

# 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 12 AUGUST 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**

Peter Biscoe	Chair
Brian Kirk	Town Planner
Annelise Tuor	Town Planner
John Simmonds	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 12 August 2020  
Commencing at 1.00pm**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 29 July 2020	
<b>3.0</b>	<b>DEVELOPMENT APPLICATIONS .....</b>	<b>5</b>
3.1	DA2020/0448 - 25 Richard Road, Scotland Island - Construction of a boat shed, jetty and associated works .....	5
3.2	DA2019/1398 - 3/63-67 The Corso, Manly - Alterations and additions to an existing building to facilitate shop top housing containing 12 apartments including the construction of a pergola and lift overrun to the roof terrace.....	43
3.3	DA2019/1260 - 27-29 North Avalon Road, Avalon Beach - Demolition works and construction of a Seniors Housing development comprising 10 self contained dwellings and site consolidation.....	134

## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 29 JULY 2020**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 29 July 2020 were adopted by the Chairperson and have been posted on Council's website.

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### 3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	DA2020/0448 - 25 RICHARD ROAD, SCOTLAND ISLAND - CONSTRUCTION OF A BOAT SHED, JETTY AND ASSOCIATED WORKS
AUTHORISING MANAGER	STEVE FINDLAY
TRIM FILE REF	2020/453028
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plan and Elevations 3 <a href="#">↓</a> 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.

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#### 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. DA2020/0448 for construction of a boat shed, jetty and associated works at Lot 38 DP 12749, 25 Richard Road, Scotland Island subject to the conditions and for the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0448
<b>Responsible Officer:</b>	Ashley Warnest
<b>Land to be developed (Address):</b>	Lot 38 DP 12749, 25 Richard Road SCOTLAND ISLAND NSW 2105
<b>Proposed Development:</b>	Construction of a boat shed, jetty and associated works
<b>Zoning:</b>	E3 Environmental Management
<b>Development Permissible:</b>	Yes - Zone E3 Environmental Management No - Zone W1 Natural Waterways
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Paul John Anink Marie-Louise Lissone-Gerbracht
<b>Applicant:</b>	Stephen Crosby & Associates
<b>Application Lodged:</b>	07/05/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	20/05/2020 to 03/06/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 27.5%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 181,760.00

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

The proposal is for the construction of a boat shed and associated works and involves a variation to the Height of Buildings development standard of the Pittwater Local Environmental Plan 2014 (PLEP 2014) of 27.5%. Despite the numeric non-compliance, the proposal is not considered to result in unreasonable bulk, scale or amenity impacts as viewed from the adjoining Pittwater Waterway or adjoining properties.

As a result of the public exhibition of the application, Council received no submissions. The proposed development is generally compliant with the numeric controls under the Pittwater 21 Development Control Plan (P21DCP).

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**

Development consent is sought for the demolition of the existing boatshed and construction of a new boatshed.

### **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 - Zone W1 Natural Waterways  
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area  
Pittwater 21 Development Control Plan - D15.15 Waterfront development

### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 38 DP 12749 , 25 Richard Road SCOTLAND ISLAND NSW 2105
<b>Detailed Site Description:</b>	The subject site consists of one allotment located on the south-western side of Richard Road.

The site is irregular in shape with a waterway frontage of 15m along Pittwaterwaterway and a depth of 54m. The site has a surveyed area of 701.9m<sup>2</sup>.

The site is located within the E3 Environmental Management zone and accommodates an existing single storey dwelling.

The site contains several native canopy trees throughout the site.

#### Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by similar one and two storey residential dwelling houses with jetties and boatsheds.

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:

- Development Application - N0047/13  
Alterations and additions to the existing shared jetty. Determined 09/05/2013

### **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)	<p>Division 8A of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b></p>

Section 4.15 Matters for Consideration'	Comments
	<p>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in regards to this application.
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 Planning for Bushfire Protection Pty. Ltd., dated 18/10/15) 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 (unsewered lands)	<p><b>General Comments</b></p> <p>no floor plan was given, so Environmental Health can not look at any wastewater aspects</p> <p>Therefore will add a condition that no plumbing is to be installed or exist within in the boat-shed</p>

Internal Referral Body	Comments
	<p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the requirements of Pittwater LEP cl 7.6 Biodiversity P21 DCP cl B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community SEPP (Coastal Management ) 2018 cl 13 Development on land within the coastal environment area</p> <p>No trees are proposed to be removed to accommodate the new boatshed and the works are to be undertaken to ensure that there will be no impact of damage to any root systems. The development is proposed in the area of least impact on PSGF or core bushland and there will be no significant net loss of PSGF vegetation. Therefore the development complies with the above controls as it is designed, sited and will be managed to avoid an adverse impact.</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><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b> As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p>

Internal Referral Body	Comments
	<p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Marine Pollution Research Pty. Ltd. dated 28 October 2018, 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><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p><b>Estuarine Risk Management</b></p> <p>In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.8m 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 0.08m 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 Statement of Environmental Effects (SEE) report prepared by Marine Pollution Research Pty. Ltd. dated 28 October 2018, the ground floor level for the proposed boatshed is 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.</p>

Internal Referral Body	Comments
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against</p> <p><b>Fisheries Management Act 1994</b></p> <p><b>Pittwater Local Environment Plan 2014</b></p> <p><b>State Environment Planning Policy (Coastal Management) 2018</b> Part 2, Division 3, Clause 13</p> <p><b>Pittwater 21 Development Control Plan</b> B4.16 Seagrass Conservation B4.19 Estuarine Habitat      B4.20 Protection of Estuarine V B8.2 - Erosion and Sediment Management</p> <p>This application proposes a shared jetty refurbishment, extension and repair of an existing boatshed with a walkway for pedestrians. The overall footprint of the boatshed will not be significantly increased as it utilises part of the existing footprint. Although there is a slight extension over the high intertidal rock seabed, it is unlikely to cause an adverse impact to the environment as there is no marine vegetation in this location. The riparian habitat at the posterior of the boatshed comprises of the Endangered Ecological Community - Pittwater Gum Forest, this is unlikely to be impacted due to the utilisation of the existing boatshed footprint, negating the need to clear any vegetation. Dredging is included in this application, if it is deemed that dredging is necessary at any time during the construction an application must be made to both Council and the Department of Primary Industries.</p> <p>The surrounding environment is of high ecological value. The sand flats provide a suitable foraging habitat for fishing &amp; wading birds, furthermore seagrass <i>Zostera capricorni</i>, <i>Posidonia australis</i> and the invasive green alga <i>Caulerpa taxifolia</i> are located in the vicinity of the proposed works.</p> <p>Any impacts to the environment are likely to occur during the construction and therefore all precautions must be undertaken to reduce these impacts including:</p> <ul style="list-style-type: none"> <li>• Installation of a sediment curtain downstream of the construction</li> <li>• Waste to be collected and disposed of off site at a licensed facility</li> <li>• Avoid stockpiling of machinery, waste and materials on seagrass intertidal areas</li> <li>• Wash down of machinery before leaving the site to reduce the spread of the invasive alga <i>Caulerpa taxifolia</i></li> </ul> <p>By incorporating these measures it is unlikely that this proposal will have impacts on the ecological, biophysical and hydrological environment, and is therefore recommended for approval subject to conditions.</p>

Internal Referral Body	Comments
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. These recommendations will be included as a condition of consent.

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

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

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

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

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

##### SEPP 55 - Remediation of Land

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

##### SEPP (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.

#### 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. These recommendations will be included as a condition of consent.

### 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 not likely to cause an adverse impact upon the matters identified in this clause. The proposed alterations and additions do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

- (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

Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause.

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

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
- (a) *has considered whether the proposed development is likely to cause an adverse*

*impact on the following:*

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

#### Comment

The proposal does not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected and the surrounding area consists of examples of similar developments.

The foreshore area is mapped as having a high likelihood of containing Aboriginal heritage sites. The foreshore area is heavily modified and no sites have been identified within the vicinity of the proposed development. The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. A condition of consent has been imposed to stop works if any Aboriginal Engravings or Relics are unearthed.

#### **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

Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.

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?	Zone E3 : Yes Zone W1 : 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 E3 : Yes

	Zone W1 : Yes
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#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	4m	5.1m (above 1.17 AHD)*	27.5%	No

\*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.

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
3.1 Exempt development	Yes
3.3 Environmentally sensitive areas excluded	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	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

##### Zone W1 Natural Waterways

The proposed works are prohibited within the W1 Natural Waterways Zone as identified by the land use table of PLEP 2014. However, the works are permitted with consent by virtue of clause 2.5 (Additional Permitted Uses) of PLEP 2014 as the proposed works are wholly located within Area 23 on the Additional Permitted Uses Map of PLEP 2014.

##### 4.6 Exceptions to development standards

###### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	4m
Proposed:	5.1m (above 1.17 AHD)*
Percentage variation to requirement:	27.5%

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

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

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment

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

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

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

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

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

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

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

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

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

Comment

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the

objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

#### Comment

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- The height of the boat shed is entirely consistent in terms of form and height with the guidelines prescribed within 21DCP, Clause D15.15.
- The ridge height and scale of the proposed boat shed is not dissimilar to many previously approved structures built within the Scotland Island locality.
- The proposal will not result in any overshadowing of neighbouring properties due to the location of the boat shed partly over water, and the rising slope of the adjoining sites where dwellings are located. 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 boat shed will appear consistent with the desired character of the Pittwater Waterway.

It is agreed that the development is visually consistent in terms of height, bulk and scale of surrounding waterfront development, and that the breach of the height limit (located towards the south-west portion of the boatshed) will not result in any unreasonable 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 cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

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

**Objectives of development standard**

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

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

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

Comment

The proposal seeks a maximum height of 5.1m (6.2 AHD) resulting in a variation of 27.5% (1.1m). The variation will not contribute to an adverse bulk and scale. Boatsheds are common development within the Lower Western Foreshores and Scotland Island locality and proposed height and scale is consistent with the design requirements within clause D15.15 of P21DCP. In turn, the proposed development is considered to be consistent with the desired character of the locality.

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

Comment

The encroachment of the height of buildings development standard will not be discernible when viewed from the Pittwater Waterway. The boatshed is to be constructed at a finished floor level of 1.7 AHD which is consistent with the surrounding examples of boatsheds. It is noted that the proposed boatshed has a pitched roof where other examples in the vicinity have flat roofs. The proposed height and scale of the boatshed complies with the design requirements within clause D15.15 of P21DCP.

*c) to minimise any overshadowing of neighbouring properties,*

Comment

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

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

Comment

Views currently enjoyed by adjoining and surrounding dwellings due to the topography of the area and the retention of existing vegetation.

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

Comment

The majority of the boatshed is located on the existing retained section of the foreshore minimising any required disturbance to the sea bed. The location of the boatshed will not impact upon any trees onsite.

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

Comment

There are no identified heritage items in the vicinity. To ensure the retention of any items that are found during construction a condition of consent will be imposed for potential items be referred to the Aboriginal Heritage Office.

## **Zone objectives**

The underlying objectives of the W1 Natural Waterways zone area:

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

Comment

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

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

Comment

The proposal has been reviewed by Council's Biodiversity, Riparian and Coastal Officers, having regard to the management of the natural environment and have raised no objection to the development subject to conditions. Further, the proposal has also been reviewed by DPI Fisheries who are also satisfied with the proposal. It is considered no unreasonable effects will be inflicted on the natural values of the waterway.

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

Comment

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

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

Comment

The proposal has been reviewed by DPI Fisheries who have raised no objection to the proposal. Further, the RMS have confirmed via their letter of correspondence dated 1 March 2019, that there are no navigational concerns regarding the designed proposal.

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

Comment

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

Conclusion:

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

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

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

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

**7.8 Limited development on foreshore area**

A portion of the proposed boatshed is located within the foreshore area. Clause 7.8 of PLEP 2014 identifies that consent can be granted for development on land in the foreshore area for the purpose of boatsheds.

The proposed boatshed is consistent with development in the surrounding area and does not appear excessive when viewed from the public foreshore area. Public access along the foreshore area is not obstructed or discouraged by the proposal and a reasonable level of amenity to Pittwater Waterway is

maintained. The proposed works will be not adversely impact upon the natural foreshore processes.

The proposed works with consideration of the above are supported.

### Pittwater 21 Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	Complies
Front building line	6.5m	N/A	Yes
Rear building line	Foreshore building line applies	N/A	Yes
Side building line	2.5m (north-west)	7.3m	Yes
	1m (south-east)	2m	Yes
Building envelope	3.5m	Within envelope	Yes
	3.5m	Within envelope	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	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	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	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
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	Yes	Yes
D8.6 Side and rear building line	Yes	Yes
D8.8 Building envelope	Yes	Yes
D8.9 Landscaped Area	Yes	Yes
D8.14 Parking management	Yes	Yes
D8.15 Site disturbance	Yes	Yes
D8.16 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes
D15.18 Seawalls	Yes	Yes
D15.19 Dredging	Yes	Yes

#### Detailed Assessment

#### **D15.15 Waterfront development**

##### *c) Boatsheds*

The proposed boatshed complies with the prescribed requirements for boatsheds. It is noted the the eaves of the boatshed project beyond the maximum width and depth however, as the structure of the boatshed complies with the 4m x 6m maximum size requirement it is consistent with the requirements of the control.

##### *d) Slipways and Launching Ramps*

The control identifies that slipways and ramps are generally not favoured however, the proposed ramp

meets the permitted variation requirements. The proposed ramp extends from the top of the existing sea wall and decking associated with the boat shed, so as to minimise the height of the ramp as viewed from the Pittwater Waterway. Further, the ramp is to be constructed out of timber and no slip rails are proposed. In this regard, the proposed ramp satisfies the prescribed criteria and is therefore supported.

#### **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 \$ 909 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 181,760.

#### **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 Environment 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 proposal includes a numeric non-compliance with clause 4.3 Height of buildings of PLEP 2014

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 DA2020/0448 for Construction of a boat shed, jetty and associated works on land at Lot 38 DP 12749, 25 Richard Road, SCOTLAND ISLAND, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2135 - DA 01 and DA 02	September 2018	Stephen Crosby and Associates Pty. Ltd.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Coastal Engineering Report	29/10/2015	Cardno
Geotechnical Report	02/11/2015	White Geotechnical Group

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

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

Other Department, Authority or Service	EDMS Reference	Dated

Ausgrid	Ausgrid Referral Response	15/06/2020
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(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

### 3. Prescribed Conditions

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

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

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

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

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

Reason: Legislative requirement.

#### 4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

occurs on Council's property.

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

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

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

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2008
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$908.80 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 \$181,760.00.

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

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

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

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

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

### 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 are required 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, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

#### 7. 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.

#### 8. 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.

#### 9. Estuarine Planning Level Requirements

An Estuarine Planning Level (EPL) of 2.8m 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 2.8m 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 2.8 m 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 2.8m AHD.
- All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.8m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.8m 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

10. **Engineers Certification of Plans**

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

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

11. **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.

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

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 seagrass

13. **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

14. **Dredging works**

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

Reason: Protection of the environment.

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

15. **Environmentally sensitive construction**

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

Reason: Protection of seagrass

16. **Preventing the spread of invasive alga**

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

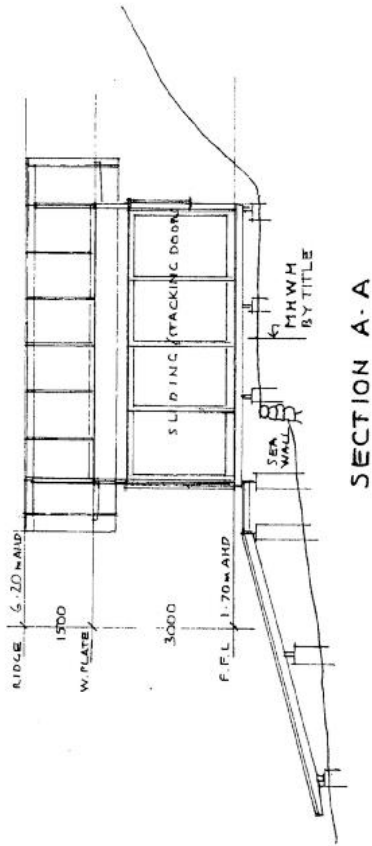
Reason: Protection of the environment

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

17. **Plumbing**

No plumbing or wastewater generation is to take place within the boat shed.

Reason: no provision has been made for wastewater



SECTION A-A

Prepared by  
**Stephen Crosby & Assoc.  
Pty. Ltd.**

Date  
**SCOTLAND ISLAND**  
PO Box 204 Church Pt. NSW 2105  
M: 081047533 E: scrosby@remodec.com.au

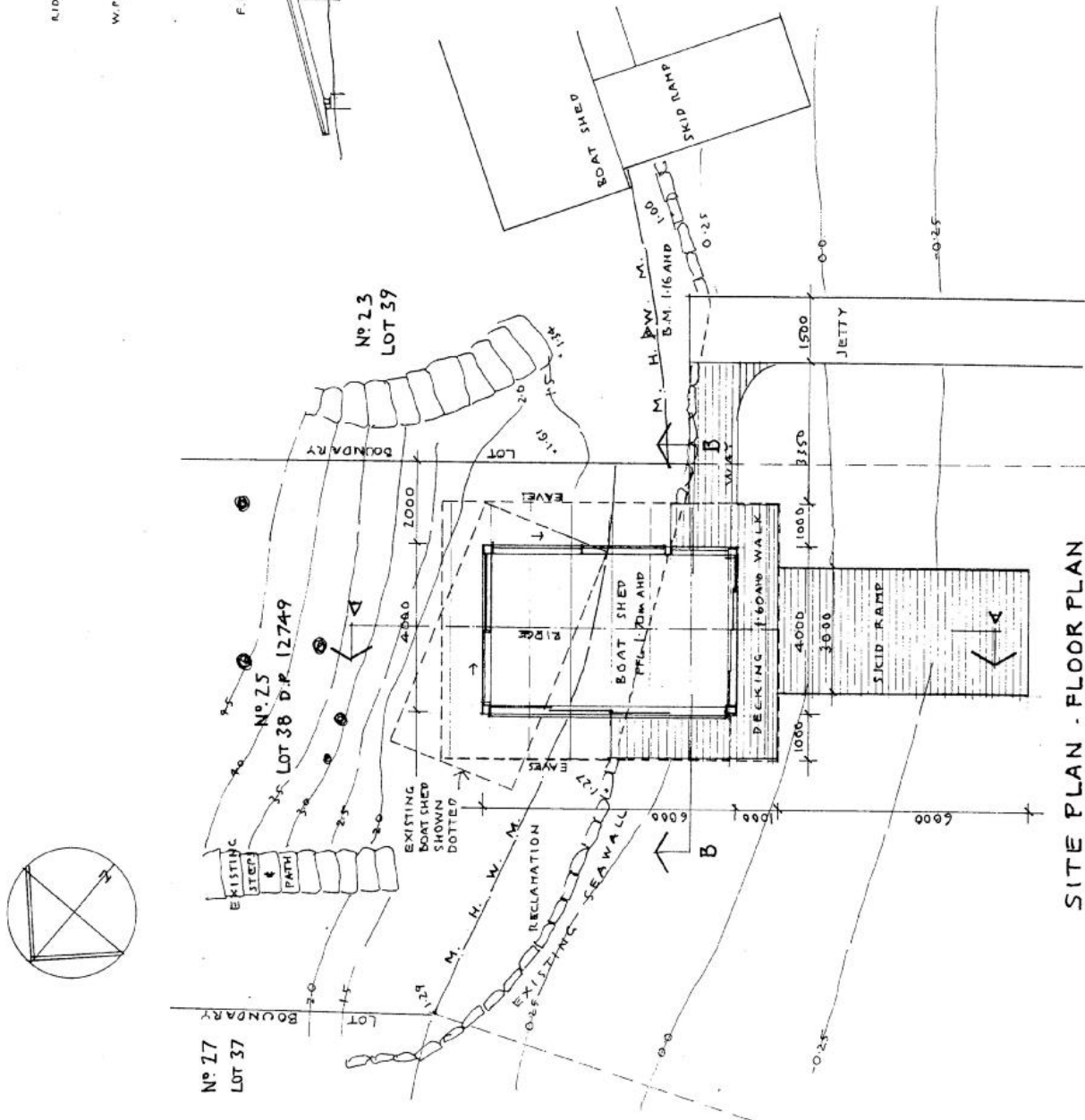
**BOAT SHED  
& SKID RAMP**  
25 RICHARD RD.  
SCOTLAND ISLAND  
Lot 38 DP 12749

For  
**P. ANNK & M. LUSOME**  
Drawing

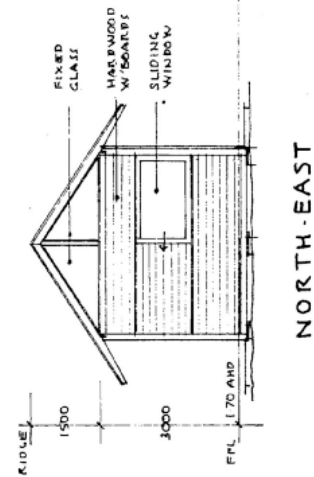
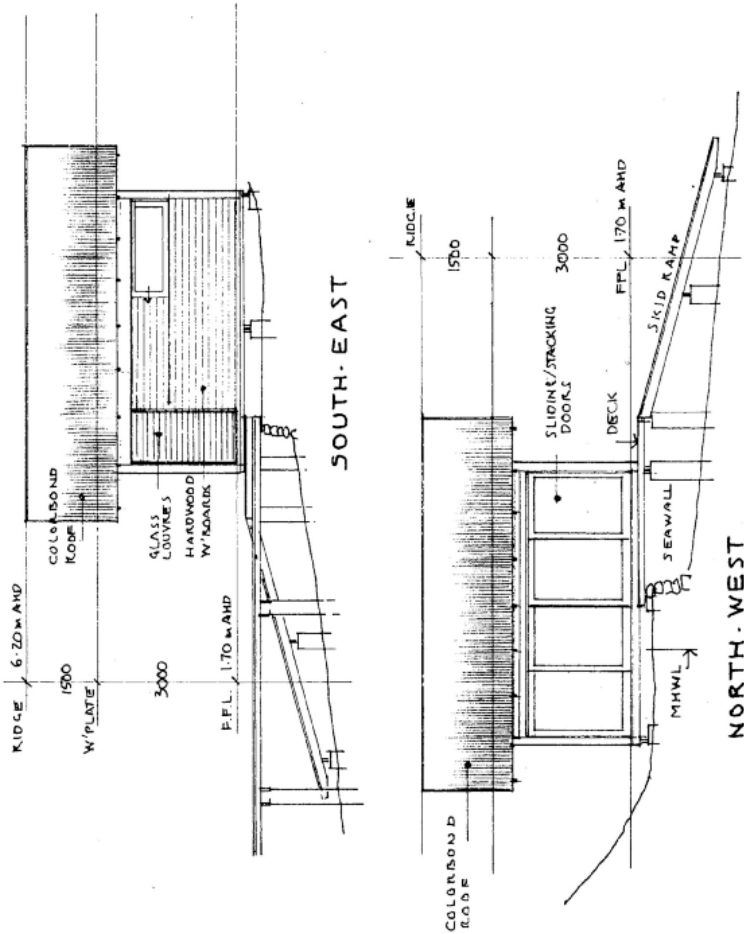
## SITE PLAN & SECTION

Scale 1:100 AT A3  
Date SEPTEMBER 2018  
Drawn S.C.  
Drawing Number

2135 - DA 01



SITE PLAN - FLOOR PLAN



Stephen Crosby & Assoc.  
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**BOAT SHED  
& SKID RAMP**  
25 RICHARD RD.  
SCOTLAND ISLAND  
Lot 38 DP 12749

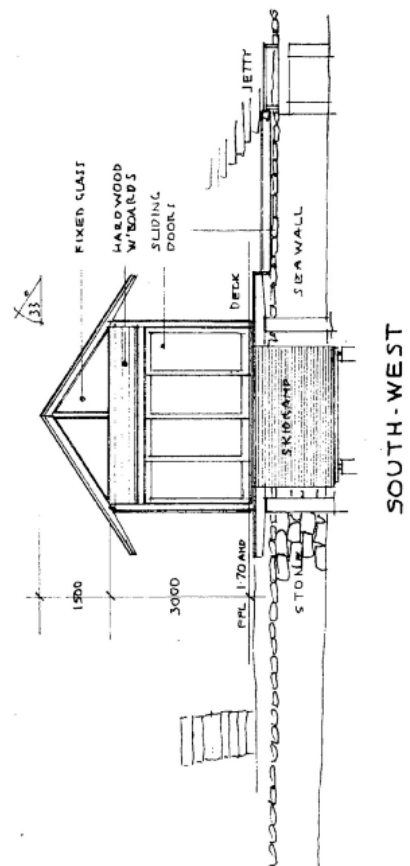
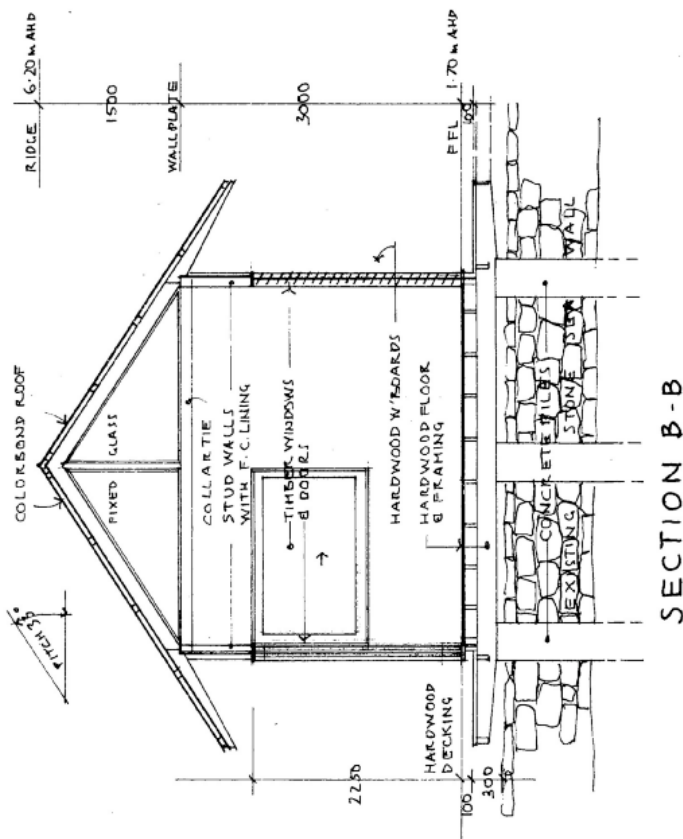
For: P. ANINK & M. LISOVE

Drawing

**ELEVATIONS  
& SECTION**

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Date: SEPTEMBER 2018  
Drawn: E.C.  
Drawing Number:

2135- DA 02



## **Clause 4.6 Variation Request Clause 4.3 Height of Buildings**

**25 RICHARD ROAD. SCOTLAND ISLAND  
Lot 38 DP 12749**

**Date:** 21<sup>st</sup> April 2020

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

**For:** P. Anink & M-L Lissone

## 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 1.70m AHD and the ridge is 6.20m 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 1.03m.

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 on Scotland Is. and in Elvina and Lovett Bays, 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 partly 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 just behind 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 Scotland Island 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**

**DA2019/1398 - 3/63-67 THE CORSO, MANLY - ALTERATIONS AND ADDITIONS TO AN EXISTING BUILDING TO FACILITATE SHOP TOP HOUSING CONTAINING 12 APARTMENTS INCLUDING THE CONSTRUCTION OF A PERGOLA AND LIFT OVERRUN TO THE ROOF TERRACE**

**AUTHORISING MANAGER ANNA WILLIAMS**

**TRIM FILE REF 2020/453052**

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

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**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 and Floor Space Ratio Development Standard of Clause 4.4 of MLEP 2013 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. DA2019/1398 for alterations and additions to an existing building to facilitate shop top housing containing 12 apartments including the construction of a pergola and lift overrun to the roof terrace at Lot 3 SP 67337, 3/63 - 67 The Corso, Manly subject to the conditions and for the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/1398
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<b>Responsible Officer:</b>	Tony Collier
<b>Land to be developed (Address):</b>	Lot 3 SP 67337, 3 / 63 - 67 The Corso MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and additions to an existing building to facilitate shop top housing containing 12 apartments including the construction of a pergola and lift overrun to the roof terrace
<b>Zoning:</b>	Manly LEP2013 - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Sangrow Pty Ltd
<b>Applicant:</b>	Sangrow Pty Ltd

<b>Application Lodged:</b>	06/12/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	11/01/2020 to 25/01/2020
<b>Advertised:</b>	11/01/2020
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 51% 4.4 Floor space ratio: 1.7%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 2,395,394.00
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### EXECUTIVE SUMMARY

The proposal involves an adaptive re-use of an existing mixed-use building which is currently occupied by backpackers accommodation with ground floor retail premises. Therefore, the proposal seeks consent for alterations and additions and the change of use of the existing backpacker accommodation component to shop top housing.

