Biodiversity Officer has reviewed the proposal against the requirements of this control and noted as follows:

*"The current proposal has no impact upon biodiversity values of the site or surrounds".*

Therefore, no further consideration against this clause is required for the purposes of this assessment.

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

The site is identified within the 'Foreshore Scenic Protection Area' under the provisions of the MLEP 2013. As such, prior to granting development consent, Council must consider the matters specified within Clause 6.9(3).

*(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,*

Comment:

The ridge line of the rear extension maintains the existing ridge level of RL22.03. The nearby dwelling located to the north of the site (69 Peronne Avenue) is located on top of a rock escarpment, with the natural ground level below the footprint of the dwelling being between RL30-RL36. The adjoining property currently enjoys views to south of Clontarf Beach over the top of the site. Given the dwelling retains the existing ridge level, it is not anticipated that the development will compromise views to the



foreshore and Sydney Harbour catchment. Moreover, the overshadowing impacts are minor and confined to the subject site and adjoining private properties.

*(b) measures to protect and improve scenic qualities of the coastline,*

Comment:

The proposed works are not visible from the public domain. As such, the development will not detract from the visual qualities of the coastline.

*(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*

Comment:

The overall height and density of the proposed development is consistent with surrounding residential developments within the locality. Moreover, no works will encroach into the foreshore area.

*(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The development is confined to private property and will not impact commercial maritime activities.

Having regard to the above assessment, it is concluded that the proposal satisfies the relevant provisions within Clause 6.9 of the MLEP 2013.

### **Mainly Development Control Plan**

#### Built Form Controls

<b>Built Form Controls - Site Area: 279sqm</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 1150sqm of site area	1 dwelling - as existing	-	Yes
	Dwelling Size: 100sqm minimum gross floor area	201sqm of gross floor area	-	Yes
4.1.2.1 Wall Height	East: 6.5m (based on flat gradient under new wall)	4.84m (new wall)	-	Yes
	West: 8m (based on gradient 1:225 or 44.25% under new wall)	3.49m (new wall)	-	Yes
4.1.2.2 Number of Storeys	2 storeys	2 storeys - as existing	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.56m	-	Yes
	Pitch: maximum 35 degrees	less than 35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line or 6m	No change to existing front building line	N/A	N/A

4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.22m (1/3 of dwelling's maximum wall height = 6.67m)	0.77m (level 1 living room) 1.05m (level 4 decking)	52.70% - 65.32%	<b>No</b>
	West: 1.96m (1/3 of dwelling's maximum wall height = 5.87m)	1.6m (level 4 bedroom)	18.37%	<b>No</b>
	Windows: no windows within 3m from side boundaries	Window W04 setback 1.6m from western side boundary	46.67%	<b>No</b>
4.1.4.4 Rear Setbacks	8m	9.14m (rear decking on level 4)	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (167.4sqm) of site area	32.15% (89.7sqm)	46.42%	<b>No</b>
	Open space above ground 25% (22.43sqm) of total open space	26.64% (23.9sqm)	6.65%	<b>No</b>
4.1.5.2 Landscaped Area	Landscaped area 40% (35.88sqm) of open space	72.56% (65sqm)	-	Yes
	2 native trees	no native trees	100%	<b>No</b>
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	no current off-street parking and no off-street parking proposed	100%	<b>No</b>

**\*Note:**

1. The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)
2. To be included as Total Open Space dimensions must be at least 3m x 3m.
3. To be included as Landscaped Area dimensions must be at least 0.5m x 0.5m.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

### **3.7 Stormwater Management**

Council's Development Engineer has reviewed the proposal with respect to stormwater management and raised no objections, subject to conditions. Subject to compliance with the conditions of consent, the proposal will adequately manage stormwater.

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

The proposed FSR for the site measures at 0.72:1 (201sqm of gross floor area), which results in an 80% variation from the applicable FSR development standard of 0.4:1 (111.6sqm of gross floor area).

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the MLEP 2013.

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

##### Description of non-compliance

Clause 4.1.4.2 of the MDCP 2013 requires the side building line to be no less than one third of the adjacent wall height from side boundaries.

The maximum wall height on the eastern elevation of the existing dwelling is 6.67m, therefore new development shall be setback at least 2.22m from the eastern side boundary. The extended footprint of the living room on level 1 is setback 0.77m from the eastern boundary and the easternmost elevation of the level 4 decking is setback 1.05m from the eastern side boundary, which fails to satisfy the prescribed requirement.

The maximum wall height on the western elevation of the existing dwelling is 5.87m, therefore new development shall be setback at least 1.96m from the western side boundary. The new bedroom on level 4 is setback 1.6m from the western side boundary, which fails to comply with the prescribed requirement.

Clause 4.1.4.2 of the MDCP 2013 requires windows adjoining habitable space to be setback at least 3m from side boundaries. The proposal includes a new window on the western elevation (Window W04) which is setback 1.6m from the western side boundary. As a consequence, the proposal fails to comply with the control in this regard.

##### Merit Assessment

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

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

##### Comment:

The new works are located well behind the front building line and will not be visible from the public domain. As such, the development will not be to the detriment of the streetscape. Furthermore, it is noted that the new non-compliant elements of the proposal adhere to the established side building lines along the eastern and western elevations. In this regard, a variation to the control is considered to be appropriate.

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

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

##### Comment:

It is noted that Window W04 adjoins a bathroom. However, the window contains a 1.7m high sill, which is sufficient to negate any unreasonable privacy impacts prompted from direct overlooking. The existing vegetation located along the western side boundary provides screening between the site and western adjoining property (20 Sandy Bay Road), which will ensure that a reasonable level of privacy is maintained between the two properties. The new rear balcony includes a 1.5m high privacy screen on the easternmost elevation (adjoining rumpus room) to mitigate direct downward overlooking into the private open space at 18 Sandy Bay Road (eastern adjoining property). Other portions of the decking are devoid of screening, however are setback 4.1m from the eastern side boundary. The decking between the bedroom and rear terrace will primarily be used as access between the dwelling and rear terrace, which will ensure no unreasonable overlooking or acoustic impacts arise. Based on the above, it is considered that the privacy impacts will be acceptable within a low-density residential environment.

In relation to solar access, the shadow diagrams submitted with this application depict that the additional shadows resulting from the development are minor and do not represent unacceptable overshadowing.

With respect to views, it is noted that the ridge line of the rear extension maintains the existing ridge level of RL22.03. The nearby dwelling located to the north of the site (69 Peronne Avenue) is located on top of a rock escarpment, with the natural ground level below the footprint of the dwelling being between RL30-RL36. The adjoining property currently enjoys views to south of Clontarf Beach over the top of the site. Given the dwelling retains the existing ridge level, it is not anticipated that the development will compromise views to the foreshore and Sydney Harbour catchment.

The side building lines on the eastern and western elevations respond to the existing development on the site. As such, the proposal is considered to be appropriately separated from the respective side boundaries and adjoining properties.

The new development will have no impacts upon traffic conditions and road visibility.

Based on the above, it is concluded that the proposal satisfies this objective.

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

Comment:

Flexibility is provided in this circumstance as the development responds to established side building lines on the property. The location of the new development will have negligible impacts upon the streetscape and will not significantly detract from the amenity of adjoining properties, specifically having regard to views, solar access and privacy.

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

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

Comment:



The development does not result in the removal of trees or significant topographic features. The existing rock outcrops and vegetation within the road reserve will continue to provide a visual buffer between nearby public open space and the adjacent residential development.

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

Comment:

The recommendations stipulated within the Bushfire Assessment have been included as part of this consent.

Having regard to the above assessment, it is concluded that the applicable objectives of the control have been achieved. Therefore, the application is supported on merit.

#### **4.1.5 Open Space and Landscaping**

Description of non-compliance

Clause 4.1.5.1 of the MDCP 2013 requires at least 60% (167.4sqm) of the site area to be total open space (TOS). To be included as TOS, the assessment considers outdoor areas with minimum dimensions of 3m x 3m, with a minimum unbroken area of 12sqm. Areas associated with carparking and vehicular access area excluded from the calculations. The proposed TOS represents 32.15% (89.7sqm) of the site area, which fails to comply with the prescribed requirement.

Moreover, the policy also limits TOS above ground to 25% (22.43sqm) of the proposed TOS. The TOS above ground represents 26.64% (23.9sqm) of the proposed TOS, which fails to comply with this control.

Clause 4.1.5.2 of the MDCP 2013 requires at least two native trees to be planted on site. The site is devoid of any significant native trees, which fails to comply with this control.

Merit Assessment

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

*Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*

Comment:

No native trees or important topographic features will be removed by the proposed development.

*Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*

Comment:

The proposed development complies with the numerical requirement for landscaped area. Furthermore, existing and proposed decking, in conjunction with the rear terrace area, provides appropriate private open space areas within the constrained allotment to sufficiently meet the needs of the occupants. It is noted that the inclusion of a canopy tree within the site would likely fail to achieve mature age and height, due to the constrained allotment size and existing development within the site. The existing rock



outcrops and vegetation within the road reserve will continue to provide a visual buffer between nearby public open space and the adjacent residential development.

*Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*

Comment:

As discussed in detail earlier within the report, the proposal does not result in unacceptable amenity or streetscape impacts.

*Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*

Comment:

The new rear extension on level 4 occurs over an existing impervious rock outcrop. The loss of soft pervious landscaped surfaces is minor and will not result in unacceptable levels of stormwater runoff. Moreover, Council's Development Engineer has recommended appropriate conditions to ensure new stormwater generated from the development is appropriately managed.

*Objective 5) To minimise the spread of weeds and the degradation of private and public open space.*

Comment:

The proposed development will not lead to a significant spread of weeds.

*Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.*

Comment:

The existing landscape treatments on site are sufficient for the 279sqm constrained allotment and will serve as potential wildlife habitat.

Having regard to the above assessment, it is concluded that the applicable objectives of the control have been achieved. Therefore, the application is supported on merit.

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

The MDCP 2013 requires two off-street parking spaces to be provided on the site. As noted earlier within this report, the site is currently devoid of any vehicular access and off-street parking. Pedestrian access is provided by external stairs within the road reserve. The provision of off-street parking would be unfeasible, due to the site frontage being elevated approximately 8m above Sandy Bay Road. It is noted that Sandy Bay Road has sufficient capacity to accommodate for two vehicles on the street. Given the proposal is not intensifying the use of the site, the existing non-compliance is acceptable.

#### **4.1.8 Development on Sloping Sites**

The site is identified within the geotechnical 'G1' area pursuant to the MDCP 2013. Accordingly, a Geotechnical Report (prepared by Alliance Geotechnical dated 3 June 2020) has been submitted with this application in accordance with the requirements of this control. The report findings conclude that the geotechnical risks associated with the development are acceptable, subject to compliance with certain recommendations. The recommendations in the report have been included as part of this

consent.

No further consideration against this control is required for the purposes of this assessment.

#### **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**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this 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:

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environment Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space has adequately addressed and demonstrated that:

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

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

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

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

### **RECOMMENDATION**

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

Accordingly Council as the consent authority grant Development Consent to DA2020/0612 for Alterations and additions to a dwelling house on land at Lot 173 DP 9999, 19 Sandy Bay Road, CLONTARF, subject to the conditions printed below:

### **DEVELOPMENT CONSENT OPERATIONAL CONDITIONS**

#### **1. Approved Plans and Supporting Documentation**

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

##### **a) Approved Plans**

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
AD-03 Revision B	17 June 2020	David Hunt Architecture
AD-04 Revision A	15 May 2020	David Hunt Architecture
AD-05 Revision B	17 June 2020	David Hunt Architecture
AD-06 Revision A	15 May 2020	David Hunt Architecture
AD-07 Revision A	15 May 2020	David Hunt Architecture

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Geotechnical Inspection Report Ref. 11035-GR-1-1	3 June 2020	Alliance Geotechnical Pty Ltd
Bushfire Assessment Statement Ref. 201393	24 April 2020	Building Code & Bushfire Hazard Solutions

BASIX Certificate No. A375860	28 April 2020	David Hunt Architecture
-------------------------------	---------------	-------------------------

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	17 May 2020	Karen and Chris Harmsen

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

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

## 2. Prescribed Conditions

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

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

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

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

updated information.

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

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

Reason: Legislative requirement.

### 3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

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

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008

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

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

#### FEES / CHARGES / CONTRIBUTIONS

##### 4. Security Bond

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

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

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

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

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

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

##### 5. Stormwater Disposal

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

Details demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the

Certifying Authority for approval prior to the issue of the Construction Certificate.

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

6. **Compliance with Standards**

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

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

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

7. **Certification of Geotechnical Requirements**

A suitably qualified geotechnical consultant is to provide written certification that the recommendations of the approved Geotechnical Report referenced in Condition 1 of this consent have been incorporated into the Construction Certificate Plans

Documented evidence is to be provided to the Certifying Authority prior to the issuance of the Construction Certificate.

Reason: To mitigate geotechnical risks.

8. **Certification of Bushfire Requirements**

A suitably qualified bushfire consultant is to provide written certification that the recommendations of the approved Bushfire Assessment Statement referenced in Condition 1 of this consent have been incorporated into the Construction Certificate plans.

Documented evidence is to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance with Planning for Bushfire Protection 2019.

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

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

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

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

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

10. **Survey Certificate**

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

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

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

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

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

**12. Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

**13. Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Certifying Authority.

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

**14. Protection of Rocks and Sites of Significance**

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

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

Reason: Preservation of significant environmental features.

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



**OCCUPATION CERTIFICATE****15. Stormwater Disposal**

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

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

**16. Certification of Geotechnical Requirements**

A suitably qualified geotechnical consultant is to provide written certification that the recommendations of the approved Geotechnical Report referenced in Condition 1 of this consent have been incorporated into the as-built development.

Documented evidence is to be provided to the Certifying Authority prior to the issuance of the Occupation Certificate.

Reason: To mitigate geotechnical risks.

**17. Certification of Bushfire Requirements**

A suitably qualified bushfire consultant is to provide written certification that the recommendations of the approved Bushfire Assessment Statement referenced in Condition 1 of this consent have been incorporated into the as-built development.

Documented evidence is to be provided to the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure compliance with Planning for Bushfire Protection 2019.

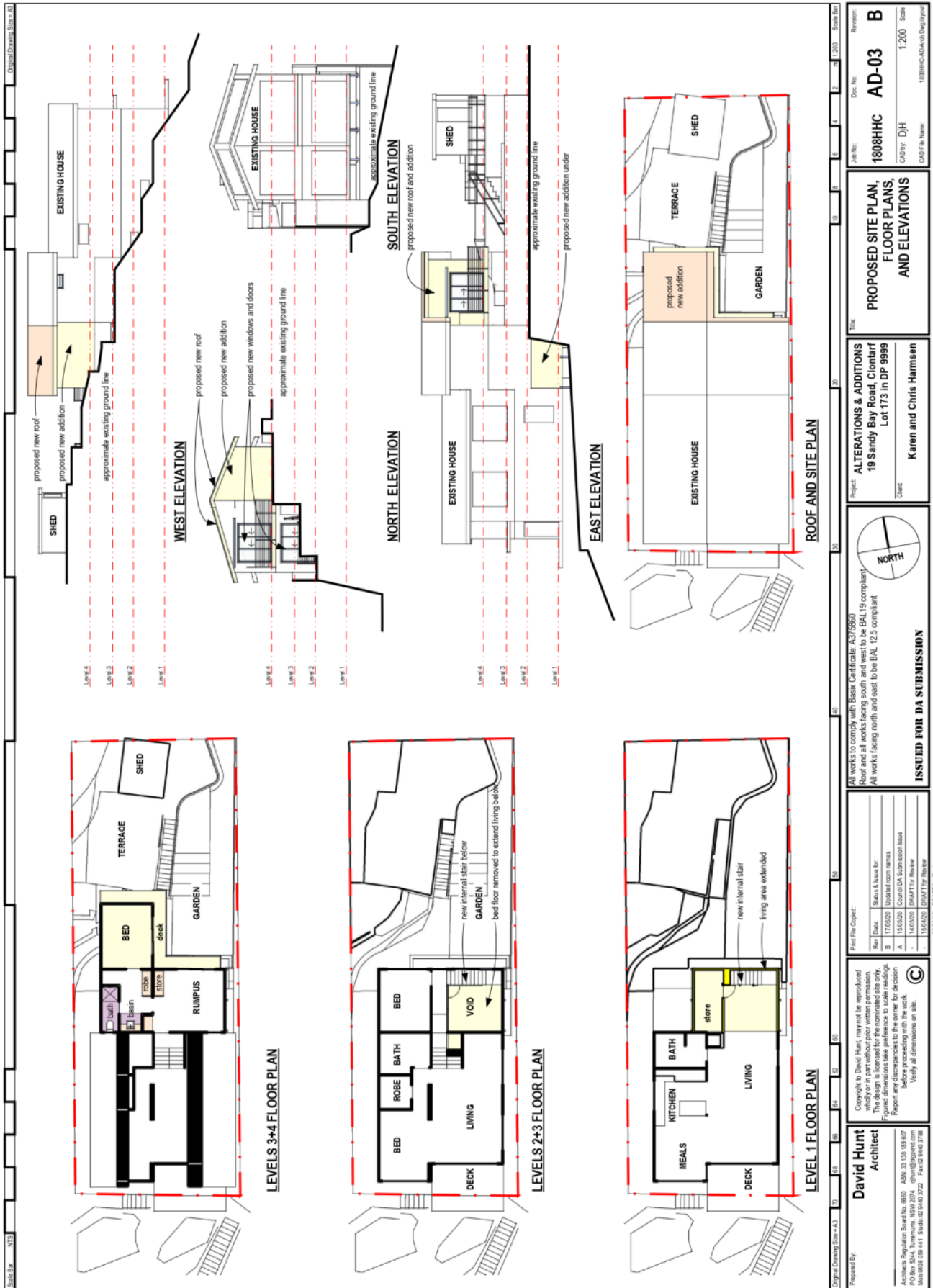
**18. Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

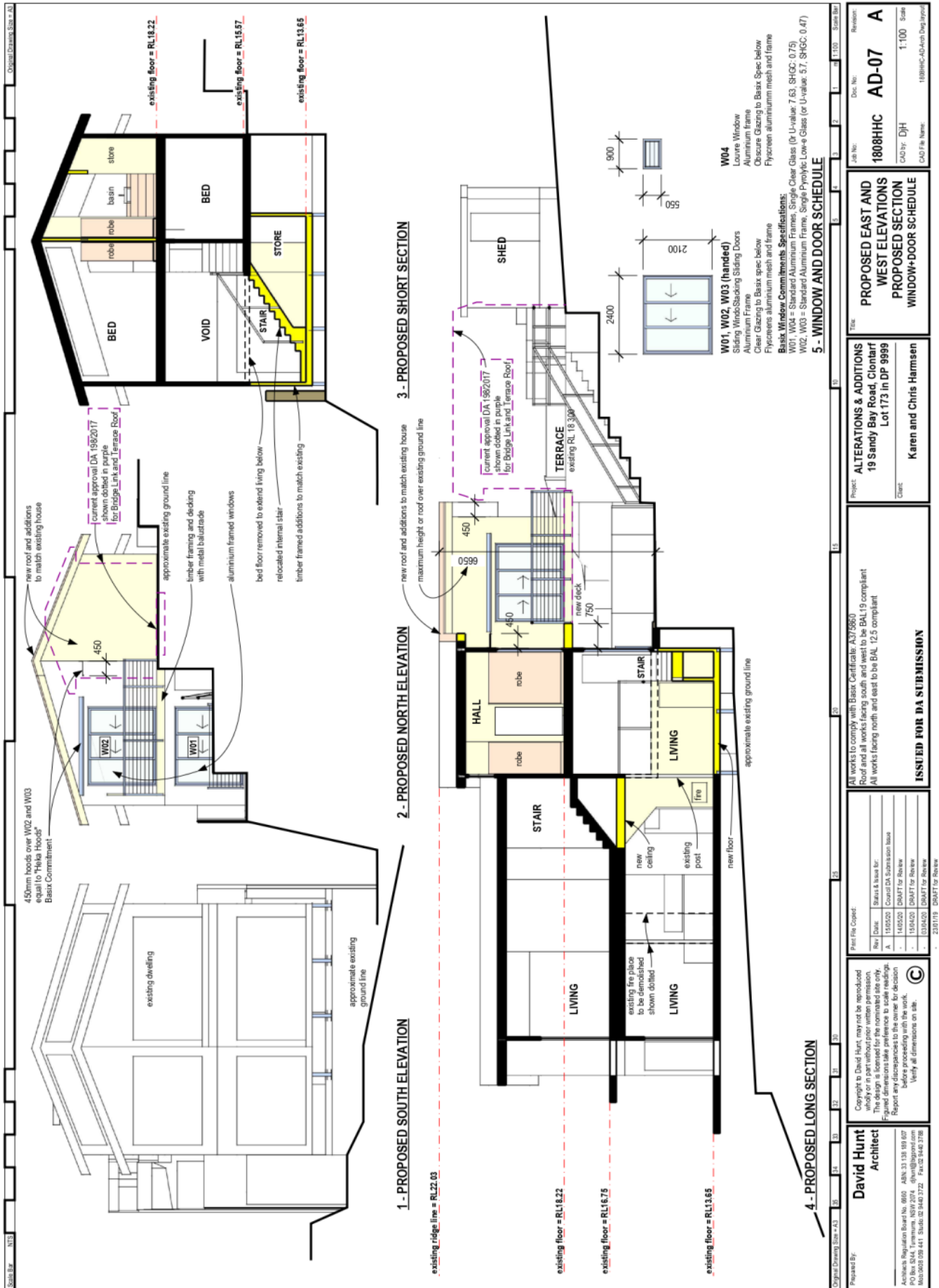
Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management.









## APPLICATION UNDER MANLY LOCAL ENVIRONMENT PLAN CLAUSE 4.6

Project:	Alterations and Additions – 19 Sandy Bay Road, Clontarf – Lot 173 in DP 9999	Date:	17/06/2020
Client:	Karen and Chris Harmsen	Page:	Page 1 of 3
Author:	David Hunt	Job No:	1808HHC
Revision – 17/06/2020 – FSR calculations updated to include existing Shed			

### LEP Clause 4.6 Exceptions to development standards

The proposal does not comply with Council's numerical control for FSR in the LEP Clause 4.4 Floor Space Ratio.

Approval is therefore requested through LEP Clause 4.6 Exceptions to Development Standards which allows for Council to grant development consent where it can be demonstrated:

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

LEP Numerical Control = 0.4:1 maximum FSR  
Minimum Lot Size for the Area = 1140sqm  
Max allowable Floor Area = 460sqm

Existing FSR = 0.68:1  
Existing Site Area = 279sqm  
Existing Floor Area = 189sqm

**Proposed FSR = 0.72:1**  
Site Area = **279 sqm**  
Proposed Floor Area = **201 sqm**  
Additional Floor Area Proposed = **12 sqm**

### The proposal includes:

Level 1 rear extension under a spit level bedroom which is to be removed resulting in no change to the overall floor area as the additional floor area replaces the bedroom area over that is removed.  
Level 4 rear extension to provide bedroom to replace the one removed on Level 2 – this is the part of the proposal that does not comply with the numerical control.

Although not strictly compliant the proposal does meet the objectives for development as set out in the Clause 4.4 Floor Space Ratio:

**Table 1**

LEP Clause 4.4. Floor Space Ratio – Objectives	Proposal Compliance
(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,	<p>The proposed additions to the dwelling on level 1 extend under a spit level bedroom which is to be removed, they cannot be seen from the street.</p> <p>The proposed rear extension continues the existing roof and side wall line, they cannot be seen from the street.</p> <p>The proposed additions cannot be viewed from the street and do not alter the bulk, scale or character of the existing streetscape.</p>
(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,	<p>The proposed additions to the dwelling on level 1 extend under a spit level bedroom which is to be removed, they are wholly within the form of the existing dwelling.</p> <p>The proposed rear extension continues the existing roof and side wall line, they do not change the building density or bulk in height or width, they increase the site coverage on the site by 12sqm, they do not impact existing landscape features.</p> <p>Properties to the rear are elevated more than 6m above the existing and proposed ridge line.</p> <p>The proposal does not obscure any landscape or townscape features from anywhere surrounding the site.</p>
(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,	<p>The existing character of the area is maintained as the proposed additions are behind the existing dwelling and cannot be viewed from the front. The rear properties are sufficiently raised above the proposal, and with significant vegetation between them they cannot view the proposal.</p> <p>There is no proposed changes to landscaping with the proposal, with the existing landscape features and character remaining unchanged.</p>
(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,	<p>The shadow diagrams included with the submission indicate that due to the orientation and topography of the site there is minimal to no impact on the existing sunlight access to private open space of the adjacent properties.</p>

Architects Registration Board Number – 6660 ABN: 59 299 326 405  
PO Box 5244, South Turramurra, NSW 2074 Email: d.hunt@bigpond.com Mob: 0408 059 441 Tel: 61 2 9440 3722

**David Hunt**  
Architect



## APPLICATION UNDER MANLY LOCAL ENVIRONMENT PLAN CLAUSE 4.6

Project:	Alterations and Additions – 19 Sandy Bay Road, Clontarf – Lot 173 in DP 9999	Date:	17/06/2020
Client:	Karen and Chris Harmsen	Page:	Page 2 of 3
Author:	David Hunt	Job No:	1808HHC

Revision – 17/06/2020 – FSR calculations updated to include existing Shed	
Generous side setbacks and proposed privacy screening minimises any visual or noise impacts on the adjacent properties.	The proposal results in minimal to no impact on the amenity of the adjacent properties.
(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.	The public domain is at the front of the property, with the proposed works behind the building they cannot be seen, and will not adversely impact the public domain.
	The proposal is for alterations and additions to an existing dwelling in a residential area.
	This clause is not relevant to the proposal.

The Manly Council Development Control Plan 2013 allows for exceptions to the floor space ratio:

**DCP Clause 4.1.3.1 Exceptions to FSR for Undersized Lots** states the following:

*The undersized nature of a lot is a matter that Council may consider in determining whether "compliance with the standard is unreasonable or unnecessary in the circumstances of the case" or "there is sufficient environmental planning grounds to justify contravening the development standard" under the LEP clause 4.6(3).*

In this instance the Lot Size is significantly undersized for the mapped area:  
In this instance the Floor Space is also undersized for the mapped area:

Allowable Lot Size = 1150sqm	Actual Lot Size = 279sqm	24% of allowable area
Allowable Floor Space = 460sqm	Proposed Floor Space = 201sqm	44% of allowable area

Therefore, even though the proposed FSR is more than the allowable FSR in the zone, the dwelling area is only 44% of the allowable dwelling area within the zone, this means that the dwelling presents with a reduced building bulk in relation to the allowable building bulk within the zone.

**Request for Council to vary Clause 4.4 Floor Space Ratio, through Clause 4.6:**

**Clause 4.6 (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:**

**Table 2**

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,	<p>Strict compliance with the development standard is unreasonable and unnecessary in this case:</p> <p>The lot is significantly undersized (as noted above) relative to the allowable lot size mapped in Council's controls</p> <p>The existing FSR of the lot is already non-compliant.</p> <p>The additional floor area proposed is only 12sqm, resulting in an increase in the FSR of only 0.04:1.</p> <p>There is minimal to no amenity impact on the adjacent properties.</p>
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.	<p>Contravention of the development standard is justified in this case:</p> <p>The proposed additions cannot be viewed from the street and do not alter the bulk, scale or character of the existing streetscape.</p> <p>The proposal does not obscure any landscape or townscape features from anywhere surrounding the site.</p> <p>There is no proposed changes to landscaping with the proposal, with the existing landscape features and character remaining unchanged.</p> <p>The proposal results in minimal to no impact on the amenity of the adjacent properties.</p>

Architects Registration Board Number – 6660 ABN: 59 299 326 405

PO Box 5244, South Turramurra, NSW 2074 Email: djhunt@bigpond.com Mob: 0408 059 441 Tel: 61 2 9440 3722

**David Hunt**  
Architect



## APPLICATION UNDER MANLY LOCAL ENVIRONMENT PLAN CLAUSE 4.6

Project:	Alterations and Additions – 19 Sandy Bay Road, Clontarf – Lot 173 in DP 9999	Date:	17/06/2020
Client:	Karen and Chris Harmsen	Page:	Page 3 of 3
Author:	David Hunt	Job No:	1808HHC
Revision - 17/06/2020 - FSR calculations updated to include existing Shed			
		The public domain is at the front of the property, with the proposed works behind the building they cannot be seen, and will not adversely impact the public domain.	

### Clause 4.6 (4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

Table 3

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)	This document is the written request. Table 2 in this document, addresses Clause 4.6 (3) (a) and (b)
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,	Please refer to the table above: LEP Clause 4.4. Floor Space Ratio – Objectives Table 1 in this document addresses how each objective is met with the proposal.

### Clause 4.6 (5) In deciding whether to grant concurrence, the Secretary must consider:

Table 4

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and	The contravention does not raise any matters of state or regional significance.
(b) the public benefit of maintaining the development standard, and	There is no public benefit in strict compliance with the development standard as the proposal maintains the planning objectives and there is no adverse impact on the amenity of the surrounding area.
(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.	The proposal is consistent with the objectives of Council's Development Control Plan 2013 Clause 4.1.3.1 Exceptions to FSR for Undersized Lots, as noted in this document.

### Summary:

The proposal is permissible with consent and the variation required from the standard does not compromise the objectives for the zone contained in the LEP or DCP.  
The increase to the floor space provides no change to the existing bulk, scale, or character of the existing dwelling.  
The proposal does not adversely impact the amenity of neighbours or the surrounding public domain.  
The proposal cannot be seen from the public domain, it sits behind the existing dwelling, as demonstrated in this picture >>>>  
Therefore, strict compliance with the floor space ratio standard is considered unreasonable and unnecessary in this instance.

**We trust this Clause 4.6 application will meet with Council's prompt approval.**



Architects Registration Board Number – 6660 ABN: 59 299 326 405

PO Box 5244, South Turramurra, NSW 2074 Email: djhunt@bigpond.com Mob: 0408 059 441 Tel: 61 2 9440 3722

**David Hunt**  
Architect

### ITEM 3.2

**DA2019/0887 - 2 MACPHERSON STREET, WARRIEWOOD -  
SUBDIVISION OF LAND INTO 24 COMMUNITY TITLE LOTS  
COMPRISING 22 RESIDENTIAL LOTS AND 2 RESIDUE LOTS**

## REPORTING MANAGER

# Anna Williams

**TRIM FILE REF**

**2020/410050**

## ATTACHMENTS

**1 Assessment Report**  
**2 Subdivision Plans**

## PURPOSE

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

## RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0887 for subdivision of land into 24 community title lots comprising 22 residential lots and 2 residue lots on land at Lot 25 Sec C DP 5464, 2 Macpherson Street, Warriewood, subject to the conditions outlined in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/0887
<b>Responsible Officer:</b>	Anne-Marie Young
<b>Land to be developed (Address):</b>	Lot 25 DP 5464, 2 Macpherson Street WARRIEWOOD NSW 2102
<b>Proposed Development:</b>	Subdivision of land into 24 community title lots comprising 22 residential lots and 2 residue lots.
<b>Zoning:</b>	R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	Yes
<b>Owner:</b>	Karimbla Properties (NO. 32) Pty Ltd
<b>Applicant:</b>	Karimbla Constructions Services (NSW) Pty Ltd
<b>Application Lodged:</b>	16/08/2019
<b>Integrated Development:</b>	Yes
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	25/02/2020 to 24/03/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 1,795,808.00

### EXECUTIVE SUMMARY

This Development Application (DA) seeks approval for subdivision of the site into 22 residential lots and 2 residue lots for the private access loop road and 25m inner creek buffer lot. The proposal is consistent with the conditions imposed in the Civil Works application reference N0398/17 approved by the Land and Environment Court. The application is referred to DDP as more than three (3) submissions have been received.

