

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

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

WEDNESDAY 19 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

Lesley Finn	Chair
Graham Brown	Town Planner
To be advised	Expert Member
Peter Cotton	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 19 August 2020
Commencing at 1.00pm**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 12 August 2020	
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3.1	DA2019/1300 - 39 Park Street, Narrabeen - Demolition works and construction of a Residential Flat Building.....	5
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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 12 AUGUST 2020

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 12 August 2020 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	DA2019/1300 - 39 PARK STREET, NARRABEEN - DEMOLITION WORKS AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING
AUTHORISING MANAGER	STEVE FINDLAY
TRIM FILE REF	2020/468309
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.

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 WLEP 2011 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. DA2019/1300 for Demolition work and construction of a Residential Flat Building at Lot 3 DP 302001, 39 Park Street, Narrabeen subject to the conditions and for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1300
Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 3 DP 302001, 39 Park Street NARRABEEN NSW 2101
Proposed Development:	Demolition work and construction of a Residential Flat Building
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	BMN Properties Pty Ltd
Applicant:	Bazem Pty Ltd
Application Lodged:	20/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	06/07/2020 to 20/07/2020
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	4.3 Height of buildings: 3.1%
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,800,000.00

EXECUTIVE SUMMARY

The proposal is referred to the Local Planning Panel as it is an application categorised as 'sensitive development' and to which *SEPP No.65 Design Quality of Residential Apartment Development* applies, being 4 storeys in height.

The proposed residential flat building is considered to be a suitable and appropriate development for the site and is in context with the residential scale and intensity of the medium density zone. Principal environmental impact considerations are views, bulk, landscaping, traffic and parking access, building height (including storey and envelope), privacy, overshadowing, urban character, construction impacts (during works) and stormwater management.



There were eight (8) public submissions received that have been considered and addressed within this report. Conditions have been applied where appropriate to address the concerns; including landscaping, privacy, bulk, overshadowing, heritage, views, traffic safety, parking, noise, construction work and stormwater.

The proposal will not have an unreasonable impact in relation to view sharing considerations, privacy or solar access. Additional amenity impacts that may arise during construction works are addressed by standard conditions, including dilapidation risk, dust, noise, site management and the like.

Suitable conditions are recommended to address engineering, traffic and landscape referral responses as detailed in this report. Other Internal and External Referrals are subject to conditions where required.

During the assessment period, some design changes were necessary to address safe driveway access and stormwater issues. The changes affected other minor elements of the design such as landscaping and setbacks at the front of the building and therefore the amended plans were re-notified. Some supplementary information was also provided by the Applicant to further assist solar access, views and privacy considerations.

The planning controls under the Warringah LEP 2011 and Warringah DCP 2011 apply and in this regard matters relating to streetscape character, setbacks, building envelope, bulk and scale, external materials, overshadowing, privacy, views, stormwater and traffic have been addressed. In this case, the non-compliance with development controls for building height, 3 storeys, building envelope, side setbacks and landscaping are addressed in accordance with the objectives and requirements of those considerations.

No issues have been raised that warrant further amendment or refusal of the application, therefore the application is recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves the following:

- Demolition of all existing structures and selected trees on site
- Construction of a residential flat building with basement carparking
- Ancillary site works including excavation, site preparation, landscaping, bin storage, fencing, drainage works, pathways and retaining walls

The configuration of the building is as follows:

RL7.60 Basement / Carpark - Parking for nine (9) car spaces, including eight (8) resident cars plus one (1) visitor space, lift and stair access, storage, plant and services rooms, driveway ramp, bin room.

RL10.40 Ground Floor - Unit No.1 - Bedrooms (3), storage, bathrooms (2), laundry, kitchen / living area, terrace, entry stair, lift access and lobby;

RL13.35 Level One - Unit No.2 - Bedrooms (3), storage, bathrooms (2), laundry, kitchen / living area, balcony, entry stair, lift access and lobby;

RL16.30 Level Two - Unit No.3 - Bedrooms (3), storage, bathrooms (2), laundry, kitchen / living area, balcony, entry stair, lift access and lobby;

RL19.25 Level Three - Unit No.4 - Bedrooms (3), storage, bathrooms (2), laundry, kitchen / living area,



balcony, entry stair, lift access and lobby;

RL22.0 to 22.85 Roof - Roof eaves, Lift overrun and Roof ridge

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B2 Number of Storeys
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D19 Site Consolidation in the R3 and IN1 Zone

SITE DESCRIPTION

Property Description:	Lot 3 DP 302001 , 39 Park Street NARRABEEN NSW 2101
Detailed Site Description:	The subject site consists of a single allotment located on the eastern side of Park Street, Narrabeen, between Goodwin Street and Mactier Street. The site has an area of 557.4 square metres (sqm) with a frontage of 18.29 metres (m) to Park Street and a depth of 30.48m.

Existing development on the land consists of a two storey dwelling, outbuildings and ancillary structures. There is a mix of native and non-native medium sized trees on the site but no rock outcrops as the land is within a coastal area containing sandy loam soils above sandstone bedrock. The site has a retaining wall along the southern boundary with a diagonal cross fall of 3.0m toward the northwestern corner.

The land is 215m west of Narrabeen beach and 230m southeast of Narrabeen Lagoon but is not subject to flooding. The site is within "Area D" for landslip risk and has a low risk of acid sulfate soils or groundwater intrusion. There are no unique rock outcrops or threatened species habitat identified on the site.

Surrounding development consists of a mix of 3 and 4 storey residential flat buildings in landscaped settings with occasional single dwelling houses or dual occupancy development. Adjoining the northern boundary is residential unit complex at No.16 Goodwin Street and a heritage listed dwelling "Lemville" at No.14 Goodwin Street. Development to the east, south and west of the site predominantly consists of 3 or 4 storey residential flat buildings. Depending on adjacent building heights and the topography, coastal views are available to the east (generally from the upper storey levels) including distant views toward Narrabeen lagoon from some adjacent development.

The character of the locality is representative of an established Medium Density zone, where there is a mix of older style post war apartments and more recent contemporary residential flat buildings. Narrabeen Public School is located 55m north of the site.

Map:



SITE HISTORY

Pre-lodgement Meeting PLM 2017/0128 - A meeting was held with the applicant on 9 November 2017 to discuss demolition and the construction of a residential flat building.

The PLM notes identify the various non-compliance issues with developing the site in the context of adjacent land and consideration of it being an isolated (single) lot. In summary, the PLM advice concluded that the onus is on the applicant to provide suitable design outcomes to minimise the impact of non-compliances with the built form controls in order to support the merits of the proposal. The advice states that if a DA is lodged, then the proposal is to be submitted with the required information and a suitable building design to be consistent with the PLM notes.

Development Application DA2019/0507 - DA was withdrawn by the applicant to enable design revisions and to respond to issues with more detailed information to address issues raised with that application.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.55 'Matters for Consideration'	Comments
Section 4.55 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.55 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.

Section 4.55 'Matters for Consideration'	Comments
Section 4.55 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.55 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.55 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application as the development is not subject to the provisions of SEPP 65.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. Additional information was received with respect to the disposal of basement water, driveway compliance and bin room access as shown on the revised architectural plans. The revised plans do not make any changes that materially impact privacy, change shadowing or increase building bulk or reduce the net landscaped open space area. The amended plans were re-notified as the technical design issues to address safety, design gradients, access or operational functionality also altered the side setback for the driveway and minor elements in the front setback area.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application as SEPP 65 does not apply.</p>
Section 4.55 (1) (b) – the	<u>Environmental Impact</u>

Section 4.55 'Matters for Consideration'	Comments
likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the development on the natural and built environment are addressed under the Warringah Development Control Plan section of this report.</p> <p>Generally, the subject site is partly constrained, being a small, sloping and isolated lot in a medium density area. The site is able to drain stormwater to Park Street / Goodwin Street and the applicant has adequately addressed the issue of OSD requirements. The proposal is supported by Council's Development Engineers subject to appropriate conditions of consent contained within the Recommendation of this report.</p> <p>The proposal is for the construction of four (4) storey residential flat building (containing 4 dwellings) located within an area zoned R3 Medium Density Residential, which permits the proposed form of residential accommodation. The area is an established medium density area with a variety of older housing stock interspersed by new medium density developments located within close proximity to the subject site.</p> <p>The proposal is not considered to result in unreasonable impacts to the adjoining and nearby lands, subject to conditions. The development will maintain consistency with the existing pattern of development, maintain the residential use of the site, maintain the reasonable sharing of views. Further, it will not create an unreasonable sense of building bulk that is inconsistent with comparable medium density development in the street.</p> <p>The building will not result in an unreasonable level of overshadowing nor result in an unreasonable level of privacy loss given the architectural design response to address those issues and retain consistency with the relevant objectives despite any numerical non-compliance. The considerations of building bulk, landscaping, setbacks, privacy, views and overshadowing are consistent residential living with a medium density urban environment.</p> <p>The development of this site for residential purposes is not considered likely to have an adverse impact on existing or future opportunities within the zone for public recreation or the use of public open space.</p> <p>Therefore, impacts upon the public domain are considered acceptable. Further, standard conditions of consent would be imposed to ensure the adequate disposal of building and construction waste material.</p> <p><u>Social Impact</u> The development is considered satisfactory in terms of potential social impact in the locality considering the residential character of the proposal and that the development will provide greater diversity to the housing stock of the Northern Beaches.</p> <p><u>Economic Impact</u> The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the proposed land use.</p>



Section 4.55 'Matters for Consideration'	Comments
Section 4.55 (1) (c) – the suitability of the site for the development	<p>The land use zone of the area as R3 Medium Density Residential is reflective of the desired future character of the area and use of land.</p> <p>The subject site is located in an area that in recent times has undergone a transition from existing low density housing stock to new medium density housing in the form of surrounding complementary and compatible medium density land uses.</p> <p>Park Street is characterised by a mix of low density (single houses) and medium density housing stock (mostly 3 storeys with some taller buildings). The site is considered to be an 'isolated' lot due to the surrounding flat buildings and a heritage item to the north.</p> <p>In this regard, the development has been designed to a scale that is considered to be of a satisfactory transition to the adjoining residential flat buildings.</p> <p>Given the proximity of the site to the Narrabeen commercial area to the north, including Pittwater Road transport services, the site is considered suitable for access to services and public transport. In addition, the existing site has access to adequate utility services (water, sewer telecommunication's and electricity etc.)</p> <p>Further, the development maintains a suitable and compatible land use for the site and is not considered to result in unreasonable or adverse impacts on the adjoining properties, subject to appropriate conditions.</p>
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Public Exhibition" in this report. Issues raised in the submissions received have been considered in this report and addressed by amended plans or appropriate conditions where relevant to ensure no unreasonable impact on the local amenity.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 8 submission/s from:



Name:	Address:
Mr Jonathan Ridgway Drane	4 / 18 - 20 Goodwin Street NARRABEEN NSW 2101
Mr Alex Xenita	5 / 16 Goodwin Street NARRABEEN NSW 2101
Mrs Skye Annelise McKenzie Mr Joshua Michael McKenzie	14 Goodwin Street NARRABEEN NSW 2101
Angela Rehrl	4 / 16 Goodwin Street NARRABEEN NSW 2101
Ms Rebecca Carroll	Address Unknown
Linda Angelique Oates	6 / 12 Goodwin Street NARRABEEN NSW 2101
Mr Vladimir Lakic	3 / 9 Regent Street DEE WHY NSW 2099
Liam Gavin	9 / 26 Malcolm Street NARRABEEN NSW 2101

The following issues were raised in the submissions:

1. LEP / DCP compliance
2. Architectural character and SEPP 65
3. Privacy
4. Building Bulk, Setbacks and Envelope
5. View Impact
6. Dilapidation risks
7. Solar Access
8. Trees and Landscaping
9. Heritage
10. Noise
11. Traffic Safety
12. Flora and fauna impacts
13. Construction Impacts
14. Lack of local infrastructure
15. Insufficient resident parking

The matters raised are addressed as follows:

1. Concern that the proposal does not satisfy the statutory Local Environmental Plan 2011 controls or the Warringah DCP 2011 controls due to the non-compliance with the height, side boundary envelope and built form of the building

Comment:

The proposed building is marginally over the 11.0m building height control and exceeds the 3 storey height limit also, being 4 storeys. The applicant has provided a "Clause 4.6" request to vary the building height development standard and this has been considered against the provisions of Clause 4.6 within this report under the heading "Exceptions to Development Standards". In summary, the cause to vary the building height control is considered to be adequately founded and does not offend the objectives of the zone or the development standard, in the circumstances of the case. Therefore, the variation to the building height does not create any unreasonable impact on adjacent land in terms of views, overshadowing, building bulk or environmental amenity. The breach to the 11.0m height control is a fractional variation (0.35m) and relates to a limited area of the roof profile and strict compliance (for a flat compressed roof form) would have no material gain in solar access, views or building bulk.



The detailed merit assessment of non-compliance with the storey limit under the WDCP is considered in detail under the heading "*Part B2 Number of Storeys*" within this report. In summary, these include consideration with regard to impacts on adjacent land for the number of storeys, and in context with the building envelope, side setbacks and landscaped open space. In summary, proposal has sought to create the fourth storey by utilising the 3.0m crossfall of the building footprint area at ground level while remaining consistent with the 11.0m height control.

In addition, the proposal has been considered with respect SEPP 65 and environmental impact on adjacent land. Overall, the proposal has been designed to facilitate re-development of the land, in context with the adjacent flat buildings without creating unreasonable amenity impacts for the medium density zone. Therefore, this issue does not warrant refusal of the application.

2. Concern that the architectural character of the development is too bulky and the style of the building design does not fit the design requirements of SEPP 65

Comment:

The site is considered to be an "isolated" site, being a single lot with apartment buildings on either side and toward the rear. In addition, the site is only 18.2m wide and which therefore places constraints on the building design in terms of setbacks and building envelope, to design a building that must also achieve other essential elements of parking, landscaping, private open space and amenity considerations. The applicant has stepped the building back for the upper storeys in response to the building envelope. The roof top is designed to be flat, in order to minimise view impacts, overshadowing and any height non-compliance to the development standard. By comparison, the building is less bulk than the adjacent older style apartments to the rear of the site or adjacent, along Park Street. The applicant has provided a *Design Verification Statement* in accordance with SEPP 65 to address the merits of the design in the context of the SEPP, adjacent land and the site. In summary, it is considered that the density, scale and built form of the design responds appropriately to the development controls.

Therefore, this issue does not warrant refusal of the development application.

3. Concern that the building will impact privacy on adjacent properties, including No.37A Park Street, No.12 to No.16 Goodwin Street

Comment:

The proposal has been designed to ensure windows that face private open space of adjacent land or other building window will include translucent glass or fitted screens to restrict overlooking. Details of how screens will be fitted to restrict the overlooking viewing angle from is illustrated below (Insert 1) is considered an acceptable design response.

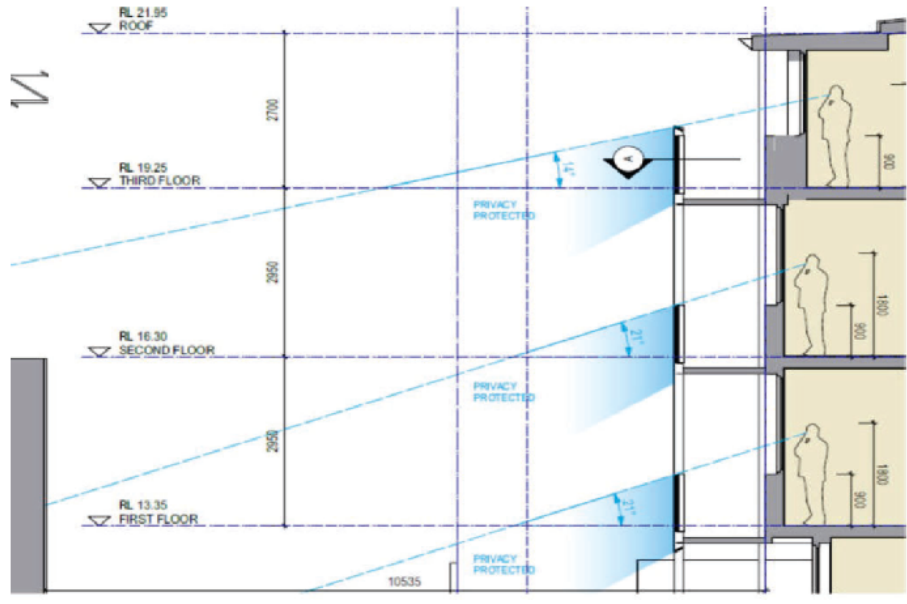


Figure 1. - Windows on the southern side elevation are either elevated above floor level or are treated with a translucent film or as shown on the section diagram the use of (offset) privacy screens along the edge of the northern elevation demonstrate that overlooking is restricted from internal living areas toward No.12 and No.14 Goodwin Street for the upper level units.

General privacy from the ground floor is mitigated given the provision of a 1.8m high boundary fence, boundary planting to ensure landscape screening. Central windows along the southern elevation are designed to serve bathrooms, storerooms and low occupancy areas to maintain privacy to No.37A Park Street.

The principal living areas (accessible to private open spaces) are oriented toward the street or rear setback to avoid direct close viewing of adjacent buildings, due to the narrower spatial separation along the side setbacks.

As the building contains only four (4) apartments, the likely pedestrian movements to and from the building is consistent with, or lower than that expected within the surrounding flat buildings.

Therefore, this issue has been addressed by the building design response and landscaping screening to be provided and is addressed in further detail under *Part D8 Privacy* within this report. The proposed development will not create unreasonable impacts on adjacent land for the medium density zone. This issue has been considered in the context of planning principle established in *Meriton v Sydney City Council [2004] NSWLEC 313* and does not warrant amendment to the design.

This issue has been addressed by design measures for the building and does not warrant refusal of the application.

4. Concern that the building will breach the side boundary setbacks and side boundary envelope and results in excessive building bulk and scale

Comment:

This issue is addressed in detail under the heading *Part B5 Side Boundary Setback* and the *Part B3 Side Boundary Envelope* merit assessment within this report. In summary, the proposal has been stepped-in to respond to the narrow site width, site area and cross fall of the area requirements of the



WDCP and SEPP 65. In terms of the building height, width and depth along the side boundary envelope, the building includes recessed sections and wider setbacks for landscaping on the lower side to minimise impacts on adjacent land.

Therefore, this issue does not warrant refusal of the application.

5. Concern that the new building will result in a loss of views and outlook from apartments within No. 37A Park Street

Comment:

This issue is addressed in detail under the heading *Part D7 Views* within this report. In summary, view sharing considerations have been made in accordance with the the Planning Principle established by the *NSW Land and Environment Court* in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*. View impacts are rated as **moderate** due to the aspect being across a side boundary and the orientation of adjacent apartments being to the east or west with the principal view gained of the ocean being to the east and north east. The most affected views are generally across a side boundary across part of the rear or front setback, therefore more difficult to retain. Views losses are not regarded as devastating since the view is limited in terms of its existing openness (i.e not a broad water / beach view) and context of distance and content (i.e. mostly urban outlook with distant glimpses of coastal fringe development or lagoon). This is discussed in detail under the view sharing assessment within this report.

In summary, this issue has been considered in the design to provide a suitably skilful design that maintains the development potential of the site and provides reasonable view sharing toward the upper storeys where views are most accessible.

6. Concern that the proposed development and associated excavation / site works will impact on the structural integrity of adjacent property assets

Comment:

The proposal includes some moderate excavation on the site to ensure carparking is provided and side access, including landscaped courtyards to the ground floor and first floor level. The deepest excavation for the basement is setback 3.5m to 4.8m with the basement floor level between RL7.6m. Excavation along the side setback and rear setback for access pathways and landscaped courtyard element is setback 0.29m to 2.1m and extends to a 6.0m setback at the rear.

The applicant has provided a detailed Geotechnical Report 31708SMrpt, dated 8.10.2018 prepared by *JK Geotechnics*. The report addresses the geotechnical aspects of the site in detail, including recommendations regarding principal geotechnical issues, dilapidation, excavation, seepage, shoring and batters, walls, footings, slabs and soil conditions, including natural movement.

This issue is addressed by conditions to ensure a dilapidation survey is completed prior to the commencement of site works and the recommendations of the Geotechnical Report are followed.

7. Concern that the overall height and non-compliant setbacks (including side boundary envelope) will cause overshadowing and loss of solar access to adjacent apartments

Comment:

The site is within a medium density area and adjacent established residential flat buildings which are up to four storeys in height. Overshadowing created by the roof height and building setbacks is detailed on



the shadow diagrams plans SK7 B to SK17 B drawn by MHDP. The proposal has been assessed in accordance with the WDCP, SEPP 65 and the *NSW Land & Environment Court* Planning Principle established under *Benevolent Society v Waverley Council (2010) NSWLEC 1082* with respect to solar access considerations.

The applicant has provided elevation and plan diagrams for adjacent building to demonstrate the change from the existing situation to future solar access with the proposed building between 9am and 3pm on the 21 June. For No.37A Park Street the change in overshadowing has the most pronounced affect on the two adjacent Level 1 Units between 9am and 3pm (note the Ground level is parking and utility rooms). The additional overshadowing occurs throughout the day for No.37A Park Street as shown on the shadow diagrams however at least 50% of habitable living room window areas will retain direct sunlight on the 21 June between 9am and 3pm when assessed across the 6 hour time period. Overall, the building design is consistent with the approach made by the NSW LEC under the Planning Principle in dealing with solar access and with *Part D6 Access to Sunlight* of the WDCP.

In summary, this issue has been considered in detail and does not warrant refusal of the application.

8. Concern that the proposal has insufficient landscaped area and will also cause the loss of the significant tree at the front of the site.

Comment:

The calculated compliant landscape area is 44% and the medium density zone requires 50% landscaped open space under the WDCP. A detailed merit assessment of landscaped open space is provided under the heading *Part D1 Landscaped Open Space* within this report with further assessment being made pursuant to the SEPP 65 assessment. The existing street tree adjacent the south west corner of the site will be retained and conditions are recommended to ensure adequate tree protection/arborist supervision measures are to be used during construction to avoid impacts that would threaten its long term survival. In summary, the proposal maintains the objectives of the landscaping requirements and, where practicable one (1) metre, or deeper, soil is retained to enable substantial screen planting to provide replacement landscape screening around the perimeter of the building. Council's Landscape Assessment Officer has assessed the landscaping impacts for the site and recommends conditions to address landscape issues.

In summary, the landscaping proposed is not unreasonable following considerations of the proposed setbacks, site works and range of replacement planting to ensure a landscape setting for the building is maintained to achieve the objectives of the landscape open space control. Therefore, this issue does not warrant refusal of the application.

9. Concern that the proposal will have a heritage impact on No.14 Goodwin Street adjacent the site.

Comment:

Heritage comments are provided under Council's internal referral response (Heritage) and pursuant to Warringah LEP 2011 as detailed within this report. In summary, the heritage values of No.14 Goodwin Street will not be unreasonably impacted by the proposed building given the landscape buffer provided, external appearance of the building including external colours, fenestration, bulk, height and setbacks.

Therefore, based on a detailed merit assessment of this issue it is considered that the proposal does warrant refusal of the application.



10. Concern that the proposal will include air conditioner units and noise from balconies may create adverse noise levels for adjacent apartments, including if any apartments are used for "AirBnB"

Comment:

Air conditioning units are required to have low noise output that meet Australian Standards to ensure no unreasonable noise levels. Therefore, noise from installed plant equipment motors is subject to standard conditions. The lift mechanism is contained within the enclosed lift shaft and a condition is recommended to ensure noise from any plant used for the building (including the lift motor, air conditioners and the like) does not exceed 5 dBA above background noise, measured at the property boundary to neighbouring land.

The use of balcony space for domestic residential purposes in a residential area is consistent with the medium density living environment and this issue does not warrant conditions to restrict normal domestic activity. The balconies front the street and therefore have a semi-public aspect that also allows for casual observation of the public domain, rather than being at the rear which would maintain a more confined outlook / aspect with adjacent apartment buildings. The location of the balconies toward the Park Street frontage is considered to be appropriate for the site in terms of aspect, solar amenity, privacy, and residential living noise. Concern regarding the use of apartments for "AirBnB" are able to be appropriately managed by the body corporate by-laws/strata management for the building.

