

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

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

WEDNESDAY 29 JULY 2020

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



Peter Robinson
Executive Manager Development Assessment

Panel Members

Paul Vergotis	Chair
Marcus Sainsbury	Environmental Expert
Robert Hussey	Town Planner
Nick Lawther	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

Agenda for a Meeting of the Northern Beaches Local Planning Panel to be held on Wednesday 29 July 2020 Commencing at 1.00pm

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 1 July 2020	4
3.0	DEVELOPMENT APPLICATIONS	5
3.1	DA2020/0509 - 10 Warringulla Avenue, Elvina Bay - Construction of a boat shed, skid ramp and associated works.....	5
3.2	DA2020/0530 - Wellings Reserve Gourlay Avenue, Balgowlah - Alterations and additions to an existing sailing club	50
3.3	DA2020/0347 - 49 Forest Way, Frenchs Forest - Demolition works and construction of 4 Seniors Housing Units, with basement parking and strata subdivision.....	81
3.4	Mod2020/0175 - 80-82 Mona Vale Road, Mona Vale - Modification of Development Consent DA2019/0123 granted for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market	154
3.5	DA2020/0211 - 82-84 Bower Street, Manly - Development Application seeking consent for the reconstruction of walls/structures that were to be retained and have been demolished, and for the use of walls/structures that were to be retained, but have been demolished and rebuilt.....	174

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 1 JULY 2020

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 1 July 2020 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	DA2020/0509 - 10 WIRRINGULLA AVENUE, ELVINA BAY - CONSTRUCTION OF A BOAT SHED, SKID RAMP AND ASSOCIATED WORKS
REPORTING OFFICER	MATTHEW EDMONDS
TRIM FILE REF	2020/428155
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/0509 for construction of a boat shed, skid ramp and associated works at Lot 3 DP 1023404, 10 Warringulla Avenue, Elvina Bay subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0509
Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 3 DP 1023404, 10 Warringulla Avenue ELVINA BAY NSW 2105
Proposed Development:	Construction of a boat shed, skid ramp and associated works
Zoning:	E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Susan McKenney
Applicant:	Stephen Crosby & Associates
Application Lodged:	20/05/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/06/2020 to 15/06/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 23.75%
Recommendation:	Approval
Estimated Cost of Works:	\$ 101,040.00

Executive Summary

This application seeks consent for the construction of a boatshed, skid ramp, timber deck and relocation of existing stone steps located seaward of the Mean High Water Mark, wholly within Crown Lands and involves a variation to the Height of Buildings development standard of the *Pittwater Local Environmental Plan (PLEP) 2014* of 23.74%. Despite the numerical non-compliance, the proposal is not considered to result in an unreasonable bulk, scale, or amenity impacts as viewed from the Pittwater Waterway, or adjoining properties.

The application was notified between 1 June 2020 and 15 June 2020, during which time Council received no submissions.

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

The application is referred to the Northern Beaches Local Planning Panel for review and determination due to the contravention of the Height of Buildings development standard exceeding 10%.

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

This application seeks consent for the construction of a boatshed with associated timber decking, skid ramp, and the relocation of existing stone stairs, pursuant to the *PLEP 2014*.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - B8.2 Construction and Demolition - Erosion and Sediment Management
Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation
Pittwater 21 Development Control Plan - D8.9 Landscaped Area
Pittwater 21 Development Control Plan - D15.13 Lateral limits to development seaward of mean high

water mark
Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 3 DP 1023404 , 10 Warringulla Avenue ELVINA BAY NSW 2105
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Warringulla Avenue. The site is associated with Crown Licence LIC 465146 for development seaward of the Mean High Water Mark (MHWM), of which is owned by the Department of Planning, Industry and Environment - Crown Lands and is located within the W1 Natural Waterways zone.</p> <p>The site is irregular in shape with a frontage of 17.95m along Warringulla Avenue and a depth of 43.58m to the MHWM. The site has a surveyed area of 713.0m².</p> <p>The site is located within the E3 Environmental Management zone and accommodates a one and two storey split level rendered and clad residence. The proposed works are, however, located seaward of the MHWM and is located wholly within the W1 Natural Waterways zone.</p> <p>The site falls from the street frontage toward the MHWM (falling from west to east) of approximately 14.63m (32.8%).</p> <p>The site is not known to contain any threatened species.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by similar dwellings of low-density development, most of which contain waterfront facilities such as jetties, boatsheds and skid ramps.</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:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 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.

Section 4.15 Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning and Design, dated 26 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.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p><i>General Comments</i></p> <p>No objections raised with regards to the proposed development.</p> <p><i>Recommendation</i></p> <p>APPROVAL - subject to conditions</p>
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the following applicable provisions:</p> <ul style="list-style-type: none"> - NSW Biodiversity Conservation Act 2016 - Pittwater DCP Clause B4.7 (Pittwater Spotted Gum Forest EEC) - Pittwater DCP Clause B4.22 (Preservation of Trees and Bushland Vegetation) <p>The subject site is mapped as containing the Pittwater Spotted Gum Forest endangered ecological community (EEC) under the NSW Government's 'Native Vegetation of the Sydney Metropolitan Area</p>

Internal Referral Body	Comments
	<p>(2016). It is noted that native trees consistent with the EEC occur landside and within proximity of the proposed works, although they are not shown on the submitted survey plans. There are also mangrove trees and pneumatophores within proximity of the proposed works.</p> <p>It is considered that the proposal can comply with the relevant controls, subject to safe retention of all existing non-exempt trees and implementation of mangrove protection measures. This has been conditioned.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p><u>Comment:</u></p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stephen Crosby & Associates Pty. Ltd. dated 12 May 2020, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard</p>

Internal Referral Body	Comments
	<p>Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>Estuarine Risk Management</p> <p>In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.7m AHD would apply at the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.06m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m.</p> <p>On internal assessment and as assessed in the submitted Coastal Engineering Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 14 May 2020, the g floor level for the proposed boat shed and deck are below the EPL for the site.</p> <p>The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP (Appendix 7 and the relevant B3.7 Estuarine Hazard Controls)</p> <p>Development on Foreshore Area</p> <p>In addition, a section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The DA proposes works on a boat shed, stone steps and other associated works. All these proposed works are consistent with Clause 7.8(2)(b) of the Pittwater LEP 2014.</p>
NECC (Development Engineering)	No objections to the boat shed and and skid ramp. As such, no conditions are required by Development Engineering.
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation relating to waterways and aquatic vegetation. As this area is mapped under the State Environment Planning Policy (Coastal Management) 2018 development must not significantly impact on the biophysical, hydrological or ecological integrity of Elvina Bay, or on the quantity and quality of surface and ground water flows to Elvina Bay.</p> <p>Consent has been given by Crown Lands, DPI (Fisheries) and RMS relating to consent for use of land, environmental impact and navigational concerns. Development is to comply with the general</p>

Internal Referral Body	Comments
	<p>conditions imposed by these letters of consent. The applicant has detailed the installation of a sediment fence downstream of the development to prevent turbid plumes entering the aquatic environment. Council considers the installation of a sediment fence in this location inappropriate due to its location in the water rather than land based. Therefore a turbidity barrier must be installed instead in this location, refer to <i>Managing Urban Stormwater: Soils and Construction Landcom (2004)</i>.</p> <p>This application, subject to conditions, is recommended for approval as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Elvina Bay if conditions are adhered to.</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 (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:

This Clause is not relevant to the subject site.

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:

This Clause is not relevant to the subject site.

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:

This Clause is not relevant to the subject site.

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:

This Clause is relevant to the subject site. Council's Coast and Catchment Officer has reviewed the application and raised no objection to the proposed development in relation to the works being within the coastal environment area. Council, as the consent authority, can be satisfied that the proposed development achieves compliance with the abovementioned objectives of Part 1 of this Clause.

- (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:

This Clause is relevant to the subject site. Council's Coast and Catchment Officer has reviewed the application and raised no objection to the proposed development in relation to the works being within the coastal environment area. Council, as the consent authority, can be satisfied that the proposed development achieves compliance with the abovementioned objectives of Part 2 of this Clause.

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:

This Clause is relevant to the subject site. Council's Coast and Catchment Officer has reviewed the application and raised no objection to the proposed development in relation to the works being within the coastal use area. Council, as the consent authority, can be satisfied that the proposed development achieves compliance with the abovementioned objectives of this Clause.

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:

This Clause is relevant to the subject site. Council's Coast and Catchment Officer has reviewed the application and determined that the proposal will unlikely increase risk of coastal hazards. Council, as the consent authority, can be satisfied that the proposed development achieves compliance with this Clause.

As such, it is considered that the application does comply 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
Height of Buildings:	W1 Natural Waterways zone: 4m	4.98m	23.75%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	4.0m
Proposed:	4.98m (above 1.17AHD)*
Percentage variation to requirement:	23.75%

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

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

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

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

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 development is justified, in this instance, for the following reasons:

- The proposed height of the boat shed is completely consistent in terms of form and height with the guidelines as stipulated within P21 DCP, Clause D15.15 Waterfront Development.
- The ridge height and scale of the proposed boat shed is not dissimilar to many previously approved structures encroaching into the MHWM within the Elvina Bay precinct, and the wider Pittwater Locality.
- The proposed boat shed will not result in any unreasonable overshadowing of neighbouring properties due to the location of the proposed boat shed over water, and the rising slope of the adjoining sites where dwellings are located.
- Due to the proposed location of the proposed boat shed being below the lowest floor levels of neighbouring dwellings, the proposed boat shed will allow for the reasonable sharing of views.
- The proposed boat shed will appear consistent with the desired character of the Pittwater Waterway."

It is agreed that the development will result in a structure that is visually consistent (in terms of height, bulk and scale) with surrounding waterfront developments within the immediate locality of Elvina Bay, as well as those waterfront developments within the wider Pittwater locality, including Scotland Island and Lovett Bay. The breach of the height limit as outlined within the development standard will not result in an unreasonable amenity impacts to neighbouring properties.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposal seeks a maximum building height of 4.98m (AHD), thus contravening the numeric control by 23.75% (0.98m). The minor height departure from the maximum building height will not contribute to an adverse bulk and scale. The proposal is contemporary in design such that the visual dominance of the built form is broken up as a result of the complementary external finishes in conjunction with the articulation of the structure. Furthermore, the modulation of the front facade will ensure that the development minimises any potential adverse visual impacts when viewed from Pittwater Waterway, and surrounding public and private places. Boat sheds are a common development for water front properties that are only accessible by boat. The height and scale of the proposed development is consistent with the desired character of the locality of Elvina Bay. Further, notwithstanding the building height numerical non-compliance, the built form is consistent with the design guidelines prescribed within Clause D15.15 Waterfront Development of the P21 DCP and is not dissimilar to that of surrounding developments. As such, the proposed development is considered to be consistent with the desired character of the locality.

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

Comment:

The encroachment of the height of buildings development standard will not be discernible when viewed from the Pittwater Waterway. The height departure from the development standard is substantially attributed to the existing ground levels within the rear portion of the site (water frontage) in conjunction with the matter of water inundation. The proposed development comprises a finished floor level of 1.65m AHD so as to ensure the boat shed is not likely to be subject to inundation. Further, the development comprises a built form (height and scale) that is in keeping with the surrounding developments within the Elvina Bay precinct, and other waterfront developments within the wider Pittwater locality.

c) to minimise any overshadowing of neighbouring properties,

Comment:

Given the siting of the proposed boat shed entirely within the MHW, in conjunction with the

steeply sloping topography of the subject site and adjoining properties, the proposed development is unlikely to unreasonably impact upon the solar access of adjoining properties.

d) to allow for the reasonable sharing of views,

Comment:

The minor height variation will not be noticeable to the casual observer from Pittwater Waterway. The articulated design and siting of the proposed boat shed will ensure a minimal disruption of views between public and private spaces. The boat shed is offset from other structures within the adjoining properties, and at a remarkably lower elevation than that of the adjoining dwellings.

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

Comment:

The proposed development requires minimal excavation works. The boat shed is to be sited atop concrete piles so as to minimise the extent of site disturbance and thus responding sensitively to the natural topography of the site, where possible. Furthermore, the proposal will result in a bulk and scale that is consistent with other waterfront developments within Elvina Bay, and other waterfront localities such as Scotland Island and Lovett Bay. The contemporary design, and subsequent variation to the building height development standard, will provide for a well composed and articulated structure that will provide good amenity and function for the occupants of the dwelling, whilst respecting the natural topography of the subject site and surrounding land.

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

Comment:

The subject site is not located within proximity to a heritage conservation area or item. As stated above, the proposed development has been sited and designed to appropriately respond to the context of the subject site to ensure the visual impact of the development is reasonable and minimised when viewed from the Pittwater Waterway and adjoining and surrounding properties.

Zone objectives

The underlying objectives of the W1 Natural Waterways zone are:

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

Comment:

As discussed above, the proposed development is appropriately sited and designed so as to protect the ecological and scenic values of the natural waterways.

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

Comment:

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

has been reviewed by DPI Fisheries who raised no objection to the proposed development, subject to conditions. It is considered that no unreasonable effects will be inflicted upon the natural values of the waterway.

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

Comment:

The proposed development will not impact upon fish passages or recreational fishing.

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

Comment:

The proposed development has been reviewed by DPI Fisheries who raised no objection to the proposal by way of their letter correspondence, dated 12 September 2019, subject to conditions. Further, the RMS have confirmed, via their letter of correspondence dated 23 July 2019, that there are no navigational concerns regarding the designed proposed development, subject to standard conditions for permissive occupancies.

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

Comment:

The proposed development ensures that access to, and along, the foreshore area will be maintained as a result of the proposed development.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management 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 Height of buildings Development Standard is assumed by the Local Planning Panel.

7.1 Acid sulfate soils

The proposed works are located within Acid Sulfate Soils Map Class 1 Area. As such, subclause (2) requires consent under this clause, and subclause (3) requires that development consent must not be granted under this clause for the carrying out of works unless an Acid Sulfate Soils Management Plan has been prepared in accordance with the Acid Sulfate Soils Manual and subsequently provided to the consent authority, being Council. However, subclause (6) of this clause within the *PLEP 2014* states that despite subclause (2) development consent is not required under this clause to carry out any works if: the works involve the disturbance of less than one (1) tonne of soil, and the works are not likely to

lower the watertable.

The proposed works do not involve the disturbance of more than one (1) tonne of soil and the works are not likely to lower the watertable. Council's Environmental Health Officer has reviewed this application and raised no objection to the proposed development, subject to conditions.

As such, Council, as the consent authority, can be satisfied that the proposed works will not impact upon the Acid Sulfate Soils Class 1 Area.

7.6 Biodiversity protection

Under Clause 7.6 Biodiversity protection of the *PLEP 2014*, development consent must not be granted to development on land to which this clause applies, unless the consent authority is satisfied that:

- (4) (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives - 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 subject site is mapped as containing the Pittwater Spotted Gum Forest which is considered an endangered ecological community as stipulated within the New South Wales (NSW) Government's 'Native Vegetation of the Sydney Metropolitan Area' (2016). Mangrove trees and pneumatophores are located south-east of the proposed boatshed and associated works. Council's Bushland and Biodiversity Officer has reviewed this application and observed that the abovementioned native trees are located landside and within proximity to the proposed works.

Council's Bushland and Biodiversity Officer raised no objection to the proposed development, subject to the safe retention of all existing non-exempt trees and the implementation of mangrove protection measures, which has been conditioned.

Council, as the consent authority, can be satisfied that the proposed development achieves compliance with the abovementioned objectives of this control.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards of the *PLEP 2014*, development consent must not be granted to development on land to which this clause applies, unless the consent authority is satisfied that the development will achieve compliance with the following subclauses:

- (4) (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and
- (4) (b) the consent authority is satisfied that:
 - (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and
 - (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited, and
 - (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate the

Comment:

The proposed works are located wholly seaward of the MHWL. Additionally, the subject site is mapped as being located within the Geotechnical Hazard H1 area. The proposal will require minor excavation

works for the concrete pier footings of the boatshed and associated works. Council's Development Engineer has reviewed this application and raised no objection to the proposed development. It should be noted that Council's Development Engineer has not applied conditions for this application.

Council, as the consent authority, can be satisfied that the proposed development achieves compliance with the abovementioned objectives.

7.8 Limited development on foreshore area

This application seeks consent for the construction of a boatshed and associated works seaward of the MHWM, wholly within Crown Lands. The definition of the foreshore area, as outlined within this Clause of the PLEP 2014, means the land between the foreshore building line and the mean high water mark of the nearest natural waterbody. In this instance, the proposed works are located outside of the foreshore area. As such, this Clause does not apply to the application.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	N/A	N/A	N/A
Rear building line	Mean High Water Mark (MHWM) applies	Wholly below MHWM	N/A	N/A
Side building line (Lateral Limit Line)	2.0m (South-eastern)	8.9m	N/A	Yes
	2.0m (North-western)	Timber Deck = Nil Skid Ramp = 0.2m Boat House = 1.3m	100% 90% 35%	No No No
Building envelope	3.5m (South-eastern elevation)	Within envelope	N/A	Yes
	3.5m (North-western elevation)	Within envelope	N/A	Yes
Landscaped area	Proposed works are entirely seaward of the MHWM - as such, this control does not apply.	N/A	N/A	N/A

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	No	Yes
B8.3 Construction and Demolition - Waste Minimisation	No	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.13 Pollution Control	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.2 Scenic protection - General	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	Yes	Yes
D8.8 Building envelope	Yes	Yes
D8.9 Landscaped Area	No	Yes
D8.15 Site disturbance	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	No	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	No	Yes

Detailed Assessment

B8.2 Construction and Demolition - Erosion and Sediment Management

This application is not accompanied by a sediment and erosion control plan. As such, Council's Coast and Catchment Officer has included a condition of consent which outlines the requirements for an appropriate sediment and erosion control barrier. This condition is to be satisfied prior to the issue of

the Construction Certificate.

B8.3 Construction and Demolition - Waste Minimisation

This application is not accompanied by a suitable waste management plan. As such, a condition of consent has been recommended to ensure a waste management plan is prepared prior to the issue of the construction certificate.

D8.9 Landscaped Area

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

D15.13 Lateral limits to development seaward of mean high water mark

This control requires all development seaward of the MHWL to achieve a setback of 2.0m for the full length of the lateral limit lines to minimise conflict and reduce the possibility of inaccurate location of structures. The proposed development, while generally compliant with the standard setback requirements of D8.6 Side and Rear Building Line of P21 DCP, will result in a side setback to the lateral limit lines ranging from nil to 1.3m. This represents variations to this control of 100% and 35%, respectively.

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

To ensure that fair and equitable enjoyment of the waterway is achieved between neighbouring waterfront landowners through restricting unreasonable encroachment of waterfront development in front of adjoining properties.

Comment:

The proposed boatshed, timber decking and skid ramp will continue to allow for the fair and equitable enjoyment of the waterway. The application is accompanied by a letter of correspondence from the Roads and Maritime Services (RMS), dated 23 July 2019, which states that the proposed development will not cause any navigational issues. As the proposed timber deck (nil setback) and the skid ramp (0.2m setback) are located closest to the lateral line limit, a condition of consent has been included within this report requiring the provision of a survey certificate, prepared by a registered Surveyor, throughout various stages of the construction works. This will ensure that the proposed works are built to the lateral limit line setbacks as shown on the plans provided. This will minimise the potential for the inaccurate location of the boatshed, timber deck and skid ramp.

D15.15 Waterfront development

C) Boatsheds

This subclause within this control requires the construction of a boatshed to be located above the MHWL on freehold land, where practicable. If this cannot be achieved, as much of the boatshed must be located above the MHWL to minimise the encroachment onto the littoral zone below the MHWL.

The proposed boatshed and associated works are located entirely seaward of the MHWL.

Merit Consideration

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

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

Comment:

Council's Coast and Catchment Officer has reviewed this application and raised no objection to the proposed boatshed and associated works. Relevant conditions of consent have been recommended to ensure the water quality and estuarine habitat of Pittwater Waterway is not negatively or adversely impacted as a result of the proposal.

- *Public access along the foreshore is not restricted.*

Comment:

There is an existing pathway along the foreshore area. This is proposed to be retained to ensure public access to the foreshore area, landward of the MHWL, is maintained.

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

Comment:

The RMS reviewed this application and provided a letter of consent dated 23 July 2020. The RMS is satisfied that the proposed boatshed and associated works will not encroach on navigation channels or adversely affect the use of ferries, other service vessels or general use of the waterway by adjoining property owners.

- *Structures blend with the natural environment.*

Comment:

A schedule of colours and materials has not been provided with this application. However, a condition of consent has been recommended to ensure the external finishes to the roof and walls and the materials used are of dark colours to ensure the proposed boatshed blends with the natural environment.

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

Comment:

The bulk and scale of the proposed boatshed and associated works are similar to that of surrounding boatsheds in the immediate vicinity of Elvina Bay. Where there are areas of non-compliance, these are minor and necessary for compliance with the relevant environmental and hazard requirements. It is considered that the proposal will not result in a reduced or detrimental visual quality, water quality or estuarine habitat of the Pittwater Waterway.

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

Comment:

The proposal is for residential development. As such, this control does not apply.

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

Comment:

As discussed above, the proposed boatshed and associated works achieve compliance with the underlying outcomes of this control and is considered appropriate and acceptable.

As discussed above, the proposed boatshed and associated works are consistent with the outcomes of this control. As such, the non-compliance can be supported on merit.

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 \$ 505 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 101,040.

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

Council is satisfied that:

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

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

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

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

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

The proposed development includes a numerical non-compliance with the following *PLEP 2014* Clause:

- *Building Height*

Comment:

The proposed development includes a variation to the building height development standard. The Applicant provided a written request to vary this development standard. As such, the proposed development standard does not strictly apply. In this instance, the proposed development is supported on merit in relation to the building height non-compliance.

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

The proposed development includes non-compliances with the following P21 DCP controls:

- B8.2 Construction and Demolition - Erosion and Sediment Management
- B8.3 Construction and Demolition - Waste Minimisation
- B8.9 Landscaped Area
- B15.13 Lateral Limits to Development Seaward of Mean High Water Mark
- D15.15 Waterfront Development

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

The proposal does, however, include a more sizable non-compliance in relation to the Building Height. The proposed height breach is considered in relation to the provisions of Clause 4.6 of the *PLEP 2014* and the context of the subject site and surrounding locality of Elvina Bay which also includes a number of approvals inclusive of variations to the Height of Buildings development standard. While it is acknowledged that the proposed height contravention represents a moderate breach, the resulting impacts of the development on the amenity of the adjoining properties, and the Pittwater Waterway, has been assessed as reasonable.

As discussed above, and with consideration of the full assessment undertaken, the proposal is considered to be acceptable having regard to all prevalent clauses within the *PLEP 2014* and controls

within the P21 DCP, and is therefore recommended for approval., subject to conditions.

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

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/0509 for Construction of a boat shed, skid ramp and associated works on land at Lot 3 DP 1023404, 10 Warringulla Avenue, ELVINA BAY, 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
DA01 Site Plan and Floor Plan	July 2019	Stephen Crosby & Associates Pty Ltd.
DA02 Section and Elevations	July 2019	Stephen Crosby & Associates Pty Ltd.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Risk Assessment Report (Ref: 1378)	26 April 2020	Planning for Bushfire Protection
Coastal Engineering Report (Ref: NW30001/L001:PDT)	14 May 2020	Cardno Pty Ltd

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

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

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

2. Prescribed Conditions (Crown Land Only)

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

Reason: Legislative Requirement.

3. **General Requirements (Crown Land Only)**

(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) 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.

(c) 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.

(d) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.

(e) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(f) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) 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 and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(j) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

(k) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at www.northernbeaches.nsw.gov.au

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

4. **Compliance with Standards (Crown Land Only)**

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$505.20 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 \$101,040.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

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. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and

Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

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

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

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

9. **Estuarine Hazard Design Requirements**

The following applies to all development:

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

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

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

10. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 2.7m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below 2.7m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.7m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.7m AHD.
- All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.7m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above INSERT m AHD to avoid the likelihood of contact with splashing waves and spray.

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

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

The development is to comply with all recommendations of the approved Coastal Engineering Report prepared by Cardno (NSW/ACT) Pty.Ltd..., dated 14 May 2020 and these recommendations are to be incorporated into construction plans.

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

12. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 100 years unless otherwise justified and accepted by Council) the development is able to withstand the wave impact forces and loadings identified in the approved Coastal Engineering Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 14 May 2020.

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

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

13. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **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.

16. **Requirement to Notify About New Acid Sulfate Soils Evidence**

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement.

Reason: To protect the environment and private & public infrastructure.

17. **Tree Protection**

In order to protect and enhance onsite vegetation and trees, the following applies to the development site:

- All existing non-exempt trees, including mangroves, on the subject site and adjoining land are to be protected during works and retained.
- The following tree protection measures are to be implemented:
 - o No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
 - o All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
 - o All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, particularly Section 4 Tree Protection Measures.
 - o All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373- 2007 Pruning of amenity trees AS4970-2009 Protection of trees on development sites.
 - o All tree protection measures are to be in place prior to commencement of works

Compliance with this condition is to be certified in writing and evidence provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To achieve compliance with applicable Natural Environment controls.

18. **Waste Management During Construction**

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

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

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

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

19. **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) Bushfire Risk Assessment Report (Ref: 1378), dated (26 April 2020), prepared by (Planning for Bushfire Protection).
(b) Coastal Engineering Report. (Ref: NW30001/L001:PDT), dated (14 May 2020), prepared by (Cardno Pty Ltd.).

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.

20. **Tree Protection**

In order to protect and enhance onsite vegetation and trees, the following applies to the development site:

- All existing non-exempt trees, including mangroves, on the subject site and adjoining land are to be protected during works and retained.
- The following tree protection measures are to be implemented:
 - o No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
 - o All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
 - o All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, particularly Section 4 Tree Protection Measures.
 - o All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373- 2007 Pruning of amenity trees AS4970-2009 Protection of trees on development sites.
 - o All tree protection measures are to be in place prior to commencement of works

Compliance with this condition is to be certified in writing and evidence provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To achieve compliance with applicable Natural Environment controls.

21. **Waste Management Confirmation**

Prior to the issue of an 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, reused and to limit landfill.

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

22. **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.