Principle assessment issues with the DA relate to flooding, biodiversity and landscape, building envelope compliance, transport - driveway dimensions and contributions. Three submissions raised issues in relation to flooding and the location of the sewer line in private property. Flooding issues have been addressed with the submission of additional information and conditions of consent. In respect of

the sewer line the Applicant will require notification of compliance from Sydney Water and approval of a Section 73 Certificate.

On balance, the proposal is recommended for conditional approval having considered the relevant issue and the assessment of the information submitted in support of the DA.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks consent for 24 lot community title subdivision to accommodate future residential development.

The works proposed under this application include:

- Proposed Lot 1 – Private access loop road and creek buffer lot;
- Proposed Lots 2 – 22 – future residential lots under community title which range in size between 220sqm and 396sqm; and
- Proposed Lot 24 – Land to be dedicated to Council, being the 25-metre inner creek line corridor.

The residential lots range from between 220sqm to 396sqm with lot frontages between 10m and 28m.

Additional details of the building envelope were submitted in February 2020 which includes details of the indicative footprint of 21 detached two storey dwellings with separate driveways, integrated garage zones and 20sqm private open space to the rear. The dwellings have a 900m setback to the side at ground level and 1500mm side setback at first floor level. The floor to ceiling height is indicated to be 3.2m and a hipped roof is suggested.

Eighteen (18) lots will have access to the new loop road and four (4) lots will benefit a 5.6m wide rear access road (amended from 4m in width).

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Pittwater Local Environmental Plan 2014 - 6.1 Warriewood Valley Release Area  
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils  
Pittwater Local Environmental Plan 2014 - 7.3 Flood planning  
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection  
Pittwater Local Environmental Plan 2014 - 7.10 Essential services  
Pittwater 21 Development Control Plan - B3.2 Bushfire Hazard  
Pittwater 21 Development Control Plan - B3.6 Contaminated Land and Potentially Contaminated Land  
Pittwater 21 Development Control Plan - B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)  
Pittwater 21 Development Control Plan - B3.13 Flood Hazard - Flood Emergency Response planning  
Pittwater 21 Development Control Plan - C6.1 Integrated Water Cycle Management  
Pittwater 21 Development Control Plan - C6.2 Natural Environment and Landscaping Principles  
Pittwater 21 Development Control Plan - C6.4 The Road System and Pedestrian and Cyclist Network  
Pittwater 21 Development Control Plan - C6.5 Utilities, Services and Infrastructure Provision  
Pittwater 21 Development Control Plan - C6.7 Landscape Area (Sector, Buffer Area or Development Site)  
Pittwater 21 Development Control Plan - C6.8 Residential Development Subdivision Principles  
Pittwater 21 Development Control Plan - D16.1 Character as viewed from a public place  
Pittwater 21 Development Control Plan - D16.7 Side and rear building lines

#### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 25 DP 5464 , 2 Macpherson Street WARRIEWOOD NSW 2102
<b>Detailed Site Description:</b>	<p>The site is legally described as Lot 25, Section C, Deposited Plan 5464, and is commonly referred to as 2 Macpherson Street, Warriewood ('the site'). The site is irregular in shape, with a 126.96m wide frontage to Macpherson Street to the south and a total area of 2.327 Hectares. The site adjoins Narrabeen Creek, the centreline of which forms the northern and eastern boundaries of the site.</p> <p>The site was formerly used for the purpose of a market garden, however, the site has recently been cleared in preparation for works in association with the approved civil works DA. Whilst the central portion of the site appears to have been built up over time and is generally level (3.28 - 3.71m AHD), the perimeter of the site falls away in each direction towards the creekline, the western side boundary and the street.</p> <p>Macpherson Street is a two-lane roadway that was recently upgraded to alleviate impacts associated with flooding, and as a result, the roadway and adjacent footpath is elevated above natural grounds levels at a minimum RL of 4.16m AHD. Two access driveways have been constructed to provide vehicular and pedestrian access to the site.</p> <p>A Sydney Water Sewerage Treatment Plant is located opposite the site on the southern side of Macpherson Street, with a seniors housing development is located to the east, medium density residential to the north and an existing</p>



dwelling to the west. The site is identified as Buffer Area 1M of the Warriewood Valley Release Area, as shown on the Warriewood Valley Release Area Map of PLEP 2014.

Map:



## SITE HISTORY

On 27 November 2014, Development Application N0431/14 was lodged with Council, seeking consent for the construction of thirty semi-detached dwelling houses and associated infrastructure at the subject site.

On 18 December 2014, Development Application N0431/14 was refused by Council for the following reasons:

- 1) *The proposed development is inconsistent with the objectives of clause 6.1 of Pittwater Local Environmental Plan 2014, specifically the need for development to be undertaken in accordance with the Warriewood Valley Strategic Review, which identifies that the subject site has no capacity for residential development.*
- 2) *The “no dwellings” yield prescribed by clause 6.1(3) of Pittwater Local Environmental Plan 2014 prohibits residential development on the site, and cannot be varied pursuant to clause 4.6 of Pittwater Local Environmental Plan 2014.*

On 24 December 2014, the Applicant lodged a Class 1 Appeal with the Land and Environment Court of NSW in regards to the refusal of Development Application N0431/14. The proceedings were ultimately listed for a separate ‘question of law’ hearing to address the following:

*Is the “no dwellings” specification for ‘Buffer area 1m’ in the table to clause 6.1(3) of the Pittwater Local Environment Plan 2014 (“PLEP”) a ‘development standard’ to which clause 4.6 of the PLEP applies?*

On 21 May 2015, the Justice Pain found in favour of Council and agreed that the “no dwellings” specification for the site in clause 6.1(3) of PLEP 2014 was in fact a prohibition and not a development standard.

On 17 November 2016, the Applicant lodged a Planning Proposal (PP0003/16), which seeks to amend the provisions of clause 6.1(3) of PLEP 2014 to provide for 22 dwellings on the subject site.

On 31 January 2017, Council resolved not to support the Planning Proposal for the following reasons:

- a. It is inconsistent with the relevant strategic study being the 'Warriewood Valley Strategic Review Report (2013)', endorsed by the former Director General of the Department of Planning and Infrastructure on 26 June 2013 and adopted by Pittwater Council on 12 June 2013.*
- b. It has not demonstrated adequate strategic merit or site-specific merit in line with the 'NSW Planning & Environment's Planning Proposals: A guide to preparing planning proposals (2016)'.*
- c. The information submitted to support the planning proposal for 2 Macpherson Street, Warriewood is substantially deficient.*
- d. It is inconsistent with Local Planning Direction '4.3 Flood Prone Land' (issued under Section 117(2) of the Environmental Planning and Assessment Act 1979) and insufficient justification has been provided to support the inconsistency.*

On 10 March 2017, Council received notice that a request for a Rezoning Review had been submitted for consideration by the Sydney North Planning Panel.

On 12 April 2017, the Sydney North Planning Panel determined that the Planning Proposal should proceed to Gateway determination.

On 30 June 2017, Council received notice from the delegate of the Greater Sydney Commission that the Planning Proposal should proceed, subject to condition in the Gateway Determination.

On 26 October 2018, the Planning Proposal was formally gazetted to permit 22 lots on the site including:

- The construction of a new road,
- Civil infrastructure associated with the new road
- Creekline reconstruction, and
- Creekline rehabilitation/revegetation.

On 31 May 2019, development application N0398/17 for the civil works was approved by the Land and Environment Court.

#### History of subject application

On 5 November 2019, the Applicant as requested to withdraw the application as the following issues were identified: Insufficient information to assess building envelope compliance, flood levels, stormwater detention, biodiversity and issues with the road layout, landscaping and contribution calculations.

On 12 February 2020, the Applicant submitted additional information to address the issues raised in the letter dated 5 November 2019.

On 10 March 2020, the Applicant submitted an updated subdivision plan to address issues relating to contributions.

On 21 April 2020, the applicant submitted a letter from ARUP traffic consultants to address issue relating to waste traffic and the proposed road layout.

On 22 June 2020, the Applicant submitted an OSD layout plan.

#### 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.  Environmental Health reviewed the reports associated with the DA and found that the management plans and remediation efforts proposed are satisfactory with no further remediation required. In summary, Health have confirmed that the levels of metals was low, immobility of benzo(a)pyrene as coal ash, asbestos removed, and noting that the ground level will be modified once offsite soil has been added to build above flood level. Condition are included to address these issues.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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.  <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.  <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was received on 5 February 2020 in relation to the building envelope, flooding the road layout and landscaping. The additional information was notified.  <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.  <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the



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

#### **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

#### **BUSHFIRE PRONE LAND**

The north-west parts of the site are mapped as containing Bush Fire Vegetation (Buffer to Category 2). The application was referred to New South Wales Rural Fire Service (NSW RFS) issued who issued General Terms of Approval (GTA) subject to conditions, refer to RFS discussion below.

## 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:
Warriewood Residents Association Incorporated	Warriewood Valley Land Release Area Abb Dummynotification Purp WARRIEWOOD NSW 2102
Mr Richard John McIntyre	4 Macpherson Street WARRIEWOOD NSW 2102
Mr Lindsay Andrew Dyce	8 Mahogany Boulevard WARRIEWOOD NSW 2102

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

- Flooding issues, and
- Sewer pipe runs through private property.

The original application was notified and one submission was received from the Warriewood Residents Association which raised the following issues:

- ***Insufficient flood evacuation information. A condition should be included requiring developers and certifiers to follow the design guidelines of the Warriewood Valley Management Plan (WVMP). Additional flood modelling is required.***

### Comment

The original application lacked sufficient details to assess flooding. Additional information has been submitted on this matter including a flood evacuation management plan. The information has been reviewed by Council's Flooding Engineer who confirms that the details are acceptable subject to conditions.

The amended plans were re-notified and a further submission was received from the Warriewood Residents Association reiterating issues in relation to flooding. In addition, two (2) submission has been received from neighbours which raised the following issues:

- **The Services and Utilities Co-ordination Plan (drawing No. C070) shows Meriton's sewer servicing pipe running into and through private property. No permission has been granted for this and it is very unlikely to be given.**

### Comment:

The Applicant has confirmed that the service pipe will be linking the Sydney Water system on their land. The Applicant will require a notification of compliance from Sydney Water and a Section 73 Certificate.

- **Concern about flooding placing residents in an active floodplain and the impact of the**



*development on upstream properties. The flood modelling does not include a survey of the bridge and upstream and down stream sections of Narrabeen Creek as they currently exist and the filling of the creek bed with rocks. In addition, rock placements have been installed between the concrete abutments under the bridge. Concern is also raised regarding the increased breeding grounds for mosquitoes in this area.*

Comment:

The assessment of flood risk at 2 Macpherson Street, Warriewood including the establishment of design flood conditions, determination of the impact of the development on flooding and the management of flood risk to life, were the subject of a previous Development Application (N0398/17) which related to the civil works for the site and was approved by the Land and Environmental Court on 31 May 2019.

The Development Application (DA2019/0887) is proposing a community title subdivision with minimal physical works included. Council's engineers are satisfied that this application complies with the necessary requirements of the Warriewood Valley Water Management Specification and Pittwater 21 Development Control Plan in relation to the development of flood prone land.

Council will investigate the rocks obstructing the creek upstream of the bridge over Narrabeen Creek. I note that in order to receive their subdivision certificate, the developer will be required to prove that the construction of the creek (including levels and rock placement) complies with the design approved in the development application process and at construction certificate.

The rock placements between the concrete abutments under the bridge and the rock armouring were constructed in accordance with Council's approved design in order to provide scour protection for the foundations of the bridge.

In regards to concerns about the increased breeding grounds for mosquitoes in this area it is confirmed that Council is continuing to work with the NSW Government on the issue of Ross River Virus and undertakes a proactive mosquito monitoring program in the area in partnership with NSW Health.

In summary, the Flood Impact Assessment Rev4 dated 5 December 2019 prepared by Cardno (NSW/ACT) Pty Ltd has demonstrated that all residential allotments are located above the Flood Planning Area (including climate change provisions) and Probable Maximum Flood area and are consistent with the requirements of the Warriewood Valley Water Management Specification, 2001 and Clause 6.1 of the Pittwater 21 Development Control Plan. Flood free evacuation in a Probable Maximum Flood event is not possible from the subject residential allotments. Restrictions are included on the title to reflect that the future occupants must shelter-in-place during extreme flood events. Given that the flooding issues have been resolved with the submission of additional information it is considered that this issue has been resolved.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p><b>General Comments</b></p> <p>Class three and four acid sulphate soils beneath a proposed 24 Lot community title subdivision. Management Plan by Coffey from 29 October 2018 is appropriate and must be adhered to.</p>

Internal Referral Body	Comments
	<p>Environmental Health recommend an approval condition based on the above mentioned report.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to a condition</p>
Environmental Health (Contaminated Lands)	<p><b>General Comments</b></p> <p>A 24 Lot community subdivision in Warriewood with a history of contaminated land. Environmental Health reviewed the reports associated with this and found that the management plans and remediation efforts are satisfactory - no further remediation is required. In short, the levels of metals was low, immobility of benzo (a)pyrene as coal ash, asbestos removed, and noting that the ground level will be modified once offsite soil has been added to build above flood level.</p> <p>We therefore recommend approval without the need for conditions.</p> <p><b>Recommendation</b></p> <p>APPROVAL - without conditions</p>
Landscape Officer	<p>The development application is for the subdivision of land into 24 community title lots comprising 22 residential lots and 2 residue lots at 2 Macpherson Street Warriewood.</p> <p>Pittwater LEP 2014, Pittwater 21 DCP 2014, and Warriewood Valley Landscape Masterplan &amp; Design Guidelines (Public Domain) are the relevant landscape guidance documents. The landscape component of the application consists of public domain works fronting the subdivision lots, between the internal roads and the front boundaries of the Lots 2 to 23, and excludes the public domain works between Lots 2, 3, 22, 23 and Macpherson Street, which are approved under development consent N0398/17.</p> <p>The landscape works are illustrated on drawing numbers L000 Landscape Cover Page issue B; L001 Landscape Plant Schedule; L201 Landscape Plan issue A; L202 Landscape Plan issue B; L900 Landscape Details issue A; and L901 Landscape Maintenance Specification, all prepared by Meriton.</p> <p>The landscape works to the internal road verges is subject to the requirements of S-4 Access Street of Warriewood Valley Release Area Masterplan and Design Guidelines. S-4 Access Street nominates street tree planting to one side of the road and to the other side street lights, path and turf is required as a minimum.</p>

Internal Referral Body	Comments
	<p>Development consent N0398/17 includes street tree planting to one side of the road.</p> <p>This application proposes street lights, path, turf and street tree planting to the opposite side of the road. The street tree planting is contained within a 800mm wide garden bed from edge of path to the front boundary. It is noted that under Warriewood Valley Release Area Masterplan and Design Guidelines, no front fences or walling is permitted forward of the building line, hence the opportunity for tree growth under this circumstance is not restricted, and the available ground surface soil volume is therefore extended into the Lots.</p> <p>The landscape component of the application is acceptable, subject to conditions of consent that the garden width area is not obstructed by utility services or the like that would not permit tree pit excavations.</p>
NECC (Bushland and Biodiversity)	<p><b>Revised Comments</b></p> <p>The current application seeks consent for a 24 Lot Community Title Subdivision to accommodate future residential development, and will not result in additional biodiversity impacts above that previously assessed and consented to as part of the construction of a road and earthworks (DAN0398/17). I note the response from Karimbla Constructions dated 5 February 2020. The letter addresses the majority of concerns raised within the original biodiversity referral comments.</p> <p>I have also reviewed the consent conditions in relation to DAN0398/17, including the approved VMP (Conacher Consulting, dated April 2019) and Bulk Earthworks Plan DAC1015, issue F, dated 28 March 2019.</p> <p>In particular, I note Condition B7, which states "The recommendations of the approved Vegetation Management Plan, as referenced in condition A1 of this consent, are to be implemented prior, during and post construction, and adhered to until the land is dedicated to Council . Details demonstrating pre-construction compliance are to be certified by the project ecologist and submitted to the Certifying Authority prior to the issue of the Construction Certificate."</p> <p>To ensure consistency with consent N0398/17, and ongoing continuity with the protection, restoration and ongoing maintenance and monitoring of the vegetation management actions to be implemented within the riparian corridor, several conditions have been adapted for the proposed biodiversity consent conditions for the subdivision development.</p> <p><b>Original Comments</b></p> <p>Council's Natural Environment - Biodiversity section cannot complete this assessment until further information is provided.</p>

Internal Referral Body	Comments																		
	<p>This application was assessed against Pittwater LEP Clause 7.6 Biodiversity and Pittwater DCP 4.15. The site is also mapped within the Coastal Management SEPP as Coastal Wetlands and Coastal Wetlands Proximity Area. There is a small portion of vegetation within the northwestern corner that is mapped as having "Biodiversity Value" within the Biodiversity Values Map prescribed by the NSW Biodiversity Conservation Act 2016.</p> <p>The proposal is for a 24-lot Community title subdivision including bush regeneration and landscaping works. The site has a court-approved DA (N0398/17) which includes civil works on the site (access road and stormwater infrastructure WSUDs).</p> <p>The submitted <b>Threatened Species Assessment Report</b> (Conacher Consulting August 2019) assesses the impacts of the proposal on threatened entities. Figures 1.1 and 2.1 show an area in pink titled "Vegetation Removal Area" which includes areas mapped as "Native Vegetation". These figures are significantly different from Figure 2.1 within the Conacher Consulting July 2017 version of the report. This earlier version is consistent with the Riparian Corridor Vegetation Management Plan. Further clarification for changes in these figures is required. Ideally, these figures will be updated to be consistent with the Figure 2.1 within the Flora and Fauna Assessment Report (Conacher Consulting July 2017). The area of Swamp Oak Floodplain Forest EEC to be impacted has changed between the July 2017 and August 2019 impact assessment reports with no justification, although the subdivision works are enclosed by approved civil works. A comparison table below (Table 1) includes area calculations provided in both Assessment of Significance for SOFF EEC. This report satisfies impact assessment requirements subject to justification of these figures.</p> <p><i>Table 1. SOFF EEC impact calculations</i></p> <table><tr><th>Report</th><th>Total SOFF EEC</th><th>Removal Area</th><th>Modification Area (APZ)</th><th>Total Disturbance Area</th><th>SOFF EEC to be retained</th></tr><tr><td>July 2017</td><td>0.4 ha</td><td>0.15 ha</td><td>0.11 ha</td><td>Not reported</td><td>0.14 ha</td></tr><tr><td>August 2019</td><td>0.21 ha</td><td>0.12 ha</td><td>0.05 ha</td><td>0.17 ha</td><td>0.04 ha</td></tr></table> <p>The submitted <b>Riparian Corridor Vegetation Management Plan</b> (Conacher Consulting August 2019) provides management actions for the 25m "Outer Riparian Corridor". This report is to be updated to include:</p>	Report	Total SOFF EEC	Removal Area	Modification Area (APZ)	Total Disturbance Area	SOFF EEC to be retained	July 2017	0.4 ha	0.15 ha	0.11 ha	Not reported	0.14 ha	August 2019	0.21 ha	0.12 ha	0.05 ha	0.17 ha	0.04 ha
Report	Total SOFF EEC	Removal Area	Modification Area (APZ)	Total Disturbance Area	SOFF EEC to be retained														
July 2017	0.4 ha	0.15 ha	0.11 ha	Not reported	0.14 ha														
August 2019	0.21 ha	0.12 ha	0.05 ha	0.17 ha	0.04 ha														



Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• Bush regeneration works for a minimum of 5 years post-construction</li> <li>• The works program must be amended to include Key Performance Indicators for each management action / task. For example: By the end of the second year of the project a ratio of weed density/endemic native plant density not exceeding 5% weed density and not less than 95% native plant cover must be achieved.</li> <li>• Addition of a table titled "Schedule of Management Costs" which provides the costs of all management actions, including quantity of plants (itemised by stratum) and bush regeneration staffing costs.</li> <li>• A table of suitable species for replanting is to be included which is consistent with the ecological communities found onsite and surrounding land, (including the EECs). This is included in the previous report.</li> </ul> <p>The submitted <b>Landscape Plan</b> (Meriton, 21/09/2018) references a "Landscape Early Works Package" within the area subject to restoration and rehabilitation in accordance with the Riparian Corridor Vegetation Management Plan (Conacher Consulting August 2019). This plan is to be updated to show and label the Riparian Zone Offset Area (proposed lot 24). The "Landscape Early works Package" is to be submitted which shows proposed landscaping works within proposed Lot 1, which act to provide a buffer to riparian vegetation.</p> <p><i>Required information:</i> Updated plans / reports which clarify impacts and management tasks as detailed above.</p>
NECC (Development Engineering)	<p><b>Development engineering comments 1/7/20</b></p> <p>The On Site Stormwater Detention plans are satisfactory. The plans detail the provision of pre-formed tanks below the ground on each of the lots. Accordingly a condition has been drafted to ensure all future housing development complies with the OSD/stormwater drainage concept plan.</p> <p>No objections to the subdivision development application subject to conditions.</p> <p><b>Development Engineering comments 12/3/20</b></p> <p>The application is not supported because the applicant as advised in October 2019 has not addressed the following stormwater/on site detention requirement for the site:</p>



Internal Referral Body	Comments
	<p>The proposed subdivision and housing development has not provided On site stormwater detention as required to meet the objectives of Section 4.6.3 and Appendix A of the "Warriewood Valley Urban Release Water Management Specification " . A concept stormwater drainage plan and hydraulic modelling/calculations are required detailing the provision of On Site Stormwater Detention and are to meet the objectives of the "Warriewood Valley Urban Release Water Management Specification " .</p> <p><b>Development Engineering comments October 2019</b></p> <p>The proposed subdivision and housing development has not provided On site stormwater detention as required to meet the objectives of Section 4.6.3 and Appendix A of the "Warriewood Valley Urban Release Water Management Specification " . A concept stormwater drainage plan and hydraulic modelling/calculations are required detailing the provision of On Site Stormwater Detention and are to meet the objectives of the "Warriewood Valley Urban Release Water Management Specification " .</p>
NECC (Riparian Lands and Creeks)	The riparian area of Narrabeen Creek has been addressed under the court-approved Civil Works application (N0398/17). Erosion and sediment controls are dealt with under the water management referral.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The Flood Impact Assessment Rev4 dated 5 December 2019 prepared by Cardno (NSW/ACT) Pty Ltd has demonstrated that all residential allotments are located above the Flood Planning Area (including climate change provisions) and Probable Maximum Flood area and are consistent with the requirements of the Warriewood Valley Water Management Specification, 2001 and Clause 6.1 of the Pittwater 21 Development Control Plan. Flood free evacuation in a Probable Maximum Flood event is not possible from the subject residential allotments. Restrictions are included on the title to reflect that the future occupants must shelter-in-place during extreme flood events.
NECC (Water Management)	<p>Water management for the common land has been addressed in the Civil Works application (N0398/17).</p> <p>For the works associated with subdivision of the individual lots in this application, sediment and erosion controls must be installed prior to any disturbance of soil on the site and maintained until all work is complete and groundcover re-established or ground stabilised.</p>
Strategic and Place Planning (Urban Design)	<p><b>Urban Design Comments 17 Feb 2020:</b></p> <p>Amended drawings dated 5 Feb 2020 have envelope control dimensions and information indicated.</p>

Internal Referral Body	Comments
	<p><b>Urban Design Comments made previously:</b></p> <p>The proponent has submitted an indicative Building Envelope Plan (SEE - Annexure 3) indicating setbacks for the ground floor building footprint. However the first floor building footprints have no dimension for the side setbacks. Building height and envelope controls are also not indicated.</p> <p>The Pittwater LEP Height of Buildings - Maximum 8.5 m should also be indicated on the drawing. The built form supported generally will be a two-storey detached house with a roof form.</p>
Strategic and Place Planning (S94 Warriewood Valley)	<p>The subject property is identified as Buffer 1m on the PLEP Urban Release Area Map. The property fronts Macpherson Street to the south. The northern and eastern boundaries are defined by the centreline of Narrabeen Creek. The property is currently vacant but once contained a nursery which has since been demolished.</p> <p>The application proposes Community Title subdivision and associated civil works to create:</p> <ul style="list-style-type: none"> <li>• an allotment containing the ring road (approved under the earlier earthworks DA N0398/17) and water management infrastructure, labelled Lot 1</li> <li>• 22 residential allotments, labelled Lots 2-23 inclusive</li> <li>• an allotment to contain the inner creekline corridor, labelled Lot 24.</li> </ul> <p>The SEE contains a development contribution calculation. Council does not support this calculation for a number of reasons. The Applicant's calculation is based on 21 allotments. The contribution must be calculated based on the proposal to create 22 residential allotment on a vacant site that has never accommodated a dwelling.</p> <p>The Warriewood Valley Development Contributions Plan Amendment 16 Revision 3 2018 (the Contributions Plan) identifies that the inner 25m creekline corridor of the property is to be dedicated to Council. Table 4 of the Contributions Plan identifies that the area of inner creek corridor on the property is approximately 6,751m<sup>2</sup>.</p> <p>The submitted Survey prepared by JBW Surveyors, dated 25 September 2018, identifies the total site area is 2.13 hectares. The submitted Plan of Subdivision, prepared by B&amp;P Surveys, dated 20 June 2017, identifies that Lot 24 containing the inner creek corridor is 8,764m<sup>2</sup> in size. A note on the Plan of Subdivision identifies that this calculation is based on DP5464.</p> <p>DP5464 was surveyed in 1906. This survey identifies the site as 2.32 hectares based on the rear property boundary being the creek centreline at that point in time. The Contributions Plan advises:</p> <p><i>Noting that the position of the creek centreline has meandered over the years, to avoid confusion, the area of</i></p>

Internal Referral Body	Comments
	<p><i>creekline required to be dedicated to Council is to be measured as 25m from the current rear property boundary.</i></p> <p>The area of Lot 24 as shown on the submitted Plan of Subdivision is not supported. The Plan of subdivision must be amended to identify the 25m inner creekline corridor measured from the current centreline of the creek based on the submitted survey prepared by JBW Surveyors, dated 25 September 2018. Based on the recent survey the inner creekline corridor area would total approximately 6,792m<sup>2</sup>.</p> <p>The submitted Statement of Environmental Effects (SEE) purports that the creek reconstruction and rehabilitation works identified for Buffer 1m in Appendix 2 of the Contributions Plan has been approved under a separate application on the site for earthworks, being DA N0398/17. The SEE requests a contributions credit for the value of these works which the Applicant has incorrectly calculated.</p> <p>DA N0398/17 was approved by the Land &amp; Environment Court on 31 May 2019. The application sought approval for earthworks and the construction of a ring road and was not related to residential development. This application involved significant cut in the creek corridor to create a 1%AEP flood-free building pad in the centre of the site.</p> <p>The Team Leader, Floodplain Planning &amp; Response has advised that the information submitted with the Construction Certificate for N0398/17 has not demonstrated that the creek reconstruction will accommodate the 1%AEP. Additionally, the Contributions Plan identifies that a works-in-kind agreement is the necessary mechanism for an applicant seeking to satisfy an obligation to pay a monetary contribution by providing some other kind of material public benefit. The Contribution Plan identifies that Council is under no obligation to accept a works-in-kind agreement and in considering any such offer, will assess the benefits to Council and the community.</p> <p>Notwithstanding, the creek works in N0398/17 were proposed by the applicant to provide a flood free building pad in the centre of the site. The Contributions Plan identifies that these works are not contemplated to be commenced by Council until 2020/21. However, the works schedule is subject to changes to actual development timeframes, community needs and economic conditions. If the Applicant requires that these works are completed ahead of Council's anticipated timeframe they will need to undertake them at their own cost.</p> <p><b>Additional Comments 18 March 2020</b></p> <p>The revised plan of subdivision identifies an acceptable area of creekline corridor to be dedicated to Council. A contribution calculation has been prepared in accordance with the Contributions Plan and financial model. The proposal is acceptable subject to</p>

Internal Referral Body	Comments
	conditions.
Traffic Engineer	<p><u>Comments on revised plans:</u> This comment has to be read in conjunction with the previous comments. The amended plans have provided a wider accessway for the lots No.1, 2, 21 and 22 and has addressed the concern regarding the maneuvers in and out of the garages within the accessway.</p> <p><u>Original Traffic Comments :</u> The proposal is for subdivision of the site into 24 community title lots (22 residential and 2 residue) as follows: The vehicular trips to the site are proposed to be via two connections, an in and out access creating a one-way road loop on Macpherson Street. Macpherson Street is a local collector road which falls under Council's ownership. The proposed circulating road is intended to be a private road. As this road will only be servicing the lots within. Traffic raise no objection to the road remaining in private ownership. Appropriate means to ensure this is documented appropriately will need to be managed by planners. The Traffic team will require that applicant submit a signage plan that will need to properly notify of the 'one-way' configuration, and additionally the applicant will need to ensure that the entry treatments are undertaken in such a way as to differentiate between private and public road reserves. The garages of Lot No.3 to 20 have access to the one way access way with adequate maneuvering area, however the garages of Lots No.1, 2, 21 and 22 will have access through a driveway off the one way circulating access way. The proposed driveway appears to be narrow not providing adequate maneuver area for vehicles to turn in and out of the garages. The driveway has to be adequately wide allowing vehicles to make the turns in and out of the garages.</p> <p>In view of the above, no objection is raised subject to conditions.</p>
Waste Officer	<p>Waste Management Assessment - Additional Information/Clarification supplied by applicant - 29/6/2020. Recommendation Approval subject to conditions.</p> <p>Information has been supplied by the applicant that indicates that the road can be traversed by a standard three axle heavy rigid waste collection vehicle.</p> <p>A special condition of consent will be required for "no standing zone" on the road pavement at the two 90 degree bends in the road.</p> <p>Waste Management Assessment Recommendation Refusal</p>



Internal Referral Body	Comments
	<p>The Traffic Impact Assessment Report (Road Design clause 6.1) states:  <i>The largest expected vehicle to use the road layout is the standard Medium Rigid Vehicle (MRV) of 8.8m length. This vehicle represents a typical garbage vehicle and emergency vehicles such as fire trucks.</i></p> <p>Waste collection services through out Warriewood Valley are delivered via the use of heavy rigid vehicles (HRV) up to 12 metres in length and 23 tonnes in weight. This is the industry standard for residential collections.</p> <p>The applicant is required to provide a suitable road design that allows for the safe operation of the HR vehicles described above.</p> <p>Please provide evidence that the proposed road design can accommodate Council's requirements (swept path and weight) or amended road design to meet the requirements.</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.
Integrated Development – NSW Rural Fire Service (Subdivisions and Special Fire Protection Purposes under Section 100B of Rural Fires Act)	<p>The New South Wales Rural Fire Service (NSW RFS) issued the General Terms of Approval (GTA), under Division 4.8 of the 'Environmental Planning and Assessment Act 1979', and a Bush Fire Safety Authority, under Section 100B of the 'Rural Fires Act 1997', are now issued subject to the following conditions:</p> <p>Asset Protection Zones - measures to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building.</p> <p>Water and Utilities - measures to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.</p> <p>Landscaping - to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.</p> <p>The GTA's and conditions are included in the recommendation.</p>
Nominated Integrated Development – Department of Industry – Natural Resources Access Regulator (Controlled Activity Approval)	The Department of Natural Resource Access Regulator (NRAR) issued the General Terms of Approval (GTA) on 16 October 2019 which are included in the recommendation.