Therefore, this issue does not have determining weight and does not warrant refusal of the application.

11. Concern that the proposal will cause an increase in traffic that will raise safety concerns for pedestrians and local vehicle traffic

Comment:

The site is located on a local road and therefore the increase in traffic generation will not create an unreasonable impact which has been assessed as part of the Traffic Report information submitted by the applicant. The provision of vehicle access meets Council policy for safe design requirements, subject to conditions. The site is already developed for housing and the proposal to re-develop the land for 4 apartments will not create a significant traffic generation for the local road network.

Therefore, this issue does not have determining weight and does not warrant refusal of the application.

12. Concern that the proposal will local flora and fauna

Comment:

The site includes a wide selection of plant species to replace trees and shrubs suitable to provide habitat and food sources for native arboreal animals and birds. There are no unique site features on the site (i.e rock outcrops, significant hollow bearing trees) and the landscape planting proposed includes deep soil zones to ensure long term sustainability and growth to ensure a landscape setting for the building.

Therefore, this issue does not have determining weight and does not warrant refusal of the application.

13. Concern that the construction works will create noise, dust and amenity impacts on surrounding residents

Comment:

Construction works are subject to 'prescribed' and general conditions to ensure no unreasonable



impacts of dust, noise and general amenity during site works. The proper management of site works is the responsibility of the site manager to ensure compliance with applicable standards and conditions of consent. Compliance with conditions of consent are also the responsibility of the appointed Certifying Authority and where matters of concern occur, such as construction noise, dust, runoff and the like, the appointed Certifying Authority is obliged to address those issues. Therefore, environmental impacts that may cause short term impacts (dust, construction noise, and the like) are to be managed by conditions of consent ensuring compliance with industry standards for demolition or construction work and minimise unreasonable construction / demolition impacts during works.

Therefore, this issue is addressed by conditions and does not warrant refusal of the proposal.

14. Concern that there is a lack of infrastructure to support the proposal

Comment:

The proposed development will include its off-street basement carparking for each unit and the building will be provided with all service utilities connections required by Ausgrid, Sydney Water and telecommunications. No comments or objection has been provided by the Service Infrastructure Authorities in association with referrals sent. Council's development and traffic engineers are satisfied with the proposed design including connection to stormwater infrastructure, road capacity and access.

In summary, this issue is subject to conditions and does not warrant refusal of the application.

15. Concern that the proposal does not have sufficient carparking for 4 Units and street parking needed during construction is often taken up by the school activity

Comment:

The WDCP, WLEP and SEPP 65 contains no requirements for the provision of additional parking to accommodate vehicles for site workers or surplus car parking for residents in association with existing street congestion such as local school traffic. Access to the site will be maintained to enable demolition and construction including the delivery and storage of building materials and a construction management plan has been prepared to facilitate this. Once the basement is roofed this area can be used as additional temporary on-site construction parking / storage area to reduce pressure on the street frontage during work. Any temporary reservation of land within the road reserve for construction management will require a separate application and approval from Council under the *Roads Act*.

The proposal complies with the required carparking planning controls and this issue does not warrant refusal of the application.

REFERRALS

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

Internal Referral Body	Comments
	<p>Planning Comment: Assessment comments from Building Assessment are concurred, with conditions included as recommended.</p>
Landscape Officer	<p>"The Arborist's Report and Landscape Plan submitted with the application are noted. Several trees on the site are required to be removed to accommodate the proposed works. The trees are not considered significant and no objections are raised to removal. Protection of trees and adjacent to the site is addressed in the Arborist's Report and it is further recommended that a Project Arborist be appointed to oversee works adjacent to protected trees, which is included in recommended conditions.</p> <p>It is recommended that the landscape plan be supplemented with additional taller growing local native palm trees to provide for softening of the built form and reduced perceived bulk and scale, which is also included in recommended conditions.</p> <p>No objections to approval subject to conditions as recommended."</p> <p>Planning Comment: Assessment comments from the Landscape Officer are concurred, with conditions included as recommended.</p>
NECC (Development Engineering)	<p>Development Engineering Comments 27 June 2020 "The amended stormwater drainage plans prepared by Natasi and Assocaite are now acceptable as they detail the discharge of all seepage water and stormwater to a pit and pipe system in Park Street. Additionally an amended driveway long section has been provided which removes the need for a cut at the boundary.</p> <p>No objections subject to conditions.</p> <p>Reference is made to Development Engineering Referral Response dated 14/1/20, Development Engineering Referral Response 2 dated 23 March 2020 and the additional information provided by the Applicant."</p> <p>Planning Comment: "Issues relating to driveway access, levels, and stormwater design took a number of revisions for the applicant to address during the assessment period. Assessment comments from the Development Engineering are concurred, with conditions included as recommended.</p> <p>The following Referral advice consolidates previous Development Engineering and previous Traffic Engineering assessment."</p> <p>Previous Referral Response: "Stormwater: The proposed Stormwater Concept Plan is unsatisfactory. The use of</p>

Internal Referral Body	Comments
	<p>sub-surface seepage for irrigation purposes is not supported and sub-surface seepage flows are not permitted to connect to the kerb.</p> <p>In this regard, an extension to Council's stormwater infrastructure in Park Street to the downstream pipeline at the corner of Park Street and Goodwin Street is required.</p> <p>In accordance with Council's Building Over and Adjacent to Constructed Council Drainage Systems and Easements Technical Specification Section 3, full hydrological and hydraulic details shall be provided and the design requirements are detailed in Section 4, including HGL analysis.</p> <p>Access:</p> <p>The proposed driveway is not satisfactory. As previously advised by Traffic Engineering, the driveway shall be redesigned so that vehicles are generally perpendicular to the boundary when exiting the property. In addition, it shall be demonstrated that a clear sight distance triangle of 2 metres by 2.5 metres next to the driveway at the property boundary to insure pedestrian safety, in accordance with AS2890.1. This is to ensure safety for pedestrians when vehicles exit the property.</p> <p>In addition, the extent of the batters required adjacent to the revised driveway is not clear. Further detail should be provided to clearly demonstrate the extent of any batters and regrading works along the property frontage to match to existing levels. In particular, it shall be ensured that there is no impact to the existing retaining wall at the adjoining property frontage. It is noted that the driveway is proposed to be 370mm below natural ground level at the northern side and 780mm below NGL at the southern side. Batters should be minimised where possible and any proposal of excessive batters within the road reserve will not be supported.</p> <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <p>Vehicle access and levels for the development in accordance with clause C2 Traffic, Access and Safety. Stormwater drainage for the development in accordance with clause C4 Stormwater."</p>
Strategic and Place Planning (Heritage Officer)	<p>Reasons for referral</p> <p>This subject site adjoins a listed heritage item, being Item I90 - House known as "Lemville", 14 Goodwin Street, Narrabeen, which is listed as a local heritage item in Schedule 5 of Warringah Local Environmental</p>

Internal Referral Body	Comments
	<p>Plan 2011. The heritage item adjoins the eastern portion of the northern boundary of the site.</p> <p>Details of heritage item affected Item I90 - House known as "Lemville", 14 Goodwin Street, Narrabeen</p> <p>Statement of Significance: A rare example of a Victorian cottage with some parts reputedly dating back to 1830's, making it one of the oldest structures, providing evidence of earliest settlement & original land grants. Although modified, retains representative Victorian fabric.</p> <p>Physical Description Single storey dwelling of rock faced ashlar sandstone. Hipped corrugated metal roof with bull-nosed verandah at front. Early timber joinery includes 2 pairs of french doors to front verandah and 4 panel front door. Stone fence. Carport to side. Skylight. Bull-nosed roofed verandah and front stone wall added. Name plaque is early 20th Century "Art Nouveau". Present building dates back to early 1880's, including some parts of 1830's dwelling.</p> <p>Consideration of Application This application proposes the construction of a 4 storey residential flat building with basement parking at 39 Park Street, Narrabeen, which adjoins the heritage property on the eastern portion of the northern boundary of the site. The proposed development is set back approximately 5 metres from this boundary with the heritage property, with the uppermost floor setback a further 2 metres.</p> <p>The DA plans (amended June 2020) and the Statement of Environmental Effects by Evolution Planning (April 2020), have been reviewed, as well as the submission from the owners of the heritage item at 14 Goodwin Street. The SEE includes an assessment of the impact of the proposed development on the adjoining heritage item. In this instance it is not considered that a separate full Heritage Impact Statement is required.</p> <p>The original stone cottage at 14 Goodwin Street is significant as a rare example of a Victorian cottage in the Narrabeen context. Although modified, its heritage significance is largely embodied in its original remaining fabric and its visibility when viewed from Goodwin Street. It is understood that the original Victorian fabric is at the front of the cottage, with rear extensions having been added. The rear of the existing cottage is located some 12 metres from the development site and the proposed new building is setback a further 5 metres (approx.) at ground level. Therefore, there will be no impact on the physical fabric of this heritage item. A dilapidation report (pre and post construction) will be required as a condition of consent to ensure that the works, particularly the excavation works, will not affect the structure of the heritage item.</p> <p>The other potential impact on the heritage item is the visual impact of the proposed new building on the cottage when viewed from the</p>

Internal Referral Body	Comments
	<p>public domain. The context of the heritage cottage is already compromised by existing residential flat buildings adjoining the site and in the vicinity, which is a product of the land use zoning. While the new building will be partly visible behind the heritage cottage, it is not considered that this would have an unacceptable adverse impact upon the cottage. The distance of separation (approximately 17 metres) will mean that the new development will appear as a separate and distinct building. The proposed external colours (various shades of grey, with timber look louvres) will mean that the proposed development will be recessive in colour. This, in combination with the existing trees along the southern boundary of the heritage site, will mean that the proposed development will blend in with the existing vegetation thereby reducing its visibility when viewed from the public domain of Goodwin Street. While some of the existing vegetation may have recently been removed from the heritage site, there are still a number of significant trees remaining along the southern boundary. Landscape conditions are proposed which will protect these trees during construction and require the planting of additional palm trees on the northern side of the building to soften the building bulk. Screen landscaping (hedges up to 2.5 metres) is also proposed along the boundary with the heritage site.</p> <p>It is recognised that the proposed development will be visible from the rear yard of 14 Goodwin Street, but this would be the case with any residential flat development on this adjoining site. Overall, it is considered that the proposed development will not have an unacceptable impact on the identified heritage significance of this cottage and its visibility when viewed from Goodwin Street.</p> <p>Therefore, taking all matters into consideration, no objection is raised to this application on heritage grounds and no conditions required.</p> <p>Consider against the provisions of Clause 5.10 of WLEP 2011 Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No - heritage discussion in SEE Has a Heritage Impact Statement been provided? N/A</p>
Strategic and Place Planning (Urban Design)	<p>"The applicant has submitted amended plans that have addressed the following issues:</p> <ol style="list-style-type: none"> 1. The breach in building height and envelope are minor and will not result in any detrimental effects on the neighbouring buildings. 2. The proposed floor to floor height of 2.95m is short of the Apartment Design Guide of 3.1m but will still be sufficient to achieve the 2.7m ceiling height in majority of the living areas. Moreover, the design is a single apartment per floor layout so there are plenty of windows on all sides to achieve good access to sunlight and cross-ventilation. 3. The fourth storey is well setback to maintain a three storey look

Internal Referral Body	Comments
	<p>from the street front to be contextually fitting with the surrounding streetscape."</p> <p>Planning Comment: Assessment comments from the Urban Design Officer are concurred. No special conditions were required.</p>
Traffic Engineer	<p>Traffic Engineer Comments: "It is understood that the Development Engineering referral is provided in support of the driveway design. Given the consolidated traffic and development engineering referral response provided by the development engineers, no further comments on the driveway design is required.</p> <p>Therefore, no concern is raised by traffic team subject to the condition regarding the relocation of the existing "End of School Zone" sign (which is currently positioned where the proposed driveway is) in consultation with Transport for NSW. "</p> <p>Planning Comment: Assessment comments from Traffic Engineering are concurred, with conditions included as recommended. The following Referral advice consolidates previous Traffic Engineering assessment:</p> <p>Comments on additional information dated 5 March 2020: "The traffic engineering matters previously raised on the design of the driveway and its gradients in compliance with AS2890.1 have still not been addressed by the applicant. "</p> <p>Original Traffic Comments: "The proposal is demolition of the existing two storey building and construction of a residential flat building consisting four 3 bedroom apartment with underground parking. The traffic generating from the proposal which is expected to be the total of 2 vehicle trips in peak hour, is considered to have negligible impact on the road network and is acceptable.</p> <p>The parking requirements for the proposal is the provision of 6 spaces allocated to the units and 1 space to visitor parking. The proposal provides 9 parking spaces which addresses the minimum parking requirements.</p> <p>The proposed gradients of the driveway does not comply with Australian Standards AS2890.1:2004. The gradients of at least the last 6m of the driveway from the property boundary shall be maximum 5%. This is to improve sight line to pedestrians when vehicles exiting the property. Also, the proposed driveway being designed angled to the property boundary raises a safety concern due to lack of sight line to pedestrians when exiting the driveway. The vehicles shall be perpendicular to the driveway when exiting the the property boundary.</p>



Internal Referral Body	Comments
	In view of the above, the proposal is not supported in regards with the driveway design. "
Waste Officer	<p>Waste Services Recommendation: "Approval subject to conditions on plans A102 version E (12 March 2020) "</p> <p>Planning comment: Waste services requirements have been satisfied subject to conditions as recommended (now as per plan A102 F that shows the driveway compliant with engineering requirements).</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid and a referral response was provided on the 30/12/2019 stating that: <i>"Ausgrid has no objection to this development application, however the design submission must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets.</i></p> <p><i>The "as constructed" minimum clearances to Ausgrid's infrastructure must not be encroached by the building development. It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.</i></p> <p><i>Ausgrid's Network Standards can be sourced from Ausgrid's website, www.ausgrid.com.au "</i></p> <p>Ausgrid requirements are included with the recommended conditions.</p>
NSW Police – Crime Prevention Office (Local Command matters)	The proposal was referred to NSW Police - Local Command. No comment and no objection to approval was provided within the 21 day statutory referral period.

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 re-development.

The Geotechnical report (No.31708SMrpt) prepared by *JK Geotechnics* has not identified any significant slope instability or other soil conditions that indicate the presence of contaminating material. Conditions are included to address the appropriate disposal of asbestos materials if found present during demolition and to ensure health risks to adjacent land is appropriately managed.

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 erection of a four storey residential flat 'housing' development plus basement car parking for the provisions of four (4) 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 (ADG).*



DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel constituted under SEPP 65. Recently, Council created a Design and Sustainability Advisory Panel (DSAP), but this application was submitted some time ago and is not required to go to that Panel. Nevertheless, the urban design quality has been assessed by Council's Urban Designer and the Planner has carried out a detailed assessment against the provisions of SEPP 65 and the ADG.

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 subject site is located in an area that is characterised by a mix of older style three or four-storey "walk-up" residential flat buildings in the vicinity and broader area of Narrabeen interspersed with mostly 3 storey contemporary apartment buildings within the medium density residential zone.

The scale and architecture of the development is distinctly more modern than the adjacent buildings but maintains a consistent height and landscape setting to the street. The older style apartment buildings (Circa 1960-70) tend to lack landscaping in favour of ground level parking. The proposed building maintains a visual outlook toward the street and is one of the last "infill" sites remaining within the local medium density area along the eastern side of Park Street.

In terms of building bulk, the design has responded to the envelope requirements by *stepping-in* the upper floors, but despite that, the proposal does not comply with the building envelope or side setback controls due to the sites narrow width. Consideration of the surrounding context and socio-economic character of the Narrabeen area suggests that the development is designed to be larger (3 bedroom) style apartments and with only 4 units in the building.

The provision of landscaping provided around the perimeter of the development contributes to providing a transition between properties given the narrow sloping width and small, single lot site area for an apartment building. The applicant has designed the proposal to retain some minor trees at the rear and will not adversely impact on the large street tree (fig) near the south-west corner.

For the reasons above, the development is considered to fit contextually with surrounding medium density development and the neighbourhood character.

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:

The development potential of the site is substantially constrained by surrounding development and crossfall and single lot site dimensions. In this regard, the site is overlooked by a 5 storey building from the higher land to the south and in turn the subject building overlooks land to the north that is lower than No.39 Park Street. Therefore, window placement, internal room layout and the building's height and shape are critical considerations. The shape of the building above ground level is influenced by the built form controls and need to respond to vehicle access, landscaping, side setbacks, building envelope and height controls. The 4th storey element meets the 11.0m height control at the rear with a minor height breach at 11.35m at the front. The 4th storey element is a breach of the DCP storey limit, but maintains consistency with the objectives of the control and is not "jarring" in the streetscape and other apartment buildings that are opposite and adjacent the site, due to the design response addressing floor layout, privacy, wall heights, landscaping, fenestration and building bulk.

Notwithstanding any numerical non-compliances, the development is of a scale that is suitable for the area and provides appropriate setbacks to the front and rear to allow for the establishment of new landscaping (as per the accompanying landscape plan and planting schedule). The side setbacks have a narrow landscaped setback (for the most part less than 4.5m) but still maintains deep soil zones suitable for medium size planting to mitigate bulk and assist with landscape privacy screening.

The development is considered to achieve a scale, bulk and height that is appropriate for surrounding and existing developments, and is designed in a manner that is not unreasonable in terms of building form and scale to adjacent medium density housing.

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:

The development provides 4 x 3 bedroom apartments and is consistent with many of the larger style apartments in Narrabeen area, normally within more recently constructed building complexes. The site benefits from existing infrastructure and proximity to local reserves, schools, community facilities, shops and public transport links to Manly and Dee Why/Brookvale.

Therefore, the density of the development is considered to be appropriate to the existing and projected population of the area and is adequate in regards to the sustainability of keeping residential longevity by virtue of proximity to services, shops, public open space and transport.

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 development application is accompanied by a BASIX Certificate which indicates the development



achieves an adequate design for water and energy conservation including thermal comfort. The development provides an adequate cross-ventilation and shading devices and balconies to large north-facing windows to mitigate the impacts of direct sunlight upon large surface areas of glazing.

The development will utilise a Waste Management Plan to recycle and dispose of waste in accordance with Council's Waste management policies and will not detract from the sustainability of the environment or surrounding area.

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, coordinating 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 provides a perimeter of landscaping around the building with the majority of landscaped open space at the front and rear setbacks. Given the narrow width and cross fall of the site, the provision of a full 4.5m landscaped side setback is not practical for the development of the site and the applicant has designed the proposal with narrower side setbacks. Consideration has been given to reinstating landscaping above the basement areas (that encroach into the side setback) at the front of the site and maintaining a full 6.0m deep soil setback to the rear of the site.

The DA is accompanied by a detailed landscaped plan and schedule of plantings as discussed under the Landscape Assessment referral within this report. This plan demonstrates that the establishment of landscaping will assist to mitigate the lower building bulk of the development and will assist with privacy screening and amenity outlook, along the side setbacks and particularly toward the rear with appropriate plant selection. The provision of landscaping has been designed for practical establishment and long-term management including the landscaping area to be re-instated in the front setback.

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 provides an appropriate provision of amenity for residents and neighbours by the design of window/balcony spaces for each apartment, including use of translucent glass, fitted privacy screens and window design. The setbacks progressively increase as building height increases the internal layout and provision of balcony and living area spaces, and the surrounding landscaped areas (including courtyards) which contribute to the amenity of privacy for occupants and minimises impacts of overlooking to adjacent land.

The development comprises of appropriately proportioned rooms, natural ventilation, access to sunlight, outlook, privacy, storage, efficient layouts and a good degree of mobility including internal lift access.

**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 development will incorporate an adequate standard of safety features for the comfort and security of residents. The development will provide increased opportunities to what is present for casual surveillance of the streetscape and adjoining front setback areas. The basement access has a security access for vehicles and there is a ground floor foyer for pedestrian entry.

The access points into the development are well-defined but not visually offensive or dominating and can be easily accessed.

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 as a whole, and each apartment, provides features (such as a basement parking, lift access, balconies, storage and spacious living areas), that would warrant the value of the apartments and provides opportunities for social interactions between residents of the subject and surrounding developments.

Specifically, the development comprises four (4) apartments consisting of three (3) bedrooms each which are suitable for a family or couples. The site is located within the Narrabeen medium density area which is dominated by older style apartments from the 1960-70's era with some contemporary infill apartment buildings. The site is one of few remaining 'in-fill' sites along Park Street Narrabeen. As such, the development provides variation in regards to a socio-economic demographic as a direct result of the design and large floor plan for each of the apartments, including underground off-street parking.

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:

This assessment report details the built form of the development against the control requirements and objectives, as can be found later in the report. The development is considered to be of good design and



of proportions that enable the building to provide essential elements of landscaping, carparking, private open space and generous internal amenity. The aesthetics of the external appearance of the building are contemporary and elements of the design serve practical functions to assist with solar access, privacy, minimising view loss, minimising overshadowing and the like.

The varying use of materials, colours and textures combined with the design and provision of landscaping provide a visual appearance that is visually interesting within the streetscape. The development is purposely in contrast to the architecture of adjacent apartment buildings due to the need to address development controls that did not exist when the adjacent flat buildings were constructed.