The building is located with the B2 Local Centre zone and within The Corso. The building is listed under the Manly Local Environmental Plan 2013 as being part of 'Item I106 - Group of Commercial Buildings'. With minor exception to the roof top terrace, the development retains the external fabric of the building, with the works occurring entirely within the building footprint.

The assessment has found that the proposed development is satisfactory in relation to built form, character, streetscape, heritage impact and, on balance given the adaptive nature of the proposal, with respect to internal and external residential amenity.

The public exhibition of the proposal did not attract any submissions.

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

### PROPOSED DEVELOPMENT IN DETAIL

The following describes changes to existing Strata Part Lot 3. Strata Part Lots 1 and 2 (which solely consist of existing retail outlets on the ground floor) remain unchanged.

In detail, the development consists:

#### Ground Floor (RL 4.93)

- Replace the existing lobby with a new residential lobby (facing Market Place).
- Add a new retail outlet adjacent to the residential lobby (facing Market Place).
- Addition of bi-fold doors to the new retail outlet (facing Market Place).
- Add a new retail outlet (facing The Corso).
- Addition of residential bin storage area adjacent to the common area (facing Market Place).

#### Mezzanine Level (RL 7.80)

- Adaptable re-use of the existing floor level to accommodate 2 x 1 bedroom apartments (Apartments 01 and 02 facing Market Place).

#### Level 1 (RL 10.70)

- Adaptable re-use of the existing floor level to accommodate four apartments. The apartments include:
  - 2 x 1 bedroom apartments (Apartments 03 and 06 facing Market Place).
  - 2 x 2 bedroom apartments (Apartments 04 and 05 facing The Corso).
- Adaptable re-use of the existing floor level to accommodate the bedrooms of Apartments 09 and 10.
- Extension of the floor level into the side void areas to accommodate a dining room to Apartments 04 and 05.
- Installation of balconies (winter gardens) to Apartments 04 and 05 behind the existing facade facing The Corso.

#### Level 2 (RL 13.65)

- Adaptable re-use of the existing floor level to accommodate four apartments. The apartments include:
  - 2 x 1 bedroom apartments (Apartments 07 and 12 facing Market Place).
  - 2 x 2 bedroom apartments (Apartments 08 and 11 facing The Corso).
  - 2 x 1 bedroom apartments (Apartments 09 and 10 facing The Corso).

- Installation of balconies to Apartments 08, 09, 10 and 11 behind the existing facade facing The Corso.

#### Roof Level (RL 16.60)

- Replacement of the existing centrally located communal area with a new centrally located communal roof terrace area to accommodate:
  - Seating, BBQ facilities and tables.
  - Landscaping.
- New lift shaft and bridge from terrace to the lift.

Note: The existing facade to The Corso and Market Place will be retained in situ.

The estimated cost of works has been prepared by a Quantity Surveyor registered with the Australian Institute of Quantity Surveyors.

### **ASSESSMENT INTRODUCTION**

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

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

### **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
Manly Local Environmental Plan 2013 - 6.16 Gross floor area in Zone B2

### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 3 SP 67337 , 3 / 63 - 67 The Corso MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment which is Strata subdivided into three (3) lots (being Part Lots 1, 2 and 3).</p> <p>The site is located at the northern end of The Corso and</p>

enjoys frontages to both The Corso and Market Place. Both streets are pedestrianised.

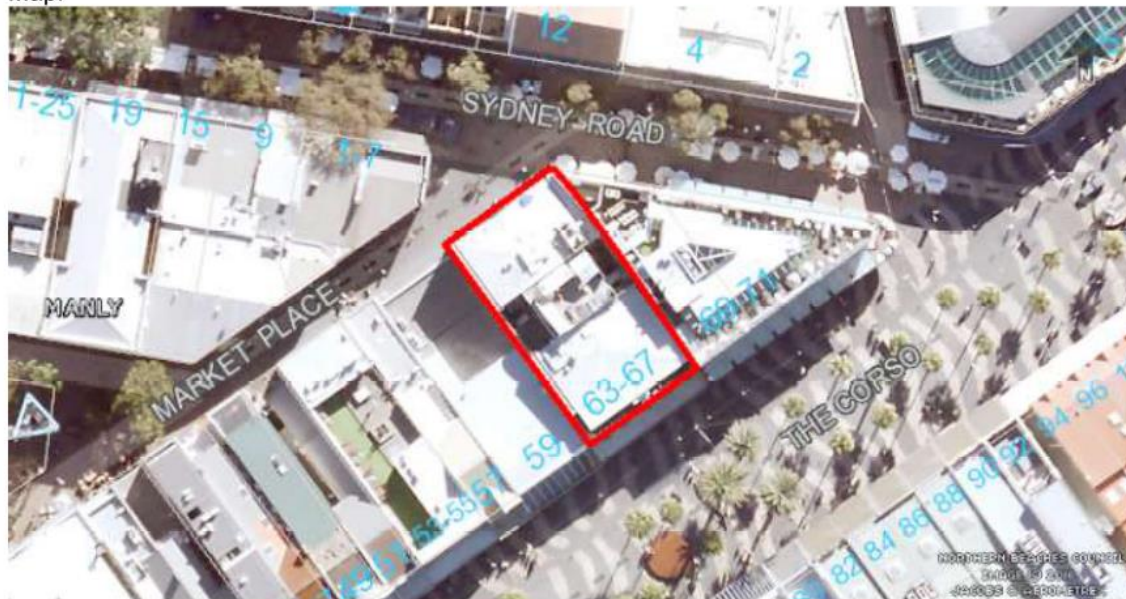
The site is generally rectangular in shape with a frontage of 16.385m to the Corso, a frontage of 14.860m to Market Place and an average depth of 27.88m. The site has a surveyed area of 490.3m<sup>2</sup>.

The site is located within the B2 Local Centre zone and accommodates a mixed use development comprising retail outlets at the ground and mezzanine floor levels and backpackers' accommodation within the three (3) levels above.

The site has a slight downward slope of 0.34m from The Corso to Market Place although this is not noticeable because the topography has been altered to accommodate the existing building.

Adjoining and surrounding development is characterised by commercial development comprising retail outlets and the neighbouring three (3) storey hotel immediately to the north.

Map:



## SITE HISTORY

Council's records reveal that the site was used as a retail premises by Woolworths until 1999 when the site was subject to a development application (DA201/98) for alterations and additions to the existing two storey retail building to create a 3 storey development containing retail and backpacker accommodation.

The following application is relevant to the current proposal:

#### DA2019/0250

This application was lodged on 13 March 2019 for alterations and additions to the existing building to facilitate shop top housing. The development included fifth floor addition of a contemporary design.

A letter was sent to the applicant on 17 April 2019 advising that the application could not be supported for the following reasons:

- Building height and FSR.
- Heritage impact.

The application was subsequently withdrawn by the applicant on 10 May 2019.

#### 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 commercial and residential purposes for an extended period of time. The proposed development retains the commercial and residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including</p>

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

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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

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

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application was referred to Council's Building Assessment Team with respect to compliance with the Building Code of Australia, disability access and fire requirements. The following comments have been provided:</p> <p><u>Response 1</u></p> <p><i>"The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</i></p> <p><i>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p> <p><i>It is noted that the Access Report by Urban Health Access and Heritage Consultants provided with this application is not relevant to the subject building. The applicant should be required to provide an new Access Report for consideration".</i></p> <p>An amended Access Report was submitted to Council on 3 February 2020 and forwarded to Council's Building Assessment Team for review. The following additional comments have been provided:</p> <p><u>Response 2</u></p> <p><i>"The Access Report dated 6/11/2019 prepared by Richard Brew of Urban Health Consultants Pty Ltd has been reviewed. The original condition in my referral report relating to "Access for People with Disabilities" is required to be <u>retained</u>. No further conditions are necessary".</i></p> <p>The recommendations contained in the Access Report are included within the draft conditions of consent.</p>
Environmental Health (Industrial)	<p>The application was referred to Council's Environmental Health Team to review the acoustic report provided on behalf of the applicant by Acoustic Dynamics, 4198R001.LB.200501 ('the report'). The following comments have been provided:</p> <p><i>"The purpose of 'the report' is to assess external impacts of the established Local Centre on the proposed residential premises. This approach was of particular importance given that 'Manly Corso' is identified as a future '24 hour Night Time Economy' precinct. This initiative is likely lead to raised background sound levels during the night-time period (10pm-7am) that could potentially cause sleep disturbance for residents and an overall raised background level</i></p>

Internal Referral Body	Comments
	<p><i>through the day and evening periods that could potentially impact on residential amenity.</i></p> <p><i>Section 4 of 'the report' provided internal and external construction recommendations that can be conditioned to ensure noise from external sources will be adequately mitigated.</i></p> <p><i>Internal floors, walls and ceilings between residential units and the existing retail are required to comply with BCA acoustic requirements. BCA compliance to be assessed by the Principle Certifying Authority.</i></p> <p><i>'The report' has highlighted the importance of 'fresh air' ventilation and Council is in agreement that for any noise attenuation to be effective, each individual unit will need to be adequately ventilated to ensure the residents can keep windows closed during peak external noise periods.</i></p> <p><i>Acoustic dynamics have provided options for passive ventilation systems in 'the report' and mechanical ventilation is also a viable option. The Statement of Environmental Effects references 'natural ventilation' however this may not be sufficient if windows need to be kept close for effective noise attenuation.</i></p> <p><i>As there is no proposal for mechanical ventilation, Council will condition that each residential unit is to have a passive system installed as recommended in section 4.4 of 'the report' or a mechanical ventilation system.</i></p> <p><i>Recommendation: Approval - Subject to conditions".</i></p> <p><i>The conditions imposed by Environmental health, together with the recommendations contained in the acoustic report are included in the draft conditions of consent.</i></p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The application was referred to Council's Stormwater and Floodplain Engineering team for review. The following comments have been provided:</p> <p><i>"The development proposes change of use, internal alterations and extensions (vertical). Subject to conditions, the development complies with Council's flood prone land controls".</i></p> <p>The conditions imposed by Council's Stormwater and Floodplain Engineering team are included in the draft conditions of consent.</p>
Strategic and Place Planning	<p>The application was referred to Council's Strategic and Place Planning department for review, particularly given the context of the work currently being undertaken with the Local Strategic Planning Statement (LSPS), controls for a consolidated Northern Beaches Local Environmental Plan and Development Control Plan together with associated studies and documents such as a Place Plan for Manly. The following comments have been provided:</p>

Internal Referral Body	Comments
	<p><i>"I understand that the DA is for alterations and additions, and change of use to shop-top housing. I understand the 3 storey building located right on and accessible from The Corso and has service access from the rear, via Market Place. This 3 storey building is currently a mixed-use, with retail at ground level and backpacker accommodation in upper 2 levels. The SEE submitted with this DA states that 'the proposed residential accommodation includes a total of 12 apartments comprising 8 x 1 bedroom and 4 x 2 bedroom domiciles.'</i></p> <p><i>The following comments are limited to the adopted and any exhibited draft documents that informs the strategic planning framework applying to this property and more generally, the future role of the Manly Strategic Centre. In this context, the development undoubtedly replaces short-term tourist accommodation with resident accommodation at a location clearly identified as tourist and visitor precinct. The loss of short-term tourist accommodation offered at a specific price point is inconsistent with the vision and principles for the Manly Strategic Centre reiterated from Council's recently adopted Local Strategic Planning Statement (LSPS). An extract from the adopted LSPS relevant to Manly Centre is provided below.</i></p> <p><i>Towards 2040 Local Strategic Planning Statement, adopted by Northern Beaches Council on 25 February 2020, is the 20 year land use vision and will guide development in the Northern Beaches to the year 2040. Towards 2040 identifies the following priorities and underpinning principles as relevant to Manly Strategic Centre for its future role/vision:</i></p> <p><i><u>Priority 26 - Manly as Sydney's premier seaside destination</u></i></p> <ul style="list-style-type: none"> <li><i>• The town centre offers cultural, tourist, retail and entertainment uses.</i></li> <li><i>• Manly is an important tourist destination and the LGA's only designated late-night precinct. These uses must be balanced with the needs of Manly's residents and other specialised uses which include the International College of Management Sydney, Manly Art Gallery and Museum (one of 40 regional and public galleries in NSW), Australia's first hospice for young adults, Soldier On (a veterans' rehab centre at North Head) and Royal Far West (a provider of health and education services for country children and their families).</i></li> </ul> <p><i>The following principles underpinning this priority are to:</i></p> <ul style="list-style-type: none"> <li><i>• Balance competing land uses in Manly to serve the needs of workers, residents and visitors.</i></li> <li><i>• Protect and enhance Manly's character, identity and social significance.</i></li> <li><i>• Balance short-term accommodation for visitors with affordable housing options for residents.</i></li> </ul>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• <i>Improve public amenity and revitalise Manly's laneways.</i></li> <li>• <i>Diversify the night-time economy and minimise conflicts with residential uses.</i></li> <li>• <i>Continue Manly's function as a tourism precinct and enhance nature-based tourism opportunities</i></li> </ul> <p><u><i>Priority 29 - A thriving, sustainable tourism economy</i></u></p> <ul style="list-style-type: none"> <li>• <i>Manly is the main tourism precinct on the Northern Beaches, voted the best beach in Australia by TripAdvisor for 2018 and 2019 and the Manly Ferry is listed as #3 'must do' in Sydney after Sydney Harbour Bridge and Sydney Opera House. Cruise ships also offer full or half-day excursions to Manly.</i></li> <li>• <i>Diversifying tourism offerings beyond Manly, Palm Beach and the beaches, and beyond the summer peak, will strengthen the tourism economy. Opportunities include diversifying accommodation offerings, such as eco-accommodation (glamping), nature-based tourism and experiences such as the Coast Walk, heritage and Aboriginal culture-based tourism. Continued amenity, vibrancy and safety improvements in centres, as well as a focus on nighttime activities and artistic and cultural offerings, will enhance visitation beyond the coast. A destination management plan for the whole Northern Beaches will guide visitor economy development and growth.</i></li> </ul> <p><i>The principles underpinning Priority 29 include, among other things:</i></p> <ul style="list-style-type: none"> <li>• <i>Enable a strong tourism economy while maintaining quality of life and protecting the environment.</i></li> <li>• <i>Ensure a range of well-designed tourist accommodation in appropriate locations.</i></li> </ul> <p><u><i>Priority 30 - A diverse night-time economy wherein Manly is identified as the only designated late-night entertainment precinct in the LGA</i></u></p> <p><i>In terms of principles under Priority 30, it aims to:</i></p> <ul style="list-style-type: none"> <li>• <i>Broaden the range of night-time activities and locations.</i></li> <li>• <i>Minimise land use conflict and prevent more sensitive uses such as residential from sterilising night-time opportunities in centres.</i></li> </ul> <p><i>The following Actions relevant to Manly Strategic Centre are or will be undertaken based on resource allocation and project programming/priorities.</i></p> <ul style="list-style-type: none"> <li>• <i>Action 26.1 - Prepare a Place Plan for Manly and develop LEP</i></li> </ul>

Internal Referral Body	Comments
	<p>and DCP controls to respond to LEP studies and night-time economy to balance competing uses.</p> <ul style="list-style-type: none"> <li>• Action 29.1 - Complete the Destination Management Plan and Employment Study and use these to inform new LEP and DCP controls and planning processes to remove barriers to the tourism economy.</li> <li>• Action 29.6 - Prepare place plans that support the tourism economy; enhance visitor experiences; improve connections to the Coast Walk; and where relevant, address competing land uses.</li> <li>• Action 30.1 - Prepare a night-time economy strategy that responds to the employment study, economic development plan and destination management plan to broaden the range of night-time activities.</li> <li>• Action 30.2 - Review late-night venue controls in Manly DCP and prepare new location-specific LEP and DCP controls that address late-night venues; the shift towards smaller venues; live music; change agent noise controls; safety; flexible trading hours; and barriers to night-time temporary uses, arts, cultural and creative uses.</li> <li>• Action 30.3 - Prepare place plans, precinct plans and activation plans that support social, practical and functional activities in the evening and night-time. For the Manly Place Plan, there is a need to respond to alcohol-related violence, anti-social behaviour and tension between competing land uses.</li> </ul> <p><i>It is noted that the former Manly Council adopted the Manly 2015 Masterplan prior to amalgamation. The Masterplan identified The Corso as the 'Tourist Strip', being the primary movement corridor for tourists and visitors moving to the beach from the ferry. It should reinforce the seaside character of the place catering to the tourists who generally fill the space. Although a number of infrastructure projects have been completed/currently underway based on this Masterplan, the recently adopted LSPS requires the preparation of a Place Plan for Manly and develop LEP and DCP controls to respond to LEP studies... and night-time economy to balance competing uses (Action 26.1) which will replace the Manly 2015 Masterplan.</i></p> <p><u>Car Parking and Contributions</u></p> <p><i>I understand this property has no direct vehicular access and the development does not propose onsite resident parking.</i></p> <p><i>Although Manly DCP provisions provide an opportunity to impose a development contribution to be levied in lieu of onsite parking spaces being provided, the current applicable contribution plan does not permit this. The Northern Beaches Section 7.12 Contributions Plan will apply to DA2019/1398. This Contribution Plan does not specifically identify any parking spaces/ public parking stations being delivered In its Works Schedule.</i></p>

Internal Referral Body	Comments
	<p><i>By way of background, the provisions under Manly DCP noted that The Manly Section 94 Contributions Plan 2004 (adopted by Manly Council on 11 April 2005) collected development contributions in lieu of shortfall in onsite parking provision to fund the delivery of public car parks. On 13 July 2019, the Manly Contributions Plan was repealed by the Northern Beaches Section 7.12 Contributions Plan.</i></p> <p><i>Any off street resident parking associated with a residential development is required to be provided on the development site under the Manly DCP.</i></p> <p><i>In the event that a proponent wishes to deliver an infrastructure/money towards delivery of infrastructure external of the development site, this would need to be negotiated and agreed to by Council through a Voluntary Planning Agreement (VPA). The VPA Guideline identifies the process relating to the submission and consideration of a VPA and state "Where a developer proposes a VPA in connection with an application for instrument change or development application, it should indicate to the Council its intention to accompany its application with a VPA offer before making the application... The Council will indicate whether or not it agrees, in principle, to negotiate a VPA with the proponent after an initial consideration of the appropriateness of the VPA offer... If the VPA offer is considered appropriate, the VPA and agreed explanatory note should be drafted and should accompany the development or instrument change application to Council so that the VPA, explanatory note and application can be exhibited together."</i></p> <p><i>The advice on the VPA process however is mute as I understand there is no offer to enter into a VPA".</i></p> <p><u>Planning Comment</u></p> <p>With respect to the adopted LSPS and the vision and principles for the Manly Strategic Centre, the LSPS has no weight as an Environmental Planning Instrument and, as such, until incorporated into a Local Environmental Plan and Development Control Plan (or draft Local Environmental Plan and draft Development Control Plan), is not applicable to the development (or in the consideration of development applications pursuant to the Matters for Consideration under Clause 4.15 of the EP&amp;A Act 1979).</p> <p>With respect to the applicable Environmental Planning Instrument (i.e the Manly Local environmental Plan 2013), the development (being shop top housing) is permitted within the B2 Local Centre zone and is considered to satisfy the zone objectives.</p> <p>Although the development changes the residential component of the building from short-term backpacker accommodation to a long-term residential apartments, the residential use of the building remains similar. In this respect, consideration has been given to the question of conflict between a residential use and the night-time economy of the Manly Town Centre. In this respect, an acoustic report was requested to demonstrate how the development would achieve compatibility with</p>

Internal Referral Body	Comments
	<p>the commercial activity within the Centre. The report ('External Noise Intrusion Assessment' dated 1 May 2020) concludes that <i>"external noise impacts have been considered for all rooms overlooking The Corso, Market Place and for rooms overlooking the courtyards and wintergarden areas...with the inclusion of design recommendations, the development can be constructed to ensure the acoustic amenity of building occupants can be adequately protected"</i>. The Report has been reviewed by Council's Environmental Health Department who concur with the recommendations of the Report subject to the imposition of a condition to address passive ventilation to each apartment. In this regard, the development is considered to achieve compatibility with the night-time economy of the Centre.</p>
Strategic and Place Planning (Heritage Officer)	<p>The application was referred to council's Heritage Officer for review. The following comments have been provided:</p> <p><i>"The proposal is seeking consent for alterations and additions to the existing building to facilitate a change of use from a mixed-use building containing ground floor retail uses with backpacker accommodation above to shop top housing.</i></p> <p><i>The Market Place entry and adjacent retails are reconfigured to accommodate a residential entrance lobby including a lift access.</i></p> <p><i>The existing second floor is proposed to have 6 apartments with a new southern facade which is recessed in the centre but infills on both sides. This recess is encouraged by Heritage but the existing corner recess is recommended to be retained.</i></p> <p><i>The proposed lift shaft and the pergola structure are above the height of the existing structures on the roof deck. It is considered that this is against the objectives of the Manly DCP Part 5 Section 5.1.2.4 The Corso - Parapets to be read against the sky:</i></p> <ul style="list-style-type: none"> <li><i>Parapet details on the street frontage, and in some cases the related original or historically relevant roof form, are to continue to be read by pedestrians as silhouetted against the sky. This is also to be the case for the parapet of any new building fronting The Corso.</i></li> <li><i>This provision applies in respect to both oblique and perpendicular views of buildings as pedestrians move through the street. This provision will govern the height and setback of any permitted additional floor levels and also establishes an important 'visual catchment' to The Corso that needs to be kept clear of obstructions.</i></li> </ul> <p><i>It is considered that the proposal will not affect the remaining existing heritage listed building fabric and will not adversely affect the view upon or from this heritage item. There will be minimal impact upon the heritage significance of the heritage items in the vicinity and the Town Centre Conservation Area.</i></p>

Internal Referral Body	Comments
	<p><i>Therefore no objections are raised on heritage grounds and subject to conditions required".</i></p> <p><u>Comment</u> The materiality of the lift shaft has been amended from a solid finish to a clear glass finish. Council's Heritage Officer has advised that this is acceptable.</p>
Strategic and Place Planning (Urban Design)	<p>The amended proposal has reduced the visual bulk of the stairs and lift core to access the roof terrace. Timber screens have also been introduced to hide the a/c condenser units.</p> <p>The submitted image board indicates an integrated landscaped theme which will work well as a roof terrace communal area.</p> <p><b>Previous Comments (20 April 2020)</b> The applicant has submitted amended plans to address the concerns highlighted previously. The shortfall in solar exposure to the units can be made up with access to the sunny roof terrace communal space. On the whole, the proposal can be supported provided more integration treatment is done at the roof terrace area. The proposed extended lift core and enclosed stair access are new built form elements that are jarring and could be made more harmonious with the roof terrace landscape theme. Some suggestions to soften the visual impact are:</p> <ol style="list-style-type: none"> <li>1. Convert the stair access to an open-air stair design (e.g. spiral staircase) to keep away from the common boundary and reduce the built form impact.</li> <li>2. Reduce the lift overrun height by exploring other lift mechanism/ technology. Treat the lift shaft as part of the roof landscape elements (e.g. backdrop to feature green walls, planter box wall treatment, etc) to hide the a/c units area in a unifying landscape theme.</li> <li>3. The material finishes selection should also reflect the landscape theme for a better fit.</li> </ol> <p><b>Previous Comments (17 February 2020)</b> The proposal cannot be supported for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The proposal exceeds the 10m building height control with the proposed additional built form comprising of roof pergolas, lift shaft and stairs to access the existing roof deck. The additions would add to the overall mass of the existing building which is currently about half a storey over the 10m building height. It will also set a precedent for surrounding developments to breach the building height control in the future.</li> </ol>

Internal Referral Body	Comments
	<p>2. The proposal intends to make the existing roof deck accessible for the residents. The existing roof deck has makeshift screens installed to minimise overlooking privacy issue to the surrounding developments. Making the roof deck more accessible will exacerbate the overlooking issue as the roof deck will have increased usage leading to the possibility of more noise generated. The roof deck should be deleted from the proposal. No precedent will also be established for surrounding developments in the future.</p> <p>3. The proposed bed and dining rooms facing the light-wells will not receive adequate solar exposure. The Apartment Design Guide (page 83) states that light wells should not be used as the primary air source for habitable rooms. The amenities provided by the south-western light-well could possibly be further compromised in the future when the next door neighbour (No. 44, The Corso) is developed.</p> <p>4. The existing boarding house does not have car parking provision as there are adequate modes of public transport near-by. Future residential occupants are more likely to have cars which will need to be parked on the streets or public car parks thereby putting more stress on the current parking shortage issues in the Manly town centre area.</p> <p>5. Applicant to check whether fire sprinklers are required as that will require ground floor shopfront to be replaced with sprinkler booster pump.</p>
Traffic Engineer	<p>The application was referred to Council's Traffic Engineer for review. The following comments have been provided:</p> <p><i>"The proposed development is for replacement of backpackers accommodation comprising 108 beds with a new residential shop housing development accommodating 8 x 1 bedroom apartments and 4 x 2 bedroom apartments. The existing ground floor retail area remains unchanged and both the existing and proposed developments provide no off-street parking.</i></p> <p><u>Traffic Generation</u>  <i>Given the location of the development near to public transport, close to amenities and services and in the absence of parking it is not anticipated that it will generate significant levels of traffic. The traffic impact assessment report suggests that the proposed development would generate less traffic than the existing backpackers development. It is considered unlikely that this would not be the case and the development is not opposed on traffic generation grounds</i></p> <p><u>Parking</u>  <i>Clause 4.2.5.4 of the Manly DCP 2013 advises that Council may be</i></p>

Internal Referral Body	Comments
	<p><i>prepared to allow a reduction in parking requirements in the Manly Town Centre, where the dimensions or topography of the site would physically prevent the provision of some or all of the required spaces, where the required access interferes with the continuity of retail frontage, or where the movement of vehicles to and from the site would cause unacceptable conflict with pedestrian movements. The subject site is located with frontages to the paved pedestrianised sections of Market Lane and The Corso as such, it is not appropriate or safe to provide vehicular access to the site.</i></p> <p><i>Further, the site is within close proximity to bus and ferry transport services, is sited within close proximity to a number of car share "pods" and is within walking distance (400m) of walking and cycling paths. There are also significant levels of commercial and retail development nearby limiting the need for private car ownership. On-street parking in the Manly Town Centre is subject to time restricted, permit and paid parking restrictions and there is therefore little opportunity for drivers without parking permits to park on a long term basis on street. As there is minimal need for private car ownership, the absence of parking in the proposed development may be supportable and may contribute to a lowering of private car movements within the Manly CBD. To further limit the potential for private car ownership and ensure residents do not place increased pressure upon parking within surrounding permit parking zones a condition of consent could be placed on any approval to this development preventing residents from obtaining resident parking permits.</i></p> <p><i>It is noted that Objective 2 of the Manly DCP seeks to minimise conflict between pedestrian and vehicular movements within the business areas. Council has pedestrianised The Corso, Market Lane and Sydney Road in the vicinity of this site and effectively prevented vehicular access other than between 5am and 8am when bollards in Henrietta lane, Central Ave and Market Lane are opened to provide for servicing of properties. The absence of parking is therefore consistent with this objective.</i></p> <p><i>Finally, the proposed development, with a parking requirement of 11 space replaces another development on the site with a parking requirement of 14 spaces as per the DCP. i.e the proposed development has a lower parking requirement than the existing development.</i></p> <p><i>It is noted that that the recent repeal of the Manly Section 94 Contributions Plan no longer allows Council to collect contributions towards the provision of public parking to offset any shortfall in parking as the new Northern Beaches Section 7.12 Contributions Plan, which takes it place, does not identify the delivery of any additional parking spaces/public parking stations in its Works Schedule. Any shortfall in parking supply relating to a new development application will now need to be assessed on its merits.</i></p>

Internal Referral Body	Comments
	<p><i>In this case, the provision of vehicular access and off-street parking at the site would introduce an unacceptable and unsafe level of conflict with pedestrian movements on the pedestrian areas surrounding the site and, given the moderate scale of the development and the fact it does not result in an increased parking requirement when compared to the existing development on the site, the absence of parking is not opposed.</i></p> <p><u>Loading and Servicing</u>  <i>As the development does not propose any off-street parking there is no off-street loading dock. Loading and Servicing needs for the development will need to be accommodated from the paved areas of Sydney Road, Market Lane and The Corso during the hours that bollards are open (5am to 8am) to permit servicing of these pedestrianised areas. This is consistent with arrangements at a number of other premises fronting these areas and the absence of an off-street loading dock is not opposed in this instance".</i></p> <p>Conditions imposed by Council's Traffic Engineer are included in the draft conditions of consent.</p>
Waste Officer	<p>The application was referred to Council's Waste Management team for review. The following comments have been provided:</p> <p><i>"The amended plans for the ground floor received on 18 June are acceptable from a waste management perspective, subject to conditions".</i></p> <p>The conditions imposed by Council's Waste Management team are included in the draft conditions of consent.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. In their response, Ausgrid do not raise any objection to the proposal subject to the development complying with the relevant Ausgrid Network Standards and SafeWorkNSW Codes of Practice for construction works near existing electrical assets.
NSW Police – Crime Prevention Office (Local Command matters)	The application was referred to NSW Police for review. In their response, NSW Police state <i>"given the nature of the development we do not believe a Crime Risk Assessment and CPTED (Crime Prevention through Environmental Design) assessment is required".</i>

#### 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/commercial purposes for a significant period of time.

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/commercial land use.