External Referral Body	Comments
for works within 40m of watercourse)	

#### **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. The potential for contamination within the site has previously been investigated under Development Application N0398/17 and a Validation Report has been submitted with the subject application.

Council's Environmental Health Unit have reviewed the reports associated with application and found that the management plans and remediation efforts are satisfactory - no further remediation is required. In short, the levels of metals was low, immobility of benzo(a)pyrene as coal ash, asbestos removed, and noting that the ground level will be modified once offsite soil has been added to build above flood level.

In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

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

###### Ausgrid

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

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

Comment:

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

**SEPP (Coastal Management) 2018**

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

**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 Land and Environment Court approval allowed for earthworks / civil works including the construction of a road. The subject application for sub-division to accommodate future residential development will not result in any additional biodiversity impacts including impacts to the coastal wetlands subject to conditions.

**11 Development on land in proximity to coastal wetlands or littoral rainforest**

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
  - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

Refer above.

**13 Development on land within the coastal environment area**

- (1) *Development consent must not be granted to development on land that is within the coastal*

*environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*

- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*
- (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:

Subject to conditions the proposed sub-division can be managed to ensure that the integrity of the biophysical, hydrological and ecological environment can be protected. The proposal will not impact on foreshore access or aboriginal heritage.

**14 Development on land within the coastal use area**

- (1)
- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
    - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
    - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
    - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
    - (iv) Aboriginal cultural heritage, practices and places,
    - (v) cultural and built environment heritage, and
  - (b) is satisfied that:
    - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
    - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
    - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

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

Comment:

As above.

**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 development will not increase the risk of coastal hazards.

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

**Pittwater Local Environmental Plan 2014**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size The site is zoned within the Warriewood Urban Valley Release Area and is identified as Buffer 1m:	Clause 6.1(3) of PLEP allows for a max of 22 dwellings are permitted	22 residential lots which vary in size from 220sqm to 388sqm. The remaining 2 lots are for the private access loop road and the inner creek buffer corridor lot.	N/A	Yes
Height of Buildings:	8.5m	Indicative envelopes have been submitted which show 7.8m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
4.1AA Minimum subdivision lot size for community title schemes	Yes
6.1 Warriewood Valley Release Area	Yes

Clause	Compliance with Requirements
7.1 Acid sulfate soils	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

#### Detailed Assessment

##### **6.1 Warriewood Valley Release Area**

The subject site is located within The Warriewood Valley Release Area and is identified as Buffer 1m.

Clause 6.1 (3) limits the development of the site to a maximum of 22 dwellings.

#### Comment:

The Development Application proposes the 24 Lot Community Title Subdivision to accommodate future residential development; 22 lots will be for future residential dwellings and the remaining 2 lots will be for the private access loop road and creek buffer lot and the 25m inner creek line corridor which will be dedicated to Council.

Clause 4 requires the consent authority to be satisfied that the the proposed development will not have any significant adverse impact on any of the following:

- (a) opportunities for rehabilitation of aquatic and riparian vegetation, habitats and ecosystems within creek line corridors,
- (b) the water quality and flows within creek line corridors,
- (c) the stability of the bed, shore, and banks of any watercourse within creek line corridors.

#### Comment

The subject site is characterized by a creek line corridor located at the rear of the subject site known as 'Narrabeen Creek'. Development Application (N0398/17) for the civil works including cut and fill to create a suitable building platform for future development, private road, drainage works and environmental management works was approved by the Land and Environmental Court on 31 May 2019.

DAN0398/17, including the approved Vegetation Management Plan (VMP) (Conacher Consulting, dated April 2019) and Bulk Earthworks Plan DAC1015, issue F, dated 28 March 2019.

Condition B7, requires:

*"The recommendations of the approved Vegetation Management Plan, as referenced in condition A1 of this consent, are to be implemented prior, during and post construction, and adhered to until the land is dedicated to Council . Details demonstrating pre-construction compliance are to be certified by the project ecologist and submitted to the Certifying Authority prior to the issue of the Construction Certificate."*

To ensure consistency with consent N0398/17, and ongoing continuity with the protection, restoration and ongoing maintenance and monitoring of the vegetation management actions to be implemented within the riparian corridor, several conditions have been adapted for the proposed biodiversity consent conditions for the subdivision development. Subject to conditions the proposal complies with the provisions of Clause 6.1 of the PLEP 2014.



### 7.1 Acid sulfate soils

The site is mapped as being part Class 2 and part Class 3 acid sulphate soils. An Acid Sulphate management plan prepared by Coffey dated 29 October 2018 has been submitted and has been assessed by Environmental Health as acceptable. A condition requires compliance with the Coffey Plan.

### 7.3 Flood planning

Clause 7.4(3) states:

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

- (a) is compatible with the flood hazard of the land, and*
- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*
- (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

#### Comment

Council Flood Engineer has confirmed that the Flood Impact Assessment Rev 4, dated 5 December 2019, prepared by Cardno (NSW/ACT) Pty Ltd has demonstrated that all residential allotments are located above the Flood Planning Area (including climate change provisions) and Probable Maximum Flood area and are consistent with the requirements of the Warriewood Valley Water Management Specification, 2001 and Clause 6.1 of the Pittwater 21 Development Control Plan. Flood free evacuation in a Probable Maximum Flood event is not possible from the subject residential allotments. Restrictions are included on the title to reflect that the future occupants must shelter-in-place during extreme flood events. As such, the proposal complies with the provisions of clause 7.3 of the PLEP 2014.

### 7.6 Biodiversity protection

Sub-Clause 7.6(3) states:

*Before determining a development application for development on land to which this clause applies, the consent authority must consider whether the development is likely to have:*

- (a) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
- (b) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (c) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (d) any adverse impact on the habitat elements providing connectivity on the land, and*
- (e) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

#### Comment

Clause 7.6 Biodiversity and clause 4.15 of the Pittwater DCP apply. In addition, the site is mapped within the Coastal Management SEPP as Coastal Wetlands and Coastal Wetlands Proximity Area. There is a small portion of vegetation within the northwestern corner that is mapped as having "Biodiversity Value" within the Biodiversity Values Map prescribed by the NSW Biodiversity Conservation Act 2016.

The Applicant has submitted additional to address biodiversity concerns. Council's Biodiversity Unit have confirmed that the proposal will not result in additional biodiversity impacts above that previously assessed and consented to as part of the construction of a road and earthworks (DAN0398/17).

To ensure consistency with consent N0398/17, and ongoing continuity with the protection, restoration and ongoing maintenance and monitoring of the vegetation management actions to be implemented within the riparian corridor, several conditions have been adapted for the proposed biodiversity consent conditions for the subdivision development. Subject to these conditions the proposal can be managed to ensure there is minimal impact on the ecological value and significance of the fauna and flora on the land and its biodiversity structure in compliance with sub-clause 7.6(3) of the PLEP 2014.

#### **7.10 Essential services**

Clause 7.20 requires that:

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

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

#### Comment

The Civil works have been approved by the Land and Environment Court under DA N0398/17 which provides for suitable access, drainage works and environmental management. The subject application will facilitate footpaths and the location of services including light poles, water, sewer and gas.

#### **Pittwater 21 Development Control Plan**

##### Built Form Controls

Clause C6.8 Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	<p>-Machperson Street - 5m to articulation zone / 6.5m to garage and dwelling</p> <p>-All other dwellings 1.5m to articulation zone 4m to garage</p> <p>Corner lots 1 m to articulation zone</p>	<p>6.5m to dwelling</p> <p>lots 4- 11, 21- 14 = 4m to articulation zone</p> <p>4.5m to 6m to garage</p>	N/A	Yes

	and 2m to garage			
Rear building line	- Lots with a depth of 20m or less - 4m for ground floor and upper floor  - Lots with a depth greater or equal to 20m - 4m ground floor and 6m upper floor	Lots 4- 11, 21- 14 = 6m  Lots 2,3 22 and 23 = 6.5	N/A	Yes
Landscaped area	20sqm	20sqm	N/A	Yes

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B3.13 Flood Hazard - Flood Emergency Response planning	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C6.1 Integrated Water Cycle Management	Yes	Yes
C6.2 Natural Environment and Landscaping Principles	Yes	Yes
C6.4 The Road System and Pedestrian and Cyclist Network	Yes	Yes
C6.5 Utilities, Services and Infrastructure Provision	Yes	Yes
C6.7 Landscape Area (Sector, Buffer Area or Development Site)	Yes	Yes
C6.8 Residential Development Subdivision Principles	Yes	Yes
C6.9 Residential Land Subdivision Approval Requirements	Yes	Yes
D16.1 Character as viewed from a public place	Yes	Yes
D16.6 Front building lines	Yes	Yes
D16.7 Side and rear building lines	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D16.10 Private and Communal Open Space Areas	Yes	Yes

#### Detailed Assessment

### **B3.2 Bushfire Hazard**

The site is mapped as bush fire prone land buffer 100m and 30m. The application was referred to RFS and the condition recommended by RFS are included in the decision, see RFS referral within this report.

### **B3.6 Contaminated Land and Potentially Contaminated Land**

As discussed above, Environmental Health have reviewed the reports associated with the subject application and found that the management plans and remediation efforts are satisfactory - no further remediation is required.

### **B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)**

Sub-Clause B3.12 (3) Climate Change Assessment for Land Identified within the Warriewood Valley Land Release Area requires:

*For land identified within the Warriewood Valley Land Release Area involving development to which this control applies, a climate change assessment shall be incorporated in the Water Management Report as required by Clause C6.4 Flood - Warriewood Valley Residential Sectors, Buffer Areas or Development Sites, Clause C6.5 Flood - Warriewood Valley Employment Generating Sectors, Buffer Areas or Development Sites and in accordance with Council's Warriewood Valley Urban Land Release Water Management Specification (February 2001 or as amended). The climate change assessment shall include the impacts of climate change on the property over the life of the development and the adaptive measures to be incorporated in the design of the project. The following climate change scenarios shall be considered:*

*Scenario 1: Impacts of sea level rise only*

*Scenario 2: Impacts of sea level rise combined with increased rainfall volume.*

#### Comment:

The Flood Impact Assessment Report includes climate change parameters in the determination of flood levels and the sizing of creek infrastructure. As such, the report appropriately addressed climate change in accordance with clause B3.12 (3) and Council's Flooding Engineer has no objections subject to conditions.

### **B3.13 Flood Hazard - Flood Emergency Response planning**

Clause B3.13 requires:

*Areas of the Pittwater LGA potentially impacted by flash flooding or overland flow or lagoon flooding or a combination of flooding are to ensure development is undertaken in a way that is reflective of the*



flood risk.

*If safe evacuation can be demonstrated to Council's satisfaction through the submitted Flood risk Emergency Assessment, then the controls for shelter in place are not applicable.*

#### Comment

The Floor Impact Assessment includes Flood Emergency Management Plan (FEMP) which have been assessed by Council's Flood Engineer as acceptable. The Plan includes the following measures:

- Flood Awareness;
- Flood Warning;
- Flood Evacuation.

The report concludes that there is insufficient time to rely upon evacuation for the site requiring a Shelter-in-Place response. The finished floor levels of all 2 storey dwellings are to be built at or above PMF (4.90 mAHD), which will ensure dwellings are flood free. The isolation time is expected to be negligible and the development will not require the dwellings to be engineered to ensure structural stability. The FEMP report has been review by Council's Flood Engineer who offered no objections to the proposal subject to conditions. As such, the development complies with clause B313.

### **C6.1 Integrated Water Cycle Management**

Clause C6.1 requires

*The Water Management Report, submitted with the application, must demonstrate how the water cycle will be managed and integrated with the development. The Water Management Report is to be prepared by appropriately qualified professionals and certified by an experienced and qualified engineer specialising in hydraulics. It is to be in accordance with Council's Warriewood Valley Urban Land Release Water Management Specification (February 2001 as amended) and relevant legislation taking into account the Narrabeen Lagoon Flood Study (September 2013 as amended) and the Pittwater Overland Flow Flood Study (2013 as amended).*

*The Water Management Report must identify the minimum floor level requirements for development in accordance with the Flood Hazard and Flood Category applicable to the proposed land use specified in Flood Risk Management Policy.*

*The subdivision of land requires the building platforms for each additional allotment to be created at or above the Flood Planning Level (plus climate change). The Plan of Subdivision is to include the Flood Planning Level (plus climate change) for each new allotment created.*

*Creekline corridors in the Warriewood Valley Release Area are to be restored to a 'natural watercourse' that results in healthy ecosystems whilst maintaining their capacity for flood conveyance during high flows as stipulated in the Warriewood Valley Urban Land Release Water Management Specification (2001). The creekline corridors are intended to fulfil a multi-functional purpose, containing the pedestrian and cycle network.*

*The 25 metre Outer Creekline Corridor (commonly known as the 'private buffer strip') to be provided on each side of the Inner Creekline Corridor is to be retained in private ownership and is to perform the functions of part water quality control and a fauna/flora corridor (Lawson & Treloar, 1998). The private buffer strip is to be a multifunctional corridor, appear to be part of the public domain, and may contain:*



*the pedestrian path/cycleway sited above the 20% AEP flood level to reduce the incidence of flood damage to a manageable level and achieve a satisfactory safety level for regular use. The location of the pedestrian path/cycleway is variable to ensure connectivity with existing sections of the path and retention of vegetation. The alignment of pedestrian paths/cycleways and associated landscaping must provide adequate sightlines for cyclists;*  
*water quality control ponds;*  
*other water quality treatment measures; and/or*  
*roads and other impervious areas traditionally sited in the public domain, for up to 25% of the outer Creekline Corridor area subject to merit assessment.*

*Any part of residential lots, dwellings, garages, fences and other vertical built structures are not permitted within the 25 metre wide Outer Creekline Corridor.*

*A landscape plan for the Inner and Outer Creekline Corridors is to be prepared and submitted with the application. Extensive stands of *Casuarina glauca*, groves of *Eucalyptus robusta* with other native feature trees, an indigenous understorey and ground covers are to comprise a minimum of 75% of the total creekline corridor area. Native groundcovers should be used as an alternative to lawn.*

*The design of the stormwater management system (quantity and quality) is to be included in the integrated water cycle management scheme for the development.*

*All development stages are to meet or exceed the water quality acceptance criteria within the Warriewood Valley Urban Land Release Water Management Specification (2001) for site discharges. Validation of the acceptance criteria is required by water and sediment quality monitoring and reporting.*

*Sediment and pollution control facilities are to be designed, installed and maintained so that upon completion of construction the facilities will prevent, discourage and intercept accidental and deliberate discharge of harmful substances in Warriewood Valley waterways.*

#### **Groundwater**

*The Water Management Report must identify the depth of the groundwater table. If groundwater is to be managed as a result of excavation/basements/stormwater or flood mitigation measures on the proposed development, the groundwater management measures are to be detailed in the report.*

#### **Comment**

The Water Management Report complies with the clause and demonstrates how the water cycle will be managed with the development. The Report identifies the minimum floor level requirements having considered climate change.

The 25m inner creekline corridor, lot 24, will be dedicated to Council. The application will be subject to a condition requiring the payment of contributions. As part of the Multi-functional Creek Line Corridor Strategy work will include the rehabilitation and reconstruction of the creek line approved under N0398/17.

Landscape Plans have been submitted with the application which have been assessed by Council Landscape Officer as acceptable.

Subject to conditions, the design of the stormwater management system has been assessed as acceptable and the water quality, management assessment and monitoring meet the criteria within the relevant specifications.

## C6.2 Natural Environment and Landscaping Principles

Clause C6.2 requires planting adjoining creekline corridors, buffer strips and reserves, to be given to local species identified as food sources for native fauna.

### Comment:

Conditions are included in the recommendation requiring compliance with the species lists contained in the Warriewood Valley Landscape Masterplan and Design Guidelines (Public Domain).

## C6.4 The Road System and Pedestrian and Cyclist Network

Clause C6.4 requires:

*The design and construction of the road and pedestrian network shall, regardless of the form of subdivision and future ownership of the road(s), provide full pedestrian and vehicular access and on-street parking and function as a public road network.*

### Comment

The subdivision design allows for future residential lots to be access from within the site via the private internal loop road which complies with the requirements of the control the and includes the provision of a pedestrian pathway.

The proposal has been amended to increase the width of the laneway / secondary access to lots 2,3 22 and 23 in compliance with the controls and to the satisfaction of Council's Transport Engineer.

## C6.5 Utilities, Services and Infrastructure Provision

The existing infrastructure and utility services that are available to the site were considered and approved under DA N0398/17. Services including sewerage, water, power, telecommunications and gas will be made available to each lot. The Applicant will be required to lodge a notification of compliance to Sydney Water and a Section 73 Certificate.

## C6.7 Landscape Area (Sector, Buffer Area or Development Site)

Clause C6.7 requires:

*Where a sector, buffer area or development site has a frontage to a creek, a minimum 35% of the site area is to be landscaped area.*

### Comment

The site has a frontage to a creek, approximately 10,891sqm or 51% of the site area is landscaped in compliance with the control.

## C6.8 Residential Development Subdivision Principles

### *Subdivision Principles*

- 1. The design of the subdivision should be generally consistent with the following key principles:*
  - Sectors, buffer areas and development sites with an effective lot width less than 60 metres should ideally pursue opportunities for site amalgamation to facilitate orderly planning and development*

*outcomes and the efficient use of land.*

- *The subdivision layout including the lot size must respond to the physical characteristics particular to each sector, such as slope and existing significant vegetation, and site constraints including bushfire risk.*
- *The subdivision layout is to incorporate adequate pedestrian, cycle and vehicle links to the road network, public transport nodes, pedestrian/cyclist network and public open space areas.*
- *Roads should adjoin creekline corridors and open space areas to facilitate surveillance, provide access to and prevent isolation and degradation of these spaces.*
- *Lots must have the appropriate area, dimensions and shape to accommodate the housing product proposed as well as canopy trees and other vegetation, an private outdoor open space, rainwater tanks, vehicular access and onsite parking.*
- *Lots are to be orientated to optimise solar access for dwellings and areas of private open space. Widest or deepest lots are to be oriented with north to the front, with the narrowest orientated with north to the rear.*
- *Larger lots should be located on corners.*

*Not more than 40% of the lots created through a subdivision proposal may be of the same lot type. Every development application for subdivision must be accompanied by a Lot Mix table showing the lot types, number and percentage of the overall total.*

#### *Titling arrangements*

- 1. The design of the subdivision must consider the future ownership, access and management of the internal road network, water management facilities and any other infrastructure.*
- 2. Details of proposed requirements for services and infrastructure, including garbage collection and emergency services, access and maintenance necessary for the subdivision to function are to accompany the development application.*

#### Comment

The proposed lots in the subdivision will maintain a 10-20 metre managed asset protection zone (APZ). The APZ will generally be cleared of existing vegetation. The landscaping works include back of kerb to property boundary and streetscape works and a pedestrian pathway which have been assessed by Council's Landscape Unit as acceptable subject to conditions.

A one-way road system which will comprise a 7.5-metre-wide access road (private residential street to be retained within community title ownership) with pavement on either side providing access to the development from Macpherson Street has been approved under DA N0398/17. Council's Transport Unit support the proposal subject to conditions.

The lot sizes and configurations will allow for a range of two storey dwelling types to be built; 18 of the 22 proposed residential lots would have direct access to the public road network; 4 of the proposed residential lots will be benefited by a 4.0m wide access and service easement (secondary road / laneway).

The proposed residential lots range in size from 220 sqm to 388 sqm, all have lot width equal to or greater than 9m and the larger lots are located on the corners in compliance with the control. Seventy two (72) % of lots are of the same / similar lot type which is contrary to the maximum 40% same lot type. An exception to this part of the clause has been assessed as acceptable given that the proposal demonstrates compliance with all other aspects of the envelope controls. In addition, the proposal includes articulation zones which provide an opportunity for the frontages of the future houses to provide expression, variety and interest hence meeting the intent of the sub-clause.



Emergency services and garbage trucks using the private loop road were considered and approved as part of the early works DA. Council's Waste Services Unit have confirmed that the proposal is acceptable subject to conditions.

#### **D16.1 Character as viewed from a public place**

Clause D16.1 applicable controls:

As the DA is for sub-division with only indicative envelopes of the dwellings provide a full assessment of clause D16.6 will be considered under the detailed application for the dwellings. Notwithstanding this the following sub-sections of Clause D16.6 are relevant to the subject application.

- *The bulk and scale of buildings to be minimised;*
- *Dwelling to address the road.*
- *Landscaping is to be integrated with the building design to screen and soften the visual impact of the built form.*
- *Garage door widths are to be in accordance with the following:*

*Lot dimension Garage type Width of garage door presented to the street*  
*Front loaded lots Area  $\geq 225m^2$  or 9m to 12.5m wide Single with a second hardstand area in front of the garage.*  
 *$\geq 12.5m$  wide Single or tandem.  $\leq 3m$  or not exceeding 40% of the lot width, whichever is less.*  
 *$\geq 12.5m$  wide Double  $\leq 6m$  or not exceeding 40% of the lot width, whichever is less.*  
*Rear loaded lots  $\geq 4.5m$  or with an area  $< 225m^2$  Single 3. Double 6m.*  
*Corner lots with garage on the secondary street frontage*  
*Any Single 40% of the lot length as presented to the secondary street up to 3m.*

*Double 40% of the lot length as presented to the secondary street up to 6m.*

#### Comment

All dwellings are orientated to the street which will ensure the development addresses the street and provide for casual surveillance. The indicative envelopes illustrates that the dwellings comply with the built form controls for the Warriewood Valley area therefore ensuring that the bulk and scale is appropriate. Conditions are included in the recommendation requiring landscape to be integrated into the site to help soften the visual impact of the built form.

Single garages (4.5m wide) are integrated into the dwelling with a hardstand area in front of the garages to lots 4- 11 and 21-14. The location of the garages on the corner lots have been assessed as acceptable as there is no secondary street to these lots. The location of the garages to lots 2,3,22 and 23 onto the rear lane (secondary street) is also acceptable.

In summary, the indicative design confirms that the proposal has the potential to achieve the objective of the control to ensure that the the scale and density of the development to enhance the existing streetscape and natural environment to provide a sense of address and a reduction of visual clutter.

#### **D16.7 Side and rear building lines**

D16.7 requires the following side and rear building lines:

*Side setbacks* for lots between 9m - 14m in width a 900mm side setback is required at ground floor and 1500mm for the upper floor.

*Rear setbacks* for lots with a depth of less than 20m a 4m setback is required at both the ground and upper floor level. Lots with a depth greater or equal to 20m a 4m rear setback is required at ground level and 6m on the upper floor.

#### Comment

Indicative building envelopes have been submitted which show compliance with the side setback requirements. The ground floor rear set backs measure 6m to lots 4-11 and lots 14 -21, 6.5m to lots 2, 3, 22, and 23 and 4m to lots 12 and 13. All upper floors have a 6m setback with the exception of lot 13 which less than 20m in depth and has a compliant 4m setback of the ground and upper floor.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **CONCLUSION**

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

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

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

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

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

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

#### *Flooding and stormwater detention.*

The assessment of flood risk at 2 Macpherson Street, Warriewood including the establishment of



design flood conditions, determination of the impact of the development on flooding and the management of flood risk to life, were the subject of a previous Development Application (N0398/17) which related to the civil works for the site and was approved by the Land and Environmental Court on 31 May 2019.

A revised flood report has been submitted which includes Flood Emergency Management Planning Measures. Council's Engineers are satisfied that this application complies with the necessary requirements of the Warriewood Valley Water Management Specification and Pittwater 21 Development Control Plan in relation to the development of flood prone land.

A revised layout includes details of the location of OSD. The indicative OSD locations have been assessed by Council's Engineers as acceptable subject to conditions.

*Drive way dimensions to lots 1, 2,21 and 22.*

The access road to the rear of lots 1, 2,21 and 22 has been increased in width to 5.6m to provide adequate manoeuvre area for vehicles to turn in and out of the garages. Council's Transport Unit have no objections to the revised layout subject to conditions.

*Insufficient information to assess building envelope.*

Additional drawings have been submitted which confirm that the building envelope comply with the built form controls of the Warriewood Valley Release Area. Council's Urban Designer has no objections to the proposal.

*Insufficient information to assess biodiversity impacts.*

Additional biodiversity information has been submitted which has been assessed by Council's Biodiversity Unit as acceptable subject to conditions.

*Insufficient information to assess landscape issues.*

Additional landscape information has been submitted which has been assessed by Council's Landscape Unit as acceptable subject to conditions.

*Insufficient information to assess waste collection issues relating to the road design.*

The original civil works approval includes the one way loop road. The Applicant's Transport Engineer, ARUP, has confirmed that a single unit truck/bus (12.5m) / Heavy Rigid Vehicle (HRV) can physically traverse the road layout as required and undertake the waste collection as required. Council's Waste Management Unit have confirmed that the proposal is acceptable subject to conditions.

*Incorrect calculation of 7.12 contributions.*

The revised plan of subdivision identifies an acceptable area of creekline corridor to be dedicated to Council. Council's Contribution Officer has no objections to the proposal subject to conditions.

In summary, it is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. As such, the proposal is recommended for approval subject to conditions.

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0887 for Subdivision of land into 24 community title lots comprising 22 residential lots and 2 residue lots. on land at Lot 25 DP 5464, 2 Macpherson Street, WARRIEWOOD, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. On Site Stormwater Detention ( future housing lots)

Future housing development on individual lots is to provide on-site stormwater detention in accordance with Northern Beaches Council's –Warriewood Valley Urban Release -Water Management specification and generally in accordance with the concept drainage plans prepared by A T and L , drawing number SKC 014, dated 21/6/20. Detailed drainage plans for future housing development are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NER) or RPENG (Civil).

The individual lot site storage and permissible site discharges are to be in accordance with the values specified on the concept drainage plan . Underground storage tanks are to be Lattice (LU5000) tanks or equivalent .

Reason: To ensure stormwater discharges are managed to prevent downstream impacts.

#### 2. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA000 Rev A Cover Sheet	5 February 2020	Meriton
DA001 Rev C Building Envelope	5 February 2020	Meriton
DA002 Rev C Driveway and garage locations	5 February 2020	Meriton
DA003 Rev C Private Open Space	5 February 2020	Meriton
DA004 Rev C Setbacks	5 February 2020	Meriton
DA005 Rev C Indicative Elevation	5 February 2020	Meriton

Engineering Plans		
Drawing No.	Dated	Prepared By
C002 Rev C General Notes	22 July 2019	At&I Civil Engineering and Project Management
C005 Rev E General Arrangement Plan	30 January 2020	At&I Civil Engineering and Project Management
C006 Rev E Typical Sections sheet 1 of 2	30 January	At&I Civil Engineering and

	2020	Project Management
C007 Rev E Typical Sections sheet 2 of 2	30 January 2020	At&I Civil Engineering and Project Management
C010 Rev E Site Works and Stormwater Plan sheet 1 of 2	30 January 2020	At&I Civil Engineering and Project Management
C011 Rev E Site Works and Stormwater Plan sheet 2 of 2	30 January 2020	At&I Civil Engineering and Project Management
C020 Rev D Site Works Details	30 January 2020	At&I Civil Engineering and Project Management
C030 Rev D Pavement Plan	30 January 2020	At&I Civil Engineering and Project Management
C050 Rev D MC01 Cross Section Sheet 1	27 November 2019	At&I Civil Engineering and Project Management
C051 Rev D MC01 Cross Section Sheet 2	27 November 2019	At&I Civil Engineering and Project Management
C052 Rev D MC01 Cross Section Sheet 3	27 November 2019	At&I Civil Engineering and Project Management
C053 Rev D MC01 Cross Section Sheet 4	27 November 2019	At&I Civil Engineering and Project Management
C054 Rev D MC01 Cross Section Sheet 5	27 November 2019	At&I Civil Engineering and Project Management
C055 Rev D MC01 Cross Section Sheet 6	27 November 2019	At&I Civil Engineering and Project Management
C056 Rev D MC01 Cross Section Sheet 7	27 November 2019	At&I Civil Engineering and Project Management
C057 Rev D MC01 Cross Section Sheet 8	27 November 2019	At&I Civil Engineering and Project Management
C058 Rev D MC01 Cross Section Sheet 9	27 November 2019	At&I Civil Engineering and Project Management
C070 Rev E Services and Utilities Coordination Plan	30 January 2020	At&I Civil Engineering and Project Management
C080 Rev E Sediment and Erosion Control Plan	30 January 2020	At&I Civil Engineering and Project Management
C081 Rev C Sediment and Erosion Control Details	22 July 2019	At&I Civil Engineering and Project Management
C081 Rev C Sediment and Erosion Control Calculations	22 July 2019	At&I Civil Engineering and Project Management
C090 Rev E Internal Stormwater Catchment Plan	30 January 2020	At&I Civil Engineering and Project Management
SKC014 Rev A OSD Layout Plan	21 June 2020	At&I Civil Engineering and Project Management

**Reports / Documentation – All recommendations and requirements contained within:**

Report No. / Page No. / Section No.	Dated	Prepared By
Flood Impact Assessment Report	5 December 2019	Cardno

Arboricultural Impact Assessment Report	20 November 2019	Jackson Nature Works
Traffic Report Rev C Ref 256447	14 July 2019	ARUP
Pre-Construction Traffic Supplementary letter	27 November 2019	ARUP
Threatened Species Assessment Report Ref 9094 V4	August 2019	Conacher Consulting
Riparian Corridor Vegetation Management Plan Ref 9094 V6	August 2019	Conacher Consulting
Bushfire Assessment Report Ref 9094	August 2019	Conacher Consulting
Water Quality Monitoring Plan Ref 11527 V4	12 July 2019	Eco Logical
Acid Sulfate Soil Management Plan Ref 754-SYDEN205656-R06b	29 October 2019	Coeffy
Validation Report Ref SYDEN205656-R05	19 July 2019	Coeffy

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>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
L000 Rev B Landscape Cover Page	30 January 2020	Meriton
L201 Rev B Landscape Plan	30 January 2020	Meriton
L202 Rev B Landscape Plan	30 January 2020	Meriton
L900 Rev A Landscape Details	12 August 2019	Meriton
L000 Rev A Landscape Cover Page	30 August 2019	Meriton
L001 Rev A Landscape Plant Schedule	30 August 2019	Meriton
L800 Rev A Landscape Typical Sections	30 August 2019	Meriton
L900 Rev A Landscape Details	30 August 2019	Meriton
L901 Rev A Landscape Maintenance Specification	30 August 2019	Meriton

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

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

### 3. Compliance with Other Department, Authority or Service Requirements

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

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>



Natural Resource Regulator	General Terms of Approval Reference IDAS1119101	16 October 2019
NSW Rural Fire Services	General Terms of Approval Reference D19/2999	26 September 2019

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's.