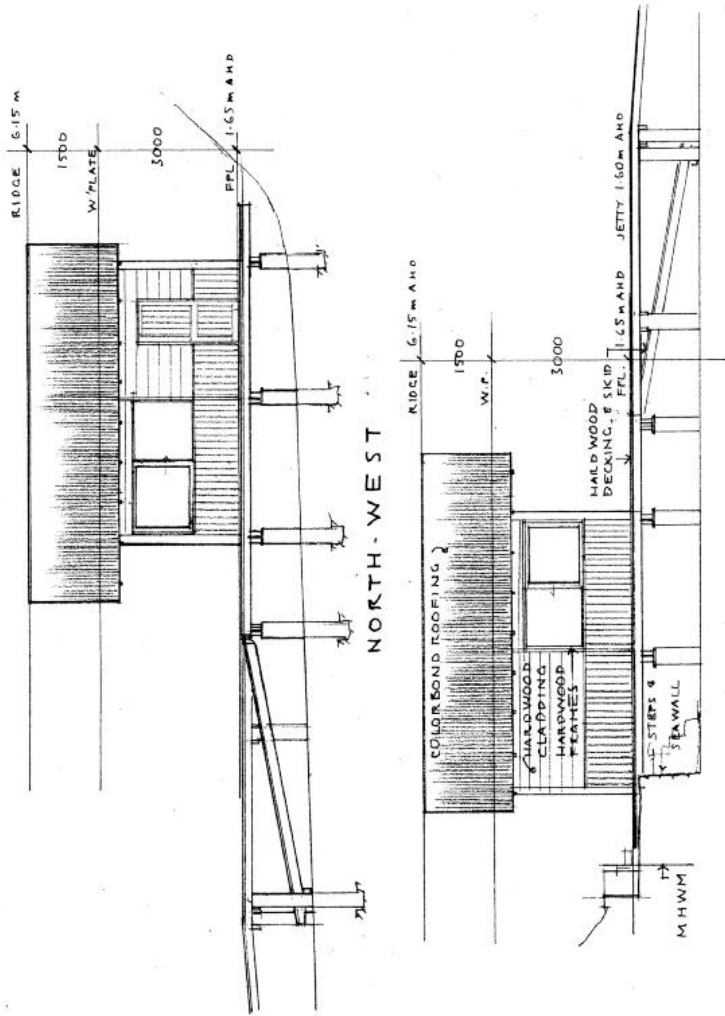
Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

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

The development is to comply with all recommendations of the approved Coastal Engineering Report prepared by Cardno (NSW/ACT) Pty. Ltd., dated 14 May 2020 and these recommendations are to be maintained over the life of the development.

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





A: 11.8.19
Date:

Stephen Crosby & Assoc.
Pty. Ltd.

SCOTLAND ISLAND
PO Box 204 Church Pt. NSW 2105
M: 082047513 E: scot@scotlandonline.au
JAB

**BOAT SHED &
SKID RAMP**

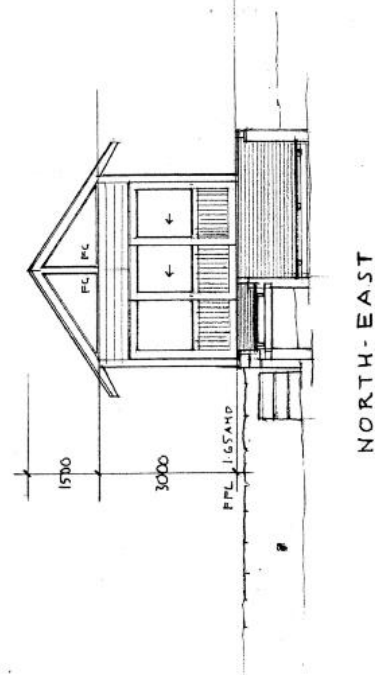
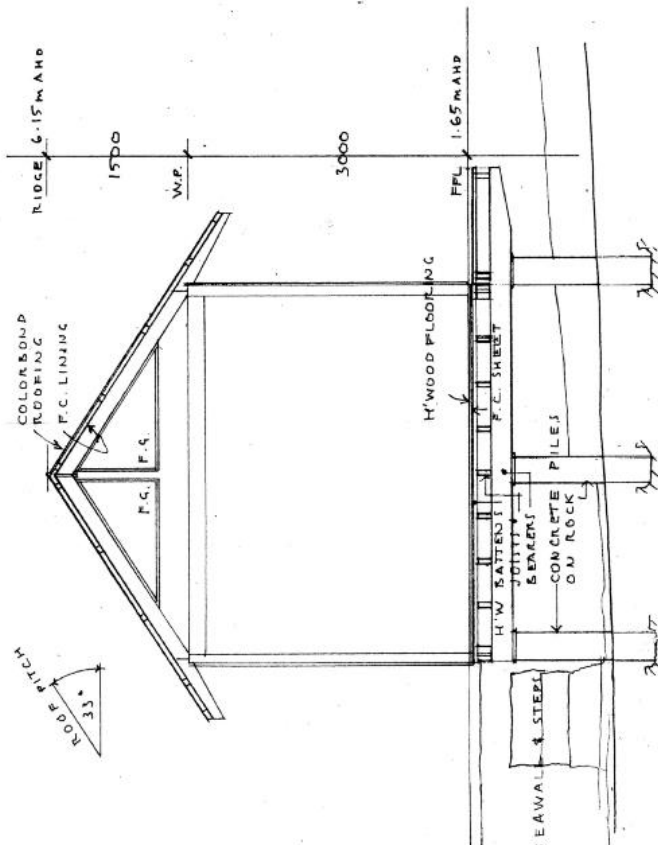
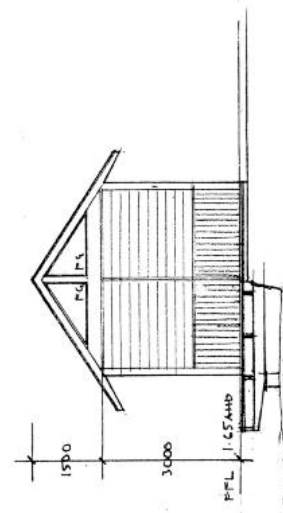
10 WIRRINGULLA AVE.
ELVINA BAY
Lot 3 DP 1023404

For: M. MCKENSEY
Design

**SECTION &
ELEVATIONS**

Scale: 1:50 & 1:100 AT AS
Date: JULY 2019
Drawn: S.C.
Drawing Number:

2179 - DA 02 A



Clause 4.6 Variation Request Clause 4.3 Height of Buildings

**10 WIRRINGULLA AVE. ELVINA BAY 2105
Lot 3 DP 1023404**

Date: 4th May 2020

Prepared By: Stephen Crosby & Associates Pty. Ltd.
PO Box 204, Church Point, NSW 2105

For: M. & S. McKenney

Introduction

Concurrent with the above Development Application we submit this letter addressing the provisions of Pittwater Council **LEP 2014**, specifically **cl. 4.3– Height of buildings** regarding development that exceeds the maximum height on Council's Heights of Buildings Map under the provisions of **LEP 2014 cl.4.6 Exceptions to development standards**.

This document shall demonstrate compliance with the outcomes of **LEP control 4.3 Height of buildings** with regard to the proposed boat shed to supplement the existing water access only family dwelling.

Clause 4.6 of the Pittwater Local Environmental Plan 2014 enables Northern Beaches Council to grant consent to the development even though the boat shed contravenes a development standard. The clause aims to provide flexibility in applying certain development standards to achieve better outcomes for and from the development.

This clause 4.6 variation request demonstrates that compliance with the height standard is unreasonable and unnecessary in the circumstances of this case, and there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that the proposed development:

- Satisfies the objectives for development standard clause 4.3 PLEP 2014 Building Height,
- Satisfies the objectives of the W1 Waterways zone under PLEP 2014,
- Is consistent with applicable state and regional planning policies,
- Provides for a better planning outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

The DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.3 of the Pittwater LEP 2014.

VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

The finished floor level of the proposed boat shed is nominated at 1.65m AHD and the ridge is 6.15m AHD. From the LEP Heights of buildings map the maximum height of the boat shed should be no more than 4.0m above astronomical height tide (1.17m AHD), giving a total of 5.17m AHD. The proposed boat shed ridge exceeds this height by 0.98m.

The location of the boat shed is in accordance with Pittwater Council's DCP P21 Section D15.15 Waterfront Development, Clause c) Boat sheds part i. "Boat sheds shall be located above the MHWL on freehold land, **where practicable**." The form of the

land with the steep embankment behind the reclamation makes it impracticable to locate the boat shed entirely on freehold land.

The height of the boat shed is entirely in accordance with Pittwater Council's DCP P21 Section D15.15 Waterfront Development, Clause c) Boat sheds part ii. "Boat sheds shall be no greater than 4.5m in building height above the platform on which it is built..." In regard to height limits the DCP makes no distinction as to the location of the boat shed.

The nominated Highest Astronomical Tide (HAT) of 1.17m AHD has been in the Council's LEP documents unchanged for over 30 years. As such it takes no account of sea level rise, or the Council's more recent (Cardno 2015) report into sea levels in Pittwater. This Cardno report puts a sea level rise of 0.42m at 2078 (relative to 2010), giving a tide level of 1.59m AHD, with the 1 in 100 year ARI still water level at 1.94m AHD.

JUSTIFICATION FOR CONTRAVENTION OF THE DEVELOPMENT STANDARD

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

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:
 - (i) the applicants 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(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

The objectives of the standard are achieved notwithstanding non-compliance with the standard. The objectives of the standard are:

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

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

The proposed boat shed floor level is entirely consistent in form and height with the guidelines for boat sheds as set down in PDCP21 D15.15, with the ridge level similar to many of these structures built over that last 20 years in Pittwater.

As, such, the proposal's height, whilst seeking a variation to the height control, still results in a development which is consistent with the expectations for boat sheds on Scotland Island, and remains consistent with the desired character of the Pittwater waterway.

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

Many of the boat sheds in Elvina and Lovett Bays, as well as on Scotland Island, are similar in height and scale.

Objective (c) to minimise any overshadowing of neighbouring properties.

The proposal will not result in any overshadowing of neighbouring properties due to the location of the boat shed over water, and the rising slope of the adjoining sites where dwellings are located.

Therefore, the variation to the height limit does not result in any overshadowing on neighbouring properties.

Objective (d) to allow for the reasonable sharing of views.

Due to the location of the boat shed being below the lowest floor levels of neighbouring dwellings, the proposed development, and the minor variation to the height limit, do not result in any view impacts, allowing for the reasonable sharing of views.

The proposal does not interrupt or obstruct any significant views to or from the site or Pittwater, making the proposed development consistent with this objective.

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

The proposed development has been designed to respond sensitively to the natural topography, which slopes steeply away from a level area straddling the Mean High Water Mark.

The building sits lightly on the existing terrain.

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

There are no heritage items affected by the proposal, and the building will have a similar visual impact on the existing environment being entirely consistent with waterfront boat sheds in this area of Pittwater.

Pittwater LEP 2014 cl. 4.6 Exceptions to development standards sets out the parameters for varying a development standard such as cl. 4.3 Height of buildings described above. Compliance with the relevant provisions of cl 4.6 is achieved as follows:

- (3) (a) as demonstrated above compliance with the development standard cl.4.3 is unreasonable or unnecessary in this case, and,
- (b) there are sufficient environmental planning grounds to justify contravening the development standard in this instance.
- (4) (a) (i) the proposed modification to the existing development is modest in scale and typical of boat sheds for water access only properties in Pittwater.

CLAUSE 4.6(4)(a)(ii) IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE ZONE AND DEVELOPMENT STANDARD.

Consistency with the objectives of the development standard.

The proposed development is consistent with the objectives of the height of buildings standard in clause 4.3, for the reasons discussed previously in CLAUSE 4.6(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY.

Consistency with the objectives of the zone.

The proposed development is consistent with the underlying objectives of the W1 Waterways zone. The primary driver of the variation is the result of designing a boat shed fit for purpose with minimal impact on the natural environment. The proposal will have minimal visual impact on the development on neighbouring sites or Pittwater.

The proposed siting and design of the boat shed will not affect public access along the waterfront.

The proposed development is of good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying the requirement that the proposal, and the height limit standard variation, are in the public interest.

Overall public interest.

The proposed development is considered to be in the public interest for the following reasons:

- Boat sheds are a specifically permissible use of the site and consistent with the character of the Elvina Bay locality.
- Boat sheds of this traditional form add character to waterways foreshores when viewed by the public using the waterway for recreational purposes.

On the basis of the above, we believe that the consent authority can be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard for building height contained in clause 4.3 of the PLEP 2014, and with the objectives of the W1 Waterways zone under the PLEP 2014.

CONCLUSION

The assessment above demonstrates that compliance with the maximum building height development standard in Clause 4.3 of the PLEP 2014 is unreasonable and unnecessary in the circumstances of this case and that the justification is well founded. It is considered that the variation allows an orderly and economic use and development of the land, and that the structure is of good design that will reasonably protect and improve the amenity of the surrounding built environment.

This clause 4.6 variation demonstrates that, notwithstanding the variation to the maximum building height development standard, the proposed development:

- Satisfies the objectives of the development standard for height of buildings in clause 4.3 of PLEP 2014,
- Satisfies the objectives of the W1 Waterways zone under PLEP 2014,
- Provides for a better outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

As such, the Development Application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2014.

STEPHEN CROSBY

ITEM 3.2 **DA2020/0530 - WELLINGS RESERVE GOURLAY AVENUE,
BALGOWLAH - ALTERATIONS AND ADDITIONS TO AN
EXISTING SAILING CLUB**

REPORTING OFFICER **STEVE FINDLAY**

TRIM FILE REF **2020/428163**

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

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the land owner is the council.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/0530 for alterations and additions to an existing sailing club at Lot 7347 DP 1148450, Wellings Reserve Gourlay Avenue, Balgowlah subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0530
Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 7347 DP 1148450, 0 Gourlay Avenue BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to an existing sailing club
Zoning:	W2 Environment Protection zone under Sydney Regional Environmental Plan Sydney Harbour Catchment 2005
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Department of Land & Water Conservation
Applicant:	North Harbour Sailing Club
Application Lodged:	25/05/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	02/06/2020 to 16/06/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 45,000.00

Executive Summary

The proposed development involves alterations and additions to the existing North Harbour Sailing Club, including the continued use of the already constructed boat ramp structure, which was built in 2012.

The land on which the club stands is owned partly by both Roads and Maritime Services/Transport for NSW and Northern Beaches Council. There is currently a lease agreement which permits the Club to occupy approximately 175m² of the site. The proposed development will increase the leased area by approximately 70m², in addition to the already built boat ramp. The applicant is seeking to increase the leased area from 175m² to 245m² as part of this application.

The proposal achieves compliance with the relevant controls contained within Sydney Regional Environmental Plan Sydney Harbour Catchment 2005 and Manly Local Environmental Plan 2013, and is generally consistent with the provisions of the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 and Manly Development Control Plan 2013.

The DA was publicly exhibited in accordance with the Northern Beaches Community Participation Plan and no submission were received.

The assessment concludes that the impacts of the development are acceptable and can be appropriately mitigated through the implementation of the recommended conditions of consent.

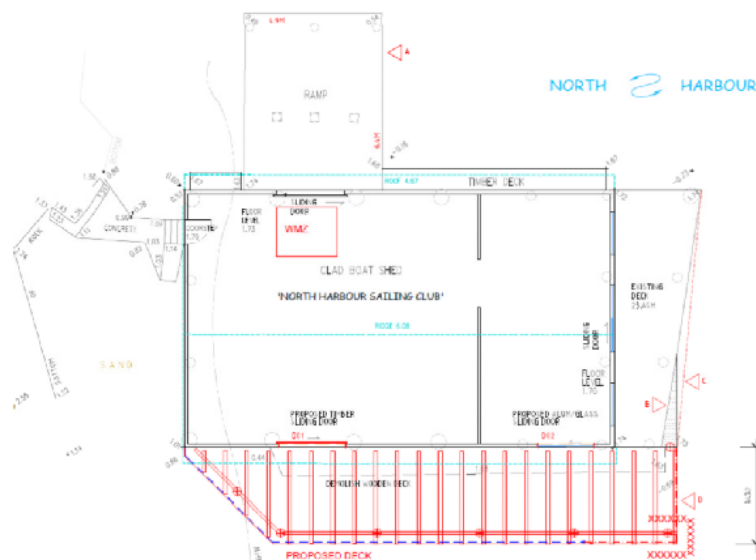
Consequently, the assessment considers the development should be approved subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The North Harbour Sailing Club is seeking development consent as follows:

- To continue to use of the already constructed boat ramp, which was extended beyond the current lease boundary
- Replace and extend the existing decking to the eastern side
- Erect a chainwire fence 1.8m high between the new deck and Sea Scout Clubhouse
- Install entry doors to the eastern clubhouse wall

The proposed works are shown on Figure 1 plan below.



LEGEND

- A** RAMP EXTENSION 'AS BUILT'
TO BE INCLUDED IN NEW LEASE AREA
- B** DECK EXTENSION 'AS BUILT'
TO BE INCLUDED IN NEW LEASE AREA
- C** PROPOSED ALIGNMENT
TO BE INCLUDED IN NEW LEASE AREA
- D** PROPOSED DECK FOR CRAFT STORAGE
TO BE INCLUDED IN NEW LEASE AREA
- SF** PROPOSED SECURITY FENCE
CYCLONE WIRE MESH 1.8M HIGH
TO ENSURE ACCESS VIA THE CLUB
FENCE TO ALIGN SEA SCOUTS BUILDING
- HR** PROPOSED HAND RAIL
SS WIRE BALUSTRADE 1.0M HIGH
TO ALIGN EXISTING

Figure 1- Plan showing proposed works (Source: Architectural plan by Paul Carrick, dated April 2020)

The current lease area occupied by the Club component of the development is approximately 175m², as shown the Figure 2 below:

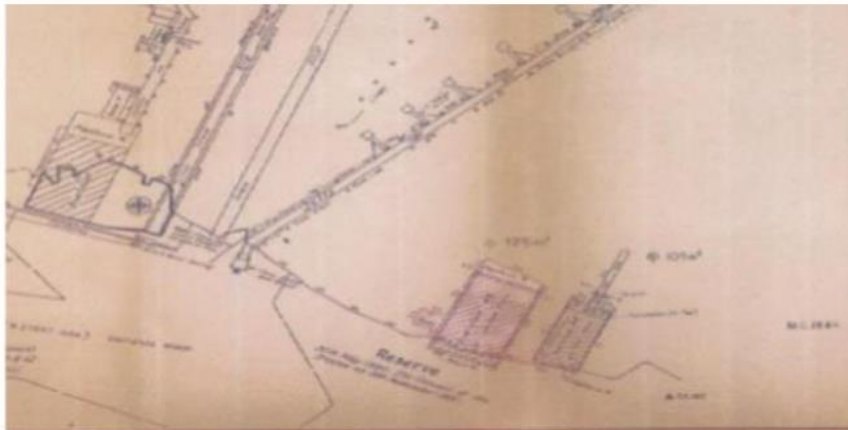


Figure 2- Extract from original lease showing current Club footprint highlighted in pink (Source: Statement of Environmental Effect, dated May 2020)

The applicant is now seeking to increase the leased area from 175m² to 245m² as part of this application.

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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 7347 DP 1148450 , 0 Gourlay Avenue BALGOWLAH NSW 2093
Detailed Site Description:	<p>North Harbour Sailing Club adjoins Wellings Reserve on land leased from Northern Beaches Council and Transport for NSW (TfNSW), formerly Roads and Maritime Services (RMS). The site is located on the southern side of North Harbour, below the high water mark. The land is designated by the TfNSW lease area, a rectangular area with a total area of 175m2.</p> <p>Access to the Club is via the adjoining steps either from the Davis Marina or from Gourlay Avenue. There is no vehicular access, with the club's ridge line below the adjacent roadway leading to Forty Baskets Beach. Public parking is available in the Council spaces along the only entry road to the reserve being Gourlay Avenue.</p>

Map:



SITE HISTORY

North Harbour Sailing Club has provided a club room and boat storage facilities for sailing dinghies, yacht tenders and other watercraft since its construction in 1948. The land on which the club stands is owned by both Roads and Maritime Services/Transport for NSW and Northern Beaches Council, which is under a lease agreement between the Transport for NSW and the Club.

The applicant has advised that in 2012, the boat ramp on the western side of the clubhouse was extended (without the formal approval of Council and Transport for NSW), replacing a dilapidated timber structure. The applicant is now seeking to increase the leased area from 175m² to 245m² as part of this application.

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	See discussion on "Draft State Environmental Instruments" in this report.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Waterways Area Development Control Plan 2005 applies in part 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)	<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.

Section 4.15 Matters for Consideration'	Comments
	<p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Waterways Area Development Control Plan 2005 and Manly Development Control Plan 2013 section in this report. In summary, the proposal is satisfactory with regards its environmental impact.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development, as it continues to be used as a sailing club.
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	<p>The proposed development will result in the upgrading and general enhancement of an existing sailing club on the site. The proposed development will not adversely impact the residential amenity of neighbouring properties and will not adversely impact the harbour or its ongoing use.</p> <p>Furthermore, given the minor nature of the proposal, the proposal will not have an adverse effect on the ecological, scientific, cultural, aesthetic or visual values of the foreshore</p>

Section 4.15 Matters for Consideration'	Comments
	and waterways area. No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the following provisions:</p> <ul style="list-style-type: none"> • Manly LEP Clause 6.5 (Terrestrial Biodiversity) • SEPP (Coastal Management) Coastal Environment Area <p>It is noted that aquatic ecological impacts have been addressed by the Riparian referral body. Subject to retention of protected native trees, it is considered that the proposal complies with the controls.</p>
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><i>Coastal Management Act 2016</i> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the</p>

Internal Referral Body	Comments
	<p>proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p><u>Comment:</u></p> <p>On internal assessment, the DA satisfies requirements under Clause 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</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. On internal assessment, it is determined that the Planning Principles and Matters for Consideration of the Area have been met.</p> <p>The subject site is located within the W2 (Environmental Protection) zone.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by the North Harbour Sailing Club dated May 2020, it is determined that the objectives and assessment criteria of the zone have been met.</p> <p>Manly LEP 2013 and Manly DCP</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</p>

Internal Referral Body	Comments
	<p>development on the site.</p> <p>Foreshores Scenic Protection Area Management On internal assessment, 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. 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> <p>Development on Foreshore Area The subject site is also shown to be as "Manly Foreshores Area" on Council's Area "within the foreshore building line Map" in Manly LEP 2013. Hence, Part 6, Clause 6.10 –Limited development on foreshore area of the Manly LEP 2013 applies for any development within the foreshore area. The DA proposes deck construction attached to an existing clubhouse and other works. All these proposed works are consistent with Clause 6.10(2). On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by the North Harbour Sailing Club dated May 2020, the DA satisfies the objectives and requirements of Part 6, Clause 6.10 of the Manly LEP 2013.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application.
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation for the protection of waterways and surrounding environment.</p> <p>The applicant must install a silt curtain to avoid the escape of turbid plumes into the environment during construction. Turbid plumes have the potential to smother aquatic vegetation. All contractors must be able to identify the invasive green alga, <i>Caulerpa taxifolia</i>, and associated management actions should it be present during the works.</p> <p>With adherence to these conditions it is unlikely that this proposal will have an adverse impact on the integrity and resilience of the biophysical, ecological and hydrological environment. It is therefore recommended for approval subject to these conditions.</p>
Parks, reserves, beaches, foreshore	The proposal is for alterations and additions to the North Harbour Sailing Club involving a proposed eastern balcony and extension to the western ramp as identified in the development applications documents.

Internal Referral Body	Comments		
	Parks & Recreation raise no objections to the proposal subject to conditions of consent to protect public assets on Council land, and environmental site management of the works.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to Heritage as it sits above a heritage item and adjoins a heritage item		
	<ul style="list-style-type: none">I1 Harbour Foreshores - Runs along the foreshore of Sydney HarbourI28 Wellings Reserve - Gourlay Avenue and New Street, North Harbour		
	Details of heritage items affected		
	Details of the items as contained within the Manly inventory is as follows: Harbour Foreshores <u>Statement of significance:</u> Natural landscape type - Aesthetic.		
	<u>Physical description:</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.		
	Wellings Reserve <u>Statement of significance:</u> Natural landscape, scientific and aesthetic significant.		
	<u>Physical description:</u> Remnant natural bushland of low woodland character. Some intrusions of weed species adjacent to roads and suburban development. Generally in good condition. Commemorative reserve named after former Shire Clerk.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No		
NSW State Heritage Register	No		
National Trust of Aust (NSW) Register	No		
RAIA Register of 20th Century Buildings of Significance	No		
Other	No		

Internal Referral Body	Comments
	<p>Consideration of Application</p> <p>The proposal seeks consent for alterations and additions to the existing North Harbour Sailing Club building. The building is not a heritage item but sits over item I1 Harbour Foreshores and adjoins item I28 Wellings Reserve. The proposal includes a new deck on the eastern side which partially extends over the I1 listing however its proposed construction method leaves the item in situ and its impact is considered very minor and tolerable. There is no impact to the heritage significance of Wellings Reserve from the proposal.</p> <p>Thus Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) was gazetted on 28 August 1998 and applies to the whole State. It introduces planning controls for the remediation of contaminated land and requires an investigation to be made if land contamination is suspected.

The subject site has been used sailing club for significant period of time, and there is no evidence to suggest any potential site contamination. Therefore, the provisions of SEPP 55 are satisfied and no further investigation is required in this regard.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP Sydney Harbour Catchment) was gazetted on 30 September 2005. As of 1 July 2009, Regional Environmental Plans (REPs) are no longer part of the hierarchy of Environmental Planning Instruments in NSW, and all existing REPs are now deemed State Environmental Planning Policies (SEPPs). The main aim of the SREP Sydney Harbour Catchment is to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained as an outstanding natural and public asset of national heritage significance for existing and future generations.

Zoning and Permissibility

Under the SREP Sydney Harbour Catchment, the subject site is zoned W2 Environment Protection.

The objectives of the W2 Environment Protection zone are as follows:

- (a) to protect the natural and cultural values of waters in this zone,
- (b) to prevent damage or the possibility of longer term detrimental impacts to the natural and cultural values of waters in this zone and adjoining foreshores,
- (c) to give preference to enhancing and rehabilitating the natural and cultural values of waters in this zone and adjoining foreshores,
- (d) to provide for the long-term management of the natural and cultural values of waters in this zone and adjoining foreshores.

Comment:

The proposed development is consistent with these objectives in that the works allow for the updating of the existing sailing club to better serve the needs of water users and the community. The cultural values are enhanced by the upgrade of the existing facility and the enhanced provision of access to the Harbour for recreational purposes.

Other Provisions

Part 2 of the SREP (Clauses 13 and 14) provides a number of planning principles with respect to land within the Sydney Harbour Catchment and development within the Foreshore and Waterways Area. Assessment of the proposal against these provisions principles provided in the following table:

SREP (SYDNEY HARBOUR CATCHMENT) 2005 – COMPLIANCE TABLE - Part 2 Planning Principles

Clause/Control	Proposal	Complies
13 Sydney Harbour Catchment	The proposed additions to the existing sailing club will not have any adverse impacts on the overall hydrological, ecological, geomorphological or environmental processes of the Sydney Harbour Catchment.	Yes
	Therefore, the proposal is considered to be satisfactory when assessed against each of the relevant principles planning for land within the Sydney Harbour Catchment.	
14 Foreshores and Waterways Area	As indicated above, the proposed development being minor additions to the existing sailing club is considered to be satisfactory when assessed against each of the relevant principles planning for land within the Sydney Harbour Catchment.	Yes

Part 3, Division 2, of the SREP requires a number of matters to be considered in relation to the granting

of consent for an application for development located within a "foreshore or waterway area". The relevant matters for consideration as it relates to the proposed development are:

- *General (clause 20);*
- *Biodiversity, ecology and environment protection (clause 21);*
- *Public access to, and use of, foreshores and waterways (clause 22);*
- *Maintenance of a working harbour (clause 23);*
- *Interrelationship of waterway and foreshore uses (clause 24);*
- *Foreshore and waterways scenic quality (clause 25);*
- *Maintenance, protection and enhancement of views (clause 26);*
- *Boat storage facilities (clause 27); and*
- *Floating boat platforms (clause 27A).*

Comment:

The proposed development is consistent with the relevant matters for consideration as the proposal is for a minor alterations to the existing sailing club which will have any adverse impact or conflict with existing use of the waterway and foreshore. The proposed development will not give rise to any adverse biodiversity impacts in the locality and will not prejudice the harbour's associated ecosystems, ecological processes and biological diversity or its water quality.