The overall aesthetic of the apartment building is considered to be appropriate for the urban context and in-fill site within the Narrabeen medium density area.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	<p>Consistent</p> <p>The development of a residential apartment building is appropriate within the context of Narrabeen and surrounding R3 Medium Density Residential zone.</p> <p>The scale and proportion of the development is similar in height and setback to the streetscape which is largely characterised by older-style four storey apartment buildings.</p> <p>Despite the non-compliant setbacks of the development the proposal is assessed as being satisfactory and without unreasonable amenity impacts upon surrounding land.</p> <p>For the reasons above, the development is considered to relate</p>

		appropriately to its context and the established medium density development in the local surroundings.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<p>Consistent</p> <p>The site is constrained in regards to providing an extensive landscaped area whilst maintaining adequate setbacks to surrounding developments to minimise overshadowing.</p> <p>The architecture of the site and the building setbacks are appropriate for the streetscape, and the front and rear setback areas maintain a wide landscape component.</p> <p>The proposal includes two narrow side boundary setbacks to the north and south, which increase progressively from 3.1m at ground level to 4.5m at the top floor.</p> <p>Given that the existing development on the site consists of low density housing the redevelopment of this site into a medium density development, appropriate for the R3 zone is inevitably going to have a greater overshadowing impact than that of the existing house.</p> <p>In regards to the above, the stepped design, height and shape of the proposed building is considered design response which could be expected upon the land and is without</p>

		<p>unreasonable detrimental impact upon surrounding land, following a number of refinements in response to solar access considerations that are influenced by height, setbacks and building envelope.</p> <p>(Solar access is also considered in detail under the heading "Submissions" and "<i>Part D6 Access to Sunlight</i>" within this report)</p>
Public Domain Interface	<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 provides an appropriate transition between public land (Park Street) and private domain and provides a consistent interface with other surrounding development. This includes landscaped treatment, entry area, driveway access and bin area.</p> <p>It is considered that the proposal does not create an unreasonable impact on the amenity of the public domain by virtue of visual interest and character of the streetscape.</p>
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principle usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) 	<p>Does not comply. Satisfactory on merit.</p> <p>1. 19.3% The development has 'communal open space' area at the rear, 6m setback that have pedestrian access from the entry foyer area for residents along the side setback. The common</p>

		<p>open space surrounding the development (side and concentrated at the rear) have an area greater than 25% of the total site area.</p> <p>Given the building is for four (4) Units only and the apartments from the first floor to the third floor have access to courtyard or front and side balconies, therefore the demand for communal open space is less warranted than that with a larger unit complex. The 108m area at the rear is satisfactory for the scale of the development.</p> <p>Consistent</p> <p>2. The rear setback is on the eastern side of the property and receives direct solar access during between 9am and midday for more than 2 hours.</p>												
Deep Soil Zones	<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 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² 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 ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<p>Consistent</p> <p>The site is calculated to have deep soil zones within the region of 44%, thereby much greater than the minimum requirement of the ADG.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<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</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td></td><td></td><td></td></tr> </tbody> </table>	Building height	Habitable rooms and	Non-habitable rooms				<p>Consistent</p> <p>The development is a 4 storey residential flat building that is below 12.0m in height, thereby</p>						
Building height	Habitable rooms and	Non-habitable rooms												

	<table> <tr> <td></td><td>balconies</td><td></td></tr> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>		balconies		Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>requiring the spatial separation of 6.0m to habitable rooms and balconies and 3.0m to non-habitable rooms.</p> <p>Despite this variation, the development is assessed as providing a reasonable level of visual and acoustic privacy to adjoining properties as minimal large window openings from primary living spaces face west and north with balconies having off-set privacy screens designed to restrict overlooking (from a normal standing position).</p> <p>Thus, despite not meeting the numerical requirements, the spatial separation proposed is considered acceptable given the 'isolated' site, limitation of narrow width, building floor layout and design of surrounding developments. In summary the architecture of the proposal has been designed to minimise impacts where the distance separation guide is not achievable.</p> <p>In summary, the building design includes some unconventional design elements in order to overcome site constraints for an in-fill development including narrow site width, slope and apartment buildings adjacent.</p>
	balconies													
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?	<p>Consistent</p> <p>Pedestrian access into the</p>												

	Large sites are to provide pedestrian links for access to streets and connection to destinations.	building is easily identifiable from Park Street. The lift overrun (which part of the highest elements of the building) is integrated within the south western quarter of the building and not prominent to the street.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Consistent The driveway entry to the street has been assessed as satisfactory by Council's Development Engineer.
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <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>Visual and environmental impacts are minimised.</p>	<p>Consistent</p> <p>The proposed provision of car parking has been assessed as satisfactory in accordance with Appendix H of the WDCP 2011.</p> <p>All car parking is provided off street in the basement car park and thereby has minimal visual and environmental impacts on the local area.</p>
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<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"> 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 	Consistent The development achieves a satisfactory provision of solar and daylight access to 100% given the orientation of

	<p>between 9 am and 3 pm at mid winter.</p> <ul style="list-style-type: none">• A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter	<p>the building, setbacks and topography. The amenity of the principle living areas is enhanced by the corner aspect within the building that enables light and solar access to the living room areas for each apartment. The solar access diagrams ("view from sun") SK17B drawn by MHDP represents the proposed building with regard to direct sunlight on June 21.</p> <p>In summary, the building contains 4 apartments, and solar access is maximised for natural light internally without undue impact on privacy. Therefore, the apartments will receive adequate natural light internally between 9am and 3pm on the 21 June.</p>								
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">• At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.• Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	<p>Consistent</p> <p>The development comprises of 4 units and has been designed to achieve natural cross ventilation.</p> <p>Therefore, the application is assessed as having 100% of apartments being naturally cross ventilated and satisfying the requirements of this control.</p>								
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td></td><td></td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m			<p>Consistent</p> <p>The development achieves satisfactory floor-to-ceiling levels as per the ADG and BCA.</p>
Minimum ceiling height										
Habitable rooms	2.7m									
Non-habitable	2.4m									

	<table><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>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>If located in mixed used areas</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></table>	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	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area					
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If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area											
Apartment Size and Layout	<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>35sqm</td></tr><tr><td>1 bedroom</td><td>50sqm</td></tr><tr><td>2 bedroom</td><td>70sqm</td></tr><tr><td>3 bedroom</td><td>90sqm</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12sqm 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. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p>	Apartment type	Minimum internal area	Studio	35sqm	1 bedroom	50sqm	2 bedroom	70sqm	3 bedroom	90sqm	Consistent The development has a satisfactory apartment size and layout per unit as per the ADG guide.
Apartment type	Minimum internal area											
Studio	35sqm											
1 bedroom	50sqm											
2 bedroom	70sqm											
3 bedroom	90sqm											

	<ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>																
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <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 15m² and a minimum depth of 3m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>Consistent</p> <p>Each apartment within the development has a courtyard area or balcony / terrace that are directly accessible from a living area.</p> <p>Apartment 1 has a terrace and garden area 32 sqm. Apartment 2 has a principal balcony area 16 sqm. Apartment 3 has a principal balcony that is 16 sqm. Apartment 4 has a principal balcony that is 15 sqm.</p> <p>All apartments contain 3 bedrooms and the principle balconies have minimum dimensions that exceed 3.0m (for the principal circulation space in the central area of the balcony).</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>Consistent</p> <p>1 apartment per floor.</p>															
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	<p>Consistent</p> <p>Each apartment has a satisfactory provision of at least 50% storage located in each apartment. (Additionally the units has walk-in-robos, laundry and kitchen / living and bedroom storage).</p>					
Dwelling Type	Storage size volume																
Studio apartments	4m ²																
1 bedroom apartments	6m ²																
2 bedroom apartments	8m ²																
3+ bedroom apartments	10m ²																

	At least 50% of the required storage is to be located within the apartment.	As the building has lift access the provision of storage in the apartments (such as cupboard space) and basement storage (such for bicycles) is satisfactory to enable items to be transferred to and from a car. Unit 1 - Basement storage not allocated. Apartment 16.8 cubic m. Unit 2 - 3.7 cubic metres basement plus apartment 20.1 cubic m. Unit 3 - 13.0 cubic metres basement plus apartment 16.8 cubic m. Unit 4 - 3.7 cubic metres basement plus apartment 13.4 cubic m.
Acoustic Privacy	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.	Consistent - subject to design measures/conditions The design and layout of the building has been composed to minimise acoustic impacts that may arise from the garage door and circulation areas. Given that the development is not large (being only 4 units) it is not anticipated that the circulation spaces would regularly produce noise that could be offensive to adjoining bedrooms. It is considered that the design of the building, anticipated usage and current construction standards (insulation and the like) would mitigate any unreasonable or detrimental acoustic impact.

		A condition is included to ensure no unreasonable noise impact from air conditioning or lift motors.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	<p>Consistent</p> <p>The architecture and layout of the building has been designed to minimise the impacts of external noise and pollution (bins storage) and to mitigate noise transmission. The development is considered acceptable in this respect.</p>
Configuration		
Apartment Mix	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 application proposes 4 x three bedroom units to accommodate for a potential buyers / tenants suitable for larger units that can accommodate working couples or 'young' families.</p>
Facades	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 incorporates contemporary architecture and design features to enhance compliance with the built form controls and to create a contemporary visual impact on all facades with landscaping to enhance the building setting.</p> <p>The general surrounding area is contextualised by mix of new and older-style brick apartment buildings, many with parking at their ground floor level or underground with 3 levels of apartments above and internal stair access. The contemporary addition of</p>

		<p>this proposed 'infill' development will not detract from the existing medium density streetscape.</p> <p>It is considered that the development respects the character of Narrabeen local area where the northern side of Narrabeen has convenient access to Narrabeen local business centre</p>
Roof Design	<p>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.</p> <p>Test whether the roof space can be maximised for residential accommodation and open space.</p>	<p>Consistent</p> <p>The development provides a low pitched and partly flat roof that is stepped in to minimise overshadowing. Therefore, the roof shape does not create an unreasonable impact on building bulk or visual appearance.</p> <p>The roof includes a small clerestory element for internal amenity and does create an unreasonable impact on views or solar access to surrounding developments.</p>
Landscape Design	<p>Was a landscape plan submitted and does it respond well to the existing site conditions and context.</p>	<p>Consistent</p> <p>The development application is accompanied by a landscaped plan and planting schedule. The landscape plan shows that the large street tree fig near the south-western corner of the site in Park Street will not be adversely affected by minor footpath re-grading works. This tree is in good vigor and contributes to the streetscape in front of the site.</p>

		The plans and schedule indicate that the provision of plantings proposed is an appropriate response to the scale of development proposed and the adjoining developments.																																			
Planting on Structures	<p>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</p> <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>150m³</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>35m³</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>9m³</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><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</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 ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		<p>Consistent</p> <p>As per the landscaped plans accompanying the application is satisfactory to ensure the front rear and side setbacks are to be planted with grasses and small / medium height plants which will be an appropriate landscaped solution. Larger plantings will be used in the front and rear setbacks to enhance the visual impact of the development and to maximise landscape setting for the building.</p>
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																																	
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Ground Cover			300-450mm																																		
Turf			200mm																																		
Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.	<p>Consistent</p> <p>Greater than 20% of the apartments incorporate the Livable Housing Guidelines silver level universal design features.</p>																																			
Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	<p>Not Applicable</p> <p>No existing elements of the site or buildings are utilised in this development proposal.</p>																																			

Mixed Use	<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>Not Applicable</p> <p>The development is for a residential flat building which is a permissible development within the R3 medium density residential zone.</p>
Awnings and Signage	<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>Not Applicable</p> <p>The application proposes no awning or signage along the property boundaries. Park Street are not a street with high pedestrian activity (as Narrabeen local centre) or active shop frontages along Pittwater Road.</p>
Performance		
Energy Efficiency	<p>Have the requirements in the BASIX certificate been shown in the submitted plans?</p>	<p>Consistent</p> <p>BASIX Certificate commitments are included with architectural plan package.</p>
Water Management and Conservation	<p>Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?</p>	<p>Consistent</p> <p>The application has been reviewed by Council's Development Engineers who raises no objections to the proposal, subject to conditions to address stormwater runoff in compliance with Council Policy.</p>
Waste Management	<p>Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.</p>	<p>Consistent</p> <p>A waste management plan has been provided to accompany the development application and appropriate conditions ensuring compliance with waste management requirements have been included in the recommended conditions of this report.</p>



Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	Consistent The building materials selected for the subject development are of a high quality and will achieve a longevity that is both sustainable and expected for a development of this nature.
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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 application is not being refused on any grounds contained within Cl. 30 (1) (a), (b) or (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) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and*
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (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 assessment of this application against the criteria and requirements of SEPP 65 has adequately demonstrated consideration has been given to Cl. 30 (2) (a) and (b) as per the above



assessment.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1005882M_02 dated 5 November 2019).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	35	38

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. A response has been received on the 30/12/2019 as per the details provided in the External Referral Response section of this report.

Other Service Infrastructure Authorities

The proposal was not required to be referred to the Roads and Maritime Service (RMS) and no other service authority referral issues are raised pursuant to the SEPP.

Warringah Local Environmental Plan 2011

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



aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11.0m	11.35m	3%	No*

*Refer to detailed merit assessment under the heading "Clause 4.6" within this report.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance:

Development standard:	Height of Buildings
Requirement:	11.0m
Proposed:	11.35m
Percentage variation to requirement:	3.1%

Maximum building height is taken to the top of the roof profile and is illustrated on drawing No.SK18 C and A222 C drawn by MHDP.

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 judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to Development Standards

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular



development,

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

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

Comment:

Clause 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:

In summary, the non-compliance is minor and confined to one small section of the building roof profile the non-compliance (of 0.35m) does not unreasonably detract from the control. The development, although non-compliant, achieves consistency with the Objectives of the Development Standard and will maintain an appropriate appearance in the context of adjacent and newer apartment buildings in the area and when viewed from adjoining properties and the street. The applicants written request outlines reasons as to why compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development.

The applicants submissions states that the non-compliance does not result in any unreasonable impacts and that the proposed development demonstrates *"the objectives of the standard are achieved notwithstanding non-compliance with the standard"*. Therefore, there is sufficient environmental planning grounds to justify the contravention of the development standard.

The assessment of the application concurs with the applicants submission in so far as the non-compliance does not result in any unreasonable amenity impacts on the adjoining lands and that a reasonable level of privacy, solar access is maintained.



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

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

In this regard, 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 the circumstances of the proposed development there are sufficient environmental planning grounds to justify contravening the development standard by the design demonstrating the merit considerations of the proposal on balance with the design response to the site constraints and addressing potential impacts to adjacent land to ensure consistency with the objectives and ensuring no unreasonable impact. As stated the variation to the standard is 3.1% and is limited to the forward section of the roof profile. While the breach could be eliminated by a flat roof this would detract from the visual style of the roof form and create an inferior design to the building with no material change for less overshadowing, increased views or materially better external amenity in the context of the context of development permitted in the zone. This includes the effect of a complying development profile of 11.0m.



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 R3 Medium Density Residential zone. An assessment against these objectives is provided below.



Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

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

Comment:

The non-compliance occurs across the front portion of the roof profile of the building where a clerestory window feature is provided that allows natural light and internal floor to ceiling height amenity for the living area of Unit 4.

Given the majority of the roof form complies with the 11.0m height control, and the building is substantially lower than the maximum height of the adjacent residential flat building of No.37A Park Street. The surrounding land has a sloping topography therefore the adjacent buildings along Park Street are variously higher or lower than the next building. The majority of apartment buildings have a larger building footprint and contain more dwellings whereas the subject site has been isolated by past development for apartment buildings on surrounding land. The top floor element has been set well back from the front elevation where the height non-compliance exist with the rear portion of the remaining compliant with the 11.0m height control.

Overall the building is compatible with the height and scale of adjacent apartment buildings is consistent and compatible with in height of other more recent medium density development in the subject zone.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

The development is largely compliant with the numerical requirement of this development standard and has been designed having regard to the principal (eastern and north-eastern) views obtained from adjoining properties, and also maintaining a reasonable level of privacy and solar access to adjoining developments. The views from the east facing units on the northern side of No.37A Park Street are principally toward the east and north east (ocean) with an alternative view toward the northwest (Narrabeen lagoon). The due north view is an urban outlook toward the central area of Narrabeen and partly obscured by trees.

The assessment of this application has found that the development does not result in any unreasonable overshadowing or privacy impacts and achieves a reasonable sharing of views given the density and pattern of surrounding development.

The area of non-compliance is minor in nature and relates to the proposed short skillion section of roof form of the development. Overall the building is consistent with surrounding and nearby development whereby views are shared between apartment buildings and impacts of privacy, solar access and views are commensurate with the dwelling density and larger building forms within a medium density environment.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,



Comment:

The development will not have an adverse impact on the scenic quality of Warringah's coastal or bush environments. The development provides appropriate landscaping and landscape elements that include a mix of native and exotic species, including plants that are suitable for the coastal environment.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

The development is considered to be consistent and compatible in its context and relationship with that of the pattern of surrounding medium density developments and the desired future character of Narrabeen. Furthermore, the development provides areas of landscaping within the side, rear and front setback areas which will act to soften the visual appearance of the building. The use of open style balconies and recessed sections at the front of the building assist to provide an appropriate living environment and outlook toward the street that is suitable for the contemporary building design.

Zone Objectives

The underlying objectives of the R3 Medium Density zone are:

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

Comment:

The subject site currently accommodates a (partly dilapidated) two storey dwelling house, which given the medium density zoning of the land, does not maximise the housing potential of the site or assist in meeting the growing housing demand within the community. The proposed medium density development containing 4 new apartments is consistent with the land zoning and will assist in meeting the growing housing needs of the community, particularly for apartment style living with access to internal parking and close to other amenities including parkland, public transport and shops.

- ***To provide a variety of housing types within a medium density residential environment.***

Comment:

The development provides apartment sizes suitable for a family and offer affordability based on size, good amenity and a well designed floor configuration between each of the four apartments. Ground level apartments have access to a garden area and all units have access to carparking, 3 bedrooms with living space and balconies. Therefore, the proposal will add to the housing options within local area for accommodation in a medium density setting.



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

Comment:

The development is located within close proximity to facilities and services which meet the day to day needs of residents such as Narrabeen local business centre and high frequency public transport routes linking Manly and Dee Why / Brookvale. The increase in density will result in an increased frequency of visits to these precincts which enhances the economic sustainability of the local area.

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

Comment:

The development incorporates landscaping within and around the perimeter of the site, including lawn areas and concentrated planting as well as communal open space within the rear setback. The landscape concept includes areas of deep soil (including 1.0m cover over basement elements) for viable soil depths within the front, side and rear setbacks and includes a mix of native and exotic species. A landscape plan has been provided to demonstrate the visual setting of the building, including the landscaped setting to soften / enhance the appearance of built form.

- ***To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.***

Comment:

The development provides a 'boutique style' residential flat building that is consistent and compatible with that of the surrounding established buildings and other recent new apartments buildings (e.g. 23 Park Street) that were re-development as a single property. The development provides landscaping within the front, side and rear setback areas which will act to reduce the visual appearance of the building when viewed from public streets and spaces and will contribute positively to the Park Street streetscape.

Given the above, it is considered that the development is consistent with the Objectives of the R3 Medium Density Residential zone.

Conclusion

The proposed variation is consistent with this control as it provides an appropriate degree in flexibility in applying the Height of Buildings Development Standard to the development applicable to the Zone.

The proposed variation will achieve a better outcome for and from the development by way of enabling a permissible medium density development in the locality which is consistent with its storey controls, desired character, height, scale and is not "jarring" by appearance to existing development nearby. Further, the area of non-compliance relates to a minor section of the proposed roof form, with the majority of the roof forms being compliant with the 11.0m height control.

The Development Standard results in the design option for a flat roof form which is different with



surrounding development in the area given the dominance of hipped style roofs. In addition to this, the non-compliance is influenced by the slope across the site which accentuates the height after excavation to accommodate the basement and new ground floor level.

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium 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 & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	3 storey	4 storey	25%	No*
B3 Side Boundary Envelope	North 4.0m at 45 degrees	Encroachment 1.1m (See section details SK22A) Habitable room wall and eaves	11.2%	No*
	South 4.0m at 45 degrees	Encroachment 1.9m (See section details SK22A) Lift shaft wall and stair access wall	21.5%	No*
B5 Side Boundary Setbacks	North 2.0m Basements	Basement Carpark wall 0.9m to 2.0m	N/A	No*
	4.5m Building wall	Ground Floor Building wall 5.3m	N/A	Yes
		Level 1 Building wall 4.5m Balcony / screen 3.1m	N/A 31%	Yes No

			Level 2 Building wall 4.5m Balcony / screen 3.1m	N/A 31%	Yes No
			Level 3 Building wall 6.6m Balcony /screen 3.1m	N/A 31%	Yes No*
			Roof edge 6.2m	N/A	Yes
		South 2.0m Basements 4.5m Building wall (Stairs up to 1m exempt)	Basement Carpark wall and bin room 0.29m	85%	No*
			Ground Floor Building wall 0.29 to 4.5m Bin room and basement stair 0.29	85% N/A	No* Yes
			Level 1 Building wall 3.5m to 4.5m	22%	No*
			Level 2 Building wall 3.5m to 4.5m	22%	Yes
			Level 3 Building wall 3.5m to 4.5m	22%	No*
			Roof edge 4.5m	N/A	Yes
B7 Front Boundary Setbacks	6.5m		Basement Services / carpark wall 2.7m to 6.5m	N/A	No
			Ground floor Terrace and building wall 4.5m to 6.5m	44%	No*
			Level 1 Balcony and Building wall 3.4m to 5.1m	47%	Yes
			Level 2 Balcony and Building wall 3.4m to 5.1m	47%	Yes

		Level 3 Balcony and Building wall 4.3m to 7.4m	33%	Yes
		Roof edge 5.6m	N/A	Yes
B9 Rear Boundary Setbacks	6.0m	Basement Carpark wall 6.0m	N/A	Yes
		Ground Floor Building wall 6.0m	N/A	Yes
		Ground Floor Building wall 6.0m	N/A	Yes
		Level 1 Building wall 6.0m	N/A	Yes
		Level 2 Building wall 6.0m	N/A	Yes
		Level 3 Building wall 6.0m	N/A	Yes
		Roof edge 5.6m	Permitted	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting (Site area 557.4sqm)	50% (279sqm)	44% (244sqm)	12.5%	No*

*Refer to detailed merit assessment under the relevant Built Form Controls heading within this report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D19 Site Consolidation in the R3 and IN1 Zone	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B2 Number of Storeys

Description of Non-compliance

The built form controls for the site apply a 3 storey limit (11.0m) and the proposal is 4 storeys.

Merit Consideration

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

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

Comment:

The site falls diagonally across the site toward the road by approximately 3.0m which, when excavated



for level floor area creates additional space between ground level and the 11.0m height plane across most of the building envelope (Reference Plan A202D drawn by MHDP). The proposed building is lower than the adjacent apartment building to the south in its overall height (being 11.35m) and is consistent with adjacent storey height of buildings surrounding the site that are all 4 storeys. With the exception of No.14 Goodwin Street the site is surrounded by residential apartment buildings that are 3 storey or more. From Park Street the proposal appears as 4 storeys and at the rear the proposal appears as partly 3 storeys (Reference Plan A204C drawn by MHDP).

Therefore the building is generally lower than adjacent apartment buildings along Park Street and nearby the site in Narrabeen.

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

Comment:

The proposal is setback on a consistent alignment with adjacent buildings of No.16 Goodwin Street and No.37A Park Street, despite the non-compliance with the 6.5m setback control. The proposal has been designed with access to the basement area which allows opportunity to integrate a fourth storey into the design by excavating the ground floor level due to site crossfall (and off-setting excavation depth). In this regard, the fourth storey level is generally consistent with the 11.0m height control and is not 'jarring' in its visual bulk by comparison to the scale and size of adjacent apartment buildings that are either 3 or 4 storeys when viewed from adjoining properties, streets and the public domain in close visual vicinity of the site.

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

Comment:

The proposal has a minor non-compliance with the building height control for the roof, and also minor elements of the lift overrun, balcony and eaves for the side boundary envelope in association with Level 4. The fourth storey element does not contribute to any unreasonable loss of views from adjacent public land or private property and this issue is addressed in detail under *Part D7 Views* within this report.

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

Comment:

The fourth storey level is narrower than the lower levels to provide spatial separation to adjacent land with a low pitched roof used to minimise overshadowing and reduce building bulk. The building is also designed to maintained reasonable privacy amenity to adjacent apartment buildings with the outlook toward the street and the north/northeast. for the northerly views privacy screens have been designed to restrict overlooking toward No. 12 and No.14 Goodwin Street. The southern elevation facing No.37A Park Street has been designed with the utility and access elements of the building with the use of translucent glass and window placement (including sill height) for the apartments will maintain reasonable amenity to adjacent apartments.

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

Comment:

The building has been designed with a flat roof in order to minimise view loss and overshadowing



toward No.37A Goodwin Street. The height of the roof is not readily overlooked from adjacent buildings and the main roof space is pitched to slope away from No.37A Park Street to no unreasonable glare for properties that overlook the roof area.

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

Comment:

The Warrigah LEP 2011 height of building control is 11.0m and the use of four storeys for residential development already has an established precedent in the locality. In this case the fourth storey element does not create any significant breach of the WLEP development standard and is not inconsistent the objectives of the control.

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

B3 Side Boundary Envelope

Description of Non-compliance

The proposal breaches the side boundary envelope along the northern and southern elevation for the fourth floor level (mainly the upper wall / eaves). The variation to the side boundary envelope is up to 1.9m and is shown on the Section diagram A221 C and Section AA A222 C drawn by MHDP.

Merit Consideration

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

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

Comment:

The proposal is partly stepped-in at the top level in response to the side boundary envelope control. The narrowness of the site and the site being a single 'isolated' lot is a significant constraint on the development whereby the building envelope from 4.0m cuts in at a 45 degree angle and therefore limits the floor plate and also intercepts the lift shaft. The envelope line interrupts the lift shaft and stair access for the fourth level on the south side and on the northern side for the eaves and balcony elements. The design has been amended to minimise the non-compliance for these non-complying elements. Therefore, the proposal has a reduced width at the upper levels, so as not to become visually dominant as a result of its height and bulk.

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

Comment:

The articulation used for the wall planes, window screens and placement, balcony orientation and the floor layout will ensure no unreasonable loss of privacy for the medium density living environment. The spatial separation between buildings is considered acceptable given the design response for the building setbacks and the side boundary envelope that is influenced by the narrowness of the property and the differences in existing ground level between the northern and southern boundaries. Despite some variation to the built form controls, the extent of the non-compliance along the upper storeys is not considered to unreasonably detract from the amenity of medium density zone and the surrounding pattern and scale of development.