## FEES / CHARGES / CONTRIBUTIONS

### 4. Security Bond

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

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

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

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

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

### 5. Construction, Excavation and Associated Works Security Bond (Road works)

The applicant is to lodge a bond with Council of \$50000 as security against any damage to the Macpherson Street bridge structure and road pavement as a result of any subdivision on works as part of this consent.

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

Reason: Protection of Council's Infrastructure.

### 6. Warriewood Valley Contributions Plan - Creekline corridor

The following is to be made for the provision of local infrastructure and services pursuant to section 7.11 of the Environmental Planning and Assessment Act 1979 and the Warriewood Valley Development Contributions Plan (as amended):

- A monetary contribution of \$1,320,770.41 (subject to (a) below) is payable to Northern Beaches Council, and
- Dedication of 6,739sqm of creekline corridor land in accordance with b) below.



- a) Written evidence (receipt/s) from Council for the payment of the monetary contribution is to be provided to the Certifying Authority prior to issue of the construction certificate or subdivision certificate (whichever occurs first), or prior to the issue of the subdivision certificate where no construction certificate is required. If the cash contribution (total or in part) remains unpaid after the financial quarter in which the development consent is issued, the amount unpaid (whether it be the full monetary contribution amount or a part thereof) will increase on a quarterly basis in accordance with the applicable Consumer Price Index.
- b) The Applicant shall dedicate to Northern Beaches Council a total of 6,739sqm of land for the provision of multi-functional creekline corridor in lieu of a monetary contribution amount calculated in accordance with Table 4 of the Contributions Plan attributed to the creekline corridor to the value of \$213,386.83. The required dedication is to take place by way of subdivision.
- c) The Applicant may negotiate with Council for the direct provision of other facilities and services, and/or the dedication of land (other than land identified in (b) above) in lieu of the monetary contribution above (or any portion of that monetary contribution) or the deferral of payments through a Material Public Benefit Agreement between Council and the Applicant in accordance with the Warriewood Valley Development Contributions Plan (as amended). The agreement for Material Public Benefit Agreement between the Applicant and Council must be finalised, formally signed and in place prior to the payment of the monetary contribution.

The Warriewood Valley Development Contributions Plan (as amended) may be viewed at 725 Pittwater Rd, Dee Why or alternatively, on Council's website Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan that enables the provision of public infrastructure and services commensurate with the increased demand resulting from development in the Warriewood Valley Release Area.

## CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE SUBDIVISION WORKS CERTIFICATE

### 7. Subdivision Works Certificate

A Subdivision Works Certificate is to be approved by Certifying Authority for the provision of engineering works.

Engineering plans for the subdivision works within this development consent are to be submitted to the Certifying Authority for approval under Section 6.13 of the Environmental Planning and Assessment Act 1979.

Civil Engineering plans for the subdivision works are to be designed in accordance with the Council's specification for engineering works – AUS-SPEC #1. The plans shall be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or RPENG for civil engineering.

The Subdivision Works Certificate must be supported by engineering plans, calculations, specification or any certification relied upon. The plans and accompanying information submitted with the Subdivision Works Certificate must comply with the conditions included with this consent.

Before any works are carried out under the approved Subdivision Works Certificate a Principal Certifier appointed.

As per the Environmental Planning and Assessment Act 1979, only Council can issue a Subdivision Certificate which means only Council can be appointed as the Principal Certifier for subdivision works.

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

**8. Utilities Services**

Prior to the issue of the Subdivision Works Certificate, the Applicant is to obtain the following:

- a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
- b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

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

Reason: To ensure that services have been provided as required by this Consent.

**9. Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: Engineering Specifications.

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Subdivision Works Certificate.

Reason: Protection of Council's Infrastructure.

**10. Pre-Commencement Dilapidation Report**

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

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the any Subdivision Works Certificate and the commencement of any works including demolition.

Reason: Protection of Council's Infrastructure during construction.

**11. Geotechnical Report Recommendations have been correctly incorporated into designs and structural plans**

The Applicant is to submit Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) and is to be completed and submitted to the Accredited Certifier, prior to issue of the Subdivision Works Certificate.

Reason: To ensure geotechnical risk is managed appropriately.

**12. Traffic Management and Control**

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

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

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

#### 13. Soil and Water Management Plan

##### Soil and Water Management Plan (site area over 2500sqm)

A Soil and Water Management Plan (SWMP) shall be prepared by a suitably qualified Civil Engineer, who has membership to the Engineers Australia and National Engineers Register, and implemented onsite prior to commencement and/or any disturbance of soil. The SWMP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004).

The SWMP must include the following as a minimum:-

- a) Site boundaries and contours;
  - b) Vehicle access points, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- c) Location of all drains, pits, downpipes and waterways on and nearby the site;
- d) Planned stages of excavation, site disturbance and building;
- e) Stormwater management and discharge points;
- f) Integration with onsite detention/infiltration;
- g) Sediment control basin locations and volume (if proposed);
- h) Proposed erosion and sediment controls and their locations;
- i) Location of washdown and stockpile areas including covering materials and methods;
- j) Vegetation management including removal and revegetation;
  - k) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- l) Inspection and maintenance program;
- m) North point and scale.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the

issue of the Construction Certificate.

Reason: To promote the long-term sustainability of ecosystem functions..

**14. Amendments to the approved plans**

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

- ☐ The sewer service line shown on Drawing reference C070 Rev E (Service and Utilities Coordinate Plan) prepared by at&I dated 30 January 2020 shall not traverse private property.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the subdivision certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

**15. Implementation of Vegetation Management Plan**

Details demonstrating pre-construction compliance with the Vegetation Management Plan (Conacher April 2019) approved as part of the road construction and earthworks consent (DA N0398/17) are to be certified by the project ecologist and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

**Reason:** Biodiversity/Vegetation Conservation and Management.

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

**16. Implementation of Vegetation Management Plan**

The recommendations of the approved Vegetation Management Plan (Conacher April 2019) approved as part of the road construction and earthworks consent (DA N0398/17) are to be implemented prior, during and post construction, and adhered to until the land is dedicated to Council . Details demonstrating pre-construction compliance are to be certified by the project ecologist and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that the riparian zone is rehabilitated and protected in accordance with the consent.

**17. Protection Fencing**

Protection fencing measures (including sedimentation fences) are to be installed in accordance with all approved plans including those specified in Section 2.2.5 of the Vegetation Management Plan (Conacher April 2019) approved as part of the road construction and earthworks consent (DA N0398/17). Protection measures are to be maintained for the duration of the works. Protection fencing that is no longer required is to be removed once all works are completed. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to commencement of works.

**Reason:** Environmental Protection

**18. Engagement of ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure all vegetation management measures are carried out according to the conditions of consent. The



Project Ecologist will provide certification that conditions relating to the Vegetation Management Plan (Conacher April 2019) approved as part of the road construction and earthworks consent (DA N0398/17) are carried out. The Project Ecologist will ensure that all conditions relating to the vegetation management of the property are fully implemented. The Project Ecologist must have one of the following memberships and/or accreditation:

- Practising member of the NSW Ecological Consultants Association OR
- Biodiversity Assessment Method assessor accreditation under the NSW Biodiversity Conservation Act 2016

**Reason:** To ensure that the riparian zone is rehabilitated and protected in accordance with the consent.

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

**19. Acid Sulphate Soils management**

All excavation, construction and associated works must be conducted in accordance with the Acid Sulphate Soil Management Plan (ASSMP) titled Acid Sulphate Soil Management Plan written by Coffey on 29 October 2018. Specifically, the recommendations of section 4 of the ASSMP are to be followed.

**Reason:** To ensure management of any acid sulphate soils.

**20. Soil and Water Management Plan Implementation**

All Site drainage and sediment and erosion control works and measures as described in the Soil and Water Management Plan and any other pollution controls, as required by these conditions shall be implemented prior to commencement of any other works at the Site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

**Reason:** Protection of the receiving environment

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

**21. Landscape completion**

Landscaping is to be implemented in accordance with drawing numbers L000 Landscape Cover Page issue B; L001 Landscape Plant Schedule; L201 Landscape Plan issue A; L202 Landscape Plan issue B; L900 Landscape Details issue A; and L901 Landscape Maintenance Specification, all prepared by Meriton, inclusive of the following requirements:

- i) all utility services, if any on this side of the road verge, are to be installed under the path and not within the garden area set aside for tree planting,
- ii) all street trees shall be pre-ordered to be delivered to site at the nominated pot size,
- iii) the tree planting of *Tristanopsis laurina* 'Luscious' is to be installed at 200 litre pot size as nominated on the plans, planted at least 500mm from the edge of the path. Any plant species or pot size substitution is not permitted unless approved by Council,
- iv) samples of the tree species shall be delivered to site for inspection and approval by Council,



v) each tree shall have a tree guard consisting of 4 x 75 x 75 x 2100 posts (at least 600mm into the ground), with 50 x 30 top and mid rail, removed at the end of the landscape maintenance period.

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

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

**22. Condition for prior to occupation certificate - Signage and Linemarking**

A plan demonstrating the proposed signage and line marking within Council's Public Domain shall be prepared by a suitably qualified person and submitted to and approved by the Local Traffic Committee prior to the issue of any Occupation Certificate. The plan shall also address necessary signage to identify the one-way configuration as well as entry and exit pavement treatments to differentiate between the private and public road reserves.

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

Reason: To ensure consistent parking amenity. (DACTRFPOC1)

Signage and Linemarking – Implementation.

The applicant is to install all signage and line marking, as per the plan approved by the Local Traffic Committee, at no cost to Council. These works are to be undertaken prior to the issue of any Occupation Certificate.

Reason: To ensure signage is installed for enforcement to commence upon occupation (DACTRFPOC2)

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

**23. Landscape maintenance**

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

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

**24. Control of Weeds**

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

**Reason:** Weed management.

**25. No Planting Environmental Weeds**

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

**Reason:** Weed management.

**26. Works to cease if item found**

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

**Reason:** To protect Aboriginal Heritage.

**27. Dead or Injured Wildlife**

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

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

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

**28. Neighbourhood Management Statement for Waste Services**

Where a development proposes the creation of a neighbourhood scheme, the Neighbourhood Management Statement shall include wording in relation to the provision of waste services in accordance with Council's standard requirements (available from Warringah Council).

**Reason:** To ensure ongoing access for servicing of waste facilities (DACWTF05)

**29. Parking Restrictions for Waste Services**

A "No Parking" restriction be placed on the road pavement (both sides of the road) from 6.00am to 6.00pm on waste collection day outside lots 11, 12 and 13.

**Reason:** To ensure unimpeded access for waste collection vehicles (DACHEFPOC1)

**30. Environmental Reports Certification**

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

- (a) Flood Impact Assessment Report, dated 5 December 2019, prepared by Cardno;
- (b) Arboricultural Impact Assessment Report, dated 20 November 2019, prepared by Jackson Nature Works;
- (c) Traffic Report Rev C Ref 256447, dated 14 July 2019, prepared by ARUP;
- (d) Pre-Construction Traffic Supplementary letter, dated 27 November, prepared by 2019 ARUP;
- (e) Threatened Species Assessment Report Ref 9094 V4, dated August 2019, prepared by Conacher Consulting;
- (f) Riparian Corridor Vegetation Management Plan Ref 9094 V6, dated August 2019 prepared by Conacher Consulting;

- (g) Bushfire Assessment Report Ref 9094, dated August 2019, prepared by Conacher Consulting;
- (h) Water Quality Monitoring Plan Ref 11527 V4, dated 12 July 2019 prepared by Eco Logical;
- (i) Acid Sulfate Soil Management Plan Ref 754-SYDEN205656-R06b, dated 29 October 2019, prepared by Coeffy, and
- (j) Validation Report Ref SYDEN205656-R05, dated 19 July 2019, prepared by Coeffy.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the sub-division certificate.

Reason: To ensure compliance with standards.

**31. Provision of Services for Subdivision**

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

**32. Services**

The Applicant shall ensure all utilities/services and street lighting is installed. The Applicant is to submit a Certification stating the above requirement has been complied with by the relevant authority(s) and/or authorised contractor.

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

Reason: To ensure services have been provided in accordance with the relevant authorities requirements.

**33. Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

**34. Certification of Utility Services**

The provision of all utilities/services and/or street lighting are to be certified by the relevant authority(s) and/or authorised contractor. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure services have been provided in accordance with the relevant authorities requirements

**35. Easement for Drainage**

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

**36. Easement for Services**

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

**37. Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

**38. Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

**39. Street naming**

The private street naming must comply with Council's list for the Warriewood Valley release area and can be found on Council's website.

Reason: To comply with Councils policies.

**40. Removal of Sediment and Erosion Controls**



Before demobilising from the site and once vegetation cover has been re-established or ground stabilised with options such as grass or soil stabilisation sprays across 70 percent of the site, the applicant is to remove all temporary sediment and erosion controls.

Any area of the site that requires ongoing stabilisation must have jute mesh or matting incorporated into any revegetated areas and future development lots must be stabilised with grass or soil stabilisation sprays. Mulch may be used on slopes subject to sheet flow with a gradient of no more than 1 metre in height for every 3 horizontal metres. Mulch must be laid to a depth of 50-100mm. If using mulch within two metres of the top of bank of a waterway, coir logs or similar must be placed at the downslope edge of the mulched area to prevent migration of the mulch to the waterway.

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

Reason: Protection of the receiving environment.

**41. Lot classification report**

A site/ lot classification report prepared by a geotechnical engineer must be prepared and submitted following the completion of all subdivision works confirming that all residential lots are compliant with AS 2870 and are suitable for development. The report must be accompanied by a table which summarises the classification of all lots created as part of the subdivision.

Reason: Compliance with Councils Development Control Plan

**42. Compliance certification engineering works.**

A compliance certificate prepared by a civil engineer with NER or RPENG(Civil) accreditation stating all relevant inspections of the civil works including street lighting, utility services, footpaths, cross overs and all stormwater drainage works are compliant with the relevant Australian standards, utility authority specifications and Councils Auspec One specification.

The compliance certification is to be provide to Council prior to the issue of the subdivision certificate,

Reason: To ensure compliance of works with Auspec one and the Utility authority requirements.

**43. Title Encumbrances**

All easements, rights of carriageway, positive covenants and restrictions as to user as indicated on the plans and required by this consent are to be created on the title naming Northern Beaches Council as the sole authority empowered to release or modify. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate

Reason: To ensure proper management of land

**44. Restriction as to User - Emergency Response**

A restriction as to user shall be created on the titles of the allotments to:

1. Require occupants of the dwellings to seek Shelter-in-place refuge during extreme flood events
2. Prohibit self-evacuation during extreme flood events unless advised otherwise by emergency



services agencies

Northern Beaches Council shall be nominated as a party to release, vary or modify such restriction.

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

Reason: To ensure that the emergency response arrangements for the properties are understood and adhered to.

**45. Certification of Vegetation Management and ongoing work**

The Project Ecologist or Ecological Consultant is to certify that:

- a) Native plant selection and planting as per Vegetation Management Plan (Conacher April 2019) approved as part of the road construction and earthworks consent (DA N0398/17) has been completed;
- b) All actions prescribed in the approved Vegetation Management Plan (Conacher April 2019) have been undertaken fully and where relevant completed and that an appropriate program of regeneration and maintenance has been entered into to comply with requirements of the Plan prior, during and post construction, and adhered to until the land is dedicated to Council;
- c) confirm that they comply with the recommendations of the approved Vegetation Management Plan and will undertake to:
  - a. visit the site immediately following completion of the works in the creekline corridor on site; and
  - b. visit the site on a three (3) monthly basis for a period of 2 years and/or until the land is dedicated to Council (whichever is the longest) to ensure implementation of the Vegetation Management Plan.

Reason: Vegetation management

**46. Positive Covenant access to waste storage facilities**

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

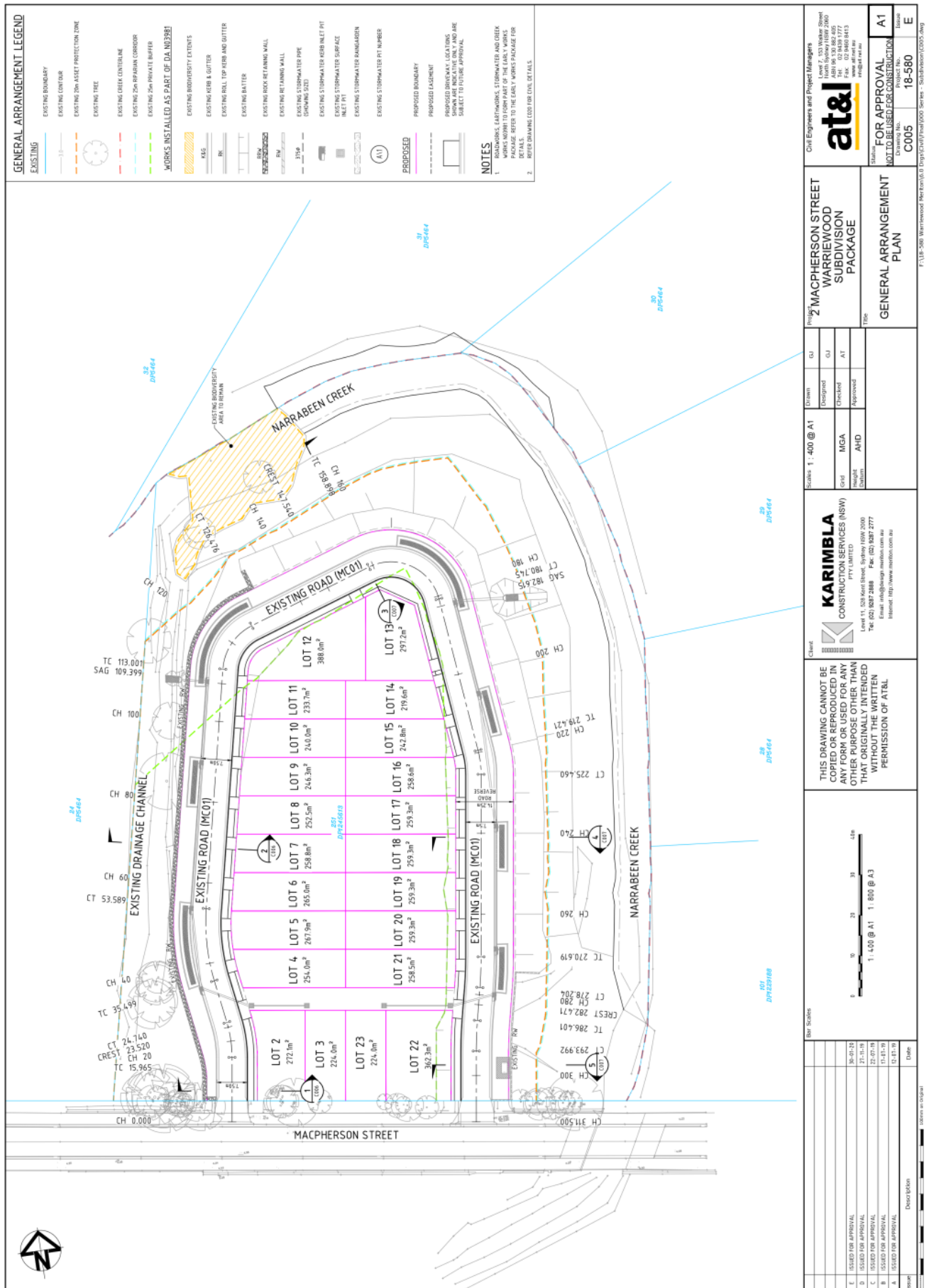
Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

**47. Authorisation of Legal Documentation required for Waste Services**

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

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

Reason: To create encumbrances on the land. (DACWTF04)





<b>ITEM 3.3</b>	<b>DA2019/1512 - 140 OCEAN STREET, NARRABEEN - DEMOLITION AND CONSTRUCTION OF MULTI DWELLING HOUSING</b>
<b>REPORTING MANAGER</b>	<b>Anna Williams</b>
<b>TRIM FILE REF</b>	<b>2020/410175</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report 2 Site Plan &amp; Elevations</b>

**PURPOSE**

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

---

**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approve** Development Consent to DA2019/1512 for demolition and construction of multi dwelling housing on land at Lot 13 DP 606591, 140 Ocean Street, Narrabeen, subject to the conditions outlined in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/1512
<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 13 DP 606591, 140 Ocean Street NARRABEEN NSW 2101
<b>Proposed Development:</b>	Demolition and construction of multi dwelling housing.
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Trust Mission Strs Of Bless Virgin Mary
<b>Applicant:</b>	John O'Brien Architect
<b>Application Lodged:</b>	20/12/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New multi unit
<b>Notified:</b>	18/01/2020 to 01/02/2020
<b>Advertised:</b>	18/01/2020
<b>Submissions Received:</b>	4
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 1,200,000.00

### EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application DA2019/1512 for demolition works and construction of multi dwelling housing at 140 Ocean Street, Narrabeen.

The cost of works for this application is greater than 1 million dollars and has received more than three objections. As such, the application is referred to the Development Determination Panel.

Council received four (4) submissions relating to site isolation/consolidation, solar access, privacy, parking, design and bulk and scale from neighbouring properties.

Council wrote to the applicant on 3 March 2020 outlining outstanding issues relating to site

consolidation, stormwater management and access. Following this, the applicant provided additional information to address concerns raised on 26 March 2020.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

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 development application seeks consent for the demolition of the existing structures on site and construction of a two storey multi-dwelling housing development.

The proposed building consists of the following:

- Two x 2 bedroom dwelling;
- One x 4 bedroom dwelling;
- 5 off-street car parking spaces and 4 bicycle spaces;
- Front gate;
- Landscaping.

### **ASSESSMENT INTRODUCTION**

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

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

### **SUMMARY OF ASSESSMENT ISSUES**

Warringah Local Environmental Plan 2011 - 2.7 Demolition requires consent  
Warringah Development Control Plan - B5 Side Boundary Setbacks  
Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - B9 Rear Boundary Setbacks  
Warringah Development Control Plan - C2 Traffic, Access and Safety  
Warringah Development Control Plan - C3 Parking Facilities  
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
Warringah Development Control Plan - D6 Access to Sunlight  
Warringah Development Control Plan - D19 Site Consolidation in the R3 and IN1 Zone

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 13 DP 606591 , 140 Ocean Street NARRABEEN NSW 2101
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Ocean Street, Narrabeen.</p> <p>The site is regular in shape with a frontage of 15.95m along Ocean Street and a depth of 60.9m. The site has a surveyed area of 957.4m<sup>2</sup>.</p> <p>The site is located within the R3 Medium Density Residential zone and accommodates a dwelling house.</p> <p>The site slopes from east to west, with a fall of approximately 1.6m.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by single and multi dwelling house including residential flat buildings.</p>

Map:



## SITE HISTORY

#### **Prelodgement Meeting No. 2019/0087**

The applicant attended a meeting with Council on 21 May 2019 to discuss the preliminary concept proposal for the construction of three attached multi-unit dwellings on the subject site.

The primary issues raised in the meeting included parking, built-form non-compliance and landscape treatment to the built form.

The design proposed in this current development application scheme is consistent with that proposed in the prelodgement meeting.

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

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

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. The provisions of SEPP 65 do not strictly apply, thereby negating the requirement of Clause 50(1A) for a design verification certificate.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to site amalgamation and stormwater management.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent</p>



Section 4.15 Matters for Consideration'	Comments
	<p>authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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

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



Name:	Address:
Lauren Elizabeth McHugh	22 / 134 - 138 Ocean Street NARRABEEN NSW 2101
Mr Stuart William Bennetts Ms Linda Brenda Quay	21 / 134 - 138 Ocean Street NARRABEEN NSW 2101
Mrs Susan Lorraine Green	15 / 134 - 138 Ocean Street NARRABEEN NSW 2101
Tomasy Pty Ltd	1073 Pittwater Road COLLAROY NSW 2097

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

- **Site Isolation**
- **Privacy**
- **Solar Access**
- **Visual Impact/Design**
- **Over development/built form non-compliance**
- **Landscaped area non-compliance**
- **Noise**
- **Boundary wall/fence**
- **Parking**

The matters raised within the submissions are addressed as follows:

- **Site Isolation**  
Comment:  
The adjoining property to the north (No. 142 Ocean Street) has raised concern in relation to site isolation. The objection argues that the proposal will isolate or sterilise the site (No. 142 Ocean Street, Narrabeen) in regards to future development. The objection notes non-compliance with part *D19 Site Consolidation in the R3 and IN1 Zone* of the Warringah DCP 2011. The objection also raises and addresses the Land and Environment Court Case: *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 (Planning Principle related to Site Isolation). The development application has been assessed against the objectives of part *D19 Site Consolidation in the R3 and IN1 Zone* of the Warringah DCP 2011 within this report. In summary, based on the information provided and having regards to the relevant Land and Environment Court planning principles the application is supported.
- **Privacy**  
Comment:  
Concern was raised by neighbouring properties to the rear in regards to the potential overlooking between the subject site and adjoining properties.  
  
The proposed courtyards to the rear of the dwellings and northern side of the dwelling are located at ground level and do not result in any direct overlooking between the subject property and adjoining dwelling house to the north, as well as the residential flat building to the west. All other windows and outdoor living areas provide adequate physical separation between the subject site and adjoining dwellings.
- **Solar Access**  
Comment:  
Concern was raised in regards to the loss of sunlight to neighbouring properties to the south

(No. 134-138 Ocean Street, Narrabeen). Particular concern was raised in regards to north facing windows and private open space. The development application has been assessed against the solar access provisions under Part D6 of the Warringah DCP. In summary, the shadow diagrams submitted with the application demonstrate adequate solar access is provided to neighbouring properties through the winter solstice on June 21 between 9:00am and 3:00pm.

- **Visual Impact/Design**

Comment:

Concern is raised in regards to the design of the proposal and the overall resulting visual impacts. Specific concern was raised in regards to the carport to the front of the dwelling house. A detailed assessment of the non compliance under *Part B7 Front boundary setbacks* of the Warringah DCP in this report. In summary, the minor variation to the front setback control is supported. The proposed carport will present as part of the overall building when viewed from the street. Landscaping between the proposed carport and front boundary will further offset and visual impact.

- **Over development/built form non-compliance**

Comment:

Concern is raised in regarding the bulk and scale of the proposed development, stating that the extent of built form non-compliance attributes to an unacceptable built form. Whilst each of the specific areas of non-compliance raised are addressed in detail below, the proposed development is considered to be an appropriate design solution in response to the constrained nature of the site. The bulk and scale of the proposal is not considered to present as overly bulky or out of scale with surrounding properties.

- **Landscape area non-compliance**

Comment:

Concern was raised in regards to the level of landscaping proposed across the site. The development application proposes a significant variation to the numeric control and the proposal has been assessed in detail against *Part D1 Landscaped Open Space and Bushland* of the Warringah DCP in this report. In summary, while non-compliant with the landscaped open space control, the variation proposed under this application is considered consistent with the streetscape and satisfactory on merit.

- **Noise**

Comment:

Concern is raised in regards to the noise impact that would result from the off-street parking on the site. The proposed off-street parking serves all three dwelling proposed on site. While it is accepted there may be a noise impact associated with the off-street parking in terms of cars entering and exiting the site, the resulting impact is acceptable in this residential context and not unreasonable in a R3 Medium Density Residential Zone.

- **Boundary wall/fence**

Comment:

A submission has been received from an adjoining property owner raising concern regarding the southern wall between the subject site and No. 134-138 Ocean Street. The objection suggests a new double brick boundary wall is to be built to ensure safety and acoustic impacts are mitigated. However, no works are proposed to the existing wall/fence along this side of the subject site. As no works are proposed to the existing boundary fence, no concern is raised by Council in this regard. The resultant treatment of the boundary and any necessary fencing will then be a matter to be resolved between the relevant land owners.

- **Parking**

Comment:

Concern is raised in regards to the number of off-street parking spaces provided as part of this proposal. The objector notes six (6) off-street parking spaces are required. Based on *Appendix 1* of the Warringah DCP five (5) car spaces are required for multi-dwelling housing. As such, the proposal is compliant with this control. Car parking calculations are provided within this report under part *C3 Parking Facilities* of the Warringah DCP 2011.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	The Landscape Plan submitted with the application is noted and considered satisfactory with regard to the relevant planning controls. No significant landscape features are affected by the proposed works. No objections are raised to approval subject to conditions as recommended.
NECC (Coast and Catchments)	<p>The proposal is supported for approval without conditions. The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>On internal assessment the DA satisfies the requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p>
NECC (Development Engineering)	<p>Reference is made to Development Engineering Referral Response dated 6/2/20 and additional information provided by the Applicant.</p> <p><u>Note to Planner:</u></p> <p>Matters previously raised relating to stormwater have not been adequately addressed by the Applicant.</p> <p>The Applicant's Response states that a letter has been provided to Council to address matters related to the driveway. This document is unable to be located in TRIM and in this regard further assessment is unable to be undertaken at this time.</p> <p><u>Stormwater:</u></p> <p>The proposed Stormwater Concept Plan is unsatisfactory. As previously advised, in accordance with Council's Warringah Stormwater Drainage from Low Level Properties Technical Specification Section 2.3, stormwater disposal shall be via a gravity fed pipeline where properties fall naturally away from the street. This will require an easement to drain water through downstream property.</p> <p>It is noted that the response provided by the Applicant has indicated that discussions regarding the obtaining of an easement have</p>

Internal Referral Body	Comments
	<p>commenced with downstream property owners. No evidence has been provided demonstrating owners consent for the creation of an easement.</p> <p>Insufficient information has been provided with regard to the proposed Stormwater Concept plan. No proposed levels have been shown on the stormwater plans for a detailed assessment to be undertaken. Any stormwater design, including for the inter-allotment drainage line, shall demonstrate compliance with design requirements of Council's policy and previously provided Development Engineering advice, including the submission of calculations, models and long-sections.</p> <p><u>Driveway:</u></p> <p>Further assessment required upon receipt of the additional information as noted above.</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"> <li>• Vehicle access for the development in accordance with clause C2 Traffic, Access and Safety.</li> <li>• Stormwater drainage for the development in accordance with clause C4 Stormwater.</li> </ul> <p>Dated 18/06/2020,</p> <p>The revised Stormwater management plan and traffic report for the development is acceptable. No Development Engineering objection subject to conditions.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***

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

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

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

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

#### **SEPP 55 - Remediation of Land**

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

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 1057073M dated 18 November 2019).

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

<b>Commitment</b>	<b>Required Target</b>	<b>Proposed</b>
<b>Water</b>	40	40
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	50	51

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

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

##### Ausgrid

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

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

##### Comment:

The proposal was referred to Ausgrid. Standard condition recommended.