Sydney Harbour Foreshore and Waterways Area Development Control Plan 2005

The Sydney Harbour Foreshore and Waterways Area Development Control Plan 2005 (SHFWA DCP) applies to land identified in the SREP (Sydney Harbour Catchment) as being within the "Foreshores and Waterways Area", and therefore applies to the portion of the site and proposed development which is located below MHWS. The DCP includes design guidelines for development, assessment criteria for marinas and criteria for natural resource protection. The table below provides an assessment of the proposed against the applicable sections of the DCP.

**SYDNEY HARBOUR FORESHORES & WATERWAYS AREA DEVELOPMENT CONTROL PLAN
2005 – COMPLIANCE TABLE**

Clause / Control	Proposal	Compliance
2. Ecological Assessment	The application has been assessed by Council's Natural Environment section, whom has advice there will be significant impact from the proposed development.	Yes
<ul style="list-style-type: none"> • 2.4 Statement of Intent and Performance Criteria 		
3. Landscape Assessment	Given the minor nature of the proposal, there will be no adverse impact on existing views and vistas to and from public places or heritage items or the public reserve adjoining the site.	Yes
<ul style="list-style-type: none"> • 3.4 Performance Criteria 	The proposed development is consistent with the performance criteria of this landscape character type, providing a low scale development, with neutral colours to match the existing building and which has no direct impact on the land or match vegetation of the foreshore area being located on piles above the water.	
4. Design Guidelines for Water-Based and Land/Water Interface Developments	Foreshore access to the adjacent beach is maintained, and the proposal provides an addition to the existing sailing club.	Yes

- 4.3 Foreshore
- 4.4 Siting of Buildings and Structures Not relevant – the existing development is a land/water interface development and not set back from the foreshore building line. Yes
- 4.5 Built Form The proposed works to the existing sailing club are low scale and well below the 8.5m height of building standard that applies to residential development in the area. Yes
- 4.7 Marinas (Commercial and Private) Not applicable to the proposed development.

SEPP (Coastal Management) 2018

The proposed development is subject to the provisions of the State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP), being within the "Coastal Environment Area". However, Clauses 13 and 14, which generally require the consent authority to consider certain matters for development on land within these areas, do not apply to land within the Foreshores and Waterways Area within the meaning of SREP (Sydney Harbour Catchment) 2005, and therefore do not need to be considered for the subject development.

Notwithstanding the above, the assessment of the proposal against the general provisions of the Coastal Management SEPP is provided within the referral section of this report by the Natural Environment - Coastal Referral comments. The only relevant provision is the requirement for the consent authority to be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposed development does alter the floor levels of the building and therefore the risk to the property is considered to be low.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

Draft State Environmental Planning Policy Remediation

As discussed above with regards to SEPP 55, the site is considered to be suitable for the proposed development and unlikely to be subject to land contamination.

Draft Environment SEPP

The Department of Planning, Infrastructure and Environment has exhibited a Draft "Environment SEPP", which was on public exhibition from 31 October 2017 until 31 January 2018. The Environment SEPP will consolidate various existing planning instruments that deal with environmental matters, including the SREP (Sydney Harbour Catchment), which currently applies to the proposed development.

The Explanation of Intended Effect (EIE) for the proposed Environment SEPP states that the policy intent of the existing SREP will continue, with some amendments to existing provisions proposed to improve the protections for Sydney Harbour. Proposed amendments including aligning zones with the Standard Instrument zones, including W2 Environmental Protection (which applies to the subject site)

which will be aligned with the Standard Instrument W1 Natural Waterways, removing the requirement to consult with the Foreshores and Waterways Planning and Development Advisory Committee, and consolidating and updating the matters for consideration into clearer themes which are structured to be more consistent with the Standard Instrument format.

The subject site is mapped under the Draft Environment SEPP as containing areas of rocky foreshores. The proposed development being a minor extension of deck will have no significant impact on aquatic ecology of the site.

At this stage of the Environment SEPP preparation, there are no other particular provisions of relevance to the subject development.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	The height of buildings map does not apply a maximum height to the subject site.	N/A	N/A	N/A
Floor Space Ratio	The floor space ratio map does not apply a maximum FSR to the subject site.	N/A	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
2.4 Unzoned land	Yes
5.7 Development below mean high water mark	Yes
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.7 Wetlands	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

Clause	Compliance with Requirements
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes
6.21 Noise impacts—licensed premises	Yes
Schedule 5 Environmental heritage	Yes

Manly Development Control Plan

Built Form Controls

There are no Built Form Controls that apply to the subject site.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.8 Waste Management	Yes	
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
Schedule 1 – Maps accompanying the DCP	Yes	Yes

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

The proposed development involves a deck addition and the continued use of a boat ramp that was built in 2012 with an associated increase to the lease area for the Club by approximately 70m². The proposed development is permissible with consent under the provisions of the SREP (Sydney Harbour

Catchment) 2005 and Manly LEP 2013 and is considered to comply with all of the relevant objectives and provisions.

The proposal's impact on the visual and scenic environment has been assessed and found to be acceptable. The site is considered ideally suited to the development having regard to the relatively modest scale of the proposed alterations and additions in comparison with the existing facilities, the history of the use of the site and the relative isolation of the site from residential properties and other sensitive receivers.

The proposal represents a modest development in a relatively isolated location, which is considered to have no significant adverse impacts on the environment or the amenity of nearby properties.

Similarly, the ecological impacts of the development have been addressed and it is concluded that the proposal is unlikely to having any significant adverse impacts on the marine ecology.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/0530 for Alterations and additions to an existing sailing club on land at Lot 7347 DP 1148450, 0 Gourlay Avenue, 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Sheet 01, 02, 03, 04, 05, and 06 (Revision A)	April 2020	Paul Carrick Associates

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

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

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

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

2. Approved Development

This consent does not approve any unauthorised structures on the site.

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) 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.

- (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.

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

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

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. Dilapidation Report of Land owned or managed by Council

A dilapidation report/survey of pre-existing land features including photographic record of the Land owned or managed by Council adjoining the development, detailing the physical condition of items such as, but not exclusively limited to, physical assets such as crossovers, driveways, footpaths, utilities, furniture, play equipment, trees, gardens, lawn areas, bushland, and any rock outcrops, shall be prepared.

This dilapidation report shall be submitted to Council and the Certifying Authority prior to commencement of works, and shall be the basis for rectification of any damage to Council's assets as listed in the Post Construction Dilapidation report submitted prior to the issue of the Occupation Certificate.

Any damage to these assets during the works must be replaced like for like to the satisfaction of the Certifying Authority, and shall be subject to acceptance by Council.

The applicant may be held liable to any damage to public infrastructures in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition. In this regard, where required, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.

Reason: protection of Council's assets.

7. Lease area Identification Survey

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the lease area as it relates to North Harbour Sailing Club reflected in the approved plans.

The plans submitted for the Construction Certificate are to accurately reflect the lease boundaries as shown 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. Working on and Access to Reserves permit

Works (undertaken by principal contractors working without Council supervision) on Land owned or managed by Council require a "Working on Reserves" permit prior to commencement. Applications can be obtained from Council's website or the Parks and Recreation business unit.

No works are to be carried out on Land owned or managed by Council without the written approval of the Council.

Reason: public safety and the protection of Council infrastructure.

9. Design Impact on Coastal Processes and Public/Private Amenity

All development and/or activities must be designed and constructed so that they will not adversely impact on surrounding properties, coastal processes or the amenity of public foreshore lands.

Reason: To ensure the development does not impact the coastal process and public/private

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

10. 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.

11. Construction Management Plan

Prior to commencement of works on site, a Construction Management Plan recommending appropriate environmental site management measures to be in place and incorporated throughout demolition and construction works:

- i) access to and from the site during construction and demolition,
- ii) safety and security of the site, road and footpath area including details of proposed fencing, hoarding and lighting,
- iii) methods of loading and unloading machinery and building materials,

- iv) location of storage materials, excavation and waste materials,
- v) methods to prevent material being tracked off the site onto surrounding roadways,
- vi) erosion, sediment and dust control measures, and
- vii) protection of existing trees and vegetation including the tree protection zone, in accordance with AS 4970-2009 Protection of Trees on Development Sites.

During works, the site management measures set out in the above must remain in place and be maintained until the completion of works.

Construction materials must not be stored on Land owned or managed by Council. Safe pedestrian access free of trip hazards must be maintained at all times on or adjacent to any public access routes connected to Land owned or managed by Council.

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

12. Environmental Safeguards

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

Reason: Protection of the environment

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. 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.

14. Protection of trees within Land owned or managed by Council

Unless identified by the development consent, existing trees shall be protected in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor

canopy disturbance.

Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately Contact Council's Tree Services section and resolve the matter to Council's satisfaction.

Reason: tree protection and management

15. Storage of Materials on Land owned and managed by Council Prohibited

The dumping or storage of building materials, spoil, vegetation, green waste, or any other material in Land owned or managed by Council is prohibited.

Reason: public safety and environmental protection

16. Preventing invasive alga, *Caulerpa taxifolia*

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

Reason: Protection of the environment

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

17. Post Construction Dilapidation Report of Land owned or managed by Council

Rectification works to Council's assets shall be contained in a Post Construction Dilapidation report submitted to Council prior to the issue of the Occupation Certificate.

The applicant may be held liable to any damage to public infrastructures in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition. In this regard, where required, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.

Reason: protection of Council's assets

18. Tree Protection

All existing trees and native vegetation on the site must be retained unless exempt under Manly DCP Clause 3.3.2. Details demonstrating compliance are to be provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

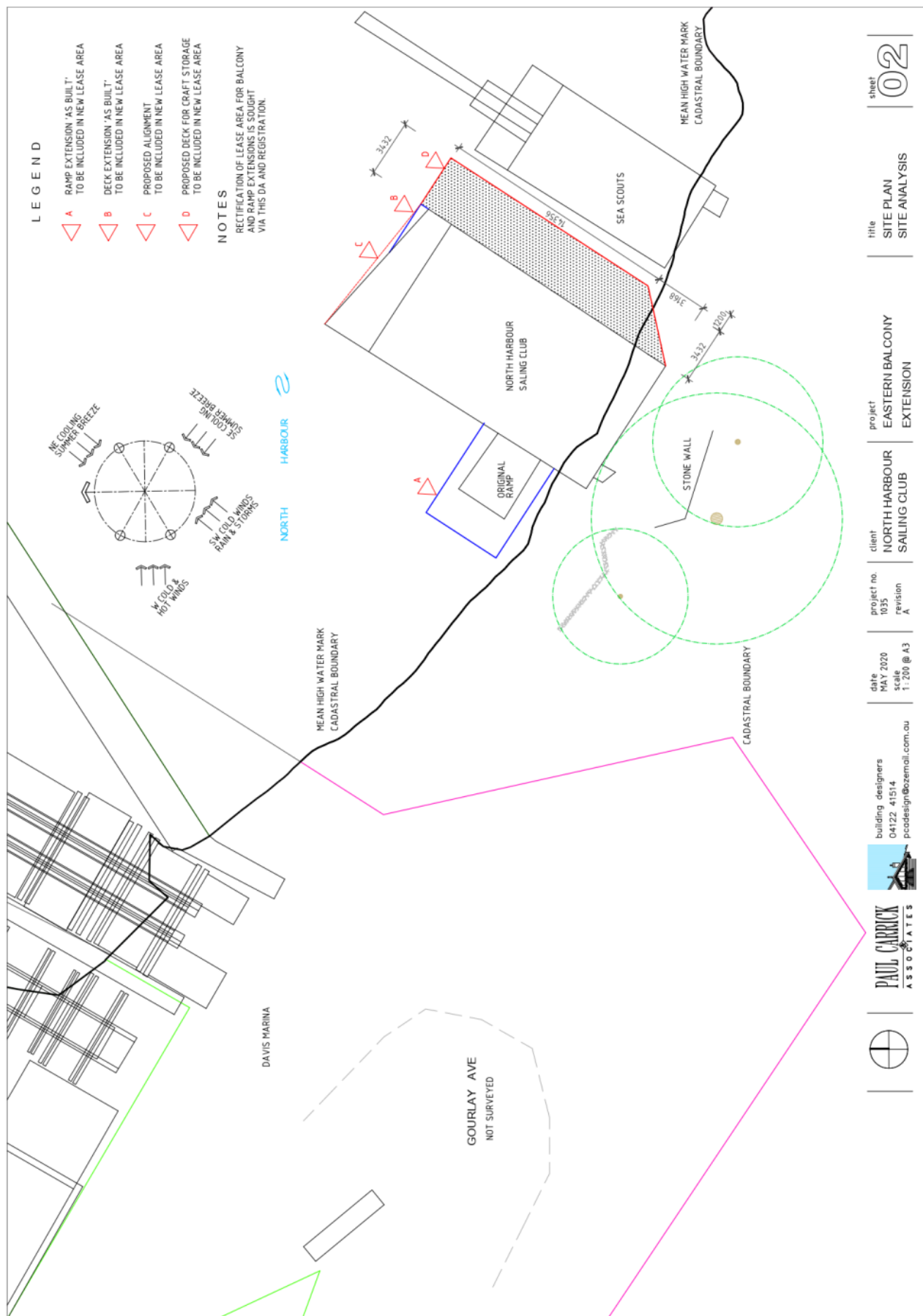
Reason: To protect native trees and vegetation in accordance with Manly LEP Clause 6.5 (Terrestrial Biodiversity).

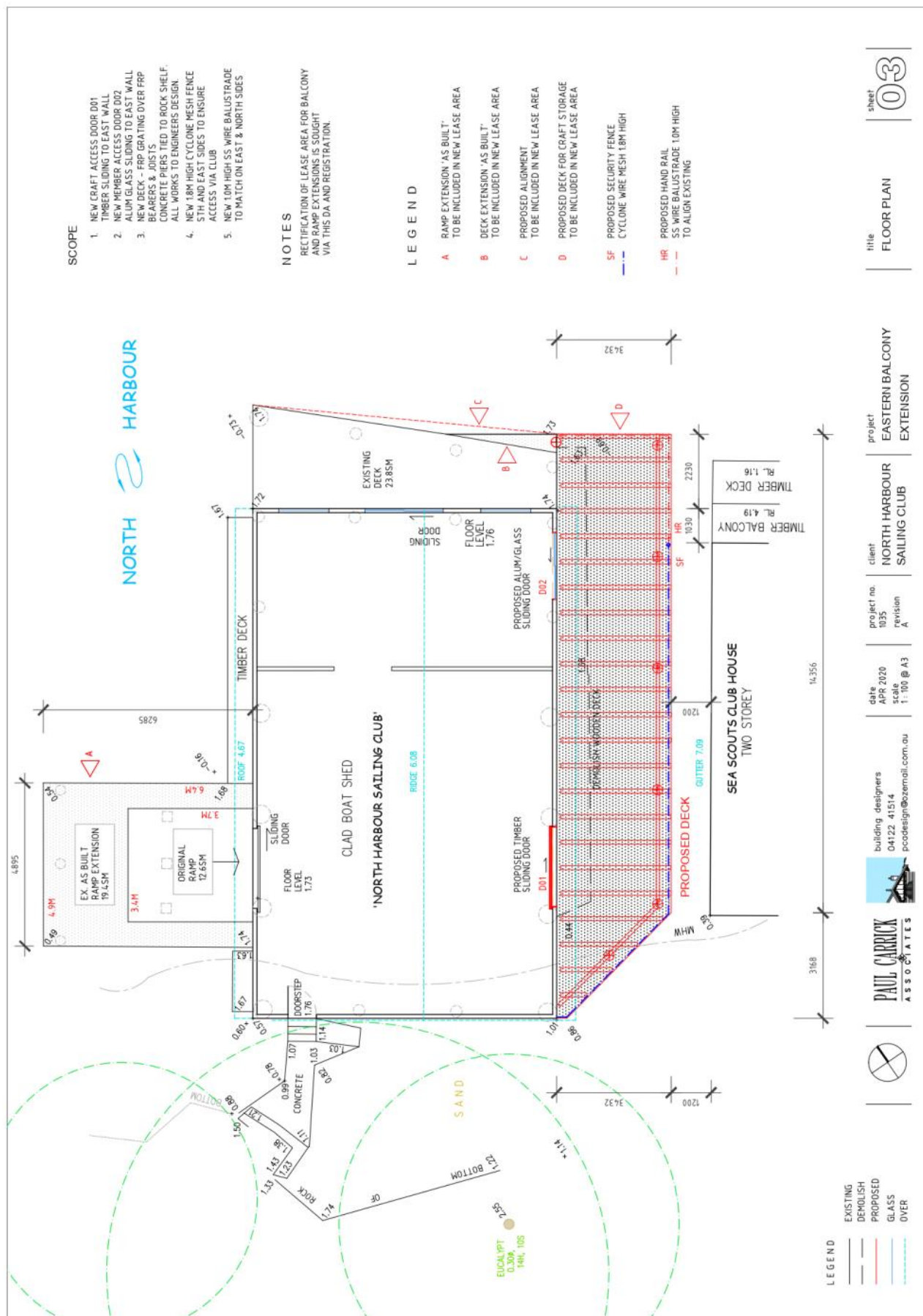
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

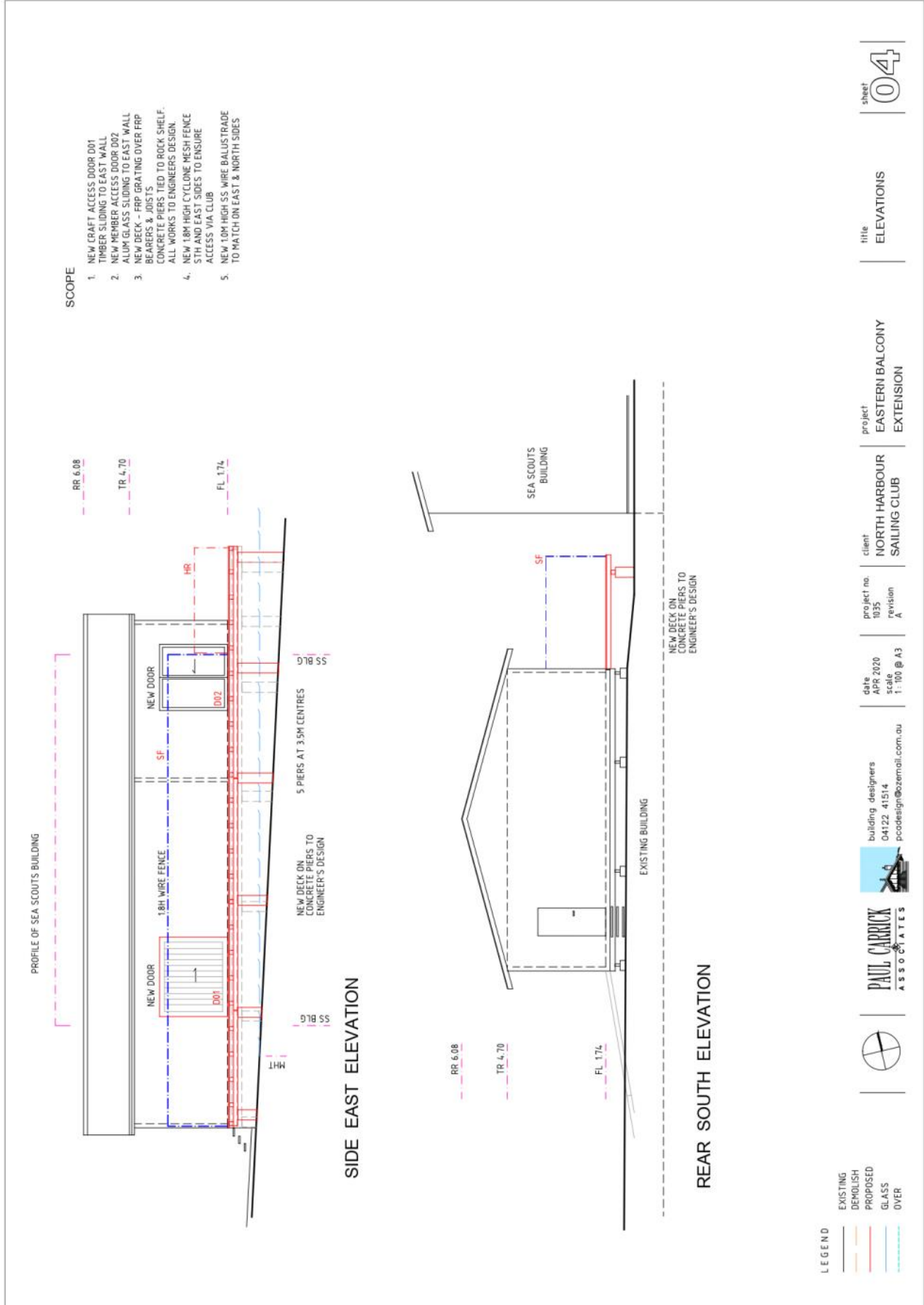
19. Dead or Injured Wildlife – Manly LEP Clause 6.5

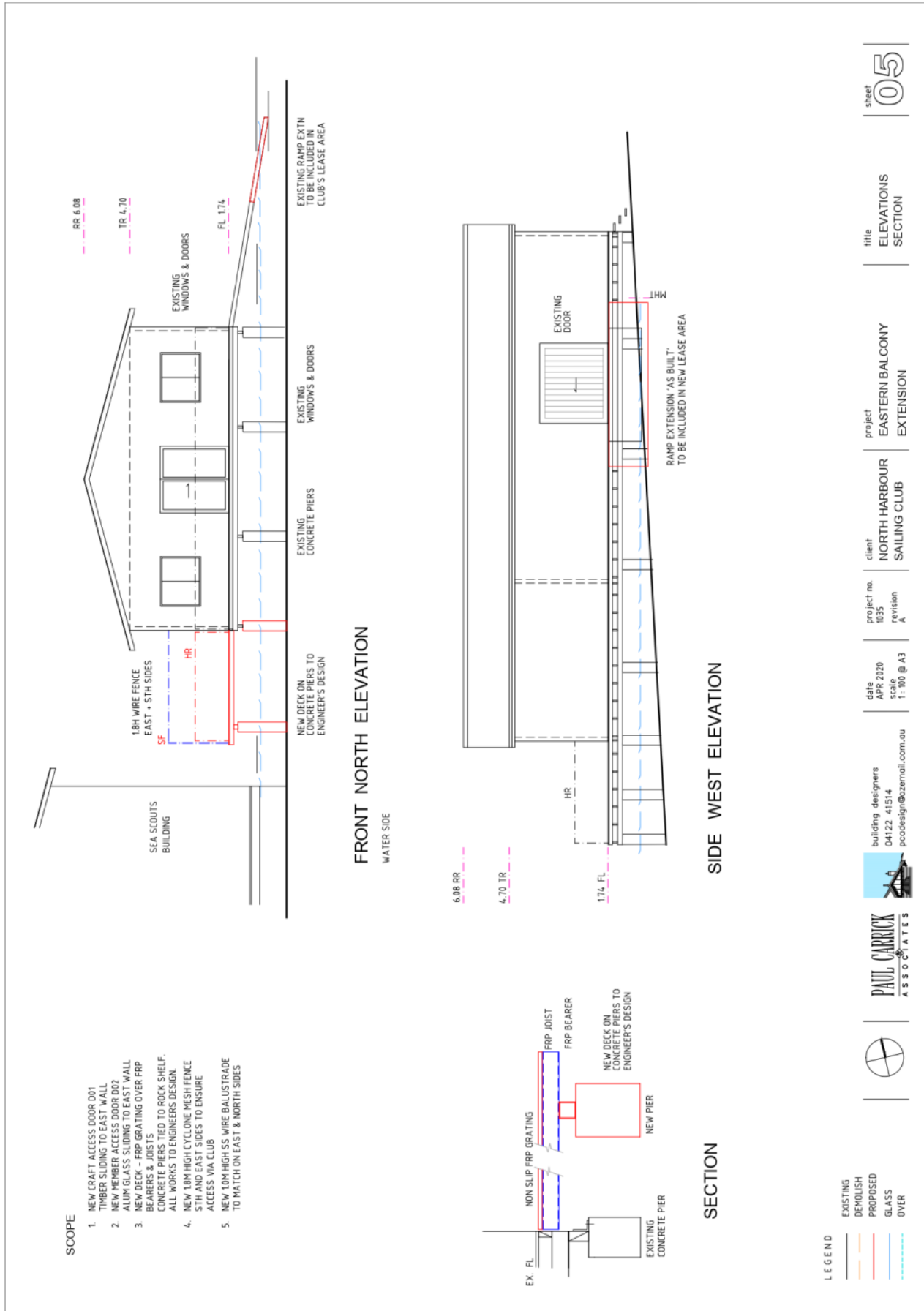
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

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









ITEM 3.3	DA2020/0347 - 49 FOREST WAY, FRENCHS FOREST - DEMOLITION WORKS AND CONSTRUCTION OF 4 SENIORS HOUSING UNITS, WITH BASEMENT PARKING AND STRATA SUBDIVISION
REPORTING OFFICER	STEVE FINDLAY
TRIM FILE REF	2020/428174
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant is a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/0347 for demolition works and construction of 4 Seniors Housing Units, with basement parking and strata subdivision at Lot 1A, DP 382200, 49 Forest Way, Frenchs Forest subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0347
Responsible Consultant:	Geoff Goodyer, planning consultant, Symons Goodyer Pty Ltd
Land to be developed (address):	Lot 1A, DP 382200, 49 Forest Way, FRENCHS FOREST NSW 2086
Proposed development:	Demolition of existing structures, construction of a housing for seniors' development containing 4 units, basement car parking for 6 cars, and strata subdivision.
Zoning:	Warringah LEP 2011 – Land zoned R2 Low Density Residential
Development permissible:	Yes, under SEPP (Housing for Seniors or People with a Disability)
Existing use rights:	No
Consent authority:	Northern Beaches Council
Delegation level:	Northern Beaches Local Planning Panel
Land and Environment Court action:	No
Owner:	Sayed Jalaledin Ziaolhagh, Rezvan Saket and Arvin Saket
Applicant:	Sayed Jalaledin Ziaolhagh
Application lodged:	14 April 2020
Integrated development:	No
Designated development:	No
State reporting category:	Residential – Housing for Seniors
Notified:	24/4/2020 – 13/5/2020
Advertised:	24 April 2020
Submissions received:	Five (5)
Recommendation:	Approval
Estimated cost of works:	\$1,215,908

EXECUTIVE SUMMARY

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and an appropriate development for the subject site.