The breach to the side boundary envelope will cause some additional overshadowing to the property to the south in the morning and the east in late-afternoon. However, the extent of overshadowing is not considered unreasonable under the provisions of Council's DCP 2011 (including relevant development considerations detailed under *Benevolent Society v Waverley Council (2010) NSWLEC 1082*), with respect to densely urbanised areas and 'isolated' infill sites. (This is further addressed within this report under *Part D6 Access to sunlight*).

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

Comment:

The site has a diagonal cross fall toward Park Street and as a result there are existing retaining walls adjacent or along the northern and southern boundaries. As a result the ground floor is partly below ground level at the rear but is visible as a full storey in the north-western corner of the building. The proposal has been designed with a wider setback to the north where the land falls away toward No.14 and No.16 Goodwin Street. The adjacent property of No.37A Park Street is higher than the subject site and this building has balconies facing east and west with no balconies along the northern elevation (toward No.39 Park Street). The proposal has sought to respond to the sloping topography of the land advantageously while minimising any non-compliance with the side boundary envelope.

Therefore, the design of the building does not give rise to any unreasonable impacts from the proposed response to the side boundary envelope control.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B5 Side Boundary Setbacks

Description of Non-compliance

The control requires a minimum setback to the side boundary of 4.5m for above ground elements and permits a 2.0m setback for basement elements, including basement stairs, bin storage facilities and the like. The proposal does not comply with the side boundary setback as follows:

- Basement level: 0.9m for the driveway ramp and basement elements along the northern boundary; and 0.29m for the basement services room, basement stairs, basement storage and southern sidewall.
- Ground floor level: 0.29 to 4.5m for the bin storage, basement stair access and foyer area / stair access along the southern boundary; and 4.3m for the ground level floor plate.
- Level 1 to Level 2: 4.3m to 3.5m for the lift and lobby stairs along the southern setback; and

3.0m to 4.4m for balcony elements (POS), privacy screens and pergola awnings along the northern elevation.

The DCP grants exception to the side boundary setback as follows:

All development:

- *Light fittings, electricity or gas meters or other services infrastructure and structures not more than 1 metre above ground level (existing) (including steps, landings, pedestrian ramps and stormwater*



structures) may encroach beyond the required setback up to 2 metres from a side boundary; and

- Entrance and stair lobbies at ground floor level may encroach the required setback up to 2 metres from a side boundary.

R3 - Basement carparking structures, and private open space:

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

Basement car parking may extend:

- Up to 2 metres from the side boundary, and
- No more than 1 metre above ground level (existing)

Private open space may extend:

- Up to 3.5 metres from a side boundary

Merit Consideration

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

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

Comment:

The encroachment of the side boundary setback does not significantly reduce the development's ability to provide areas of deep soil landscaping in that deep soil landscaping for 44% of the site has been provided. The assessment of the application has found the amount of landscaped open space (LOS) to be satisfactory despite the shortfall (35sqm) in the numerical area of required landscaped open space (as per the WDCP definition). Grouped and linear planting is provided within the side setback areas within deep soil zones to maintain a landscape setting and screen planting for the building. If non-compliant landscaping elements are included, being soil zones less than 1.0m deep and less than 2.0m wide, the site has a total of 50% LOS.

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

Comment:

The provision of ground level private open space in terrace and balcony areas facing the street are of practical benefit to the units to enhance the amenity of the internal kitchen / living areas. The low density of the development, being four (4) residential units provides a scale that is commensurate with the available land area and requirements for a landscape setting similar to other apartment buildings in the vicinity of the site. The ground level area acts as an extension of the living space of the ground floor unit and does not compromise the landscape setting of the building and screen planting within the side setback. Selected landscape planting is of a suitable height and density to soften and partly screen the building when viewed from adjacent land so that the development is not visually dominant by comparison to the surrounding pattern and scale of existing development.



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

Comment:

The central area of the building footprint is 19.2m long and 17.2m wide with substantial recessed sections for the top floor area and terraces / balconies for each floor. Thus the bulk and scale of the building is broken up along the side planes to address this objective by the use of variations in the wall setbacks and materials. While the proposal includes significant variations to the side setbacks for the side walls of the building and ancillary elements, the use of landscape planting, articulation, building materials, and windows assists to ensure the visual impact of the scale and bulk of the building is minimised.

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

Comment:

Adequate physical separation is provided between the adjacent building above ground level to maintain a reasonable level of privacy, amenity and solar access appropriate to the medium density zone and DCP controls. The ground level private open space and terraces and other elements of the building do not cause an unreasonable impact on privacy despite the minor non-compliance with the side boundary setback. The building does not create unreasonable impacts in terms of solar access overshadowed along the southern setback for adjacent land and this issue is discussed in further detail under *Part D6 Access to Sunlight* within this report.

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

Comment:

The side setback for the development does not create any unreasonable impacts on the sharing of views to and from public and private properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of *Warringah DCP* and the objectives specified in section 5(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of Non-compliance

The control requires development to be setback 6.5m from the front boundary. Variations to the control include a basement water tank structure which is setback 5.7m, and a landscape planter structure, private open space and balcony structure for Unit 1 extending within the front setback up to 3.8m.

Merit Consideration

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



- ***To create a sense of openness.***

Comment:

The building elements that are within the front setback include minor elements of the basement structure, ground floor terrace and part of the building wall and balconies for Level 1, 2 and 3. The front terrace area for Unit 1 includes garden area in front of the building. This grassed area is a stormwater detention system and cannot be modified by the unit occupants. Overall, the non-complying elements have no significant impact on the sense of openness created along the site frontage and are consistent with the prevailing setback of adjacent buildings of No.37A Park Street and No.16 Goodwin Street.

- ***To maintain the visual continuity and pattern of buildings and landscape elements.***

Comment:

The front setback for the building wall for Units 1 to 4 varies from 6.0m to 6.5m with the balcony and terrace elements from 4.5m to 3.5m. The balcony and terrace elements are open/lightweight structures and do not detract from the visual continuity of the street. The carpark is wholly contained below the footprint of the residential area of the ground floor and does not detract from the visual continuity of the street.

The proposed variations on the residential floor levels are minor in nature and the replacement landscape elements are consistent with maintaining the visual continuity and pattern of buildings and landscape elements in the street.

- ***To protect and enhance the visual quality of streetscapes and public spaces.***

Comment:

The encroaching elements are minor components of the building and do not detract from the visual quality of the streetscape as the proposal includes deep soil landscape space and appropriate colours and materials to integrate with the surrounding urban environment. Landscape planting includes a mix of deep soil grassed areas, small to medium shrubs and small trees appropriate to the coastal landscape.

In this regard, the landscaping proposed will ensure the development does not have an adverse impact on the visual quality of Park Street streetscape and adjacent public space along the road reserve.

- ***To achieve reasonable view sharing.***

Comment:

The site is within a built up area and benefits from distant and partly obscured coastal views to the east and limited views toward Narrabeen Lagoon to the north from level 2 and 3. However, views across the front setback toward Narrabeen Lagoon are limited or obscured by the density of surrounding trees, buildings and the low topography (i.e only 10.0m to 13.0m above sea level).



Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of Non-compliance

The control requires a minimum 50% of the site area to be landscaped open space. The development involves 44% (244sqm) of the total site area as landscaped open space. This represents a variation of 12.5%.

Merit Consideration

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

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

Comment:

The Landscape Plan submitted with the application demonstrates that the front, side and rear setback areas have been designed to ensure a landscape setting and a quality and quantity of planting to enhance the appearance of the building. This will maintain the local streetscape character and assist to soften the visual impact of the development through the inclusion of a mix of planting including shrubs and small to medium sized trees. Planting along the front setback includes lawn areas, endemic plants and screen hedge planting to enhance the streetscape. The large street tree (Fig) near the south western corner of the site will not be adversely affected by the proposed development.

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

Comment:

The natural vegetation within the site will be nearly completely cleared except for some smaller trees along the outer boundary line. Landscaping will be replaced with new plants as detailed on the landscape plan LP.01 drawn by *Manna Landscapes*. There are no areas of threatened species, significant topographical features or significant areas of remnant vegetation on the site. The Landscape Plan indicates a comprehensive replacement planting regime to enhance the landscaped setting for the building. Tree and shrub planting is to be provided which varies in mature height from 1.0m to 12.0m (if ideal soil / environmental conditions prevail)

The proposed planting includes a shortfall in the required 50% landscape area. However, it is noted that front, side and rear setbacks include areas that are at least 2.0m wide (except for the main entry path/OSD/driveway) and will have deep soil zones of 1.0m or more.

- ***To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building***



Comment:

The proposed planting to be located within the front, side and rear setback areas includes a mix of shrubs and small to medium sized trees and native palms which achieve a mature height of between 1.0m to 12.0m. Refer to the 'Plant Schedule' provided with the Landscape Plan LP.01 by *Manna Landscapes*. The spacing of the trees around the perimeter of the site softens the visible building bulk and screen wall elements. Given the proposed height the selected plants to be retained and new plants shown on the planting schedule, landscaping will be of scale and density commensurate with the proposed building height, bulk and scale. Dense planting areas are used in suitable locations for the ground level, including adjacent terrace balconies to break up wall structures and soften the appearance and screen the exterior of the building.

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

Comment:

The development includes areas of dense landscaping located around the perimeter of the site which, in-conjunction with the physical window locations and fixed or adjustable privacy screens, to provide adequate screening between buildings. The landscape plan indicates small to medium sized trees to be planted around the perimeter of the site which achieve a height of between 1.0m to 12.0m at maturity which will further assist to provide adequate screening / landscape setting to the development when viewed from surrounding and adjoining properties. Privacy considerations are addressed in further detail under *Part D8 Privacy* within this report.

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

Comment:

Each of the apartments have terraces or balcony spaces that are generally oriented to provide a street outlook and have suitable dimensions and area to act as an extension to the main living area. The majority of the ground level landscape areas along the side and rear setback areas will remain as communal open space that provide alternative open space for recreational opportunities for occupants. All terraces have screens on the side elevations (which are also narrow) to reduce privacy impacts on adjacent land.

In addition to the above, the site is located close to nearby recreational areas such as parkland's within the Narrabeen beachfront reserve to the east and Narrabeen Lagoon reserve to the north of the site. It is anticipated that occupants will utilise pedestrian access to parkland facilities near the site that are part of the local precinct to supplement recreational needs that are not possible within the site.

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

Comment:

The plans indicate that the rear setback is principally allocated as communal area (accessed from the lobby) and includes facilities for clothes drying and lawn areas. The terrace and balcony areas are also large enough to enable domestic clothes drying without unreasonably



restricting their use. Further, it is considered that sufficient internal areas and domestic facilities will be provided for service functions.

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

Comment:

The development has been reviewed by Council's Development Engineers having regard to the provisions for stormwater management and has raised no objections to the proposed stormwater system subject to conditions included in the recommendation of this report. The stormwater detention system is within the front setback area and therefore must be retained as lawn and garden area. The site is also within an area containing deep sandy loam soils and therefore the land has good stormwater infiltration capability within the setback areas, despite the shortfall in compliant landscape open space. Stormwater pipe connection will be provided to Council's street pit at the corner of Goodwin and Park Street.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D2 Private Open Space

Description of Non-compliance

The ground floor (Unit 1) apartment has 32sqm (requires 35sqm) of private open space that is partly within the front setback area.

Unit 2, Unit 3 and Unit 4 have more than 15sqm of private open space (with dimensions of 2.5m or more) which is compliant with *Part D2 Private Open Space*.

Merit Consideration

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

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

Comment:

The location of private open space for Unit 1 is marginally less than the 35sqm required for ground level apartments and this Unit also has access to the lawn area that is part of the front setback. The location of the balcony / private open space areas at the western side of the building assists to maximise internal amenity, provide visual interest to the street facade and minimise overlooking toward the rear for adjacent land. Therefore, the retention of communal landscaped open space at the rear, with private open space mainly facing the road, is a reasonable design response for the site due to limited site area and depth of the property.

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

Comment:



All apartments within the proposed building have their private open space areas designed to be directly accessible from the living / dining / kitchen area of each unit.

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

Comment:

The outlook is generally oriented toward Park Street and views to the north are included with privacy screens designed to restrict overlooking toward the private open space areas in consideration of No.14 and No.16 Goodwin Street. The private open space balcony areas do not overlook apartments to the east or south of the site at No.12 Goodwin Street or No.37A Park Street.

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

Comment:

The private open space for the building will receive direct northern sunlight between 9am and 3pm on June 21 as demonstrated in the solar access diagram SK16B and SK17B drawn by MHDP.

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

D6 Access to Sunlight

Merit Consideration Against the Objectives

Council may consider a variation to this control in the particular circumstances of a proposal, where an applicant can demonstrate, to the satisfaction of Council that:

- i) the slope or topography of the site or adjoining property makes compliance impractical; and*
- ii) other design options have been investigated which would comply but would unreasonably constrain the development of an otherwise compliant building.*

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

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

Comment:

The LEC Planning Principle established in the *Benevolent Society v Waverley Council (2010) NSWLEC 1082* has been considered in the assessment of sunlight. In this regard, the dense pattern of surrounding development and height of the apartment building adjoining the eastern and western boundaries has significant influence on solar access due to the reduced building separation distances. In this regard, the site is also narrower than adjacent land limiting opportunity to provide compliant



setbacks and building envelope and maintain a reasonable floor plate width that is appropriate for the building. Key considerations include that:

- *At higher densities sunlight is harder to protect which is the case in for such a narrow site as the proposal is situated on.*
 - *Sunlight lost should be taken into account in the solar access diagrams, as well as the amount of sunlight retained, this extends to how soon sunlight is lost or gained before and may include after the autumn and spring solstice respectively if warranted.*
 - *The quality of design may be demonstrated by including sensitive design elements that achieves good amenity outcomes. These include floor plate and roof elements, use of recessed sections and setbacks which the proposal has done.*
 - *Strict mathematical formulae are not always an appropriate measure of solar amenity against glazed surfaces or small private open space areas that may also be subject to shadowing from ancillary building elements.*
 - *The impact of existing development should be taken into context in areas undergoing change, which in this case the site is an 'infill' Lot adjacent land that was developed with little regard to the amenity of the subject land and its equivalent impact on solar access.*
 - *In the context of the pattern of existing development and the considerations raised under the planning principle the proposal does not create an unreasonable loss of sunlight.*
- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal has been able to respond to the narrowness and small area of the site by using a design that does not reduce direct sunlight by more than 50% for the apartments within No.37A Park Street that will be overshadowed (along the northern elevation). This is demonstrate on the solar access diagrams SK14 to SK17 drawn by MHDP. The use of low pitched roof, recess wall plane and design changes have been made to provide an innovative design solution that minimise overshadowing of adjacent land and maintains the development potential of the site for an apartment building.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

Comment:

The proposal has been able to respond to the narrowness and small area of the site by using a design that does not reduce direct sunlight by more than 50% for the apartments within No.37A Park Street that will be overshadowed (along the northern elevation). This is demonstrated in the solar access diagrams SK14 to SK17 drawn by MHDP. In summary, the ground floor for No37A Park Street contains garages and utility rooms with three levels of apartments above. Half of the apartments face Park Street (west) and half of the apartments face the rear (east), however there are bedroom, bathroom and living room windows along the side elevation (overlooking the subject proposal). Figure 1A below shows the side setback area along the southern side of the site that will be overshadowed.



Figure 1A: Utility rooms and parking level at ground floor of No.37A Park Street

The shadow diagrams demonstrate that only Level 1 apartments are affected by overshadowing between 9am and 3pm on June 21. In this regard, the shadow line covers 3 apartment windows and the front balcony between 9am and 11am. Direct sunlight is available from 11am to 3pm for the majority of the side elevation windows for the Level 1 apartments. The height non-compliance (including the 4th storey) and building envelope non-compliance does not create a non-compliance with overshadowing requirements that might otherwise no occur to the same extent with a fully compliant envelope and 3 storey building.

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

Comment:

The proposal does not unreasonably affect any solar design elements for adjacent land or solar panels used for solar energy. The principal outdoor open space areas for No.37A Park Street are on the eastern and western side of that apartment building which will receive a direct solar access during the mid morning or mid afternoon period.

- *To minimise the need for artificial lighting.*

Comment:

The proposal will not have an unreasonable impact on the use of artificial lighting as the spatial separation maintained is sufficient to allow natural light to all side windows during the main part of the day.

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



D7 Views

Merit Consideration of the Objectives

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

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

1. Nature of the views affected

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

Comment to Principle 1:

A site visit of the subject property and adjacent properties demonstrates the views enjoyed across the site are broad urban views and extend to include more distant sections of the coastal interface (water), parts of the Narrabeen urban area, and the ocean horizon. The focal area is in an easterly and north easterly direction toward the coastal area of Narrabeen. The ocean can also be viewed in an eastern direction from the upper storey levels within No.37A Park Street, but this view is not a view across the centre of the subject site from the existing east facing balconies.



Figure 1: Sample of unaffected east view to ocean from No.37A Park Street from east facing Units



upper level

The district views of the urban hinterland around Narrabeen lagoon also form part of the periphery in a northwards and northwest direction which include an urban outlook. The view is closed in at first floor level due to the pattern of surrounding buildings and obstructions such as dense tree canopy and the like, with some existing obstruction across the side boundary since the existing dwelling is part two story with a pitched roof and ridgeline at RL19.18.

Specific view considerations have been made with regard to units within the northern side of No.37A Park Street. This includes loss of outlook at the lower floors and view sharing at the upper floors as detailed in submissions received specifically from those units. Further view loss considerations are also made with respect to general view sharing considerations, whether or not a specific submission was received. While access to all neighbouring units may not be possible during visitation to the site, adjacent vantage points, supporting survey information / plans and representative proximity between buildings / levels allows reasonable appreciation of view impacts and the views affected. The views from opposite the site in Park Road (west) overlooking the site are an urban outlook the east if viewing toward the site, and are not the same view line those from the upper floor apartments directly adjacent the northern side of No.37A Park Street.

The Figure below shows view angle across the side boundary of the site. Note that views through the site from No.37A Park Road which views across the rear boundary are also considered.



Figure 2: View will be obscured across mid-side boundary from upper level NE direction from 37A Park Street (ridge of house to be demolished is RL19.18), solar access is maintained

2. What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

The views enjoyed from adjacent apartments are principally from the second and third storey level side windows across the side boundary. It should be noted that for the balconies of apartments at the eastern or western elevation of No.37A Park Street any view line northward and toward proposed building is across a side boundary, therefore the principal outlook directly East or West are unaffected. The apartment building at No.37A Park Street has numerous north facing windows at each floor level. This view is across a side boundary and there are no balconies along the northern elevation of the adjacent building.

The view is dominated by an urban outlook with distant elements of the Narrabeen coastal area including limited views to Narrabeen Lagoon from above Level 2. The ability to maintain views from a sitting and standing position are impacted due to the view being across a side boundary and the proposed building setback, 11.0m height height plane will essentially greatly restrict views from the third and fourth storey through the central area of No.39 Park Street. The view through the centre of the site will be blocked by the development at the third floor.

A narrow view corridor will be maintained diagonally across the rear setback and the front setback. The view line is wider at the top where the proposed building steps in further from the side boundaries, but retaining a substantive view width directly north across the side boundary in the context of the pattern of surrounding development (where the principal views are generally east or north east) is unrealistic (Figure 2).

3. Extent of impact

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

Comment to Principle 3:

The proposal will substantially encroach into the existing view corridor northward over the existing building and impact the area of distant coastal views available from the upper storeys within No.37A Park Street. These views are across a side boundary. To the rear the view from Park Street is also partly across a rear boundary and views from above first floor level already have various incursions or interference such as the existing building profiles, trees, telegraph lines and the like. Therefore, the view impact is considered to be moderate, above the third storey given some views are from bedrooms and there is an alternate easterly view aspect. A separate View Sharing photo study has not been provided, but potential view impacts have been addressed at Section 4.2.2.1 statement of environmental effects with the supporting documentation for the proposal.

The figures *(3 & 4) below shows the NW and NE view corridors over the existing building on the site toward a principle focal area in the distance from the kitchen window.



Figure 3: View north west to Narrabeen Lagoon area / urban area.

Figure 4: Kitchen view north east across side boundary and 6.0m rear setback maintained.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with



the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

The adjacent properties along Park Street have consistent setbacks with shared views north and north-east toward Narrabeen. This is mostly an urban outlook with distant views of coastal development area. The proposed additions have been amended to a more skillful design to retain part of the focal point of the water view / ocean horizon without unnecessary structural change to the lower part of the building. Therefore, the proposal is considered to be satisfactory with regard to this element of the planning principle.

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

Comment:

The proposal has been amended (from the pre-lodgement proposal and previously withdrawn DA) to a more innovative design to maintain the the amenity and development potential of the site as well as consistency with the Planning Principle in respect of view sharing.

- *To ensure existing canopy trees have priority over views.*

Comment:

The existing tree within the road reserve and on adjacent properties will form part of the views from properties adjacent the site from various view angles. The proposal includes new landscaping works in the front garden area and the design demonstrates appropriate landscape elements will be provided that do not create unreasonable long term impacts on views.

Having regard to the above assessment, it is concluded that the proposed development consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

Merit Consideration

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

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

Comment:

The building has been designed to ensure the principal balcony spaces for all units are oriented toward the street and have appropriate separation and screening to limit overlooking toward adjacent private open space. Privacy screens are included for the side walls, and protective screens are used at the along the northern elevation to limit views toward adjacent apartments, yards and dwellings of No.14



and No.16 Goodwin Street. Windows that face toward No.37A Park Street are designed to minimise privacy impacts by the use of design elements such as translucent glass, high sill level or narrow slot openings. The proposal has limited overlooking impacts toward No.12 Goodwin Street due to the much lower level of that building and existing canopy trees.

The use of internal 'block-out' or 'opaque' blinds will also ensure internal privacy for habitable room windows, while also enabling maximum natural light to be available during the day. For acoustic privacy, the ground level open space areas are landscaped and shielded by boundary fencing. In addition to this the balconies and private terrace areas face the street maintain acoustic privacy adjacent properties.

Therefore, the proposal is consistent with this objective.

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

Comment:

The proposal has ensured that window positioning, window sill heights and private open space areas are designed to assist in maintaining privacy to adjacent land. The building has used variations in the wall setbacks to assist in providing natural light and internal amenity without direct viewing to adjacent windows. Living areas are generally confined to the front (Park Street) elevation of the building to maximise privacy at the rear. This however has not reduced north facing sunlight due to the innovative design that takes advantage of the north-western aspect of the floor plan to maximise solar amenity throughout the day. Minor balcony side extensions are provided to improve visual interest and provide an outer supporting structure for privacy screens along the northern wall to minimise overlooking toward No.14 and No.16 Goodwin Street.

In this regard, the proposal has used innovative design considerations to offset some solar amenity in favour of greater privacy amenity for neighbours.

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

Comment:

The site will have security access, including gated access to the basement and side setbacks. Internal security is provided from the foyer area to all apartments.

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

D9 Building Bulk

Merit Consideration

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

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

Comment:

The proposal has sought to reduce various elements of the building form by a number of design revisions in order to address this objective and achieve consistency with the objectives of the



built form controls and ensure good design outcomes with no unreasonable impact from overshadowing, spatial separation, streetscape, views and amenity. The building bulk has been addressed by the use of variation in materials, balcony elements, fenestration and wall setback to provide an appropriate design response for the building that is consistent with the pattern and scale of surrounding medium density development and appropriately addresses the site constraints that affect the development potential of the land.

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

Comment:

The building addresses the street in terms of its presentation and outlook from living areas and has provided suitable design response in the form of landscaping and privacy screens to reduce overlooking and maintain privacy between adjacent properties. The overall height and bulk of the building is compatible with the pattern of development along Park Street and the wider medium density area in the vicinity of the site. The visual impact of the proposed building does not detract from the existing streetscape or when viewed adjacent land by way of the proposed setbacks, height, wall treatment, landscaping and overall scale when compared to surrounding development.