### SEPP (Coastal Management) 2018

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

#### 13 Development on land within the coastal environment area

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

Comment:

The proposal is unlikely to have an adverse impact on any of the above.

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

Comment:

The proposal design and siting will avoid any adverse impacts on the biophysical, hydrological, ecological and/or coastal environment.

#### 14 Development on land within the coastal use area

- (1)
- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
    - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
    - (ii) *overshadowing, wind funnelling and the loss of views from public places to*

- foreshores,  
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,  
(iv) Aboriginal cultural heritage, practices and places,  
(v) cultural and built environment heritage, and
- (b) is satisfied that:  
(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or  
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or  
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal is not likely to have adverse impact on the surrounding coastal 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 development is unlikely to cause increased risk of coastal hazards on the subject site or other land.

**Warringah Local Environmental Plan 2011**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.50m	7.20m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes

#### Detailed Assessment

#### 2.7 Demolition requires consent

The survey notes the garage to be a fibro garage. As such, conditions have been imposed to ensure demolition works are carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

#### Warringah Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	2	2	-	Yes
B3 Side Boundary Envelope	4m (North)	Within Envelope	-	Yes
	4m (South)	Within Envelope	-	Yes
B5 Side Boundary Setbacks	4.5m (North)	1.8m (Courtyard) 4.5m (Dwelling Wall)	60%	No
	4.5m (South)	4.5m	-	Yes
B7 Front Boundary Setbacks	6.5m	6m (Carport) 11.8m (Dwelling)	7.7%	No
B9 Rear Boundary Setbacks	6m	2.4m (Courtyard) 6.54m (Dwelling)	60%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	50% (478.6sqm)	31.19% (298.6sqm)	37.6%	No

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

##### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D19 Site Consolidation in the R3 and IN1 Zone	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **B5 Side Boundary Setbacks**

##### Description of non-compliance

Clause B5 of the WDCP 2011 stipulates that development is to be setback at least 4.5m from side boundaries. The proposed courtyard on the northern side of the development is setback 1.8m, non-compliant with the numeric control. represents a 60% variation to the numeric control.

##### 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:

A discussion on the provision of landscaping can be found in this report under Part D1 which concludes that the landscaped solution proposed is acceptable.

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

Comment:

The development is not found to be of a scale or architecture that is unreasonably visually dominant. The area of non-compliance is located at ground level and is not of an unseasonable bulk and scale. Given these factors it is not considered that the courtyard will be visually dominant when viewed from the public domain. Further, the structure will not be visually dominant when viewed from both the properties to the north and south.

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

Comment:

The bulk of the development is considered to be acceptable within the R3 Medium Density Residential zone given the size of the allotment and the opportunities present for additional landscaping. The proposed development is consistent with the 8.5m Height of Building development standard, the primary control of bulk and scale. No further design changes are warranted to further minimise the bulk and scale of the development.

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

Comment:

As noted above, the proposed development adjoins similar size and scale development to neighbouring properties. The areas of non-compliance will not give rise to unreasonable privacy impacts to adjoining properties. Furthermore, the non-compliant components of the development will not result in an unreasonable level of overshadowing to the adjoining property to the south.

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

Comment:

The proposed development will not compromise views from to and from public and private properties including neighbouring properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent 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 supported, in this particular circumstance.

**B7 Front Boundary Setbacks**Description of non-compliance



The control requires development to be setback 6.5m from the front boundary. The proposed carport is setback 6m, non-compliant with the numeric control. This represents a 7.7% variation to the numeric control.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The proposed carport occupies a small portion of the front setback area and ensures compliance with the parking requirements on site. In turn, the carport will not be visually imposing within the streetscape and will encourage a sense of openness. The variation sought to the front setback requirement is not found to detract from a sense of openness given that the proposed carport is of an open design.

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

Comment:

The proposed development is consistent with the established front setback along Ocean Street. Other surrounding allotments to the north and south have structures similarly within the front boundary line, and thereby the pattern of buildings is maintained.

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

Comment:

The encroaching elements are minor structures and are generally appropriate to the ground level, with landscape spaces adjacent. Landscape planting includes a mix of deep soil grassed areas, small to medium shrubs and small trees appropriate to the coastal environment. In this regard, the landscaping proposed will ensure the development does not have an adverse impact on the visual quality of Ocean Street.

- *To achieve reasonable view sharing.*

Comment:

The proposed carport will not compromise views to and from private and public properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent 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 supported, in this particular circumstance.

## **B9 Rear Boundary Setbacks**

#### Description of non-compliance

The control requires a rear setback of 6.0m. The proposed rear courtyard is setback 2.4m, non-compliant with the numeric control. This represents a 60% variation to the numeric control.

#### Merit consideration:

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

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

#### Comment:

Despite the shortfall in landscaped open space, the proposal allow for adequate opportunities for deep soil landscape areas across the site.

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

#### Comment:

The non-complaint components of the proposal pertaining to the rear setback control occupy only a minor aspect of the rear setback area. In this regard, the proposed development is not considered to detract from a sense of openness within the rear yard.

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

#### Comment:

No unreasonable privacy impacts are anticipated to arise as a result of the proposed development. The proposed courtyard is sufficiently setback from the rear boundary so as not to encourage any unreasonable overlooking impacts between properties.

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

#### Comment:

Due to the irregularity of the allotment dimensions within the locality, there is not an established rear building line prevalent across nearby properties. This assessment concludes that the location of the proposal in relation to the rear boundary is acceptable, given no unreasonable amenity impacts will be associated with the development. Furthermore, the proposal does not necessitate the removal of important trees or significant landscape features within the rear yard.

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

#### Comment:

As noted above, the proposal will not give rise to unreasonable privacy impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent

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 supported, in this particular circumstance.

## **C2 Traffic, Access and Safety**

The proposed development has been reviewed in detail by Council's Development Engineer who raises no objections to the proposed development, subject to conditions.

## **C3 Parking Facilities**

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Multi dwelling House	One x 2-bedroom dwelling (1.2)	1.2	5	Nil
		1.2		
	One x 2-bedroom dwelling (1.2)	1.5		
	One x 4 - bedroom dwelling (1.5)	1		
	Visitor - 1 space			
<b>Total</b>		4.9 (5)	5	Complies

## **D1 Landscaped Open Space and Bushland Setting**

### Description of non-compliance

Clause D1 of the WDCP 2011 stipulates that development is to provide at least 50% (478.6sqm) of the site area as landscaped open space. In calculating landscaped open space landscaped areas with dimensions less than 2m are excluded from the calculation. The application proposes 31.19% (298.6sqm) of the site area as landscaped open space, non-compliant with the numeric control. This represents a 37.6% variation to the numeric control.

### 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:

Adequate landscaping is proposed to both the rear, side and front of the site to complement the desired character of the street and the overall Narrabeen locality.

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

Comment:

There are no threatened species, significant topographical features of vegetation identified on site.

- *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:

Sufficient area of deep soil are maintained to both the front and rear of the dwelling house to enable the establishment of low lying shrubs, medium high shrubs and canopy trees.

- *To enhance privacy between buildings.*

Comment:

Existing screen planting to the rear of the site, while not relied on for visual privacy may help offset privacy between properties.

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

Comment:

The rear yard would provide appropriate recreational opportunities to sufficiently meet the needs of the occupants.

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

Comment:

The site contains a sufficient amount of space for service functions, including clothes drying.

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

Comment:

The proposal would allow for suitable drainage, subject to conditions imposed by Council's Development Engineers.

Having regard to the above assessment, it is concluded that the proposed development is consistent 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 supported, in this particular circumstance.

## **D6 Access to Sunlight**

### Merit consideration

Clause D6 of the WDCP 2011 stipulates that at least 50% of the required area of private open space for

the subject site and adjoining properties are to receive at least three (3) hours of sunlight between 9am and 3pm on June 21 (Winter Solstice). Concern was raised within a submission of the bulk and scale of the proposed development and the resulting overshadowing to adjoining properties that may arise. Accordingly, the application is assessed against the requirements of the Control as follows:

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

Comment:

Three submissions in regards to solar access have been received by the apartments (Nos. 15, 21 and 22) in the two storey residential flat building to the south (No. 134- 138 Ocean Street). The apartments are located at ground floor level on the northern side of the building and currently enjoy sunlight from the north, east and west during 9am and 3pm during the day. Given the existing situation in regards to solar access, the apartments are highly vulnerable to being overshadowed by any development on the subject site. The private open space of these properties are also vulnerable to self shadowing throughout 9am to 3pm during the winter solstice by virtue of siting and fencing.

The shadow diagrams submitted with the application indicate that the private open space of the ground floor north facing apartments of No. 134- 138 Ocean Street will be impacted by the development. The existing situation means that any first floor element on the subject site would result in a non-compliance with Part D6 of the Warringah Development Control Plan. This is contributed to by the orientation of the private open space of No. 134- 138 Ocean Street and the siting of the existing development on the subject site. Despite the lack of sunlight to the private open space areas of these apartments throughout the winter solstice, the opportunity for light to penetrate the living rooms throughout the winter solstice, provides a situation in which there is adequate sunlight to these units. It is also noted that the shadow diagrams indicate that between the hours of 12 midday and 3pm on June 21 the private open space area of the adjoining dwellings will retain solar access to these private open space areas.

As described above the north facing ground floor apartments of No. 134- 138 Ocean Street are considered to be highly vulnerable to overshadowing given their aspect, design and location of private open space areas and the constraints of the subject site that burden any substantial development. The vulnerability of the ground floor apartments to overshadowing extends to the extent that even a building that goes beyond full compliance with side boundary setbacks (4.5m) would result in overshadowing of the private open space areas of the adjoining north facing units.

For the reasons outlined above it is considered that a reasonable level of access to sunlight is provided to the adjoining properties private open space areas and the private open space areas of the proposed dwellings.

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

Comment:

The proposal is considered to be generally acceptable in the context of the site and surrounding development, and will provide a development that will be an improvement to the urban environment. The design is considered to be sufficiently innovative, and will not have unreasonable impacts on the solar access of neighbours, as discussed above.

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



Comment:

As detailed above, the proposal will have no unreasonable impact on the penetration of mid winter sunlight into high use indoor areas of the southern neighbour..

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

Comment:

The main indoor living areas of the proposal are orientated to the west and north and will be warmed by the sun in the morning in mid winter. The development is considered to adequately promote passive solar design and the use of solar energy.

- *To minimise the need for artificial lighting.*

Comment:

Windows provided along the north, east and southern side of the development will allow for sunlight to penetrate living areas, mitigating the need for artificial lighting.

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

## **D19 Site Consolidation in the R3 and IN1 Zone**

### Merit consideration

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

- *To encourage lot consolidation to allow efficient use of land.*

Comment:

The objective of this clause is to encourage lot consolidation to ensure the orderly and efficient use of land, in line with the objectives of the Environmental Planning and Assessment Act 1979. The subject site and the adjoining property to the North (No. 142 Ocean Street, Narrabeen) remain undeveloped with regard to neighbouring development along the western side Ocean Street. The two allotments could, and ideally should, be amalgamated to facilitate the desirable use of the land.

In assessing this application reference is made to the planning principal within *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 when considering amalgamation of sites and isolation of sites through redevelopment. This is provided below:

*"The general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:*

- *Firstly, is amalgamation of the sites feasible?*
- *Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?*

**18 The principles to be applied in determining the answer to the first question are set out by *Brown C in Melissa Grech v Auburn Council [2004] NSWLEC 40*. The Commissioner said:**

*Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.*

*Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.*

*Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979."*

Comment:

The principles set out by Brown. c in the Land and Environment Court Case *Melissa Grech v Auburn Council [2004] NSWLEC 40* require that the developer of a property must make reasonable and genuine attempts to purchase adjoining land that could become isolated by this development. In this case, the circumstance sees the owner of the subject site not wanting to amalgamate with the adjoining property to the north. While a formal offer has not offered up to Council by the applicant or objector, it has been noted by both the owner and adjoining northern property that an attempt by the owner of No. 142 to amalgamate the site has been unsuccessful. The applicant has made it clear in their application that the owners of the subject site (Missionary Sisters) have no interest in further developing the site, beyond that of a 'boutique' multi dwelling development.

**"19 In the decision *Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189*, I extended the principles of *Brown C* to deal with the second question and stated that:**

*The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.*

*To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the*

*subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.*

*The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments".*

Comment:

Given that an agreement in regards to the amalgamation of the two sites has failed, the NSWLEC decision of *Cornerstone Property Group v Warringah Council* [2004] NSWLEC 189 requires that it be demonstrated can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible. The applicant has submitted concept plans of No. 142 which propose a envelope in response to Council requesting further information with regard to this matter.

The concept drawings provide a building envelope for similar size multi-dwelling development on No. 142 to what is being proposed under this application. It is worth noting that No. 142 is of similar size and shape as the subject site being a rectangular site with a site area of 929sqm (subject site area 957.4sqm). Given the subject proposal will allow for suitable development without any unreasonable amenity impacts or streetscape impacts, it can be concluded that a development of a similar scale can be achieved on site consistent with the aims and objectives of the R3 Medium Density Zone.

As such, it can be determined that amalgamation is not feasible in this instance and a suitable development yield can be achieved for No. 142 Ocean Street as an isolated site.

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

Comment:

The applicant has sought to demonstrate that a smaller multi dwelling development can still be carried out in a manner that is a good outcome for the site and surrounding land. The applicant has demonstrated some innovative measures to address the numerous non-compliances with the built form controls. This includes design measures to minimise or address issues of privacy, setback encroachments, overshadowing, landscaped areas and building bulk. The applicant has demonstrated that the adjoining property to the north fronting Ocean Street will still be able to be redeveloped for medium density use.

- *To avoid lot sterilization.*

Comment:

Both the subject site and No. 142 Ocean Street are of similar in size and scale . The subject site is capable of being developed in a reasonable manner as evident by the assessment of this application, and the architectural plans accompanying the proposal include a schematic of how No. 142 could be developed in a similar manner. Failure to consolidate with No. 142 Ocean Street does not prevent that land from being developed in a similar manner for medium density use as per the subject site. This has been illustrated in the concept plans, prepared by John

O'Brien (Architect).

Having regard to the above assessment, it is concluded that the proposed development is consistent 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 supported, in this particular circumstance.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2019**

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

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

### **CONCLUSION**

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

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

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

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

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



### Conclusions on the Assessment of the Application

The proposal construction of a multi dwelling housing development that will not cause an unreasonable impact on surroundings development.

On balance, the proposal should be approved as the proposed development does not isolate neighbouring development and multi dwelling housing is an adequate use of the site. Furthermore, the proposed design and conditions imposed will assist in maintaining neighbourhood amenity.

Therefore, the application is recommended for approval.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes the proper and orderly planning for the site or the locality. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

### RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/1512 for Demolition and construction of multi dwelling housing, on land at Lot 13 DP 606591, 140 Ocean Street, NARRABEEN, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA004/ Revision B	19 December 2020	John O'Brien
DA005/ Revision B	19 December 2020	John O'Brien
DA009/ Revision B	19 December 2020	John O'Brien
DA101/ Revision A	3 December 2020	John O'Brien
DA102/ Revision B	19 December 2020	John O'Brien
DA103/ Revision B	19 December 2020	John O'Brien
DA105/ Revision C	4 March 2020	John O'Brien
DA106/ Revision B	19 December 2020	John O'Brien
DA110/ Revision B	19 December 2020	John O'Brien
DA200/ Revision B	19 December 2020	John O'Brien

**Reports / Documentation – All recommendations and requirements contained within:**



Report No. / Page No. / Section No.	Dated	Prepared By
NatHERS and BASIX Assessment	18 November 2019	Efficient Living
Traffic Report	18 March 2020	Anne Coutts
Geotechnical Assessment	3 April 2020	Crozier Geotechnical Consultants

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan	8 September 2020	John O'Brien

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	N/A	Mecone

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	N/A

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

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

## 3. Approved Land Use

Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond the definition of a **multi dwelling housing**

A multi dwelling housing is defined as:

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

Warringah Local Environment Plan 2011 (as amended) Dictionary.

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

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

#### 4. **Prescribed Conditions**

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

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

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

- to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

## 5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no

hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner



that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$12,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,200,000.00.

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

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

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

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

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

### 7. Security Bond

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

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



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

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

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

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

The applicant is to lodge a bond with Council of \$5000.00 as security against any damage or failure to complete the construction of footpath and vehicular crossing works as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

9. **Traffic Management and Control**

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

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

10. **Boundary Identification Survey**

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

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

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

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

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention and absorption drainage system in accordance with Northern Beaches Council's WARRINGAH WATER MANAGEMENT POLICY PL850, and generally in accordance with the concept drainage plans prepared by Civil & Structural Engineering Design Services Pty. Ltd., drawing number M-11-267490A, dated 13/09/2019 and Report Dated 13 March 2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has

membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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

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

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

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

The application is to include four (4) copies of Civil Engineering plans for the design of Vehicular crossing and footpath which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

- A standard vehicular crossing 3.0 metres wide.
- Reconstruction of concrete footpath, 1.5 metres wide along the full frontage to the site.
- Detail designs plans with levels and specification.

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

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

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

13. **Vehicle Driveway and parking**

The Applicant is to ensure driveway gradients, parking and passing bays within the private property are design in accordance with the Traffic report prepared by INROAD:GROUP dated 18 March 2020.

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

Reason: To ensure suitable vehicular access to private property.

14. **Compliance with Standards**

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

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

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

15. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

16. **Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

17. **Boundary Fencing**

No approval is given for any works to boundary fencing. No consent has been provided by the owners of the common boundary.

Reason: To ensure compliance with the Dividing Fences Act 1991.

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

18. **Pre-Construction Dilapidation Report**

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

Properties:

142 Ocean Street, Narrabeen  
134-138 Ocean Street, Narrabeen

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

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

Note: This documentation is for record keeping purposes and may be used by an applicant or

affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

19. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

20. **Tree protection**

(a) Existing trees which must be retained

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

(b) Tree protection

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

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

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

21. **Road Reserve**

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

Reason: Public safety.

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

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

- o Work Health and Safety Act;



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

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

23. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

24. **Survey Certificate**

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

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

25. **Protection of sites of significance**

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



Reason: Preservation of significant environmental features.

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

**26. Landscape completion certification**

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

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

**27. Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- o Compare the post-construction report with the pre-construction report,
- o Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- o Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

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

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

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

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

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

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

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

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 Roads Act approval. Works as Executed data certified by a registered surveyor in relation to boundaries, shall be submitted to Council for approval. Copy of an approval from Council is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

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

30. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines  
([https://auspost.com.au/content/dam/auspost\\_corp/media/documents/Appendix-01.pdf](https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf)).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

31. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

**ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES****32. Landscape maintenance**

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

Reason: To maintain local environmental amenity.

[illegible]

<div>JOHN O'BRIEN</div> <div>ARCHITECT &amp; LANDSCAPE CONSULTANT</div> <div>PO BOX 3037, MALVERN VIC 3463 • TELEPHONE 08 94 145 242</div> <div>JOHNOBRIEN@O'BRIENARCH.COM • 0850 112 841 84 34</div>	PROJECT	CLIENT
	<div>140 OCEAN STREET, NARRABEEN</div> <div>SITE LAYOUT PLAN</div>	<div>MISSIONARY SISTERS OF BLESSED VIRGIN MARY</div>
<div>JACEK BANASIEWICZ</div> <div>1845 NEWBY ROAD</div> <div>PO BOX 100, MALVERN VIC 3463 • 0850 112 841 84 34</div>	TITLE	<div>DESIGNED BY</div> <div>SCALE (@ A1)</div> <div>1 : 100</div>
	<div>ISSUED FOR PERMIT</div> <div>DATE</div> <div>06/09/19</div>	<div>FORWARDED BY</div> <div>PROJECT NUMBER</div> <div>2019_002</div>







FB-W	FACE BRICK - WHITE	AL-L	ALUMINIUM LOUVRE
FB-D	FACE BRICK - DETAIL		
AR-C	ARCHITECTURAL CONCRETE		
BF-D	BATTEN FINISH - DARK		

[illegible]

<b>ITEM 3.4</b>	<b>DA2020/0337 - 8 MONASH PARADE, DEE WHY - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE</b>
<b>REPORTING MANAGER</b>	<b>Steve Findlay</b>
<b>TRIM FILE REF</b>	<b>2020/410248</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report</b> <b>2 Site Plan &amp; Elevations</b>

### **PURPOSE**

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

---

### **RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approve** Development Consent to DA2020/0337 for demolition works and construction of a dwelling house on land at Lot 1 DP 315635, 8 Monash Parade, Dee Why, subject to the conditions outlined in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0337
<b>Responsible Officer:</b>	Lashta Haidari
<b>Land to be developed (Address):</b>	Lot 1 DP 315635, 8 Monash Parade DEE WHY NSW 2099
<b>Proposed Development:</b>	Demolition works and construction of a dwelling house
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Shane Paul O'Neill Christie Anne O'Neill
<b>Applicant:</b>	AMDE Construction Pty Ltd
<b>Application Lodged:</b>	08/04/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	24/04/2020 to 12/05/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	4
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 1,219,723.00

### Executive Summary

The application is for demolition of the existing dwelling and construction of a new dwelling house.

The proposal has an estimated cost of works of \$1,219,723 and there are three (3) unresolved objections, therefore, the proposal is being referred to the Development Determination Panel for determination. The issues raised in the submissions are:

- View loss
- Visual Privacy
- Construction related impact
- The use of the dwelling for Bed and Breakfast Establishment



The above issues have been addressed in this report and were found to not have determining weight in the assessment of the application. Suitable conditions have been imposed where necessary as discussed in the body of the report.

The assessment of the application has found that the proposal generally satisfies the planning controls and is acceptable and can be supported subject to conditions.

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

### PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent to demolish the existing dwelling and construct a two storey dwelling house, which comprises:

- **Ground Floor:** Entry, lounge room with kitchenette, living room, four (4) bedrooms with ensuites, stairs, outdoor alfresco and stairs
- **First Floor:** Master bedroom with ensuite and WIR, Bedroom No.2, open lounge, dining and kitchen connecting to balcony, WIP, study, WC & stairs

The proposal will retain the existing garage fronting Monash Parade.

Amended plans were submitted to Council on 18 June 2020. The amendments include the following:

- A reduction in the roof pitch from 18 degrees to 16 degrees to improve views for the adjoining properties
- An amendment to Window 21 in bedroom 2 to improve privacy for the adjoining development at 10 Monash Parade

The amended plans were not re-notified as the amended plans address the concerns originally raised by the objectors.

This assessment addresses the amended plans.

### 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 - D7 Views

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 315635 , 8 Monash Parade DEE WHY NSW 2099
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the eastern side of Monash Parade, midway between Oaks Ave and Pacific Parade.</p> <p>The site is regular in shape with a frontage of 14.4 metres to Monash Parade and has depth of 46.34m along the northern side boundary and 53.4m along the southern side boundary. The site has a surveyed area of 713.5m<sup>2</sup>.</p> <p>The site is currently occupied by a single storey brick construction dwelling, garage and storage structure and swimming pool. The site is a level site which has a gentle slope in the north eastern corner towards Pacific Parade.</p> <p>The rear of the property adjoins a public reserve including an associated public carpark which is located at the west and open space along the escarpment overlooking the Pacific Ocean. The reserve is located along the shoreline and leads to the Dee Why Rock Pool and Dee Why Beach at the north and Dee Why Cliffs Reserve at the South.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>This area of Dee Why is characterised by residential developments of varying scales and architectural styles. Whilst a number sites have been redeveloped in recent years to provide higher density living in this idyllic setting, some sites have been retained as single occupancy residences , which include large areas of glazing affording water and shoreline views.</p> <p>To the south of the property, sites have been retained as single dwellings on individual land parcels. These properties contain a range of housing styles, of varying form and scale.</p>

Map:





#### **SITE HISTORY**

A search of Council's records has revealed that there are no recent or 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:

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
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) –	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council</p>



Section 4.15 Matters for Consideration'	Comments
	<p>to request additional information. Additional information was requested in relation to view loss impact.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. / This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED



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

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

<b>Name:</b>	<b>Address:</b>
Mrs Susan Mary Wright	13 / 186 Pacific Parade DEE WHY NSW 2099
Ms Louise Frances Howitt	30 Carlton Road NORTH ROCKS NSW 2151
Graham Zerk	Address Unknown
Ms Carol Ann Taggart Mr James Donald Taggart	6 Monash Parade DEE WHY NSW 2099

The matters raised within the submissions are addressed as follows:

- **Use of the Dwelling for Bed and Breakfast**

Concern has been raised that the proposed dwelling contains six bedrooms, all with ensuites, which may allow use as a Bed and Breakfast or leased out at times on AirBnB and become a "party house".

Comment:

The application is lodged for a single dwelling house and there is no evidence before Council to suspect the use of the premises is for anything but a dwelling house. Suitable conditions can be imposed in this respect.

This issue does not warrant the refusal of the application.

- **View Loss**

Concern has been raised that the current single storey dwelling is being replaced with a two storey house, which will impact on views towards Pacific Ocean. The submission has requested a reduction in the pitch of the roof.

Comment:

This issue has been addressed in detail under Clause 'D7 - Views' in this report, where it was found that the impact on views for each of the properties is minor to negligible.

Notwithstanding, the applicant agreed to lower the roof pitch from 18 degrees to 16 degrees to minimise view impacts, which is reflected in the current plans.

This issue does not warrant the refusal of the application.

- **Visual Privacy**

Concern has been raised that the proposed first floor level balcony will have direct overlooking opportunities into the adjoining dwelling at No. 6 Monash Parade.

Comment:

To prevent direct overlooking from the proposed first floor balcony, a condition has been imposed to provide a privacy screen along the northern and southern edges of the proposed balcony.



This issue has been addressed by way of condition.

- **Impact of the development on the retaining wall**

A submission has raised concerns regarding the impact of the development on the brick wall fronting Monash Parade. The submission states that any damage caused to the wall during construction should be the responsibility of the owners of the subject site.

Comment:

This issue can be addressed by way of condition to require a dilapidation report for the adjoining developments.

This issue has been addressed by way of condition.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	No significant landscape features are indicated to be affected by the proposed works. The DA is considered acceptable with regard to the relevant controls relating to landscape issues, subject to conditions.
NECC (Bushland and Biodiversity)	The Warringah Development Control Plan control E4 Wildlife Corridors occurs on a very small portion of the sites eastern boundary. This portion of the site is landscaped garden, and no native vegetation or wildlife habitat will be impacted by the works. Based on this, the limited area and additional landscaping is proposed, the applicant has addressed the objectives of the DCP.
NECC (Coast and Catchments)	<p>The application is supported for approval without conditions.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>As assessed in the submitted Statement of Environmental Effects (SEE) report, the DA satisfies the requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p>
NECC (Development Engineering)	No objections to the proposed new dwelling subject to conditions.
Parks, reserves, beaches, foreshore	No issues with the proposal, subject to conditions.

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





External Referral Body	Comments
	assumed that no objections are raised and no conditions are recommended.

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***

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

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

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

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

##### **SEPP 55 - Remediation of Land**

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

##### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 1064451S and 5 December 2019). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	52

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

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

###### Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the





- electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

**SEPP (Coastal Management) 2018**

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

**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 located within a coastal wetlands or littoral rainforests area.

Clause 10 does not apply.

**11 Development on land in proximity to coastal wetlands or littoral rainforest**

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
  - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:



The site is not located within proximity to a coastal wetlands or littoral rainforests area.

Clause 11 does not apply.

## 12 Development on land within the coastal vulnerability area

*Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:*

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
  - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
  - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
  - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.*

### Comment:

The NSW Department of Planning, Industry and Environment website refers to a Coastal Vulnerability Area as one that is subject to coastal hazards such as coastal erosion and tidal inundation. However, Clause 12 is preceded by a note which states "at the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified".

Therefore, Clause 12 is not applicable at this time.

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

Comment:

The development is predominantly of a low impact nature, being dwelling house will not result in any adverse impacts to the matters contained under Clause (1)(a) to (g) inclusive.

Appropriate conditions are imposed which require the installation and maintenance of sediment and erosion control in accordance with Landcom's 'Managing Urban Stormwater, Soils and Construction' to ensure not no sediment or polluted water enters the Lagoon. This satisfies the requirements of Clause (2)(a).

#### 14 Development on land within the coastal use area

- (1)
  - (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
    - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
    - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
    - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
    - (iv) Aboriginal cultural heritage, practices and places,
    - (v) cultural and built environment heritage, and
  - (b) is satisfied that:
    - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
    - (ii) if that impact cannot be reasonably avoided—the development is designed, sited



- and will be managed to minimise that impact, or  
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and  
(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The site is located within the coastal use area.

The overall assessment of this proposal has found that the development would not unreasonably exacerbate those elements of the built form and amenity which relate to the matters listed under Clause 14(1)(a)(i) to (iii) inclusive.

The site is not subject to the matters referred to in Clause 14(1)(iv) and (v).

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

As such, it is considered that the application complies 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 site is located within a well established residential area and is significantly distance from the coastal. The works proposed result in any adverse impact.

The development is therefore not considered to increase the risk of coastal hazards.

**Warringah Local Environmental Plan 2011**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.9m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
--------	------------------------------



Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	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
B1 Wall height	7.2m	6.3m	N/A	Yes
B3 Side Boundary Envelope	5m (North)	Within	N/A	Yes
	5m (South)	Within	N/A	Yes
B5 Side Boundary Setbacks	0.9m (North)	1.6m	N/A	Yes
	0.9m (South)	1.4m	N/A	Yes
B7 Front Boundary Setbacks	6.5m (Monash Parade)	Dwelling -20m (note. the existing garage unaltered)	N/A	Yes
	3.5m (Pacific Parade)	Dwelling - 6.8m Porch -3.9m	Yes	Yes
B9 Rear Boundary Setbacks	6m	N/A	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (285.4)	54% (387m <sup>2</sup> )	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage	Yes	Yes





Clause	Compliance with Requirements	Consistency Aims/Objectives
Easements		
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	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
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **D7 Views**

##### Merit consideration

Two submissions were received in relation to view loss from the following properties:

- Unit 6/186 Pacific Parade, Dee Why; and
- Unit 13/186 Pacific Parade, Dee Why

The applicant was requested to provide photo montages to demonstrate view sharing, as site inspections from the objectors properties could not be undertaken in person.

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

*To allow for the reasonable sharing of views.*



Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

**1. Nature of the views affected**

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

Comment to Principle 1:

The 8 storey residential flat building at No.186 Pacific Parade is located on the western side of Monash Parade, opposite the subject site. The views are currently available from the balconies over the subject site towards Dee Why Beach.

The ocean view from Unit 6 is partially obstructed by existing dwellings and palm trees on the subject site.



**View from Unit 6/186 Pacific Parade**

The view from Unit 13 is relatively unobstructed, as it is above the roof lines of development on the east side of the street and vegetation.



**View from Unit 13/186 Pacific Parade**

**2. What part of the affected property are the views obtained**



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

Comment to Principle 2:

The view is obtained over the front boundary from the elevated balconies of these units which service a living room in each apartment. Views are obtained from both sitting and standing positions.