The site, with an area of 923m², does not comply with the development standard in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 SEPP (HSPD) 2004 relating to minimum site size of 1,000m². The applicant has submitted a written request to vary the development standard which, for reasons discussed in this assessment report, is considered to be well founded.

The proposal has been assessed pursuant to the relevant planning controls including SEPP (HSPD) 2004, Warringah Local Environmental Plan 2011 (WLEP 2011) and Warringah Development Control Plan 2011 (WDCP) 2011. It is considered that the proposal satisfies the aims and objectives of all relevant planning controls.

Five (5) submissions were received from neighbours objecting to the proposal and raising a number of issues. The submissions raised concerns including overdevelopment, traffic, parking, privacy, overshadowing, tree removal, streetscape, stormwater, waste management, loss of property value, height of building at the rear of the site, and insufficient information. The assessment of these submissions concludes that none of them are of determining weight.

The application was referred to external consultants with regards to traffic, access, safety and parking provision. The external consultants consider the proposal to be satisfactory in this regard subject to conditions. In addition, Council's Traffic Engineer has requested a condition requiring a widening of Adams Street for part of the frontage of the property, but it is not recommended that this condition be imposed for reasons discussed in this assessment report.

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. One of the owners of the site is an employee of Northern Beaches Council, so hence the assessment and Traffic comments were done by external consultants.

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 (ie: this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- An inspection of the subject site and neighbouring sites 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 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 in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination); 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

- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 – Clause 40(2) Site size
- Warringah Local Environmental Plan 2011 – Clause 4.6 Exceptions to development standards
- Warringah Development Control Plan 2011 – C2 Traffic, Access and Safety
- Warringah Development Control Plan 2011 – D1 Landscaped open space and bushland setting
- Warringah Development Control Plan 2011 – D6 Access to Sunlight
- Warringah Development Control Plan 2011 – D8 Privacy
- Warringah Development Control Plan 2011 – D9 Building bulk

STATUTORY CONTROLS

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- Warringah Local Environmental Plan 2011
- Warringah Development Control Plan 2011
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- State Environmental Planning Policy No. 55 – Remediation of Land and Draft SEPP
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

SITE DESCRIPTION

Property description:	Lot 1A DP 382200, 49 Forest Way FRENCHS FOREST NSW 2086
Detailed site description:	<p>The site is located on the south-eastern corner of Forest Way and Adams Street. It is an irregularly shaped allotment, with a frontage of 48.205m to Adams Street, 23.775 to Forest Way and a splay corner boundary of 6.335m. The site has a southern boundary of 46.95m and an eastern boundary of 1.74m. The site area is 923m².</p> <p>The site contains a part 1-storey, part 2-storey dwelling house of brick construction with a tile roof. The area around the building contains lawn, shrubs and trees. Vehicular access to the site is from Adams Street.</p>

	<p>Adjoining the site to the south is a two-storey dwelling house and to the east is a single-storey dwelling house. There is a bus stop on Forest Way in front of the site.</p> <p>Surrounding development comprises predominantly dwelling houses in landscaped settings interspersed with other development.</p>
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Figure 1 – Location of Site

SITE HISTORY

The site has been used for residential purposes for approximately 70 years prior to which it was vacant. A search of Council's records has revealed the following relevant history:

A previous Development Application (DA2019/0811) was lodged on 29/7/2019 for demolition works and construction of 4 Seniors Housing Units, with basement parking and strata subdivision. The application was withdrawn on 15/10/2019.

A pre-lodgement meeting (PLM2020/0013) was held with the applicant, their project team, Council's officer and the independent assessing officer on 12/2/2020.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to demolish the existing dwelling house and construct a building containing four dwellings as housing for seniors or people with a disability. The building comprises 2 storeys over basement car parking. Each dwelling has 2 bedrooms plus "study / flex space". A lift connects all three levels of the building.

Basement carparking is provided for 6 cars. Access to the basement car parking area is from Adams Street. Pedestrian access to the site is from Forest Way. The area around the building is to be landscaped.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 4.15 of the EPAA are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	See discussion on "Warringah Development Control Plan 2011" in this report.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, enable Council to request additional information in relation to a development application. The applicant was requested to provide amended plans regarding waste storage (13/5/2020) and building height (15/5/2020). Amended information was received on 15/5/2020 and 18/5/2020.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98(1)(b)</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98(1)(a)</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on	(i) Environmental Impact

Section 4.15 'Matters for Consideration'	Comments
the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. The provision of housing for seniors and people with a disability is considered to result in a positive social impact.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the proposed works.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered to be of sufficient size for the proposed development, as discussed below. The site is not subject to natural constraints such as landslip, flooding or bushfire risk that would make it unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 4.15 (1) (e) – the public interest	The public interest is considered to be served by providing housing for seniors or people with a disability in a manner that protects the amenity of the area.

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

The subject application was notified to surrounding and nearby properties in accordance with the EPA Regulation 2000 and Warringah Development Control Plan 2011.

In response, Council received five (5) submissions. All of the submissions raised objections. The issues raised in the submissions are summarised as follows:

Name:	Address:
Mr Neil Bennett	47 Forest Way FRENCHS FOREST NSW 2086
Ms Bronwyn Tucker	9 Greendale Avenue FRENCHS FOREST NSW 2086

Name:	Address:
Mr Andrew Tripet	25 Adams Street FRENCHS FOREST NSW 2086
Mr Harry Koppanyi	23 Adams Street FRENCHS FOREST NSW 2086
Name withheld	Address withheld

Overshadowing

Concern is raised that the proposal will result in overshadowing of 47 Forest Way.

Comment: This issue is discussed in detail below.

Privacy

Concern is raised that the proposal will result in a loss of privacy.

Comment: This issue is discussed in detail below.

Allotment size

Concern is raised that the site, with an area of 923m², is less than the minimum allotment size of 1,000m² permitted under Clause 40(2) of SEPP HSPD.

Comment: This issue is discussed in detail below.

Traffic

Concern is raised that the proposal will have a negative impact on local road conditions due to traffic generated by the site and due to cars queueing at the intersection of Adams Street and Forest Way.

Comment: The issue of traffic, access and safety is addressed in the report by ASON Group (attached to this report). The report concludes that the proposal has been designed to perform in a satisfactory manner with regards to parking, access and safety. These concerns have not been given determining weight.

Overdevelopment

Concern is raised that the proposal is an overdevelopment of the site.

Comment: Clause 50(b) of SEPP HSPD provides that consent cannot be refused on the grounds of density and scale if the floor space ratio is 0.5:1 or less. The proposal has a floor space ratio of 0.5:1. It is considered that objections regarding potential overdevelopment of the site are relatable to the density and scale of the proposal, and clause 50(b) of SEPP HSPD provides that consent cannot be refused on this ground. This objection has not been given determining weight.

Scale and streetscape

Concern is raised that the proposal is excessive in scale and will have a negative impact on the streetscape.

Comment: Clause 50(b) of SEPP HSPD provides that development with a floor space ratio of 0.5:1 or less cannot be refused on the grounds of density and scale. The proposed density (4 units) is considered acceptable. The proposal has a floor space ratio of 0.5:1, such that development consent cannot be refused on the grounds of scale.

The proposal has a character that is different to that of a dwelling house due to it being development for housing for seniors and people with a disability. However, the character of the development is considered to be compatible with the surrounding character and with the streetscape. This has been achieved by ensuring that the floor space ratio of the development satisfies the requirements of clause 50(b) of SEPP HSPD and through the architectural design of the proposal, which has broken up the development into a number of separate “modules” through deep recesses in the façade, and through the provision of a landscaped setting for the building.

This concern has not been given determining weight.

Impact on trees

Concern is raised regarding the impact on trees on the neighbouring site, 47 Forest Way, and on street trees.

Comment: Council's Landscape Officer has reviewed the proposal overall and particularly with regards to trees on 47 Forest Way and has concluded that the development will not have an unreasonable impact on those trees subject to appropriate conditions. Two street trees are proposed to be removed and no objections are raised by Council's Landscape Officer to the removal of these trees subject to a condition requiring replacement tree planting in accordance with the recommendations of Council's Landscape Officer. This concern has not been given determining weight.

Impact on stormwater

Concern is raised regarding the impact of the proposal on stormwater management.

Comment: Council's development engineer has reviewed the proposal and the means by which stormwater is to be disposed of and raises no objections subject to conditions. This objection has not been given determining weight.

Vehicle and pedestrian conflict

Concern is raised regarding the potential safety impacts of vehicles entering and leaving the site and pedestrians on Adams Street.

Comment: This concern is addressed in the report by ASON Group (attached). Whilst there is no footpath on Adams Street in front of the property the area is subject to pedestrian activity. The report by ASON Group considers that the proposal will not give rise to unreasonable safety impacts subject to conditions, including a condition requiring the construction of a footpath on the Adams Street frontage of the property.

Waste collection

Concern is raised regarding waste collection arrangements.

Comment: Council's Waste Manager has reviewed the proposal and raises no objections subject to conditions. This concern has not been given determining weight.

Insufficient information

Concern is raised regarding the sufficiency of the information provided in the application and the lack of detail on the plans, including tree protection zones, fencing, air conditioning plant and geotechnical information.

Comment: The arborist's report submitted with the development application provides information regarding tree protection zones. The landscape plans provide details regarding fencing. A geotechnical report forms part of the proposal and it concludes that the site is suitable for the development and does not pose a geotechnical risk subject to compliance with the recommendations of the report.

However, the documentation does not provide details regarding the location of air-conditioning plant. In this regard the principal concern relates to acoustic impacts from the location of air conditioning plant and this matter has been addressed by conditions of consent.

Other vacant seniors' accommodation is available in the area

Concern is raised as to the necessity of the proposal given the availability of other vacant seniors' housing accommodation in the area.

Comment: The proposed development must be assessed on its merits in accordance with the relevant planning controls. The availability of other vacant seniors' housing accommodation in the area is not a matter for consideration raised by those controls. This concern has not been given determining weight.

Impact on outlook

Concern is raised regarding the impact on the outlook from neighbouring properties.

Comment: For the reasons discussed below the proposal is considered to result in a reasonable impact on the outlook from 47 Forest Way and this concern has not been given determining weight.

Loss of property value

Concern is raised that the proposal will result in a loss of property value.

Comment: The impact of the proposal on property values has not been demonstrated and is not a matter for consideration under the relevant planning controls.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal referrals

Referral officer	Comments	Consent recommended
Building Assessment	No objections subject to conditions to ensure compliance with the Building Code of Australia.	Yes, subject to condition
Development Engineer	<p>The stormwater drainage plans have been reviewed together with the DRAINS model for the on site detention system and are generally supported.</p> <p>However as advised by Development Engineering in the pre lodgement notes the basement pump out discharge line is to be directly connected via a new inlet pit in Adams Street and then a new 375mm concrete pipe is to be connected to the nearest existing Council kerb inlet pit. This requirement will be conditioned and there are no other objections to the Seniors Living development proposal.</p>	Yes, subject to conditions
Landscape	<p>The Arborist's Report and Landscape Plans submitted with the application are noted.</p> <p>The Arborist's Report indicates that 4 Category A trees and 6 Category Z trees are to be removed to accommodate the proposed works. 5 Category A and 1 Category Z trees are to be retained on/adjacent to the site.</p> <p>The report indicates that Tree 16. <i>Corymbia citriodora</i>, located on an adjoining property will be subject to some incursion into the Tree Protection Zone of the tree.</p> <p>The report calculates a 12% incursion and that no works are proposed in the Structural Root Zone of the tree.</p> <p>In view of the additional root area outside of the proposed works, sufficient area is provided in consideration in of AS4970-2009 protection of trees on development sites.</p> <p>The Landscape Plans indicate replanting of 22 trees (Including 2 street trees) as part of the proposed works, which is supported.</p> <p>No objections are raised to approval subject to conditions as recommended.</p>	Yes, subject to conditions
Strategic Planning	The subject site is not identified for rezoning under the Hospital Precinct Structure Plan. No objections are raised to the proposed development.	Yes
Traffic Engineering	<p>We have received the attached comments and conditions provided by ASON Group.</p> <p>We are generally satisfied with the assessment and conditions, subject to the inclusion of the road widening.</p> <p>Noting, however, that the external Planning Consultant has stated '<i>...such a requirement (road</i></p>	Yes, subject to conditions

Referral officer	Comments	Consent recommended
	<p><i>widening) would be invalid in the absence of a s. 94 Contributions Plan identifying the works'.</i></p> <p>It should be noted that there is intent from Council/RMS to upgrade the signals at the adjoining intersection. This is not part of a S.94 Contribution Plan as the works are a reactive project. The reason to impose the widening component of the works to the developer is to benefit the development. The widening will result in modifications to driveway accesses, and hence it is recommended that the applicant undertake the works to ensure their driveway access is constructed for the future configuration. Failure to do so may result in a less than adequate driveway gradient when entering the property.</p> <p>Further to note is the applicant will not be asked to provide the road widening along the full length of the site, as this would result in the need for them to relocate the traffic signal post. This would be deemed onerous. They will only be required to undertake the road widening for a length of 45m, which will create an indented bay as an interim measure, until such time as Council/RMS undertake a full intersection upgrade.</p> <p><u>Assessing Officer's Comment:</u></p> <p>The situation is analogous to that in <i>N&S Olivieri Pty Ltd v Fairfield City Council</i> [2002] NSWLEC 35. In that case the Council sought to impose a condition requiring the applicant to construct kerb, gutter, footpath and 6.5 metres of carriageway for the full frontage of the development site. The Court reviewed the relevant legislation and caselaw and concluded (paragraph 22):</p> <p><i>It follows that in the absence of a contributions plan the council had no statutory authority to impose condition 14 requiring contribution for any works for the public amenity because of s 94(11) of EP&A Act.</i></p> <p>Section 94 of the Act has been superseded by Section 7.11, but the provisions remain relevantly unchanged. Council, instead, levies a fixed contribution pursuant to Section 7.12 of the Act, and a condition is included in the recommendation of this report requiring the payment of such a contribution.</p> <p>In particular, this is not a situation where the proposed development has given rise to the need for the road widening. The road widening is needed because of demand created by changing traffic conditions and development generally in the area.</p>	

Referral officer	Comments	Consent recommended
	<p>It should be noted that the situation is different with regards to the construction of a footpath on Adams Street adjacent to the property, as it is the proposed development and intensification of use that results in the need for the footpath to be constructed. In this regard, the condition recommended by ASON Consultants (who undertook an independent assessment of the proposal) is considered to be valid and has been included in the recommendation of this report.</p> <p>It is also noted that there are three street trees on Adams Street adjacent to the property which would be affected by road widening as requested by Council's Traffic Engineer.</p>	
Urban Design	The proposal is generally compliant with the built form controls except for a 0.01m breach of the 7.2m wall height DCP control. The additional shadow casted from the breach in wall height has a negligible effect on the solar access of the neighbouring property to the south. The built form has also been broken down to a compatible bulk and scale that is sympathetic with the neighbouring houses. As such, there is no objection to the proposal.	Yes
Waste	No objections are raised to approval subject to conditions as recommended.	Yes, subject to conditions

External referrals

Referral Body External	Comments	Consent Recommended
Ausgrid	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.	N/A

ENVIRONMENTAL PLANNING INSTRUMENTS

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

SEPP 55 – Remediation of Land and draft Remediation of Land SEPP

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.

The draft SEPP proposes to rationalise the existing controls for remediation of land and update the relevant guidelines. The proposal is consistent with these requirements.

SEPP (Building Sustainability Index: BASIX) 2004

BASIX Certificate No. 1088612M dated 2 April 2020 demonstrates compliance with the State government's requirements for sustainability.

If this application is to be approved it would be appropriate to impose a condition requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

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.

The application was referred to Ausgrid under clause 45(2) of SEPP Infrastructure.

To date, no response has been received and it is assumed that Ausgrid does not raise any objection nor impose any conditions.

Clause 102 - Roads and Maritime Service (Transport NSW)

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

SEPP (Vegetation in Non-Rural Areas) 2017

Vegetation is prescribed under Part E1 of WDCP 2011 for the purposes of SEPP (Vegetation in Non-Rural Areas) 2017. The proposal involves the removal of ten (10) trees.

A report has been submitted by Hugh the Arborist assessing the impact of the proposal on vegetation on the site and on neighbouring land that will be impacted by the proposal. Council's Landscape Officer has reviewed the report and raises no objections to the proposal subject to conditions.

The conditions as recommended by Council's Landscape Officer are included in the recommendation of this assessment report.

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

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

Chapter 1 – Preliminary

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

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

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

Comment:

The proposed development satisfactorily achieves the aims of the SEPP HSPD for the following reasons:

- (a) The proposal increases the supply and diversity of dwellings and have been designed to accommodate the particular needs of seniors and people with a disability.
- (b) The site has access to all necessary infrastructure and services.
- (c) The proposal has been architecturally designed and is considered to be of good design.

Chapter 3 – Development for seniors housing

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

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 – Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and	Each proposed dwelling is provided with two (2) car spaces to enable satisfactory access to services. Additionally, the site is located within 600m walking distance from Forest Way Shopping Centre, and is serviced by public transport (bus) between the site and Chatswood, North Sydney, Sydney City etc. with a bus stop	Yes


Development Criteria			
Clause	Requirement	Proposal	Complies
	(c) the practice of a general medical practitioner	directly in front of the site on Forest Way.	
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400 metres away.	The site is located adjacent to a southbound bus stop on Forest Way and within 50 metres of a northbound bus stop on Forest Way which have safe pedestrian access to and from the site.	Yes
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	The site is not located upon land identified as bush fire prone land.	Yes
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	The site is provided with reticulated water and sewerage.	Yes
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v): i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	<ul style="list-style-type: none"> the proposed development for the purpose of Seniors Housing is considered to be compatible with the natural environment as it does not seek consent for any works that would be deemed detrimental to any ecosystems in the vicinity. The development also is compatible with surrounding residential land uses by being an alternate form of residential land use in a residential zone. the proposed development will be compatible and not detrimental to the provision of services and infrastructure to service the development. the assessment of this development application as contained in this report has found that the bulk, scale, built form and character of the development is unlikely to have a negative impact on existing surrounding developments and future developments. 	Yes
PART 3 – Design Requirements – Division 1			


Development Criteria			
Clause	Requirement	Proposal	Complies
30	A site analysis is provided.	A site analysis has been provided to accompany the development application.	Yes

Clause 31 Design of in-fill self-care housing

Pursuant to Clause 31, in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development (SLP)* by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the SLP have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. An assessment of the proposal against the provisions of the SLP follows:

Section	Objectives / Requirements	Comment
1. Responding to context	<p><u>Built Environment</u></p> <p>New development is to follow the patterns of the existing residential neighbourhood in terms of built form.</p> <p><u>Policy Environment</u></p> <p>Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.</p>	<p><u>Built Environment</u></p> <p>The SLP calls for consideration of blocks and lots, identifying lot patterns and the nature of built form on those lots. The following aerial photograph, sourced from sixmap.nsw.gov.au, shows the pattern of development in the immediate vicinity of the site:</p>  <p>Of note is that the development on Forest Way is generally constructed across the allotment, with a landscaped front setback to Forest Way and a landscaped rear yard. The existing development on the site complements this form of development.</p>

Section	Objectives / Requirements	Comment
		<p>The proposal is generally consistent with this pattern of development, providing an eastern setback comparable to neighbouring development and landscaped setbacks to both Forest Way and Adams Street.</p>  <p>The width of the development as presented to Forest Way is generally consistent with other development in Forest Way and is reflective of the subdivision pattern in the area.</p> <p>The presentation to Adams Street has been broken up architecturally to provide a scale that is compatible (though not identical) to other development in Adams Street.</p> <p><u>Policy Environment</u></p> <p>The WLEP 2011 and WDCP 2011 do not explicitly identify key elements contributing to local character. The site is within the R2 Low Density Residential zone under WLEP2011. The consistency of the proposal with the objectives of the R2 Low Density Residential zone is discussed below.</p>
2. Site planning and design	<p>Objectives of this section are:</p> <ul style="list-style-type: none"> • <i>to minimise the impact of new development on neighbourhood character</i> • <i>to retain existing natural features of the site that contribute to neighbourhood character to provide high levels of amenity for new dwellings</i> 	<p>The proposed development has been sited such that it provides a reasonable rear setback area and respects the surrounding pattern of development.</p> <p>The building has been designed such that it maintains neighbourhood character, noting that it is a different form of residential development to the predominant single dwelling house form in the area. Compatibility is achieved by</p>

Section	Objectives / Requirements	Comment
	<ul style="list-style-type: none"> to maximise deep soil and open space for mature tree planting, water percolation and residential amenity to minimise the physical and visual dominance of car parking, garaging and vehicular circulation to provide housing choice through a range of dwelling sizes 	<p>providing a floor area commensurate with the planning controls, breaking up the bulk of the building through architectural design, and minimising the building height through the adoption of a flat roof form.</p> <p>The new dwellings achieve excellent amenity with reasonable room sizes and configuration, access to sunlight and natural cross ventilation.</p> <p>Deep soil planting areas comply with the requirements of the planning controls and contribute to residential amenity.</p> <p>Car parking is provided in a basement, which minimises its visual impact.</p> <p>The proposed dwellings contribute to housing choice in the area.</p>
3. Impacts on streetscape	<p>Objectives of this section are:</p> <ul style="list-style-type: none"> to minimise impacts on the existing streetscape and enhance its desirable characteristics to ensure that new development, including the built form, front and side setbacks, trees, planting and front fences, is designed and scaled appropriately in relation to the existing streetscape to minimise dominance of driveways and car park entries in the streetscape to provide a high level activation and passive surveillance to the street. 	<p>The proposed development has been designed to address both Forest Way and Adams Street, with living areas and balconies oriented towards both streets.</p> <p>The facades to both street fronts are articulated. This breaks up the scale of the building when viewed from the street.</p> <p>The entrance to the basement car parking area is oriented such that it does not face directly to the street. This is considered to be a good way to reduce the visual appearance of the garage entrance when viewed from Adams Street.</p> <p>The 2-storey presentation to the street is generally consistent with the 1-storey and 2-storey development in the vicinity of the site.</p> <p>The scale of the development is consistent with the relevant planning controls and complies with that which is specified in Clause 50(b) of SEPP HSPD (i.e.: 0.5:1).</p>
4. Impacts on neighbours	<p>Objectives of this section are:</p> <ul style="list-style-type: none"> to minimise impacts on the privacy and amenity of existing neighbouring dwellings to minimise overshadowing of existing dwellings and private open space by new dwellings 	<p>The assessment of this development proposal identifies that the proposal will result in impacts on neighbours which are reasonable when assessed under the relevant planning controls.</p> <p>Potential privacy impacts are mitigated through the orientation of dwellings, the use of physical screening structures, and the separation distance between living</p>

Section	Objectives / Requirements	Comment
	<ul style="list-style-type: none"> to retain neighbours' views and outlook to existing mature planting and tree canopy to reduce the apparent bulk of development and its impact on neighbouring properties to provide adequate building separation 	<p>areas and terraces on the subject site and neighbouring sites.</p> <p>Existing mature planting is protected in the rear yard of 47 Forest Way and outlook is maintained to a reasonable degree.</p> <p>The bulk of the development is consistent with that which is contemplated by the planning controls and impacts are further mitigated through the use of architectural features to break down the scale of the building.</p> <p>The proposed setbacks provide adequate separation between buildings.</p>
5. Internal site amenity	<p>Objectives of this section are:</p> <ul style="list-style-type: none"> to provide quality useable private and communal open spaces for all residents to provide dwellings that have distinct identity and safe entries to provide safe and distinct pedestrian routes to all dwellings and communal facilities to ensure adequate solar access to living areas and private open space to reduce the dominance of parking, garaging and vehicular circulation space on the internal character 	<p>The proposed development is considered to provide an adequate level of amenity to occupants of the four proposed dwellings. The dwellings all have north-facing living areas and private open space to obtain good levels of sunlight and all units have natural cross-ventilation. The room layouts provide good internal amenity and utility.</p>

Clause 32 Design of residential development

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

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

Control	Requirement	Proposed	Compliance
Clause 33 – Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	The character of the local area is predominantly residential dwelling houses in landscaped settings interspersed with other land uses. The proposal reflects these characteristics with its	Yes

Control	Requirement	Proposed	Compliance
		generally 2-storey appearance and landscaped setting.	Yes
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that are identified in a local environmental plan.	The site is not in proximity to any heritage conservation areas of heritage items that could be detrimentally impacted by the development.	Yes
	c. Maintain reasonable neighbour amenity and appropriate residential character by; (i) providing building setbacks to reduce bulk and overshadowing (ii) using building form and siting that relates to the site's land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and (iv) considering where buildings are located on the boundary, the impact of the boundary walls on neighbours.	The building has a bulk that is reasonable when assessed under the planning controls. The floor space ratio satisfies the criteria in Clause 50(b) of SEPP HSPD (i.e.: 0.5:1). The building setbacks (3.0m to the southern boundary and 14.0m to the eastern boundary) mitigate the impacts of bulk and overshadowing. The 2-storey presentation to the streets is compatible with the 1-storey and 2-storey development in the surrounding area.	Yes
	d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,	The front setbacks to Adams Street (3.5m) and Forest Way (6.56m) are sympathetic to surrounding development.	Yes
	e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.	The proposed landscaping is considered to be appropriate for the development.	Yes
	f. retain, wherever reasonable, major existing trees, and	Tree removal associated with the development has been assessed as acceptable by Council's Landscape Officer.	Yes
	g. be designed so that no building is constructed in a riparian zone.	N/A	Yes

Control	Requirement	Proposed	Compliance
Clause 34 – Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:	The development uses design elements to minimise privacy impacts, orienting living areas and balconies towards the street and away from neighbouring properties and utilising fin walls and privacy screens on the east-facing balconies to prevent views into the neighbouring rear yard at 47 Forest Way.	Yes
	(a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	Bedrooms are generally located away from driveways, with the exception of a single bedroom in Units 2 and 4. Given the low traffic generation of the proposal (accommodating 4 units) the impacts are not considered to be significant.	Yes
Clause 35 – Solar access and design for climate	The proposed development should:	The proposed development is oriented to the north such that all four units receive good solar access.	Yes
	(a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	The neighbouring dwelling house to the south, 47 Forest Way, has no windows in its northern façade so shadows cast by the proposed building fall onto a blank wall. The proposal provides a rear setback that satisfies the relevant planning controls and permits reasonable levels of solar access, more than 3 hours sunlight between 9am and 3pm in midwinter, to the private open space and living room windows of the neighbouring property to the south, 47 Forest Way. All units have openings on more than one side of the dwelling providing good natural cross-ventilation.	Yes

Control	Requirement	Proposed	Compliance
Clause 36 – Stormwater	Control and minimise the disturbance and impacts of storm water runoff and where practical include on-site detention and water re-use.	Council's Development Engineers have reviewed the proposed stormwater concept and have raised no objections subject to conditions.	Yes
Clause 37 – Crime prevention	<p>The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:</p> <p>(a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and</p> <p>(b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and</p> <p>(c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.</p>	The proposed development satisfactorily addresses the provisions of CPTED.	Yes
Clause 38 – Accessibility	<p>The proposed development should:</p> <p>(a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and</p> <p>(b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.</p>	The proposed development satisfies the requisite accessibility requirements pertaining to housing for seniors' development.	Yes
Clause 39 –	The proposed development should be	The proposal provides a waste storage area adjacent to the	Yes

Control	Requirement	Proposed	Compliance
Waste management	provided with waste facilities that maximise recycling by the provision of appropriate facilities.	garage entry to the building. Council's Waste Manager has reviewed the proposal and raises no objections subject to conditions which have been included in the recommendation of this assessment report.	