#### **SEPP 65 - Design Quality of Residential Apartment Development**

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

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

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

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

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

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

As previously outlined the proposed development is for the adaptive re-use of an existing building for the purposes of a 3 storey mixed use development for the provision of 12 self-contained dwellings.

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

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

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

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

## DESIGN REVIEW PANEL

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

## DESIGN QUALITY PRINCIPLES

### Principle 1: Context and Neighbourhood Character

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

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

#### Comment

The site is located towards the eastern end of The Corso and is sandwiched between The Corso and Market Place. Both streets are pedestrianised and heavily utilised as through-routes from the ferry landing to Manly Beach and for market activities on the weekend.

The existing building forms part of a group of commercial buildings listed under the MLEP 2013 as Heritage Item I106. In the Statement of Significance for Heritage Item I106, Council's Heritage Officer has generally described the character of the local area as follows:

*"The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort.*

*The Corso acts as a low scale horizontal corridor which steps down from the harbour to the ocean. The atmosphere of The Corso is of a 19th century place. Its special qualities include the contrasts of horizontal (low scale architecture) and vertical (planting) dimensions, and urban and natural elements".*

The retention of the exterior facade and roof elements is considered to respect the status of Heritage Item I106 and the character of local area.

It is considered that the development satisfies Principle 1.

### Principle 2: Built Form and Scale

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

*Good design also achieves an appropriate built form for a site and the building's purpose in terms of*

*building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*

#### Comment

As noted under Principle 1, the development retains the exterior fabric, building footprint and roof form of the existing building and, as such achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings by continuing to define the public domains of The Corso and Market Place, contribute towards the character of streetscapes including their views and vistas, and will provide an acceptable level of internal amenity and outlook in accordance with the provisions of the Apartment Design Guide.

It is considered that the development satisfies Principle 2.

### **Principle 3: Density**

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

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

#### Comment

Although it should be noted that MLEP 2013 does not include a Density Development Standard for the B2 Local Centre zone, the development proposes the provision of 12 apartments which translates to an average residential density of 1 dwelling per 40.8m<sup>2</sup> which is considered to be appropriate given the apartment mix of 1 and 2 bedroom dwellings within an adaptively re-used building of heritage significance.

Given the absence of a density Development Standard, density is gauged by how the development responds to the Design Quality Principles of SEPP 65, the relevant Development Standards of the MLEP 2013 and the relevant controls within the MDCP. This assessment has found that the development, as proposed achieves a satisfactory level of compliance and consistency with these Principles, Standards and controls given the limitations of the building footprint and requirement to retain both building facades.

It is considered that the development satisfies Principle 3.

### **Principle 4: Sustainability**

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

#### Comment

The site currently accommodates an existing and ageing commercial building which will be re-used in the development.

The residential elements of the development have been designed to achieve the commitment targets set by SEPP (BASIX) and satisfies the relevant environmental Primary Development Controls under the

Apartment Design Code.

It is considered that the development satisfies Principle 4.

#### **Principle 5: Landscape**

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

*Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.*

#### Comment

The site is built boundary-to-boundary and is therefore unable to include any landscaping. Notwithstanding, a roof terrace design has been submitted which does include a landscaped perimeter around the terrace. This is an improvement on the current situation and context and provides for a more inviting area to relax.

The planter box is shielded by timber screens. The plantable area would be sufficient to include shrubs which would soften the area.

It is considered that the development satisfies Principle 5.

#### **Principle 6: Amenity**

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

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

#### Comment

The development has been assessed with regards to impacts upon the amenity of affected neighbouring properties in terms of visual privacy, overshadowing, view sharing and noise.

#### *Visual Privacy*

The building is surrounded by commercial development in both The Corso and Market Place. Given the orientation of the building to this surrounding development, privacy (such as overlooking and being overlooked) is considered to be negligible due to the offset of windows and balconies to adjacent windows.

Internally, the development does not include any windows or balconies which face each other. The two side void areas are sealed from occupant access (these areas are only accessible for maintenance purposes) to avoid compromising visual privacy to the adjacent bedrooms.

#### *Overshadowing*

The development is contained within the building footprint of the existing building, which is sandwiched between two commercial building (being a two storey retail/commercial use to the south-west and the three storey New Brighton Hotel to the north-east). No additional works are proposed which would otherwise create additional shadow than what already exists.

#### *View Sharing*

Because the development uses the existing building envelope, the proposal would not obstruct available cross site views to the south-east (The Corso) or to the north-west (Market Place). Views towards Manly Beach are not possible due to the bulk and scale of the New Brighton Hotel to the north-east.

The proposed lift shaft and fire stair are of a minor scale such that they would not unreasonably diminish the available cross-site views.

#### *Noise*

An Acoustic Report was submitted with the application external noise impact from surrounding non-residential activity in The Corso and Market Place (and particularly the neighbouring entertainment venues in the New Brighton Hotel).

The Report (prepared by Acoustic Dynamics dated 1 May 2020) concludes that, with the inclusion of recommended mitigating measures, the development can be constructed to ensure the acoustic amenity of building occupants can be adequately protected.

The Report was reviewed by Council's Environment Health Department who advises that:

*"The report' has highlighted the importance of 'fresh air' ventilation and Council is in agreement that for any noise attenuation to be effective, each individual unit will need to be adequately ventilated to ensure the residents can keep windows closed during peak external noise periods.*

*Acoustic dynamics have provided options for passive ventilation systems in 'the report' and mechanical ventilation is also a viable option. The Statement of Environmental Effects references 'natural ventilation' however this may not be sufficient if windows need to be kept close for effective noise attenuation.*

*As there is no proposal for mechanical ventilation, Council will condition that each residential unit is to have a passive system installed as recommended in section 4.4 of 'the report' or a mechanical ventilation system".*

It is considered that the development satisfies Principle 6.

#### **Principle 7: Safety**

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

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

Comment

The apartments in the development which face towards both The Corso and Market Place thereby providing optimum passive surveillance to the public domain. Internal security is achieved by providing a lockable entry lobby at street level.

In this regard, the proposal is considered to adequately achieve safety and security for future occupants of the development providing good passive surveillance of the public and private domains.

It is considered that the development satisfies Principle 7.

**Principle 8: Housing Diversity and Social Interaction**

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

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

Comment

The development provides a mix of apartments which will vary in size and affordability (i.e. 8 x 1 bedroom (66.7%) and 14 x 2 bedroom (33.3%)).

This mix is considered to provide for the social evolution of the community in an area which has close proximity to Manly Beach, direct accessibility to shopping and services, and high frequency public transport routes.

The development includes a redesign of the existing roof top terrace for the purposes of communal open space. Because of the close proximity of the site to Manly Beach and other recreation reserves it is unlikely that the communal open space area would be heavily utilised. Nonetheless, it does provide a different type of communal space for a broad range of people, providing opportunities for social interaction amongst residents.

It is considered that the development satisfies Principle 8.

**Principle 9: Aesthetics**

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

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

Comment

The development retains the original facade to The Corso and Market Place, which includes detailed façade fenestration to incorporate narrow and vertical window profiles, balconies and the use of subtle materials and finishes.

In this regard, the development is considered to maintain the appropriate composition of building elements, textures, materials and colours to reflect the mixed-use nature, internal design and structure of the development and which achieves an appropriate urban form that is considered to relate

favourably in both architectural scale and landscape treatment to neighbouring mixed-use development.

It is considered that the development satisfies Principle 9.

## APARTMENT DESIGN GUIDE

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

**Note:** Clause 4R (Adaptive Reuse) of the ADG applies in this instance which states:

*"There are many benefits of retaining existing buildings including sustainability, aesthetics, character and valuing their social and cultural significance. Adaptation of an existing building for a new residential use provides for its repurposing and should be approached in a way that acknowledges the past and respects its sense of place. The significance of heritage items or buildings in conservation areas needs to be respected. Modifications should ensure the building's continued relevance in the future. Residential adaptive reuse projects should be sensitively designed, to respect existing elements and character."*

*Non-residential buildings (such as the subject building) often have dimensions, layouts and orientations that are not designed for residential use. A balance must be achieved between the benefits of retaining existing buildings versus the quality of residential amenity that can be achieved".*

The development seeks to adaptively re-use the existing building for residential purposes and therefore, in assessing the application against the various clauses of the ADG below, consideration has been given to adopting flexibility to controls which are more readily achievable in an entirely new build.

Consideration has been given as to whether a lesser number of apartments would result in a better level of compliance with the ADG. If the development included less apartments, it would be possible to achieve compliance with Clause 4D-3(1), (2) & (3): Habitable room widths (each of which reflect minor non-compliances). The remainder of non-compliance is considered to be a result of the internal retrofitting of an existing building which aims to preserve the exterior heritage fabric.

Development Control	Criteria / Guideline	Comments
<b>Part 3 Siting the Development</b>		
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	Consistent  A Site Analysis Plan (in conjunction with the Statement of Environmental Effects and SEPP 65 Design Statement) has been submitted with the application.
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent  As discussed elsewhere in this report under the Design Quality Principles, through its retention of the building facades and roof line, the development responds to the to the streetscape of the local centre and provides a continuity to

		the level of solar access to neighbouring properties.												
<b>Public Domain Interface</b>	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p>Consistent</p> <p>The development is considered to provide a satisfactory transition between the private and public domains without compromising safety and security.</p>												
<b>Communal and Public Open Space</b>	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> <li>1. Communal open space has a minimum area equal to 25% of the site</li> <li>2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</li> </ol>	<p>Consistent</p> <p>The development provides a roof top terrace as communal open space.</p> <p>This area is located central to the roof line and has a useable area of 48m<sup>2</sup> (i.e. 25.2% of the site area) excluding the landscaped edges.</p> <p>Because of its roof top location, the communal open space area will exceed the required direct sunlight access between 9am and 3pm on 21 June.</p>												
<b>Deep Soil Zones</b>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	<p><b>Inconsistent</b> Acceptable on merit</p> <p>The development uses the existing boundary-to-boundary building footprint such that no deep soil zones are possible.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
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<b>Visual Privacy</b>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4</td><td>6m</td><td>3m</td></tr> </tbody> </table>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4	6m	3m	<p>Consistent</p> <p>The building (excluding the lift overrun) has a height of up to 11.3m and is therefore required to separation distances of 6.0m for habitable rooms/balconies and 3.0m for non-habitable rooms.</p>						
Building height	Habitable rooms and balconies	Non-habitable rooms												
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storeys)											
Up to 25m (5-8 storeys)	9m	4.5m									
Over 25m (9+ storeys)	12m	6m									
<b>Pedestrian Access and entries</b>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Consistent</p> <p>The development provides an accessible and legible building entry which defines the private property from the public domain.</p>									
<b>Vehicle Access</b>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Not applicable</p> <p>The site does not accommodate any capacity to include car parking.</p>									
<b>Bicycle and Car Parking</b>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre.</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p>	<p><b>Inconsistent</b></p> <p>Acceptable on merit</p> <p>The development is an adaptive re-use of the existing building and is not capable of providing on-site car parking.</p> <p>Council's Traffic Engineer has reviewed this aspect of the proposal and advises:</p> <p>"Clause 4.2.5.4 of the Manly DCP 2013 provides that Council may be prepared to allow a reduction in parking requirements in the Manly Town Centre, where the dimensions or topography of the site would physically prevent the provision of some or all of the required spaces, where the required access interferes with the continuity of</p>									

<p>Visual and environmental impacts are minimised.</p>	<p><i>retail frontage, or where the movement of vehicles to and from the site would cause unacceptable conflict with pedestrian movements. The subject site is located with frontages to the paved pedestrianised sections of Market Lane and The Corso as such, it is not possible or safe to provide vehicular access to the site.</i></p> <p><i>Further, the site is within close proximity to bus and ferry transport services, is sited within close proximity to a number of car share "pods" and is within walking distance (400m) of walking and cycling paths. There are also significant levels of commercial and retail development nearby limiting the need for private car ownership. On-street parking in the Manly Town Centre is subject to time restricted, permit and paid parking restrictions and there is therefore little opportunity for residents to park on a long term basis on street. Given the proximity of this development to good public transport, car share vehicles, services and walking and cycling routes, there is minimal need for private car ownership and the absence of parking in the proposed development is therefore supportable. To ensure residents do not place increased pressure upon parking within surrounding permit parking zones a condition of consent could be placed on any approval to this development preventing residents from obtaining resident parking permits.</i></p> <p><i>It is noted that Objective 2 of the Manly DCP seeks to minimise conflict between pedestrian and vehicular movements within the business areas. Council has pedestrianised The Corso, Market Lane</i></p>
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		<p>and Sydney Road in the vicinity of this site and effectively prevented vehicular access other than between 5am and 8am when bollards in Henrietta lane, Central Ave and Market Lane are opened to provide for servicing of properties. The absence of parking is therefore consistent with this objective.</p> <p>Finally, the proposed development replaces another development on the site with a similar parking requirement as per the DCP. That development also provides no parking.</p> <p>In light of the above, the provision of vehicular access and off-street parking at the site would introduce an unacceptable and unsafe level of conflict with pedestrian movements on the pedestrian areas surrounding the site and, given the moderate scale of the development and the fact it does not result in an increased parking requirement when compared to the existing development on the site, in this case, the absence of parking is not opposed".</p>
<b>Part 4 Designing the Building</b>		
<b>Amenity</b>		
<b>Solar and Daylight Access</b>	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	<p><b>Inconsistent</b> Acceptable on merit</p> <p>The living rooms of six (6) apartments (i.e. 50%) will receive a minimum 2 hours direct sunlight between 9 am and 3 pm at mid winter. The apartments receiving direct sunlight access are located facing Market Place.</p> <p>Similarly, due to the reasons given below, a maximum of 50% of apartments in the building (i.e. those apartments facing The Corso) do not receive direct sunlight between 9 am and 3 pm at mid winter.</p>

		Although not compliant with the Design Criteria, it is acknowledged that the development is constrained by the retrofitting of an existing building, and its existing orientation.				
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> <li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</li> </ul>	<p><b>Inconsistent</b> Acceptable on merit</p> <p>Six apartments (all located on the upper level) are cross ventilated through the incorporation of 'ventilated skylights'. This equates to 50% of the apartments in the development.</p> <p>The apartments at the lower levels are not cross ventilated due to the requirement to close the windows within the two side void areas to mitigate noise transfer.</p> <p>It is noted that, due to limitations of the retrofitting of the existing building, the provision of dual aspect apartments is not achievable in this particular instance.</p> <p>Notwithstanding, it is noted that four (4) of the remaining single aspect apartments at the lower levels (being Apartments 01, 02, 03, and 06) have depths of less and or equal to 8.0m thereby enabling a acceptable level of airflow for open plan apartments (according to Figure 4D.3 of the ADG).</p>				
	<ul style="list-style-type: none"> <li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li> </ul>	<p>Consistent</p> <p>The development includes two (2) cross-over apartments (being Apartments 09 and 10). The depths of these identical apartments is 8.9m.</p>				
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1"> <tr> <th colspan="2">Minimum ceiling height</th> </tr> <tr> <td></td> <td></td> </tr> </table>	Minimum ceiling height				<p>Consistent</p> <p>The development provide continuous floor-to-ceiling heights of between 2.7m and 3.0m (at the</p>
	Minimum ceiling height					

	<table><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p>upper level).</p> <p>The floor-to-ceiling height of the retail uses at the ground floor remain unaltered at 27m (the Mezzanine level) to 5.4m (facing The Corso).</p>																																																											
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<b>Apartment Size and Layout</b>	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p>Consistent</p> <p>The development includes the following apartment sizes:</p> <table><tr><th>Unit</th><th>Bedrooms</th><th>Area</th></tr><tr><td>1</td><td>1</td><td>52.8m<sup>2</sup></td></tr><tr><td>2</td><td>1</td><td>63.4m<sup>2</sup></td></tr><tr><td>3</td><td>1</td><td>52.8m<sup>2</sup></td></tr><tr><td>4</td><td>2</td><td>83.8m<sup>2</sup></td></tr><tr><td>5</td><td>2</td><td>88.3m<sup>2</sup></td></tr><tr><td>6</td><td>1</td><td>63.4m<sup>2</sup></td></tr><tr><td>7</td><td>1</td><td>52.8m<sup>2</sup></td></tr><tr><td>8</td><td>2</td><td>70.3m<sup>2</sup></td></tr><tr><td>9</td><td>1</td><td>56.3m<sup>2</sup></td></tr><tr><td>10</td><td>1</td><td>56.3m<sup>2</sup></td></tr><tr><td>11</td><td>2</td><td>74.5m<sup>2</sup></td></tr><tr><td>12</td><td>1</td><td>61.8m<sup>2</sup></td></tr></table> <p><b>Inconsistent</b></p> <p>Acceptable on merit</p> <p>The development provides the following:</p> <table><tr><th>Unit</th><th>Room</th><th>Room Area</th><th>Glass Area</th><th>%</th></tr><tr><td>01</td><td>Living Bed</td><td>30.6m<sup>2</sup> 11.8m<sup>2</sup></td><td>2.9m<sup>2</sup> 2.9m<sup>2</sup></td><td><b>9.5%</b> 24.5%</td></tr><tr><td>02</td><td>Living Bed</td><td>31.4m<sup>2</sup> 11.8m<sup>2</sup></td><td>2.9m<sup>2</sup> 2.9m<sup>2</sup></td><td><b>9.2%</b> 24.5%</td></tr><tr><td>03</td><td>Living</td><td>30.6m<sup>2</sup></td><td>2.9m<sup>2</sup></td><td><b>9.5%</b></td></tr></table>	Unit	Bedrooms	Area	1	1	52.8m <sup>2</sup>	2	1	63.4m <sup>2</sup>	3	1	52.8m <sup>2</sup>	4	2	83.8m <sup>2</sup>	5	2	88.3m <sup>2</sup>	6	1	63.4m <sup>2</sup>	7	1	52.8m <sup>2</sup>	8	2	70.3m <sup>2</sup>	9	1	56.3m <sup>2</sup>	10	1	56.3m <sup>2</sup>	11	2	74.5m <sup>2</sup>	12	1	61.8m <sup>2</sup>	Unit	Room	Room Area	Glass Area	%	01	Living Bed	30.6m <sup>2</sup> 11.8m <sup>2</sup>	2.9m <sup>2</sup> 2.9m <sup>2</sup>	<b>9.5%</b> 24.5%	02	Living Bed	31.4m <sup>2</sup> 11.8m <sup>2</sup>	2.9m <sup>2</sup> 2.9m <sup>2</sup>	<b>9.2%</b> 24.5%	03	Living	30.6m <sup>2</sup>	2.9m <sup>2</sup>	<b>9.5%</b>
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room depth is 8m from a window.

each habitable level. Therefore, this clause recommends that room depths for habitable rooms (other than open plan layouts) equate to 6.75m.

The development provides the following:

Unit	Room	Depth
01	Living Bed	6.5m 3.8m
02	Living Bed	8.0m 3.8m
03	Living Bed	6.5m 3.8m
04	Living Bed 1 Bed 2	<b>9.7m</b> 3.2m 3.2m
05	Living Bed 1 Bed 2	<b>9.7m</b> 3.2m 3.2m
06	Living Bed	8.0m 3.8m
07	Living Bed	6.5m 3.8m
08	Living Bed 1 Bed 2	<b>8.6m</b> 3.7m 2.7m
09	Living Bed	<b>8.6m</b> 3.0m
10	Living Bed	<b>8.6m</b> 3.0m
11	Living Bed 1 Bed 2	<b>8.6m</b> 3.7m 2.7m
12	Living Bed	8.0m 3.8m

The development includes living room depths of between 8.6m to 9.7m as listed above.

Although numerically not compliant, the open plan living room depths do not unreasonably impede residential amenity given the shortfall in depth of between 0.6m and 1.7m (the latter is

	situated in Apartments 04 and 05 where the open plan area has windows at either end of the room).																																							
Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).	<p><b>Inconsistent</b> Acceptable subject to condition</p> <p>The development provides the following:</p> <table><tr><th>Unit</th><th>Room</th><th>Area</th></tr><tr><td>01</td><td>Bed 1</td><td>11.8m<sup>2</sup></td></tr><tr><td>02</td><td>Bed 1</td><td>11.8m<sup>2</sup></td></tr><tr><td>03</td><td>Bed 1</td><td>11.8m<sup>2</sup></td></tr><tr><td>04</td><td>Bed 1 Bed 2</td><td>9.8m<sup>2</sup> 10m<sup>2</sup></td></tr><tr><td>05</td><td>Bed 1 Bed 2</td><td>9.8m<sup>2</sup> 10m<sup>2</sup></td></tr><tr><td>06</td><td>Bed 1</td><td>11.8m<sup>2</sup></td></tr><tr><td>07</td><td>Bed 1</td><td>11.8m<sup>2</sup></td></tr><tr><td>08</td><td>Bed 1 Bed 2</td><td>13.5m<sup>2</sup> 8.1m<sup>2</sup></td></tr><tr><td>09</td><td>Bed 1</td><td>12m<sup>2</sup></td></tr><tr><td>10</td><td>Bed 1</td><td>12m<sup>2</sup></td></tr><tr><td>11</td><td>Bed 1 Bed 2</td><td>13.5m<sup>2</sup> 8.1m<sup>2</sup></td></tr><tr><td>12</td><td>Bed 1</td><td>11.6m<sup>2</sup></td></tr></table> <p>Bedroom 1 in Apartments 04 and 05 are marginally undersized and should be increased to accommodate a minimum area of 10m<sup>2</sup> (i.e. and additional 0.2m<sup>2</sup> each). Accordingly, an appropriate condition is included in the consent to address this matter</p> <p>Bedroom 2 in Apartments 08 and 11 are significantly undersized and should be designated as Study's only. Accordingly, an appropriate condition is included in the consent to address this matter.</p>	Unit	Room	Area	01	Bed 1	11.8m <sup>2</sup>	02	Bed 1	11.8m <sup>2</sup>	03	Bed 1	11.8m <sup>2</sup>	04	Bed 1 Bed 2	9.8m <sup>2</sup> 10m <sup>2</sup>	05	Bed 1 Bed 2	9.8m <sup>2</sup> 10m <sup>2</sup>	06	Bed 1	11.8m <sup>2</sup>	07	Bed 1	11.8m <sup>2</sup>	08	Bed 1 Bed 2	13.5m <sup>2</sup> 8.1m <sup>2</sup>	09	Bed 1	12m <sup>2</sup>	10	Bed 1	12m <sup>2</sup>	11	Bed 1 Bed 2	13.5m <sup>2</sup> 8.1m <sup>2</sup>	12	Bed 1	11.6m <sup>2</sup>
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Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	<p><b>Consistent</b></p> <p>The development provides the following:</p> <table><tr><td></td><td></td><td></td></tr></table>																																							

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<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"><li>• 3.6m for studio and 1 bedroom apartments</li><li>• 4m for 2 and 3 bedroom apartments</li></ul>	<p><b>Inconsistent</b> Acceptable on merit</p> <p>The development provides the following:</p> <table><tr><th>Unit</th><th>Type</th><th>Width</th></tr><tr><td>01</td><td>1 Bed</td><td>4.9m</td></tr><tr><td>02</td><td>1 Bed</td><td>3.9m</td></tr><tr><td>03</td><td>1 Bed</td><td>4.9m</td></tr><tr><td>04</td><td>2 Bed</td><td><b>3.7m</b></td></tr><tr><td>05</td><td>2 Bed</td><td><b>3.7m</b></td></tr><tr><td>06</td><td>1 Bed</td><td>3.9m</td></tr><tr><td>07</td><td>1 Bed</td><td>3.9m</td></tr><tr><td>08</td><td>2 Bed</td><td><b>3.7m</b></td></tr><tr><td>09</td><td colspan="2">Crossover - see below</td></tr><tr><td>10</td><td colspan="2">Crossover - see below</td></tr><tr><td>11</td><td>2 Bed</td><td><b>3.7m</b></td></tr><tr><td>12</td><td>1 Bed</td><td>3.9m</td></tr></table> <p>The four (4) apartments listed above have internal widths of 3.7m which is 0.3m below the recommended width.</p> <p>All apartments are shallow in depth</p>	Unit	Type	Width	01	1 Bed	4.9m	02	1 Bed	3.9m	03	1 Bed	4.9m	04	2 Bed	<b>3.7m</b>	05	2 Bed	<b>3.7m</b>	06	1 Bed	3.9m	07	1 Bed	3.9m	08	2 Bed	<b>3.7m</b>	09	Crossover - see below		10	Crossover - see below		11	2 Bed	<b>3.7m</b>	12	1 Bed	3.9m
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		(i.e. room depths of 8.9m) with good outlook which assists in relieving a sense of enclosure.																																																						
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	<p><b>Inconsistent</b> Acceptable on merit</p> <p>The two (2) crossover apartments (Apartments 09 and 10) have internal widths of 3.8m.</p> <p>Both apartments are shallow in depth (i.e. room depths of 8.9m at the living room level and 2.9m at the bedroom level) with good outlook which assists in relieving a sense of enclosure.</p>																																																						
<b>Private Open Space and Balconies</b>	<p>All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr> </thead> <tbody> <tr> <td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr> <tr> <td>1 bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr> <tr> <td>2 bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr> <tr> <td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	<p><b>Inconsistent</b> Acceptable on merit</p> <p>The development provides the following:</p> <table border="1"> <thead> <tr> <th>Unit</th><th>Area</th><th>Depth</th></tr> </thead> <tbody> <tr> <td>01 (1 Bed)</td><td>1.1m<sup>2</sup></td><td>0.7m</td></tr> <tr> <td>02 (1 Bed)</td><td>1.1m<sup>2</sup></td><td>0.7m</td></tr> <tr> <td>03 (1 Bed)</td><td>1.1m<sup>2</sup></td><td>0.7m</td></tr> <tr> <td>04 (2 Bed)</td><td>7.9m<sup>2</sup></td><td>2.3m</td></tr> <tr> <td>05 (2 Bed)</td><td>7.9m<sup>2</sup></td><td>2.3m</td></tr> <tr> <td>06 (1 Bed)</td><td>1.1m<sup>2</sup></td><td>0.7m</td></tr> <tr> <td>07 (1 Bed)</td><td>1.1m<sup>2</sup></td><td>0.7m</td></tr> <tr> <td>08 (2 Bed)</td><td>7.9m<sup>2</sup></td><td>2.0m</td></tr> <tr> <td>09 (1 Bed)</td><td>7.9m<sup>2</sup></td><td>2.0m</td></tr> <tr> <td>10 (1 bed)</td><td>7.9m<sup>2</sup></td><td>2.0m</td></tr> <tr> <td>11 (2 Bed)</td><td>7.9m<sup>2</sup></td><td>2.0m</td></tr> <tr> <td>12 (1 Bed)</td><td>1.1m<sup>2</sup></td><td>0.7m</td></tr> </tbody> </table> <p>The development involves the</p>	Unit	Area	Depth	01 (1 Bed)	1.1m <sup>2</sup>	0.7m	02 (1 Bed)	1.1m <sup>2</sup>	0.7m	03 (1 Bed)	1.1m <sup>2</sup>	0.7m	04 (2 Bed)	7.9m <sup>2</sup>	2.3m	05 (2 Bed)	7.9m <sup>2</sup>	2.3m	06 (1 Bed)	1.1m <sup>2</sup>	0.7m	07 (1 Bed)	1.1m <sup>2</sup>	0.7m	08 (2 Bed)	7.9m <sup>2</sup>	2.0m	09 (1 Bed)	7.9m <sup>2</sup>	2.0m	10 (1 bed)	7.9m <sup>2</sup>	2.0m	11 (2 Bed)	7.9m <sup>2</sup>	2.0m	12 (1 Bed)	1.1m <sup>2</sup>	0.7m
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		<p>retrofitting of an existing building of which the retention of the existing facades is required.</p> <p>In retrofitting the building, the development relies on the existing Juliet balconies which are situated on the facade facing Market Place. These balconies form a recognisable feature to the building when viewed from The Market.</p> <p>Although not compliant with the required minimum depth and area, the balconies include full height French doors which open directly from the Living Room and therefore form an open perspective to The Market below.</p> <p>Similarly, the areas of the 2 bedroom apartments do not comply with the required area of 10m<sup>2</sup>. Again, because the development is required to retain the facade facing The Corso, the relevant apartments have been sited to locate balconies behind the existing facade.</p>										
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.	Not applicable										
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight (8).	Consistent										
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	The maximum number of apartments off a circulation core is six (6).										
		Not applicable										
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	The development is required to provide the following:										
	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td></tr><tr><td>1 bedroom apartments</td><td>6m<sup>2</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>2</sup></td></tr><tr><td></td><td></td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m <sup>2</sup>	1 bedroom apartments	6m <sup>2</sup>	2 bedroom apartments	8m <sup>2</sup>			<ul style="list-style-type: none"><li>1 Bedroom (8) = 48m<sup>3</sup></li><li>2 Bedroom (4) = 32m<sup>3</sup></li><li>Total Required = 80m<sup>3</sup></li></ul>
	Dwelling Type	Storage size volume										
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		Beyond storage contained in kitchens, bathrooms and										