### 3. Extent of impact

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

Comment to Principle 3:

- **13/186 Pacific Parade**

The views are above the existing and proposed roof line on the subject site and is therefore not affected by the proposed development. In this respect, the impact on the view is negligible.

- **6/186 Pacific Parade**

Unit 6 is located on a lower floor of the apartment complex at 186 Pacific Parade and therefore experiences more partial views of the ocean.

The ocean view is heavily obstructed by existing dwellings and the palm trees within the subject site. The view from the balcony will be partly affected by the development and so it is considered to be a moderate impact. However, the view corridors between the row of dwellings will remain.

### 4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:



The proposed development complies with the numerical planning controls for the site, and the applicant amended the plans to lower the roof pitch by 2 degrees (from 18 degrees to 16 degrees) to minimise the impact. In this regard, it is considered that the development has been designed to sensitively respond to view sharing and the proposal is regarded as acceptable and the view sharing reasonable.

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

### **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.

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2019**

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

A monetary contribution of \$12,197 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,219,723.

### **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 assessment of this application has found that the proposed development is consistent with the planning controls applicable to the site and the locality and is generally reasonable and acceptable and can be supported subject to general and special conditions.

The assessment also concludes that the built form of the proposed dwelling house is acceptable within the context of the site, and would not result in any significant adverse environmental or amenity impacts. In this regard, the main issue raised by those who made submissions was the impact on views and the lowering of the roof pitch and full compliance with building height, wall height and envelopes is indicative of a reasonable size and scale of building relative to view impacts and view sharing as discussed in detail in this report.

As a direct result of the application and the consideration of the matters detailed within this report, it is recommended that approval be granted to the Development Application subject to the conditions detailed within the "Recommendation" section of this report.

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/0337 for Demolition works and construction of a dwelling house on land at Lot 1 DP 315635, 8 Monash Parade, DEE WHY, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A01, A02, A03, A04, A05, A06, A07, A08, A09, A10, A11, A12, A13, A14, A15, A17, A18, and A19	2/06/2020 (Revision N)	G.J. Gardner Builders Details

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Assessment	19/03/2020	Ascent Geotechnical Consulting





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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan (Drawing A12)	2/06/2020 (Revision N)	G.J. Gardner Builders Details

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

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

## 2. Prescribed conditions (Demolition):

(a) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

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

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

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

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

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

(c) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (i) protect and support the adjoining premises from possible damage from the excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.



(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

Reason: Legislative Requirement.

### 3. **Prescribed Conditions**

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

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

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



- to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. **General requirements (Demolition):**

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- o 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

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

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

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



## 5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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





- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

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

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

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

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





## FEES / CHARGES / CONTRIBUTIONS

### 6. Policy Controls

#### Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$12,197.23 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,219,723.00.

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

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

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

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

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

### 7. Security Bond

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

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

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

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

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION  
CERTIFICATE****8. Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site. Stormwater shall be conveyed from the site to Monash Parade.

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

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

**9. Boundary Identification Survey**

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

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

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

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

**10. Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To facilitate suitable vehicular access to private property.

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

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area, in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until



all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

12. **Compliance with standards (Demolition):**

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

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

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

13. **Compliance with Standards**

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

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

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

14. **External Finishes to Roof**

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

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

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

15. **Privacy Screen**

A 1.65 metre privacy screens (measured from finished floor level) are to be erected along the outer northern and southern edges of the balcony for the length of 2m measured from wall adjacent to Lounge and Dining room of the upper level as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

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

16. **Sydney Water "Tap In"**

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



Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

**17. Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

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

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

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

**18. Pre-Construction Dilapidation Report**

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

- o 6 Monash Parade, Dee Why; and
- o 10 Monah Parade, Dee Why

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

**19. Tree protection**

- (a) Existing trees which must be retained
  - i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
  - ii) Trees located on adjoining land





(b) Tree protection

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

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

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

20. **Road Reserve**

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

Reason: Public safety.

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

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

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

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

22. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip





as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

23. **Survey Certificate**

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

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

24. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

25. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

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

26. **No Access through Public Open Space**

Site access through adjacent public reserve is not approved for construction of the development.



Reason: Public safety and preservation of reserve amenity.

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

27. **Stormwater Disposal**

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

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

28. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

29. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management. (DACPLF01)

30. **House / Building Number**

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

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

Reason: Proper identification of buildings.

31. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from



demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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

32. **No Planting Environmental Weeds**

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

**Reason:** Weed management.

33. **Works to cease if item found**

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

**Reason:** To protect Aboriginal Heritage.

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**

**Steven Findlay, Manager Development Assessments**

The application is determined on //, under the delegated authority of:

**Steven Findlay, Manager Development Assessments**

**DIMENSIONS INCLUDE CLADDING THICKNESS**

**NOTE:**

• FRONT SETBACK IS TO BE  
AT LEAST:  
6.5m

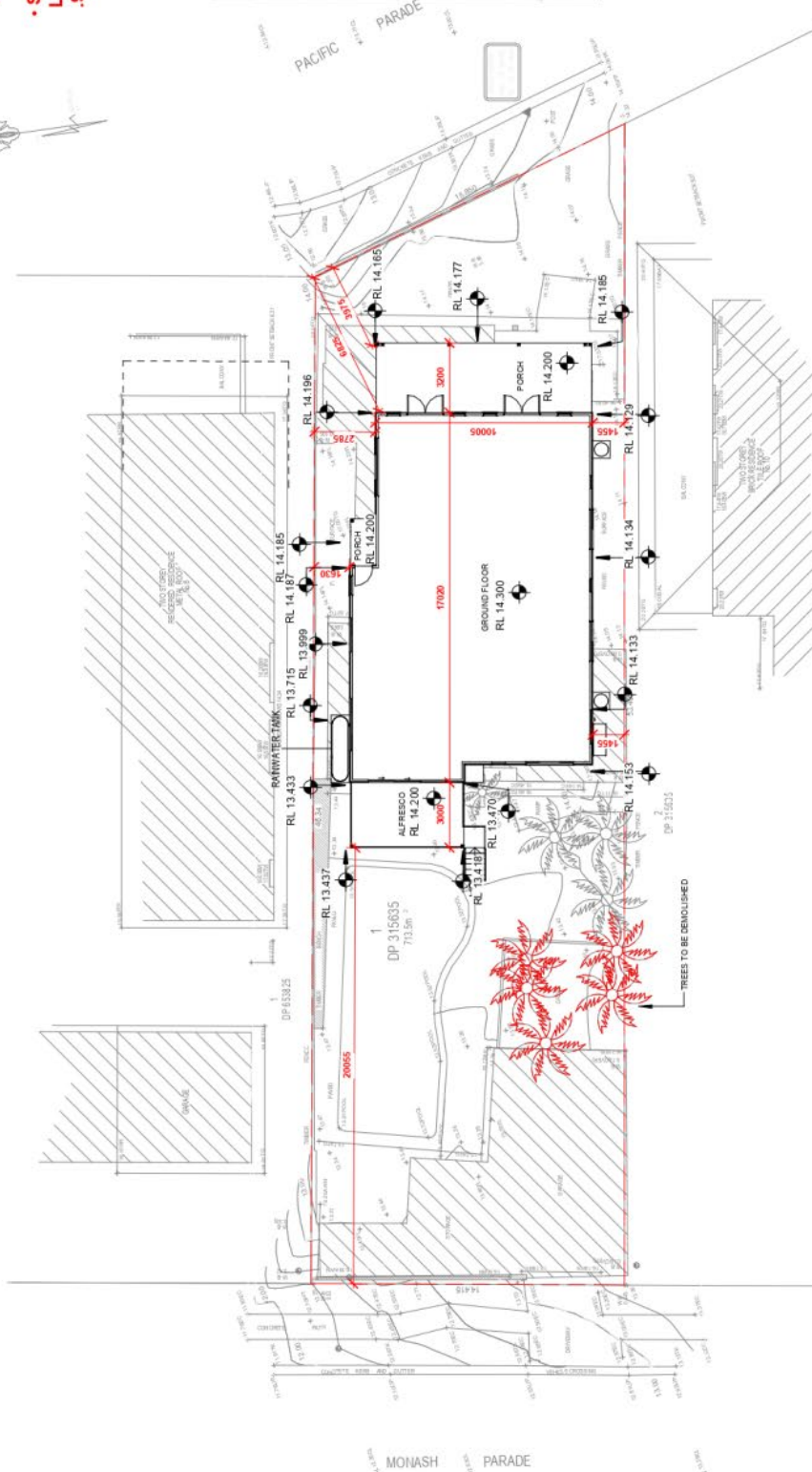
• SIDE SETBACK IS TO BE AT  
LEAST:  
.9m

**DIMENSIONS INCLUDE  
CLADDING THICKNESS**

DRAWING REVISION SCHEDULE	
No.	AMENDMENTS
A	FIRST ISSUE
B	ADD GARAGE; INCREASE SIZE OF HOUSE; WIR TO BED 3. ADJUST WET BATH
C	CHANGES TO GARAGE; INCREASE SETBACK 3.4.5
D	ADJUST SETBACK; EXTEND GARAGE
E	ADJUST SETBACKS
F	UPDATE TO FULL SET CDC
G	CHANGES AS PER EMAIL
H	UPDATE TO FULL SET DA
J	CHANGES TO GARAGE; INCREASE SETBACK TO BED 6; ALFRESCO; EXTERNAL STAIRS; ADDED SHOWER
K	CHANGES TO GARAGE RL
L	CHANGES TO STAIRS, DOOR AT LOUNGE AREA AND BATH
M	REMOVED NEW GARAGE
N	CHANGE ROOF PITCH; CHANGE WINDOW 21

PROPOSED FLOOR SPACES		
NAME	AREA	%

ALFRESCO	16 m <sup>2</sup>	2%
BALCONY	32 m <sup>2</sup>	4%
FIRST FLOOR	141 m <sup>2</sup>	16%
GROUND	167 m <sup>2</sup>	19%
LANDSCAPING	494 m <sup>2</sup>	56%
PORCH	34 m <sup>2</sup>	4%
WATER TANK	3 m <sup>2</sup>	0%
<b>TOTAL AREAS:</b>	<b>886 m<sup>2</sup></b>	<b>100%</b>



**1 SITE PLAN**  
1 : 200

0 1m 3m 5m 10m  
SCALE BAR 1:200

© COPYRIGHT THIS DRAWING REMAINS THE PROPERTY OF G.J. GARDNER HOMES & IS PROVIDED FOR THE USE AS DESCRIBED & MAY NOT BE USED OR REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION. ANY LANDSCAPING (WHEN SHOWN) ARE FOR ILLUSTRATIVE PURPOSES ONLY AND DO NOT FORM PART OF ANY CONTRACT.

**G.J. Gardner.**  
Builders Details

**KJR**  
SUITE 302  
5 CEDAR ROAD  
BELLA VISTA NSW 2153  
ABN 15 078 927 238  
(02) 8862 4244 kjr.drafting@kjr.net.au

**SHANE & CHRISTIE ONEILL**  
DRAWING TITLE  
**SITE PLAN**  
SCALE: 1 : 200

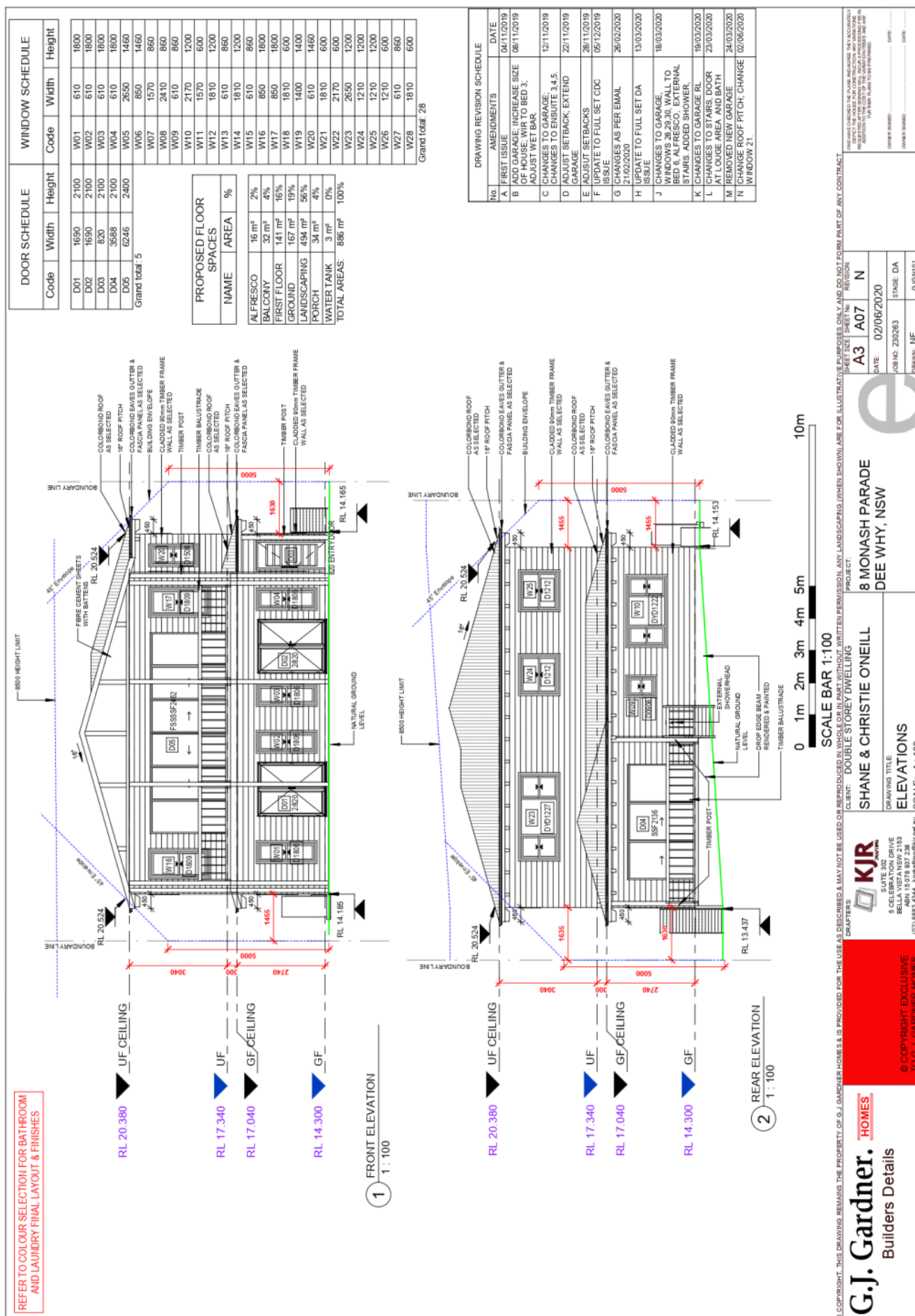
**8 MONASH PARADE  
DEE WHY, NSW**

**A3 A03 N**  
DATE: 02/06/2020  
JOB NO: 230283  
DRAWN: NF  
CHECKED: GJH/N11

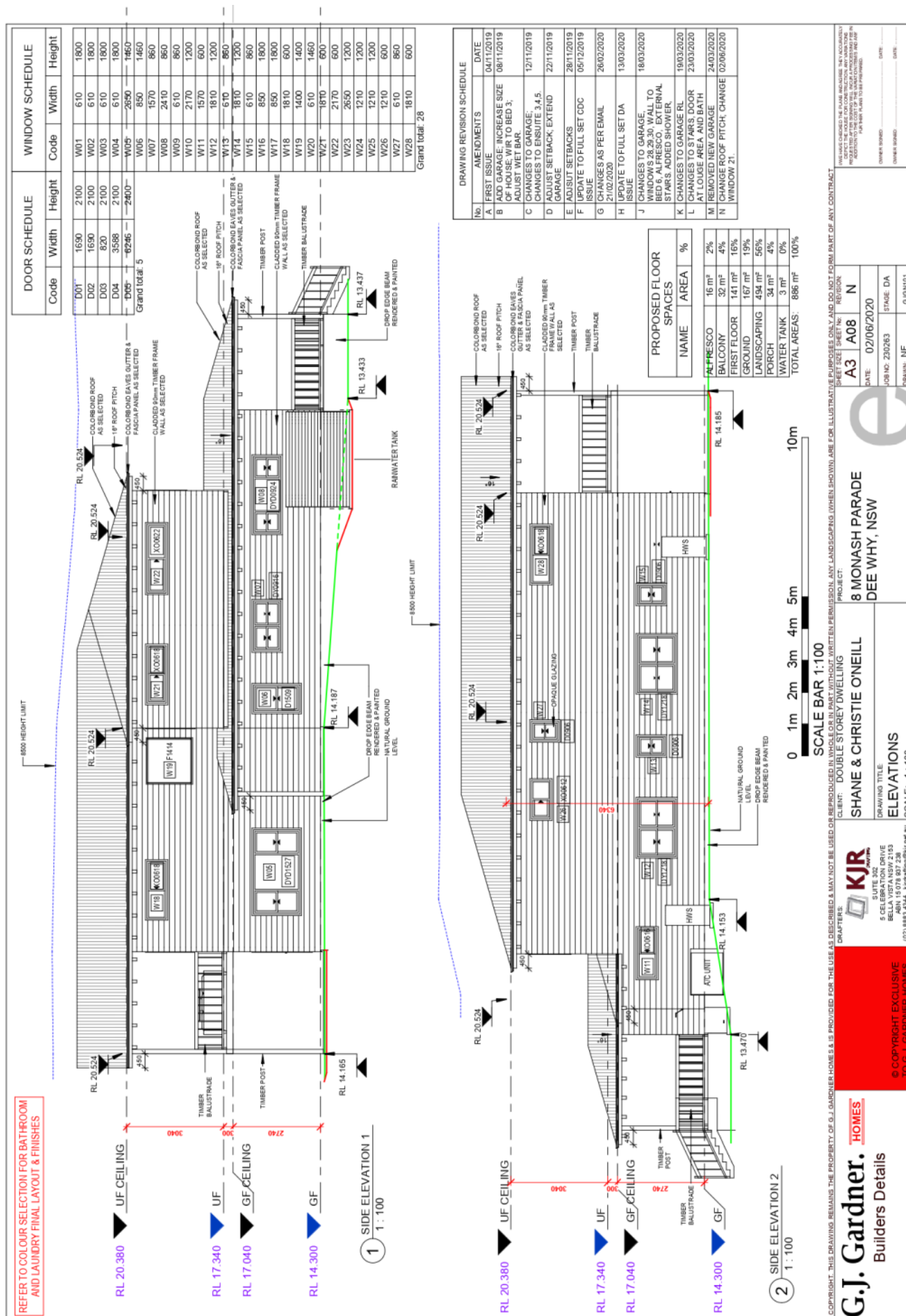
**OWNER'S NAME:**  
OWNER'S ADDRESS:  
OWNER'S PHONE:  
OWNER'S EMAIL:  
OWNER'S DATE:

**OWNER'S NAME:**  
OWNER'S ADDRESS:  
OWNER'S PHONE:  
OWNER'S EMAIL:  
OWNER'S DATE:









<b>ITEM 3.5</b>	<b>DA2020/0382 - 11 WEST STREET, BALGOWLAH - DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A MULTI DWELLING DEVELOPMENT (3 DWELLINGS)</b>
<b>REPORTING MANAGER</b>	<b>Anna Williams</b>
<b>TRIM FILE REF</b>	<b>2020/410259</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report</b> <b>2 Site Plan &amp; Elevations</b> <b>3 Clause 4.6</b>

### **PURPOSE**

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

---

### **RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approve** Development Consent to DA2020/0382 for demolition of existing structures and construction of a multi dwelling development (3 dwellings) on land at Lot 1 DP 13808, 11 West Street, Balgowlah, subject to the conditions outlined in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0382
<b>Responsible Officer:</b>	Anne-Marie Young
<b>Land to be developed (Address):</b>	Lot 1 DP 13808, 11 West Street BALGOWLAH NSW 2093
<b>Proposed Development:</b>	Demolition of existing structures and construction of a multi dwelling development (3 dwellings)
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Brown Bulley Pty Limited
<b>Applicant:</b>	David John Brown
<b>Application Lodged:</b>	21/04/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Other
<b>Notified:</b>	05/05/2020 to 19/05/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	8
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 3.3%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 2,034,844.57

### EXECUTIVE SUMMARY

The Development Application seeks consent for a multi-residential dwelling comprising three (3) x three (3) bedroom dwellings with excavation for basement car parking for seven (7) cars. The application is being referred to the DDP as more than three (3) submissions have been received and the cost of works exceeds \$1m.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site. A summary of the principle assessment issues is provided below.

- The proposal will result in an a FSR of 4.46:1 which represents a 3.3% (16.2sqm) variation of the 4.45:1 FSR development standard. The floorspace that exceeds the FSR relate to the

additional car parking space located within the basement which exceeds the minimum MDCP parking requirements. The additional floors space does not add to the bulk and massing of the development as seen above ground. The additional car parking space is considered to be in the public interest as it will address concerns raised in submissions in regards to the impact of the development on the availability of on-street parking.

- The site area is 1070.5sqm and the proposal exceeded the housing density requirement of the MDCP which requires 1 dwelling per 500sqm. The proposal generally meets all other built form controls, including, the building height development standard, wall heights, open space and setbacks. The bulk, scale, massing and density is therefore assessed as acceptable and it is conceded that there is an inconsistency between the MLEP density control, expressed as FSR, and the MDCP residential density control.
- The development has been designed to ensure that existing residential amenity will be maintained with no unreasonable impacts on solar access, privacy or view sharing opportunities.
- The development presents as a two storey dwelling setback 12.6m from West Street in a landscape setting consistent with the existing and desired character of the area.
- Eight submissions have been received following notification. In addition to the issues listed above, the following additional issues were raised: species selection needs to ensure that trees will not overshadow neighbours, concern over the bulk and massing of southern wall and privacy issues. Conditions are recommended to appropriately address those concerns raised in the public interest.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

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

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks consent for the demolition of the existing two storey dwelling and swimming pool and construction of a multi-dwelling development comprises three (3) x three (3) bedroom two (2) storey dwellings and excavation for seven (7) car parking spaces and storage. In detail, the proposal comprises:

### Dwelling 1, 2 and 3

#### *Ground Floor*

- Entry
- Open plan living/ dining/kitchen
- Terrace
- WC
- Rumpus
- Courtyard and internal stairs

#### *First Floor*

- Three bedrooms

- Bathroom
- Internal access stair and lift shaft
- Courtyards

#### *Basement*

Excavation to a depth of 5.7m to provide seven (7) car parking spaces, six (6) bike parking spaces and bin storage.

#### *External works*

New driveway and crossover, footpaths and landscaping. The materials include brickwork, render, stone cladding, battened cladding, grey steel roof and warm grey aluminium windows.

\*Note: The SEE refers to strata-sub-division of the allotment into 3 lots. No details have been submitted in respect of the strata sub-division therefore this aspect of the development has not been assessed and no consent has been given for the strata subdivision.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - Zone R2 Low Density Residential  
Manly Local Environmental Plan 2013 - 4.4 Floor space ratio  
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing  
Manly Development Control Plan - 3.4.2 Privacy and Security  
Manly Development Control Plan - 3.4.3 Maintenance of Views  
Manly Development Control Plan - 4.1 Residential Development Controls  
Manly Development Control Plan - 4.1.1 Dwelling Density, Dwelling Size and Subdivision  
Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size



Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)  
 Manly Development Control Plan - Schedule 1 – Maps accompanying the DCP  
 Manly Development Control Plan - Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

#### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 1 DP 13808 , 11 West Street BALGOWLAH NSW 2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western (higher) side of West Street.</p> <p>The site is regular in shape with a primary frontage of 17.54m along West Street a depth of 59.81m. The site has a surveyed area of 1070.1m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone in the Manly LEP and accommodates a two storey rendered dwelling with a tiled roof and a swimming pool to the rear of the dwelling. The driveway is located adjacent to the northern boundary.</p> <p>The site has a a total fall of 10m over its length with an overall grade of 10-20%. A number of mature native and exotic trees are located throughout the site, particularly in the landscape garden to the rear.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by large detached one and two storey dwellings setback from the street in landscaped gardens. A residential flat building is located diagonally opposite the site at No. 18 West Street.</p>

Map:



## **SITE HISTORY**

On 14 November 2019, a Pre-Lodgement (PLM) Meeting took place to discuss the demolition of existing dwelling and ancillary structures and construction of three (3) multi-dwelling houses. The issues that were discussed included density (the conflict between the LEP and DCP density controls), open space and landscaping, overshadowing, streetscape impacts, front and side setbacks, view loss, excavation beyond the building footprint and visitor parking. It was recommended that the bulk, scale and massing of the proposal be reduced, setbacks to the southern boundary increased with additional landscaping providing screening and potential impacts on neighbouring amenity be addressed with respect of overshadowing, view loss and privacy.

- Density - The subject application has been amended to reduce the density to comply with the objectives of the density controls. It is noted that the provision of an extra car parking space has resulted in the development exceeding the maximum FSR controls by 16sqm (3.6%). The building above ground complies with the FSR control and the excessive floor space will not increase the bulk, scale or massing of the development. Refer to the discussion under the clause 4.6 variation.
- Open space and landscaping - The proposal has been amended to increase the amount of open space and landscaping so as to exceed the DCP requirements. Concerns raised at the PLM in respect of privacy issues with the elevated terraces have been addressed with the addition of privacy screens. A landscape plan has been prepared to address issues raised at the PLM including a requirement for additional screen planting along the southern boundary.
- Overshadowing - The side setbacks of dwelling 3 to the southern boundary has been increased and the roof pitched lower so as to ensure that the proposal complies with the solar access provisions.
- Streetscape and front setback - Dwelling 1 is setback an additional 1.4m further from the street front than the existing dwelling. The front setback exceeds the 6m requirement by 7.1m.
- View loss- View analysis diagrams have been submitted in respect of No. 9 West Street which illustrates that the proposal will improve view sharing as a result of the reduced bulk, height and massing of dwelling 1 compared to the existing dwelling. A view analysis has also been undertaken in respect of No. 16a Seaview Street which confirms there is no view loss from this property.

- Traffic - A visitor car parking space has been provided in the basement.
- Excavation - The basement garage has increased in size to provide forward exiting and a visitor parking space.

#### 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	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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&amp;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&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to waste management and FSR.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent</p>

Section 4.15 Matters for Consideration'	Comments
	<p>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&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

#### **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

#### **NOTIFICATION & SUBMISSIONS RECEIVED**

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

As a result of the public exhibition process council is in receipt of 8 submission/s from:



Name:	Address:
Mr Ian John Sharp	4 Namba Road DUFFYS FOREST NSW 2084
North Harbour Residents Group	24 Wanganella Street BALGOWLAH NSW 2093
Ms Suzanne Christine De Monchaux	31 Wattle Avenue FAIRLIGHT NSW 2094
Mrs Juliette Marie Elwin	2 / 18 West Street BALGOWLAH NSW 2093
Ms Alison Margaret Whitehead	5 West Street BALGOWLAH NSW 2093
Ms Lisa Kate Cocks	7 West Street BALGOWLAH NSW 2093
Mr Alexander John Cowper Robison	12 A Seaview Street BALGOWLAH NSW 2093
Colco Consulting Pty Ltd	29 A Amiens Road CLONTARF NSW 2093

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

- Over-development / non-compliance with the density controls and precedent;
- Privacy and overlooking;
- Overshadowing;
- Southern Wall - bulk, scale and massing of southern wall and insufficient side setbacks;
- Traffic and parking issues;
- Impact on the character of the neighbourhood;
- Zoning non-compliance, and
- Front setback non-compliance

The matters raised within the submissions are addressed as follows:

**The proposal is contrary to the DCP density controls which allow one dwelling per 500sqm therefore only two dwellings are permitted on the 1070.1sqm site. There is a concern that some floor areas have been omitted from the GFA calculations.**

Comment:

It is agreed that the proposal is contrary to the clause 4.1.1.1 Residential Density control of the MDCP which requires 1 dwelling per 500sqm. There is however a conflict between the DCP density controls and the FSR development standard. The FSR controls allows a density of FSR 0.45:1 (481sqm). A review of the GFA plans confirm that the applicant had not included the additional car parking space in the basement which exceeds the minimum parking requirements of the MDCP. The additional 16.2sqm results in an FSR of 0.46:1 and the Applicant has been requested to submit a Clause 4.6 variation to support the 3.3% variation of the FSR development standard. The extra floorspace is entirely located within the basement and will not add to the visual bulk of the development. The proposal generally complies with the built form controls and the density of the development has been assessed as acceptable. Refer to discussion on the issue of density under Clause 4.6.

**Excessive bulk and wall length from neighbouring property to the south and insufficient setback to the southern boundary.**



Comment:

The setback of the dwelling from the southern boundary vary between the three dwelling with a maximum set back of 5.8m to dwelling 3. The side setbacks generally exceed the minimum side setback requirements of the DCP. The southern wall has been articulated in plan and elevation so as not to present a blank continuous plane. The height of the dwellings along the southern boundary sits below the maximum 8.5m height and the wall height. The proposal steps down with the topography of the site and existing and proposed landscaping is provided along the southern boundary to soften the built form. In summary, the bulk, massing and height of the southern wall generally complies with the built form controls and has been assessed as acceptable.

**Negative impacts on residential amenity as a result of the excessive bulk, height and massing of the southern wall. Particular concern has been expressed in relation to overshadowing and privacy impacts to the sunroom of No 9 West Street as a result of dwelling No 3.**

Comment:

As discussed above, the bulk, height, massing and setbacks of the proposal has been assessed as acceptable and the proposal will not result in unacceptable amenity impacts on neighbouring properties in terms of overshadowing and privacy.

*Privacy*

The following privacy control measures have been included in the design.

Dwelling 3 – the windows that face No. 9 West Street are windows to non-habitable rooms and privacy screens are proposed to the bathrooms and hallway. It is noted that these windows are positioned 6.2m and 4.6m respectively from the southern boundary. Window 3.21 to the upper floor bedroom is positioned 5.7m to the boundary and 10.5m to the sunroom of No. 9 West Street. Despite this setback, a condition requires that a privacy screen be applied to this window to ensure privacy to No. 9 West Street is maintained. A condition also requires privacy screens be installed to the north facing upper floor bedroom windows to dwelling 3.

Dwelling 2 - the sill heights of bathroom windows is 1.9m which will prevent overlooking. Dwelling 1 - a condition requires the kitchen window in the southern elevation to be a high level window and a privacy screen to be installed along the entire length of the southern edge of upper level terrace.

*Overshadowing*

Concern has been raised in regards to the loss of solar access to the sunroom and terrace of No. 9 West Street. Shadows diagrams have been submitted in plan and elevation demonstrating that the proposal complies with the solar access requirements. A small portion of 1 window in the sunroom will be affected by additional shadowing. The line of new shadow will be cast on a small area of the bottom portion of the window. The proposal however will maintain solar access to this window for at least 2 hours between 10.00 am and 3.00 pm on June 21 in compliance with the control. The shadow diagrams also confirm that the development will not eliminate more than one third of the existing sunlight to accessing the private open space in compliance with the control. In summary, the proposal has been design to increase the setback of dwelling 3 and reduce the pitch of the roof to ensure solar access to No 9. West Street is maintained. Refer to further discussion under clause 3.5.1 solar access.