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

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

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
Site size	1,000m ² minimum	923m ²	No – see Clause 4.6 discussion elsewhere in this report
Site frontage	20 metres minimum	48.205m	Yes
Building height	8m or less (measured vertically from ceiling of topmost floor to ground level immediately below)	7.21m (ceiling RL156.6 over EGL RL 149.39)	Yes
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height. (Note: a car park that does not extend above ground level by more than 1m is not counted as a storey – Clause 3(2) of SEPP HSPD)	2 storeys (Note: the ceiling of the basement car park is 920mm above existing ground level and so the basement does not count as a storey)	Yes
	A building located in the rear 25% of the site must not exceed 1 storey in height.	1 storey (the ceiling of the basement is greater than 1m above existing ground level and therefore constitutes a storey).	Yes

Clause 41 Standards for hostels and self-contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development.

The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
Wheelchair access	If the whole site has a gradient less than 1:10, 100% of the dwellings must have wheelchair access by a continuous path of travel to an adjoining public road. If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the greater.	Capable of complying.	Yes
Security	Pathway lighting (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	Capable of complying.	Yes
Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel, and (b) must be lockable, and (c) must be located together in a central location adjacent to the street entry.	Capable of complying.	Yes
Private car accommodation	(a) Carparking space must comply with AS2890. (b) One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a power operated door to be installed at a later date.	Capable of complying.	Yes
Accessible entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299.	Capable of complying.	Yes

Control	Requirement	Proposed	Compliance
Interior general	Widths of internal - corridors and circulation at internal doorways must comply with AS1428.1.	Capable of complying.	Yes
Bedroom	At least one bedroom within each dwelling must have: (a) An area sufficient to accommodate a wardrobe and a queen size bed. (b) A clear area for the bed of at least 1200mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction. (c) Power and telephone outlets and wiring described in Clause 8 of Schedule 3.	Capable of complying.	Yes
Bathroom	The bathroom is to comply with the requirements described in Clause 9 of Schedule 3.	Capable of complying.	Yes
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	Capable of complying.	Yes
Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	Capable of complying.	Yes
Door hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	Capable of complying.	Yes
Ancillary items	Switches and power points must be provided in accordance with AS4299.	Capable of complying.	Yes
Living & dining room	A living room must have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.	Capable of complying.	Yes
Kitchen	The kitchen must comply with the requirements of Clause 16 of Schedule 3.	Capable of complying.	Yes
Access to kitchen, main bedroom, bathroom & toilet	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	The development provides kitchen, main bedroom and bathroom on the entry level.	Yes

Control	Requirement	Proposed	Compliance
Laundry	The laundry must comply with the requirements of Clause 19 of Schedule 3.	Capable of complying.	Yes
Storage	A self-contained dwelling must be provided with a linen storage in accordance with Clause 4.11.5 of AS4299.	Capable of complying.	Yes
Garbage	A garbage storage area must be provided in an accessible location.	Complies.	Yes

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

The development is not for serviced self-care housing and therefore Clause 42 and 43 do not apply.

This assessment report demonstrates that there is adequate availability of facilities and services in accordance with Clause 44.

Part 6 Development for vertical villages

This part is not applicable to the proposed development.

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

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

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

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

Control	Requirement	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	7.21m	Yes
Density and scale	0.5:1	0.5:1	Yes
Landscaped area	30% of the site area is to be landscaped	40.9% of the site area is landscaped	Yes
Deep soil zone	15% of the site area. Two thirds of the deep soil zone (10% of the site area) should be located at the rear of the site. Each area forming part of the zone should have a	33.6% of the site area is deep soil. 10.0% of the site area is provided as deep soil area is located at the rear of the site.	Yes Yes

Control	Requirement	Proposed	Compliance
	minimum dimension of 3 metres.	Each area has a minimum dimension of 3m.	Yes
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-Winter.	All dwellings in the development receive the requisite provision of solar access and therefore satisfies this requirement.	Yes
Private open space	i) In the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multistorey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor; and (ii) In the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area,	Each dwelling in the development has a sufficient provision of private open space in accordance with the requirements of this control.	Yes
Parking	(i) 0.5 spaces for each bedroom where the application is made by a person other than a social housing provider; or (ii) 1 space for each 5 dwellings where the application is made by, or is made by a person jointly with, a social housing provider.	8 bedrooms, therefore 4 car spaces required as the application is made by a person other than a social housing provider. However, the "flex / study" room in each dwelling is of a size and configuration that make it usable as a bedroom, resulting in a total 12 bedroom, therefore 6 car spaces required. 6 car spaces are proposed.	Yes
Visitor parking	Nil	Nil	Yes

Local Environment Plans (LEP's)

Warringah Local Environmental Plan 2011 (WLEP 2011)

Consideration of proposal against Warringah Local Environment Plan 2011:

Definition of proposed development: (ref. WLEP 2011 Dictionary)	Seniors Housing
Zone:	R2 Low Density Residential
Permitted with Consent or Prohibited:	Prohibited (Note: SEPP HSPD permits the proposed development with consent)

Objectives of the Zone

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

The development is considered to be consistent with the relevant objectives of the zone for the following reasons:

- The proposal provides a landscaped setting for the building.
- The proposal provides for the housing needs of the community and it does so in a manner that does maintains the low density residential environment for reasons discussed in this report.

Principal Development Standards:

Standard	Permitted	Proposed	Complies
Height of Buildings	8.5 metres	8.13m (RL 157.5 over EGL 149.37)	Yes

Note: SEPP HSPD provides for a maximum building height of 8.0m (measured to the underside of the top-most ceiling) which prevails over Clause 4.3 Height of Buildings Principal Development Standard in WLEP 2011. This matter is addressed later in this report.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Development requires consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone R2 Low Density Residential

Housing for Seniors or People with a Disability (or Seniors Housing) is not a form of development permitted in the R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011. However, SEPP HSPD is the prevailing Environmental

Planning Instrument (EPI) for this development which permits Seniors Housing in the R2 zone. Accordingly, the form of development sought is Permitted with Consent.

4.6 Exceptions to Development Standards

VARIATION - SITE SIZE

Clause 40(2) of the SEPP HSPD requires that *the size of the site must be at least 1,000 square metres.*

The following assessment of the variation to Clause 40 (2) *Site Size* of the SEPP HSPD development standard has taken into consideration the questions established in *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46 (*Winten*) and also recognises judicial advice provided in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118 (*Initial Action*), *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 (*Four2Five*), *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386 (*Micaul*), and *RebelMH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130 (*RebelMH*).

Requirement:	Minimum 1,000m ²
Proposed:	923m ²
Is the planning control in question a development standard?	Yes
Is the non-compliance with the clause requirement a Numerical and/or Performance based variation?	Numerical
If numerical, what is the % variation to the requirement?	7.7%

Furthermore, to ensure consistency between the proposed development and the envisioned form of development on this site, an assessment against Clause 2 *Aims of Policy* of SEPP HSPD and the zone objectives in WLEP 2011 is undertaken below.

Is the planning control in question a Development Standard?

Clause 40(2) of SEPP HSPD prescribes a control on the size of land and thus falls within the definition of a “*development standard*” in clause 1.4 of the *Environmental Planning and Assessment Act 1979*.

What are the underlying Objectives of the Development Standard?

Clause 40 of the SEPP HSPD does not have specify the objectives of the control. However, the applicant has submitted that “*it is reasonable to conclude that the objectives of the site size control include to ensure that sites are of sufficient size to provide for buildings, vehicular access, landscaping and retention of natural topographical features. In addition, that the properties are able to be developed without incurring any unreasonable physical impacts on neighbouring properties in terms of shadowing, privacy, visual impact, or view loss.*” These underlying objectives are agreed with.

1. *Is the site of sufficient size to provide for buildings, vehicular access, landscaping and retention of natural topographical features?*

Comment:

It is considered that the site is of sufficient size to accommodate an appropriately designed development for housing for seniors and people with a disability given the particular site characteristics. Two street frontages enable appropriate vehicular access to be provided. The site contains no topographical features that require retention and satisfactory landscaping is provided.

2. *Is the site of sufficient size to ensure that development for housing for seniors or people with a disability can be carried out without incurring any unreasonable physical impacts on neighbouring properties in terms of shadowing, privacy, visual impact, or view loss?*

Comment:

For the reasons discussed in this report it is considered that the proposal will not result in unreasonable physical impacts on neighbouring properties in terms of overshadowing, privacy, visual impact or view loss.

3. *Is the allotment of sufficient size to accommodate a development for housing for seniors or people with a disability whilst maintaining the character of the area?*

Comment:

For the reasons discussed in this report it is considered that the proposal maintains the character of the area.

The underlying Aims of Policy of the SEPP HSPD are:

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

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

Comment:

The proposal provides for housing that assists in meeting the needs of seniors or people with a disability. However, this is a general achievement that can be achieved by such a development on any appropriate site and with an appropriate design. Consistent with the Court's guidance from Four2Five and RebelMH, this is not sufficient grounds for supporting a variation to the control.

- b) *make efficient use of existing infrastructure and services,*

Comment:

The site is afforded with sufficient existing infrastructure and services that can accommodate the proposed development, without the development unreasonably burdening the existing infrastructure or service network. However, this is a general achievement that can be achieved by such a development on any appropriate site and with an appropriate design. Consistent with the Court's guidance from Four2Five and RebelMH, this is not sufficient grounds for supporting a variation to the control.

c) *be of good design,*

Comment:

The assessment of this development proposal has found that the proposed building is of good design with regards to its siting, bulk and scale and the impacts that arise from these characteristics.

What are the underlying Objectives of the Zone?

In assessing the development's non-compliance, consideration must be given to its consistency with the underlying objectives of the R2 Low Density Residential zone.

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposed development provides for the housing needs of the community. The proposed density is considered to be compatible with the low density residential environment, recognising that seniors housing is different in character to dwelling houses.

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

Comment:

This development is for residential accommodation. The SEPP HSPD requires particular distances and accessibility to various services to meet the needs of residents of the development, and this matter has been addressed earlier in this report (see Section: SEPP HSPD). Accordingly, the site is afforded with access to other land uses which provide facilities or services to meet the day to day needs of residents. The variation sought to the lot size does not impinge upon the opportunity to satisfy this objective.

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

Comment:

The provision of landscaping in the subject development scheme has several facets that must be considered, both formally and informally, in the assessment of landscaped setting. These facets include compliance with the SEPP HSPD landscape controls and consistency with the surrounding landscaped character.

The development complies with the SEPP HSPD landscape provisions which prevail over the WDCP 2011 landscape controls (which thus don't hold determinative weight in this assessment).

The surrounding streetscape is characterised by allotments that have some greenery and mature canopy trees.

The front setback areas of the subject development is of a scale that is generally consistent with that of surrounding allotments and affords opportunities for the establishment and maturity of large trees in longevity.

Therefore, in consideration of all the above facets, it is considered that the development satisfies this objective.

Is the variation to the Development Standard consistent with the Objectives of Clause 4.6 of the WLEP 2011?

It should be noted that the decision in Initial Action establishes that *"there is no provision that requires compliance with the objectives of the clause"*. The following discussion needs to be read in light of this decision.

(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.*

Comment:

The mechanism of Clause 4.6 applies to Section 40 of SEPP HSPD as they are classified as Development Standards. As development for the purpose of seniors housing is prohibited via the WLEP 2011, but Permitted with Consent via the prevailing SEPP HSPD, it is considered warranted to allow a degree of flexibility in applying the SEPP HSPD development standards in order to ensure that a development will meet the objectives and aims of both the WLEP 2011 and the SEPP HSPD.

However, such flexibility is a matter of extent and degree. It is considered that the proposed development has an appropriate bulk and scale, is consistent with the streetscape and does not have unreasonable physical impacts on neighbouring properties and that the exercise of a degree of flexibility in the circumstances of the case.

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment:

The proposal is considered to result in appropriate outcomes in terms of bulk and scale, impacts on streetscape and character of the area, and impacts on neighbouring amenity. By not allowing flexibility the opportunity to provide housing that adds to the variety of housing in the area for the benefit of the community would be lost.

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

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment:

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (**Wehbe**) CJ Preston formulated five methods in which a development standard can be shown to be unreasonable or unnecessary in the circumstances of particular cases.

The methods in *Wehbe* can be summarised as:

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

The applicant's Clause 4.6 submission refers to all five of these methods, but appears to acknowledge that Methods 2 to 5 are not relied upon to justify a variation to the control.

As discussed above, it is considered that the applicant's submission has demonstrated that the proposal achieves the underlying objectives of the development standard and, therefore, it satisfies Method 1 described above.

It should be noted that it is not sufficient for the applicant to assert in their clause 4.6 submission that the proposal satisfies the relevant objectives of the control but that the consent authority must be satisfied that those submissions demonstrate consistency with the objectives. The decision in *RebelMH* discusses this issue and the decisions in *Initial Action* and *Micaul* and states:

"In order for a consent authority to be satisfied that an applicant's written request has "adequately addressed" the matters required to be demonstrated by cl 4.6(3), the

consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i))."

The applicant has provided the following as "sufficient environmental planning grounds to justify contravening the development standard":

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

Comment: It is agreed that the building bulk and scale is appropriate for the site.

- *The proposed exception in the minimum site size development standard is modest in its extent (7.7%) and, noting its corner location and significant spatial separation to surrounding development, it would not be perceivable in the visual presentation of the property to surrounding properties or the streetscape.*

Comment: The building has been designed to mitigate potential streetscape impacts through façade modulation and setbacks.

- *The proposed exception does not result in a significant reduction in the quality of the proposed built form will not significantly alter the spatial characteristics of the property.*

Comment: The proposal is considered to have a high quality of built form, although it is noted that this would be equally true regardless of the site area.

- *The proposed exception will not result in unreasonable or excessive physical impacts on the neighbouring properties or the streetscape quality of the property.*

Comment: This comment is concurred with for the reasons discussed in this assessment report. However, a lack of environmental impacts does not, of itself, provide sufficient environmental planning grounds to justify a variation to the development standard.

- *The proposed exception is capable of being accommodated on the site without imposing any significant or adverse impacts on the amenity of the surrounding land, or the scenic quality of the wider locality.*

Comment: As with the previous dot point, this comment is concurred with but does not, of itself, provide sufficient environmental planning grounds to justify a variation to the control.

- *Strict compliance with the minimum site size development standard would be unreasonable and unnecessary to the extent that the site would be unable to accommodate a form of development that is consistent with the aims and*

objectives of the SEPP, in circumstances where the building form does not impose any significant or adverse impacts on the amenity of surrounding land.

Comment: This comment is concurred with and, in the circumstances of the case, provides sufficient environmental planning grounds to justify a variation to the control.

- *The extent of the proposed development is not excessive as a result of this exception, and the development-to-land ratio proposed, as evidenced by the proposal's compliance with the suite of built form controls relating to car parking, boundary setbacks, private open space, deep soil landscaped area, building height and floor space ratio. It is compatible to the extent of development that can be reasonably expected upon land within the R2 zone generally.*

Comment: This comment is concurred with, but does not of itself provide sufficient environmental planning grounds to justify a variation to the control.

- *The proposed development provides more landscaped area (43.3%) than the requirement for a single dwelling (40% under the DCP). There are appropriately located and proportioned landscaped areas for vegetation and private recreational use proposed. The proposal will achieve a suitable balance between landscaped areas and the built form despite the site size exception.*

Comment: This comment is concurred with and contributes to a conclusion that there are sufficient environmental planning grounds to justify a variation to 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*

Comment:

As discussed above, it is considered that the applicant's submission has adequately addressed the matters required to be demonstrated by subclause (3).

- (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:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone in the WLEP 2011.

- (b) *the concurrence of the Director-General has been obtained*

Comment:

Planning Circular PS 17-006 dated 15 December 2017, 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 where the variation to a numerical standard is not greater than 10%. Consequently, the concurrence of the Secretary for the variation to the Site Size Development Standard of SEPP HSPD may be assumed.

Conclusion on Clause 4.6 variation Request Regarding Minimum Site Area

The above discussion analyses the proposal and the impacts arising from the non-compliance with the minimum site area requirements of clause 40(2) of SEPP HSPD.

The analysis concludes that the proposal satisfies the underlying objectives of the control and the relevant objectives of the R2 Low Density Residential zone.

The proposal satisfies the requirements of clause 4.6 of WLEP 2011 and the request to vary the development standard is considered to be well founded.

Warringah Development Control Plan 2011 (WDCP 2011)

Built Form Controls

Built Form Control	Requirement	Proposed	%Variation	Complies?
B1 Wall height	7.2m	7.21m	0.1%	No
B2 Number of storeys	2 storeys	2 storeys	-	Yes
B3 Side boundary envelope	4m + 45°	East – within envelope South – within envelope	- -	Yes Yes
B5 Side boundary setbacks	900mm	East – 9.46m South – 4.2m	- -	Yes Yes
B7 Front boundary setbacks	Forest Way – 6.5m Adams St – 3.5m	Forest Way – 6.56m Adams St – 3.5m	- -	Yes Yes
B9 Rear boundary setbacks	N/A	N/A	-	N/A
D1 Landscaped open space and bushland setting	40% (369.2m ²)	40.9% (378m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C4 Stormwater	Yes	Yes
C5 Erosion and sedimentation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C7 Excavation and landfill	Yes	Yes
C8 Demolition and construction	Yes	Yes
C9 Waste management	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
D16 Swimming pools and spas	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

Detailed Assessment

B1 Wall Height

Wall height is measured from the underside of the topmost ceiling to the existing ground level below that point. The underside of the topmost ceiling has a level of RL 156.6. At its lowest point, the ground level below the ceiling has a level of RL 149.39, resulting in a maximum wall height of 7.21m. This represents a variation of 0.01m or 0.01%. The proposed building is almost entirely compliant with the control, with the majority of the building having a wall height of less than 7.2m.

The following assessment is made pursuant to the objectives of the wall height control:

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

Comment: The visual impact of the building is considered to be satisfactory due to its design, articulation and modulation of facades, and provision of landscaped screening.

- *To ensure development is generally beneath the existing tree canopy level.*

Comment: The height of the building is such that it is below the existing tree canopy.

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

Comment: The proposal maintains reasonable view sharing and has no impact on public views.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment: For the reasons discussed in this assessment report, the proposal is not considered to have unreasonable impacts on adjoining and nearby properties.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment: The proposal does not involve excessive excavation and responds in a reasonable manner to the topography of the site.

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

Comment: The proposal provides a flat roof form which is considered to be complementary to the design vernacular of the building and is appropriate in the circumstances of the case.

D3 Noise

The proposed use will generate domestic levels of noise and, to this extent, is considered to be satisfactory.

No details have been provided regarding the location of air conditioning plant or its potential acoustic impacts. The plans do not show any plant room in the basement or any other potential locations for air conditioning plant. The potential noise from air conditioning plant could have a negative impact on neighbouring residential amenity or the amenity of future residents of the development site.

To mitigate this impact conditions of consent are recommended requiring acoustic certification of air conditioning plant to be provided prior to the release of the Occupation Certificate.

D6 Access to Sunlight

Part D6 of WDCP 2011 requires that 3 hours of sunlight be maintained to the private open space of neighbouring dwelling houses between 9am and 3pm in midwinter. The private open space of 47 Forest Way is that area that is immediately adjacent to the internal living rooms in the rear yard of the site. The submitted shadow diagrams demonstrate that there is no overshadowing of that area at 9am and that it will be completely overshadowed at 3pm. At 12 noon more than 80% of the private open space area remains in sunlight.

The following assessment examines the consistency of the proposed carport with the objectives of the controls for access to sunlight:

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

Comment: 47 Forest Way currently enjoys sunlight to its private open space at 9am and 12 noon in midwinter with overshadowing occurring through the afternoon. The element of the proposal that is creating the impact complies with the relevant controls with regards to setbacks and building heights. In these circumstances it is considered that the solar access retained to 47 Forest Way is reasonable and that this objective is satisfied.

- *To encourage innovative design solutions to improve the urban environment and public open space.*

Comment: This objective is directed towards maintaining sunlight in the public domain. The proposal results in minimal overshadowing of the public domain and the objective is satisfied.

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

Comment: The proposal retains sunlight to the roof areas of neighbouring dwellings, enabling their use for solar water heating and electricity generation. This objective is satisfied.

Part D6 of WDCP 2011 also requires consideration of the planning principle in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082.

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

Comment: The site is within a low density area and there is a reasonable expectation that the residents of 47 Forest Way will retain reasonable levels of sunlight to its private open space. As discussed above, the proposal achieves this due to its compliant nature and the orientation of the sites.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

Comment: The proposal results in a significant loss of sunlight throughout the afternoon in midwinter. However, this is offset by the retention of sunlight in the morning and early afternoon periods.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

Comment: The loss of sunlight to the private open space of 47 Forest Way does not result from poor design.

- *To be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of 22.5° or more. (This is because sunlight at extremely oblique angles has little effect.) For a window, door or glass wall to be assessed as being in sunlight, half of its area should be in sunlight. For private open space to be assessed as being in sunlight, either half its area or a useable strip adjoining the living area should be in sunlight, depending on the size of the space. The amount of sunlight on private open space should be measured at ground level.*

Comment: Sunlight to living room windows is not relevant to this assessment as 47 Forest Way does not have any windows in its northern elevation. Sunlight to private open space is measured at ground level.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

Comment: The assessment of overshadowing has been carried out in accordance with this principle.

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

Comment: 47 Forest Way is zoned R2 Low Density Residential and there is no information to indicate that future development will change the nature of the site.

In summary, the proposal is considered to result in the retention of reasonable levels of solar access to the private open space of 47 Forest Way and is consequently recommended for refusal.

D8 Privacy

The proposal has generally used design elements to maintain privacy between dwellings. Privacy screens are proposed on the southern side of the rear terraces at both ground and first floor level to prevent overlooking of 47 Forest Way. The separation distance between the terraces and 25 Adams Street is sufficient to mitigate any potential overlooking impacts.

D9 Building Bulk

Part D9 provides a series of requirements to reduce the apparent bulk of buildings and to achieve the following objectives:

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

The proposal includes design elements that assist in achieving these objectives, such as the provision of landscaping on the street frontages, the modulation of the elevation to Adams Street, and the adoption of a flat roof form.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contribution Plan 2019

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

A monetary contribution of \$12,159 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,215,908.

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;
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- Warringah Local Environment Plan 2011;
- Warringah Development Control Plan 2011; and
- Codes and Policies of Council.

The proposal has been assessed against the relevant matters for consideration under Sections 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions.

The assessment concludes that the proposal satisfies the aims and objectives. Where variation to the numerical controls are proposed (site area, wall height) it is considered that the proposal achieves the objectives of those controls and the variations are justified.

The proposal fails to satisfy development standards in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 relating to minimum site area. Detailed consideration has been given to the applicant's request to vary this development standard pursuant to clause 4.6 of Warringah Local Environment Plan 2011. It has been concluded that the clause 4.6 variation request should be upheld.

An independent assessment of the traffic impacts has been undertaken by ASON Group and recommends approval of the application subject to conditions which have been included in the recommendation below. Council's Traffic Engineer has requested a condition be imposed requiring the widening of Adams Street in front of the site but it is considered that such a condition cannot be validly imposed for the reasons discussed in this assessment report and it is not included in the recommendation below.

The proposal was notified which resulted in objections being received from the owners and residents of five neighbouring and nearby properties. These objections have been carefully considered and have not been given determining weight.

Accordingly, the application is recommended for approval.

RECOMMENDATION (APPROVAL)

That Northern Beaches Council as the consent authority vary Clause 40(2) Site Area of SEPP HSPD pursuant to Clause 4.6 of the WLEP 2011, 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 APPROVE Development Consent to Development Application No. DA2020/0347 for the demolition of existing structures and construction of a housing for seniors' development containing 4 units, basement car parking for 6 cars, and strata subdivision at Lot 1A DP 382200, 49 Forest Way, FRENCHS FOREST, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA100 (Revision B)	18.05.2020	Walsh ² Architects
DA101 (Revision B)	18.05.2020	Walsh ² Architects
DA102 (Revision B)	18.05.2020	Walsh ² Architects
DA103 (Revision B)	18.05.2020	Walsh ² Architects
DA104 (Revision B)	18.05.2020	Walsh ² Architects
DA200 (Revision B)	18.05.2020	Walsh ² Architects
DA201 (Revision B)	18.05.2020	Walsh ² Architects
DA300 (Revision B)	18.05.2020	Walsh ² Architects
DA301 (Revision B)	18.05.2020	Walsh ² Architects
DA800 (Revision B)	18.05.2020	Walsh ² Architects
DA911 (Revision B)	18.05.2020	Walsh ² Architects
L501.1 (Revision C)	30.03.2020	Plot Design Group
L502.1 (Revision C)	30.03.2020	Plot Design Group
L503.1 (Revision C)	30.03.2020	Plot Design Group

Engineering Plans		
Drawing No.	Dated	Prepared By
Sheet-1	26.03.2020	Taylor Consulting
DR-000 (Revision 3)	26.03.2020	Stellen Consulting
DR-001 (Revision 3)	26.03.2020	Stellen Consulting
DR-002 (Revision 3)	26.03.2020	Stellen Consulting
DR-003 (Revision 3)	26.03.2020	Stellen Consulting
DR-004 (Revision 1)	26.03.2020	Stellen Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Access Report	23.03.2020	Walsh ² Architects
Arboricultural Impact Assessment (Revision A)	27.03.2020	Hugh The Arborist
BASIX Certificate 1088612M	02.04.2020	Building Sustainability Assessments
NatHERS Certificate 0004725010	02.04.2020	Building Sustainability Assessments
Statement of Environmental Effects	March 2020	BBF Planners
Stormwater Design Report	26.03.2020	Stellen Consulting
Traffic and Transport Report	30.03.2020	Traffic and Transport Planning Associates
Waste Management Plan	09.07.2019	Sayed Jalaaludin Ziaolhagh

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
L501.1 (Revision C)	30.03.2020	Plot Design Group
L502.1 (Revision C)	30.03.2020	Plot Design Group
L503.1 (Revision C)	30.03.2020	Plot Design Group

Draft Strata Subdivision Plans		
Drawing No.	Dated	Prepared By
Sheet 1	29.06.2020	Warren L. Bee
Sheet 2	29.06.2020	Warren L. Bee

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) 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.
- (c) 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.
- (d) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.
- (e) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (f) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) 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 and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment

Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

- (k) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at www.northernbeaches.nsw.gov.au

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$12,159.08 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to the section 7.12 of the Environmental Planning & Assessment Act 1979 and Northern Beaches Section 7.12 Contributions Plan 2019. The contribution is based on a development cost of \$1,215,908.00.

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 Road, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au.