	3+ bedroom apartments	10m <sup>2</sup>	bedrooms, the development provides a total of 41.7m <sup>3</sup> storage area.
	At least 50% of the required storage is to be located within the apartment.		
<b>Acoustic Privacy</b>	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.		<p>Consistent</p> <p>No car parking is provided on the site and therefore no noise impact will be generated in this regard.</p> <p>The plant is located on the roof and will not create any adverse acoustic impact .</p>
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.		<p>Consistent Subject to condition</p> <p>An Acoustic Report was submitted with the application external noise impact from surrounding non-residential activity in The Corso and Market Place (and particularly the neighbouring entertainment venues in the New Brighton Hotel).</p> <p>The Report (prepared by Acoustic Dynamics dated 1 May 2020) concludes that, with the inclusion of recommended mitigating measures, the development can be constructed to ensure the acoustic amenity of building occupants can be adequately protected.</p> <p>The Report was reviewed by Council's Environment Health Department who advises that:</p> <p>"The report' has highlighted the importance of 'fresh air' ventilation and Council is in agreement that for any noise attenuation to be effective, each individual unit will need to be adequately ventilated to ensure the residents can keep windows closed during peak external noise periods.</p> <p>Acoustic dynamics have provided options for passive ventilation</p>

		<p>systems in 'the report' and mechanical ventilation is also a viable option. The Statement of Environmental Effects references 'natural ventilation' however this may not be sufficient if windows need to be kept close for effective noise attenuation.</p> <p>As there is no proposal for mechanical ventilation, Council will condition that each residential unit is to have a passive system installed as recommended in section 4.4 of 'the report' or a mechanical ventilation system".</p>
<b>Configuration</b>		
<b>Apartment Mix</b>	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	<p>Consistent</p> <p>The development includes the following apartment mix which is considered appropriate in supporting the housing needs of the community now and into the future:</p> <ul style="list-style-type: none"> <li>• 1 bedroom: 8 (66.7%)</li> <li>• 2 bedroom: 4 (33.3%)</li> </ul>
<b>Ground Floor Apartments</b>	Do the ground floor apartments deliver amenity and safety for their residents?	Not applicable
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<p>Consistent</p> <p>The development retains the existing building facades.</p>
<b>Roof Design</b>	<p>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.</p> <p>Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.</p>	<p>Consistent</p> <p>Although change is proposed to the lift shaft and fire stair, the remainder of the roof form remains unchanged. The communal terrace remains integrated into the roof form.</p> <p>Council's Heritage Officer has reviewed this aspect of the proposal and advises that the proposal will not affect the remaining existing heritage listed building fabric and will not adversely affect the view upon or from this heritage item.</p>

		Furthermore, Council's Urban Designer has also provided comment on this matter and advises that the amended proposal (which reduced the height of the lift shaft and changed its facade to glass) has reduced the visual bulk of the stairs and lift core to access the roof terrace. Timber screens have also been introduced to hide the airconditioning condenser units.																									
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Acceptable on merit  The site is built boundary-to-boundary and is therefore unable to include any landscaping. Notwithstanding, a roof terrace design has been submitted which does include a landscaped perimeter around the terrace. This is an improvement on the current situation and context and provides for a more inviting area to relax.																									
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes: <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m<sup>3</sup></td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m<sup>3</sup></td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m<sup>3</sup></td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Consistent  As noted above, the application includes a roof terrace design which details the provision of a perimeter planter box around the north, east and southern edges. The planter box is shielded by timber screens. The plantable area would be sufficient to include shrubs which would soften the area.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																							
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	Ground Cover		300-450mm		
	Turf		200mm		
<b>Universal Design</b>	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features				<p>Acceptable on merit</p> <p>Because the development involves an adaptable re-use of the existing building, achieving all 7 core design features of the Silver Level are not possible. However, it is noted that the development does satisfy the following 4 core design features:</p> <ul style="list-style-type: none"> <li>• A safe continuous and step free path of travel from the street entrance to a dwelling entrance that is level.</li> <li>• At least one, level (step-free) entrance into the dwelling.</li> <li>• Internal doors and corridors that facilitate comfortable and unimpeded movement between spaces.</li> <li>• A toilet on the ground (or entry) level that provides easy access.</li> </ul>
<b>Adaptable Reuse</b>	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				<p>Acceptable on merit</p> <p>All additions are situated within the exterior fabric of the building and do not have any notable impact on the area's identity and sense of place.</p>
<b>Mixed Use</b>	<p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>				<p>Consistent</p> <p>The development can be readily accessed through public transport (ferry and bus).</p> <p>Because the development retains the external fabric of the building, the heritage context of the built form will continue to contribute to the public domain of The Corso and Market Place.</p> <p>The ground floor will continue to be used for retail and lobby purposes</p>

		only. No residential use is located at the ground floor level.
<b>Awnings and Signage</b>	<p>Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.</p> <p>Signage must respond to the existing streetscape character and context.</p>	<p>Consistent</p> <p>The development will not alter the provision of awnings.</p> <p>Signage is not part of the this application.</p>
<b>Performance</b>		
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	<p>Consistent</p> <p>The BASIX Certificate submitted with the application indicates that the development will achieve above target scores for water and energy while thermal comfort will achieve a target pass.</p>
<b>Water Management and Conservation</b>	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<p>Consistent</p> <p>The development will utilise the existing access to water infiltration, potable water, rainwater, wastewater, stormwater and groundwater.</p>
<b>Waste Management</b>	Has a Waste Management Plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	<p>Consistent</p> <p>A Waste Management Plan (prepared by Lid Consulting dated 15 November 2019) has been submitted with the application and is included in the draft conditions of consent.</p>
<b>Building Maintenance</b>	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	<p>Consistent</p> <p>The development retains the external fabric of the building (including the roof treatments).</p> <p>The only elements which are additional to the external facade are the exposed lift shaft and fire stair, both of which are finished in materials which would ensure the longevity and sustainability of the building due to low maintenance requirements.</p>

#### STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

modification of development consent states that:

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

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

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

Comment

The development is considered to satisfy (1)(a) because the adaptive re-use of the existing building is unable to provide on-site car parking.

The development satisfies (1)(b) and (1)(c).

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

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

(3) To remove doubt:

- (a) sub-clause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in sub-clause (1), including on the basis of sub-clause (2), and
- (b) the design criteria specified in sub-clause (1) are standards to which clause 4.15 (2) of the Act applies.

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

Comment

The development demonstrates that adequate regard has been given to the design quality principles and the objectives specified in the Apartment Design Guide for the relevant design criteria.

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

A BASIX certificate has been submitted with the application (see Certificate No. 874102M-04 dated 15 July 2020).

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

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Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	35	46

### 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:*
- the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
  - the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
  - the carrying out of any of the following:*
    - earthworks (including the depositing of material on land),*
    - constructing a levee,*
    - draining the land,*
    - environmental protection works,*
  - any other development.*

#### Comment

The development is not located on land located within a coastal wetland or littoral rainforest area.

Clause 10 is therefore not applicable.

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

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

#### Comment

The development is not located on land located within proximity to a coastal wetland or littoral rainforest area.

The nearest littoral rainforest proximity area is located approximately 996m to the south-east adjacent to Collins Beach on the opposite side of the Manly Peninsula.

Clause 11 is therefore not applicable.

#### 12 Development on land within the coastal vulnerability area

*Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:*

- (a) *if the proposed development comprises the erection of a building or works - the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
  - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
  - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
  - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of,*

*anticipated  
coastal  
processes  
and  
current  
and  
future  
coastal  
hazards.*

Comment

The NSW Department of Planning, Industry and Environment website refers to a Coastal Vulnerability Area as one that is subject to coastal hazards such as coastal erosion and tidal inundation. However, Clause 12 is preceded by a note which states "*at the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified*".

Therefore, Clause 12 is not applicable at this time.

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

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

Clause 13 is therefore not applicable.

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

(1)

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

Comment

The site is located at the southern edge of the Coastal Use Area.

The development retains the primary structural and architectural features of the site such that no adverse impact will be caused to the matters raised in Point (a)(i) to (v).

Therefore, Council is satisfied that the development has been designed, sited and will be managed to avoid any adverse impact referred to in Point (a).

This assessment has considered the development against the applicable standards and controls to take into account the bulk, scale and size of the development within the surrounding coastal and built environment.

The development satisfies Clause 14(1).

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

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

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

Comment

The development retains the primary structural and architectural features of the site such that any increased risk of coastal hazard will be avoided.

The development satisfies Clause 15.

### Manly Local Environmental Plan 2013

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

### Principal Development Standards

Standard	Permitted	Proposed	% Variation	Complies
4.3 - Height of Buildings	10m	Terrace Wall: 12.6m Fire Escape: 14.37m Lift Shaft: 14.97m	26% (2.6m) 43.7% (4.37m) 49.7% (4.97m)	No
4.4 - Floor Space Ratio (FSR)	2.5:1 (1,255.7m <sup>2</sup> )	2.6:1 (1,277m <sup>2</sup> )	1.70% (21.3m <sup>2</sup> )	No

**Note:** Clause 4.4(2A) allows for a FSR of up to 0.5:1 if the commercial GFA is at least 50% of the building GFA. The commercial GFA is less than 50% and therefore, the development does not benefit from the additional FSR.

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	N/A
6.4 Stormwater management	N/A
6.8 Landslide risk	N/A
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	Yes

### Detailed Assessment

#### 4.6 Exceptions to development standards

#### Description of non-compliance

Development standard:	4.3 - Height of Buildings 4.4 - Floor Space Ratio

Requirement:	Building Height: 10.0m Floor Space Ratio: 2.5:1 (1,255.7m <sup>2</sup> )
Proposed:	Building Height: 12.6m to 14.97m Floor Space Ratio: 2.6:1 (1,277m <sup>2</sup> )
Percentage variation to requirement:	Building Height: 26% to 49.7% Floor Space Ratio: 1.7%

### Description of non-compliances

#### Building Height

The new elements contributing to non-compliant building height are:

- Lift shaft;
- Fire Stair; and
- Terrace Wall.

Each of the elements are located on the roof, immediately adjacent to the central communal open space area.

#### Floor Space Ratio

The new elements contributing towards the non-compliant floor space ratio are situated in various locations and involve the filling in of stairwells, redundant spaces and outdoor areas within the two side courtyards.

### Assessment of request to vary a development standard

The following assessment of the variation to Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standards, 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 and Clause 4.4 - Floor space ratio development standards are 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 sub-clause (3), and*

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

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

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

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

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

Comment

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

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

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

Comment

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

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

**Building Height**

*"Having regard to the clause 4.6 variation provisions we have formed the considered opinion:*

- (a) that the contextually responsive development is consistent with the zone objectives, and*
- (b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and*
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and*
- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and*
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning".*

**Floor Space Ratio**

*"Having regard to the clause 4.6 variation provisions we have formed the considered opinion:*

- (a) that the contextually responsive development is consistent with the zone objectives, and*
- (b) that the contextually responsive development is consistent with the objectives of the floor space ratio standard, and*
- (c) that there are sufficient environmental planning grounds to justify contravening the development*

standard, and

*(d) that having regard to (a), (b) and (c) above that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case, and*  
*(e) that given the developments ability to comply with the zone and floor space ratio standard objectives that approval would not be antipathetic to the public interest, and*  
*(f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning".*

The justification provided in the request to vary Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) is considered to be sound in that, while the variations (particularly with respect to the Height of Buildings) appear significant numerically, the non-compliant elements are comparatively minor to the scale of the existing building and treated to minimise visual bulk.

The variation to the floor space ratio is contained entirely within the existing building and does not add to the bulk and scale of the building.

The request has satisfactorily justified the variations against the objectives of the respective Development Standards and the zone.

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

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

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

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

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

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

Comment

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings and Floor Space Ratio Development Standards and the objectives of the B2 Local Centre zone. An assessment against these objectives is provided below.

**Objectives of the Development Standards**

**Height of Buildings**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of Buildings' of the MLEP 2013 are:

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

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

Comment

The author of the request states:

*"The bulk and scale of the building is not significantly altered with the minor increase in floor space located within the established building envelope.*

*The subject property is heritage listed, located within immediate proximity of other heritage listed properties and is located within the Town Centre Conservation Area. Accordingly, primary consideration must be given to maintaining a contextually appropriate building form which respects the significance of the existing building, its setting and its relationship with the building form and height established by adjoining development including the heritage listed New Brighton Hotel.*

*The application is accompanied by a detailed Architect Design Statement prepared by the project Architect which details the design philosophy and considerations which influenced the design and final built form and heights proposed. Such design response was dictated, to a large extent, by the advice received during the design phase from the project heritage consultant and as detailed within the accompanying HIS. Particular attention must be given to the content of these documents as they form a critical component of the application. The conclusion contained at clause 9.6 of the HIS is as follows:*

*"Given the heritage significance of the building and its condition, options for retention and adaptive reuse of the building are most appropriate. The scale and alignment of the building reinforce the character of the adjacent New Brighton Hotel and anchor this important corner opposite the Steyne Hotel".*

*In relation to building height we note that the existing 3 storey parapet to The Corso is maintained with the glass line at the upper level pushed back to create balcony space with the existing roof form retained over. The existing roof top ancillary structures are demolished and replaced with more integrated access structures. The consent authority can be satisfied that the additional works above the height standard will not give rise to any inappropriate or jarring streetscape, urban design or residential amenity outcomes.*

*Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the minor increase in building height of the proposed development offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of adjoining development and development generally along the length of The Corso. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings and representative of the existing and desired future character of development within the Town Centre Heritage Conservation Area".*

The justification provided by the author of the request is concurred with in that the development retains the overall height of the existing building with exception to the comparatively minor additions of the lift shaft and fire stair, both of which are located

on the roof and not readily visible from street level.

The proposal is considered to be consistent with this objective.

**b) to control the bulk and scale of buildings.**

Comment

The author of the request states:

*"We rely on our response to objective (a) above. This objective is not defeated".*

The justification provided by the author of the request is concurred with given the considerations under (a).

The proposal is considered to be consistent with this objective.

**c) to minimise disruption to the following:**

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

Comment

The author of the request states:

*"Having inspected the site to determine available view lines across the site from surrounding residential development to public spaces (including Manly Beach and The Corso) and from public spaces to surrounding development including the surrounding adjoining heritage items we have formed the considered opinion that the development, by virtue of its height, maintains a view sharing scenario in accordance with the principles established by the Land and Environment Court in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140.*

*View impacts have been minimised and accordingly the proposal is consistent with this objective".*

The justification provided by the author of the request is concurred with in that the development, particularly the elements of non-compliance, do not unreasonably impact on available views to nearby residential development from public spaces, from nearby residential development to public spaces and between public spaces.

The proposal is considered to be consistent with this objective.

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

Comment

The author of the request states:

*"The accompanying shadow diagrams clearly demonstrate that the only minor*

*additional shadowing created by the development between 9am and 3pm will occur to adjoining development. The extent of additional shadowing is appropriately described as minor and will not unreasonably impact on the amenity of the adjoining properties. No additional overshadowing will occur to The Corso".*

The justification provided by the author of the request is concurred with in that the development, particularly the elements of non-compliance, do not unreasonably impact on solar access to public and private open spaces. No dwellings are located adjacent to the subject site.

The proposal is considered to be consistent with this objective.

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

Comment

This objective is not applicable.

#### Floor Space Ratio

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

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

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

Comment

The author of the request states:

*"The bulk and scale of the building is not significantly altered with the minor increase in floor space located within the established building envelope. The roof top communal open space, pergola and access structures do not contribute towards GFA/FSR.*

*Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as reflected by GFA/FSR, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of adjoining development and development generally along the length of The Corso. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings and representative of the existing and desired future character of development within the Town Centre Heritage Conservation Area."*

The justification provided by the author of the request is concurred with in that the development retains the overall bulk and scale of the existing building when viewed from street level.

The proposal is considered to be consistent with this objective.

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

Comment

The author of the request states:

*"Having inspected the site to determine available view lines to and from the site from surrounding residential development and public spaces (including Manly Beach and The Corso) we have formed the considered opinion that the building, by virtue of its height, bulk and scale will not obscure important landscape and townscape features".*

The justification provided by the author of the request is concurred with in that, with exception to the afore-mentioned lift shaft and fire stair considered under Clause 4.3 above, the development does not alter the external fabric of the building and therefore does not obscure important landscape and townscape features.

The proposal is considered to be consistent with this objective.

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

Comment

The author of the request states:

*"We rely on our response to objective (a) and (b) noting the landscaped setting of the site and its surrounds is maintained".*

The justification provided by the author of the request is concurred with given the considerations under (a) and (b).

The proposal is considered to be consistent with this objective.

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

Comment

The author of the request states:

*"The accompanying shadow diagrams clearly demonstrate that the only minor additional shadowing created by the development between 9am and 3pm will occur to adjoining development. The extent of additional shadowing is appropriately described as minor and will not unreasonably impact on the amenity of the adjoining properties. No additional overshadowing will occur to The Corso. Similarly, the proposal will not result in any unacceptable visual or aural privacy impacts on any adjoining land.*

*The change of use from backpacker accommodation to shop top housing will minimise potential/ existing adverse environmental impacts on the use and enjoyment of adjoining land and the public domain".*

The justification provided by the author of the request is concurred with in that the development would not cast any additional shadow nor present any overlooking opportunities into surrounding residential or commercial buildings. Furthermore, through the retention of the existing building, the development will not further limit any view sharing to and from private and public spaces.

The proposal is considered to be consistent with this objective.

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

Comment

The author of the request states:

*"The established level of retail floor space is maintained as a consequence of the works proposed and accordingly the proposal is consistent with this objective".*

The justification provided by the author of the request is concurred with in that the development would not unreasonably impact on the retention of local services and employment opportunities within the Centre. The development retains the existing retail/commercial activities on the ground floor which will continue to provide local services and employment opportunities within the Centre.

Despite its size, it is noted that the backpacker accommodation only employs one part-time manager and one casual clerk. The applicant advises that cleaning is done by the guests staying in the hostel. Comparatively, it is anticipated that there will be one off site management role for the residential component, the equivalent of one full time employee for cleaning of units and common area. Tradesmen will also be required for ongoing building and plant maintenance. In this respect, it is considered that the development would not reduce the employment opportunity of the site.

The proposal is considered to be consistent with this objective.

### **Zone objectives**

The underlying objectives of the B2 Local Centre zone are:

- ***To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.***

Comment

The author of the request states:

*"The proposed development retains the existing ground floor and mezzanine level retail uses the area of which far exceed the minimum 25% floor space requirement"*

The justification provided by the author of the request is concurred with.

The proposal is considered to be consistent with this objective.

- ***To encourage employment opportunities in accessible locations.***

Comment

The author of the request states:

*"The proposed development retains the existing ground floor and mezzanine level retail uses the area of which far exceed the minimum 25% floor space requirement. Manly CBD is one of the most accessible commercial areas within the northern beaches LGA".*

The justification provided by the author of the request is concurred with.

The proposal is considered to be consistent with this objective.

- ***To maximise public transport patronage and encourage walking and cycling.***

Comment

The author of the request states:

*"The proposal does not provide any carparking and as such satisfies this objective".*

The justification provided by the author of the request is concurred with. Council's Traffic Engineer has reviewed this aspect of the proposal and notes that the site is within close proximity to bus and ferry transport services, is sited within close proximity to a number of car share "pods" and is within walking distance (400m) of walking and cycling paths. There are also significant levels of commercial and retail development nearby limiting the need for private car ownership. On-street parking in the Manly Town Centre is subject to time restricted, permit and paid parking restrictions and there is therefore little opportunity for drivers without parking permits to park on a long term basis on street. As there is minimal need for private car ownership, the absence of parking in the proposed development may be supportable and may contribute to a lowering of private car movements within the Manly CBD and the reliance on public transport.

The proposal is considered to be consistent with this objective.

- ***To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.***

Comment

The author of the request states:

*"The development is not within proximity of any zone boundaries. The change of use from backpacker accommodation to shop top housing will reduce potential noise and odour impacts with no impacts associated with the delivery of materials or use of machinery. In this regard no objection is raised to standard conditions pertaining to the acoustic performance of roof mounted air conditioning condensers".*

The justification provided by the author of the request is concurred with. It is further noted that the applicant has undertaken an acoustic assessment to ensure that the development would not prejudice adjoining commercial development in the Centre nor adversely impact upon the nighttime economy of the Centre. The recommendations contained in the Acoustic Report are included in the conditions of consent.

The proposal is considered to be consistent with this objective.

## Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre 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 and Floor Space Ratio Development Standards is assumed by the Local Planning Panel.

#### 6.16 Gross floor area in Zone B2

Clause 6.16 requires:

1. *The objective of this clause is to provide for the viability of Zone B2 Local Centre and encourage the development, expansion and diversity of business activities, that will contribute to economic growth, retention of local services and employment opportunities in local centres.*

##### Comment

The development will introduce a long-term residential component into the zone which would contribute towards the economic growth of the Centre through the provision of a stable customer base.

2. *This clause applies to land in Zone B2 Local Centre.*

##### Comment

The subject site is located within the B2 Local Centre zone.

3. *Development consent must not be granted to the erection of a building on land in Zone B2 Local Centre unless the consent authority is satisfied that at least 25% of the gross floor area of the building will be used as commercial premises.*

##### Comment

The development includes a total gross floor area of 1,277m<sup>2</sup>. Pursuant to sub-clause (3), the development should provide 25% of the area (being 319.2m<sup>2</sup>) as commercial premises. The development provides for 365.6m<sup>2</sup> gross floor area which equates to 74.6% and therefore complies with the requirement of this clause.

4. *Development consent must not be granted for development on land to which this clause applies if the gross floor area of any retail premises on the land would exceed 1,000 square metres.*

##### Comment

The gross floor area of the retail premises is 365.6m<sup>2</sup> and therefore complies with the requirements of this clause.

#### Manly Development Control Plan

##### Built Form Controls

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Development Controls	Requirement	Proposed	% Variation*	Complies
4.2.1 - FSR	2.5:1	2.6:1	1.7% (21.3m <sup>2</sup> )	<b>No</b> See comments under Clause 4.4 of MLEP 2013
4.2.2 - Height of Buildings	10m	12.7m to 15.1m	27% to 51%	<b>No</b> See comments under Clause 4.3 of MLEP 2013
4.2.3 - Setbacks in the B2 Zone	Public Road: Nil Side Boundaries: Nil	Nil Nil Existing (no change)	N/A N/A	Yes Yes
4.2.4 - Car Parking	See Schedule 3 below	Nil	100%	<b>No</b> See separate comment below
Schedule 3 - Parking and Access	Residential: 9 spaces Visitor Parking: 2 spaces Retail: 8.8 spaces* Total: 19.8 (20) spaces	Nil	100%	

**Note:** The retail component includes the existing retail uses on the site to indicate the extent of the total car parking shortfall.

Clause (as applicable)	Requirement (as relevant)	Compliance
4.2.5.1 - Design of Townscape	<ul style="list-style-type: none"> <li>Maintain the predominant pattern of narrow fronted buildings within the town centre with new buildings incorporating modulation of the street wall such as recesses or modulation in the building facade to visually reduce the length and perceived bulk of the street wall.</li> </ul>	Yes  The development maintains the existing facade at The Corso and Market Place thereby maintaining the existing articulation, aesthetic and bulk.
	<ul style="list-style-type: none"> <li>Maintain existing setbacks.</li> </ul>	Yes  The development maintains the existing facade at The Corso and Market Place thereby maintaining the existing setbacks.
	<ul style="list-style-type: none"> <li>New development to enhance townscape characteristics, disregarding existing unsympathetic buildings.</li> </ul>	Yes  The development maintains the existing external aesthetic appearance, scale and built form by retaining both street facing facades. Therefore, the character of the townscape is

		preserved.
4.2.5.2 - Height of Buildings	<ul style="list-style-type: none"> <li><i>Whether the final building height including any architectural embellishments adversely dominate the heights of end (corner) buildings in the same street block or that of adjoining buildings.</i></li> </ul>	<p>Yes</p> <p>The development includes lift overrun and fire stair embellishments which are situated within the north-western part of the roof.</p> <p>The lift shaft has been designed to feature glass frontages to minimise its visual appearance. The fire stair is sited such that it would not be readily visible from the street.</p> <p>In both instances, Council's Urban Designer has endorsed both features and states:</p> <p><i>"The amended proposal has reduced the visual bulk of the stairs and lift core to access the roof terrace".</i></p>
	<ul style="list-style-type: none"> <li><i>Whether the proposed development successfully demonstrates the most appropriate relationship to adjoining development in terms of fulfilling the Council's townscape objectives. New development provides opportunities to achieve the maximum height of building in the centre of the street blocks to obtain views and outlook over buildings on the block edge at a lower height.</i></li> </ul>	<p>Yes</p> <p>With exception to the aforementioned lift overrun and fire stair, the development maintains the building height and setbacks by retaining the existing facades to both street frontages thereby fulfilling the objectives of Clause 4.2.5.1 - Design of Townscape.</p> <p>Views and outlook over buildings from the roof terrace is retained.</p>
	<ul style="list-style-type: none"> <li><i>Whether new development should be constructed to the same building envelope as existing buildings on a site in order to maintain interest and variety, provided the other objectives and requirements (including FSR) of this plan are achieved.</i></li> </ul>	<p>Yes</p> <p>The development retains the existing front and side setbacks (and the existing building envelope).</p> <p>The retention of the facades at both street frontages maintains the historic visual interest, architectural variety and continuity of the</p>

		townscape.
	<ul style="list-style-type: none"> <li>Whether new buildings equate with both the overall height as well as the level of each floor of adjoining buildings and in relation to particular architectural details like parapet details and with particular regard to important end-buildings in the particular street block.</li> </ul>	<p>Yes</p> <p>Notwithstanding the aforementioned lift overrun and fire stair (both of which are supported), the height of the development equates with both the overall height as well as the level of each floor of adjoining buildings and to particular architectural details in the street block.</p>
<b>4..2.5.4 - Car Parking &amp; Access</b>	<p><i>In exceptional circumstances and having regard to the merits of the application, Council may be prepared to allow a reduction in the any parking rate/ requirements in Manly Town Centre (including residential and commercial) where the applicant has demonstrated that:</i></p> <ul style="list-style-type: none"> <li><i>In the case of all uses other than dwellings, the dimensions or topography of the site would physically prevent the provision of some or all of the required spaces;</i></li> <li><i>The required access interferes with the continuity of retail frontage or interrupts the frontage of the property in other ways such that there would be a conflict with any other provisions of this DCP in particular the townscape objectives;</i></li> <li><i>The movement of vehicles to and from the site would cause unacceptable conflict with pedestrian movements, special servicing arrangements for pedestrianised areas or</i></li> </ul>	<p>Yes</p> <p>Council's Traffic Engineer has reviewed this aspect of the development and advises that</p> <p><i>"The subject site is located with frontages to the paved pedestrianised sections of Market Lane and The Corso as such, it is not possible or safe to provide vehicular access to the site.</i></p> <p><i>Further, the site is within close proximity to bus and ferry transport services, is sited within close proximity to a number of car share "pods" and is within walking distance (400m) of walking and cycling paths. There are also significant levels of commercial and retail development nearby limiting the need for private car ownership. On-street parking in the Manly Town Centre is subject to time restricted, permit and paid parking restrictions and there is therefore little opportunity for residents to park on a long term basis on street. Given the proximity of this development to good public transport, car share vehicles, services and walking and cycling routes, there is minimal need for</i></p>

	contribute to congestion at key intersections.	private car ownership and the absence of parking in the proposed development is therefore supportable".
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#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	N/A	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	N/A	N/A
3.3.2 Preservation of Trees or Bushland Vegetation	N/A	N/A
3.3.3 Footpath Tree Planting	N/A	N/A
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
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	N/A	N/A
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	No	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	No	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.5.1 Design for Townscape	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	N/A	N/A
4.4.5 Earthworks (Excavation and Filling)	N/A	N/A
5 Special Character Areas and Sites	N/A	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect 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 \$23,954 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,395,394.