**Replacing the existing dwelling with three dwellings will leads to increased pressure on the availability of on street parking.**

Comment:

The proposal provided a total of seven (7) car parking spaces which exceeds the parking requirements in the MDCP which require a total of six (6) parking spaces for a three (3) x three (3) bedroom multi dwelling development. Council's Transport Unit advise that the proposed traffic generation of three (3) vehicle trips in peak hour is not considered to have significant impact on the road network, and is acceptable. The additional space in excess of the controls will help reduce the demand for on street parking.

**The areas is characterised with single dwellings set in large gardens. The proposal for three (3) multi-unit dwelling will impact on the character of the neighbourhood.**

Comment:

It is agreed that the majority of properties in the area are characterised by large detached one and two storey dwellings in garden settings. There are however higher density dwelling in the immediate area including a residential flat building on the opposite side of the street at No. 18 West Street. The proposal presents a two (2) storey dwelling typology to the street with dwelling 1 setback 12.6m from the frontage in a landscape setting consistent with the existing and desired character of the area. The facade is modulates to break up the massing and the built form is soften with extensive planting. In addition, the proposed materials are consistent with the materials used in the surrounding area.

**Multi-unit dwellings are contrary to the zoning and approval will result in a undesirable precedent.**

Comment:

Multi dwelling units are permitted in the R2 zone, therefore, the proposal is permitted in the zone and consistent the the objectives of the zone. Refer to discussion elsewhere in this report.

**Privacy issues to the rear of the development.**

Comment:

Dwelling 3 is located between 8.2m – 10.3m from the rear (western) boundary. Significant landscaping will be retained along this boundary and enhanced with additional planting. As such, dwelling 3 is not expected to result in unacceptable impacts on residential amenity by way of privacy to the property to the rear.

**It is requested that a domestic style timber fence be erected between the southern boundary of No. 9 and the subject site and any planting along the southern boundary be restricted to species that will be limited in height to protect solar access.**

Comment:

The landscape plan includes the removal of the a number of mature exotic species which currently overshadow neighbouring properties. Council's Landscape Officer has confirmed that the proposed species selection along the southern boundary will not result in solar impact issues to No. 9 West Street as the proposed species are all low height ferns / accents unlikely to achieve a height higher than boundary fencing.

The plans are annotated to show the retention of the existing timber fence to the southern boundary.

**Front setback non-compliance.**

Comment:

Dwelling 1 is setback 12.7m to the frontage and is partially consistent with the setback of the existing dwelling. The proposal complies with the 6m front setback control and is generally consistent with the prevailing setbacks in the street.

**REFERRALS**

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p>The proposed development is for the demolition of existing structures and the construction of a multi-dwelling development and strata subdivision of one lot into three lots.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically: 3.3.1 Landscaping Design; and 4.1.5 Open Space and Landscaping.</p> <p>A Landscape Plan and a Arboricultural Impact report are prepared with the development application to support the desired outcome of the landscape controls of Manly DCP 2013.</p> <p>The landscape component of the development application is considered to achieve a softening of the built form through landscape treatment and is acceptable subject to the completion of landscape works and the protection of existing vegetation nominated for retention.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
Traffic Engineer	<p>The proposal is for demolition of a dwelling house and construction of three dwellings with a proposed strata subdivision.</p> <p>Parking:</p> <p>The development proposes the provision of 7 parking spaces comprising 2 parking spaces for each units and 1 visitor parking. The proposal also provides 6 bicycle spaces. The proposed parking provision satisfies the parking requirement.</p>

Internal Referral Body	Comments
	<p>Car park design: No concern is raised on the proposed car parking design subject to the compliance with Australian Standards.</p> <p>Traffic generation: The proposed traffic generation of 3 vehicle trips in peak hour is not considered to have significant impact on the road network, and is acceptable.</p> <p>Conclusion: The proposal can be supported by traffic team subject to conditions.</p>
Waste Officer	<p><b>Waste Services Referral</b></p> <p>The updated drawing, DA02.1 revision D received on 7 July 2020 regarding waste storage facilities is acceptable and the application is now supported from a Waste Services Perspective, subject to the conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>Ausgrid has no objection to this development application, however the design submission must comply with relevant Ausgrid Network Standards and Safe Work NSW Codes of Practice for construction works near existing electrical assets.</p> <p>The “as constructed” minimum clearances to Ausgrid’s infrastructure must not be encroached by the building development. It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances on site. Ausgrid’s Network Standards can be sourced from Ausgrid’s website, <a href="http://www.ausgrid.com.au">www.ausgrid.com.au</a></p>

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***

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

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

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

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

##### **SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated.



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

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 10761093M).

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

<b>Commitment</b>	<b>Required Target</b>	<b>Proposed</b>
<b>Water</b>	40	40
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	45	45

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

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

##### Ausgrid

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

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

##### Comment:

The proposal was referred to Ausgrid and a response was received on 18 May 2020 confirming there are no objections to the proposal subject to advice relating to work near on Ausgrid infrastructure. A condition requires compliance with Ausgids advice.

#### **Manly Local Environmental Plan 2013**

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



zone objectives of the LEP?	Yes
-----------------------------	-----

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.3m	N/A	Yes
Floor Space Ratio	FSR: 0.45:1 (481sqm)	FSR: 0.46:1 (497.7sqm)	3.3% (16.2sqm)	No

#### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

#### Detailed Assessment

#### Zone R2 Low Density Residential

The proposal is for *multi dwelling housing*, defined in the LEP as *three (3) or more dwellings*. The principle of a multi dwelling development is therefore acceptable in principle.

#### 4.4 Floor space ratio

The development will result in an FSR of 0.46:1 which represents a minor 3.3% (16.2sqm) breach of the maximum 0.45:1 FSR development standard. The additional 16.2sqm relates to the extra car parking space located within the basement. The additional floor space will not impact on the bulk, scale and massing of the development above ground and provides a public benefit in that it will address concerns relating to the impact of the development on the availability of on street parking. Refer to the discussion under Clause 4.6 variation below.

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	4.45:1 (481.05sqm)
Proposed:	4.46:1 (497.77sqm)
Percentage variation to requirement:	3.3% (16.2sqm) which relates to the extra car parking space in the basement.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

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

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

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

*circumstances of the case, and*

Comment:

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

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

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- *The non-compliance with a floor space control relates to the provision of an additional off street car space in the basement, which exceeds Council's minimum requirement. Submissions have raised concerns in relation to on street parking impacts and the provision of an additional space within the confines of the site is considered to be within the public interest as it will allow for additional parking provision, which addresses the neighbour's concerns.*
- *The minor noncompliance of 16.2sqm with the maximum gross floor area control, resulting from the inclusion of an additional off street car space, will benefit the local community by providing for greater parking provision within the confines of the site.*
- *The area of FSR non-compliance, is located wholly below ground level and not visible from an external view of the site. The bulk and scale of the development as presented above ground is acceptable.*
- *The proposed multi dwelling residential development will meet the housing needs of the community which is a permissible use in this low-density residential zone.*
- *The multi dwelling residential development, is consistent with the Objectives of the R2 Low Density Residential Zone and will allow for increased housing opportunity for the local community. The proposal provides for a high level of amenity for the site's occupants while maintaining the exiting residential amenity of neighbouring properties.*
- *Notwithstanding the non-compliance with the maximum floor space ratio the new works will provide a well designed high quality residential development that will add positively to the character of the local residential neighbourhood.*

Comment:

The applicants justification for the 3.6% variation of the FSR development standard is excepted as the minor 16.2sqm variation is entirely contained in the basement and will not add to the bulk and massing of the development presented above ground. The additional floor space in excess of the FSR relates to the additional car park space which exceeds the minimum car parking requirements of the MDCP. The provision of the extra car park space will address the concerns raised in the submission received in relation to the impact on the proposal on the demand for on street car parking. The multi residential development is well considered to provides a high level of amenity to future occupants that will increase housing choice in the area in accordance with the objectives of the R2 Low Density Residential zone.

The development presents a two storey dwelling typology to the street with dwelling 1 setback 12.7m from the street frontage in a landscape setting consistent with the character of existing and desired development in the area. The proposal generally complies with the height, setbacks and envelope controls to present a built form (bulk, scale and massing) which will ensure that the residential amenity of neighbouring properties is maintained.

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

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

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



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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

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

Comment:

The objective of Clause 4.4(1)(a) seeks to ensure buildings, by virtue of their height and scale, are consistent with the desired future streetscape character of the locality.

The contemporary development maintains a predominant two story built form with a low profile roof which will sit below the maximum 8.5m height limit to ensure that existing residential amenity in terms of view sharing opportunities and solar access are maintained. The proposal generally complies with built form controls, including, setbacks and building envelopes to ensure an appropriate bulk and scale. Dwelling 1 is setback 12.6m from the street frontage in a landscape setting which will help soften and reduce the visual bulk of the dwelling from the streetscape. Further, the modulation of the front façade, together with the provision of appropriate side setbacks and recessive external finishes, will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

In summary, the proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as such, will not be a visually dominant element in the area.

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

Comment:

The proposal application is supported by a comprehensive landscape plan prepared by Melissa Wilson Landscape Architects which details the removal of a number of trees and the planting of native trees that are in excess of 8m in height and a number of mid-storey trees and associated planting. The existing and proposed planting will help soften the built form and the development.



The proposed landscaping has been assessed as acceptable and the proposal will not result in any adverse effects on the landscape features of the area.

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

Comment:

The landscape design will see a net increase in the amount of landscape in the front setback when compared with the existing as well as an increased density of landscape to the street. The proposal will retain a sufficient area of soft landscaping in accordance with the DCP control and maintains an appropriate balance between the landscaping and the built form. The proposal provides a substantial landscaped curtilage which assists in improving the amenity for the future occupants, neighbouring properties and the visual quality of the streetscape.

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

Comment:

The proposed works are wholly contained within the site and will not result in any adverse impacts for any adjoining land.

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

Comment:

The site is not located within a business zone and by providing for the construction of multi dwelling residential development, is not contrary to the viability of any local business activity.

## Zone objectives

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

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

Comment:

Multi dwelling development is a permissible form within the Land Use table and is considered to

The R2 Low Density Residential Zone contemplates low density residential uses on the land. 1

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

Comment:

The subject proposal relates to a multi dwelling residential development and this provision is that

Conclusion:

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

the R2 Low Density Residential zone.

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

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Floor Space Ratio Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%. Notwithstanding this given that the DA has resulted in more than three (3) unresolved submission the application is required to be determined by the Development Determination Panel.

**Mainly Development Control Plan**

Built Form Controls

<b>Built Form Controls - Site Area: 1070.5sqm</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 500 sqm therefore 2 dwellings are permitted on the 1070sqm site	3 dwellings	N/A	No
	Dwelling Size: 90sqm for 3 bedroom dwellings 95sqm	Dwelling 1 - 149.12sqm Dwelling 2 - 164.63sqm Dwelling 3 166.82sqm All dwellings exceed the minimum size requirements	N/A	Yes
4.1.2.1 Wall Height (1/3 of wall height)	Southern Boundary: 7.6m based on a gradient of 1:5.5	The wall height varies between 2.3 - 5.7m	N/A	Yes
	Northern Boundary: 7.6m based on a gradient of 1:5.5	The wall height varies between 6.5m and 7.5m	N/A	Yes
4.1.2.2 Number of Storeys	2/3	2/3	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.8m	N/A	Yes
	Pitch: maximum 35 degrees	8 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Approximately 12.7 m to the frontage of dwelling 1 and 4.8m to the retaining wall of the front garden  There is no consistent setback in the street, however, the proposal is	N/A	Yes

		generally consistent with the setback of the existing dwelling and the neighbouring dwellings including No 7, 15 and 19 West Street.		
4.1.4.2 Side Setbacks	Southern boundary 0.7m - 1.9m based on the proposed wall height of 2.3m to 5.7m	Dwelling 1 - 0.9m - 3.3m Dwelling 2 - 1.8m - 3.2m Dwelling 3 - 2m, 3.5m and 5.2m	N/A	Yes
	Northern boundary 2.1m - 2.5m based on the proposed wall height of 6.5 to 7.5	Dwelling 1 - 8.8m Dwelling 2 - 4.1- 8.2m Dwelling 3 -0.99m - 3.8m	N/A NA 47.8%	Yes Yes No
	Windows: 3m	Dwelling 1 - 2m setback to kitchen window at ground level Dwelling 3 - 1.8m setback to first floor bedroom window	33% 40%	No No
4.1.4.4 Rear Setbacks	8m	8.1m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (588.7sqm)	57.4% (614.6sqm)	N/A	Yes
	Open space above ground 25% of total open space	1.6% (17.9sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (215.06sqm)	51% of the total open space (314.52sqm)	N/A	Yes
	4 native trees	5 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	Dwelling 1 - 33.6sqm Dwelling 2 53sqm Dwelling 3 87.7sqm	N/A	Yes
Schedule 3 Parking and Access	A total of 6 spaces including 1 visitor space	A total of 7 space (2 per dwelling) plus 1 visitor space.	N/A	Yes

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
Schedule 1 – Maps accompanying the DCP	No	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	Yes	Yes
Schedule 3 - Part B - Minimum Dimensions for parking, access and loading	Yes	Yes

#### Detailed Assessment

#### **3.4.1 Sunlight Access and Overshadowing**

3.4.1.1 Maintaining Solar Access to private open space of Adjacent Properties requires:

*a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June).*

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);*

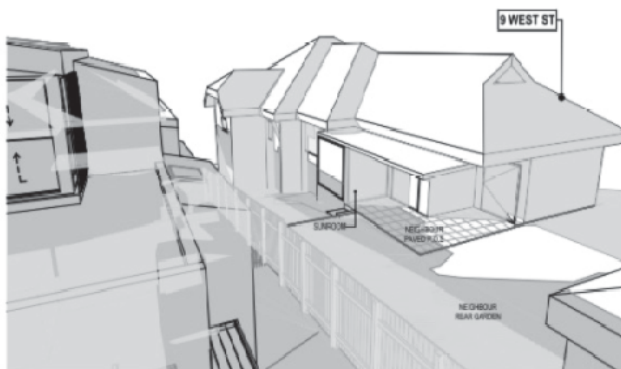
#### Comment

##### *Private Open Space*

Detailed shadow diagrams in plan and elevation have been prepared in addition to solar access calculations which assess the existing solar access to No. 9 West Street and the shadow impact of the proposed development. The information includes an assessment of existing and proposed solar access on the hour between 9.00 am and 3.00 pm on 21 June. The shadow analysis confirms that the new development will not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June). The Applicant also notes that solar access will be retained to 90% of the sun terrace to No. 9 West Street on June 21.

##### *Windows and doors of living rooms*

The elevational shadow diagrams confirm that the proposal will result in additional overshadowing to the a small potion of one lower north facing window to the sunroom at No. 9 West Street at 9.00 am on June 21. Solar access is maintained to this window for at least 2 hours between 10.00 am and 3.00 pm.



Elevational shadow diagram of No. 9 West Street at 9.00 am.

In summary, as a result of compliance with the built form controls, namely side setback, envelope and height the proposal complies with the solar access controls.

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

Clause 3.4.2 requires:



#### 3.4.2.1 Window Design and Orientation

- a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.
- b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

#### 3.4.2.2 Balconies and Terraces

- a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.
- b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

#### Comment

The kitchen window to dwelling 1 is located 2m from the southern boundary. A condition requires that this window be designed as a high level window to ensure visual privacy is maintained to No.9 West Street. In addition, a condition requires the privacy screen to the upper level terrace to extend the entire length of the southern edge of the terrace and a privacy screen be applied to the south facing window in dwelling 3. Two windows to upper floor bedroom in dwelling 3 are located 1.8m from the northern boundary. A condition also require that fixed angled privacy screens are installed to these windows.

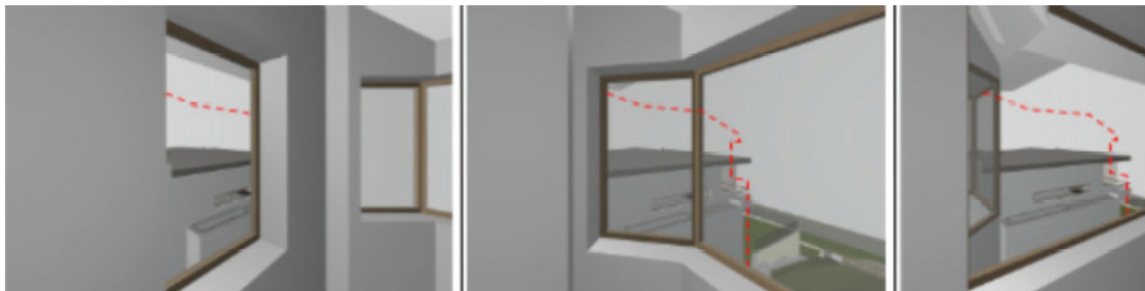
#### 3.4.3 Maintenance of Views

Clause 3.4.3 requires

- a) The design of any development, including the footprint and form of the roof is to minimise the loss of views from neighbouring and nearby dwellings and from public spaces.
- b) Views between and over buildings are to be maximised and exceptions to side boundary setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas.
- c) Templates may be required to indicate the height, bulk and positioning of the proposed development and to assist Council in determining that view sharing is maximised and loss of views is minimised. The templates are to remain in place until the application is determined. A registered surveyor will certify the height and positioning of the templates.

#### Comment

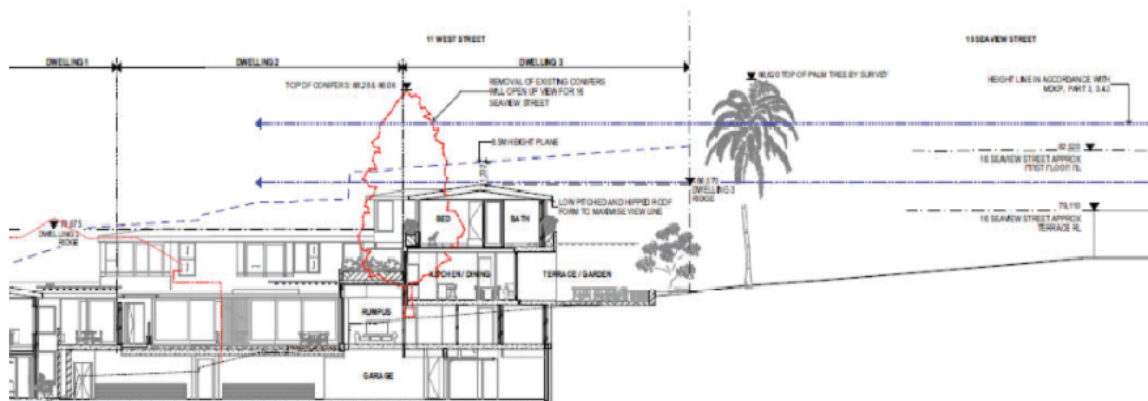
The Applicant has submitted a view loss analysis which shows views looking to the north-east from the front windows of No 9. West Street will improve as a result of the reduce height and bulk of dwelling 1 compared to the existing two storey dwelling.



Windows 1, 2 and 3 to the front of 9 West Street showing the existing dwelling profile in red and the

reduced proposed massing.

View analysis has also been submitted in respect of potential view loss from No 16 Seaview Street located to the rear of the dwelling, refer to diagram below. The analysis illustrates that the views from the rear windows of No. 16 Seaview will not be compromised and that the removal of the mature trees will open up views to the east.



In summary, the proposal meets the objectives of the clause in that it provide for view sharing for both the existing and proposed development.

#### 4.1 Residential Development Controls

With the exception of the residential density controls the proposal generally complies with all other residential controls. Refer to discussion under clause 4.1.1.1 (Residential Density).

##### 4.1.1 Dwelling Density, Dwelling Size and Subdivision

The relevant DCP objectives to be met in relation to residential development include the following:

- Objective 1) To delineate by means of development control the nature and intended future of the residential areas of the former Manly Council area.*
- Objective 2) To provide for a variety of housing types and densities while maintaining the exiting character of residential areas of the former Manly Council area.*
- Objective 3) To ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residences, the existing environmental quality of the environment or the aesthetic quality of the former Manly Council area.*
- Objective 4) To improve the quality of the residential areas by encouraging landscaping and greater flexibility of design in both new development and renovations.*
- Objective 5) To enable population growth without having adverse effects on the character, amenity and natural environment of the residential areas.*
- Objective 6) To enable other land uses that are compatible with the character and amenity of the locality.*
- Objective 7) To ensure full and efficient use of existing social and physical infrastructure and the future provision of services and facilities to meet any increased demand.*

Comment:

The proposal meets the objectives of the residential density controls in that it provides a variety of housing, namely a multi-dwelling development, while maintaining the existing character of the area. The proposal presents a two storey frontage to the street consistent with the character of the area. The bulk, height and scale of the built form has been designed to ensure that neighbouring residential amenity will not be degraded in terms of overlooking or overshadowing. The environmental quality of the area will be maintained with the provision of a significant amount of open space and landscaping in compliance with the relevant controls.

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

##### **4.1.1 Dwelling Density, Dwelling Size and Subdivision**

Clause 4.1.1 requires a density of 1 dwelling per 500sqm.

The proposal provided 3 dwellings in an area of 1070.1sqm and therefore does not comply with the control. The development is considered against the Objectives of the Control.

*Objective 1) To promote a variety of dwelling types, allotment sizes and residential environments in Manly.*

##### Comment

The proposal seeks to provide a multi dwelling development in a low density residential zone which is permissible in the zone. The proposal dwelling type, namely three (3) x three (3) bedroom dwellings will help meet objective 1 in that it provides a variety of housing types and densities while maintaining the existing character of residential areas of the former Manly Council area.

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

##### Comment:

The proposal will require the removal of a number of trees to accommodate the proposed works, as detailed in the Arboricultural Impact Report prepared by Landscape Matrix, dated 15 April 2020. Replacement plantings are to be provided, and further supplemented by plantings as detailed in the Landscape Plan prepared by Melissa Wilson Landscape Architects, Job No. 2003, dated 8 April 2020. The majority of the plants to be removed are exotic or not preferred species for the area. The removal of some of the mature exotic species will enhance the amenity of neighbouring properties opening up views and improving access to sunlight. Council's Landscape Officer supported the removal of the trees and the landscape plan, subject to conditions.

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

##### Comment

As noted above, the proposal meets objective 1 in that it will provide for an increase in housing diversity and dwelling size in the area. The development will provide for appropriate level of internal amenity to the future occupants in terms of private open space, dwelling size, and landscaping within a built form that complements the surrounding development pattern. In addition, the proposal has been designed to minimise impacts on neighbouring residential amenity in terms of the protection of solar access and privacy. Refer to discussion under clause 3.4 (privacy and overshadowing).

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

Comment:

The proposal presents as a single two storey dwelling to West Street set back 12.7m from the street in a landscape setting which is generally consistent with neighboring properties. The materials complement the existing dwellings in the street and include the use of natural stone, brick, timber cladding and render.

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

Comment

The proposal provides a total of seven (7) car parking spaces which exceed the requirement for six (6) spaces as required under the MDCP. Council's Transport Engineer have no objections to the proposal subject to conditions. It is noted that a number of submissions raised issues with impacts on the availability of on street parking. Given that the proposal exceeds the maximum parking spaces this will reduce the demand for on-street parking which will address the neighbours concern relating to this issue.

Summary:

On merit the proposal has been assessed as acceptable and complies with the objectives of the clause. The development is generally consistent with the built form controls in terms of the maximum building height and wall height, front, rear and side setbacks and open space.

The minor 3.3% breach of the FSR control relates to the addition of an extra car parking spaces located within the basement garage and has no visible impact on the density of the development from the streetscape or neighbouring properties. The proposed car parking exceeds the parking requirements thereby ensuring that the demand for on street parking will not be compromised.

It is acknowledge that there is a conflict between the MLEP FSR density controls and the MDCP dwelling density controls. The development, above ground, presents a bulk and scale that is acceptable and compliant with the FSR development standard. In summary, given the inconsistency between the LEP and DCP density controls the proposal has been assessed on merit as acceptable as it presents a bulk, scale and massing that is compatible with the existing and desired character of the area and will not result in unreasonable impacts on existing residential amenity. Refer to discussion on the FSR, density and bulk and scale within the clause 4.6 variation section of this report.

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

Clause 4.1.4.2 requires

- a) Setbacks between any part of a building and the side boundary must not be less than one third the height of the adjacent external wall of the proposed building.*
- b) Projections into the side setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, and the like, if it can demonstrate there will be no adverse impact on adjoining properties including loss of privacy from a deck or balcony.*
- c) All new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries.*

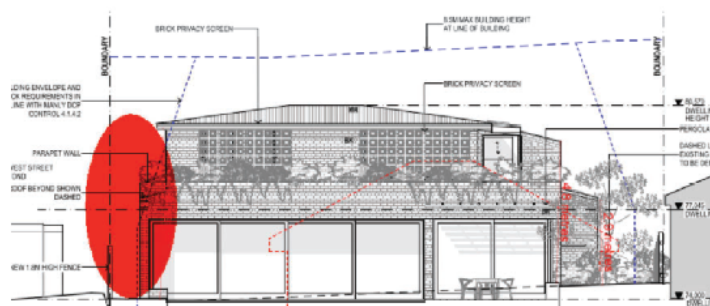


*d) For secondary street frontages of corner allotments, the side boundary setback control will apply unless a prevailing building line exists. In such cases the prevailing setback of the neighbouring properties must be used. Architecturally the building must address both streets.*

e) Side setbacks must provide sufficient access to the side of properties to allow for property maintenance, planting of vegetation and sufficient separation from neighbouring properties.

Comment

The wall height of dwelling 3 measures 5.8m therefore a 1.9m side setback is required to the northern boundary. The proposal provides a 0.99m setback to the ground floor and a 1.8m setback to the upper floor. The variation relates to a 6.9m length of the wall to dwelling 1. It is also noted that two windows to the upper floor bedroom are located 1.8m from the northern boundary.



Rear elevation showing the side setback of dwelling 3 to the northern boundary.

On merit the variation of the side setback control to dwelling 3 has been assessed as acceptable as the proposal meets the following objectives of the setback provisions:

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

Comment

Dwelling 3 is setback within the rear of the site and will not be visible from the streetscape.

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

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

Comment:

Fixed privacy screens will be applied to the proposed upper floor bedroom windows to ensure privacy is maintained to No. 13 West Street. It is also noted that the kitchen window to dwelling 1 is located within 2m of the southern boundary. A condition requires this window to be a high level window to protect



privacy to No. 9 West Street.

Due to the orientation of the dwelling 3 the breach of the side setback control on the northern boundary will not result in solar access issues to neighbouring properties or impacts on view sharing.

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

Comment:

The development has been design to promote flexibility in the siting of the dwellings. Dwelling 3 has been pulled away from the southern boundary to avoid issues with solar access to the property to the south at No. 9 west Street.

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

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

Comment:

The proposal complies with the open space and landscape provisions of the MDCP and will provide for additional planting which will soften the built form.

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

Comment:

The site is not mapped as being located within a bushfire asset protection zone.

#### **4.4.5 Earthworks (Excavation and Filling)**

4.4.5.1 requires:

*General*

- a) Earthworks must be limited to that part of the site required to accommodate the building and its immediate surrounds to protect significant natural features of the site including vegetation and prominent rock outcrops.*
- b) Natural and undisturbed ground level must be maintained within 0.9m of side and rear boundaries.*
- c) On steeply sloping sites, pier and suspended slab or an equivalent non-invasive form of construction technique must be used to minimise earthworks and vegetation loss and retain natural features.*
- d) Excavation under the canopy of any tree (including those on neighbouring properties) will only be permitted providing its long-term survival and stability is not jeopardised. Such excavation must be supported by an Arborist report.*
- e) Approved sediment, siltation and stormwater control devices must be in place (and maintained) prior to and during the carrying out of any earthworks and other works on the site.*

#### **4.4.5.2 Excavation**

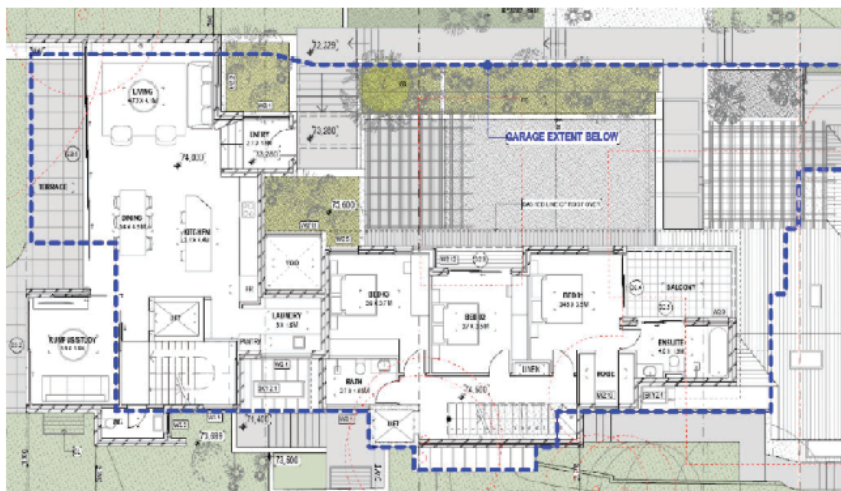
- a) Excavation is generally limited to 1m below natural ground level with the exception of basement*

*parking areas (which will be contained within the footprint of the building) and swimming pools;*  
b) A dilapidation survey report and geotechnical assessment may be required for excavation works exceeding 1m. Dilapidation survey reports are to include photographic survey of the physical condition of adjoining properties, both internally and externally, including walls ceilings, roof, structural members and other such items. Such records are to provide proper record in relation to the proposed development to particularly assist in any dispute over damage to adjoining proposed arising from the works. It is in the interests of applicants and adjoining landowners for it to be as full and as detailed as necessary commensurate with the nature of the proposed development.

#### Comment

The excavation exceeds the footprint of the dwellings and extends to a maximum depth of 5.7m. The applicant has justified the departure of the DCP control on the following grounds:

The basement garage did increase in size to provide for forward exiting as well as the required visitor parking bay. Sweep paths have been submitted to show the car movements in the garage. The proposal complies with deep soil landscape. The whole garage is within the building footprint. We have considered the courtyard to dwelling 2 to be defined as building footprint. Refer below for the overlay of the garage excavation area with the footprint below.



Overlay of garage / excavation to the ground floor

On merit, the Applicants justification for a departure from clause 4.4.5.1 is supported. The basement garage provides safe vehicular access to and from the site in compliance with the requirements from Council's Transport Unit. The extent of excavation also allows for the provisions of an extra car parking space beyond Council's minimum parking requirement which in turn will address concerns from neighbours in relation to impacts of the development on the availability of on-street parking. The setback of the excavation varies between 0.9m, 1.8m, 3.1 and 9.3m to the southern boundary and between 1.7m and 2.1m on the northern boundary in compliance with the minimum 0.9m set back. A geo-technical report has been submitted and the recommendation of this report will be included as a condition of consent. Finally, the excavation complies with the following objectives of clause 4.4.5.1:

*Discouraging the alteration of the natural flow of ground and surface water;*  
*Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways*

Council's Development Engineer have no objections to the proposal in respect of impacts on ground

and surface water and conditions are recommended in respect of sediment control.