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

5. Construction, Excavation and Associated Works Security Bond (Footpath works Adams Street)

The applicant is to lodge a bond with Council of \$15000 as security against any damage or failure to complete the construction of new footpath works in Adams Street as required by 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. Construction, Excavation and Associated Works Bond (Drainage works Adams Street)

The applicant is to lodge a bond of \$40000 as security against any damage or failure to complete the construction of stormwater drainage works in Adams Street 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**

7. Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Ascent Geotechnical Consulting dated 28 May 2019 and letter dated 27 March 2020 by Ascent Geotechnical Consulting are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

8. 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.

9. 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.

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

The development is for the purposes of Seniors Housing or Housing for Persons with a Disability and is required to comply with all the standards specified in Schedule 3 - "Standards concerning accessibility and useability for hostels and self-contained dwellings".

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

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

11. Fire Safety Matters

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

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

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

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

12. Submission of Engineering Plans

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

- Footpath construction (1.5m wide with 600mm grass verge either side) along all frontages and provision of the footpath connection to the nearest bus stop for both northbound and southbound travel.
- Upgrade of the designated bus stops to be DDA compliant.

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

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

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

13. Construction Traffic Management Plan

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

The CTMP must address following:-

- The proposed phases of construction works on the site, and the expected duration of each
- construction phase;

- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored on site, at all times;
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.

- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- Proposed protection for Council and adjoining properties;
- The location and operation of any on site crane; and

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.

14. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

15. Shoring of Adjoining Property

Should the proposal require shoring to support an adjoining private property or Council's land, owner's consent for the encroachment onto the affected property shall be provided with the engineering drawings. Council approval is required if any temporary ground anchors are proposed to be installed within the Council's land/road reserve.

A Temporary Ground Anchors Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

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

16. 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.

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.

17. 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 WARRINGAH WATER MANAGEMENT POLICY PL850., and generally in accordance with the concept drainage plans prepared by Stellen Consulting drawing number DR001-003 Issue 3, DR004 Issue 1, dated 26/3/20. 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.

The drainage plans must also address the following:

- i. The basement pump out discharge line is to be directly connected to a new Kerb inlet Pit in Adams Street. This new Kerb Inlet pit is to be drained to an existing Council Kerb Inlet Pit via a new 375mm concrete stormwater line.
- ii. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction

Certificate. All external drainage works must be approved by Council via a Section 138 Roads Act application.

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

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

The Applicant is to submit an application for approval of stormwater infrastructure works within Council's roadway. Engineering plans are to be prepared for the connection of the basement pump-out line to a new Kerb Inlet Pit within Adams Street. This Kerb Inlet Pit is to be drained via a new 375mm concrete stormwater line to an existing Council Kerb Inlet Pit.

Engineering plans are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993 prior to the issue of any Construction certificate.

The application is to include four (4) copies of Civil Engineering plans for the design of stormwater drainage works in Adams Street which are to be in accordance with the Council's specification for engineering works - AUS-SPEC #1 and prepared by a qualified civil engineer.

The fee associated with the Section 138/139 Roads Act 1993 assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

19. 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.

20. Shoring of Council's Road Reserve (Temporary road anchors)

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

DA2020/0347

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

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

21. 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.

22. 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 Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

23. Waste and Recycling Requirements

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

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

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

24. Construction Traffic Management Plan

Prior to the release of the Construction Certificate, a Construction Traffic Management Plan (CTMP) prepared by an accredited practitioner, detailing construction traffic impacts is to be submitted to Council for review and endorsement. Construction activities are not to commence prior to Council endorsing the CTMP. The endorsed CTMP and any associated Traffic Control Plans is to be implemented at all times during construction.

Reason: To minimise traffic impacts during construction.

25. Car parking certification

Prior to issue of a construction certificate, a design statement shall be prepared by a suitably qualified traffic engineer confirming:

- a) All car parking and access thereto has designed and constructed in accordance with AS2890.1—Off-street car parking.
- b) A minimum of 6 car parking space shall be provided on-site. Any tandem spaces shall both be allocated to the same unit.
- c) A minimum of 5% of the above car parking spaces (or those associated with adaptable units) shall be designed in accordance with AS4299, with a minimum width of 3.8m

Reason: To ensure adequate off-street car parking.

26. Air conditioning plant

The location of any proposed air conditioning plant is to be shown on the plans submitted with the Construction Certificate application. Such plant is not to be located on the roof of the building.

Certification is to be provided from an appropriately qualified acoustic consultant that noise from air conditioning plant that is to be installed will comply at all times with the relevant noise limits in the Protection of the Environment Operations Act 1997.

Reason: To maintain residential amenity.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

27. 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.

47 Forest Way, Frenchs Forest
25 Adams Street, Frenchs Forest

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

28. 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.

29. 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 the Project Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by the Project Arborist on site.
- iii) All tree protection to be in accordance with the Arboricultural Impact Assessment Report Revision A dated 27 March prepared by Hugh the Arborist and 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.

30. Project Arborist

- i) Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works.
- ii) The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the Arboricultural Impact Assessment Report Revision A dated 27 March prepared by Hugh the Arborist and AS4970-2009 Protection of trees on development sites.
- iii) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

Reason: to ensure protection of vegetation proposed for retention on the site.

31. Tree removal within the road reserve

- i) This consent includes approval to remove the following trees located within the road reserve:

Species	Location
2 x Liquidambar styraciflua	Adams Street Road reserve forward of the property to accommodate the new driveway crossover

- ii) Removal of approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor.
- iii) Details of currently approved tree contractors can be obtained from Northern Beaches Council Public Trees Section prior to removal.

Reason: Public liability

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

32. 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.

33. Removing, Handling and Disposing of Asbestos

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

- Work Health and Safety Act
- Work Health and Safety Regulation
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)] and
- 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.
- 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.

34. 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.

35. 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.

36. 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.

37. Progress Certification (Road & Subdivision)

The applicant shall provide written certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by Council for the following stages of the required stormwater drainage works in Adams street.

- (a) Silt and sediment control facilities
- (b) Laying of stormwater pipes and construction of pits

(**To be tested by a recognised N.A.T.A. approved laboratory).

Details demonstrating compliance are to be submitted to the Council prior to issue of the Occupation Certificate and or refund of any bonds held by Council.

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

38. Footpath Construction

The applicant shall construct a 1.5m wide footpath in Adams Street to be connected to the existing footpath at the Warringah road Corner. The works shall be 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.

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

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

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

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

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

40. Traffic Control During Road Works

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

Reason: Public Safety.

41. Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

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

42. Vehicle Crossings

The Applicant is to construct **one** vehicle crossing **5** metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ Normal 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.

43. Waste/Recycling Requirements (Waste Plan Submitted)

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan prepared by Sayed Jalaedin Ziaolhagh and dated 09.07.2019.

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

44. 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.

45. All works within property

Unless otherwise specifically approved in writing by Council, all works, processes, storage of material, loading and unloading associated with construction of the development are to occur entirely on the property.

NOTE: No Work Zone shall be permitted on either Forest Way or Adams Street frontages.

Reason: To maintain public amenity during construction.

46. Road Opening Permit

The developer/applicant shall obtain a "Road Opening Permit" from Council and pay all appropriate charges prior to commencement of any work on Council property. The application is to include a Traffic Control Plan prepared by an accredited TfNSW Traffic Controller indicating details for vehicular and pedestrian management, including any temporary closures for delivery of materials or concrete pours, in accordance with AS1742.3 "Traffic Control Devices for Works on Roads" and "Traffic Control at Worksites".

Reason: To maintain traffic safety.

DA2020/0347

47. Compliance with the Waste Management Plan

The actions and requirements described in the Waste Management Plan (submitted with the development application) are to be fully implemented from commencement of any excavation, demolition, development and operational works in perpetuity.

Any works must comply with the Waste Management Guidelines (For development in the area of WLEP 2011 and WLEP 2000).

Reason: Protection of the environment.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE****48. Signage and Linemarking – External.**

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

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

Reason: To ensure consistent parking amenity.

49. Signage and Linemarking – Implementation.

The applicant is to install all signage and linemarking, as per any Roads Act approval. These works are to be completed prior to the issue of any Occupation Certificate.

Reason: To ensure signage is implemented prior to occupation so that operations can occur appropriately.

50. Stormwater Disposal

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

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

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

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

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

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

52. Reinstatement of Kerb

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

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

53. Positive Covenant for the Maintenance of Stormwater Pump-out Facilities

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 positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

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 adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

54. 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.

55. 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.

56. Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

- a) Compliance to Arborist recommendations for tree protection and excavation works.
- b) Extent of damage sustained by vegetation as a result of the construction works.
- c) Any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites.

57. Required Planting

Trees (including street trees) shrubs and groundcovers shall be planted in accordance with the approved Landscape Plans.

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

DA2020/0347

Reason: To maintain environmental amenity.

58. 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.

59. Waste and Recycling Facilities Certificate of Compliance

The proposal shall be constructed in accordance with Warringah Development Control Plan – Part C9 Waste Management 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.

60. 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.

61. 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.

62. 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.

63. Bicycle parking

The following minimum bicycle parking provision shall be provided on-site:

- a) resident bicycle spaces within a high security compound (which may be an enclosed garage of the unit to which the bicycle space(s) is allocated).
- b) 1 visitor bicycle space in an accessible area.

Reason: To provide satisfactory bicycle parking.

64. Bicycle parking

Bicycle parking shall be designed and constructed in accordance with AS2890.3—Bicycle Parking Facilities.

Reason: To provide satisfactory bicycle parking.

65. Footpath construction

Prior to first occupation, the developer/applicant shall construct a footpath to the satisfaction of Council along the length of the Adams Street frontage, connecting to the existing footpath facilities at the intersection of Adams Street / Forest Way.

Reason: To provide satisfactory pedestrian facilities.

66. 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.

67. Geotechnical and Structural Certification

All civil works approved in this Development Consent shall be certified as compliant with all relevant Australian Standards and Codes by an appropriately qualified and practising Civil Engineer.

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

Reason: Public and Private Safety

68. Environmental Reports Certification

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

- (a) Arborist Report prepared dated 27 March 2020 by Hugh the Arborist
- (b) Geotechnical Report dated 28 May 2019 prepared by Ascent Geotechnical Consulting and letter dated 27 March 2020 by Ascent Geotechnical Consulting

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

Reason: To ensure compliance with standards.

69. House / Building Number

House/building number is to be affixed to the building / letterbox 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.

70. 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>> 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.

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

A positive covenant pursuant to s88E of the Conveyancing Act 1919 is to be registered on the title of the land to which this development consent applies.

The covenant shall stipulate that Council is the sole authority to release or modify the covenant and that the development is only permitted to be occupied by persons detailed as follows:

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

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

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

AND

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

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

Reason: Statutory requirement

72. Side and rear boundary fencing

The applicant is to replace all side and rear boundary fencing (above ground) with the agreement and at no cost to, the adjoining property owners with 1.8m lapped and capped timber paling fencing as indicated on the plans. Any fence forward of the building line shall be 1.2m in height. Details to be provided to the satisfaction of the Certifying Authority prior to any Occupation Certificate.

Reason: To maintain visual privacy.

73. Air conditioning plant

Certification is to be provided from an appropriately qualified acoustic consultant that noise from air conditioning plant that has been installed will comply at all times with the relevant noise limits in the Protection of the Environment Operations Act 1997.

Reason: To maintain residential amenity.

ONGOING CONDITIONS TO BE COMPLIED WITH AT ALL TIMES

74. 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.

75. Vehicle manoeuvring

All vehicles entering and exiting the site shall do so in a forward direction at all times.

Reason: To maintain public safety.

76. Air conditioning noise

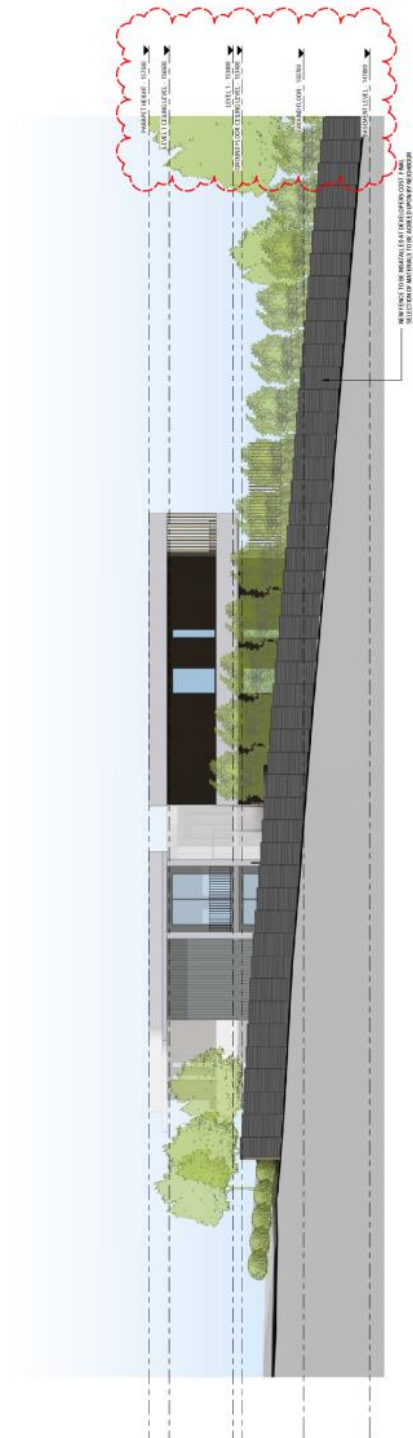
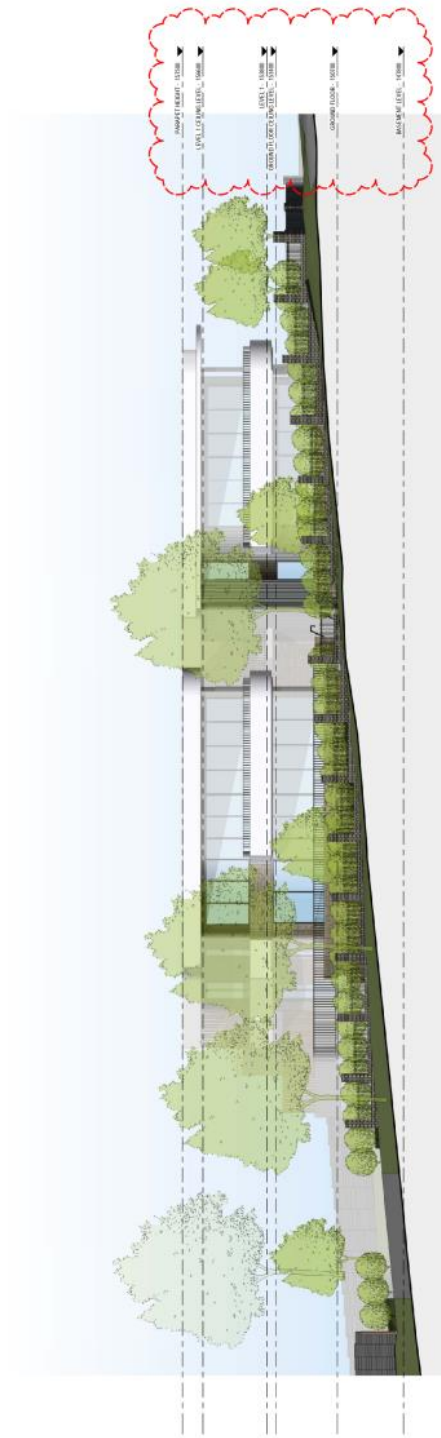
Noise from air conditioning plant is to comply at all times with the relevant noise limits in the Protection of the Environment Operations Act 1997.

Reason: To maintain residential amenity.



REVISION	DATE	BY	DESCRIPTION
1	27.03.20	AS	ISSUE FOR DA APPROVAL
2	18.05.20	AS	UPDATED DRAWINGS FOR DA APPROVAL

Project: SENIORS HOUSING 49 FOREST WAY, FRENCHS FOREST Client: SEYED JALALEDDIN ZIAOLHAGH	Registered Architect ACT 2024 NSW 10366 scs@walsh2architects.com.au 0486 049 860	Scale As Indicated @ A1	Sheet Name SITE PLAN	No. A B	Description ISSUE FOR DA APPROVAL UPDATED DRAWINGS FOR DA APPROVAL	Date 27.03.20 18.05.20	Rev. B
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Project: **SENIORS HOUSING**
49 FOREST WAY, FRENCHS FOREST
Client: SEYED JALALEDDIN ZIAOLHAGH

Walsh²
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Registered Architect
ACT 2024 NSW 10366
scc@walsh2architects.com.au
0486 049 860

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ELEVATIONS

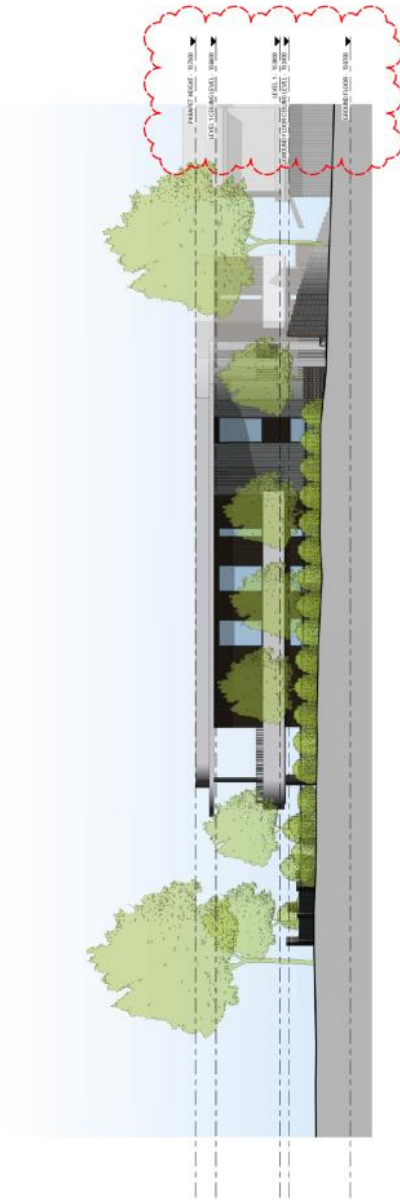
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No.
A
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Number
DA300

Description
ISSUE FOR DA APPROVAL
UPDATED DRAWINGS FOR DA APPROVAL

Date
27.03.20
18.05.20

Rev.
B



Project: **SENIORS HOUSING**
49 FOREST WAY, FRENCHS FOREST
Client: SEYED JALALEDDIN ZIAOLHAGH

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Scale
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Sheet Name
ELEVATIONS

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Number
DA301

No.
A
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Description
ISSUE FOR DA APPROVAL
UPDATED DRAWINGS FOR DA APPROVAL

Date
27.03.20
18.05.20
Rev.
B

ITEM 3.4	MOD2020/0175 - 80-82 MONA VALE ROAD, MONA VALE - MODIFICATION OF DEVELOPMENT CONSENT DA2019/0123 GRANTED FOR USE OF PART OF THE CARPARKING AREA ASSOCIATED WITH THE PITTWATER RSL CLUB FOR THE PURPOSES OF AN ORGANIC FOOD MARKET
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2020/428209
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plans

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2020/0175 for Modification of Development Consent DA2019/0123 granted for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market at Lot 27 DP 5055, Lot 51 DP 1237461 and Lot 52 DP 1237461, 22 Jubilee Avenue, Warriewood, 80-82 Mona Vale Road, Mona Vale and 84 Mona Vale Road, Mona Vale subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0175
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 27 DP 5055, 22 Jubilee Avenue WARRIEWOOD NSW 2102 Lot 51 DP 1237461, 84 Mona Vale Road MONA VALE NSW 2103 Lot 52 DP 1237461, 80 - 82 Mona Vale Road MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent DA2019/0123 granted for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market
Zoning:	B7 Business Park B7 Business Park R2 Low Density Residential SP2 Infrastructure
Development Permissible:	Yes, under Clause 2.8 Temporary Use of Land of the PLEP 2014
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Pittwater RSL Club Ltd
Applicant:	Organic Food Markets

Application Lodged:	08/05/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	18/05/2020 to 01/06/2020
Advertised:	Not Advertised
Submissions Received:	16
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The Modification of Development Consent DA2019/0123 granted for use of part of the carparking area

associated with the Pittwater RSL Club for the purposes of an organic food market seeks an extension to the approved operating hours and extension of the consent period from 18 months to five years. DA2019/0123 was determined by the Northern Beaches Local Planning Panel (NBLPP). As such, MOD2019/0547 is also referred to the NBLPP for determination.

There are no built form controls to consider in relation to this application. The proposed development has received 16 submissions, comprising of 11 against and 5 in support. The issues raised in the objecting submissions included noise impacts, traffic impacts, inconsistency with the previous recommendations and trial period approval, and other market precedents. These matters are addressed throughout this report.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent DA2019/0123 to:

- amend the trial period of 18 months to extend to five years; and
- amend hours of operation of the approved market events as follows:

Approved:

Sundays:

- Set Up: 7:00am-8:30am
- Trading: 8:30am to 12:30pm
- Pack Down: 12:30pm-2:00pm

Proposed:

Sundays:

- Set Up: 7:00am-8:00am
- Trading: 8:00am to 12:30pm
- Pack Down: 12:30pm-2:00pm

Therefore, the proposal involves extending the hours to commence trading half an hour earlier.

The markets commenced operation on 1 September 2019, temporarily ceased operation from 29 March 2020 in response to the current coronavirus pandemic, and recommenced operation on 3 May 2020.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;

- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 2.8 Temporary use of land

SITE DESCRIPTION

Property Description:	<p>Lot 27 DP 5055 , 22 Jubilee Avenue WARRIEWOOD NSW 2102</p> <p>Lot 51 DP 1237461 , 84 Mona Vale Road MONA VALE NSW 2103</p> <p>Lot 52 DP 1237461 , 80 - 82 Mona Vale Road MONA VALE NSW 2103</p>
Detailed Site Description:	<p>The subject site consists of three (3) allotments located to the south-west of Mona Vale Road, north-west of Foley Street, and north of Jubilee Avenue.</p> <p>The site is irregular in shape with frontages of 267m along Mona Vale Road, 200m along Foley Street, and 100m along Jubilee Avenue. The site has an area of approximately 39,319m².</p> <p>The site is zoned part R2 Low Density Residential and part B7 Business Park and accommodates the Pittwater RSL Club development, comprised of the club, sportsfields, bowling club and associated parking.</p> <p>The site slopes approximately 20m from east to south-west, and contains significant vegetation around the existing buildings, facilities and parking areas.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by industrial, commercial and low-density residential development.</p>

Map:



SITE HISTORY

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

DA2019/0123 for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market was approved on 19 June 2019 by the Northern Beaches Local Planning Panel.

The market comprises up to 100 stalls, and operates on up to 42 days per year and has the following operating hours:

- Sundays:
 - Set Up: 7:00am-8:30am
 - Trading: 8:30am to 12:30pm
 - Pack Down: 12:30pm-2:00pm

The markets were granted approval to commence on a trial period basis for up to 18 months from commencement, with the option to extend to 5 years with prior approval of Council. The markets commenced operation on 1 September 2019.

MOD2019/0547 for modification of Development Consent DA2019/0123 sought to amend hours of operation, to allow set up from 6:00am and trading from 7:30am. MOD2019/0547 was refused for the following reasons:

1. Pursuant to Section 1.3(c) of the Environmental Planning and Assessment Act 1979, the proposed extension of operating hours does not represent an orderly development of land.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed modification does not demonstrate that the proposed temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, as required by Clause 2.8 Temporary Use of Land of the Pittwater Local Environmental Plan 2014, particularly in relation to noise impacts.

3. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest in relation to acoustic amenity.
4. Pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, the proposed development is not of minimal environmental impact in relation to acoustic amenity.
5. Insufficient information was submitted with the application in relation to the acoustic impact of the proposed extended operating hours on the adjoining residential area. In this regard, no acoustic report was lodged that addresses the proposal.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/0123, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	The modification, as proposed in this application, is considered to be of minimal environmental impact in relation to the extension of hours, as the hours are in accordance with the NSW Environmental Protection Authority's Noise Policy for Industry 2017 daytime trading hours for Sundays, and is supported by a Noise Emission Compliance Report and Council's Environmental Health Officer. However, the proposed extension of the consent period to five years is not yet considered to be of certainly minimal environmental impact, as the markets have not been in operation for the length of time intended by the Northern Beaches Local Planning Panel upon conditional approval of the original application.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0123, as the proposal remains for the operation of the markets of the same

Section 4.55(1A) - Other Modifications	Comments
development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	intensity on Sundays.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan 2014 and Pittwater 21 Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. The proposed development retains the commercial use of the site, and is not considered a contamination risk.

Section 4.15 'Matters for Consideration'	Comments
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)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 4.15 'Matters for Consideration'	Comments
	(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal is not orderly development of land in relation to the extension of the consent period, which is contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest. This is included as a reason for refusal.

Section 1.3 Objects of the Act

Section 1.3 of the Environmental Planning and Assessment Act 1979 stipulates the Objects (or intentions) of the Act. Subclause 1.3(c) details that one of the Objects of the Act is 'to promote the orderly and economic use and development of land'. The following matters are relevant in establishing whether the proposed modification is 'orderly' development.

DA2019/0123 was granted conditional approval by the Northern Beaches Local Planning Panel (NBLPP), on the basis that reduced hours of operation and a trial period of 18 months applied. The relevant condition states:

10. Trial Period

This consent expires in 18 months from the date of commencement of operation of the market on site unless, by no later than 13 months after the date of commencement, the applicant lodges a modification application to extend the expiry date to 5 years and Council thereafter approves the modification.

Reason: To monitor the operation of the consent to ensure no adverse impact on any adjoining land or the amenity of the neighbourhood and the temporary use of the land in accordance with the consent.

The intention of Condition 10 is to monitor the impacts of the operation of the site for the purpose of markets in its approved state for an extended period of time, being approximately 12 months (as discussed by the NBLPP when deliberating the original application). To modify the consent period to five years after approximately nine months of operation is contrary to the intention of Condition 10.

Note: the markets commenced operation on 1 September 2019, temporarily ceased operation from 29 March 2020 in response to the current coronavirus pandemic, and recommenced operation on 3 May 2020.

While the extended hours of operation are assessed as acceptable, the extension of the consent period from an 18-month trial to a five-year period is not yet considered suitable, and that element of the proposed modification is not demonstrated to be 'orderly' development as required by the Act. An application to extend the consent period from 18 months to five years is likely more appropriate after a longer period of operation.

In consideration of the recommended approval of extended trading hours, Condition 10 is recommended to be amended to allow a further 3 months of trading under the trial period (to account for a loss of trading due to COVID-19 restrictions), in order for the impacts of the additional half hour of

trading to be recorded and assessed.