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

D19 Site Consolidation in the R3 and IN1 Zone

Merit Consideration

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

- ***To encourage lot consolidation to allow efficient use of land***

Comment:

The objective of this clause is to encourage lot consolidation to ensure the orderly and efficient use of land, in line with the objects of the *Environmental Planning and Assessment Act 1979*. The adjacent land to the north is a Heritage item and is therefore inappropriate to include for redevelopment with the subject site. Consolidation is therefore not feasible.

The applicant has provided for an efficient use of the site and a design that is workable in terms of access, parking, private open space, landscaping and is consistent with environmental considerations.

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

Comment:

While site consolidation is desirable for single sites in medium density areas in this case only feasible alternative would be associated with No.14 Goodwin street that would likely eliminate the heritage item on this site. Therefore, the applicant has sought to demonstrate that a smaller



"boutique" apartment development can still be carried out in a manner that is a reasonable outcome for the site and surrounding medium density zoned land.

The applicant has demonstrated some innovative measures to address the numerous non-compliances with the built form controls. This includes design measures to minimize or address issues of privacy, setback encroachments, overshadowing, landscaped areas, building bulk and building envelope. The re-development of the site as an 'isolated' lot is therefore supported and is consistent with other single sites in the area such as the flat building at No.23 Park Street.

- **To avoid lot sterilisation**

Comment:

The site is effectively already isolated and has required additional design responses and some amendments to the plans to overcome non-compliance issues for the driveway access, setbacks, building envelope, height, landscaping and other design considerations to enable an acceptable "fit" on the site. This has been demonstrated in the design response.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly 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 \$28,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,800,000.

CONCLUSION

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

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



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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 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.

The proposed residential flat building is considered to be a suitable and appropriate form of development for the site and is in context with the residential scale and intensity of development in the R3 Medium Density Residential zone. Principal environmental impact considerations are views, bulk, landscaping, traffic and parking access, building height (including walls and envelope), privacy, overshadowing, urban character, construction impacts (during works) and stormwater management.

The public submissions received have been considered and are addressed within this report, and conditions have been applied where appropriate to address those concerns, including; landscaping, privacy, bulk, overshadowing, views, traffic safety, parking, access and excavation work.

The proposal will not have an unreasonable impact in relation to view sharing considerations from adjacent and nearby properties in Park Street. Additional amenity impacts such as may commonly arise during construction works are addressed by standard conditions (including dilapidation, dust, noise, site management and the like). Suitable conditions are recommended to address stormwater engineering, vehicle access and landscape related issues as detailed in this report.

During the assessment period, a number of design changes were made by the applicant to overcome technical issues and assist in ensuring a design response that did not create unreasonable impacts on adjacent land while ensuring acceptable standards of internal amenity for the building as required by SEPP 65 and the ADG. As a result, the proposal was re-notified and some supplementary information was provided to further assist engineering, solar access, privacy and view considerations.

The requirements of the Warringah LEP 2011 and Warringah DCP 2011 apply and in this regard



matters relating to desired future character, setbacks, building envelope, bulk and scale, external materials, overshadowing, privacy, views, stormwater and traffic have been addressed. In this case the non-compliances with the height, envelope, storeys, setbacks and landscaping controls are addressed in accordance with the objectives and requirements of those considerations.

On balance, the revised proposal has sufficient merit and has adequately addressed the concerns raised and the variations to the planning controls and is therefore recommended for approval.

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 WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/1300 for Demolition work and construction of a Residential Flat Building on land at Lot 3 DP 302001, 39 Park Street, NARRABEEN, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A101 E Basement Floor Plan	16.6.2020	MHDP
A102 F Ground Floor Plan	16.6.2020	MHDP
A103 C Level 1 Plan	16.6.2020	MHDP
A104 D Level 2 Plan	16.6.2020	MHDP
A105 D Level 3 Plan	16.6.2020	MHDP
A106 D Roof Plan	16.6.2020	MHDP
A201.1 D North Elevation* with Privacy Screens and External finishes schedule	16.6.2020	MHDP
A202 D West Elevation*	16.6.2020	MHDP
A203 C South Elevation*	16.6.2020	MHDP
A204 C East Elevation*	16.6.2020	MHDP
A221 C Section A-A	16.6.2020	MHDP
A222 C Section B-B	16.6.2020	MHDP
A223 C Section C-C	16.6.2020	MHDP

*with external finishes and materials as shown on the Architectural Plans.

Engineering Plans		
Drawing No.	Dated	Prepared By
Geotechnical Report 31708SMrpt	8 Oct 2018	JK Geotechnics
Stormwater Drawings C1 to C6 Issue F	12.6.2020	Nastasi & Associates
Driveway Drawings C1 to C4 Issue F	12.6.2020	Nastasi & Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Basix Certificate 1005882M 02	5.11.2019	Thermal Performance
Construction Traffic Management Plan 605-19	Apr 2019	MHDP
Environmental Site Investigation BG-02731.Stage1.PSI.03.19	19.3.2019	EBG
Arboricultural Development Impact	8.3.2019	Birds Tree Consultancy

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
SK01 Landscape Area	16.6.2020	MHDP
LP.01 Landscape Plan*	25.10.2019	Manna Landscapes

* Landscape plans to be updated in accordance with the approved Architectural and Stormwater plans.

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan - 39 Park Street	Oct 2019	MHDP

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. (In the conditions "interim/final" is intended to allow a Certifier to select the suitable or appropriate time or phase to meet the requirement)

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

2. Prescribed Conditions

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



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

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:



- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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



- (k) All sound producing lift plant, door motors, air conditioning machinery or fittings and the like, to service the building must not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room (s) consistent with the *Environment Protection Authority's NSW Industrial Noise Policy* and/or *Protection of the Environment Operations Act 1997*.

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$28,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,800,000.00.

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

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

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

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

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

5. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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).

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

6. **Construction, Excavation and Associated Works Security Bond (Councils Road assets)**

The applicant is to lodge a bond with Council of \$20,000 as security against any damage to Councils road and footpath infrastructure.

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

Reason: Protection of Council's Infrastructure.

7. **Construction, Excavation and Associated Works Bond (External Drainage works Park Street)**

The applicant is to lodge a bond of \$60000 as security against any damage or failure to complete the construction of the 375mm RCP stormwater drainage works in Park road as part of this consent.

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

Reason: Protection of Council's Infrastructure.

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

The applicant is to lodge a Bond of \$20,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

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

Reason: Protection of Council's Infrastructure.

9. **Construction, Excavation and Associated Works Bond (Maintenance for stormwater works in Park Road)**

The developer/applicant must lodge with Council a maintenance bond of \$10,000 for the construction of 375mm RCP stormwater line in Park street. The maintenance bond will only be refunded upon completion of the six month maintenance period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing practical completion.

Reason: To ensure adequate protection of Council infrastructure.

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



10. On slab landscape planting and associated works

- a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.
- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.
- c) The following soil depths are required in order to be counted as landscaping:
 - 300mm for lawn
 - 600mm for shrubs
 - 1metre for trees

Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

11. Pump-Out System Design for Stormwater Disposal

The design of the pump-out system for stormwater disposal will be permitted for drainage of hard surfaces areas such as driveways and basement pavement areas only, and must be designed in accordance with AS/NZS 3500. The Applicant is to provide engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site.

12. Construction Traffic Management Plan

The Construction Traffic Management Plan (CTMP) and report shall be updated and prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate. The proposed phases of construction works on the site, and the expected duration of each construction phase;

- o 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;
- o Make provision for all construction materials to be stored on site, at all times;
- o The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- o The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- o 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.
- Due to the proximity of the site adjacent to a School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- Proposed protection for Council and adjoining properties;
- The location and operation of any on site crane; and

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

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

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner’s property rights and protects amenity in the locality, without



unreasonable inconvenience to the community. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

13. **Boundary Identification Survey**

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

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

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

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

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

The Applicant is to provide drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Warringah Water Management Policy PL850, and generally in accordance with the concept drainage plans prepared by Natasi and Associates, Job No 16026 Drw Nos C1-C5 Issue F, dated June 2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Engineers Register (NER) or RPENG (Professionals Australia)

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

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

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

The Applicant is to submit an application for construction of a 375mm RCP drainage line and inlet pits on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of stormwater works within Park Street which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

- i. Provision of a kerb inlet pit and stormwater pipe (375mm RCP) from the prop

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

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



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

16. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

17. **Sub-Soil Seepage**

The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit, directly to the proposed stormwater inlet pit in Park Street and is to be carried out in accordance with relevant Council approval.. (Note: At the time of determination the following (but not limited to) Standards applied:

- o Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- o Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.

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

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

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

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

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

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

19. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.



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

Reason: To facilitate suitable vehicular access to private property.

20. **Landscape Planting Schedule**

Landscape Plans are to be amended to provide additional planting as follows:

- Incorporate 2 x *Livistona australis* in the above slab planter bed on the northern side of the site; and
- Incorporate 2 x *Livistona australis* in the above slab planter bed on the southern side of the site.
- The minimum pot size of the additional planting is to be 45 litres

Details shall be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the provision of suitable landscape amenity and character.

21. **Pre-commencement Dilapidation Report**

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

The pre-construction / demolition dilapidation report must be submitted to Council and Certifying Authority prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's Infrastructure during construction.

22. **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.

23. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic silver / white finish is not permitted.

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

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

24. **Selected Window Sill Heights**

The windows facing the south and north boundary are to have a raised sill height of 1.65m



above floor level, excluding the windows within the "external void" that are protected by screens.

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

Reason: In order to enhance privacy from viewing toward adjacent apartments. (DACPLC06)

25. **Boundary Fencing**

Any replacement boundary fencing, if required shall be at the applicants expense and 'lapped and capped' timber palings or a similar standard, and in consultation with the adjacent affected property owner where required by the *Dividing Fences Act 1991*.

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

Reason: To ensure maintain privacy and minimize impacts upon adjoining land.

26. **Waste and Recycling Requirements**

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

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

Reason: To ensure adequate and appropriate waste and recycling facilities are provided. (DACWTC01)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

27. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties:

No.12 Goodwin Street
No.16 Goodwin Street
No.14 Goodwin Street
No.37A Park Street

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

In the event that access for undertaking the dilapidation report is denied by an adjoining owner,



the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

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

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

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

28. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

29. **Tree trunk, branch and root protection**

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by the Project Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by the Project Arborist on site.
- iii) All tree protection to be in accordance with the Arboricultural Development Impact Assessment Report Rev. B dated 08 March 2019 prepared by Birds Tree Consultancy and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

30. **Project Arborist**

- i) A Project Arborist with minimum qualification AQF Level 5 or equivalent is to be appointed prior to commencement of works.



ii) The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the Arboricultural Development Impact Assessment Report Rev. B dated 08 March 2019 prepared by *Birds Tree Consultancy* and AS4970-2009 Protection of trees on development sites.

iii) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

Reason: Tree protection

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

31. **Road Reserve**

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

Reason: Public Safety.

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

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

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

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

33. **Survey Certificate**

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

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

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

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and



Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

35. **Property Boundary Levels**

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

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

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

36. **Progress Certification (Road drainage works)**

The applicant shall provide written certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Council for the following stages of works:

- Laying of stormwater pipes and construction of pits

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

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

37. **Civil Works Supervision**

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

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

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

38. **Footpath Construction**

The applicant shall a 1.5m wide footpath at the back of the kerb in Park Street. The works shall be in accordance with the following:

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

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

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

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

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



(d) Prior to pouring of kerb and gutter

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

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

40. **Traffic Control During Road Works**

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

Reason: Public Safety.

41. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/Normal and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

Please note the vehicle crossing is to be constructed perpendicular to the boundary .

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

Reason: To facilitate suitable vehicular access to private property.

42. **Construction and Contractor Parking**

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

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

Reason: To ensure minimum impact of construction activity on local parking amenity

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

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

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

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



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

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

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

45. **Landscape Certification**

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Principal Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the approved Landscape Drawing and a maintenance program has been established.

Reason: to ensure the landscaping is planted in accordance with the drawing and maintained appropriately.

46. **Condition of retained vegetation**

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

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

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites, and protect the existing amenity that trees and/or bushland vegetation provide.

47. **Stormwater Disposal**

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

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

48. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- o Compare the post-construction report with the pre-construction report,
- o Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- o Should any damage have occurred, suggested remediation methods.



Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

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

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

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

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

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

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

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

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

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

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

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

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



51. **Post-Construction Dilapidation Report (Major Development)**

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

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

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

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

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

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

53. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

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

54. **House / Building Number**

The building address number is to be affixed to the building / front fence entry point 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.

55. **Sydney Water**

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

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



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

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

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

56. **Relocation of "End of School Zone" sign**

The applicant is to relocate the existing "End of School Zone" sign, which is located where the driveway is proposed, in consultation with Transport for NSW. A written concurrence regarding the location of the signage shall be obtained from the Transport for NSW and submitted to the private certifying authority.

Reason: To ensure the installation of the signage in satisfaction of the responsible authority (DACTRFPOC1)

57. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with Northern Beaches Council Development Control Plan – Part C9 Waste Management

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

Reason: To ensure waste and recycling facilities are provided. (DACWTF01)

58. **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)

59. **Positive Covenant for Waste Services**

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

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

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

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

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance



with Council's Fees and Charges.

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

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

61. **Undesirable Trees**

Leighton Green Cypress - *Cupressocyparis leylandii* or any of its cultivars, must not be planted on the site for the life of the development. In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity.

62. **Landscape maintenance**

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity.

63. **Allocation of Spaces**

Car parking spaces provided shall be provided, made accessible and maintained at all times. The spaces shall be allocated as follows:

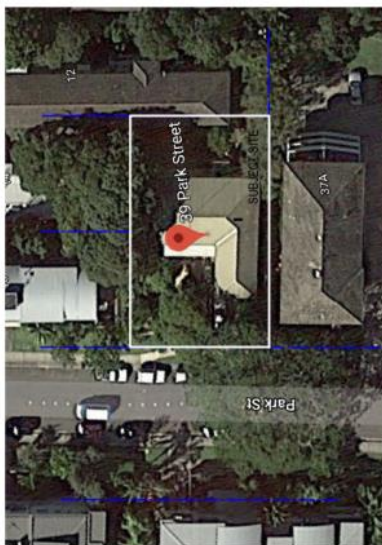
Eight (8)- Residential

One (1) - Residential - Visitors

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.

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 that adequate parking facilities to service the development are provided on site. (DACPLG01)



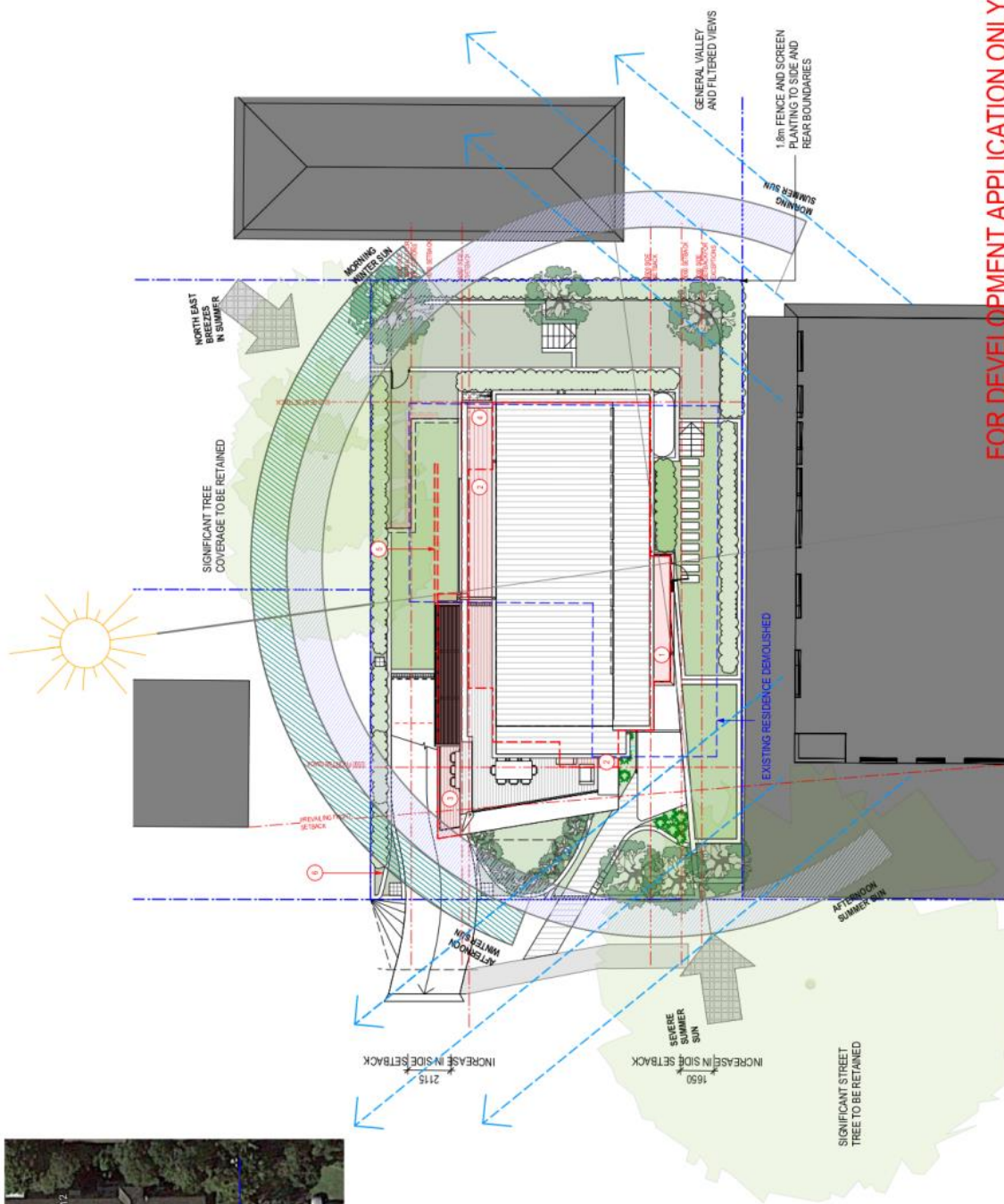
1 SITE MAP
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- AMENDMENTS SINCE PREVIOUSLY SUBMITTED DA**
1. STAIR ROOF LOWERED
 2. LEVEL 3 BUILDING AREA REDUCED
SETBACK TO LEVEL BELOW INCREASED (2m)
 3. LEVEL 3 BALCONY AREA REDUCED
 4. LEVEL 3 REAR BALCONY REMOVED
 5. FLOATING PRIVACY SCREEN REMOVED
PRIVACY SCREENS OVER WINDOWS
 6. LANDSCAPE SCREENING FROM FRONT INCREASED



SITE PLAN & SITE ANALYSIS

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MARK HARCOURT DESIGN PRACTICE PTY LIMITED 2018

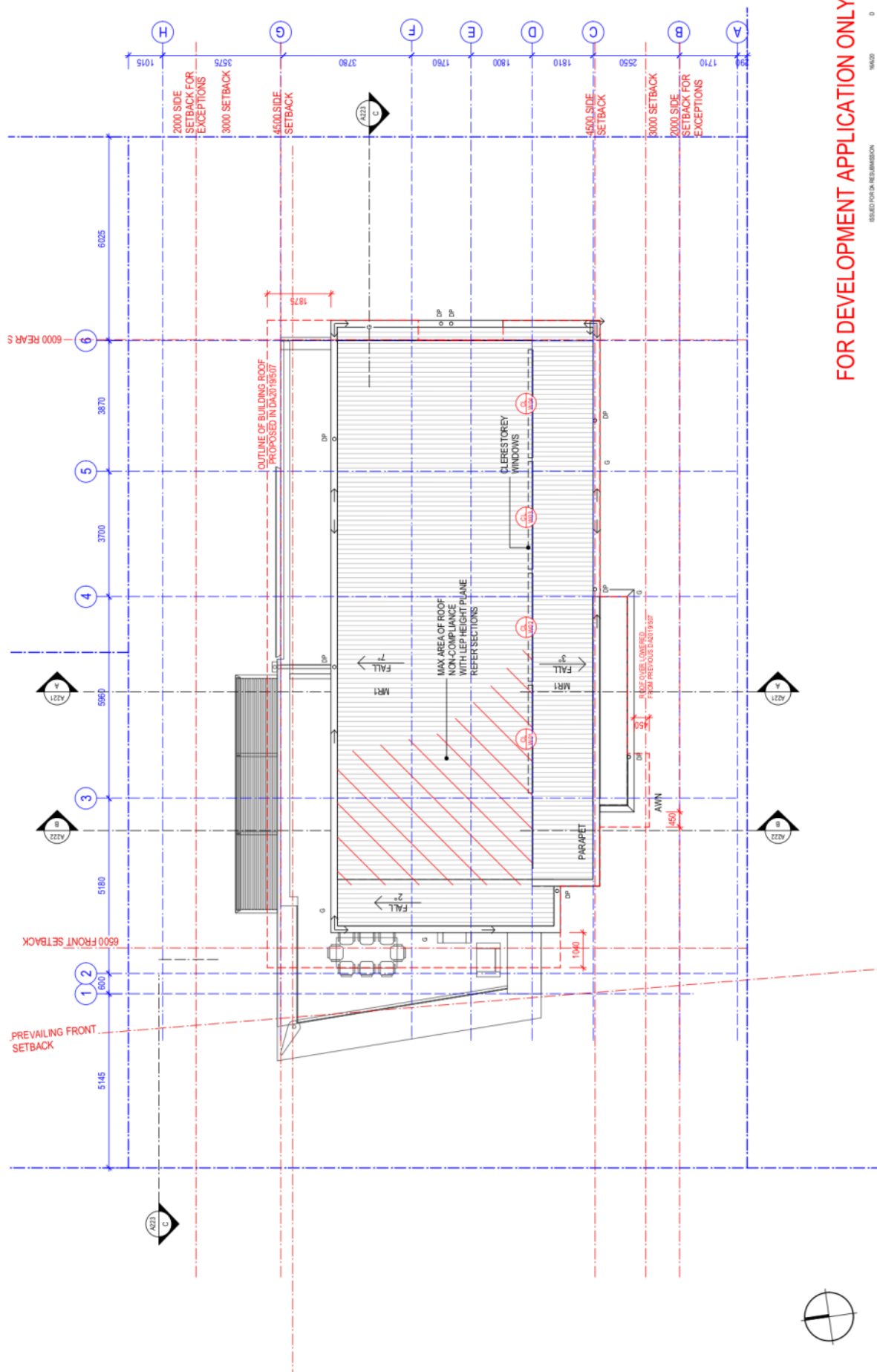


FOR DEVELOPMENT APPLICATION ONLY

A001 D
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Tue, 16 Jun 2020

**NEW RESIDENTIAL FLAT BUILDING
39 PARK STREET NARRABEEN**

ISSUED FOR	REVISION	DATE	BY	DATE
MARK HARCOURT DESIGN PRACTICE				
LEVEL 2 27/1 ALPINE STREET NORTH				
LEVEL 3 27/1 ALPINE STREET NORTH				
LEVEL 4 27/1 ALPINE STREET NORTH				
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FOR DEVELOPMENT APPLICATION ONLY

ROOF PLAN

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MARK HURLOM DESIGN PRACTICE (PTY) LIMITED 2018

A106 D

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Tue, 16 Jun 2020

**NEW RESIDENTIAL FLAT BUILDING
339 PARK STREET NARRABEEN**

AMENDMENT	DATE	ISSUE
MARK HURCUM DESIGN PRACTICE A R C H I T E C T S		
LEVEL 2, 221 ALFRED STREET NORTH MORTH STONEY NSW 2060 TELEPHONE 021 9955 5033 FACSIMILE 021 9955 5608		DESIGN PRACTICE