#### CONCLUSION

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

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

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

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

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

Council is satisfied that:

1. The applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:
  - a) Compliance with both standards is unreasonable or unnecessary in the circumstances of the case; and
  - b) There are sufficient environmental planning grounds to justify the contraventions.
2. The proposed development will be in the public interest because it is consistent with the objectives of the standards 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 conducted for each of the following specific issues where and inconsistency or numerical non-compliance was found:

#### **Apartment Design Guide (ADG)**

- Clause 3E - Deep Soil Zones;
- Clause 3J - Bicycle and Car Parking;
- Clause 4A - Solar and Daylight Access;
- Clause 4B - Natural Ventilation;
- Clause 4D - Apartment Size and Layout;
- Clause 4E - Private Open Space and Balconies; and
- Clause 4G - Storage.

In each instance, the above inconsistencies were considered to be acceptable on merit given the adaptive nature of the proposal within the retained heritage fabric of the building and pursuant to the provision of Clause 4R - Adaptive Re-Use' of the ADG.

#### **Manly Local Environmental Plan 2013**

- Clause 4.3 - Height of Buildings; and
- Clause 4.4 - Floor Space Ratio.

#### **Manly Development Control Plan 2013**

- Clause 4.2.1 - Floor Space Ratio;
- Clause 4.2.2 - Height of Buildings;
- Clause 4.2.4 - Car Parking

In each instance the assessment of the above matters found that the development achieved consistency with the objectives of the control and could be 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 Council as the consent authority vary clause 4.3 Height of Building and Clause 4.4 Floor Space Ratio development standards pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by sub-clause (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 DA2019/1398 for Alterations and additions to an existing building to facilitate shop top housing containing 12 apartments including the construction of a pergola and lift overrun to the roof terrace on land at Lot 3 SP 67337, 3 / 63 - 67 The Corso, MANLY, 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
101 (DA3) - Ground Floor Plan	25 May 2020	Platform Architects Pty Ltd
102 (DA3) - Mezzanine Plan	06 July 2020	Platform Architects Pty Ltd
103 (DA3) - First Floor Plan	06 July 2020	Platform Architects Pty Ltd
104 (DA3) - Second Floor Plan	06 July 2020	Platform Architects Pty Ltd
105 (DA3) - Roof Plan	13 May 2020	Platform Architects Pty Ltd
201 (DA3) - South Elevation - The Corso	06 July 2020	Platform Architects Pty Ltd
202 (DA3) - West Elevation	06 July 2020	Platform Architects Pty Ltd
203 (DA3) - North Elevation	06 July 2020	Platform Architects Pty Ltd
204 (DA3) - East Elevation	13 May 2020	Platform Architects Pty Ltd
301 (DA3) - Section A-A	06 July 2020	Platform Architects Pty Ltd
302 (DA3) - Section B-B	06 July 2020	Platform Architects Pty Ltd

303 (DA3) - Section C-C	06 July 2020	Platform Architects Pty Ltd
304 (DA3) - Section D-D	06 July 2020	Platform Architects Pty Ltd
305 (DA3) - Section E-E	06 July 2020	Platform Architects Pty Ltd
306 (DA3) - Section EE	30 October 2019	Platform Architects Pty Ltd
Roof Terrace Design (Issue A)	12 May 2020	Platform Architects Pty Ltd

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
External Noise Intrusion Assessment	01 May 2020	Acoustic Dynamics
DA Stage BCA Access Report	06 November 2019	Urban Health Consultants Pty Ltd
Structure Load Check	1 September 2016	MPN Group Consulting Engineers
Construction Management Plan	14 November 2019	Low Impact Development Consulting

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan Report	15 November 2019	Low Impact Development Consulting

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

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- 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);
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
  - A. the name and licence number of the principal contractor, and
  - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
  - A. the name of the owner-builder, and
  - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

### 3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

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

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

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

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

#### 4. Resident Parking permits

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

Reason: To ensure the residents/tenants are aware that they are not entitled to a permit irrespective of its location within a Resident Parking Scheme (RPS). (DACTRBOC1)

**FEES / CHARGES / CONTRIBUTIONS****5. Policy Controls****Northern Beaches 7.12 Contributions Plan 2019**

A monetary contribution of \$23,953.94 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,395,394.00.

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

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

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

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

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

**6. Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required 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, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION  
CERTIFICATE****7. Amendments to the approved plans**

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

- Bedroom 1 in Apartments 04 and 05 are to be increased to achieve a minimum area of 10m<sup>2</sup>.
- Bedroom 2 in Apartments 08 and 11 are to be designated on the plans as Studies only.

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

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

**8. Building Code of Australia Upgrade requirements and Fire Safety Upgrade**

The Building Code of Australia works and fire upgrading measures to upgrade the building as detailed and recommended in the Indicative Compliance Report prepared by Building Innovations Australia, dated 29/11/2019, Report Project No.PRO-04365-B2N4 are to be considered when assessing the Construction Certificate.

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

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

**9. Access for People with Disabilities**

Access to and within the building and facilities are to be provided for Persons with a Disability in order to comply with the Building Code of Australia and AS 1428.1.

Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

**10. Material Finish to the Lift Shaft**

The lift shaft is to be finished entirely in clear glass on all facades so that the shaft is a see-through structure.

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

Reason: To minimise the visual appearance of the lift shaft.

**11. Schedule of Materials and Finishes**

A Schedule of Materials and Finishes is to be submitted to Council for approval prior to the issue of a Construction Certificate.

Reason: To ensure that any facade treatments are consistent with the heritage values of the site.

12. **Noise fixtures prior to CC**

Details of the fixtures, fitting and equipment being used for the windows, internal walls, external walls, mechanical plant and external doors are to be provided to the PCA for approval prior to the issuing of any Construction Certificate.

Fixtures fittings and equipment are to meet the minimum requirements as specified in the acoustic report by Acoustic Dynamics Document 4198R001.LB.200501, section 4 - 4.1, 4.2 and 4.3.

Reason: to protect future residence from noise associated with a local business district.

13. **Passive ventilation systems**

Details of passive ventilation for all individual residential units are to be provided to the PCA for approval prior to any Construction Certificate being issued.

All passive ventilation systems must meet the requirements for AS2107:2016.

Reason: To meet indoor acoustic design objectives.

14. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Flood Planning Level of 5.84m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 5.84m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

Flood Emergency Response – E2

Appropriate access to the shelter in place refuge should be available from all areas of the new development.

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

**Reason:** To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

15. **Compliance with Standards**

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

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

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

16. **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.

Due to pedestrian safety and traffic congestion issues in the vicinity of the site truck movements will be restricted in size and number. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

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 means to minimise traffic and pedestrian impacts and noise in the area;
- 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 Traffic Control Plans 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 the 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 practicing 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.(DACTRCPC1)

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

##### 17. Works Zones and Permits

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road reserve for the parking of vehicles associated with a construction site. Separate application is required with a Traffic Management Plan for standing of crane, concrete trucks or other construction plant on the road reserve.

Reason: To ensure Work Zones are assessed, monitored and installed correctly (DACTRDPC1)

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

##### 18. 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)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005;
- and

- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

19. **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.

20. **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 and pedestrian 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 Council on request.

Reason: to ensure compliance of the developer/builder in adhering to the agreed Construction Traffic Management procedures and are held liable to the conditions of consent. (DACTREDW1)

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

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

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

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

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

Reason: To ensure waste is minimised and recovered for recycling where possible.  
(DACWTE02)

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

23. **Certification that fittings and structures meet the minimum acoustic standards**  
Prior to any Occupational Certificate being issued, details are to be submitted to the PCA who is to certify that all recommended fixtures, fittings, and equipment have been installed and meet the minimum requirements as specified in the acoustic report by Acoustic Dynamics Document 4198R001.LB.200501, section 4 - 4.1, 4.2 and 4.3

Reason: to protect future residence from noise associated with a local centre.

24. **Installation of passive ventilation**  
Prior to any Occupational Certificate being issued, details are to be provided to the PCA to certify that all individual residential units have passive ventilation units installed as specified in the acoustic report by Acoustic Dynamics Document 4198R001.LB.200501, section 4.4.

Reason: To ensure residents benefit from the recommended noise attenuation with adequate ventilation (DACHPFPOC6)

25. **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 drained to the sewer with a tap in close proximity to facilitate cleaning, or a cleaning plan submitted to Council indicating a regular inspection and cleaning regime to avoid accumulation or escape of waste from the property

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.  
(DACPLF03)

26. **House / Building Number**  
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

27. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**  
The units within the development are to be numbered in accordance with the Australia Post Address Guidelines  
([https://auspost.com.au/content/dam/auspost\\_corp/media/documents/Appendix-01.pdf](https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf)).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on

stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

28. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

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

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

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

29. **Waste/Recycling Compliance Documentation**

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

Reason: To ensure waste is minimised and recycled. (DACWTF02)

30. **Positive Covenant for Waste Services**

Waste containers are not to be presented in the public places for servicing or collection. Access to the on-site storage facility must be available to waste collection contractors.

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

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

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

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved

plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

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

Reason: To create encumbrances on the land. (DACWTF04)

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

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

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

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

33. **Commercial Waste and Recycling Storage**

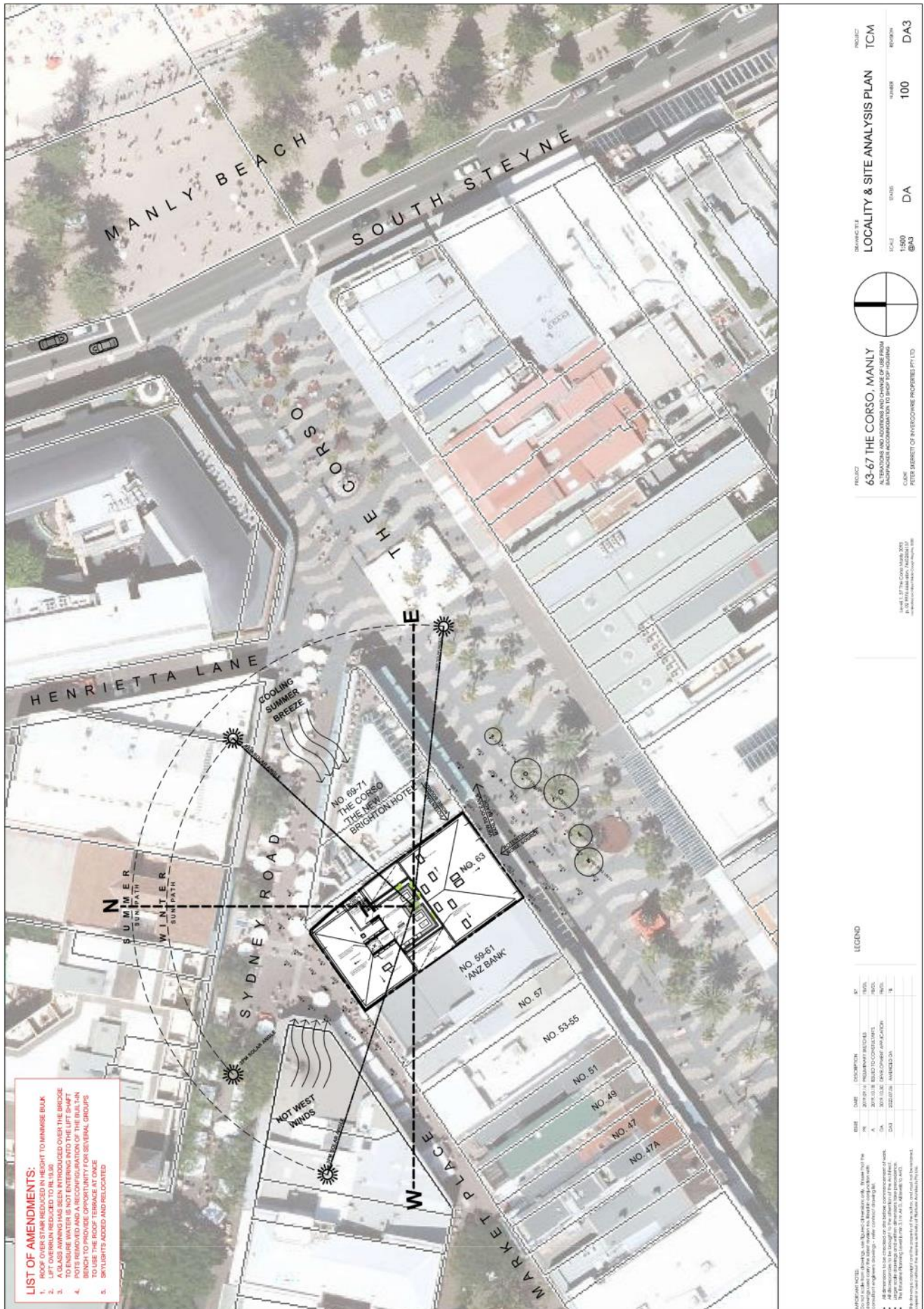
Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed. (DACPLG19)

34. **Loading and Servicing**

Any Loading/Unloading and Servicing of the development from within the pedestrianised areas of Market lane, Sydney Road or The Corso must only occur between the hours of 5am and 8am when bollards in Henrietta Lane, Central Avenue and Market lane are open to facilitate servicing. Any loading or servicing requirements outside of those hours must be accommodated from within Loading Zones in surrounding streets

Reason: to ensure pedestrian safety on pedestrianised areas (DACTRGOG1)



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**BostonBlythFleming**  
Town Planners

2<sup>nd</sup> July 2020

**Development Application DA2019/1398**  
**Updated clause 4.6 variation request – Building height**  
**Alterations, additions and change of use to shop top housing**  
**63 – 67 The Corso, Manly**

Reference is made to the amended plans prepared by Platform Architects in response to a number of issues raised by Council during the assessment of the application. Please find attached an updated clause 4.6 variation request in support of a variation to the clause 4.3 - Building height standards contained within Manly Local Environmental Plan 2013 (MLEP 2013). The GFSA/ FSR has not changed and to that extent we continue to rely on the clause 4.6 variation request for FSR contained within the original Statement of Environmental Effects.

**Yours sincerely**

Boston Blyth Fleming Town Planners



Greg Boston  
B Urb & Reg Plan (UNE) MPIA  
B Env Hlth (UWS)  
**Director**

Attachment 1      Updated clause 4.6 variation request - Clause 4.3  
MLEP 2013 – Height of buildings

## Attachment 1

### Updated clause 4.6 variation request – Height of buildings

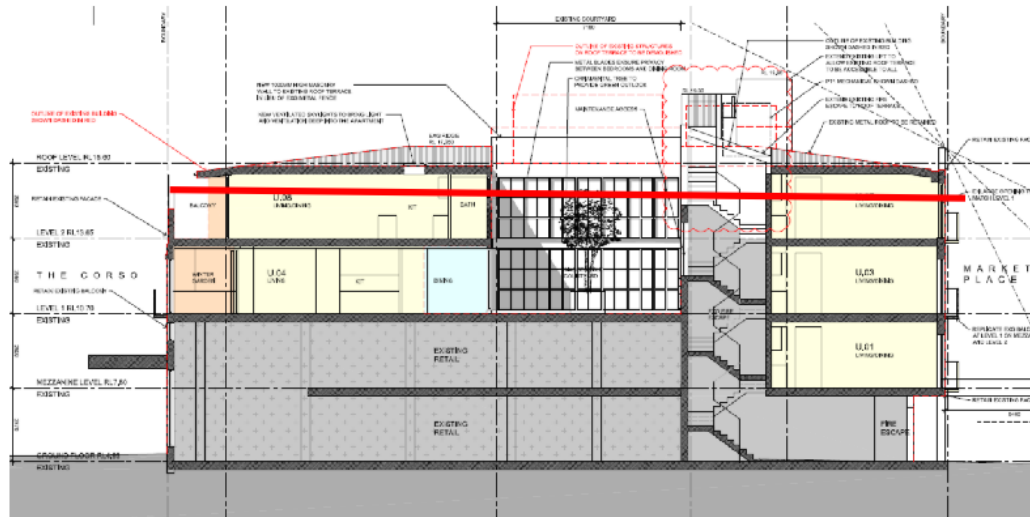
Pursuant to Clause 4.3 of MLEP 2013 the height of a building on the subject land is not to exceed 10 metres in height. The objectives of this control are as follows:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following:*
  - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
  - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
  - (iii) *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Building height is defined as follows:

***building height (or height of building)*** means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

The development has a maximum height of 14.97 metres measured to the proposed lift overrun, 14.37 metres measured to the stairwell roof and 12.6 metres measured to the proposed roof top open space balustrade. The stair extension structures are consistent with the height of the pre-existing structures at this level with the lift extension necessary to satisfy the accessible provisions of the BCA and the applicable DDA legislation. These heights represent non-compliances of 4.97, 4.37 and 2.6 metres respectively and a maximum variation of 49.7% as depicted in Figure 1 below.



**Figure 1** – Section extract showing relationship of existing development and proposed works to the 10 metre height standard

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

Pursuant to clause 4.6(2) 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.

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) states that 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.*

Clause 4.6(4) states 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 Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

### **Claim for Variation**

#### **Consistency with zone objectives**

The subject property is zoned B2 Local Centre pursuant to Manly Local Environmental Plan 2013 ("MLEP 2013") with commercial premises and shop top housing permissible in the zone with consent. The developments consistency with the stated objectives of the B2 zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Response: The proposed development retains the existing ground floor and mezzanine level retail uses the area of which far exceed the minimum 25% floor space requirement. The proposal is consistent with this objective.

- *To encourage employment opportunities in accessible locations.*

Response: Again, the proposed development retains the existing ground floor and mezzanine level retail uses the area of which far exceed the minimum 25% floor space requirement. Manly CBD is one of the most accessible commercial areas within the northern beaches LGA and as such the proposal is also consistent with this objective.

- *To maximise public transport patronage and encourage walking and cycling.*

Response: The proposal does not provide any carparking and as such satisfies this objective.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Response: The development is not within proximity of any zone boundaries. The change of use from backpacker accommodation to shop top housing will reduce potential noise` and odour impacts with no impacts associated with the delivery of materials or use of machinery. In this regard no objection is raised to standard conditions pertaining to the acoustic performance of roof mounted air conditioning condensers.

The proposed development is consistent with the zone objectives as outlined.

#### **Consistency with height of buildings standard**

The development has a maximum height of 14.97 metres measured to the proposed lift overrun, 14.37 metres measured to the stairwell roof and 12.6 metres measured to the proposed roof top open space balustrade. The stair extension structures are consistent with the height of the pre-existing structures at this level with the lift extension necessary to satisfy the accessible provisions of the BCA and the applicable DDA legislation. These heights represent non-compliances of 4.97, 4.37 and 2.6 metres respectively and a maximum variation of 49.7% as depicted in Figure 1.

Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

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

Comment: The bulk and scale of the building is not significantly altered with the minor increase in floor space located within the established building envelope.

The subject property is heritage listed, located within immediate proximity of other heritage listed properties and is located within the Town Centre Conservation Area. Accordingly, primary consideration must be given to maintaining a contextually appropriate building form which respects the significance of the existing building, its setting and its relationship with the building form and height established by adjoining development including the heritage listed New Brighton Hotel.

The application is accompanied by a detailed Architect Design Statement prepared by the project Architect which details the design philosophy and considerations which influenced the design and final built form and heights proposed. Such design response was dictated, to a large extent, by the advice received during the design phase from the project heritage consultant and as detailed within the accompanying HIS. Particular attention must be given to the content of these documents as they form a critical component of the application. The conclusion contained at clause 9.6 of the HIS is as follows:

*Given the heritage significance of the building and its condition, options for retention and adaptive reuse of the building are most appropriate. The scale and alignment of the building reinforce the character of the adjacent New Brighton Hotel and anchor this important corner opposite the Steyne Hotel.*

In relation to building height we note that the existing 3 storey parapet to The Corso is maintained with the glass line at the upper level pushed back to create balcony space with the existing roof form retained over. The existing roof top ancillary structures are demolished and replaced with more integrated access structures. The consent authority can be satisfied that the additional works above the height standard will not give rise to any inappropriate or jarring streetscape, urban design or residential amenity outcomes.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the minor increase in building height of the proposed development offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of adjoining development and development generally along the length of The Corso. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings and representative of the existing and desired future character of development within the Town Centre Heritage Conservation Area.

The proposal is consistent with this objective.

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

Response: We rely on our response to objective (a) above. This objective is not defeated.

- (c) *to minimise disruption to the following:*

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

Response: Having inspected the site to determine available view lines across the site from surrounding residential development to public spaces (including Manly Beach and The Corso) and from public spaces to surrounding development including the surrounding adjoining heritage items we have formed the considered opinion that the development, by virtue of its height, maintains a view sharing scenario in accordance with the principles established by the Land and Environment Court in the matter of *Tenacity Consulting v Warringah* [2004] NSWLEC 140.

View impacts have been minimised and accordingly the proposal is consistent with this objective.

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

Comment: The accompanying shadow diagrams clearly demonstrate that the only minor additional shadowing created by the development between 9am and 3pm will occur to adjoining development. The extent of additional shadowing is appropriately described as minor and will not unreasonably impact on the amenity of the adjoining properties. No additional overshadowing will occur to The Corso.

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

Comment: Not applicable.

Accordingly, the consent authority can be satisfied that the building height non-compliance proposed will not defeat the objectives of the height standard and accordingly strict compliance is both unreasonable and unnecessary under the circumstances.

Having regard to the matter of *Veloshin v Randwick City Council* [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance.

Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard.

He held that the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary.

In this regard, it is considered that there are sufficient environmental planning grounds to justify the variation sought namely the contextually appropriate building form achieved which respects the significance of the existing building, its setting and its relationship with the building form and height established by adjoining development including the heritage listed New Brighton Hotel.

The application is accompanied by a detail Architect Design Statement prepared by the project Architect which details the design philosophy and considerations which influenced the design and final built form proposed. Such design response was dictated, to a large extent, by the advice received during the design phase from the project heritage consultant and as detailed within the accompanying HIS. Particular attention must be given to the content of these documents as they form a critical component of the application.

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 the proposed development and associated height breaching elements, in particular the communal open space roof terrace, pergola and associated access, are consistent with objectives 1.3(c), (f) and (g) of the Act in they that promote good design and amenity, promote the sustainable management of built and cultural heritage with the approval of the variation facilitating the orderly and economic use and development of the land.

The proposed development will be in the public interest because it is consistent with the objectives of the height development standard and the objectives of the zone.

### **Conclusions**

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and

- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Yours sincerely

**Boston Blyth Fleming Pty Limited**



**Greg Boston**  
B Urb & Reg Plan (UNE) MPIA  
**Director**



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/1260
<b>Responsible Officer:</b>	Renee Ezzy
<b>Land to be developed (Address):</b>	Lot 33 DP 8394, 29 North Avalon Road AVALON BEACH NSW 2107 Lot 32 DP 8394, 27 North Avalon Road AVALON BEACH NSW 2107
<b>Proposed Development:</b>	Demolition works and construction of a Seniors Housing development comprising 10 self contained dwellings and site consolidation
<b>Zoning:</b>	R2 Low Density Residential R2 Low Density Residential
<b>Development Permissible:</b>	Yes, under SEPP Housing for Seniors or People with a Disability (HSPD) 2004
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	Yes
<b>Owner:</b>	Armada Avalon Pty Ltd
<b>Applicant:</b>	Armada Avalon Pty Ltd
<b>Application Lodged:</b>	11/11/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Seniors Living
<b>Notified:</b>	09/01/2020 to 28/01/2020
<b>Advertised:</b>	07/12/2019
<b>Submissions Received:</b>	84
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: SEPP (rear 25%)%
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$ 3,574,441.00

### EXECUTIVE SUMMARY

Development Application DA2019/1260 has been made by Armada Avalon Pty Ltd for demolition works and construction of a two storey development divided into four buildings, containing ten (10) self-contained dwellings pursuant to State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004. The development includes a centralised hard stand parking area for fifteen (15) vehicles and an elevated walkway which connects the four (4) building elements at first floor level. The

works also include removal of fifty-one (51) trees and site consolidation.

On 24 December 2019, the Applicant commenced Class 1 proceedings in the NSW Land and Environment Court, appealing Council's deemed refusal of the development application.

Public exhibition of the development resulted in eighty-four (84) submissions objecting to the proposal and raising concerns relating to amenity (noise and privacy), traffic and parking, character, density, tree removal and compliance with SEPP HSPD.

The subject site is zoned R2 Low Density Residential under the *Pittwater Local Environmental Plan 2014 (PLEP 2014)*. Development for the purposes of seniors housing is prohibited with the zone. The application has been lodged pursuant to SEPP HSPD.

The assessment of the application has found that the proposal in its current form cannot be supported as it fails to satisfy the requirements of both SEPP HSPD and P21 DCP including building height, side setback, landscaped open space and character.

Accordingly, the application is referred to the NBLPP with a recommendation for refusal and for the Panel to endorse the recommendation and for Council to defend the appeal in the NSW Land and Environment Court.

## **PROPOSED DEVELOPMENT IN DETAIL**

The development seeks consent for the following:

Demolition works and construction of a seniors housing development, comprising ten (10) self-contained dwellings for seniors or people with a disability.

The building is designed with four (4), two storey detached buildings centrally connected by an elevated footbridge.

Each building contains a hipped or pitched roof.

### **Ground Floor Level**

- Dwellings 1 and 2 provide two (2) bedrooms
- Dwellings 3, 4 and 5 provide three (3) bedrooms

### **First Floor Level**

- Dwellings 6, 7 and 8 provide two (2) bedrooms
- Dwellings 9 and 10 provide three (3) bedrooms
- Elevated footbridge connecting Dwellings 9 and 10 with Dwellings 6, 7 and 8 and a lift access.
- Site consolidation
  - Fifteen (15) at-grade parking spaces
  - One single vehicle access off North Avalon Road

- Removal of fifty-one (51) trees, eleven (11) from within the road reserve

## **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 - Zone R2 Low Density Residential  
Pittwater Local Environmental Plan 2014 - 7.10 Essential services  
Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality  
Pittwater 21 Development Control Plan - B5.10 Stormwater Discharge into Public Drainage System  
Pittwater 21 Development Control Plan - C1.1 Landscaping  
Pittwater 21 Development Control Plan - C1.5 Visual Privacy  
Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy  
Pittwater 21 Development Control Plan - C1.12 Waste and Recycling Facilities  
Pittwater 21 Development Control Plan - C1.20 Undergrounding of Utility Services  
Pittwater 21 Development Control Plan - C1.21 Seniors Housing  
Pittwater 21 Development Control Plan - C4.4 Subdivision - Public Roads, Footpath and Streetscape  
Pittwater 21 Development Control Plan - D1.15 Fences - General

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 33 DP 8394 , 29 North Avalon Road AVALON BEACH NSW 2107 Lot 32 DP 8394 , 27 North Avalon Road AVALON BEACH NSW 2107
<b>Detailed Site Description:</b>	The site comprises two lots and is legally identified as follows:  (a) Lot 32 DP 8394 (known as No. 27 North Avalon Road)

(b) Lot 33 DP 8394 (known as No. 29 North Avalon Road)

The site currently contains two single detached dwelling houses with an attached single garage at No. 27 and an attached carport at No. 29.

The site contains a drainage easement which extends from the north-east to the south-west side of the site and runs behind the dwelling at No. 27 and in front of the dwelling at No. 29.

The site is identified as Low Risk Flood Prone Land. The site is not Bushfire Prone Land.

The site is rectangular in shape with a combined frontage of 36.58m along North Avalon Road and a depth of 60.96m. The site has a surveyed area of 2227m<sup>2</sup>.