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 16 submission/s from:

Name:	Address:
Ron Bode	19 Jubilee Avenue WARRIEWOOD NSW 2102
Mr Peter William McDonald	10 / 6 Foley Street MONA VALE NSW 2103
Mr Deepak Damji Wadher Mrs Hansa Wadher	83 Mona Vale Road MONA VALE NSW 2103
Shanti Burn	Address Unknown
Mr Stephen Choularton	10 Chiltern Road INGLESIDE NSW 2101
Grant Jackson Jessica Jackson	Address Unknown
Mrs Janice Lynette Bilton	8 / 6 Foley Street MONA VALE NSW 2103
Ric Simpson	Address Unknown
Kim Osborne	Address Unknown
Mr Philip Charles Walker	184 Warriewood Road WARRIEWOOD NSW 2102
Mr Geoffrey Russell Walsh	188 Warriewood Road WARRIEWOOD NSW 2102
Ms Valerie Jensen Ms Mary Phillips	185 Warriewood Road WARRIEWOOD NSW 2102
Mr Daniel Glen Giles	80 Vineyard Street MONA VALE NSW 2103
Mr Neil Burleigh	5 Kay Close MONA VALE NSW 2103
Mr David Norman Edgley	30 / 5 Ponderosa Parade WARRIEWOOD NSW 2102
Ms Courtney Mae Ings	88 Warriewood Road WARRIEWOOD NSW 2102

The application received 16 submissions, comprised of 11 against and 5 in support. The issues raised in the submissions are addressed as follows:

ISSUES RAISED AGAINST THE APPLICATION

Noise

Objections raised concern that the proposed hours set up hours and noise levels are not compliant with NSW Environmental Protection Authority's Noise Policy for Industry 2017 "Daytime Trading Hours for Sundays". Noise levels have disrupted sleeping of nearby residents.

Comment:

While the setting up of the market is not technically classified as operation, it could be argued that set up is equivalent. However, it should be noted that set up will not commence any earlier than as approved. In this way, the modification application does not lead to any additional inconsistency with the Policy. The extended hours of trading are supported by Council's Environmental Health Officer, who has reviewed this application and the supporting Noise Emissions Compliance Report. Further, it is noted that, while submissions raise noise as a concern, Council is not in receipt of any noise complaints as a result of the markets. It is recommended the consent remain as a trial (though extended to allow for an additional three months of trading in lieu of time lost as a result of coronavirus-related restrictions). As such, the markets will continue to be monitored in relation to its impacts.

Traffic and Parking

Objections raised concern that the extended trading hours are not appropriate, as there is not enough parking on site under current circumstances.

Comment:

Council's Traffic Engineer has reviewed the original proposal, and the current modification, and is supportive of the proposal.

ISSUES RAISED IN SUPPORT OF THE APPLICATION**Extended Hours**

Submissions in support raised that earlier trading hours would allow people to access the site in times of less congested local traffic, and would allow more time to sell items.

Comment:

The extended hours of operation are supported.

OBJECTION UNRELATED TO PROPOSED MODIFICATIONS**Site Location / Suitability**

A small number of submissions raised concern with the location of the markets and the location of toilets on site, indicating that more suitable sites exist elsewhere.

Comment:

This modification application does not propose a new location for the markets, nor make any amendment to approved toilet locations. Hypothetical consideration of other land for suitability is not a relevant planning matter for consideration under the *Environmental Planning and Assessment Act 1979*.

Changes to the Entries, Exits and Stall Locations

One objection raised concern about changes to the approved market entry and exit points, and stall locations.

Comment:

No changes to the physical markets operations are proposed.

Regulation

Objections raised concern that the operation of the markets leads to illegal parking on surrounding streets, damage and trespassing on private property, and littering. Concern was also raised that the markets are not being operated in accordance with restrictions relating to the current coronavirus pandemic.

Comment:

These matters are not related to the proposed extended hours of operation and extended period of consent. These matters are reportable to Council's Environmental Compliance team for investigation.

Footpath Construction

Objections raised concern that the original application recommended construction of a footpath along Foley Street, which has not yet been carried out.

Comment:

The Assessment Report for the original application (DA2019/0123) recommended construction of a footpath along Foley Street. However, the consent authority (Northern Beaches Local Planning Panel) did not see this as necessary and did not apply the recommended condition of consent requiring the works.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>Application for a 5 year-long trial period of modified market operations at Pittwater RSL carpark, with a minor change to patron trading times, allowing for an 8 am start.</p> <p>Environmental Health object to the 5 year approval as it is not commensurate the intention of the 18 month trial period approved in 2019.</p> <p>Council requires a formal plan of management of noise with refined definitions that can be used as an enforcement tool. It is understood that the applicant is in the best position to provide fair and just clauses that appropriately reflect the complexities of operations, in balance with community amenity and State guidelines such as the Noise Policy for Industry.</p> <p>This would include rules that stall operators are required to follow which are reasonable, practical and measurable. Keeping in mind, any breach of these rules would be considered a breach of consent.</p> <p>We suggest the applicant implements the noise control management recommendations in the acoustic report prior to deciding on a formal plan of management that can be effectively regulated. Recommendations such as 'stall operator arrivals staggered equally between gates', 'truck idling for extended periods', 'trucks with reverse alarms should avoid reversing' and 'patrons are directed to park in the covered RSL parking or as further away from the residential receivers as possible' are not well defined or practical, therefore, not able to be enforced or used by Council as conditions of consent.</p> <p>Environmental Health do not object to trading from 8 am - the noise issues are related to stall operators and vehicles during setup.</p>
Traffic Engineer	<p>The application seeks modification of the commencement of trading hours from 8.30am to 8.00am, 30 minutes earlier than the currently approved time.</p> <p>In terms of Traffic Impacts, there is no unreasonable impacts envisaged.</p> <p>Council's Traffic Team raise no objection to the modification of the</p>

Internal Referral Body	Comments
	start time, provided all other conditions, previously imposed, remain.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (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 not referred to Ausgrid, as no physical works are proposed.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone R2 : No
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	Zone B7 : No Zone SP2: No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone R2 : Yes Zone B7 : Yes Zone SP2: Yes

Principal Development Standards

There are no principal development standards under Part 4 of the PLEP 2014 to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements
2.8 Temporary use of land	No

Detailed Assessment

2.8 Temporary use of land

The subject site is zoned R2 Low Density Residential, B7 Business Park and SP2 Infrastructure (Classified Road). The proposal is wholly contained within the R2 and B7 zoned land, and does not impact upon the SP2 zoned portion of land. The proposed development is not permissible in the R2 or B7 zones. The proposal relies on Clause 2.8 Temporary Use of Land of the PLEP 2014 for permissibility. Clause 2.8 requires that development consent must not be granted unless the consent authority is satisfied that:

(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and
Comment:

The proposed modification does not alter the approved development's compliance with this clause.

(b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and

Comment:

As per the previous assessment, the proposed temporary use is acceptable in relation to neighbourhood amenity, subject to adherence to conditions of consent and the Plan of Management. Unlike the previous modification application (MOD2019/0574), the current proposed increase in hours of operation is consistent with the NSW Environmental Protection Authority's Noise Policy for Industry 2017 daytime trading hours for Sundays (being 8am to 6pm). The current modification application is supported by a Noise Emission Compliance Report, which demonstrates the additional half hour of trading does not result in any unreasonable acoustic impacts to nearby residential properties. This element of the proposal is supported. However, the proposed extension of the consent from a trial period to five years is not considered suitable, as the markets have not been in operation for the length of time intended by the Northern Beaches Local Planning Panel upon conditional approval of the original application for the markets (DA2019/0123). As such, the extension of the consent period to five years is not yet considered appropriate in terms of making a full assessment of amenity, and is not yet demonstrative of orderly development.

(c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and

Comment:

The proposed modification does not alter the approved development's compliance with this clause.

(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

Comment:

The proposed modification does not alter the approved development's compliance with this clause.

Given the above in relation to (b) above, the consent authority cannot be satisfied that the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and consent to the modification application cannot be granted.

Pittwater 21 Development Control Plan

Built Form Controls

There are no built form controls under Part D14 Warriewood Locality of the P21 DCP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.15 Waterways Locality	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes

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 undertaken in relation to following:

Orderly Development of Land

The proposed modification is inconsistent with the approved trial period, which intends for the markets to operate for an extended period of time (12-18 months). A trial period of approximately nine months at the time of writing this report amounts to a reduced trial period, and does not provide for orderly development in accordance with the objects of the *Environmental Planning and Assessment Act 1979*.

Acoustic Amenity

The proposed extension of trading hours is acceptable in relation to the NSW Environmental Protection Authority's Noise Policy for Industry 2017 "Daytime Trading Hours for Sundays", and is not considered to present an unreasonable acoustic impact on nearby residential properties.

Temporary Use of Land

The proposed modification does not provide the consent authority with sufficient satisfaction that the extended consent period will not result in adverse impact on the amenity of the neighbourhood.

Based on the above assessment, the proposed extension of the operating hours is supported, but the proposed extension of the consent period is not supported.

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

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2020/0175 for Modification of Development Consent DA2019/0123 granted for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market on land at Lot 27 DP 5055,22 Jubilee Avenue, WARRIEWOOD, Lot 51 DP 1237461,84 Mona Vale Road, MONA VALE, Lot 52 DP 1237461,80 - 82 Mona Vale Road, MONA VALE, subject to the conditions printed below:

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

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

a) Modification Approved Reports

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Operational Management Plan	June 2020	M A Choularton
Noise Emission Compliance Report	28 May 2020	Rodney Stevens Acoustics

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

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

B. Modify Condition 4 Amendment to Plan of Management to read as follows:

The submitted Operational Management Plan is to be amended to include:

- Hours of Operation, being:
 - Access for stall traders: 7:00am-2:00pm; and
 - Trading hours: 8:00am-12:30pm.
- Methods for restricting access to the site prior to 7am and in relation to trading hours;
- Complaints Register: A complaints register is to be kept up to date at all times, logging complaints received, and action taken;
- Complaints Contact: A contact person is to be nominated in the Operational Management Plan along with a phone number;
- Stall Numbers: Market events are not to exceed 100 stalls at any time; and
- Market events must not exceed 42 days in 12 months.

Reason: To ensure appropriate amenity, complaints resolution and consistency with the consent.

C. Modify Condition 7 Hours of Operation to read as follows:

The hours of operation are to be restricted to:

- Sundays:
 - Set Up: 7:00am-8:00am
 - Trading: 8:00am to 12:30pm
 - Pack Down: 12:30pm-2:00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises for the purpose of the markets shall be required to leave. Stallholders and site managers may commence set up from 7:00am and must vacate the site by 2:00pm. No access to the site for the purpose of market stall set up is permitted before 7:00am.

Reason: Information to ensure that amenity of the surrounding locality is maintained. At the public meeting, the applicant indicated that approval was only being sought to operate the market on Sundays.

D. Modify Condition 10 Trial Period to read as follows:

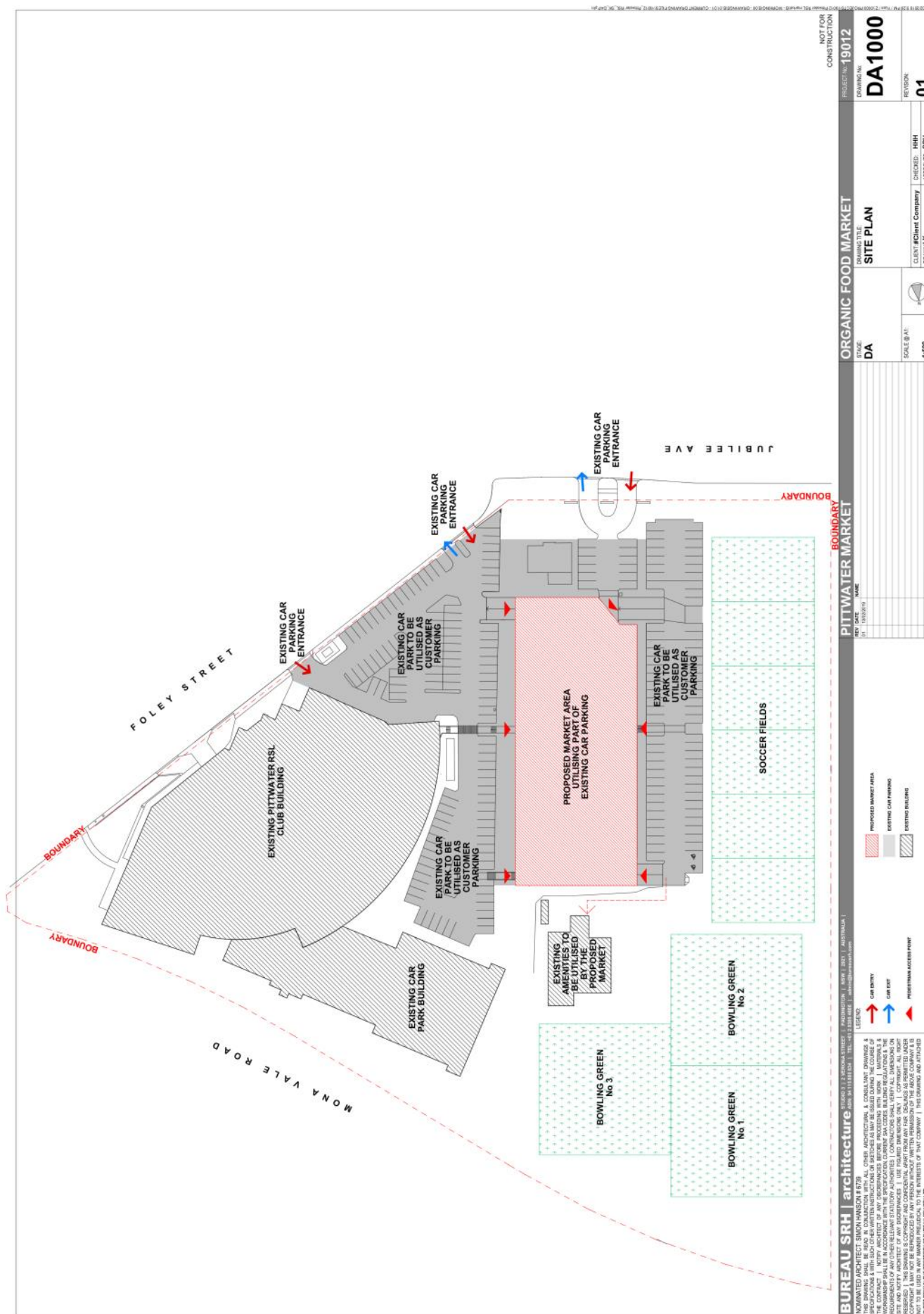
This consent expires in 21 months from the date of commencement of operation of the market on site unless, by no later than 16 months after the date of commencement, the applicant lodges a modification application to extend the expiry date to 5 years and Council thereafter approves the modification.

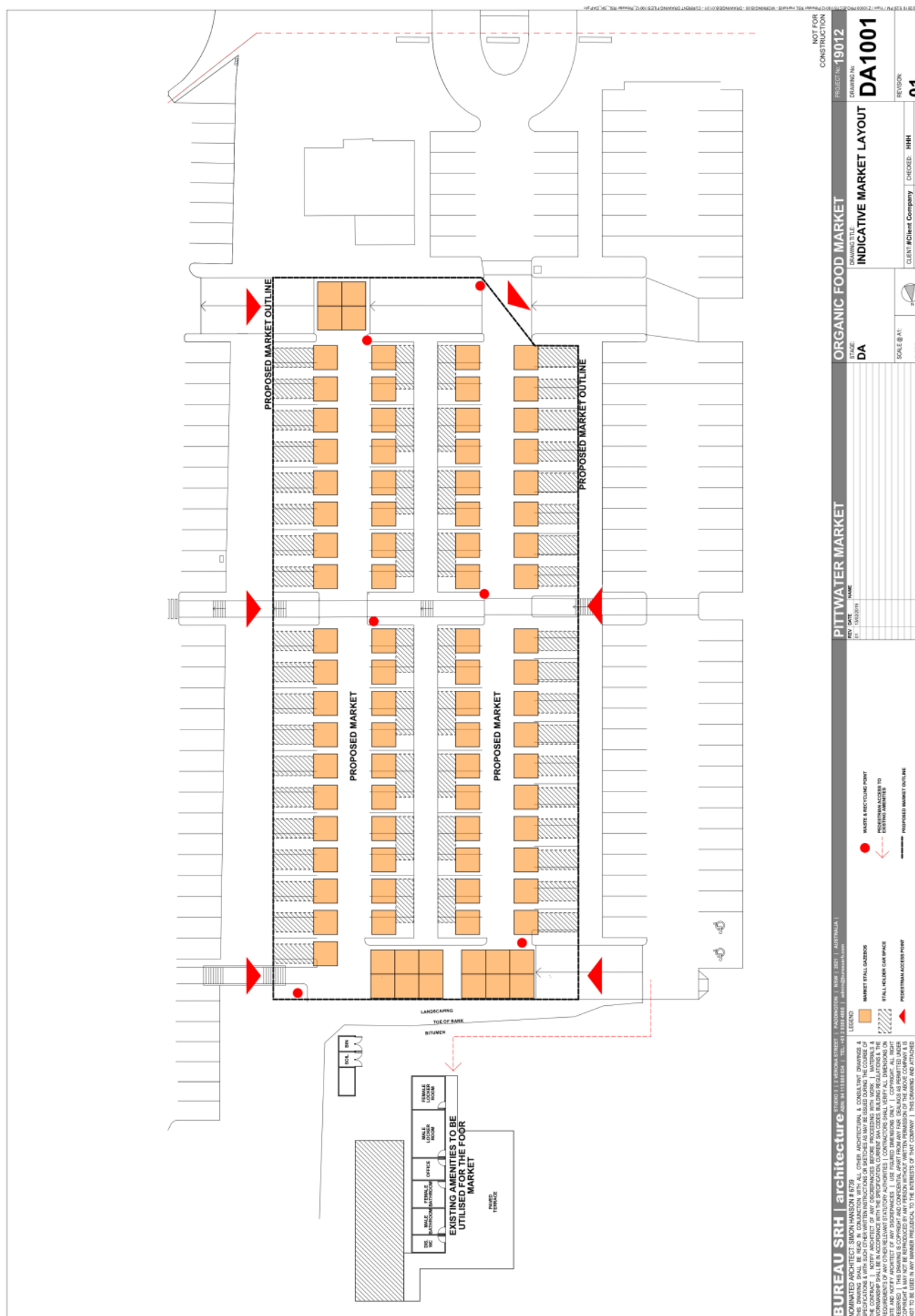
Reason: To monitor the operation of the consent to ensure no adverse impact on any adjoining land or the amenity of the neighbourhood and the temporary use of the land in accordance with the consent.

E. Add Condition 11 Operation to read as follows:

Operation of the markets is to be in accordance with the approved Operational Management Plan and Noise Emissions Compliance Report.

Reason: To ensure operation of the markets does not result in unreasonable impacts to the amenity of surrounding residential properties.





ITEM 3.5

**DA2020/0211 - 82-84 BOWER STREET, MANLY -
DEVELOPMENT APPLICATION SEEKING CONSENT FOR THE
RECONSTRUCTION OF WALLS/STRUCTURES THAT WERE TO
BE RETAINED AND HAVE BEEN DEMOLISHED, AND FOR THE
USE OF WALLS/STRUCTURES THAT WERE TO BE RETAINED,
BUT HAVE BEEN DEM**

REPORTING OFFICER**ANNA WILLIAMS****TRIM FILE REF****2020/428229****ATTACHMENTS**

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

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/0211 for Development Application seeking consent for the reconstruction of walls/structures that were to be retained and have been demolished, and for the use of walls/structures that were to be retained, but have been demolished and rebuilt at Lot 5 DP 8075, 82-84 Bower Street, Manly for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0211
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 5 DP 8075, 82 - 84 Bower Street MANLY NSW 2095
Proposed Development:	Dual occupancy - Development Application seeking consent for the reconstruction of walls/structures that were to be retained and have been demolished, and for the use of walls/structures that were to be retained, but have been demolished and rebuilt
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Trustees Roman Catholic Church Archdiocese Sydney 82-84 Bower Street Pty Ltd
Applicant:	Smith & Tzannes
Application Lodged:	05/03/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/06/2020 to 22/06/2020
Advertised:	Not Advertised
Submissions Received:	19
Clause 4.6 Variation:	4.3 Height of buildings: 31.7% 4.4 Floor space ratio: 55.1%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 88,000.00

EXECUTIVE SUMMARY

The original consent (DA0168/2017) relating to this development was approved under delegation on 14 November 2017.

The subject development application seeks consent for the reconstruction of the walls/structures that were to be retained and have been demolished, and for the use of walls/structures that were to be

retained, but have been demolished and since been rebuilt. There are no works proposed beyond the existing building on the site.

A Building Information Certificate Application (BC2020/0048) has also been submitted to Council seeking the regularization of the unauthorised reconstruction of walls and floors already carried out.

The use of the site as a dual occupancy is not permissible within the E3 zone and relies on existing use rights. An assessment of the development against the relevant legislation/case law regarding existing use rights is completed in the report and is found to be satisfactory.

Nineteen (19) submissions were received by way of objection in response to the notification/advertising of the application. The submissions generally relate to privacy, setbacks and whether the development should be classified as alterations and additions or a new build.

As the proposal has received more than ten submissions by way of objection, the application is referred to the Northern Beaches Local Planning Panel for determination.

Due to the extent of demolition and the resulting structures retained on the site, the development is fundamentally considered to be a new development rather than alterations and additions. Given this consideration and the subsequent assessment of the works/impacts as a new development, the proposal is not supported and is recommended for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The site contained an existing dual occupancy development, with alterations and additions approved under DA0168/2017.

Following the commencement of works associated with this consent (and subsequent consents DA2019/0125 and DA2019/0126) a number of wall and floor structures that were proposed/approved to be retained were demolished and partially rebuilt.

This development applications seeks consent for the reconstruction of the walls/structures that have been demolished, and for the use of walls/structures that have been demolished and since been rebuilt without consent.

There is a concurrent Building Information Certificate (BC2020/0048) under assessment by Council in relation to the unauthorized reconstruction of those walls/structures that have since been rebuilt.

The extent of the demolition works to the existing dwellings and the extent of the structures remaining is such that the development as executed is now fundamentally considered to be for the construction of a new dual occupancy.

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 E3 Environmental Management
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.3.1 Landscaping Design
 Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.7 First Floor and Roof Additions
 Manly Development Control Plan - 4.4.2 Alterations and Additions

SITE DESCRIPTION

Property Description:	Lot 5 DP 8075 , 82 - 84 Bower Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment (No. 82-84 Bower Street) located on the northern side of Bower Street.</p> <p>The site is irregular in shape with a frontage of 16.365m along Bower Street and a depth of 45.83m. The site has a surveyed area of 698.4m².</p> <p>The site is located within the E3 Environmental Management zone and accommodates an existing dual occupancy (attached).</p> <p>The site slopes 7.57m from front (south) to rear (north).</p> <p>The site planted vegetation generally within the front setback. No significant trees are located on the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by</p>

detached dwellings, dual occupancies and residential flat buildings.

Map:



SITE HISTORY

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

DA0034/2016 for Alterations and additions to an existing semi-detached dwelling including new upper level internal reconfiguration and new roof, reconstruction of the existing ground floor entry, partial demolition of rear of dwelling, new plunge pool, terrace, new double garage and landscaping - No 84 Bower Street, Manly only - Approved on 27 April 2016 by the former Manly Development Assessment Unit.

DA0168/2017 for Alterations and additions to the existing dual occupancy - Approved on 14 November 2017 under staff delegation.

Mod2018/0547 - Modification of Development Consent No. DA168/2017 granted for alterations and additions to the existing dual occupancy - Approved 10 January 2019 under staff delegation.

DA2019/0126 - Alterations and additions to a dual occupancy - Approved 10 July 2019 by the Development Determination Panel.

DA2019/0125 - Demolition works and construction of two garages - Approved 10 July 2019 by the Development Determination Panel.

EPA2019/0374 - A Stop Works Order was issued by Council when the unauthorised works were brought to the attention of the Building Control Team - Dated 21 November 2019 (revoked), and re-issued 19 December 2019.

BC2020/0048 - Reconstruction of existing walls and existing floors - Under Assessment.

It is noted that works associated with multiple previously approved development consents for the site are currently under construction.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a</p>

Section 4.15 Matters for Consideration'	Comments
	<p>condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Manly LEP and DCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

- Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The current use of the site/building as a dual occupancy (attached) was established prior to the coming into force of Manly Local Environmental Plan on 5 April 2013.

Council has on record evidence of the development consent, DA4026/91 for Proposed Alterations and Additions on the site. Condition A of this consent specifies a reduction to the number of units from three to two as part of the development, therefore granting approval for use of the site as a dual occupancy.

2. Was the use of the building / work / land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the building/land was lawfully approved by Council on 19 July 1991, prior to the coming into force of Manly Local Environmental Plan 2013 on 5 April 2013.

3. Has the use of the building / work / land been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The building/land has been approved for the purpose of a dual occupancy since 1991. As noted above, the Manly Local Environmental Plan 2013 rendered the use prohibited development, however, the continuance of existing use rights has been established by way of uninterrupted use of the building/land for the approved purpose.

- **What is "the land on which the existing use was carried out" for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGRA 26 stated (at 27) the rule to be applied as follows: "if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose".

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The subject site is located within the E3 Environmental Management zone, which permits a limited range of development.

The proposed dual occupancy development, as approved under DA0168/2017 and subsequent approvals (DA2019/0125 and DA2019/0126), includes extensive non-compliances with the relevant numerical controls under the Manly Local Environmental Plan 2013 and Manly Development Control Plan 2013. These non-compliances include height of buildings, floor space ratio, wall heights, number of storeys, and front, side and rear setbacks.

It is acknowledged throughout this report that the existing development on the site contributed to the number and extent of these non-compliances, which were proposed/supported on the grounds that the development was for alterations and additions. As also discussed in this report, the works as undertaken are no longer considered to constitute alterations and additions, and are now assessed as a new development.

In this regard, the bulk and scale of the development may be consistent with what can be expected if surrounding sites are redeveloped through alterations and additions. However, the development does not reflect the expected/desired outcomes of new development under the applicable planning instruments.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor

space ratio, height or parking provision.

Comment:

There is no change of use proposed. As discussed above, the existing building elements that were to be retained made a significant contribution to the bulk of the approved development.

The existing building was not proposed/approved for demolition, but has since been demolished regardless. In this case, there is not considered to be any entitlement to build/rebuild the development to the bulk/scale resulting from the previously approved height, floor space ratio, setbacks, etc.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposed development will not result in unreasonable view loss or overshadowing impacts, and incorporates privacy screening to the western elevation. However, the location of the existing lower ground and ground floor western walls provide minimal physical separation, resulting in excessive visual bulk and greater potential for privacy impacts despite any screening devices.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The subject application does not alter the internal amenity of the development as previously approved.

Conclusion

Notwithstanding the above assessment against the relevant case law, the proposed development does not materially alter the built form of the development, so there is no measurable intensification of use of the existing building/land.

The use has been approved under a previous environmental planning instrument (Manly Local Environmental Plan 1988) and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (Manly Local Environmental Plan 2013).