FOR DEVELOPMENT APPLICATION ONLY

A201.2 E

Scale - 1:100 @ A3

Tue, 16 Jun 2020

NEW RESIDENTIAL FLAT BUILDING
39 PARK STREET NARRABEEN

NORTH ELEVATION -
WITHOUT PRIVACY SCREEN

ISSUED FOR	REVISION	DATE	BY	DATE	BY
1	1	16/06/20	MARK HODGSON	16/06/20	MARK HODGSON
2	1	16/06/20	MARK HODGSON	16/06/20	MARK HODGSON
3	1	16/06/20	MARK HODGSON	16/06/20	MARK HODGSON
4	1	16/06/20	MARK HODGSON	16/06/20	MARK HODGSON
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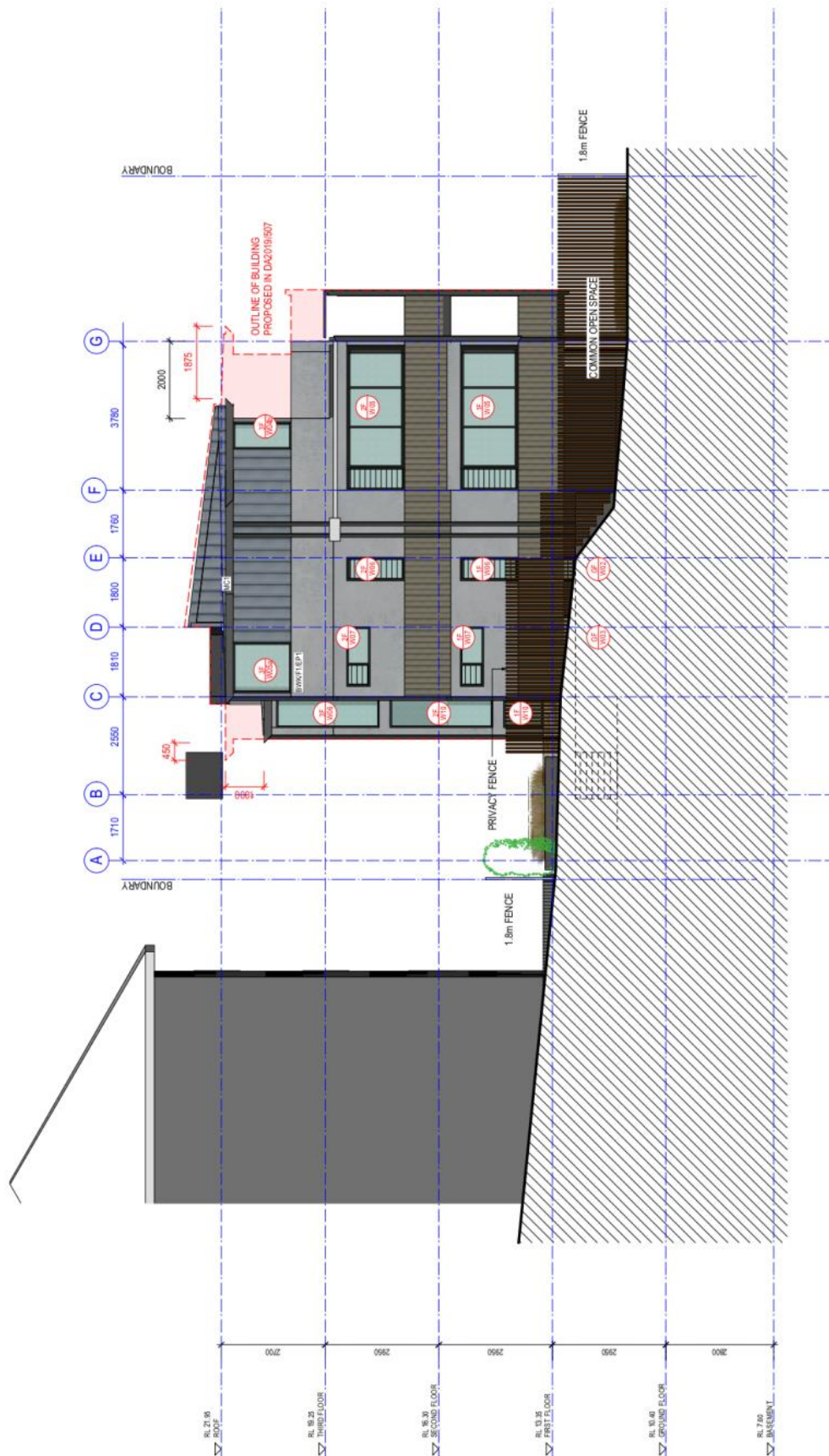


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Tue, 16 Jun 2020

**NEW RESIDENTIAL FLAT BUILDING
339 PARK STREET NARRABEEN**

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Tue, 16 Jun 2020

NEW RESIDENTIAL FLAT BUILDING
39 PARK STREET NARRABEEN

EAST ELEVATION

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Zone Objectives

The Objectives of the B2 Zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*
- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

The proposed development is considered to satisfy the zone objectives for the following reasons:

- It will provide for the housing needs of the community in a medium density context;
- Whilst the proposal is for three bed room units only, we believe the current supply for such larger apartments does not meet existing demand;
- The proposal will be within a landscaped setting, improving the existing landscaped character of the site;
- The proposal is of high visual quality and represents a significant improvement in terms of how the existing development contributes to the streetscape.

4.2.2 Height

A development standard pertaining to height of 11m applies to the site.

The maximum height of the proposed development is 11.35m, occurring at the uppermost point of a small part of the roof and a small portion of a pergola. The minor breach to the height standard is shown at Figure 17 below.



Figure 17: Extract 11m height plane perspective (non-compliance shown in pink).

To address this minor breach to the development standard a request to vary the standard, in accordance with Clause 4.6 of the LEP and a recent judgement of the NSW Land and Environment Court by Preston CJ in *Initial Action v Woollahra Municipal Council* [2018] NSWLEC 118, in terms of the proper construction of such statements, is provided below.

The Clause 4.6 variation request addresses a number of issues which arise with relation to the consideration of the objectives of the standard, such as potential amenity related impacts on neighbouring properties. In this respect, the variation request does not only consider the small non-compliant portions of the building but rather the building as a whole to avoid the duplication of discussion in these respects.

4.2.2.1 Clause 4.6 - Exceptions to Development Standards – Height

The Objectives of Clause 4.6 of Warringah Local Environmental Plan 2011 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.

At sub clause (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.”

Sub-clause (3) includes the requirement that a written request is provided by the applicant that seeks to justify the contravention of the standard.

The written request needs to demonstrate that:

- i. *compliance with standard is unreasonable or unnecessary in the circumstances of the case;*
- ii. *there are sufficient environmental planning grounds to justify contravening the development standard.*

Before granting consent, the consent authority needs to be satisfied:

- a. that the request made by the applicant adequately addresses those matters at sub clause (3), (items (i) and (ii) above);
- b. that the proposal is within the public interest because:
 - i. it is consistent with the objectives of the particular standard; and,
 - ii. the objectives for development within the zone in which the development is proposed to be carried out.
- c. Concurrence has been obtained from the Secretary.

In deciding whether to grant concurrence, the Secretary must consider:

- i. *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- ii. *the public benefit of maintaining the development standard, and*
- iii. *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are considered below with respect to a proposed contravention to *Clause 4.3 Height* under Warringah LEP 2011.

This statement (or request) satisfies the first provision of Clause 4.6 in terms of the applicant making a written request to vary a development standard.

The consent authority, the Northern Beaches Local Planning Panel, has delegation from the Secretary to determine this DA.

Relevant Standard

The development standard to which this Clause 4.6 request seeks to vary is Clause 4.3 Height of Warringah LEP 2011.

4.3 (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map

“Building height” is defined as:

“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.”

Is the requirement a development standard?

A *development standard* is defined at Section 4 of the Act as:

*“**development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

*(a) the area, shape or frontage of any land, **the dimensions of any land, buildings or works**, or the distance of any land, building or work from any specified point,*

(b)”

[emphasis added]

Clause 4.3 of the LEP includes a numeric height restriction of any building being 18m. The control is considered to be a *development standard*.

1. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In *NSWLEC Four2Five Pty Ltd v Ashfield Council 2015*, Pearson C found that due to the consistency in language used in SEPP 1 Development Standards and Clause 4.6 that when determining whether compliance with a development standard is unreasonable or unnecessary under Clause 4.6 that the consideration provided in *NSWLEC Wehbe v Pittwater 2007* (typically applied to SEPP 1) may be of assistance.

As to whether or not compliance with the standard is unreasonable and unnecessary, *Wehbe* sets out five means for consideration as follows:

- a) the objectives of the standard are achieved notwithstanding non-compliance with the standard;
- b) the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- c) the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- d) 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;
- e) 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.

With respect to the tests outlined above from *Wehbe*, we submit that it is unreasonable and unnecessary to strictly comply with Clause 40(4)(a) for reasons related to (a) above, in terms of the consistency of the proposed development with the objectives of the development standard.

(a) Consistency with the objectives of the standard

The objectives of the height standard are as follows:

- “(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.”*

The proposed development is considered to be consistent with the objectives of the standard for the following reasons:

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

Comment: To assess the “compatibility” of the proposed development in terms of its height and scale with surrounding and nearby development, reference is made to a NSW Land and Environment Court Planning Principle found in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191.

The Planning Principle, prepared by Senior Commissioner Dr J Roseth in the aforementioned judgement, deals with “compatibility in the urban environment”.

The Planning Principle begins by offering an understanding of compatibility as follows:

“22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.”

The accepted approach is therefore that compatibility is different from sameness.

In terms of “height” the Planning Principle provides the following:

27 Buildings do not have to be the same height to be compatible. Where there are significant differences in height, it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape

There are three main considerations which relate to the current proposal in light of the Planning Principle:

- that buildings do not have to have the same height to be compatible;

-
- compatibility is easier to achieve when changes in height is gradual – or in other words compatibility may be achieved by following a transition in height between buildings;
 - consistency of height in the streetscape.

The two questions which need to be asked are:

- i. *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
- ii. *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

In response to these questions:

- (i) *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites*

The proposed development, in particular the part of the development which breaches the 11m height plane, does not create any adverse visual impacts; does not disrupt existing views; does not introduce any privacy impacts; and, does not unreasonably overshadow neighbouring properties.

Visual Impact

The small portion of the balcony pergola which breaches the height plane is of light-weight construction with negligible massing and does not introduce any unreasonable visual impacts.

The part of the roof which breaches the height standard is setback from the front building line and will not be visible from the street as shown below in the perspectives taken at the north and south site boundaries at a height of 1.6m (assumed eye level).



Figure 18: Extract street perspective at northern site boundary



Figure 19: Extract street perspective at southern site boundary at assumed eye level of 1.6m

View Loss

The proposed development (including the non-compliant roof section) does not introduce any unreasonable view loss impacts for the following reasons:

- There are no significant views presently available from neighbour properties across the subject site;

- the principal living spaces of the building to the south are orientated to the west or to the east (further to the east than the rear setback of the proposed development) and views of significance are towards the north-east and east towards the ocean;
- the development to the north will be unaffected as it sits lower than the proposal and has no available significant views;
- a compliant three storey development with a height of 11m and a pitched roof built from existing ground level would have a similar impact on the 3-4 storey development to the west in terms of any available outlooks.

Loss of Privacy

No privacy impacts are introduced as a result of the proposed non-compliance with the height standard.

The elevated roof portion includes a clerestorey window which does not allow for direct sightlines to the windows or balconies of the building to the south. Refer to Figure 20 below.



Figure 20: Extract section

The non-compliant portion of the pergola is for aesthetic purposes has no privacy implications.

In terms of potential privacy impacts introduced from the proposal generally, the proposal has been designed accordingly and incorporates suitable treatments to satisfactorily mitigate potential privacy impacts. Such measures include:

- Privacy screen to windows and balconies across northern elevation. Refer to extracts below of cross section and north elevation

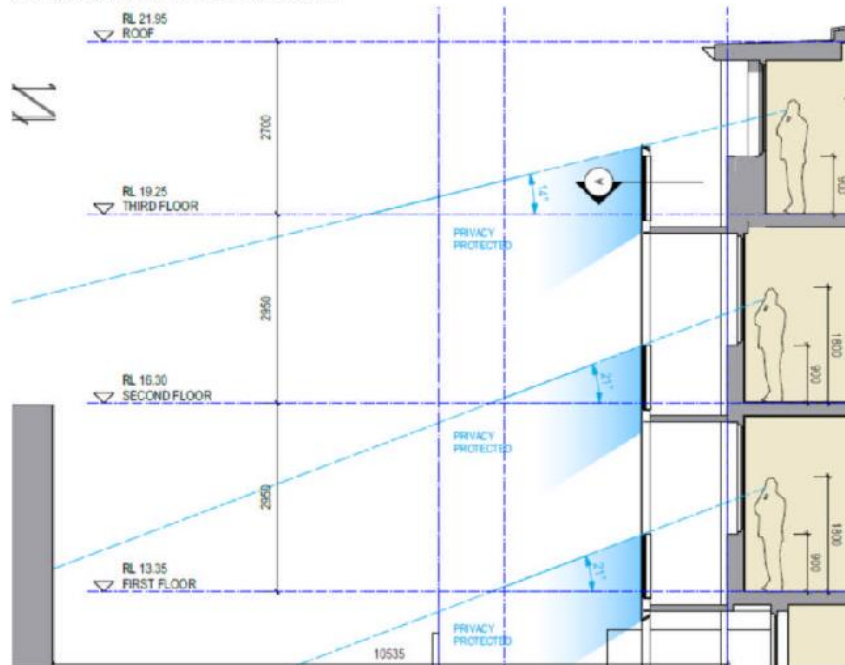


Figure 21: Privacy screens blocking direct sightlines from living rooms to the building to the north



Figure 22: Privacy screens across northern elevation (full height at balconies at central portion of elevation)

- Windows on the southern side elevation are either elevated above floor level or are treated with a translucent film.

Potential privacy loss from the private outdoor open space at ground level of Unit 1 towards the north is satisfactory mitigated given the provision of a 1.8m high boundary fence, boundary planting and since the planter box further to the east on the north side at ground level is non-trafficable.

Overshadowing

The proposed development, and the non-compliant portion of the building, will not unreasonably overshadow the principal living spaces or private or communal open space areas to the building to the south for the following reasons:

- the northern façade of the building to the south which will be overshadowed comprises windows to bedrooms, bathrooms and secondary windows to living spaces;
- the overshadowing will only occur to the lower half of the neighbouring building leaving the top two levels unaffected by shadow.
- the principal living spaces and balconies of the building to the south are orientated to the east and west and will be unaffected by the proposed development and continue to receive solar access at mid-winter in accordance with the DCP. Refer to extracts from solar access modelling below.



Figure 23: Extract 11am mid-winter solar access model

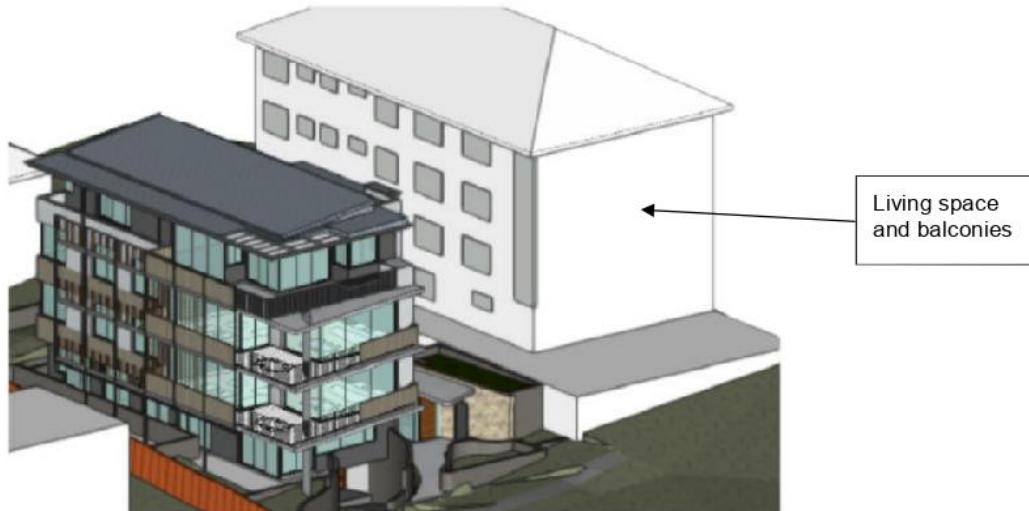


Figure 24: Extract 3pm mid-winter solar access model

- The communal open space at the rear of the building to the south will be unaffected by the proposed development in terms of potential overshadowing.

The proposed development (including the non-compliant portion with respect to height) is not considered to introduce any unacceptable physical impacts on surrounding development and does not reduce the development potential of surrounding development. The proposal therefore passes the first test of the Planning Principle.

(ii) *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

The appearance of the building is one of high-quality modern architectural design which is in character with more contemporary development in the locality of a similar typology.

The character of the area is quite eclectic, comprising a variety of building typologies (single dwellings; multi-unit housing; residential flat buildings; and, a school); built of varying materials such as painted render and glazed balustrades to more traditional face brick finishes and wrought iron and brick balustrades; and, of varying forms including 2, 3, 3-4 and 4 storey forms with pitched, flat and curved roofs.

Depending on perspectives, the proposed 4 storey building presents to the street as a 3-storey form given the difference in height between the subject site and the site to the south of ~1 storey and the proposed excavation to create a level building footprint.

It is considered that the proposed development constitutes a harmonious streetscape outcome by following a transition in heights between the two neighbouring buildings.

The 3-storey building to the north sits below the relative level of the subject site by ~1/2-1 storey and the 4-storey building to the south sits above the subject site by ~ 1 storey.

The uppermost relative levels of the neighbouring buildings and the proposal are as follows:

16 Goodwin Street (North)	RL16.3
39 Park Street (Subject site)	RL22.25
37A Park Street (South)	RL26.8

In the words of the Planning Principle, *"it is easier to achieve compatibility when the change is gradual rather than abrupt"* and given that the proposed building follows a transition in height between the neighbouring development, it is considered that the proposed development is in character with the street in terms of height.

Refer to an extract of a cross section showing neighbouring development. (We note that the roof of the building to the south has been cut off in the drawing but the actual roof has been annotated on the figure below for the purpose of this exercise.

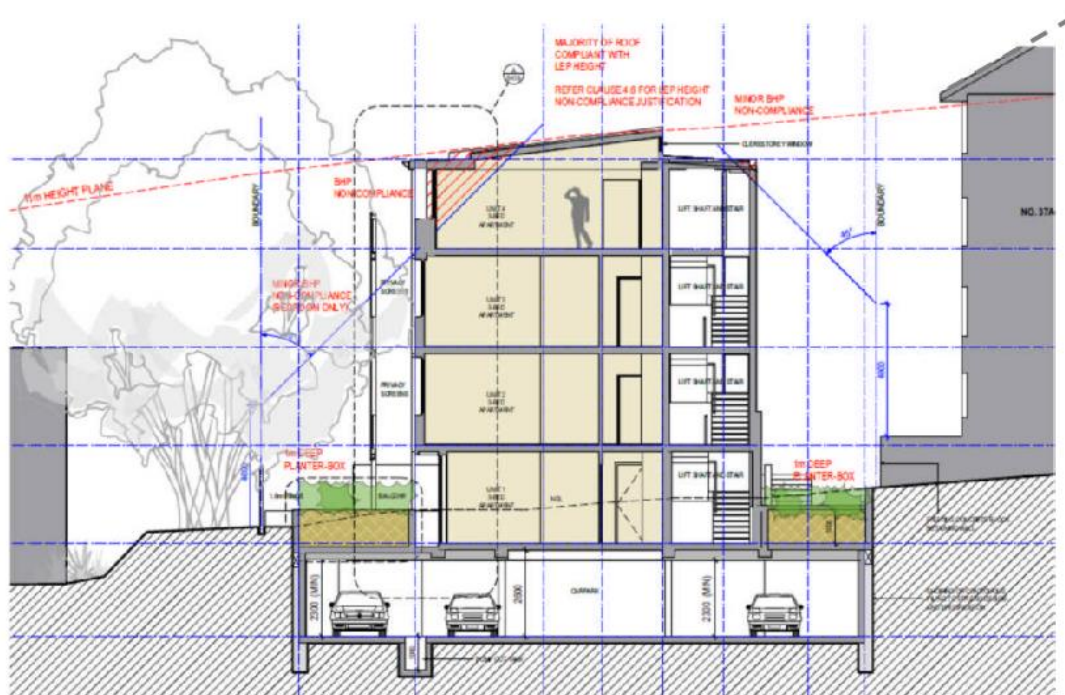


Figure 25: Extract cross section showing transition in building heights

- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access”,

Comment: Refer to (a) above.

- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments.

Comment: The proposal is of high-quality design and has a positive impact on Warringah's coastal environment and is not located in a bushland setting.

(d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities*

Comment: The visual impact of the development, as viewed from Park Street, has been successfully managed by adopting setbacks which are consistent with neighbouring buildings; by creating a form which represents a transition in height between neighbouring buildings; and, by recessing the uppermost floor from the floor plate below.

The proposed development is considered to be consistent with, and would not hinder, the objectives of the height standard, and therefore it is submitted that compliance with the standard is both unreasonable and unnecessary in the circumstances of this case.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed variation under Clause 4.6 is considered to be justified on the following environmental planning grounds:

- The departure to the height standard will not introduce any significant adverse environmental or amenity related impacts on neighbouring properties;
- The non-compliance created by the roof arises as a result of a desire to achieve good levels of internal amenity by having 2.7m internal ceiling heights to the living areas.

If a strict approach to compliance with the 11m height standard under the LEP and the 2.7m standard, which if met cannot be used as grounds for refusal, was adopted then the resultant 2-3 storey form would not constitute a derisive transition in height between neighbouring buildings; would result in a poor streetscape outcome; and, whilst capable of compliance with BCA would not achieve the desirable internal ceiling heights of 2.7m under SEPP 65 and inferior amenity levels to occupants;

- The proposal creates a suitable transition in relative height between the higher four storey form to the south, which sits above the subject site, and the lower three storey form to the north, which sits below the subject site;
- Strict compliance with the standard would not make any perceivable difference to the massing or scale of the building;
- The proposed non-compliance is not of a degree to warrant the amendment of the instrument and subject to merit may be administered under Clause 4.6.

The Public Interest

Under Clause 4.6 the public interest is considered to be satisfied where it can be demonstrated that the proposed development is consistent with the objectives of the development standard and the zone within which the site is located.

The proposed development promotes the objectives of the zone and the development standard for height and therefore is considered to be in the public interest.

Matters of significance for State or regional environmental planning

No matters of significance for State or regional environmental planning arise as a result of the non-compliance with Clause 4.3.

The public benefit of maintaining the development standard

It would not be in the public benefit to strictly maintain the standard in the particular circumstances of this case as it would lead to the reduction in internal ceiling heights or perhaps the removal of a storey.

Such a drastic amendment to the scheme, for the sake of such a minor non-compliance, would result in an inferior built form streetscape outcome due to an incongruous relationship between the height of any such building and neighbouring buildings, specifically an inability to provide a suitable transition in heights.

Conclusion

Strict compliance with Clause 4.3 of the LEP is considered to be unreasonable and unnecessary in the circumstances of this case and there are satisfactory environmental planning grounds to justify the departure to the standard.

Subject to the mechanism available under Clause 4.6, the proposal development satisfies Clause 4.3 of the LEP, and consent may be granted.

4.2.3 Heritage

The subject site is not heritage listed nor is it located in a heritage conservation area. It is however located in proximity to a heritage item

Part of the northern site boundary shares an interface with the rear boundary of a local heritage listed dwelling at 14 Goodwin Street. Refer to aerial plan and image below of street view of dwelling.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0318
Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 102 DP 16393, 48 The Serpentine BILGOLA BEACH NSW 2107
Proposed Development:	Alterations and additions to a dwelling house including swimming pool
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Benjamin Feek
Applicant:	Benjamin Feek
Application Lodged:	01/04/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/07/2020 to 15/07/2020
Advertised:	Not Advertised
Submissions Received:	16
Clause 4.6 Variation:	4.3 Height of buildings: 5.6%
Recommendation:	Approval
Estimated Cost of Works:	\$ 750,000.00

EXECUTIVE SUMMARY

The application involves alterations and additions to a dwelling house and a new swimming pool.