The site has a fall from the rear south-north to the front of the site of approximately 0.9m (1.5%) and from east to west of approximately 0.8m (2.29%).

Surrounding development consists of low density single residential dwellings all located on large lots, sited 'amongst the trees' with generous setbacks and open rear yards.

Map:



character, building setbacks, building bulk, privacy and tree removal. The concluding comments from the meeting state:

*"Higher density development where permitted should maintain a "good fit" within the context of surrounding land to prevent outcomes that are "jarring" against the existing urban amenity and local residential character that popularises the surrounding streets / precinct."*

#### **Development Application DA2019/1260**

Development Application No. DA2019/1260 for demolition works and construction of a seniors housing development comprising ten (10 self-contained dwellings for seniors or people with a disability was lodged with Council on 25 November 2019. The application reflects the design discussed at the pre-lodgement meeting.

#### **Class 1 Proceedings - NSW Land and Environment Court**

On 24 December 2019, Class 1 proceedings were commenced in the NSW Land and Environment Court appealing Council's deemed refusal of the application.

There is no further relevant history for the site.

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

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

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration'	Comments
	<p><u>Clauses 54 and 109</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p><b>(i) Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 DCP section of this report. A number of inconsistencies with the relevant controls have been identified which indicate the impact of the development on the built environment is not acceptable.</p> <p><b>(ii) Social Impact</b> The development will provide seniors housing in the locality, therefore the development ensures that the housing stock caters for a broad cross section of the community. In terms of the provision of housing, the proposed development will not have a detrimental social impact on the locality.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is not considered to be suitable for the development given its location within an area which renders the development to be inconsistent with its desired future character.
Section 4.15 (1) (d) – any	The public submissions received in response to the proposed

Section 4.15 Matters for Consideration'	Comments
submissions made in accordance with the EPA Act or EPA Regs	development are addressed under "Notification & Submissions Received" within this report. Several issues were raised which warrant the refusal of the application.
Section 4.15 (1) (e) – the public interest	<p>The provision of Seniors housing in the locality is generally in the broader public interest.</p> <p>However, the controls contained within the <i>Pittwater LEP</i> and <i>P21 DCP</i> provide the community with a level of certainty as to the scale and intensity of future development and the form and character of development that is in keeping with the desired future character envisage for the locality.</p> <p>This assessment has found the proposal to be contrary to the relevant requirement(s) in these local planning controls 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.</p>

#### 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 84 submission/s from:

Name:	Address:
Mr Gary Wynne Denman Mrs Deborah Elizabeth Denman	8 Urara Road AVALON BEACH NSW 2107
Mr Bruce Anthony Chard Mrs Cathy Lynne Chard	34 North Avalon Road AVALON BEACH NSW 2107
Mr Ian Alexander Fitzhardinge Sheppard	30 North Avalon Road AVALON BEACH NSW 2107
Mr Hugh Mark Spear	50 Hudson Parade AVALON BEACH NSW 2107
Raia Pty Ltd	5/123 Kurraba Road KURRABA POINT NSW 2089
Mrs Anne-Louise Clacher	26 North Avalon Road AVALON BEACH NSW 2107
Withheld	AVALON BEACH NSW 2107

Name:	Address:
Withheld	
Ms Jacqueline Robyn Brown	55 Tasman Road AVALON BEACH NSW 2107
Bree Turner	64 a Marine Parade AVALON BEACH NSW 2107
Mrs Nancy Lorraine Krause	64 Marine Parade AVALON BEACH NSW 2107
Mr Mark Edmund Turner	10 Watkins Road AVALON BEACH NSW 2107
Janette Bunch	Address Unknown
Mrs Kathrine Foliot Whalan	12 Urara Road AVALON BEACH NSW 2107
Mr Barry Norman Hanstrum	31 North Avalon Road AVALON BEACH NSW 2107
Mr Rohan Baker Mrs Chelsey Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107
Mr Roger Philip Sayers	104 Binburra Avenue AVALON BEACH NSW 2107
Mrs Marita Ann Macrae	24 Catalina Crescent AVALON BEACH NSW 2107
Mr Andrew Gardiner Reynolds Pauline Molnar	68 Marine Parade AVALON BEACH NSW 2107
Mr Peter John McGowan	10 Urara Road AVALON BEACH NSW 2107
James Nicol	Address Unknown
CHOEDON COVENTRY	Address Unknown
Mr Tom Coventry	8 Marine Parade AVALON BEACH NSW 2107
Ms Tina Henry	30 Bareena Road AVALON BEACH NSW 2107
Ms Dale Christine Kentwell	22 Coonanga Road AVALON BEACH NSW 2107
J Bulgin	34 North Avalon Road AVALON BEACH NSW 2107
Mr Darren Leonard Bogg Mrs Renee Karen Bogg	26 Catalina Crescent AVALON BEACH NSW 2107
Erin Broady Menios Constantinou	16 Catalina Crescent AVALON BEACH NSW 2107
Ms Leonie Desree Leonard	636 Barrenjoey Road AVALON BEACH NSW 2107
Mr Craig Douglas Berry Mrs Sharyn Dee Berry	23 North Avalon Road AVALON BEACH NSW 2107
David Griffiths	Address Unknown
Mrs Kara Jodie Egerton	36 North Avalon Road AVALON BEACH NSW 2107
Mr Mark John Head	2/10 North Avalon Road AVALON BEACH NSW 2107
Mrs Jessica Sharon Shaw	44 Marine Parade AVALON BEACH NSW 2107
Mr Anthony Craig Boaden	34 Trappers Way AVALON BEACH NSW 2107
Mrs Judith Ann Thomas	18 / 36 - 38 Old Barrenjoey Road AVALON BEACH NSW 2107
Brad Goulding	27 Bareena Road AVALON BEACH NSW 2107
Mr Grahame Patrick Byrnes	5 A North Avalon Road AVALON BEACH NSW 2107
Ms Karin Turner	26 Marine Parade AVALON BEACH NSW 2107
Mrs Helen Olivia Richards	248 Hudson Parade CLAREVILLE NSW 2107
Mr Clifford John Barry	20 Marine Parade AVALON BEACH NSW 2107
Mrs Robin Boler	80 Binburra Avenue AVALON BEACH NSW 2107
Mr Hubert Reinhold Habicht	1 B Urara Road AVALON BEACH NSW 2107

Name:	Address:
Mr Laurie Bombardiere	PO Box 296 AVALON BEACH NSW 2107
Mr Darren Patrick Fishburn	52 Binburra Avenue AVALON BEACH NSW 2107
Mr Phillip Gregory Jones Mrs Annabel Selby-Jones	48 Marine Parade AVALON BEACH NSW 2107
Mr A Padovan	18 Connanga Road AVALON BEACH NSW 2107
Avalon Preservation Trust Incorporated as Avalon Preservation Association	24 Catalina Crescent AVALON BEACH NSW 2107
Mr Roger Barton Perkins Mrs Joan Elizabeth Perkins	95 Marine Parade AVALON BEACH NSW 2107
Mrs Caroline Ann James	44 Binburra Avenue AVALON BEACH NSW 2107
Jacqui Turner	6 Joseph Street AVALON BEACH NSW 2107
Mr Sam Nugent Richmond Mr Hannah Richmond	47 Tasman Road AVALON BEACH NSW 2107
Ms Jennifer Nathalie Cuthbertson Natalie Cuthbertson	4 Coonanga Road AVALON BEACH NSW 2107
Shane Longmore	C/- Alpha Chemicals Pty Ltd 18 Inman Road CROMER NSW 2099
Mr Frank Raymond Zonneveldt	48 Binburra Avenue AVALON BEACH NSW 2107
Mrs Milga Mary Rose	13 Urara Road AVALON BEACH NSW 2107
Mr David George Beausire Barnard Marieta Barnard	36 Marine Parade AVALON BEACH NSW 2107
Mr Duncan John Hyde Mrs Lyndee Gai Hyde	33 North Avalon Road AVALON BEACH NSW 2107
Emma Neville	89 Marine Parade AVALON BEACH NSW 2107
Mrs Jeanette Eleanor Padilla	21 Catalina Crescent AVALON BEACH NSW 2107
Nina Louise Gow	PO Box 22 AVALON BEACH NSW 2107
Michele Ann Robertson	134 Central Road AVALON BEACH NSW 2107
Ms Anne O'Malley Jones	21 Harley Road AVALON BEACH NSW 2107
Mr Phillip Mark Deer	23 Watkins Road AVALON BEACH NSW 2107
Mr David Allan Watson	7 / 82 Soldiers Avenue FRESHWATER NSW 2096
Katherine Beaumont	PO Box 808 NEWPORT BEACH NSW 2106
Frances Graham	11 North Avalon Road AVALON BEACH NSW 2107
Mr Ross Gary Woodward	12 Watkins Road AVALON BEACH NSW 2107
Ms Erin Amanda Hopkins	28 Tasman Road AVALON BEACH NSW 2107
Mr Raymond John Martin	16 Marine Parade AVALON BEACH NSW 2107
Mr Michael Ian Lapin	1 Harley Road AVALON BEACH NSW 2107
Ms Linda Nhung Bendixsen	25 Bareena Road AVALON BEACH NSW 2107
Withheld Withheld	AVALON BEACH NSW 2107
Mrs Danielle Edith Dubois	46 Park Avenue AVALON BEACH NSW 2107

Name:	Address:
Mr Sven Shimell	6 Bareena Road AVALON BEACH NSW 2107
Ross King	85 Marine Parade AVALON BEACH NSW 2107
Mrs Julie Robyn King	12 Ascot Road KENTHURST NSW 2156
Ms Sandra Kay Tyson	27 Catalina Crescent AVALON BEACH NSW 2107
Rebecca Conroy	1 North Avalon Road AVALON BEACH NSW 2107
Mr Garry Farrell	17 Marine Parade AVALON BEACH NSW 2107
Susan Farrell	71 Marine Parade AVALON BEACH NSW 2107
Mr John Benedict Norsa Ms Maryline Norsa	1 Emerald Street NARRABEEN NSW 2101
Mrs Natalie Sheryl Ball	2 North Avalon Road AVALON BEACH NSW 2107
Dr Penelope Rose Lake	22 Tasman Road AVALON BEACH NSW 2107
Mr Stephen John Riley	234 Hudson Parade CLAREVILLE NSW 2107

The development application was notified and advertised for a period of 42 days from 3 December 2019 to 24 January 2020 in accordance with the Community Participation Plan. The application was required to be renotified for a further 21 days from 7 January 2020 to 28 January 2020 due to an administrative error with the first notification.

The following issues were raised in the submissions received:

- Traffic and parking
- Tree removal
- Site coverage and overdevelopment
- Character and Streetscape
- Clustering of medium density seniors housing
- Proximity of development to relevant services
- Building Height non-compliance
- Impact of population increase from 10 additional units
- Increased load on sewage mains and stormwater

The matters raised within the submissions are addressed as follows:

- **Traffic and Parking**  
Increased traffic congestion and street parking

*The intersection of North Avalon Road and Barrenjoey Road is already overloaded with cars at peak periods, as evidenced by the long queues of vehicles extending back along*

*North Avalon Road as far as Tasman Road. This build up in traffic is mainly caused by drop offs at Barrenjoey High School, the Montessori School and two day care centres in North Avalon, converging with local traffic heading into Avalon Village along Barrenjoey Road. The regional road infrastructure is also beyond capacity as evidenced by the traffic jam experienced every morning from 8.30am to 9.30am between Whale Beach Road and the Bilgola Bends. The roads are at capacity and struggling to cope with the existing residential traffic, not only during the morning peak but at other times such as peak weekend and holiday season traffic.*

Comment: The proposed traffic movements for the development have been assessed as being within the capacity of the local road network. Notwithstanding, local issues raised in relation to intersection capacities at peak periods is a matter that requires further investigation.

- **Tree Removal**

*Impact on flora and fauna habitats*

*Removal of over 50 trees. No attempt to retain existing trees consistent with the Locality statement and the requirements of Clause 33 (f) of SEPP HSPD.*

Comment:

Council's Landscape Architect has reviewed the proposed tree removal in detail and has raised significant concerns with the extent of trees to be removed. The removal of over fifty (50) trees from the site is considered to result in a detrimental loss of canopy trees and vegetation synonymous with Avalon Beach Locality. The removal of vegetation to accommodate such an excessive footprint on the site is not supported. This issue forms a reason for refusal of the application.

- **Site Coverage and overdevelopment**

Comment:

The proposed development seeks consent for a development that covers 60% of the site in a area where a maximum of 50% is the maximum site coverage. The site layout contains issues with the parking design, rear building setback and driveway access which indicates the proposal is an overdevelopment of the site.

- **Character of the area and streetscape**

*Abundance of trees, traditional beach style houses set back from the street, spaciousness and dwellings nestled comfortably into the landscape.*

*Building line in front of the average dwelling setback (excluding carports)*

Comment:

The assessment of this development has demonstrated that the proposal is an overdevelopment of the site, notwithstanding the increased allowances permitted pursuant to SEPP (HSPD). The extensive removal of characteristic tree canopy and vegetation from the site to accommodate a large development footprint which covers 60% of the site is not consistent or empathetic to the established character of development in this location. The surrounding streets are predominantly single dwellings within a generous landscaped curtilage.

The proposed development while incorporating building elements visible in the surrounding area, presents as a medium density development which is inconsistent with the existing character and with the desired character for the locality, which clearly states where this form of development should be located: " *medium density housing will be located within and around commercial centres,*

*public transport and community facilities". The inconsistency of the development in addressing the character of the location is reflected in the reasons for refusal.*

- **Clustering of medium density seniors housing in the area**

*This development will be the third seniors housing development within 300m (No. 7 North Avalon Road and No.4-6 Binburra Avenue) conflicts with the intention of the Avalon Locality Statement that medium density housing be located around the commercial centres, public transport and facilities.*

Comment:

While there are other examples of seniors housing in close proximity, these other developments are located much closer to Barrenjoey Road. The subject site is not considered a suitable location given the concerns with suitable access, tree removal and character.

- **Proximity to relevant essential services**

*To access medical services by public transport, residents need to walk almost 400 metres to the bus stop on Barrenjoey Road, alight the bus at the Avalon Parade traffic lights, then walk another 400 metres to the main medical centre located at the western end of Avalon Village at 54 Avalon Parade. These distances are at the outer limit of the travel distances, as specified by SEPP HSPD Clause 26. The journey to the medical centre in Avalon Village and back to the site is a significant excursion for elderly people and people with a disability, requiring around 1.6 kilometres travel by foot, wheelchair or motorized cart, in addition to the bus trip. For the return journey, the bus stop on the western side of Barrenjoey Road is located 435 metres from the entrance pathway on the development site, more than the upper limit of 400 m as specified in the SEPP HSPD.*

*SEPP HSPD Clause 26 does not allow for any gradient along the pathway to exceed 1:8. The 'Assessment of Distance and Path of Travel to the Bus Stops' report in the DA documents identifies 3 sections of the path to the bus stops which are non-compliant with this Clause. The kerb ramp on the western side of Barrenjoey Road has a section steeper than the 1:8 gradient, as does the kerb ramp on the corner of North Avalon Road and Catalina Crescent. The transition to the footpaths either side of Tasman Road are also non-compliant and need to be remedied as part of the proposed works to upgrade the footpath from the site.*

Comment:

The issues identified by the public submissions with the provision of suitable access are concurred with in this assessment. SEPP (HSPD) states: "(a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like,"

As detailed elsewhere in this report, the access from the proposal to Barrenjoey Road is not considered acceptable. The development is located at the very limits of the required distance to the bus stops, with the bus stop on the western side of Barrenjoey Road beyond the maximum distance. The access to this bus stop is not adequate or safe and is considered unacceptable.

- **Building Height non-compliance**

*SEPP HSPD requires the rear 25% of the site to be one storey. Proposal extends into this by 1.4m creating a bulkier appearance at the rear of the site. Clause 4.6 submitted disregards planning regulations designed to protect the visual amenity and privacy of the neighbours.*

Comment:

The inclusion of additional built form within the rear setback at first floor level for Units 9 and 10 is not supported. This non-compliance demonstrates that the development is cramming more onto this site than it should. A variation to the development standard is not supported.

- **Impact of population increase from additional 10 units**

Comment:

There are implications within the submissions received that the additional ten (10) units on the site will create exacerbated impacts on the traffic movements in this area. The traffic reports do not support this concern and it appears that there is a broader issue with traffic management within this enclave that needs a more comprehensive review. Traffic congestion and cars banking-up at the intersection of Barrenjoey Road during the morning and afternoon peak periods is a result of many factors including school traffic. Investigations into the potential for a signalised intersection at Barrenjoey Road is a matter for Transport for NSW as the owner of the road asset.

- 

- **Increased load on sewage mains and stormwater**

*Increased risk of flooding on adjoining properties*

*The increase in area of hard surfaces within the development may also lead to an increase in run-off from the site into a flood declared zone.*

Comment:

Council's Development Engineers have identified a deficiency in the information submitted with the application, which does not allow them to ascertain if the proposed stormwater connection is viable. Due to insufficient information, this issue remains unresolved. This issue forms a reason for refusal.

- **Amenity Impacts**

*Visual and Acoustic impacts on neighbours*

*Noise levels from the 15 bay car park*

Comment:

The proposed layout of the parking on the site has been detailed elsewhere within this report. The inclusion of numerous parking spaces directly adjoining bedrooms and windows to those rooms is considered a poor design and amenity outcome. The layout also provides minimal areas for landscaping to offer any relief to the extent of hardstand area, and the reflected/reverberated noise from fifteen (15) vehicles in this location. This aspect of the development forms a reason for refusal.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported, subject to conditions</b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p><b>Not Supported</b></p> <p>The development application seeks approval for demolition works and construction of 10 self-contained dwellings pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.</p> <p>Council's Landscape section has assessed the proposal against Pittwater 21 DCP Controls and the Seniors Living Policy urban design guidelines under SEPP 2004, as follows:</p> <ul style="list-style-type: none"> <li>• DCP Controls: B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; C1.21 Seniors Housing; C1.24 Public Road Reserve - Landscaping and Infrastructure; and D1 Avalon Beach Locality,</li> <li>• Seniors Living Policy: section 2. Site Planning and Design; section 3. Impacts on Streetscape; and section 4. Impacts on Neighbours.</li> </ul> <p>In its current form, the landscape proposal is not supported for the following reasons:</p> <ul style="list-style-type: none"> <li>• the public footpath proposed as 1.2 metres wide is contrary to the requirement for a 1.5 metre wide footpath as nominated under DCP control C1.21 Seniors Housing. This additional footpath width thus may impact upon additional trees within the road verge, over and above the impacts currently assessed with the Arboricultural Assessment Report for the proposed public pathway,</li> <li>• the quantity of tree loss within the front setback and road verge limits the opportunity to minimise the impact of new development on the streetscape,</li> <li>• the quantity of tree loss particularly within the front setback is contrary to the objectives of DCP control B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; and Seniors Living Policy section 2. Site Planning and Design and section 3. Impacts on Streetscape, and</li> <li>• insufficient side boundary screen planting by way of small</li> </ul>

Internal Referral Body	Comments
	<p>and medium height tree planting along the side boundaries to reduce the impact of development upon neighbours.</p> <p>To support this application, consideration of tree retention of existing native trees is required through re-design of the footprint to ensure as many high and medium retention value trees are retained and protected. This requirement for retention of existing trees responds to DCP control B4.22 Preservation of Trees and Bushland Vegetation, and C1.1 Landscaping, as well as Seniors Living Policy: section 2. Site Planning and Design; section 3. Impacts on Streetscape; and section 4. Impacts on Neighbours.</p> <p><b>Public footpath with road verge</b></p> <p>Pittwater 21 DCP Clause C1.24 Public Road Reserve - Landscaping and Infrastructure, requires a 1.5 metre wide footpath for residential development comprising 6 or more dwellings. The proposal for a 1.2 metre wide footpath is contrary to Pittwater 21 DCP.</p> <p>The proposed alignment of the footpath as shown on the Civil Plans C01 and C02 impacts upon existing street trees through excavation works that are reported in the Arboricultural Assessment Report as likely to affect tree condition.</p> <p>The Arboricultural Impact Assessment for the site includes retention of the following trees along the frontage of No. 27-29 for the footpath within the road verge: T6, and T11, as assessed in the Arboricultural Impact Assessment, and T1, T2, T3 and T4 as assessed in the Arboricultural Assessment Report for the proposed public pathway. It is anticipated therefore that a complying 1.5 metre wide footpath will have increased detrimental impacts that may affect these trees. The development application assessment is therefore unable to be continued as the impact to these trees is unknown.</p> <p>The Arboricultural Impact Assessment for the site includes removal of the following trees along the frontage of No. 27-29 for the footpath within the road verge: T5, T7, T8, T9, and T10.</p> <p>The Arboricultural Assessment Report for the proposed public pathway assesses that the impact to the existing street trees T1, T2, T3 and T4 within the road verge should be determined by a non-destructive tree root investigation as structural root zone (SRZ) disturbance is likely. Under Australian Standard 4970-2009 Protection of Trees on Development Sites, such investigations are required to consider the design of the footpath including design options such as a suspended footpath, construction of the footpath on top of the existing ground with no excavation, or installation of</p>

Internal Referral Body	Comments
	<p>an alternative footpath material.</p> <p>This information has not been presented at development application stage and thus the footpath proposal is insufficient in detail and can't be considered for approval at this stage.</p> <p><b>Landscape Character</b></p> <p>Pittwater 21 DCP Clause C1.21 Seniors Housing, requires consideration to reduce the visual bulk and scale of development and retention of natural vegetation.</p> <p>The loss of vegetation is extensive and impacts upon the landscape character of tall canopy trees currently evident throughout Avalon. It is recognised that many of the existing trees proposed for removal are classified as Exempt Trees under Northern Beaches Council tree policy.</p> <p>The quantity of tree loss as proposed is not supported. To support this application, consideration of tree retention of existing native trees is required through re-design of the footprint to ensure as many high retention value trees are retained and protected.</p> <p>This requirement for retention of existing trees additionally responds to DCP control B4.22 Preservation of Trees and Bushland Vegetation, and Clause C1.1 Landscaping.</p> <p>The Seniors Living Policy draws attention to the requirement to:</p> <ul style="list-style-type: none"> <li>• retain trees on the street and in front setbacks to minimise the impact of new development on the streetscape;</li> <li>• retain trees at the rear of the lot to minimise impact on neighbours; and</li> <li>• retain large or otherwise significant trees on other parts of the site through sensitive site planning.</li> </ul> <p>It is considered that the following trees should be retained over and above the listed trees shown on the plans for retention, to satisfy the Seniors Living Policy:</p> <p><u>Road Verge</u></p> <p>The following trees are noted for retention within the road verge: T6 and T11, subject to further investigations to respond to concerns raised above.</p> <p><u>Front Setback</u></p> <p>T14 (She Oak with medium retention value), with any proposed low</p>

Internal Referral Body	Comments
	<p>walling/fence located to minimise tree impact, T15 (She Oak with high retention value), with any proposed low walling/fence, stairs and fire hydrant booster located to minimise tree impact, T20 (Angophora with high retention value) is recommended for retention, however the proposed fencing requires relocation to minimise tree impact, T21 (Eucalyptus with high retention value) is recommended for retention, however the proposed fencing requires relocation to minimise tree impact.</p> <p>Note: the following trees are noted for retention within the front setback: T20 and T21</p> <p><u>Rear Setback</u></p> <p>Nil, over and above the proposed retention of T50.</p> <p><u>Side Boundaries</u></p> <p>T58 (Tallowwood with medium retention value), with the surface pavement for the ground carparking area to be designed to accommodate an alternative permeable / porous pavement material.</p> <p>Note: the following trees are noted for retention within the side boundary setbacks: T12, T22, T23 and T24.</p> <p><b>Landscape Proposal</b></p> <p>To achieve the landscapes of the Seniors Living Policy and Pittwater 21 DCP, the landscape plan is to be amended to include the following:</p> <ul style="list-style-type: none"> <li>• continuous medium sized canopy trees along the western side boundary,</li> <li>• continuous medium sized canopy trees along the eastern side boundaries, thus requiring any proposed walling to be relocated to allow for sufficient soil volume area to support trees,</li> <li>• at least 3 large canopy trees and at least 2 other medium canopy trees within the front setback,</li> <li>• at least 3 large canopy trees and at least 2 other medium canopy trees within the rear setback, and</li> <li>• landscape walling, fencing, paths and the like shall be relocated to minimise impact upon existing trees.</li> </ul> <p>The landscape proposal is not supported.</p>
NECC (Development Engineering)	<p><b>Not Supported</b></p> <p><u>Driveway</u></p> <p>Traffic officer requires a 5.5m wide and 6.0m long driveway from</p>

Internal Referral Body	Comments
	<p>the property boundary. The proposal shows 3.8m wide which can affect the waste storage area and the entrance to the development. An amended access driveway plan and waste storage plan is requested in this regards.</p> <p><u>Drainage plan</u> The development proposes to build over and extinguish Council's drainage easement, The proposal is to divert stormwater from the upstream property 31 North Avalon Road to the Council drainage system in the road. The proposed development wishes to connect the stormwater discharge from the developed site to drainage system located near the rear of 25 North Avalon Road . A CCTV of the existing drainage system down stream of the site provided, indicate that no public stormwater drainage is connected to it and is in a dilapidated and poor condition.</p> <p>In order for Council to permit the extinguishment of the proposed Council's drainage easement within the site and to connect into a redundant pipe line The applicant is required to submit the following:</p> <ul style="list-style-type: none"> <li>• Confirm that they have been given consent from 31 North Avalon Road to divert their domestic stormwater drainage line.</li> <li>• The CCTV survey video footage used to create the CCTV report submitted with the DA.</li> <li>• The submitted CCTV report show that the existing drainage system down stream is in a dilapidated condition.</li> <li>• The drainage system that the development proposes to connect shall be upgraded and/or reinstated to ensure that the down stream drainage is sustainable for the life of the proposed development. The minimum pipe size for Council drainage system is 375mm. A concept stormwater plans is requested from the development site to Council pit located in Tasman Road with supporting hydraulic study.</li> <li>• Provide title search for all the down stream properties from the development site to Tasman Road to demonstrate that there is a Council's drainage easement affecting all the down stream lots. If there is no drainage easement benefiting Council the applicant will require driange easement rights to be created to benefit the subject development. Detail evidence of drainage easement rights is requested.</li> </ul> <p><u>Footpath</u> The footpath plan is to be amended to 1.5m wide. Council's Landscape offier is requested to comment on the location of the footpath and it's impact on the existing trees in this area.</p> <p>As result of in sufficient information Development Engineers can</p>

Internal Referral Body	Comments
	not finalise the comments.
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p><b>Supported</b></p> <p>The proposed seniors living development is located within the Probable Maximum Flood extent as identified in the Avalon to Palm Beach Floodplain Risk Management Study and Plan, 2017. The peak Probable Maximum Flood level is 16.09m AHD, the proposed floor levels of the dwellings are set at 16.10m AHD.</p> <p>As per the recommendation of the Flood Risk Management Report the subfloor and perimeter walls of units 1 and 2 are to be sufficiently open to not impede flood water. The development is recommended for approval subject to conditions.</p>
Strategic and Place Planning (Urban Design)	<p><b>Supported</b></p> <p>The proposed development was subject of a pre-lodgement meeting with the applicant held in February 2019.</p> <p>The development represents a moderate intensification of the site which is comparable to similar developments in the local area. Comments provided by the Urban Design officer to the applicant in the pre-lodgment meeting have generally been addressed.</p> <p>The development represents a style that is architecturally sympathetic to the adjacent neighbouring properties and sits well within the context. The lightweight nature of the architectural materiality and the selective shading and privacy devices assist to reduce the perceived bulk and scale of the overall development. Deep balconies also provided for passive climate control whilst this enhanced private open space to each of the apartments is generous.</p> <p>Similarly the site planning is well considered and articulated across the site optimising the climatic conditions and orientation enhancing the solar and ventilation strategies across the site through the buildings' orientation whilst remaining within the relevant development controls of setbacks and building envelope.</p> <p>The proposed development can generally be supported.</p> <p><u>Assessing Officer Comment</u> While the Urban Design comments generally support the application based on high level urban design principals which focus more generally on elements like aesthetics and building design, these comments do not focus on the more detailed appropriateness of the development in terms of compliance with the requirements of the SEPP, case law and planning principles.</p> <p>As indicated in the comments above, while the development provides an architecturally sympathetic appearance and building form, the development is considered deficient in terms of its</p>

Internal Referral Body	Comments
	<p>consistency with the local character of development as it is specified within the Avalon Beach Locality Statement and by the test required to establish suitability of development under Part 3, Section 1 and Clause 33 of the SEPP. Accordingly, based on a detailed assessment of the development against the relevant planning controls relating to character and consistency with the SEPP, the proposal is ultimately found to be unacceptable based on the current design and character response and is therefore not supported.</p>
Traffic Engineer	<p><b>Not Supported</b></p> <p>The proposal is for demolition of two existing dwellings and construction of 10 seniors living units.</p> <p>The traffic generating by the proposed development is expected to be the total of 5 vehicle trips in peak hours and the increase of 3 vehicle trips in peak hours. The traffic generation impact resulting from the proposal is considered to be negligible noting that the morning peak hours of seniors hour does not generally coincide by the traffic peak hour.</p> <p>The proposal provides 15 parking spaces which satisfies the SEPP requirement of provision of 13 off-street parking spaces.</p> <p>The proposal includes the provision of a 4m wide entry and exit driveway onto North Avalon Road. Given the proposed driveway being longer than 30m, the provision of a minimum 5.5m wide passing bay for at least the first 6m of driveway from the property boundary is required. The access driveway shall be designed in accordance with the engineering requirements and is subject to the development engineers approval.</p> <p><u>Assessing Officer Comment</u> While the Traffic Engineer generally supports the application as the development provides sufficient on-site parking to satisfy the requirements of SEPP HSPD, the access into the site requires a substantial increase to the width of the driveway in order to facilitate two vehicles passing within the site. It is not considered acceptable for this to be dealt with by condition. The implications of increasing the driveway width a further 1.5m will require amendments to the design relocating the waste storage area and impacting on the pedestrian access into the site. The access into the site is considered a key element of the proposal and is not something that can be successfully dealt with through conditions. Accordingly, the proposal is ultimately unacceptable with the current access design and not supported.</p>
Waste Officer	<p><b>Not Supported</b></p> <p>The applicant has not complied with the Northern Beaches Council Waste Management Guidelines as follows. A redesign is required to ensure compliance.</p>

Internal Referral Body	Comments
	<p><u>Bin room design and location</u> The applicant is to ensure there is a bin room at street level to facilitate a wheel out and return service by Council and/or its agents. The bin room is to be able to accommodate 11 x 240L bins required for 10 dwellings in a single row of bins. No bin stacking is permitted. Bin dimensions are w – 650mm; d – 750mm and height – 1060mm (close lid) or 1600mm (open lid)</p> <p><u>Waste Storage Area</u> The Waste Storage Area must be: a) Incorporated entirely within the site boundary and, if it is an external structure, be designed to reduce visual impact and clutter from the street. The waste enclosure to be set back a minimum of 3000mm from the front boundary but within 6500mm of the front property boundary.</p> <p>Any doors fitted on the Waste Storage Area, pathway and access will be:</p> <ul style="list-style-type: none"> <li>a) A minimum width of 1200mm.</li> <li>b) Able to be latched in an open position.</li> <li>c) Unobstructed by any locks and security devices.</li> <li>d) Openable in an outward direction.</li> </ul> <p><u>Access Pathway</u> The pathway and access between the Waste Storage Area and Collection Point will be: a) Solid, concrete, continuous, non-slip and clear of any obstructions and steps. b) A maximum ramp gradient of 1 in 8. c) Hazard free and not via a pathway with vehicular traffic. d) A minimum width of 1200mm. Currently shared pathway with vehicles.</p> <p><u>Bulky Good Waste Storage</u> A bulky goods waste storage area must be provided that will be:</p> <ul style="list-style-type: none"> <li>a) A minimum of 4m<sup>3</sup> per 10 dwellings fit for the purpose of storing bulky goods.</li> <li>b) A room or caged area separate from the Waste Storage Area.</li> <li>c) to be located within 6500mm of the front property boundary</li> <li>d) A maximum ramp gradient of 1 in 8.</li> <li>e) Hazard free and not via a pathway with vehicular traffic.</li> <li>f) A minimum width of 1200mm.</li> </ul>
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

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

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

A BASIX certificate has been submitted with the application (see Certificate No. 1017780M\_03 dated 9 October 2019).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	45	45

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

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

The DA has been lodged pursuant to SEPP (HSPD) as the development is for 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 is considered to be consistent with the first two aims (a) and (b) of the policy as the development will provide an increase in supply and diversity of accommodation to meet the needs of seniors or people with a disability.