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 19 submission/s from:

Name:	Address:
Mark Kelly	88 Bower Street MANLY NSW 2095
Charlie Lavender	Address Unknown
Ms Anne Gabrielle Crawford Dr Simon Buckingham	80 Bower Street MANLY NSW 2095
Christopher Philip Jones	5 Loquat Valley Road BAYVIEW NSW 2104
Elizabeth Anna Taylor	5 Bower Street MANLY NSW 2095
Mr Ross Boyd Lane	38 Stuart Street MANLY NSW 2095
Mr Angus Fingleton Gemmell	5 / 60 Bower Street MANLY NSW 2095
Vicki Pratt	8 Scarfe Street SMITHS LAKE NSW 2428
Mrs Vesela Matijevic	11 / 69 - 71 Oaks Avenue DEE WHY NSW 2099
Mr Stephan Goerner	87 Bower Street MANLY NSW 2095
Ms Lisa Kathleen Meadows	113 Bower Street MANLY NSW 2095
Ms Kathryn Cope	38 Mildred Avenue MANLY VALE NSW 2093
Mrs Ineses Indra Kingsmill	77 Gordon Street CLONTARF NSW 2093
Mr Stuart Plane	62 Bower Street MANLY NSW 2095
Dr Craig John Taylor	68 Bower Street MANLY NSW 2095
Mrs Tess Lavender	86 Bower Street MANLY NSW 2095
Ms Zena Hazel Hanna	51 Bower Street MANLY NSW 2095
Ms Merrilee Ann Linegar	2 / 92 Bower Street MANLY NSW 2095
Mr Mark Kehoe	12 Tutus Street BALGOWLAH HEIGHTS NSW 2093

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

- Classification of proposal as alterations and additions or a new development
- Consideration of the unauthorised works in isolation, rather than the context of the whole development
- Side boundary setbacks to eastern and western adjoining properties
- Privacy impacts

The matters raised within the submissions are addressed as follows:

- Classification of proposal as alterations and additions or a new development
Comment:
Given the proportion of structures/fabric that have been demolished to those that are retained, the development is no longer considered to be for alterations and additions. A detailed assessment of this matter is completed against the relevant matters set out in the planning principle relating to demolition (Coorey v Municipality of Hunters Hill).
- Consideration of the unauthorised works in isolation, rather than the context of the whole

development

Comment:

As the application is considered as a new development, the proposed walls/structures that are the subject of the application cannot be assessed in isolation. Rather, the LEP and DCP controls are applicable to the broader development and a greater level of compliance with these controls is expected/required. In this regard, the development is considered to exceed what would be achievable/supported for a new development in this area.

- Side boundary setbacks to eastern and western adjoining properties

Comment:

The proposed side boundary setbacks of the subject walls (previously existing walls) are significantly non-compliant with the numerical control for new structures, and provide insufficient physical separation to adjoining sites/dwellings.

- Privacy impacts

Comment:

The lack of adequate physical separation from the adjoining sites greatly increases the potential for privacy/overlooking impacts and reduces the effectiveness of mitigation measures.

REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid 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.

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 proposed works are generally within the existing building footprint and will not unreasonably impact

the coastal environment area.

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

Comment:

The proposal is consistent with this Clause.

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 will not unreasonably impact the coastal use area given the nature and location of the works within the existing building footprint.

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 proposal is unlikely to cause increased risk of coastal hazards on the site or surrounding land.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	4.8m - 11.2m (No change)	31.7%	No (as approved)
Floor Space Ratio	0.45:1 314.28m ²	0.7:1 487.5m ²	55.1%	No (as approved)

It should be noted that the approved FSR for the alterations and additions proposed under the initial consent DA0168/2017 was 0.65:1. Since that time two subsequent development applications, DA2019/0125 and DA2019/0126, have increased the approved FSR for the site to 0.7:1.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	No
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone E3 Environmental Management

The proposed development relies on existing use rights. Discussion of this matter is contained within this report.

4.6 Exceptions to development standards

Description of non-compliance:

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Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.2m
Percentage variation to requirement:	31.7%

Development standard:	Floor space ratio
Requirement:	0.45:1 (314.28m ²)
Proposed:	0.7:1 (487.5m ²)
Percentage variation to requirement:	55.1%

Given the extent of the demolition works to the existing building, the development as carried out at the site is considered to be fundamentally for the construction of a new dual occupancy, despite the previous approval being granted for alterations and additions.

As discussed elsewhere in this report, a greater level of compliance with the prescribed controls, particularly development standards, is expected/achievable for new developments. Further, the proposed setback non-compliances (previously existing setbacks) make a significant contribution to the non-compliant gross floor area outside of the allowable building footprint/envelope. This presents as significant additional bulk in closer proximity to the adjoining sites/dwellings.

Where previously the existing and approved variations were assessed in the context of a development for alterations and additions, they must now be considered in the context of a new development on the site, and take into account the subsequently approved developments that further increased the extent of the non-compliances.

To assist in this assessment, a recent search of Council's records for DA approvals including FSR variations was completed based the following criteria:

- New dwelling approvals under the current Manly LEP 2013
- Within the vicinity of the site on Bower Street within the E3 zone

This search revealed the following developments approved with a FSR non-compliance:

- 54 Bower Street - DA0103/2013 (0.526:1, 16.9%); later modified by DA0103/2013 Part 2, 2015 (0.57:1, 27%)
- 77 Bower Street - DA0269/2015 (0.63:1, 41%); later modified by MOD2018/0180 (0.68:1, 51.2%)

It is clear that variations to the FSR control for new dwellings are uncommon and the proposal would be inconsistent with the character of comparable development in the surrounding area.

Given the above, the proposed variations would result in a building of a bulk and scale that is not acceptable in the context of a new development, and the variations are not supported.

6.2 Earthworks

The proposal does not seek consent for any further earthworks on the site.

6.5 Terrestrial biodiversity

The subject site is within declared habitat for the endangered population of Long-nosed Bandicoot at North Head. The proposed development does not alter the design/built form from the previous approval and the relevant biodiversity conditions remain applicable to any works on the site. As such, the proposal was not referred to Council's Biodiversity team and is not considered likely to unreasonably impact the endangered bandicoot population or habitat.

6.8 Landslide risk

The proposal does not physically alter the works previously existing/approved on the site. Further, appropriate geotechnical assessment of the site has been undertaken.

6.9 Foreshore scenic protection area

The proposal includes the reconstruction/use of walls in existing/approved locations, and will not result in any material change to the appearance of the dwellings.

Manly Development Control Plan

Built Form Controls

Built Form Controls	Requirement		Proposed	Complies
4.1.2.1 Wall Height	West (No. 84): 8m		LG Lounge, Bed 3: 3.6/5.2m	Yes
			LG Bed 2, Ensuities: 3.1/3.4m	Yes
			GF Kitchen: 4.6/6m	Yes
	East (No. 82): 8m		GF Living: 4.3/5.5m	Yes
			GF Kitchen/Dining: 2.7/4.3m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	West (No. 84)	Lounge, Bed 3: 1.2/1.9m	0.8/0.9m	No
		Bed 2, Ensuities: 1.0.3/1.13m	1.1/1.2m	No
		Kitchen: 1.53/3m	1.1m	No
	East (No. 82)	Living: 1.4/1.83m	0.2/0.1m	No
		Kitchen, Dining: 0.9/1.43m	1.4/1.3m	No
4.1.4.4 Rear Setbacks	8m		5.2m	No

Note: As the development relies on existing use rights, the relevant Development Standards and Development controls do not strictly apply. However, in accordance with the principals outlined in *Fodor Investments v Hornsby Shire Council*, the controls are relevant to the extent that they indicate the kind of development that can be expected if and when surrounding sites are redeveloped. As such, an assessment against the residential control contained within the Manly LEP and DCP is undertaken in this report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.7 First Floor and Roof Additions	No	No
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.2 Alterations and Additions	No	No
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.3.1 Landscaping Design

The proposal includes the reconstruction/use of walls in existing/approved locations, and does not involve any changes to landscaping on the site.

3.3.2 Preservation of Trees or Bushland Vegetation

No removal of trees or vegetation is proposed.

3.4.1 Sunlight Access and Overshadowing

The proposal will not result in any unreasonable overshadowing impacts and maintains consistency with previous assessments of the development.

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The wall/window locations as proposed for reconstruction are not appropriately designed for privacy. It is noted that a screening device is incorporated into the large ground floor western window. However, the proposed western side setback provides insufficient physical separation and the levels are such that the development has the potential to result in significant overlooking/direct viewing to the adjoining pool terrace and private open space area of No. 86 Bower Street.

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

Comment:

The proximity of the development to adjoining properties does not provide increased privacy.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal does not impact opportunities for passive surveillance.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

3.4.3 Maintenance of Views

The demolished walls at lower ground and ground floor levels are significantly below the building height control. The proposal will not result in any unreasonable view loss impacts and maintains consistency with previous assessments of the development.

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

Compliance with control

The walls that are the subject of this application maintain compliance with the wall height control.

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

Description of non-compliance

The development approved under DA0168/2017 included extensive existing and approved setback non-compliances. The existing eastern and western lower-ground and ground floor walls were non-compliant with the required side setback of 1/3 wall height. The approved development resulted in further side setback non-compliances to the proposed first floor addition (0.43m breach to the eastern side, 0.86m breach to the western side). No changes were proposed to the existing lower ground and ground floor walls and the proposed upper floor breaches were considered to be acceptable.

The maximum side setback breaches proposed as part of this application, which were existing walls as assessed/approved under DA0168/2017, are as follows:

- Eastern GF Living room wall - 5.5m high, setback of 0.1m is non-compliant with the requirement of 1.83m; and
- Western LG Bed 3/Lounge wall - 5.2m high, setback of 0.9m is non-compliant with the requirement of 1.9m.

Merit consideration:

The approved development was for alterations and additions to the existing dual occupancy and the majority of the non-compliances related to existing structures that were to be retained. Manly DCP Clause 4.1.7 First Floor and Roof Additions also allows for variations to setback provisions based on the existing ground floor wall locations. These considerations in relation to setback breaches facilitated greater floor plates and resulting gross floor area than what would have been otherwise achievable/supported through a new dwelling approval. As these walls were not previously assessed as existing structures, less consideration was given to their contribution to building bulk and any requirement for articulation of the elevations at lower ground and ground floor levels. In the current circumstance where the walls are no longer existing, a more acceptable outcome in relation to bulk and scale can be achieved by providing additional setbacks in relation to wall height, in accordance with the policy.

No objection was raised by Council to the existing and proposed setbacks under DA0168/2017, however, the 'existing' lower ground and ground floor walls have since been demolished or partially demolished. Those non-compliances, along with their contributions to the FSR, amenity and bulk impacts of the development, must now be considered in the context of new dwellings/structures. In this regard, a greater level of compliance with the relevant controls is generally expected/achievable for new dwellings or new constructions.

The outcome of the approved consent was a development that is entirely non-compliant with the prescribed side setback controls. This outcome was considered to be acceptable in the context of the works under the alterations and additions proposal where numerous breaches were existing and unchanged. However, as unauthorized works have since been undertaken to (partially) demolish the existing walls approved to be retained, the resulting non-compliances are no longer considered acceptable in the context of new works/structures.

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

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

Comment:

Sightlines to the development from the street frontage are largely obscured by the approved double garage structures at the front of the site.

Objective 2) To ensure and enhance local amenity by:

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

- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The lack of adequate physical separation from the adjoining properties will unreasonably impact local amenity, particularly in relation to building bulk and the greater potential for privacy impacts.

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

Comment:

Flexibility was allowed in the context of the approved development for alterations and additions. However, as discussed above, the previous setback non-compliances are not considered to be appropriate in the circumstance where substantial demolition works have been undertaken.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed non-compliances do not impact landscaping on the site.

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

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

4.1.7 First Floor and Roof Additions

This control provides for variations to the setback requirements where additions follow the line of an existing ground floor wall.

The assessment of setback non-compliances in relation to DADA0168/2017 notes that the existing side and rear setbacks at the lower ground and ground floor levels were to be retained. As such, no consideration of the (existing) setback breaches was undertaken through that assessment.

However, the existing western lower ground floor wall has since been demolished and therefore a variation in accordance with this control can no longer apply to the ground floor wall above. An

assessment of the merits of the proposed setback breaches is completed under Clause 4.1.4 Setbacks.

4.4.2 Alterations and Additions

The works undertaken on the site have resulted in the demolition of the majority of the existing dual occupancy building. As such, the proposed development is considered to be a new building for the purposes of Clause 4.4.2.

Furthermore, an assessment has been made against the planning principle relating to demolition (Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187) to establish whether the development as undertaken is classified as alterations and additions or new development. An assessment of the qualitative and quantitative issues set by the planning principle is as follows:

Qualitative issues

- *How is the appearance of the existing building to be changed when viewed from public places?*

Comment: The works that are the subject of this application are generally located at the lower ground and ground floor levels towards the rear of the site and do not alter the appearance of the building from the Bower Street frontage of Marine Parade at the rear.

- *To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places?*

Comment: The proposal retains the existing building footprint and will not impact existing landscaping.

- *To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?*

Comment: The proposal will not impact any nearby heritage items.

- *What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?*

Comment: The application relates to structures that have previously been demolished, that were to be retained under DA0168/2017. These structures include the eastern ground floor wall, western lower ground and ground floor walls, as well a substantial proportion of the party wall and the lower ground and ground level floor structures.

- *What is the extent, if any, of any proposed change to the use of the building?*

Comment: The proposal does not involve any change of use of the building.

- *To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?*

Comment: The proposed works will not change the presentation of the building within the streetscape.

- *To what extent, if any, are the existing access arrangements for the building proposed to be altered?*

Comment: The proposal will not alter the approved access.

- *To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development?*

Comment: The proposal is for the reconstruction of existing building fabric and will not significantly alter the outlook from within the building.

- *Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?*

Comment: The extent of demolition work to the existing dwellings are such that the remaining structure is not considered sufficient to constitute alterations and additions.

Quantitative issues

- *To what extent is the site coverage proposed to be changed?*

Comment: The proposal retains the building footprint as approved under previous consents on the site.

- *To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?*

Comment: The proposal includes further setback non-compliances to the eastern ground floor wall and western lower ground and ground floor walls. Under the original approval, DA0168/2017, these walls were proposed to be retained as existing.

- *To what extent is the building envelope proposed to be changed?*

Comment: The resulting building envelope remains unchanged.

- *To what extent are boundary setbacks proposed to be changed?*

Comment: Boundary setbacks that were previously approved to be retained have since been demolished, and now result in further setback non-compliances in this application.

- *To what extent will the present numerical degree of landscaping on the site be changed?*

Comment: The landscaping calculation on the site remains unchanged.

- *To what extent will the existing floor space ratio be altered?*

Comment: The previously approved FSR remains unchanged.

- *To what extent will there be changes in the roof form?*

Comment: No change to the roof form is proposed.

- *To what extent will there be alterations to car parking/garaging on the site and/or within the building?*

Comment: There will be no alteration to car parking/garaging on the site.

- *To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?*

Comment: The existing landform is unchanged by this application.

- *What relationship does the proportion of the retained building bear to the proposed new development?*

Comment: The proportion of the building retained on the site bears minimal relationship/resemblance to the proposed new development under this application or that approved under DA0168/2017. The consideration of this planning principle completed in the assessment of DA0168/2017 included the following comment:

"The majority of the existing structure is retained, with some internal walls being demolished a

Since this approval, the majority of the external walls have been demolished, as well as a significant proportion of the existing lower ground and ground level floor structures. The structures that have been retained are generally limited to the central section of the party wall, the eastern side lower ground floor external wall, and minor internal walls/elements at the basement and lower ground floor levels.

The below photographs of the site reflect the extent of the retained structures:

- Photos 1 & 2 show the eastern and western ground floor walls completely demolished, as well as the front portion of the party wall.
- Photos 4 & 6 show that the western lower ground floor wall has also been completely demolished.
- The ground level floor structure visible in Photos 1 & 2 was also partially demolished, and is shown partially rebuilt in Photo 4.



Photos 1 & 2. View from front property boundary indicating extent of demolition at Nos. 82 (right) and 84 (left) Bower Street.



Photo 3 (left) View prior to demolition from No. 86 Bower Street first floor showing the location of the existing western wall of No. 84, and Photo 4 (right) indicating subsequent extent of demolition at the western side of the building.



Photo 5 (left) View prior to demolition from No. 86 Bower Street rear terrace showing the location of the existing western wall of No. 84, and Photo 6 (right) indicating subsequent extent of demolition at the western side of the building.

Conclusion:

The above consideration of the proposal shows that there is a significant departure from the existing position in relation to the proportion of the building fabric retained and demolished. As such, the proposal no longer constitutes alterations and additions as previously assessed, but rather is now considered to be for a new building.

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Notwithstanding the previously approved variation to the height of buildings and floor space ratio development standards, the proposed development does not seek any further variation. As no variation is proposed as part of this application, Clause 4.6 does not apply and the applicant is not required to make a written request.

This application seeks consent for the reconstruction/use of walls and other structures that were to be retained but have since been demolished.

The proportion of existing structures that have been retained on the site is not sufficient to assess the proposal as alterations and additions, and the development is now considered to be a new building.

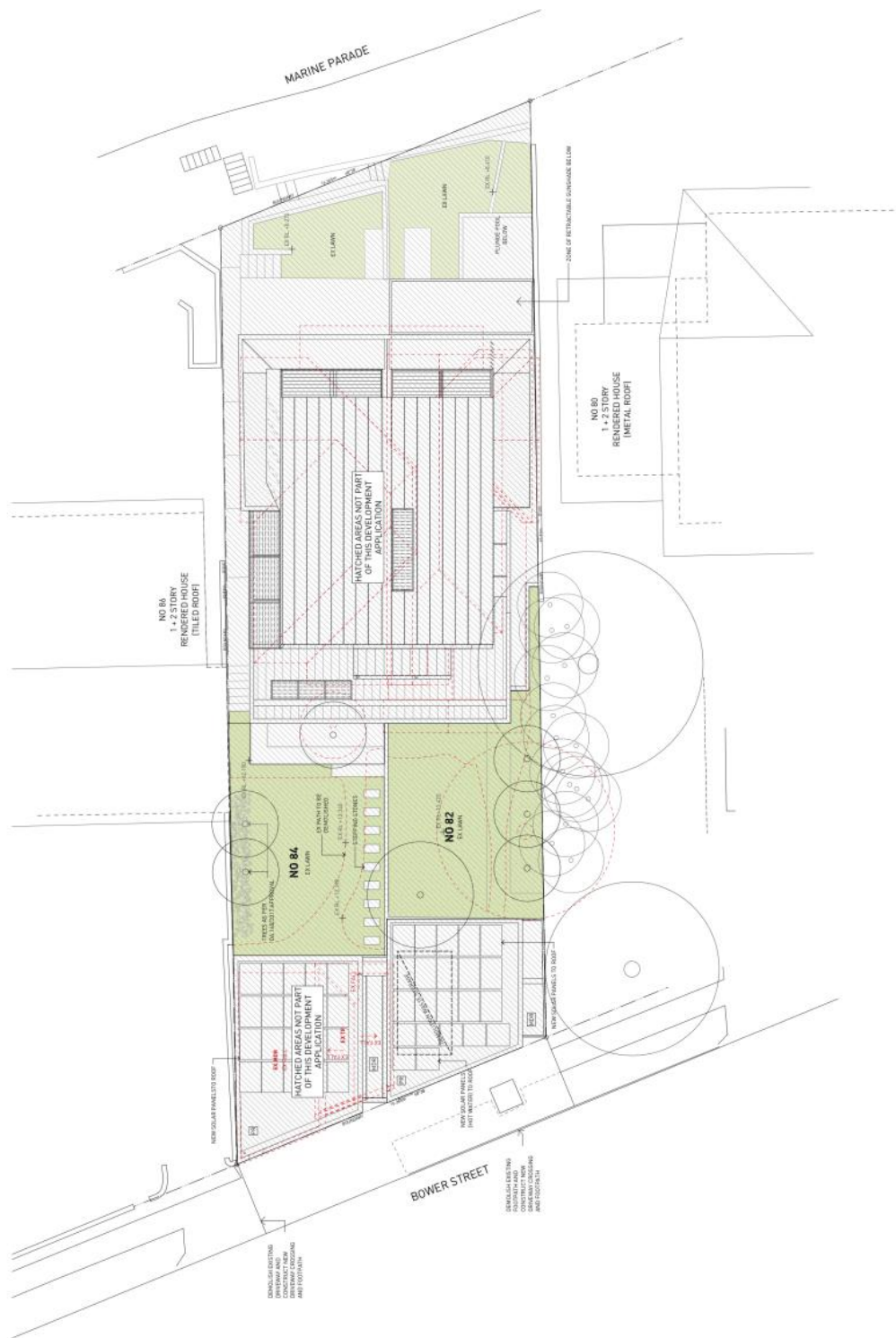
The subsequent assessment of the works as a new development concludes that the proposal is unacceptable due to the extent of non-compliance with the relevant LEP/DCP controls and the associated impacts.

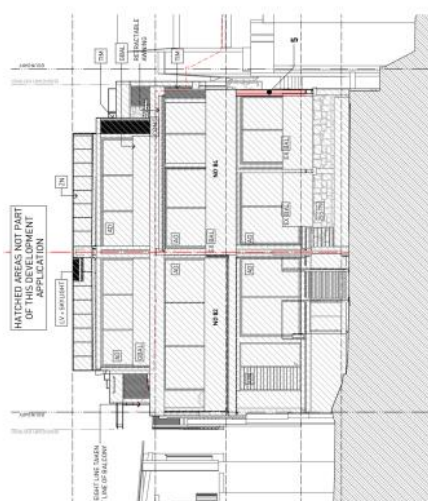
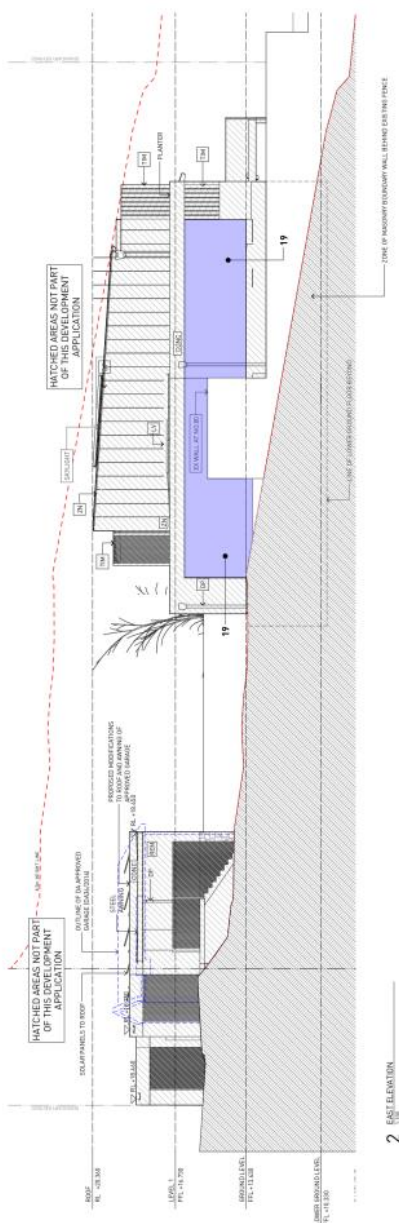
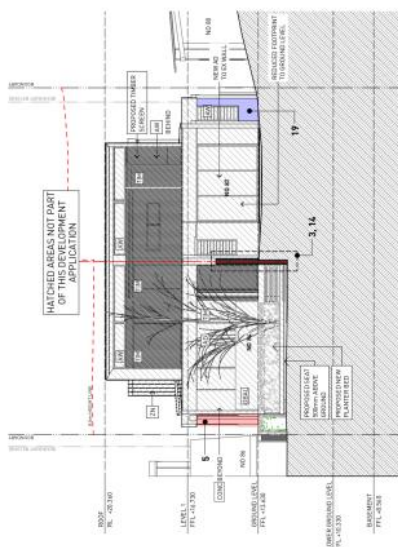
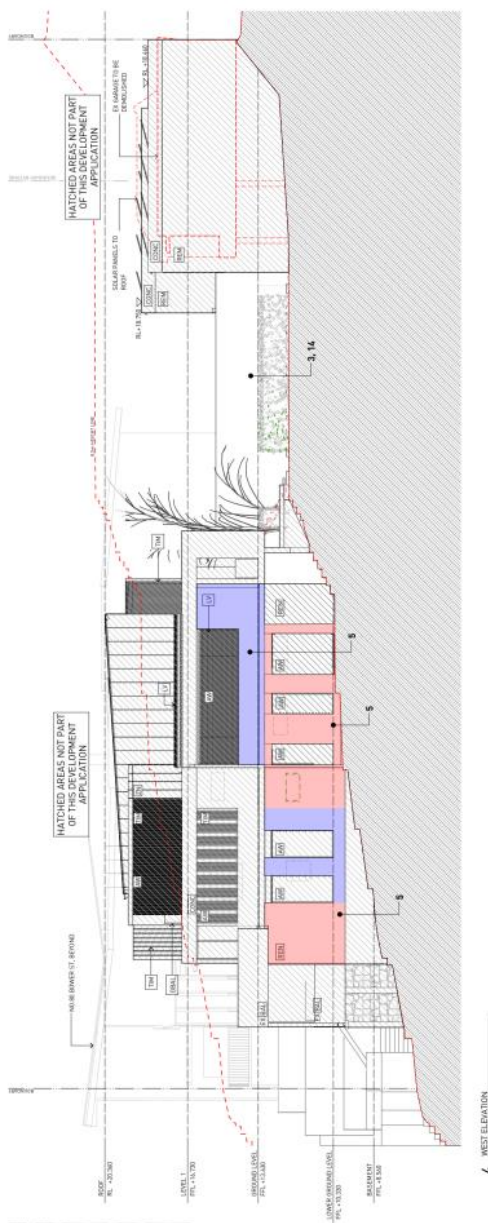
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2020/0211 for the Dual occupancy - Development Application seeking consent for the reconstruction of walls/structures that were to be retained and have been demolished, and for the use of walls/structures that were to be retained, but have been demolished and rebuilt on land at Lot 5 DP 8075,82 - 84 Bower Street, MANLY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E3 Environmental Management of the Manly Local Environmental Plan 2013. Specifically, the development is not considered to have suitable regard for the impact to surrounding properties/land uses as a new development within the E3 zone.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013. Specifically, the extent of the variations to the height of buildings and floor space ratio development standards are unacceptable for a new development in the context of the surrounding area.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan. Specifically, the side setback non-compliances provide insufficient physical separation, resulting in a development that is out of character with comparable new constructions in the surrounding area and significantly increasing the potential for amenity/privacy impacts to adjoining properties.



NORTH ELEVATION
1:1000

3 SOUTH ELEVATION

[illegible]

DOCUMENT
ELEVATIONS

DOCUMENT
DEVELOPMENT APPLICATION

DATE
REV A 18/12/19

TAKE
DATA SUBMISSION

SUBJECT FABRIC TO BE RECONSTRUCTED

Personal Name
 Submit only drawings with Personal Data on this tag.
 Worth all drawings on site prior to commencement & report
 discontinuance to the architect.
 Drawings depict the scope of work and general not. These drawings are
 not shop drawings. Set and title to be submitted by November on this. Shop
 drawings should be prepared when required by supervisory

LEGEND

Refer to the minimums for legend that includes further notes and
 explanation of all materials

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