Following notification and preliminary assessment of the proposal, concerns with the proposal were raised with the applicant, including; height, views, solar access, privacy, character, setbacks, envelope, landscaping and geotech. Amended plans and additional information were submitted in response. The assessment of this application is based on the amended plans.

A total of sixteen (16) submissions were made in response to the original notification and nine (9) were made to the notification of the amended plans, raising numerous concerns with the proposal. Based on the number of submissions, the application is referred to the Northern Beaches Local Planning Panel for determination. In summary, the resident issues, which are primarily related to building height,

building bulk and view impacts, were partly addressed by the amended plans. The assessment of the amended scheme reveals the residents issues do not warrant the refusal or further amendment of the application.

The application has been assessed against the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, relevant Environmental Planning Instruments (EPIs) and Council policies. The proposed Clause 4.6 variation to Building Height under the Pittwater LEP 2014 and the variations to the Built Form controls under the Pittwater 21 DCP are supported for the reasons discussed in detail in the report.

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

Accordingly, it is recommended that the application be approved subject to the attached conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes demolition works and alterations and additions to the existing dwelling house as follows:

Roof

- Demolition of existing roof and construction of a new skillion roof

Second Floor (Entry Level)

- Alterations and additions to provide for new entry, open plan living, dining and kitchen, extension of existing terrace balcony, new internal access stairs and WC

First Floor (Bedroom Level)

- Alterations and additions to provide for new bedroom, two ensuites, bathroom, laundry, internal access stairs and extension of existing balcony.

Ground Floor (Garden Level)

- Internal alterations to provide for new bedroom

Site

- New swimming pool, paved and turf terraces and planter box
- New double garage over existing parking hardstand
- Landscaping works

The development has been assessed in accordance with the Demolition Planning Principle established by the NSW Land and Environment Court in *Coorey v Municipality of Hunters Hill* [2013] NSWLEC 1187. In this regard, it is considered that the development is most accurately described as alterations

and additions.



Figure 1 - Three Dimensional Impression of the South Elevation of the Proposed Dwelling Additions

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 E4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.5 Coastal risk planning
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - A4.3 Bilgola Locality
Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D3.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D3.6 Front building line
Pittwater 21 Development Control Plan - D3.7 Side and rear building line
Pittwater 21 Development Control Plan - D3.9 Building envelope
Pittwater 21 Development Control Plan - D3.11 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 102 DP 16393 , 48 The Serpentine BILGOLA BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of The Serpentine.</p> <p>The site is regular in shape with a frontage of 14.435m along The Serpentine and a depth of 50.11m along the western boundary and a depth of 49.818 along the eastern boundary. The site has a surveyed area of 716.5m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a part three, part two storey brick and timber residence with a metal roof. The front of the site contains a detached single storey brick rumpus room and storage area with a two car open parking platform located on the roof. Vehicular access is provided from The Serpentine via a concrete driveway.</p> <p>The site slopes down from The Serpentine Road frontage RL38.5 (northern) boundary and to the rear RL22.0 (southern boundary) with a fall in level of approximately 16.5m from the street frontage to the headland reserve.</p> <p>The site contains a lawn area to the rear which transitions into low lying bushland vegetation consistent with that of the adjoining headland reserve.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>The site is adjoined by a council owned headland reserve to</p>

the south and overlooks Bilgola Beach. Surrounding development is characterised by two (2) and three (3) storey residential dwelling houses of varying architectural styles.

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:

N0073/01

Development Application for new concrete parking slab and crash barriers - Approved 29/03/2001

PLM2019/0038

A pre-lodgement meeting was held on 21 March 2019 for alterations and additions to a dwelling house and proposed swimming pool. The notes raised a number of issues for the applicant to consider, including views, setbacks, bulk/building envelope and concerns with excavation and landfilling of the rear garden.

APPLICATION HISTORY

14 April 2020

Application was notified to five (5) surrounding properties.

14 April 2020

Application was notified to an additional three (3) properties due to potential view loss issues.

18 May 2020

Council wrote to the applicant, raising concerns in relation to:

- Height of building non-compliance
- Insufficient Clause 4.6 Statement
- The design and bulk of the proposed garage and its impacts on view sharing and the character

- of the area
- Insufficient shadow diagrams
- Visual privacy impacts
- Building envelope non-compliance
- Landscaped area non-compliance
- Insufficient Geotechnical Report assessing the Coastline Bluff/Cliff Instability Hazard
- Insufficient details regarding colours and finishes
- Insufficient landscaping and landscape plan

25 June 2020

Amended plans and additional information were submitted.

The amendments included:

- Amended design of the proposed garage, including a reduction in height; introduction of a new low pitch skillion roof form; increased front setback and change in materials to incorporate transparent glazing;
- The introduction of the new low pitch skillion roof form to the dwelling;
- Reduction of the upper "entry level dining room" addition;
- Relocation and reduction in pool and terrace area to facilitate additional landscaped area;
- Additional landscaping;
- Addition of privacy screens to windows on the south-western elevation;
- Incorporation of the proposed fireplace and flue into the proposed plans.

25 June 2020

Amended plans were re-notified to the original list of residents and those who made a submission.

24 July 2020

Updated plans were submitted correctly labelling windows.

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)(iia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans and updated reports.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 16 submission/s from:

Name:	Address:
Mr David Anthony Simmons	46 The Serpentine BILGOLA BEACH NSW 2107
Mr Noel Phillip West	52 The Serpentine BILGOLA BEACH NSW 2107
Mrs June Delwyn Reilly	504 Barrenjoey Road AVALON BEACH NSW 2107
Mr John Keith Andrews	29 The Serpentine BILGOLA BEACH NSW 2107
Mr Anthony Robin Aveling Melissa Jane Aveling	80 The Serpentine BILGOLA BEACH NSW 2107
Mr Peter Mack Martina Mack	25 The Serpentine BILGOLA BEACH NSW 2107
Mr David Stewart Norris Mrs Felicity Jane Norris	31 The Serpentine BILGOLA BEACH NSW 2107
Mr Dudley Neil Hoskin Mrs Katherine Anne Sophie Hoskin	31 C The Serpentine BILGOLA BEACH NSW 2107
Mrs Heather Athene Wilkinson	47 The Serpentine BILGOLA BEACH NSW 2107
Mr Yung Chun Bark Hyung Geun Bark	50 The Serpentine BILGOLA BEACH NSW 2107
Mr Donald Marcus Hayman Mrs Louise Pamela Hayman	31 D The Serpentine BILGOLA BEACH NSW 2107
Mr Michael Anthony	40 The Serpentine BILGOLA BEACH NSW 2107

Name:	Address:
Houstone	
Ms Roslyn Margaret Marsh	16 William Street AVALON BEACH NSW 2107
Avalon Preservation Trust Incorporated as Avalon Preservation Association	24 Catalina Crescent AVALON BEACH NSW 2107
Poppy Roxburgh	488 Barrenjoey Road BILGOLA PLATEAU NSW 2107
Withheld Withheld	AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- Concern was raised with the type of application
- Building Height
- PLEP non-compliance - Building Height (including Height Pole Request)
- View loss
- Non-compliance with DCP controls – Building Envelope; Front Building Line; Bilgola Beach Locality; Landscaped Area;
- Inconsistent with SEPP [Coastal Management] 2018
- Impact on coastal walkway
- Building Bulk, Over-development and adverse impacts to the Scenic Protection Area and Bilgola Locality
- Overshadowing/solar access impacts
- Privacy impacts
- Acoustic privacy
- Not in line with E4 - Environmental Living zone
- Encroachment on road reserve and limiting pedestrian and cycle access.
- Protection Norfolk Island Pine
- Precedent
- Inaccurate/misleading documentation
- Pool fencing
- Use of the house
- Concern of damage to property due to earthworks and structural adequacy of the development
- Coastline Bluff Hazard Report not submitted
- Location of pool plant equipment and air conditioning
- Building Colours and Materials

The matters raised within the submissions are addressed as follows:

- **Concern was raised with the type of application**

Comment:

The application was submitted as “Alterations and Additions to an existing dwelling house”. Whilst the submitted plans show increases in floor space, and changes to the external fabric of the existing dwelling, the proposed design does not represent a complete transformation of the existing character, design and external appearance of the dwelling.

To assist, the Land and Environment Court case *Edgar Allen Planning Pty Limited v Woollahra Municipal Council 2006 LGERA 1* and *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187* sets out Planning Principles for the assessment of both qualitative and quantitative issues

to determine whether or not an application is “alterations and additions” or a “new dwelling”.

Using the Planning Principles, Council agrees that the application is for alterations and additions to an existing dwelling.

- **Concern was raised in regards to the building height of the proposal**

Comment:

Concern was raised in relation to the height of the proposed alterations and additions to the existing dwelling house. Specific concern was made to how the calculation of height was made and that the proposal does not accurately reflect the proposed variation to building height as it is not correctly taken from existing ground levels.

On this, it is noted that the site has a significant slope from rear to front, but has been noticeably excavated in a previous development, thus exhibiting a vertical stepped profile towards the lower part of the site. This is further evidenced by the gradient and levels of the surrounding properties. However, when measured based on Australian Height Datum (applying interpolated levels for the site (as per the definition of Building Height under PLEP 2014), the maximum height of the building at the rear of the site is 8.45m.

Caselaw in the LEC Court, including the case *Bettar v Council of the City of Sydney [2014] NSWLEC 1070* and *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189* have made apparent that the measure of existing building height should relate to the levels and natural topography of the site, and not relate to artificially modified levels (such as those made through excavation).

Therefore, for the purpose of this assessment, the relevant ground levels to accurately determine the height of the building are extrapolated from survey points around the perimeter of the site as detailed on the architectural plans accompanying the application.

- **LEP Non-compliance - Building Height (including Height Pole Request)**

Comment:

An assessment of the submitted clause 4.6 variation request has been undertaken within the relevant section of this report. The assessment finds the applicant's written request adequately demonstrates that it is unreasonable to apply strict compliance and that there are sufficient environmental planning grounds to justify contravening the development standard. It is considered that the proposal is consistent with the aims and objectives of the E4 Environmental Living zone and the Height of Buildings development standard under Pittwater LEP 2014.

Submissions also requested height poles for the proposed development. However, height poles

were not considered necessary in this instance as the proposal was predominantly located over the footprint of the existing dwelling and adequate photomontages were provided to enable a complete and accurate assessment.

- **View Loss**

Comment:

The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Section C1.3 View Sharing of the P21 DCP. The requirements of this clause and the view sharing principles of *Tenacity Consulting vs Warringah Council [2004] NSWLEC 140* and *Rose Bay Marina Pty Limited Vs Woollahra Municipal Council and anor (213) NSWLEC 1046* have been addressed and the issues raised within the residents submissions in relation to view loss do not warrant further amendment or refusal of the application.

- **Non-compliance with DCP Controls – Building Envelope, Front Building Line, Bilgola Beach Locality and Landscaped Area**

Comment:

For each of the numerical non-compliances, a merit assessment was carried out against the objectives of that control in this report. The assessment has found the proposed non-compliances to be reasonable (subject to conditions).

- **Inconsistent with SEPP (Coastal Management) 2018**

Comment:

The proposal has been assessed under the relevant clauses of State Environmental Planning Policy (Coastal Management) 2018 and is considered to comply with the requirements of this SEPP.

- **Impact on Coastal Walkway**

Comment:

Concern has been raised in regards to the impact of the proposed development on views from the planned coastal walkway. This has been discussed further in Section C1.3 View Sharing of the P21 DCP. It should also be noted that draft community consultation plan indicates that the Newport - Avalon Pedestrian Link is not proposed on this section of The Serpentine as it is proposed to be located to the south of the subject site along the headland reserve.

- **Building Bulk, Overdevelopment and adverse impacts to the Scenic Protection Area and Bilgola Locality**

Comment:

Concerns have been raised that the proposal is an overdevelopment of the site and has excessive building bulk which would result in adverse impacts to the scenic protection area and Bilgola Beach Locality. These issues have been addressed throughout the report. In summary, the proposal involves minimal environmental impact, is set below the general tree canopy height, includes building modulation and changes in finishes to minimise bulk, does not involve significant earthworks, and provides an appropriate balance between respecting the landform and encouraging development. The additions are considered appropriate in the context of the site given that the subject site slopes away from the street, with the proposed development having the appearance of being single storey as viewed from The Serpentine. The proposed development would appear as 3 storeys as viewed from the south. However, existing and proposed vegetation downslope of the dwelling house will assist to soften the built form as viewed from surrounding properties and Bilgola Beach. Furthermore, the siting of the proposal, with a substantial rear setback from the adjoining headland reserve and a rear building line set behind surrounding properties (primarily to the west) means that the 3 storey nature of the proposal would not be prominent from Bilgola Beach.

- **Overshadowing/Solar Access Impacts**

Comment:

The proposed development is acceptable in relation to overshadowing for the reasons detailed in the section of this report relating to Section C1.4 Solar Access of the P21 DCP.

- **Privacy Impacts**

Comment:

The proposed development is acceptable in relation to privacy for the reasons detailed in the section of this report relating to Section C1.5 Visual Privacy of the P21 DCP. In summary, the proposal results in reasonable levels of privacy to adjoining properties.

- **Acoustic Privacy / Noise Impacts**

Comment:

A submission was raised concerning the potential of the proposed pool and balconies to create amenity impact by reason of noise to the adjoining neighbours. The proposed balconies and terrace areas are a continuation of an existing arrangement and are not considered to create unreasonable acoustic privacy concerns. A condition has been imposed to ensure the pool filter is to be acoustically treated so that it does not emit any noise of 5dB(A) above background noise at the nearest residential receiver.

- **Location of pool plant equipment and air conditioning**

Comment:

A submission was raised regarding the location of pool plant equipment and air conditioning requesting that it be located away from adjoining boundaries. The proposed plans indicate the

pool equipment enclosure to be located centrally under the proposed new terrace decking. A condition has also been imposed to ensure the pool filter be to be acoustically treated so that it does not emit any noise louder than 5dB(A) above background noise at the nearest residential receiver. The plans do not indicate any new air conditioning units within the vicinity of adjoining boundaries.

- **Building Colours and Materials**

Comment:

A submission was raised requesting the colours and materials be of dark and earthy tones. The submitted schedules of external material and finishes indicate the additions will be of dark and earthy tones in line with P21DCP.

- **Not Compatible with E4 - Environmental Living Zone**

Comment:

A detailed assessment has been completed of the objectives under the Zone E4 Environmental Living zone within the Pittwater Local Environmental Plan 2014 and it is considered that the proposed development is consistent with these objectives.

- **Encroachment on Road Reserve and Limiting Pedestrian and Cycle Access**

Comment:

Concern was raised that the existing hardstand and driveway encroach the public road reserve and limit pedestrian and cycle access. The proposed works do not seek to alter the existing driveway crossing. Council's Development Engineers have reviewed the proposal and raise no objection to the existing driveway. No works are proposed on the Council Road Reserve.

- **Protection Norfolk Island Pine**

Comment:

Concern was raised with regards to the health and protection of the existing Norfolk Island Pine located on the road reserve adjoining the subject site. No works are proposed to this tree. Council's Landscape Officer has imposed a condition requiring a Tree Protection Plan to illustrate how the existing trees will be protected during construction works.

- **Creation of Precedent**

Comment:

Concern was raised that the approval of a garage within the front setback and the variation to building height would result in a precedent for the street. It should also be noted that numerous other properties along the lower side of The Serpentine feature double garages within the front setback. To approve the proposed development would not be setting a precedent, as the proposal is consistent with the existing character of the locality. Furthermore, the height variation has been assessed under Clause 4.6 of PLEP 2014 which has found that it is unreasonable to strictly apply the standard and there are sufficient environmental planning grounds to justify contravening the development standard in this particular instance. This issues does not warrant refusal of the application.

- **Inaccurate/misleading documentation**

Comment:

Concern has been raised that the documentation provided as part of this application is inaccurate and misleading. This specifically relates to the submitted photo-montages, shadow diagrams and survey plan.

With regards to the shadow diagrams and photo-montages, Council received a signed letter (dated 08/07/2020) from the Principal Architect of Bawtree Design specifying that the submitted shadow diagrams and photo-montages were true and accurate. The shadow diagrams were also supported with a signed certification. It should be noted that concern was raised that the shadow diagrams were not valid as they did not represent overshadowing from surrounding topography and trees/vegetation. The 'Access to sunlight' planning principle from the *Benevolent Society v Waverley Council [2010] NSWLEC 1082* specifies that overshadowing by vegetation should be ignored. Therefore, it is considered that the shadow diagrams are sufficient to determine the increased solar access impacts from the proposal. This is addressed in further within Section C1.4 Solar Access of the P21 DCP.

With regards to the survey plan, Council received a signed letter (dated 10/07/2020) from Total Surveying Solutions stating that the levels on the detailed survey plan provided were true and accurate.

- **Pool fencing**

Comment:

Concern was raised with regards to the pool fencing adjoining the side boundary with No.46 The Serpentine. It is agreed that the siting of the pool and pool coping, setback 2.1m from the south-western boundary, facilitates sufficient space to incorporate pool fencing located entirely within the site boundary. As such a condition has been imposed to ensure the pool fencing is constructed a minimum of 2.0m from the south-western boundary. This would minimise impact upon landscaping and adjoining neighbour amenity.

- **Use of the House**

Comment:

A submission was raised concerning the potential use of the property as a "party house" and for short term rental accommodation. The proposal does not propose to change the use or classification of the building from a "dwelling-house". Concerns regarding unauthorised building use should be referred to Council's Compliance department. A condition of consent has been imposed to ensure the site is not used for any use beyond the definition of a "dwelling house".

- **Concern of damage to property due to earthworks and structural adequacy of the development**

Comment:

Concern was raised from an adjoining neighbour regarding the proposed excavation near the common side boundary with No.46 The Serpentine as well as the structural adequacy of the development. Council's Development Engineer has reviewed the submitted Geotechnical Report and Coastline Bluff Hazard Management Report, deeming the proposal to be acceptable subject to compliance with recommended conditions. A condition has also been imposed to ensure the stability of adjoining land during excavation works and that proposed retaining walls are designed and certified by a Structural Engineer.

- **Coastline Bluff Hazard Report not submitted**

Comment:

Following this submission, a Coastline Bluff Hazard Report has been submitted to Council. Council's Coast and Catchments Officer has reviewed this report deeming the proposal to be acceptable subject to compliance with recommended conditions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p>Recommendation: Approval - subject to conditions</p> <p>Environmental Health has reviewed the updated proposal in relation to the installation of a solid fuel heater.</p> <p>It should be noted that Council discourages the installation of solid fuel heaters, as wood smoke is a significant contributor of noxious gas and particulate (PM10 and PM2.5) emissions in the Sydney Basin.</p> <p>The manufacturer's specification sheet has been provided and the master plans updated.</p>
Landscape Officer	<p>The development application is for the construction of alterations and additions to an existing dwelling including a new double garage.</p> <p>The previous Landscape Referral assessment did not support the</p>

Internal Referral Body	Comments
	<p>application based on the lack of proposed tree planting to reduce the bulk and scale. This was partly due to the inadequate landscape area (36.65%) proposed that did not meet the requirements under D3.11 Landscaped Area - Environmentally Sensitive Land, and D3.1 Character as viewed from a public place.</p> <p>In assessment of the revised plans the following concern remains, that are essentially a planning merit consideration:</p> <ul style="list-style-type: none"> It is assessed that there are no landscape opportunities to reduce the garage built form and prominence along the streetscape, in consideration of D3.1 Character as viewed from a public place, where the built form is required to be integrated with landscaping. Garages, carports and other parking structures including hardstand areas should not be the dominant site feature when viewed from a public place. The proposed landscaping will not adequately achieve this as insufficient landscape area is available within the frontage, and the softening of the proposed garage relies on existing street trees. The above concern is the result of the site planning layout of the existing hardstand and dwelling. It is considered that the existing elevated hardstand of this site contributes to the built form, and additional built elements such as the proposed garage will augment the impact to the streetscape. <p>Otherwise the revised landscape plans provide an acceptable landscape outcome that is able to satisfy the controls of Pittwater Local Environmental Plan E4 Environmental Living clause and the following Pittwater 21 DCP Controls:</p> <p>B4.22 Preservation of Trees and Bushland Vegetation C1.1 Landscaping D3 Bilgola Locality, including D3.1 Character as viewed from a public place, D3.2 Scenic protection - General, and D3.11 Landscaped Area - Environmentally Sensitive Land.</p> <p>A revised Landscape Plan is provided that addresses the landscape concerns of the previous development application design and includes increased landscape area to support a range of low-lying shrubs, medium-high shrubs and canopy trees shall be retained or provided to soften the built form, including canopy trees under C1.1 Landscaping. The swimming pool is relocated to allow for additional landscape area and planting along the side boundary to establish suitable screening to eliminate overlooking into private open space. Canopy tree planting and understorey planting is provided in the rear foreshore setback to reduce the built form when viewed from the water and to satisfy D3.2 Scenic protection - General.</p> <p>No existing trees of significance are located within the property. Prominent existing Norfolk Island Pines of significance exist within the</p>

Internal Referral Body	Comments
	<p>road verge. A Tree Protection Plan is required to illustrate how the existing trees will be protected during construction works, requiring tree protection fencing to exclude access and storage within the tree protection zone, and potential damage to the trunk and branches during deliveries.</p>
NECC (Bushland and Biodiversity)	<p>Amended plans and documentation received 25/06/2020 The amended plans do not alter the previous assessment of the application by Biodiversity Planning, and conditions previously recommended continue to apply.</p> <p>The proposed development has been assessed against the following biodiversity-related provisions:</p> <ul style="list-style-type: none"> - Pittwater LEP Clause 7.6 (Biodiversity Protection) - Pittwater DCP Clause B4.3 (B4.3 Flora and Fauna Habitat Enhancement Category 2 Land) - State Environmental Planning Policy (Coastal Management) 2018 Cl. 13 Development on land within the coastal environment area <p>The subject site is predominately landscaped garden with some small areas of native vegetation remaining that will not be significantly impacted. The development is proposed in the area of least impact on native vegetation and where there will be no net loss of native vegetation. The proposed development is designed, sited and will be managed to avoid an adverse impact</p> <p>The DCP controls required the planting two canopy trees or appropriate native vegetation (minimum 60% (by number of plants) locally native plant species of the Pittwater Ward, as per the Native Plant Guide on Council's website), and removal/ control of noxious and environmental weeds.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 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>

Internal Referral Body	Comments
	<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> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) revised report prepared by Vaughan Milligan Development Consulting Pty. Ltd dated June 2020, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>The subject site is also shown to be affected by Coastline Bluff/Cliff Instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014. As such, the Geotechnical Risk Management Policy for Pittwater (Appendix 5, Pittwater 21 DCP) and the relevant B3.4 Coastline (Bluff) Hazard controls in P21 DCP will apply to new development of the site.</p> <p>Coastline Bluff Hazard Management</p> <p>A Geotechnical Report (Revised) prepared by Crozier Geotechnical Consultants dated June 2020 assessing coastline (bluff)/ coastal cliff or slope instability has been submitted with the DA. The report assessed that 'based on the proposed setbacks, it is considered extremely unlikely that coastal processes and forces prevailing the cliff/bluff near the site's rear boundary will have any impact on the existing or proposed structures within a 100-year design life'.</p> <p>As such, it is considered that the application does comply, subject to conditions, with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>
NECC (Development Engineering)	<p>The proposal relies upon the existing driveway to gain access to an existing hardstand area where a garage is proposed to be constructed. The applicant's Engineering consultants have provided reports addressing the adequacy of the existing driveway and this is</p>

Internal Referral Body	Comments
	<p>considered acceptable for the existing driveway to remain. The proposed method of stormwater is also acceptable. The submitted Geotechnical report addresses the relevant DCP controls.</p> <p>No objection to approval, subject to conditions as recommended.</p> <p>Amended plans and documentation received 25/06/2020</p> <p>The amended plans do not alter the previous assessment of the application by Development Engineering. As the Geotechnical report has been updated, the conditions have been amended to suit.</p> <p>No objection to approval, subject to conditions as recommended.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed for compliance with Pittwater 21 DCP B5.8 Water Quality Pittwater 21 DCP B8.2 Sediment and Erosion Controls SEPP Coastal Management 2018 - Coastal Environment Zone</p> <p>The application does not increase the impervious area of the lot by more than 50sqm (the swimming pool was included in this calculation as it prevents infiltration), therefore water quality controls do not apply. The proposed development is not expected to have a significant impact on the hydrology of the coastal zone.</p>
Parks, reserves, beaches, foreshore	<p>The development application is for the construction of alterations and additions to an existing dwelling including a new double garage.</p> <p>The Parks Referral is assessed against Pittwater Development Control Plan clause B4.11 Land Adjoining Bushland and B8.2 Erosion and Sediment Management. The site adjoins North Bilgola Headland.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**SEPP 55 - Remediation of Land**

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A359190 dated 18 March 2020).