The proposed development is considered to stretch the limits of flexibility in relation to being in a satisfactory proximity of existing infrastructure and services. The site is short of the required 400m to the closest bus stops on Barrenjoey Road. According to the Applicants supporting documents, the bus stop on the eastern side of Barrenjoey Road is approximately 384m from the primary entrance of the site and the bus stop on the western side of Barrenjoey Road is 435m. It is Council's position, that the current arrangement, even were it compliant, does not provide a suitably safe access crossing Barrenjoey Road. The applicant has submitted a Clause 4.6 in relation to this non-compliance.

When considering the development against the aim of achieving good design, the development must be considered in context with other provisions of the SEPP (HSPD). The aim of the policy is to encourage seniors housing to be a good design outcome, which maintains and minimises the impacts on the amenity and character of the area. The proposed built form does not minimise the impact on the character of the area as detailed in this report. Accordingly, the proposed development has been found to be inconsistent with the aims of this policy and this issue has been included as a reason for refusal.

## Chapter 2 – Key Concepts

Comment: The proposed development is consistent with the key concepts contained within SEPP (HSPD). The proposed development comprises self-contained dwellings, which are to be occupied by seniors or people with a disability. On this basis, it is considered that the proposed development is consistent with Chapter 2 of SEPP (HSPD).

## 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 an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
<b>PART 2 - Site Related Requirements</b>			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community	Bus services are located approximately 384m to the south-bound bus stop and 435m to the north-bound bus stop on Barrenjoey Road.	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	services and recreation facilities, and (c) the practice of a general medical practitioner		
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 400metres away.	The site is not within 400m of facilities or services required by the SEPP. The site is within 400m of the south bound bus service which provides access to Avalon, Mona Vale and other areas where appropriate services are available.  The existing access pathway to these critical bus stops is considered inadequate. While footpaths to these bus stops are undersized and in some locations missing and could be upgraded as part of a supporting consent, the access to get across Barrenjoey Road presents more significant concerns in terms of safety for the target market of this development, seniors or people with a disability.	NO
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	N/A	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	Reticulated water and sewerage infrastructure is presently available to the site. The proposed seniors housing development is capable of connecting to a reticulated water system, in accordance with the provisions of Clause 28.	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	The development as proposed is considered inconsistent with the requirements contained within Clause 25(5)(b)(i), (iii) and (v) for the following reasons:  <b><i>(i) the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,</i></b> <u>Comment:</u> The site is located within a low density residential area where the very predominant building pattern is a single dwelling structure with large landscaped	NO

Development Criteria			
Clause	Requirement	Proposal	Complies
	<p>approved uses of land in the vicinity of the proposed development</p> <p>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,</p> <p>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.</p>	<p>rear and front yards that maintain the visible vegetation canopy that is synonymous with this part of the Avalon Beach Locality. The natural environment forms a key characteristic encapsulated by the emerging development in the surrounding area.</p> <p><b><i>(iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,</i></b></p> <p><u>Comment:</u> While the Applicant has provided consultant reports to support the absolute stretch of the development to meet in part the access distances of the site to the only transport intersection points on Barrenjoey Road, the report fails to identify the inappropriateness of the physical circumstances at these vital transport connection points.</p> <p>The north bound bus stop requires seniors or people with a disability or compromised mobility to negotiate Barrenjoey Road. This location has a small pedestrian refuge that has regularly been hit by vehicles travelling at speed around the bend on approach. Once across the road, the access to the bus stop is inappropriate and contains an unprotected drop off to west which would be very high risk for any one with walking assistance or compromised visibility.</p> <p><b><i>(v) without limiting any other criteria, 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,</i></b></p> <p><u>Comment:</u> The proposed development includes ten (10) apartments, five (5) of which are three (3) bedroom and five (5) are two (2) bedroom. The development is two</p>	

Development Criteria			
Clause	Requirement	Proposal	Complies
		(2) storeys with the second floor level interconnected with footbridges and elevated walkways. Due to the number of dwellings and their elevation above the dwellings to the south, the privacy impacts from the development and the elevated footways is considered to result in an overwhelming impact on these adjoining properties.	
<b>PART 3 - Design Requirements – Division 1</b>			
30	A site analysis is provided.	A Site Analysis Plan and the Statement of Environmental Effects submitted with the application satisfactorily address the requirements of this clause.	Yes

#### Clause 31 Design of in-fill self-care housing

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

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	<p>Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form.</p> <p>Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.</p>	<p>The proposed development while providing a two storey building form will not provide a pattern of development which is complementary to the existing pattern of development demonstrable on the surrounding properties.</p> <p>The Desired Character for the Avalon Beach Locality includes the following relevant features which support the concerns raised in relation to the character of the development.</p> <p><i>"Carparking should be provided on site and where possible integrally designed into the building.</i></p> <p><i>Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native</i></p>

Section	Requirements	Comment
		<p><i>vegetation, including canopy trees, will be integrated with development. The objective is that <b>there will be houses amongst the trees and not trees amongst the houses.</b></i></p> <p><i>As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment</i></p> <p>The proposed built form is considered inconsistent with the desired and existing character of the locality as the density and scale of the development is considered excessive, even given the additional density discretions provided by the SEPP HSPD.</p>
2. Site Planning and design	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>-Minimise the impact of new development on neighbourhood character</li> <li>-Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.</li> </ul>	<p>The proposed development is not considered to minimise the impact on the neighbourhood character.</p> <p>The placement and extent of structures on the site will result in an interruption of the green tree canopy and large separation between physical structures, which is clearly evident from the rear yards and from inside the surrounding dwellings.</p> <p>The proposed parking layout on the site will result in hardstand parking areas which directly adjoin bedroom windows and provide negligible opportunities for landscape buffers or planting areas centrally on the site.</p>
3. Impacts on streetscape	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>-Minimise impacts on the existing streetscape and enhance its desirable characteristics</li> <li>-Minimise dominance of driveways and car park entries in streetscape.</li> </ul>	<p>While the overall design of the buildings is generally acknowledged to attempt to integrate features identifiable in surrounding building designs, the overall size of the development as it presents to the street is considered significantly bulkier than the general character of this location.</p> <p>The proposed driveway is</p>

Section	Requirements	Comment
		inadequate for the scale of the development providing a driveway under 4.0m in width. A 5.5m driveway is required to enable dual vehicles to pass.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	As identified in the public submissions received, the proposed development will result in adverse impacts on the adjoining properties in terms of privacy and character. The development is not consistent with the requirements of this clause.
5. Internal site amenity	Objectives of this section are to: -Provide safe and distinct pedestrian routes to all dwellings and communal facilities.	The proposed site layout is not considered to provide safe pedestrian links. The proposed driveway directly adjoins the main pedestrian pathway into the site which provides no separation of these spaces.  The site layout is not considered consistent with the requirements of the clause.

#### 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
CL33 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.	<i>"Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, commercial, community and recreational facilities will serve the community."</i> This is clearly identified within the locality statement for the Avalon Beach locality. The development has not provided an adequate design response to minimise the additional density proposed on the site.	<b>NO</b>
	b. Retain,	Not applicable	N/A

Control	Requirement	Proposed	Compliance
	<p>complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.</p> <p>c. Maintain reasonable neighbour amenity and appropriate residential character by;</p> <p>(i) providing building setbacks to reduce bulk and overshadowing</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development,</p> <p>(iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors.</p> <p>d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,</p> <p>e. embody planting that is in sympathy with, but not necessarily the same as, other planting in</p>	<p>While the proposed development provides setbacks to most elements which comply with the numerical requirements for medium density housing, the established character of development surrounding on this site provide much larger rear setbacks up to 20m consistently, which is one of the attributes that has created the visible tree canopy and sense of openness. There is a further concern with the elevated walkway platforms that link the apartments at first floor level to the single lift access. As the development provides the minimum setbacks, this element will be highly visible to the directly adjoining properties.</p> <p>The potential for overlooking and increased sense of bulk resulting from this feature is not considered to address this requirement.</p>	<p><b>NO</b></p>

Control	Requirement	Proposed	Compliance
	the streetscape. f. retain , wherever reasonable, major existing trees, and g. be designed so that no building is constructed in a riparian zone.		
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (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.	The site planning of this development does not provide a desired level of visual or acoustic amenity with the centralised carpark resulting in vehicles directly adjoining bedrooms and bedroom windows with the development itself.  As the development covers approximately 60% of the site, and removes fifty-one (51) trees, the landscaping is inadequate in screening any additional noise or overlooking from the site.	<b>NO</b>
CL35 Solar access and design for climate	The proposed development should: (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	The proposed development does not result in any adverse impact on the surrounding properties in terms of overshadowing.	Yes

Control	Requirement	Proposed	Compliance
	northerly direction.		
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	Insufficient detail has been provided to satisfy Council's Development Engineers in relation to the treatment of stormwater from the increased hard paved areas of the development.	<b>NO</b>
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (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 (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	Adequate casual surveillance is available from within the dwellings to satisfy this requirement.	Yes
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet	The proposed development has failed to adequately demonstrate that safe pedestrian links can be provided from the site to the public transport links required to access essential services. These deficiencies are detailed elsewhere in this report and include	<b>NO</b>

Control	Requirement	Proposed	Compliance
	safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	adequate footpath width and provision from the site and suitable safe access to the bus stops on Barrenjoey Road.	
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The proposed waste storage area does not satisfy the requirements of Council's Waste Management Guidelines.	No

#### Part 4 - Development standards to be complied with

##### Clause 40 – Development standards – minimum sizes and building height

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

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

Control	Required	Proposed	Compliance
Site Size	1000sqm	2226m <sup>2</sup>	Yes
Site frontage	20 metres	36.5m	Yes
Building Height	8.0m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	7.1m	Yes
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	Maximum 2 storeys	Yes
	A building located in the rear 25% of the site must not exceed 1 storey in height (development within 15.51 metres of the rear boundary).	The proposed development includes part of the second floor area of Dwelling 9 and 10 within the rear 25% of the site.	<b>NO</b>

##### 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	Required	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.	The application was accompanied by an Access Report prepared by Vista Architects which demonstrates the development is capable of satisfying the requirement	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	Can be conditioned to comply.	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.	Adequate space can be provided on site for letterboxes.	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	Complies	Yes

Control	Required	Proposed	Compliance
	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.		
Accessible entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	Complies	Yes
Interior general	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	Complies	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 1200 mm 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.	Complies	Yes
Bathroom	The bathroom is to comply with the requirements described in Clause 9 of Schedule 3.	Can comply	Yes
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	Can comply	Yes
Surface finishes	Balconies and external paved areas must	Can be conditioned to comply	Yes

Control	Required	Proposed	Compliance
	have slip resistant surfaces.		
Door hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	Can be conditioned to comply	Yes
Ancillary items	Switches and power points must be provided in accordance with AS4299.	Can be conditioned to comply	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.	Can be conditioned to comply	Yes
Kitchen	The kitchen must comply with the requirements of Clause 16 of Schedule 3	Can be conditioned to comply	Yes
Access to kitchen, main bedroom, bathroom & toilet	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Can be conditioned to comply	Yes
Laundry	The laundry must comply with the requirements of Clause 19 of Schedule 3.	Can be conditioned to comply	Yes
Storage	A self-contained dwelling must be provided with a linen storage in accordance with Clause 4.11.5 of AS4299	Can be conditioned to comply	Yes
Garbage	A garbage storage area must be provided in an accessible location.	Can be conditioned to comply	Yes

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

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

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

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

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

Control	Required	Proposed	Compliance
Building height	8.0m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	The proposed development is less than 8.0m in height.	Yes
Density and scale	0.5:1	0.495:1	Yes
Landscaped area	30% of the site area is to be landscaped (667.8m <sup>2</sup> )	39% (879m <sup>2</sup> )	Yes
Deep soil zone	15% (333.9m <sup>2</sup> ) of the site area Two thirds of the deep soil zone (222.6m <sup>2</sup> ) should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	30.3% of the site area is a deep soil zone (674 square metres). The majority of the deep soil zone is located within the front and rear setback areas.	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	The applicant has provided solar access diagrams which demonstrate that the private open space areas of each dwelling will receive 3 hours of solar access. Nine (9) of the ten (10) dwellings will receive three (3) hours of solar access to the living room.	Yes
Private open space	(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in	All dwellings provide adequate open space.	Yes

Control	Required	Proposed	Compliance
	<p>part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and</p> <p>(ii) in the case of any other dwelling, there is a balcony with an area of not 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</p>		
Parking	0.5 parking spaces for each bedroom.	The development provides 6 x 2 bedroom dwellings and 4 x 3 bedroom dwellings. 12 spaces are required. The development provides 15 spaces.	Yes
Visitor parking	None required if less than 8 dwellings	The development provides three (3) spaces above the required number which can be used as visitor spaces.	Yes

#### CLAUSE 4.6 VARIATION - BUILDING HEIGHT AND BUS STOP (SEPP HSPD)

##### Description of non-compliance: Building Height (rear 25% no more than 1 storey)

Development standard: SEPP (HSPD)	Height of buildings - rear
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	25% no more than 1 storey
Requirement:	15.24m
Proposed:	13.9m
Percentage variation to requirement:	8.8%

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

The following assessment of the variation to 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:**

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

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

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

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

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

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

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

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

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

**Comment:**

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

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

**Comment:**

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

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

**The applicants written request argues, in part:**

*"The development provides a greater setback at 8.9m to the rear boundary at ground level than would be required in either a dwelling house (where 6.5m is required) or medium density development zone (where 3m would be required for multi dwelling housing).*

*The variation allows for the articulation of the rear wall of Level 2 which assists in minimising the visual bulk of the rear elevation.*

*The variation occurs at the centre of the site and is setback around 13 metres from both the side and rear boundaries. As such the non-complying element of the building does not result in any non-complying impact on the solar access to the surrounding properties.*

*The variation does not result in any adverse privacy impacts on the surrounding development."*

**This assessment does not support the justification provided in relation to the environmental planning grounds provided. While the development may provide greater setbacks than those required where medium density and multi unit housing are permissible and where a dwelling house is permissible, this is a development that is neither of those things. The proposal is for multi unit housing on a low density zone. The SEPP has provided scope for greater site coverage and density than would be allowed by a permissible form of development on this site and there is no environmental planning grounds to support proposed development not complying.**

**In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, or that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.**

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Council are not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

**Comment:**

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

**Objectives of development standard**

The Urban Design Guidelines for Infill Development set out the following objectives in relation to minimising impacts on neighbours. The Guidelines list the SEPP requirement for development in the rear 25% of the site to not exceed one storey as the relevant control for Part 4 of the guideline.

**The objectives of this clause are as follows:**

- *To minimise impacts on the privacy and amenity of existing neighbouring dwellings*

**Comment:**

While the first floor component at the rear of the development provides minimal windows, the additional built form in this location will be highly visible from the adjoining properties both internally and externally.

- *To minimise overshadowing of existing dwellings and private open space by new dwellings*

**Comment:**

The proposed development does not result in any additional adverse impacts in terms of overshadowing

- *To retain neighbours views and outlook to existing mature planting and tree canopy*

**Comment:**

The development will result in the removal of a significant volume of existing planting and tree canopy as a result of the extensive footprint. The inclusion of non-compliant built form at first floor level will further reinforce the loss of tree canopy and vegetated character of this location.

- *To reduce the apparent bulk of development and its impact on neighbouring properties*

**Comment**

The proposed development has sought to maximise the site coverage in this instance providing ten (10) apartments with small internal spaces on a site that would traditionally accommodate two (2) single dwellings. While the development is made permissible pursuant to SEPP (HSPD), the resulting built form provides a much larger bulk and scale than the surrounding development. The development is considered to provide too much built form and would benefit from the rear building losing dwelling 9 and 10 removing this elevated built form and the associated connecting walkways.

***To provide adequate building separation.*****Comment:**

The proposed development while satisfying the minimum numerical setbacks at ground level for development, seeks to compromise the requirement for 25% of the rear of the site to be single storey. In the Avalon Beach Locality, large building separation is a characteristic feature. No encroachment of this requirement is supported.

## Zone objectives

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

### 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 will provide an increase in the diversity of housing for seniors and people with a disability in this locality. While the site is located within a low density residential environment, the built form and scale of the development fails to provide a suitable transition of this form of housing comfortably within the existing local character.

It is considered that the development does not satisfy this objective.

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

#### Comment:

The development provides for residential accommodation on the site and does not include any other facilities or services. The development will not impact on other land uses in proximity of the site.

It is considered that the development satisfies this objective.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses..*

#### Comment:

The proposed development is not considered of a low intensity or scale compatible with the surrounding land uses.

It is considered that the development does not satisfy this objective.

## Conclusion:

For the reasons detailed above, the proposal for ten (10) dwellings is considered to be inconsistent with the objectives of the R2 Low Density Residential zone.

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

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

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

Standard cannot be assumed by the Local Planning Panel.

**Description of non-compliance: Bus Stop**

Development standard: SEPP (HSPD) Clause 26(1) and (2)	Bus Stop Distance from site
Requirement:	Within 400m of the site
Proposed:	Up to 435m from the site (bus stop on the western side of Barrenjoey Road)
Percentage variation to requirement:	8.8%

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:**

**The distance to services (bus stop) development standard is not expressly excluded from the operation of this clause.**

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

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

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

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

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

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

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

**Comment:**

The Applicant's written request (attached to this report as an Appendix) states that the development is consistent with the aims of the SEPP and provides compliance with the relevant planning provisions. Further, the request states:

***"The development provides car parking spaces for each dwelling. Each dwelling will therefore have access to at least one car parking space. The provision of car parking on site provides residents who are able to drive the choice of driving to the required services or using public transport.***

***For those residents who are unable to drive, or who would prefer to use public transport, the bus stop on the eastern side of Barrenjoey Road is accessible via an accessible path of travel and is less than 400 metres walking distance of the site. The walk for the return journey is marginally longer than the specified in the standard however this additional walking distance does not impose an unreasonable or excessive additional requirement on residents who are capable of walking 400 metres to and from a bus stop and then additional steps once at the destination to access the required services."***

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

The applicants written request argues, in part:

***"The pedestrian access to the site could be moved to the western boundary to reduce the number of metres from the site to the bus stop however such an amendment would result in a greater proportion of the front (and potential side) setback being dedicated to a pathway. This would reduce the amount of area available in the front setback for the provision of landscaping and thereby compromise the streetscape and the proposal's consistency with the character of the area."***

**Comment:**

This assessment does not support the justification provided in relation to the environmental planning

grounds provided. Aspects of the site layout have been discussed throughout this assessment. The intent of the SEPP is to provide opportunities for Seniors housing in locations that are able to support the needs of the occupants being 'seniors or people with a disability'. The shops located at the end of North Avalon Road do not meet the criteria of relevant facilities and services as there aren't sufficient community services facilities, banking facilities or medical practitioners. Occupants of the development are therefore required to travel to gain access to these.

The return trip on public transport requires crossing Barrenjoey Road from the bus stop on the western side of the road. The distance from this bus stop is more than 400m and is not considered a suitably safe pathway. Barrenjoey Road contains a blind corner for vehicles travelling south past the bus stop and pedestrian refuge and there have been numerous occasions where the pedestrian refuge has been impacted by a vehicle.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Council are not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

(ii) the proposed development will not be in the public interest because it is inconsistent 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

The objectives of the standard for SEPP (HSPD) are addressed above.

**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 inconsistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard cannot be assumed by the Local Planning Panel.

**Pittwater Local Environmental Plan 2014**

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	9.26m	8.9%	No

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.4 Floodplain risk management	Yes
7.10 Essential services	No

#### Detailed Assessment

##### Zone R2 Low Density Residential

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 R2 Low Density Residential of the Pittwater Local Environmental Plan 2014.

##### 7.10 Essential services

The proposal has been reviewed by Council's Development Engineer who cannot support the development in its current form. Insufficient information has been provided with the application to support the Applicant's preferred drainage solution connecting into a 'redundant pipe line'.

#### Pittwater 21 Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	6.5m	N/A	Yes
Rear building line	6.5m	6.5m	N/A	Yes
Side building line (multi-unit housing)	East - 3.0m	2.4m to Bed 1 in Dwelling 3	20%	No
	West - 3.0m	3.0m	Nil	Yes
Building envelope (multi-unit housing)	4.2m	Within envelope	N/A	Yes
	4.2m	Within envelope	N/A	Yes

Landscaped area	50%	39% (879m2)	11%	No
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#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.1 Avalon Beach Locality	No	No
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	No	No
B4.22 Preservation of Trees and Bushland Vegetation	No	No
B5.1 Water Management Plan	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	No	No
B5.10 Stormwater Discharge into Public Drainage System	No	No
B5.12 Stormwater Drainage Systems and Natural Watercourses	No	No
B6.1 Access driveways and Works on the Public Road Reserve	No	No
B6.2 Internal Driveways	No	No
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	No
C1.6 Acoustic Privacy	No	No
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	No	No
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.21 Seniors Housing	No	No
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	No	No
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C4.4 Subdivision - Public Roads, Footpath and Streetscape	No	No
C4.5 Subdivision - Utility Services	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	No	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	Yes	Yes
D1.13 Landscaped Area - General	No	No
D1.15 Fences - General	No	No
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

#### Detailed Assessment

##### **A4.1 Avalon Beach Locality**

The desired character outlined in the Locality Statement for the Avalon Beach Locality within P21 DCP, provides very strong guidance for the form of development anticipated and established in this location. Some of the key features incorporated include:

*Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.*

*Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with development. The objective is that there will be houses amongst the trees and not trees amongst the houses.*

*A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment.*

*Most houses are set back from the street with low or no fencing and vegetation is used extensively to delineate boundary lines. This, coupled with the extensive street planting of canopy trees, gives the locality a leafy character that should be maintained and enhanced.*

**Comment**

The proposed development does not satisfy the desired future character for development as it does not provide for an integration with existing vegetation.

The proposed development is not considered to provide adequate pedestrian access to public transport, given the nature of the development servicing seniors and people with a disability.

The scale of the development is uncharacteristic. The extent of site coverage and building height are not compatible with the context of the character of the locality.

The proposal is inconsistent with the aims set out in cl.1.2 (b) Aims of The Plan of PLEP 2014 as the excessive removal of existing established trees on the site is considered inconsistent with the Avalon Beach Locality and fails to protect and enhance Pittwater's natural environment.

The public benefit of providing seniors living accommodation on this site does not outweigh the concerns in relation to the site coverage and built form of the proposal and the impact that this would have on the broader locality

**B5.10 Stormwater Discharge into Public Drainage System**

Council's Development Engineer has not received satisfactory information to support the proposed Stormwater connection into the public drainage system.

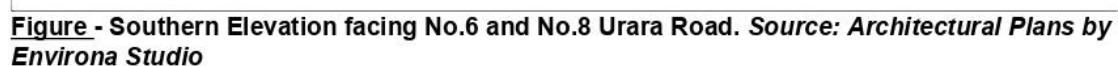
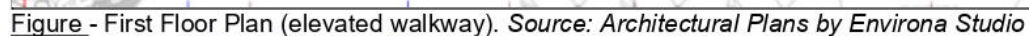
**C1.1 Landscaping**

The proposed development seeks an excessive building footprint which will provide inadequate opportunity for the retention of existing established trees on the site and within the road reserve that provide an important canopy for the site and also for the broader locality.

The scale of tree removal and the replacement planting do not provide adequate balance to provide any relief of the scale of development. Accordingly, the development is not supported and this issue forms a reason for refusal.

**C1.5 Visual Privacy**

The proposed development which incorporates ten (10) dwellings on the site includes five dwellings at first floor level which are connected by a central elevated walkway.



- Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.

- A sense of territory and safety is provided for residents.

### Controls

- Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).
- Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.
- 
- Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

### Comment:

While the proposed elevated walkway is located just over 9.0m from the southern boundary, concern has been raised by the neighbouring properties to the east and west in relation to overlooking as these dwellings, as they currently contain very open living and private open space areas adjacent to the boundary.

The elevated walkways are not considered a good design feature of this development as they will result in additional bulk and site coverage. Providing elevated platforms available to five (5) dwellings on a site surrounded by single dwelling houses on large lots and generous separation from adjoining properties, consolidates the inconsistency of this form of development with the character of the locality. The building forms on the subject site will be extremely visible and exposed from the adjoining properties. Currently, the single storey dwelling on the site has sight lines through to these properties. Overlooking and compromised visual privacy will be exacerbated from the proposed two storey development with ten (10) apartments and elevated walkways.