### **Schedule 1 – Maps accompanying the DCP**

Map A - Residential Density Areas

#### Comment

The site is mapped as being located in an area that requires a residential density of 1 dwelling per 500sqm. The subject site measures 1070.1sqm and provides 3 dwellings contrary to the clause 4.1.1.1. On merit the proposed density has been assessed as acceptable as it generally complies with the built form controls and the bulk and scale is comparable to neighbouring properties. The minor 3.3% breach of the FSR controls has been assessed as acceptable given that the non-compliant floor space relates to the extra car park space located in the basement and will not affect the built form of the development above ground. Refer to discussion under clause 4.1.1.1.

### **Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles**

The proposal requires a total of 6 space for the 3 x 3 bedroom dwellings. Seven spaces are proposed in the basement. Council's Transport Unikt have no objections to the proposed parking.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2019**

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

A monetary contribution of \$20,348 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,034,845.

### **CONCLUSION**

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

In summary, the principle issues with the development, including issues raised in the submissions area:

*Density - bulk, scale and massing and impacts on the streetscape character.*

The minor 3.3% variation of the FSR control has been assessed as acceptable as it relates to an extra car park space contained in the basement and will not impact on the bulk, massing and density of the development. It is acknowledged that there is an inconsistency between the FSR MLEP controls and the residential density controls in the MDCP. The proposal generally complies with the built form controls including height, setbacks and open space and the bulk and scale of the development has been assessed as acceptable. The development presents as a detached two storey dwelling to the street set in an extensive landscape garden consistent with the existing and desired character of the area.

*Impacts on residential amenity*

The proposal has been designed to ensure existing residential amenity is maintained in terms of solar access, visual privacy and view sharing. Additional conditions are recommended to ensure residential amenity is protected.

*Impacts on the availability of on street parking*

The proposal exceeds the minimum parking rates and it is not expected that there will be extra demand for on street parking. Council's Transport Unit have confirmed that the proposed traffic generation of 3 vehicle trips in peak hour is not considered to have significant impact on the road network.



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

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2020/0382 for Demolition of existing structures and construction of a multi dwelling development (3 dwellings) on land at Lot 1 DP 13808, 11 West Street, BALGOWLAH, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA00.1 Rev B Cover	15 April 2020	MacCormick and Associates Architects
DA00.2 Rev B Legend and BASIX	15 April 2020	MacCormick and Associates Architects
DA00.4 Rev B Schedule of Materials	15 April 2020	MacCormick and Associates Architects
DA01.2 Rev B Site Plan	15 April 2020	MacCormick and Associates Architects
DA01.3 Rev B Living Level Site Plan	15 April 2020	MacCormick and Associates Architects
DA01.4 Rev B Design Concept Plan	15 April 2020	MacCormick and Associates Architects
DA01.5 Rev B Demolition Plan	15 April 2020	MacCormick and Associates Architects
DA01.6 Rev B Axonometric and 3D Images	15 April 2020	MacCormick and Associates Architects
DA01.7 Rev C Southern Side Axonometric	12 June 2020	MacCormick and Associates Architects
DA02.1 Rev D Garage Floor Dwelling 01 (Level 1)	7 July 2020	MacCormick and Associates Architects
DA02.2 Rev C Garage layout (Level 1)	12 June 2020	MacCormick and Associates Architects

DA02.3 Rev B Ground Floor Dwelling 01 and 02 (Level 2)	15 April 2020	MacCormick and Associates Architects
DA02.4 Rev B First Floor Dwelling 02 & Ground Floor Dwelling 03	15 April 2020	MacCormick and Associates Architects
DA02.5 Rev B First Floor Dwelling 03 (Level 4)	15 April 2020	MacCormick and Associates Architects
DA02.6 Rev B Roof Plan	15 April 2020	MacCormick and Associates Architects
DA03.1 Rev B Long (Side) Elevation	15 April 2020	MacCormick and Associates Architects
DA03.2 Rev B North Elevation	15 April 2020	MacCormick and Associates Architects
DA03.3 Rev B South Elevation	15 April 2020	MacCormick and Associates Architects
DA03.4 Rev B Street Elevation	15 April 2020	MacCormick and Associates Architects
DA03.5 Rev B Rear Elevation	15 April 2020	MacCormick and Associates Architects
DA04.1 Rev B Long Sections	15 April 2020	MacCormick and Associates Architects
DA04.2 Rev B Section A-A	15 April 2020	MacCormick and Associates Architects
DA04.3 Rev B Section B-B	15 April 2020	MacCormick and Associates Architects
DA04.5 Rev B Section C-C	15 April 2020	MacCormick and Associates Architects

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
H-DA-00 Rev B Sediemnet Control	15 April 2020	ITM Design Engineers
H-DA-01 Rev B Garage Level 01 Stormwater Drainage	15 April 2020	ITM Design Engineers
H-DA-02 Rev B Level 02 Stormwater Drainage	15 April 2020	ITM Design Engineers
H-DA-03 Rev B Level 03 Stormwater Drainage	15 April 2020	ITM Design Engineers

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Preliminary Geotechnical Investigation 11 West Street P2007611JR01V02	April 2020	Martens Consulting Engineers
Traffic and Parking Impact Report 20008Rep01	15 April 2020	TEF Consulting
Arboricultural Impact Report Issue C	15 April 2020	Landscape Matrix
NCC Assessment Report Ref C20053-	7 April 2020	Credwell

NCC-r1		
Waste Management Report	14 April 2020	MacCormick and Associates Architects

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>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
LS01 1 of 5 Landscape Site Rev C	25 March 2020	Melisa Wilson
LS02 2 of 5 Landscape Ground Floor Plan Rev C	25 March 2020	Melisa Wilson
LS03 3 of 5 Landscape Fourth Floor Plan Details and Sections	25 March 2020	Melisa Wilson
LS04 4 of 5 Landscape Third Floor Plan Rev C	25 March 2020	Melisa Wilson
LS05 5 of 5 Landscape Ground Floor Plan Rev C	25 March 2020	Melisa Wilson

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
DA11.3 Rev B Waste Management Plan	14 April 2020	MacCormick and Associates Architects

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

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

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

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

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Ausgrid	Response Ausgrid Referral	18 May 2020

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

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

**3. Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments

specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

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

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

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

Reason: Legislative requirement.



## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

#### Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$20,348.45 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,034,844.57.

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

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

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

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

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

### 5. Security Bond

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

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

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

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

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

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

### 6. On slab landscape works

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

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

- i) 300mm for lawn
- ii) 600mm for shrubs
- iii) 1m for small trees

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

Reason: to ensure appropriate soil depth for planting and secure waterproofing and drainage is installed

### 7. Boundary Identification Survey

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

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

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

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

### 8. Building Code of Australia and Fire Safety Requirements

The Building Code of Australia fire safety measures as detailed and recommended in the Building Code of Australia Audit Report prepared by Credwell Consulting P/L, dated 7 April 2020, Report Ref No. C20053-NCC-r1 are to be carried out in full to the building.

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

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

### 9. On-site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's MANLY SPECIFICATION

FOR ON-SITE STORMWATER MANAGEMENT 2003, and generally in accordance with the concept drainage plans prepared by itm design pty ltd, job number 19/170, drawing number H-DA-00 to H-DA-03, dated 15/04/2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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

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

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

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

The application is to include four (4) copies of Civil Engineering plans for the design of footpath and vehicle crossing which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information: The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

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

**11. Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

**12. Compliance with Standards**

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

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

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

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

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

### 13. **Privacy Devices**

The privacy devices shall be applied to the following windows and terraces:

- Dwelling 1 - The south facing kitchen window shall be a high level window with a sill height of 1.6m. A fixed and angled privacy screen shall be installed along the entire southern edge of the upper floor terrace to a height of 1.6m.
- Dwelling 3 - Fixed and angled privacy screens shall be applied to the south facing bedroom window ref W3.21 and the north facing bedroom windows ref W3.12 and W3.13.

Reasons: To protect the amenity of surrounding dwellings.

### 14. **Construction Traffic Management Plan**

A Construction Traffic Management Plan(CTMP) and report shall be prepared by a RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 –



"Manual of Uniform Traffic Control Devices", RMS' Manual – "Traffic Control at Work Sites".

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

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site. (DACTRCPC1)

15. **Access Driveway Width**

The access driveway to be widened to the minimum of 3.5m at the kerb excluding the splays.

Reason: To allow for convenient access to/from the site (DACTRCPC2)

16. **Waste and Recycling Requirements**

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

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

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

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

18. **Tree removal within the property**

This consent approved approval to remove the following trees within the property, as recommended in the Arboricultural Impact Report prepared by Landscape Matrix:

- tree 2 - Strawberry Tree
- tree 6 - Cheese Tree (subject to replacement within the site)

The following Exempt Species do not require Council consent for removal:

- tree 4 - Sweet Pittosporum (under 5m)

- tree 5 - African Olive
- tree 7 - Camellia
- tree 9 - Curly Palm

Reason: to enable authorised building works

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

19. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, and as recommended in the Arboricultural Impact report prepared by Landscape Matrix for existing trees 3 and 8.

The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

The Project Arborist is to supervise all excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

All tree protection measures specified must:

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

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

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

Reason: tree protection

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

20. **Road Reserve**

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

Reason: Public safety.

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

Any asbestos material arising from the demolition process shall be removed and disposed of in

accordance with the following requirements:

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

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

22. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

23. **Footpath Construction**

The applicant shall install a 1.5 metres wide concrete footpath along property frontage at West street in accordance with the following:

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

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

24. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ EH and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be

restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

**25. Protection of existing street tree**

The existing street tree identified a T1 - Weeping Bottlebrush in the vicinity of the works shall be retained during all construction stages, including tree protection fencing to the extent and alignment as determined by an Arborist with minimum AQF Level 5 in arboriculture, and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

Unless identified by the development consent, no tree roots over 25mm diameter are to be damaged or cut and all structures are to be bridged over such roots.

Should any problems arise with regard to the existing or proposed trees on public land during the construction or bond period, Council's Public Trees section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: tree protection

**26. Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected, including:

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture
- iii) removal of existing tree roots greater than 25mm is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots greater than 25mm diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-



2009 Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Report prepared by Landscape Matrix, as listed in the following sections: 5. Tree protection measures.

The Certifying Authority must ensure that:

d) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: tree and vegetation protection

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

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan dated 15 April 2020

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

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

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

Reason: To ensure waste is minimised and recovered for recycling where possible. (DACWTE02)

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

29. **Landscape completion**

Landscaping is to be implemented in accordance with the Landscape Plan LS01, LS02, LS03, LS04, and LS05, all issue C, prepared by Melissa Wilson Landscape Architects, inclusive of the following conditions:

a) the proposed *Raphiolepis* species nominated shall be replaced with a non-invasive shrub species of similar form and height,

- b) new tree planting shall be located at least 1.5m from any common boundaries,
- c) new tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.

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

Reason: environmental amenity

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

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

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

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

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

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

31. **Environmental Reports Certification**

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

- (a) Preliminary Geotechnical Investigation 11 West Street P2007611JR01V02, dated April 2020, prepared by Martens Consulting Engineers.
- (b) Traffic and Parking Impact Report 20008Rep01, dated 15 April 2020, prepared by TEF Consulting
- (c) Arboricultural Impact Report Issue C, dated 15 April 2020, prepared by Landscape Matrix
- (d) NCC Assessment Report Ref C20053-NCC-r1, dated 7 April 2020, prepared by Credwell
- (e) Waste Management Report, dated 14 April 2020, prepared by MacCormick and Associates Architects

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

Reason: To ensure compliance with standards.

32. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area. (DACPLF03)

33. **Fire Safety Matters**

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

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

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

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

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

The proposal shall be constructed in accordance with Northern Beaches Council Waste Management Guidelines.

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

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

35. **Waste/Recycling Compliance Documentation**

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

Reason: To ensure waste is minimised and recycled. (DACWTF02)

36. **Positive Covenant for Waste Services**

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

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

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

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

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

Reason: To create encumbrances on the land. (DACWTF04)

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

38. **Landscape maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

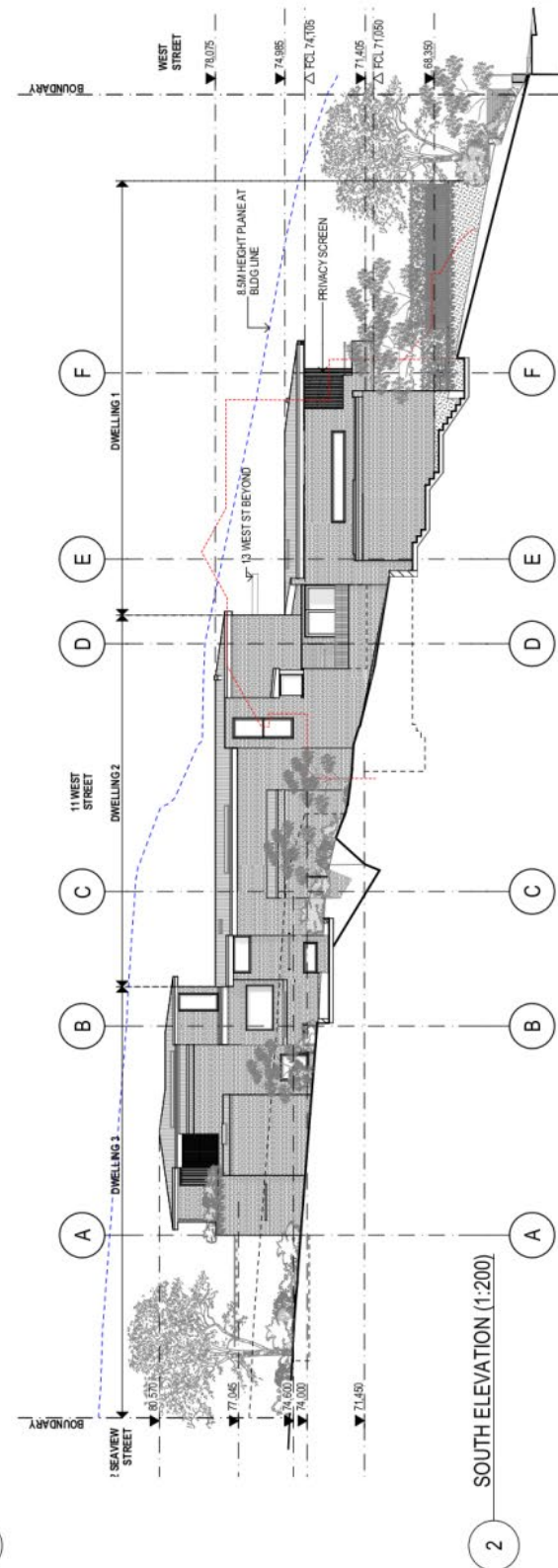
Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: to maintain local environmental amenity





[illegible]

**MACCORMICK + ASSOCIATES ARCHITECTS** 13 VICTORIA STREET QUEEN'S PARK NSW 2022  
T 02 9437 0407 E [info@maccormickarchitects.com.au](mailto:info@maccormickarchitects.com.au) ACN 147 572 807 ARCHITECT REG 6702





DA03.2 B

DATE PRINTED: 15.04.2020  
PAPER SIZE: A3  
DRAWN BY: SD  
CHECKED BY: MM

PROJECT  
WEST STREET COURTYARD HOUSING  
MR DAVID BROWN  
Lot 1, DP 13808 - 11 West St, Balgowlah, 2093  
SC1 Projects 191 920, WestStreetCourtyardHousing@\_design121.Com.au CA 991

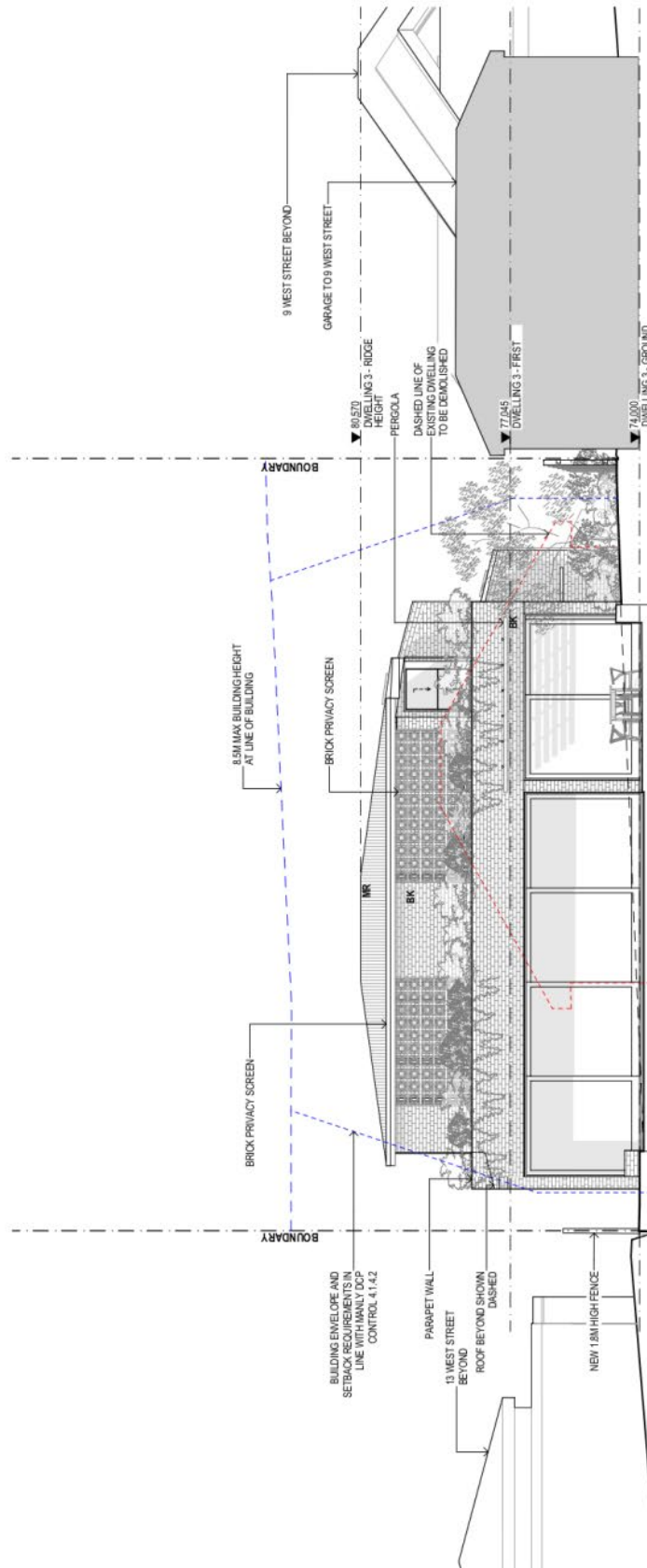
**MAACORRICK + ASSOCIATES ARCHITECTS**  
13 VICTORIA STREET QUEENS PARK NSW 2122  
ACN 147 532 801 ARCHITECT REG 6702  
TEL 02 937 532 801 [info@maacorricks.com.au](mailto:info@maacorricks.com.au)







**MACCORMICK + ASSOCIATES ARCHITECTS**  
10/107/04/17 E: info@macmickarchitects.com.au  
ACN 147 572 807 ARCHITECT REG 002



NOT FOR CONSTRUCTION

DRAWING NO. **DA03.5**  
REVISION **B**

DRAWING TITLE  
**REAR ELEVATION**  
DRAWING STATUS  
**SD**

SCALE  
DATE PRINTED: 15/04/2020  
PAPER SIZE: A3  
DRAWN BY: SD  
CHECKED BY: MM

PROJECT NO. 1913  
REVISION  
B DEVELOPMENT APPLICATION 15/04/20  
A PRE-LODGE/MENT LEE TING 17/03/20

PROJECT  
**WEST STREET COURTYARD HOUSING**  
MR DAVID BROWN  
Lot 1, DP 13808 - 11 West St, Balgowlah, 2003  
1011 Rogers Road, Westmead, NSW 2122 (Project 1913)  
David Brown Architects, 2003

MACCORMICK + ASSOCIATES ARCHITECTS  
11 VICTORIA STREET QUEENSLAND 4000  
T: 08 7100 1100 E: info@maccormickarchitects.com.au  
THE BUILDER SHALL CHECK & VERIFY ALL DIMENSIONS & DIMENSIONS TO THE  
DRAWING SHALL BE USED FOR CONSTRUCTION PURPOSES UNTIL ISSUED BY THE ARCHITECT FOR CONSTRUCTION  
THIS DRAWING IS COPYRIGHT AND NOT TO BE USED WITHOUT THE ARCHITECT'S CONSENT

**002**

Vaughan Milligan Development Consulting Pty Ltd

---

**WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF  
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

**11 WEST STREET, BALGOWLAH**

**DEMOLITION OF THE EXISTING STRUCTURES, CONSTRUCTION OF A MULTI DWELLING  
DEVELOPMENT AND STRATA SUBDIVISION OF ONE LOT INTO THREE**

**MANLY LOCAL ENVIRONMENTAL PLAN 2013**

**For:** Demolition of the existing structures, construction of a multi dwelling development and strata subdivision of one lot into three  
**At:** 11 West Street, Balgowlah  
**Owner:** David Brown  
**Applicant:** David Brown  
C/- MacCormick & Associates Architects

**1.0 Introduction**

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum floor space ratio development standard as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

**2.0 Background**

Clause 4.4 restricts the maximum floor space area control within this area of the Balgowlah locality and refers to the floor space ratio noted within the "Floor Space Ratio Map."

The relevant maximum floor space control in this locality is 0.45:1 or for this site with an area of 1070.1m<sup>2</sup>, the maximum gross floor area is 481.545m<sup>2</sup> and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed development will presents a gross floor area of 497.77m<sup>2</sup> or 0.465:1, which is inclusive of the area within the excavated basement garage which is not required for vehicle manoeuvring and parking to meet Council's parking controls. Sheet DA11.2, Revision C dated 7 July 2020 has been prepared to quantify the extent of the floor area within the basement garage which has been excluded from the gross floor area calculation.

The proposed development will present a variation to the maximum of floor area control of 16.22m<sup>2</sup> or 3.36%.

It is notable that a contributing factor to the non-compliance with a floor space control relates to the provision of an additional off street car space, which exceeds Council's minimum requirement and also the area within the basement garage, which is not directly required for the safe turning

Vaughan Milligan Development Consulting Pty Ltd

---

and manoeuvring of vehicles, including suitable width to allow for safe vehicle movement in accordance with the Australian Standards for driveway and reversing movements. In the event that these areas were to be excluded from the calculation, the development would comply with Council's maximum floor space area control.

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

**Is clause 4.4 of MLEP a development standard?**

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act includes:

*"(d) the cubic content of floor space of a building."*

- (b) Clause 4.4 relates to floor space of a building. Accordingly, clause 4.4 is a development standard.

**3.0 Purpose of Clause 4.6**

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

**4.0 Objectives of Clause 4.6**

The objectives of Clause 4.6 are as follows:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).



Vaughan Milligan Development Consulting Pty Ltd

---

*Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

*"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP provides:

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

Clause 4.4 (the FSR development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

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

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

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

The proposed development does not comply with the FSR development standard pursuant to clause 4.4 of MLEP which specifies an FSR of 0.45:1 however as the proposal includes an additional off street car space which presents a variation to the floor area control of 16.22m<sup>2</sup>, with the area to be located wholly below ground level and not visible from an external view of the site, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Vaughan Milligan Development Consulting Pty Ltd

---

Clause 4.6(4) of MLEP provides:

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

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

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

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained.

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

*(5) In deciding whether to grant concurrence, the Secretary must consider:*

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

*Vaughan Milligan Development Consulting Pty Ltd*

---

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of a multi dwelling residential development, which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal will provide for the construction of a multi dwelling development and the strata subdivision of one lot into three, which will allow for increased housing opportunity for the local community and high level of amenity for the site's occupants.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes, in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum floor space ratio, together with the fact that the development which includes an additional off street car space within the basement garage, resulting in a non-compliance of 16.72m<sup>2</sup> with the gross floor area control, the new works will provide a well designed high quality residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

Submissions lodged in response to the notification of the proposed development have raised concerns in relation to on street parking impacts and the provision of an additional space within the confines of the site is considered to be within the public interest as it will allow for additional parking provision, which addresses the neighbour concerns.

Vaughan Milligan Development Consulting Pty Ltd

---

The proposed multi dwelling development will not see any adverse impacts on the views enjoyed by neighbouring properties.

The works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

## 5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the FSR development standard contained in clause 4.4 of MLEP.
- 5.2 Clause 4.4 of MLEP specifies an allowable gross floor area for a site in this part of Balgowlah of 0.45:1 or for this site, the allowable gross floor area is 481.05m<sup>2</sup>.
- 5.3 The subject site has an area of 1070.1m<sup>2</sup>.
- 5.4 The proposed multi dwelling development, with basement garage level has a calculable gross floor area of 497.77m<sup>2</sup> or FSR of 0.465:1. The proposal will see a minor non-compliance with a maximum gross floor area of 16.22m<sup>2</sup>.

## 6.0 Relevant Caselaw

- 6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:
  - 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
  - 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
  - 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
  - 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*



Vaughan Milligan Development Consulting Pty Ltd

---

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
  22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*
- 6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:
1. Is clause 4.4 of MLEP a development standard?
  2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
    - (a) compliance is unreasonable or unnecessary; and
    - (b) there are sufficient environmental planning grounds to justify contravening the development standard
  3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the R2 zone?
  4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
  5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

Vaughan Milligan Development Consulting Pty Ltd

---

## 7.0. Request for Variation

### 7.1 Is clause 4.4 of MLEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:

*“(d) the cubic content of floor space of a building.”*

- (b) Clause 4.4 relates to floor space of a building. Accordingly, clause 4.4 is a development standard.

### 7.2 Is compliance with clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in Wehbe.
- (b) The first way in Wehbe is to establish that the objectives of the standard are achieved.
- (c) Each objective of the FSR standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The objective of Clause 4.4(1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The proposal provides for a multi dwelling development providing for three dwellings with basement car parking and the strata subdivision of the existing lot into three strata lots. The development maintains a predominant two story scale which is intended to provide for a development outcome that benefits the surrounding neighbours by maintaining existing view sharing opportunities.

The contemporary building form with a low profile roof and earthy external finishes are considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade, together with the provision of appropriate side setbacks and recessive external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as such, will not be a visually dominant element in the area.

Vaughan Milligan Development Consulting Pty Ltd

---

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

The proposal will not see the retention of the more significant trees within the site, which are indigenous palms and conifer species. The development is supported by a comprehensive landscape plan prepared by Melissa Wilson Landscape Architects which details the provision of five trees that are in excess of 8 m in height and a number of mid story trees and associated planting. As a result of the conference of landscape treatment and the retention of the existing landscape features the development is therefore not considered to result in any adverse effects on the scenic qualities of the foreshore.

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

The site is considered to be sufficient to provide for the proposed works, with the dimensions of the lot to be unchanged. The landscape design will see a net increase in the amount of landscape in the front setback when compared with the existing as well as an increased density of landscape to the street.

The proposal will retain an appropriate area of soft landscaping, and the site will maintain an appropriate balance between the landscaping and the built form.

On the basis that the proposal maintains a substantial landscaped curtilage which assists in improving the amenity for the future occupants and the surrounding neighbours, the site is considered to maintain an appropriate balance between the site's landscaping and the built form.

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

The proposed works are wholly contained within the site and will not result in any adverse impacts for any adjoining land.

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

The site is not located within a business zone and by providing for the construction of multi dwelling residential development, is not contrary to the viability of any local business activity.

**7.3 Are there sufficient environmental planning grounds to justify contravening the development standard?**

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning*

Vaughan Milligan Development Consulting Pty Ltd

---

*grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*



Vaughan Milligan Development Consulting Pty Ltd

---

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

The low pitch roof form further introduces modulation and architectural relief to the building's facade, which further distributes any sense of visual bulk.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The design of the proposed multi dwelling residential development introduces modulation and architectural relief to the building's facade, and reduces the bulk when viewed from the street, which promotes good design and improves the amenity of the built environment (1.3(g)).
- The proposed multi dwelling development will respect the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will present a street façade that responds to the single residential detached rhythm in a built form which is compatible with the streetscape of West Street, which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new works which exceed the gross floor area control and FSR standard of 0.45:1, which result primarily from the inclusion of an additional off street car space within the basement garage level are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.
- The alterations demonstrate good design and improves the amenity of the built environment by creating improved and functional living area and also maintains the amenity of the existing dwelling house and neighbours in terms of views by presenting a modest two story appearance with a sympathetic roof form which will reduce the impact on the views and outlook for uphill properties and limit overshadowing impacts to the property to the south of the site (cl 1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants whilst reducing the calculable gross floor area of the above ground elements of the development and manages the bulk and scale, effectively maintaining views over and past the building from the public and private domain.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

Vaughan Milligan Development Consulting Pty Ltd

---

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

**7.4 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R2 Low Density Residential zone?**

- (a) Section 4.2 of this written request suggests the 1<sup>st</sup> test in Wehbe is made good by the development.
- (b) Each of the objectives of the R2 Low Density Residential zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone*".

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the compatible form of the proposed multi dwelling residential development which is a result of the inclusion of the additional car space in the basement garage, will see a minor non-compliance of 16.22m<sup>2</sup> with the maximum gross floor area control, will be consistent with the individual Objectives of the R2 Low Density zone for the following reasons (over):

Vaughan Milligan Development Consulting Pty Ltd

---

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

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Multi dwelling development is a permissible form within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The R2 Low Density Residential Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed multi dwelling residential development will provide for an appropriate level of amenity and in a form, and respect the predominant bulk and scale of the surrounding dwellings.

The development will see a minor noncompliance of 16.72m<sup>2</sup> with the maximum gross floor area control, primarily resulting from the inclusion of an additional off street car space, which will benefit the local community by providing for greater parking provision within the confines of the site.

The compatible form and scale of the proposed multi dwelling residential development will meet the housing needs of the community within a compatible built form and which is a permissible use in this low-density residential zone.

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

The subject proposal relates to a multi dwelling residential development and this provision is therefore not relevant.

**7.5 Has council obtained the concurrence of the Director-General?**

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

**7.6 Has the Council considered the matters in clause 4.6(5) of MLEP?**

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed multi dwelling residential development for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of

*Vaughan Milligan Development Consulting Pty Ltd*

---

the zone there is no significant public benefit in maintaining the development standard.

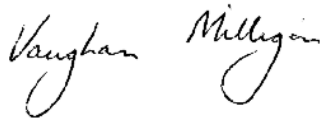
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

## **7.0 Conclusion**

This development proposes a departure from the maximum floor space ratio control, with the proposed inclusion of an additional car space within the basement garage level of the multi dwelling residential development providing a maximum FSR of 0.465: 1, which exceeds Council's control of 0.45:1.

The provision of the additional car space will allow for improved parking opportunity within the confines of the site, which is to the benefit of the surrounding community. Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



**VAUGHAN MILLIGAN**  
*Town Planner*