**Photograph 1 and 2 - The subject site visible over the fence adjoining the rear yard of No. 6 and 8 Urara Road**

Notwithstanding the numerical setback of the development to the boundary, unnecessary overlooking will be a real and permanent feature for the adjoining properties due to the removal of the existing vegetation.

#### **C1.6 Acoustic Privacy**

The design of the development, incorporating at-grade parking within the centre of the site has resulted in some poor design outcomes which are considered to adversely impact the internal amenity of some of the apartments. Clause C1.6 Acoustic Privacy within P21 DCP states:

*"Noise-sensitive rooms, such as bedrooms, should be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like."*

In this regard, the following design elements are not supported:

- Parking spaces 1, 2 and 3 adjoin bedrooms and bedroom windows of Dwelling 3

- Communal lift access outside the sole window to Bedroom 1 of Dwelling 2
- Parking space 6 and 7 adjoin the sole window of Bedroom 1 of Dwelling 1
- The main pedestrian access from the street to the rear dwellings adjoins Bedroom 2 window and Kitchen window of Dwelling 3

These elements of the design provide no buffer to the sensitive receivers within these apartments and are considered unacceptable flaws in the design and site layout.

### **C1.12 Waste and Recycling Facilities**

The proposed development fails to provide adequate waste and recycling facilities.

Council's Waste section have reviewed the proposed design and identified the following inconsistencies:

- The proposed bin room is inconsistent with the Northern Beaches Council Waste Management Guidelines. The bin room will not be able to accommodate the required bin storage in accordance with the requirements of the Waste Management Guidelines.
- The bin room must facilitate a wheel out and return service by Council and/or its agents. The bin room must accommodate 11 x 240L bins required for 10 dwellings in a single row of bins. No bin stacking is permitted. A minimum access path with a width of 1200mm.
- The proposed bin room is located on the front boundary of the site and does not provide any form of landscaping to soften the appearance of the structure from the street. The development has not provided a dedicated area for the storage of bulky goods waste and unwanted bulk household materials. A minimum of 4m<sup>3</sup> per 10 dwellings fit for the purpose of storing bulky goods.

This issue is listed as a reason for refusal.

### **C1.20 Undergrounding of Utility Services**

While there is no detail provided in relation to undergrounding of utility services, this is something that is considered essential on a site this size. Were the application to be supported, a condition of consent would be imposed which requires arrangements for the provision of underground telecommunications services to be provided to the development.

### **C1.21 Seniors Housing**

While the development is assessed primarily under the provisions of SEPP (HSPD), this clause provides local expectations and requirements for seniors housing being located outside the R3 Medium Density Residential and B4 Mixed Use zones. The proposed development is considered inconsistent with the following outcomes and controls of this clause:

#### **Outcomes:**

- *Visual bulk and scale of development is limited.*
- *Restricted footprint of development on site.*
- *Retention of the natural vegetation and facilitate planting of additional landscaping where possible.*

- *Achieve desired future character of the locality.*

#### **Controls**

- *Be in keeping with the development of the surrounding area in regard to bulk, building height, scale and character.*

As identified throughout this report, the proposed development is considered to result in an excessive footprint which spreads the development over 60% of the site and results in the removal of fifty-one (51) trees from the site, of which twenty-five (25) are prescribed trees.

The removal of such significant amounts of vegetation and tree canopy from the site is in conflict with the desired future character of the locality and is inconsistent with the existing character of the Avalon Beach locality.

The proposed design which includes elevated walkway links will be visible from the private open space and internal living areas of the adjoining properties and will result in an uncharacteristic form of development.

#### **C4.4 Subdivision - Public Roads, Footpath and Streetscape**

The proposed development which will require a subdivision to consolidate the two (2) parcels of land do not provide adequate space for compliant footpaths from the site with a minimum of 1.5m in width. For a development specifically for seniors or people with a disability, the provision of suitable, safe and orderly pedestrian access is essential. This issue forms a reason for refusal.

#### **D1.15 Fences - General**

The proposed development includes front fence structures that vary in height from approximately 1.1m to 1.3m. Some of the fencing is stepped across the frontage to create privatised open space areas attached to specific apartments. These fencing areas are contrary to the desired and existing open character of front setbacks in the locality.

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

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

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

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

#### **CONCLUSION**

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

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

- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

This report provides a comprehensive assessment of the application for the redevelopment of the site as a seniors housing development containing ten (10) dwellings.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP (HSPD) 2004, SEPP 55, SEPP (Infrastructure), PLEP 2014, the relevant codes and policies of Council, the relevant provisions of the Pittwater 21 DCP.

#### Public Exhibition

The public exhibition of the DA resulted in a very significant response from this small community of concerned residents. Objections to the proposed development include concerns relating to building height, erosion of the natural environmental character through the extensive removal of trees, amenity impacts, over-development of the site and inadequate access to suitable transport infrastructure and essential services.

The issues raised in the submissions have been addressed in the 'Public Exhibition & Submissions' section of this report and are generally concurred with.

The application was referred to a number of internal departments. Fundamental concerns have been raised by Council's Landscape Architect, Development Engineer, Waste Officer, and issues raised within the traffic Engineers comments.

The assessment of the application against the provisions of SEPP (HSPD) has identified that the proposal is not satisfactory in relation to a number of the requirements of the SEPP.

Further, the assessment of the proposal against the provisions of P21 DCP which establishes how successfully the development harmonises with the established and desired future character of the locality has identified that the development, as proposed, is not a successful built form in terms of how it relates to the desirable elements of the neighbourhood or how it transitions the increase in density with the very obvious low density residential location.

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

defence of the Court appeal.

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

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

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/1260 for the Demolition works and construction of a Seniors Housing development comprising 10 self contained dwellings and site consolidation on land at Lot 33 DP 8394, 29 North Avalon Road, AVALON BEACH, Lot 32 DP 8394, 27 North Avalon Road, AVALON BEACH, for the reasons outlined as follows:

### 1. Reasons for Refusal

1. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the Aims set out in Clause 1.2(b) of the Pittwater LEP 2014.

2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the Pittwater 21 Development Control Plan:

- Clause B4.22 Preservation of Trees and Bushland Vegetation
- Clause B5.9 Stormwater Management
- Clause B6.1 Access Driveways
- Clause C1.1 Landscaping
- Clause C1.5 Visual Privacy
- Clause C1.6 Acoustic Privacy
- Clause C1.12 Waste and Recycling Facilities
- Clause C1.15 Storage Facilities
- Clause C1.21 Seniors Housing
- Clause C1.24 Public Road Reserve - Landscaping and Infrastructure
- Clause D1.13 Landscaped Area
- Clause D1.15 Fences

3. Pursuant to Section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2014:

- Clause 26(2) Access
- Clause 29 Character
- Clause 33 Neighbourhood Amenity and streetscape
- Clause 34 Visual and Acoustic privacy
- Clause 36 Stormwater
- Clause 38 Accessibility
- Clause 40 Building Height (rear 25%)

4. Pursuant to Section 4.15(1)(b)(i) of the Environmental Planning and Assessment Act 1979, the proposed development will result in unacceptable impacts on the natural environment of the Avalon Beach Locality.

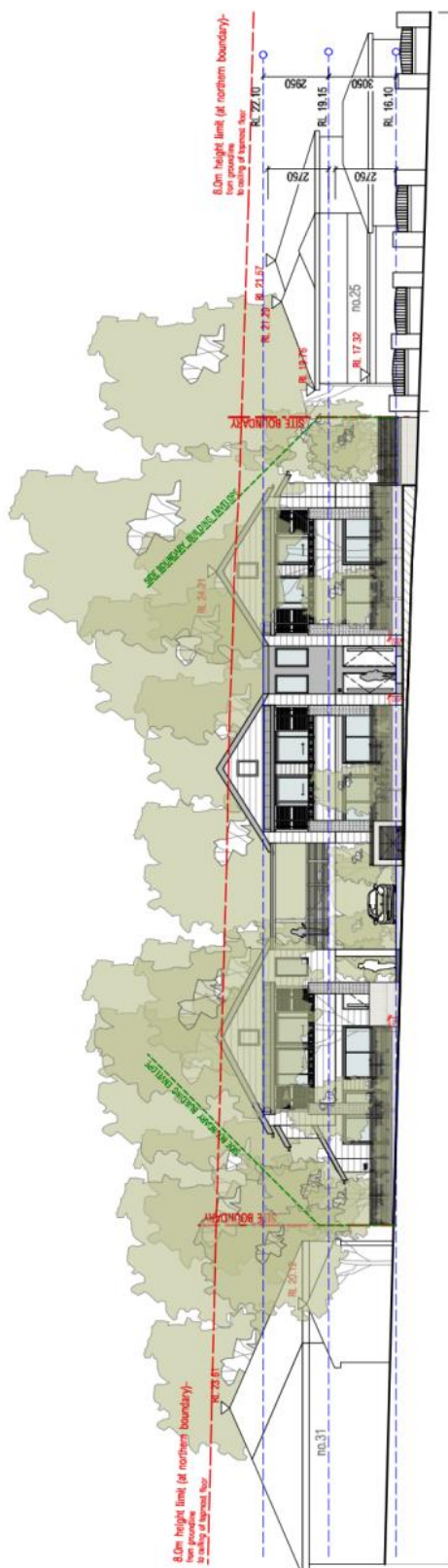
5. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with the Desired Future Character of the location and is an over-development of the site.

6. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979,

the proposed development is not in the local public interest.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.



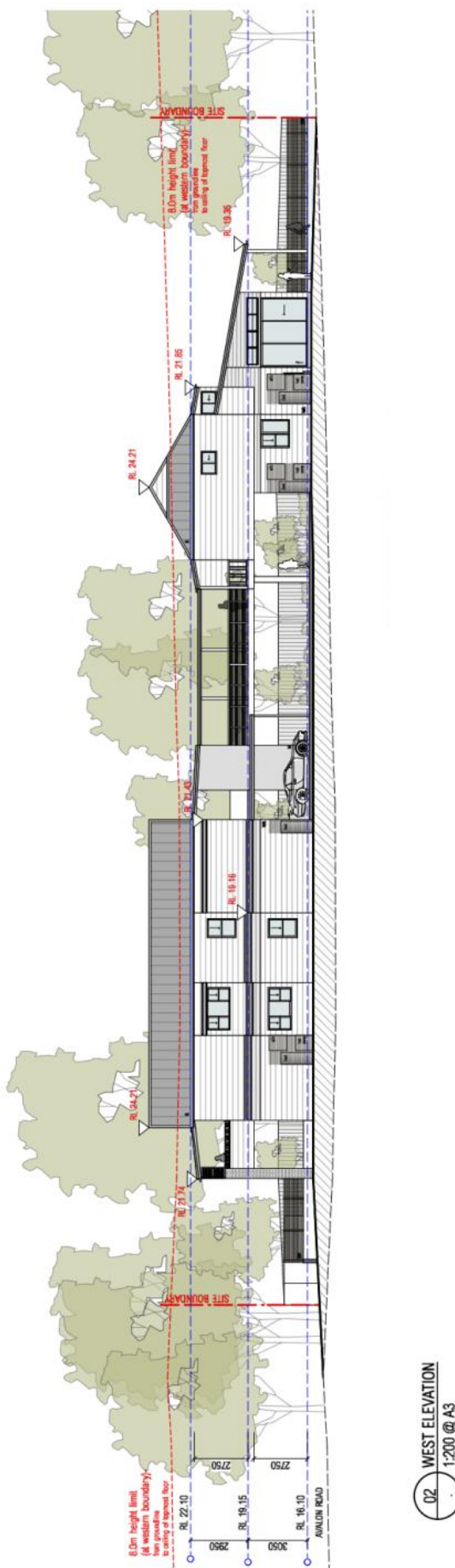
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02 EAST ELEVATION  
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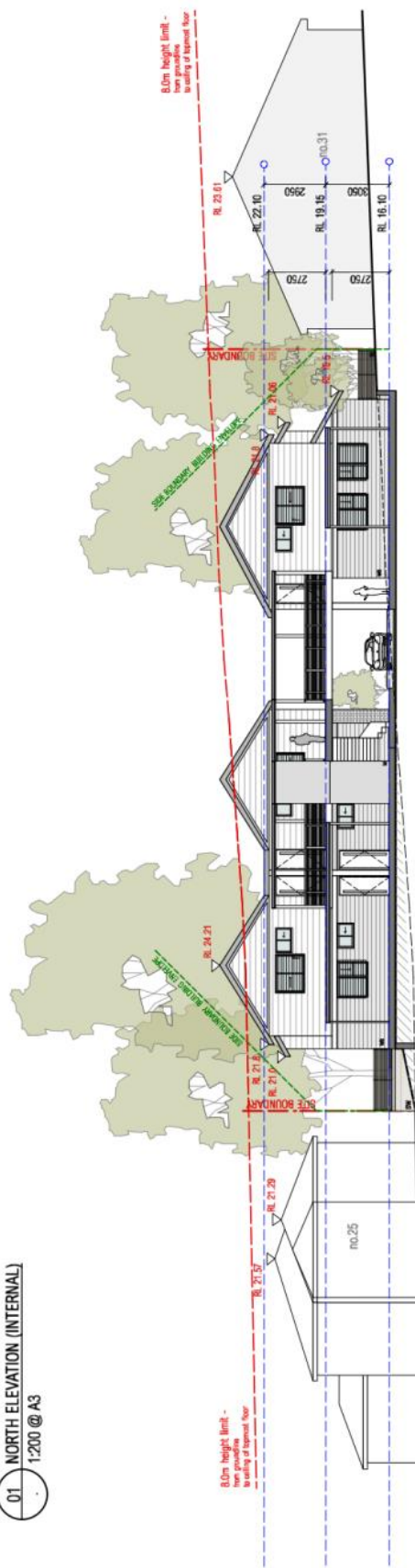
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MATERIALS - PRODUCTS - BRANDS	NOMINAL		UNIT	QUANTITY	UNIT PRICE	TOTAL PRICE	TAXES	TOTAL	REMARKS
	DESCRIPTION	QUANTITY							
1	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
2	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
3	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
4	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
5	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
6	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
7	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
8	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
9	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
10	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
11	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
12	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
13	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
14	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
15	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
16	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
17	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
18	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
19	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
20	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
21	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
22	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
23	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
24	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
25	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
26	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
27	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
28	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
29	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
30	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
31	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
32	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
33	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
34	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
35	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
36	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
37	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
38	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
39	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
40	CEMENT	50 KG	KG	100	1.20	120.00		120.00	
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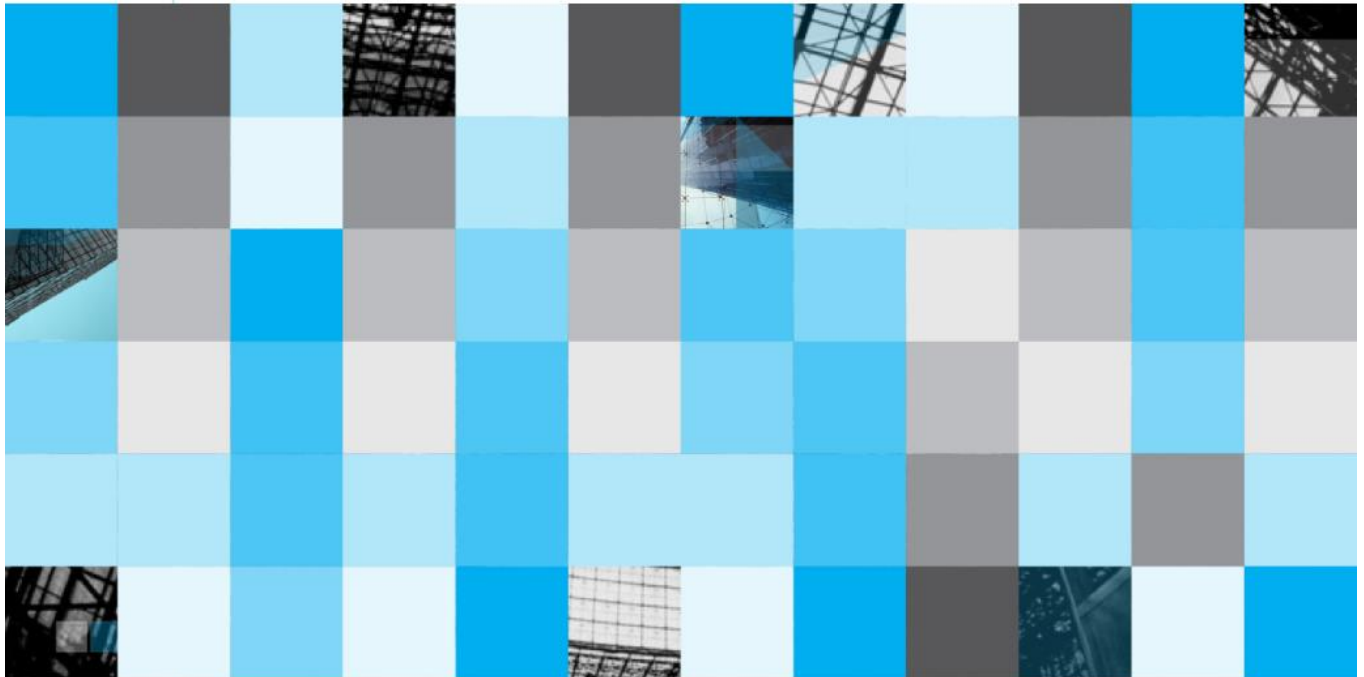
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**SUTHERLAND  
& ASSOCIATES  
PLANNING**



27-29 North Avalon Road, Avalon Beach

Clause 4.6 – Building Height

## SUTHERLAND & ASSOCIATES PLANNING

ABN 14 118 321 793 ACN 144 979 564

# Clause 4.6 – Building Height

## 27-29 NORTH AVALON ROAD, AVALON BEACH

**October 2019**

Prepared under instructions from  
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by

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## 1.0 CLAUSE 4.6 REQUEST – BUILDING HEIGHT

### 1.1 Introduction

This written request for an exception to a development standard is submitted in respect of the development standard contained within Clause 40(4)(c) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The request relates to an application for demolition works, tree removal, site consolidation and the construction of ten self-contained dwellings for seniors or people with a disability with 15 car parking spaces at 27 and 29 North Avalon Road, Avalon Beach. The development relies on the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD).

### 1.2 Clause 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 (PLEP) applies to the land. Pursuant to clause 4.6(2) of PLEP development consent may be granted for development even though the development would contravene a development standard imposed by the PLEP, or any other environmental planning instrument (emphasis added in underline).

However, clause 4.6(3) states that 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 circumstance of the case, and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with clause 4.6(3) the applicant requests that the development standard at clause 40(4)(c) of SEPP HSPD be varied.

### 1.3 Development Standard to be varied

Clause 40(4) of SEPP HSPD is as follows:

(4) Height in zones where residential flat buildings are not permitted

If the development is proposed in a residential zone where residential flat buildings are not permitted:

- (a) the height of all buildings in the proposed development must be 8 metres or less, and

Note. Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).

- (b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and

Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

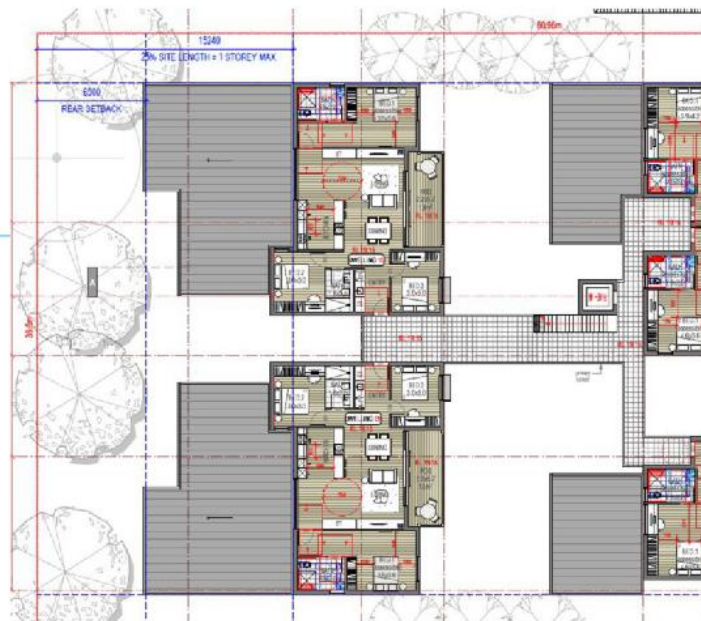
#### 1.4 Extent of Variation to the Development Standard

Clause 40(4)(c) of SEPP HSPD provides that a building located in the rear 25% area of the site must not exceed 1 storey in height. As the site is rectangular and has a length of 60.96 metres, the rear 25% area of the site is that part of the site within 15.24 metres of the rear boundary.

The proposal complies with the standard of 40(4)(c) with the exception of Bedroom 2 of Dwellings 9 and 10 which both extend 1.4 metres into the 15.24 metre setback for a width of 4.2 metres (as shown on Drawing 102 prepared by Environa Studio). An extract of Drawing 102 is included as Figure 1. The non-complying element of the development is located at the centre of the site.

Figure 1:

Extract from Drawing  
102 prepared by  
Environa Studio



#### 1.5 Clause 4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

In addition, in the matter of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 [34] the Chief Justice held that "establishing that the development would not cause environmental harm and is consistent with

the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary".

This request addresses the five-part test described in *Wehbe v Pittwater Council*. [2007] NSWLEC 827, followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:

**1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;**

Clause 40 does not include a specific objective for the height requirement.

The aims of the Policy are set out in clause 2 of the SEPP. Clause 2 provides the following:

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

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

(2) These aims will be achieved by:

- (a) setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and
- (b) setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and
- (c) ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.

The proposed development is consistent with the aims of the SEPP in that the development increases the supply and diversity of residences that meet the needs of seniors or people with a disability by providing 10 self-contained dwellings that comply with the accessibility and usability standards of the SEPP for self-contained dwellings.

The site is in an existing low-density residential area and as such the necessary services and infrastructure are available to the two allotments. The development is able to make use of the existing infrastructure and services including local public transport services (being the local buses and the trial Keiride On-Demand Public Transport Service).

The development is of a good design as detailed in the accompanying Statement of Environment Effects. The Statement of Environmental Effects describes each aspect of the development and the proposal's compliance with all relevant planning provisions. The proposal's high level of compliance with the objectives and standards reflects the high quality of the design and its responsiveness to the local development context.

Part 4 'Impacts on Neighbours' of the Urban Design Guidelines for Infill Development set out the following objectives in relation to minimising impacts on neighbours. The Guidelines list the SEPP requirement for development in the rear 25% of the site to not exceed one storey as the relevant control for Part 4 of the guideline.

The objectives of Part 4 are:

- 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
- 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.

The proposal is consistent with the objective of the standard as identified in the Infill Guidelines in that:

- The non-complying element of the building is setback 12.8 metres from both the eastern and western boundaries and 13.84 metres from the rear boundary. The non-complying element of the building is setback significantly further from the side boundaries than the minimum required setback. The setbacks of the non-complying element of the development ensure that the development will not result in an adverse visual impact nor will the development appear excessively bulky despite the proposed variation.
  - The wall of the ground level is setback 8.987 metres from the rear boundary. The roof over each deck to the rear of the site is setback 6.5 metres from the rear boundary. The ground level setback significantly exceeds the minimum required by the DCP for residential flat buildings and multi-dwelling housing (3 metres) and single dwellings (6.5 metres). The benefit of providing a greater rear setback on the ground level is that it enables mature trees and shrubs to be planted in the rear setback area which are capable of screening the development. The landscape design prepared by John Lock and Associates incorporates a mix of Eucalyptus Trees, Lilly Pillies and a range of other trees and shrubs to provide a layered and dense landscape screen between the development and the surrounding properties.
  - Adequate building separation is proposed to mitigate potential visual and privacy impacts.
  - The non-complying component of the development is only a small proportion of the rear elevation and a small proportion of the overall width of the site. Each of the two non-complying elements has a length of 4.2 metres and projects only 1.4 metres into the rear 25% of the site. The entire rear boundary has a length of 36.5 metres. As such, the variation does not result in an unreasonable or excessive visual impact.
  - The non-complying element of the building will not result in any excessive or unreasonable impacts on the solar access available to the neighbouring properties having regard to the limited size of the area of the non-complying component of the development and the significant setbacks of these elements from the side and rear boundaries. The adjoining properties will maintain over 3 hours of solar access to the main living rooms and private open spaces as shown on the shadow diagrams prepared by Enviro Studio (Drawing 910).
2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

The underlying objective of the standard is relevant to the development application.

3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying objectives and purpose of the standard are relevant to the proposed development.

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;

The development standard has not been virtually abandoned.

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

The zoning of land is appropriate.

Strict compliance with the development standard is unnecessary or unreasonable in the circumstance of this site as discussed below:

- The proposal is consistent with the underlying objectives of the standard as detailed in this clause 4.6 request despite the minor variation to the development standard.
- Strict compliance in this instance would reduce the articulation of the rear elevation without any necessary improvement to the solar access, privacy or visual amenity available to the surrounding properties.
- Compliance is unnecessary as the development reduces the impacts of the development (and the proposed variation) on the surrounding properties by providing a greater rear setback than required on the ground floor.

#### 1.6 [Clause 4.6\(3\)\(b\) Are there are sufficient environmental planning grounds to justify contravening the development standard?](#)

The Land & Environment Court matter of *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development

There are sufficient environmental planning grounds to vary the standard in that:

- Whilst a variation is proposed to the standard at clause 40(4)(c) of SEPP HSPD the development provides a significantly greater rear setback on the ground floor than required by P21DCP (8.987 metres instead

of 3 metres for a residential flat building/multi-dwelling housing development or 6.5 metres for a single dwelling) which allows for a generous landscaped buffer to be provided along the rear boundary whilst also providing sufficient space for outdoor entertaining areas to be provided for residents. The additional setback ensures that an appropriate landscaped setting is proposed for the development, consistent with the character of the area and minimises the potential visual impact of the development when viewed from the surrounding properties. The additional setback proposed for the ground floor results in a better outcome than a development that both fully complies with the rear setback provisions of the DCP and the height development standard.

- The variation allows for the articulation of the rear wall of Level 2 which assists in minimising the visual bulk of the rear elevation.
- The variation occurs at the centre of the site and is setback around 13 metres from both the side and rear boundaries. As such the non-complying element of the building does not result in any non-complying impact on the solar access to the surrounding properties. All surrounding properties maintain over 3 hours of solar access to the private open spaces and the development does not impact on any living room windows.
- The variation does not result in any adverse privacy impacts on the surrounding development having regard to the 12.8 metre setback of the non-complying element of the building from both the eastern and western boundaries and the 13.84 metre setback to the rear boundary.

On the basis of the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height non-compliance in this instance.

#### 1.7 Clause 4.6(4)(a)(i) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

These matters are comprehensively addressed above in this written request with reference to the five-part test described in *Wehbe v Pittwater Council* [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.

#### 1.8 Clause 4.6(4)(a)(ii) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.

##### Objective of the Development Standard

The proposal's consistency with the objectives of the development standard have been addressed in detail in this clause 4.6 request.

##### Objectives of the Zone

Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the R2 Low Density Residential zone.

The objectives of the R2 Low Density Residential zone are:

- 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 provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.

The proposed development increases the supply and diversity of housing for seniors and people with a disability in an accessible location.

The design of the development has been based on a thorough analysis of the site and surrounding area. The scale, setbacks, quantum of landscaping, internal layout and materials and finishes of the development are compatible with or responsive to the particular features of the adjoining sites and surrounding development.

In this regard the development is appropriate within the low-density residential environment in which it is located and is consistent with the objectives of the R2 zone.

#### 1.9 Objectives of Clause 4.6

The specific objectives of Clause 4.6 are:

- (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.

As demonstrated above the proposal is consistent with the objectives of the zone and the underlying objectives of Clause 40(4)(c) notwithstanding the proposed variation to the standard.

Requiring strict compliance with the standard would reduce the modulation of the rear elevation and would not result in any real benefits to the surrounding properties in terms of reduced solar access, improved privacy or reduced visual impact. Requiring strict compliance would not recognise the benefits of the proposal's provision of a greater rear setback than required.

Accordingly, it is considered that the consent authority can be satisfied that the proposal meets objective 1(b) of Clause 4.6 in that allowing flexibility in relation to the development standard and will achieve a better outcome in this instance.

#### 1.10 Conclusion

Strict compliance with the minimum height of buildings development standard contained within clause 40(4)(c) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 has been found to be unreasonable and unnecessary in the circumstances of the case. In addition, there are sufficient

environmental planning grounds to justify the variation. Finally, the proposed variation is in the public interest because it is consistent with the objectives of the standard and the zone. In this regard it is reasonable and appropriate to vary the standard to the extent proposed.