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

SEPP (Infrastructure) 2007Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections subject to recommended conditions.

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 works 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)
 - (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 proposed development is not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunnelling or unreasonable impact on the loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The proposed development will also not have an adverse impact on the cultural and built environment heritage.

It is considered that the proposed development has satisfied the requirement to be designed, sited and will be managed to avoid an adverse impact to the aforementioned cultural and environmental aspects. Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the surrounding coastal and built environment, which consist of low-density residential dwellings.

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. A condition of consent has been placed to stop works and report the findings to the AHO 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.

Coastal Management Act 2016

The subject site identified as Coastal use area under the Coastal Management Act 2016. The management objectives for the coastal use area are as follows:

"(a) to protect and enhance the scenic, social and cultural values of the coast by ensuring that:

- (i) the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast, and*
- (ii) adverse impacts of development on cultural and built environment heritage are avoided or mitigated, and*
- (iii) urban design, including water sensitive urban design, is supported and incorporated into development activities, and*
- (iv) adequate public open space is provided, including for recreational activities and associated infrastructure, and*
- (v) the use of the surf zone is considered,*

(b) to accommodate both urbanised and natural stretches of coastline."

Comment:

The proposal is setback from the foreshore and will 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. In addition, the surrounding area consists of examples of similar developments.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.0m	8.45m	5.6%	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	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone E4 Environmental Living

The proposed alterations and additions are consistent with the objectives of the E4 Environmental Living zone. The development will continue to have the appearance of a "low impact" residential dwelling house in a natural landscaped setting, integrated with the scenic landform and aesthetic values.

Overall, the proposal is consistent with the desired objectives and future character of the E4 Environmental Living zone.

4.3 Height of buildings

Clause 4.3 (2) stipulates that height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The subject site is located within Area 'H' of the

Height of Buildings Map which has a maximum height of 8.0m.

The maximum height of the proposed development has been measured at 8.45m from the interpolated ground levels for the site (pre-excitation) and AHD levels as per the Building Height definition under PLEP 2014.

4.6 Exceptions to development standards

Description of Non-compliance:

Development standard:	Height of buildings
Requirement:	8.0m
Proposed:	8.45m
Percentage variation to requirement:	5.6%

* Based on interpolated ground levels for the site (pre-excitation) and AHD levels as per the Building Height definition under PLEP 2014

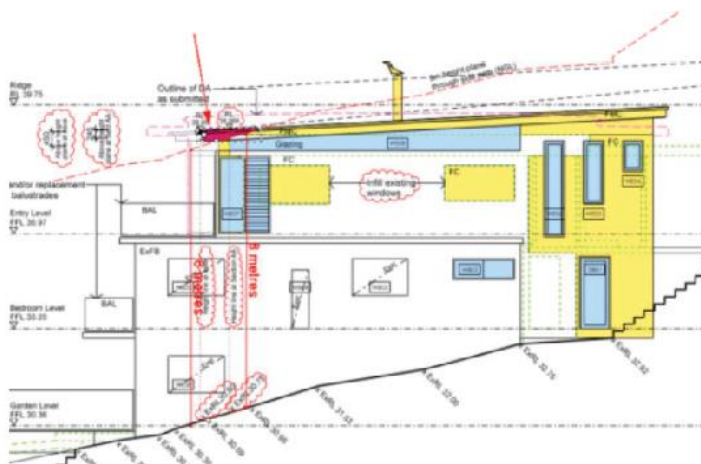


Figure 2: Building height non-compliance shown in pink

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 (summarised):

- *This variation occurs as a result of the sloping topography of the site and siting of existing development;*
- *The proposal is compatible with the general bulk, scale and style of surrounding newer dwellings;*
- *The proposal is low impact development of good design as it retains the footprint of the existing building and does not require any significant further site disturbance to facilitate additional floor area;*
- *The non-compliant building height falls within the roof form only which has been well designed with a low profile pitched hip roof form;*
- *The proposal improves the residential amenity of the buildings' occupants and maintains the amenity of neighbours in terms of views by locating the new floor area level, where it will not unreasonably obstruct views across the site and will maintain the views from the site.*

It is acknowledged that the style and scale of the proposed dwelling is compatible with surrounding newer development in the area and along The Serpentine. It is considered that due to the slope of the site, the siting of the existing building and the generous rear setback and compliant north-eastern side boundary setback, that the non-compliance would not substantially alter the character or appearance of the existing dwelling nor be readily identifiable to anyone observing the dwelling from a public space. It

is also agreed that the proposal will not have any unreasonable amenity impact to surrounding properties as a result of the height non-compliance.

Fundamentally, a fully compliant scheme compared to the proposed non-compliant scheme would not materially alter the impacts of development.

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 E4 Environmental Living Zone 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 proposed height non-compliance of 450mm is contained to the south-eastern extremity of the new low pitch skillion roof. The proposed additions are comparable with that of the built form of the existing dwelling and surrounding newer dwellings located on The Serpentine. The dwelling will appear as a one (1) storey dwelling when viewed from The Serpentine. Given the sloping nature of the site, and the existing built form of the dwelling, the development will present as a three (3) storey dwelling when viewed from the rear. Whilst this three (3) storey element is not envisaged by the current planning controls,

it is not unreasonable to accept the proposed design given the dwelling currently provides a first floor and basement configuration which is a result of the sloping nature of the site. The development proposes to maintain a similar building footprint as to what exists. The 25.8m rear setback and proposed vegetation buffer also allows for some visual relief towards Bilgola Beach and the adjoining reserve. As such, the building height breach is not considered to impact on the desired character of the locality.

The development satisfies this objective.

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

Comment:

The development is located on the downward slope of the The Serpentine escarpment which is characterised by undulating topography. This results in variable built forms along the road, such that there is an eclectic mix of height and scale in which to be compatible with. The non-compliance is contained to the south-eastern extremity of the new low pitch skillion roof due to the topographical nature of the site.

The non-compliance is considered to be relatively minor and does not unreasonably conflict with the height and scale of surrounding and nearby development. In this context, the proposed height non-compliance is considered to be compatible.

The development satisfies this objective.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The breach in height to the south-eastern extremity of the proposal is not considered to result in unreasonable overshadowing impact to adjoining neighbours. This is discussed further within section C1.4 of this report.

The development satisfies this objective.

d) to allow for the reasonable sharing of views,

Comment:

Given the topography of the land, the height non-compliance does not have an unreasonable impact upon the existing views from adjoining properties or further up the escarpment to Barrenjoey Road due to the higher placement/vantage point of these properties. This is discussed further within section C1.3 of this report.

The development satisfies this objective.

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

Comment:

The variation to the height control occurs as a result of the siting of the existing dwelling in

conjunction with the sloping topography of the site. The development proposes no significant excavation to facilitate additional floor area and the development will appear as single storey when viewed in the streetscape. The proposals design maintains the open style rear balcony areas to provide a more "stepped" look when viewed from the rear and the neighbouring properties. The proposal reflects the established built form character of newer dwellings located along The Serpentine where multi-level, variably stepped houses are prevalent, due to the steep topography of the land.

The development satisfies this objective.

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

Comment:

The proposed works will maintain consistency with the general height and scale of surrounding newer development, and further, the bulk and scale of the works are minimised as a result of the setbacks, modulation of the facades, the use of materials and design of the proposed roof form. No unreasonable amenity impacts will be caused for the subject site or adjoining properties. The proposal will not require the removal of any significant vegetation or require any significant site disturbance or excavation to facilitate additional floor area, with minimal alteration to the natural ground levels. No heritage conservation areas or heritage items will be affected as a result of this application.

The development satisfies this objective.

Zone Objectives

The underlying objectives of the E4 Environmental Living Zone zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

The proposed works do not include any significant excavation or site disturbance to facilitate additional floor area and the proposed additions is to be largely sited within the existing building footprint. The proposal will not require the removal of any significant vegetation. The proposal respects the scale and form and relative height of other recent development within the vicinity, particularly as viewed from The Serpentine. It is considered the proposal complements the locality.

The development satisfies this objective.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

The development will not have any unreasonable impact upon long distance views, and further, the development will appear as single storey as viewed in the streetscape. The setbacks maintain compatibility with the existing surrounding newer development. The proposed works do not include any significant excavation or site disturbance.

The development satisfies this objective.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:

The development proposes no significant excavation to facilitate additional floor area and the development will appear as single storey when viewed in the streetscape. The proposals design maintains the open style rear balcony areas to provide a more "stepped" look when viewed from the rear and the neighbouring properties. The proposal reflects the established built form character of newer dwelling located along the Serpentine where multi-level, variably stepped houses are prevalent, due to the steep topography of the land. The proposal will not require the removal of any significant vegetation and proposes additional landscaping to minimise bulk and scale and facilitate integration with the landform.

The development satisfies this objective.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors*

Comment:

The proposal will not impact upon riparian or foreshore vegetation or wildlife corridors. The additions are largely sited within the existing building footprint.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living Zone 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 with the objectives of the zone and the development standard, the concurrence of the Secretary for the variation to the Height of buildings Development Standard can be assumed by the Local Planning Panel.

7.5 Coastal risk planning

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

- (a) *is not likely to cause detrimental increases in coastal risks to other development or properties, and*

Comment: The development has been assessed by Council's Coastal Engineers. The coastal

engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is not likely to cause detrimental increases in coastal risks to other development or properties.

(b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and

Comment: The development has been assessed by Council's Coastal Engineers. The coastal engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment.

(c) incorporates appropriate measures to manage risk to life from coastal risks, and

Comment: The development has been assessed by Council's Coastal Engineers. The coastal engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development incorporates appropriate measures to manage risk to life from coastal risks.

(d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and

Comment: The development has been assessed by Council's Coastal Engineers. The coastal engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards.

(e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and

Comment: The development has been assessed by Council's Coastal Engineers. The coastal engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.

(f) has regard to the impacts of sea level rise, and

Comment: The development has been assessed by Council's Coastal Engineers. The coastal engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development has regard to the impacts of sea level rise.

(g) will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

Comment: The development has been assessed by Council's Coastal Engineers. The coastal engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,
- (b) the development's design and construction methods,
- (c) the amount of cut and fill that will be required for the development,
- (d) waste water management, stormwater and drainage across the land,
- (e) the geotechnical constraints of the site,
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitable managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

- (b) the consent authority is satisfied that:

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or
- (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or
- (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	0.7m - 2.8m (Garage wall)	89.3% (Max)	No
Rear building line	6.5m	17.6m	N/A	Yes
Side building line	2.5m (South-West)	2.1m (Pool terrace)	16%	No
	1.0m (North- East)	1.2m (Garage)	N/A	Yes
Building envelope	3.5m (South-West)	Outside envelope	14.81% (Max)	No

	3.5m (North-East)	Outside envelope	59.6% (Max)	No
Landscaped area	60% (429.9sqm)	41.13% (294.7sqm) 50.4% (361.4sqm) (with variation)	31.45%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	No	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	No	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	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	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D3.1 Character as viewed from a public place	No	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	No	Yes
D3.7 Side and rear building line	No	Yes
D3.9 Building envelope	No	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	No	Yes
D3.13 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D3.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D3.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.3 Bilgola Locality

The proposed development consists of part a two/part three storey dwelling house, where the locality calls for two storey development. Furthermore, a section of the proposed dwelling would exceed the 8.0m building height requirement under the PLEP as specified for the Bilgola Beach area. However, the existing development is three storeys in height and the proposed works do not result in any additional storeys. Further, the proposal involves minimal environmental impact, is set below the general tree canopy height, includes adequate building modulation and changes in finishes to minimise bulk, does not involve significant earthworks, and provides an appropriate balance between respecting the landform and encouraging development.

The addition is considered appropriate in the context of the site in that the subject site slopes away from the street, with the proposed development having the appearance of being single storey as viewed from The Serpentine. The proposed development would appear as three storeys as viewed from the south, however, existing and proposed vegetation downslope of the dwelling house will assist in softening the built form as viewed from surrounding properties and Bilgola Beach.

Furthermore, the siting of the proposal, with a substantial rear setback from the adjoining headland reserve and a rear building line set behind surrounding properties (primarily to the west) means that the three storey nature of the proposal would not be prominent from Bilgola Beach.

As such, the proposed development achieves the intention of the desired character of the area and is acceptable in this regard.

B6.1 Access driveways and Works on the Public Road Reserve

The proposal relies upon the existing driveway to gain access to an existing hardstand area where a garage is proposed to be constructed. The applicant's Engineering consultants have provided reports addressing the adequacy of the existing driveway and this is considered acceptable for the existing driveway to remain. Council's Engineer has reviewed the proposal and raises no objection subject to recommended conditions.

C1.3 View Sharing

Merit Consideration

Six (6) submissions were received from the following properties which included concerns regarding view loss from a private property:

- 46 The Serpentine
- 50 The Serpentine
- 52 The Serpentine
- 31 The Serpentine
- 31C The Serpentine
- 31D The Serpentine

Figure 3 below shows the origin of the submissions relative to the subject site, and the view angles of the sites over the subject site (outlined in blue).

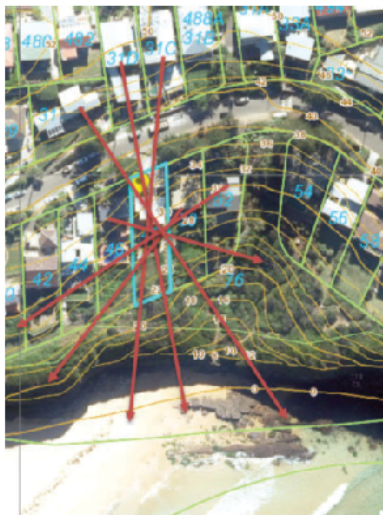


Figure 3: View angles over the subject site

The proposed development is considered against the outcomes of the control as follows:

- *A reasonable sharing of views amongst dwellings. (S)*

Comment

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

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

Comment to Principle 1:

No. 46 The Serpentine

The views from 46 The Serpentine that are the concern are to the south-east of the property and include views of the ocean, North Bilgola Headland and land and water interface. No iconic views are impacted. The view is partially obstructed by existing dwellings.





Photo 1 & 2: Existing views from No.46 The Serpentine to the south-east over the subject site

No. 50 The Serpentine

The views from 50 The Serpentine that are the concern are to the south-west of the property and include views of the ocean, Bilgola Beach, South Bilgola Headland, Bungan Headland and land and water interface. The view is partially obstructed by existing vegetation.



Photo 3 & 4: Existing views from No.50 The Serpentine to the south-west over the subject site

No. 52 The Serpentine

The views from 52 The Serpentine that are the concern are to the south-west of the property and include views of the ocean, Bilgola Beach, South Bilgola Headland, Bungan Headland and land and water interface. The view is partially obstructed by existing vegetation and dwelling houses.



Photo 4 & 5: Existing views from No.52 The Serpentine to the south-west over the subject site

No.31 The Serpentine

The views from 31 The Serpentine that are the concern are to the south-east of the property and include views of the ocean, land and water interface and surf break area of Bilgola Beach. The view is partially obstructed by existing vegetation, existing dwellings and power infrastructure.

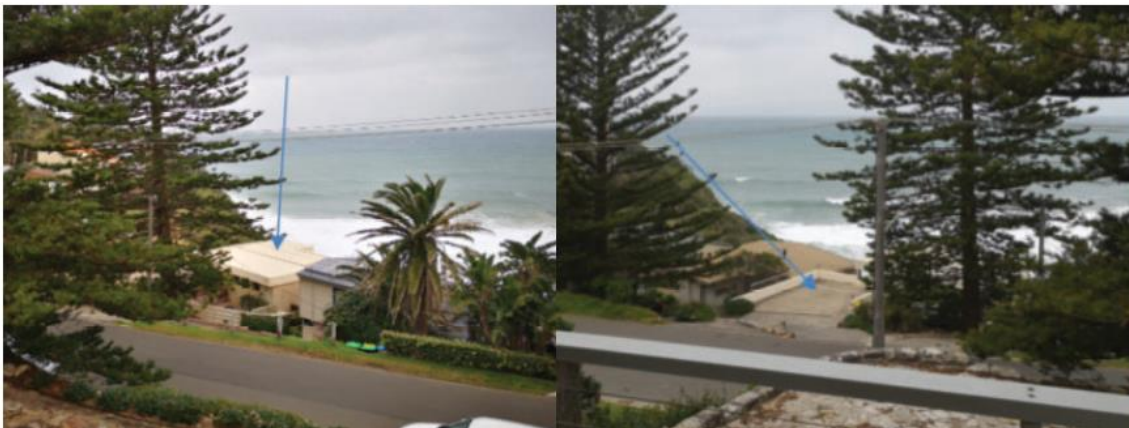


Photo 6 & 7: Existing views from No.31 The Serpentine to the south-east over the subject site

No. 31C The Serpentine

The view from 31C The Serpentine that are the concern are to the south-west of the property and include views of the ocean, and surf break area of Bilgola Beach. The view is partially obstructed by existing vegetation, existing dwellings and power infrastructure.



Photo 8 & 9: Existing views from No.31C The Serpentine to the south-west over the subject site

No. 31D The Serpentine

The view from 31D The Serpentine that are the concern are to the south of the property and include views of the ocean, and surf break area of Bilgola Beach. The view is partially obstructed by existing vegetation, existing dwellings and power infrastructure.



Photo 10 & 11: Existing views from No.31D The Serpentine to the south over the subject site

2. What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

No. 46 The Serpentine

Views are primarily obtained from the rooms orientated towards the rear of the dwelling. The view of the ocean and headland which is of concern is obtained from both a sitting and standing position and are over the eastern side boundary. The expansive ocean, beach and headland views to the south and south-west remain unaffected by the proposal.

The views of key concern are obtained from the primary living area, kitchen and open terrace located at ground floor level at the rear of the dwelling.

It should also be noted that this property has approval for the demolition of the existing dwelling and erection of a new dwelling (Ref: N0894/99) which was approved through the Land and Environment Court in 2002. This approval obtained a Construction Certificate and Notice of Commencement in 2007. Given the works have commenced, it appears as though this consent is still valid. If constructed, the proposed living and dining room and kitchen would extend substantially further to the south than what currently exists on site and the principle open space would be located far closer to the existing pool.

No. 50 The Serpentine

Views are primarily obtained from the rooms orientated towards the rear of the dwelling. The view of the ocean, beach and headland which is of concern is obtained from both a sitting and standing position and are over the western side boundary. The expansive ocean, beach and headland views to the south, south east and south-west remain unaffected by the proposal.

The views of key concern are obtained from the primary living area and rear open space located at ground floor level and the first floor bedroom located at the rear of the dwelling.

No. 52 The Serpentine

Views are primarily obtained from the rooms orientated towards the rear of the dwelling. The view of the ocean, beach and headland which is of concern is obtained from both a sitting and standing position and are over the western side boundary. The expansive ocean, beach and headland views to the south, south east and south-west remain unaffected by the proposal.

The views of key concern are obtained from the primary living area; rear ground floor balcony located off the living room and rear first floor balcony located off a bedroom.

No.31 The Serpentine

Views are primarily obtained from the rooms orientated towards the front of the dwelling. The view of the ocean, land and water interface and surf area which is of concern is obtained from both a sitting and standing position and are over the southern front boundary. The expansive ocean, beach and headland views to the south, south-east and south-west remain unaffected by the proposal.

The views of key concern are obtained from the first floor living room and kitchen; first floor balcony located off the living room; first floor bedroom and balcony located off this bedroom.

No. 31C The Serpentine

Views are primarily obtained from the rooms orientated towards the front of the dwelling. The view of the ocean and surf area which is of concern is obtained from both a sitting and standing position and are over the southern front boundary. The expansive ocean, beach and headland views to the south, south-east and south-west remain unaffected by the proposal.

The views of key concern are obtained from the ground floor bedroom and open space, and the first floor primary living area and balcony at the front of the dwelling.

No. 31D The Serpentine

Views are primarily obtained from the rooms orientated towards the front of the dwelling. The view of the ocean and surf area which is of concern is obtained from both a sitting and standing position and are over the southern front boundary. The expansive ocean, beach and headland views to the south, south-east and south-west remain unaffected by the proposal.

The views of key concern are obtained from the ground floor bedroom and the first balcony located off the primary living area.

3. Extent of impact

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

Comment to Principle 3:

No. 46 The Serpentine

The proposed extension to the dwelling would substantially obscure the view of North Bilgola Headland from the internal and external principle living areas of No.46 The Serpentine. This involves obscuring parts of the water and land interface and a small portion of the horizon. The view of North Bilgola Headland is already partially obstructed by the existing dwelling. Given the design and layout of 46 The

Serpentine, ocean and headland views including the interface between land and water are obtained from the majority of the internal and external principle living areas over the rear (southern) boundary and eastern and western side boundaries.

The extent of the impact is considered to be **moderate**.

No. 50 The Serpentine

As viewed from No.50 The Serpentine, the proposed extension would only increase the height and depth of the roof and upper "entry" level. The lower levels and balconies would not be altered on the north east elevation facing No.50. As such the proposed extension would not have an impact on existing views of the ocean, beach, or headlands enjoyed by primary living areas and open space of No.50. The extension of the upper "entry" level would result in a minor loss of headland views which is currently gained from the first floor bedroom and partially obstructed by the existing balcony. Given the design and layout of No.50, ocean, beach and headland views including the interface between land and water are obtained from the majority of the internal and external principle living areas over the rear (southern) boundary and eastern and western side boundaries.

The extent of the impact is considered to be **minor**.

No. 52 The Serpentine

As viewed from No.52 The Serpentine, the proposed extension would only increase the height and depth of the roof and upper level. The lower levels and balconies would not be altered on the north east elevation facing No.52. As such the proposed extension would not have an impact on existing views of the ocean, beach, or headlands enjoyed by primary living areas and private open space of No.52. Given the design and layout of No.52, ocean, beach and headland views including the interface between land and water are obtained from the majority of the internal and external principle living areas over the rear (southern) boundary and eastern and western side boundaries.

The extent of the impact is considered to be **negligible**.

No. 31 The Serpentine

The view impacts for No 31 The Serpentine are only marginally increased beyond the form of the existing dwelling on the site, with some minor loss of additional water; surf zone and land and water interface, when viewed directly over and past the proposed building. The expansive ocean, beach and headland views to the south, south-east and south-west remain unaffected by the proposal.

The extent of the impact is considered to be **minor**.

No. 31C The Serpentine

The view impacts for No 31C The Serpentine are only marginally increased beyond the form of the

existing dwelling on the site, with some minor loss of additional water and surf zone, when viewed directly over and past the proposed building. The expansive ocean, beach and headland views to the south, south-east and south-west remain unaffected by the proposal.

The extent of the impact is considered to be **minor**.

No. 31D The Serpentine

The view impacts for No 31D The Serpentine are only marginally increased beyond the form of the existing dwelling on the site, with some minor loss of additional water and surf zone, when viewed directly over and past the proposed building. The expansive ocean, beach and headland views to the south, south-east and south-west remain unaffected by the proposal.

The extent of the impact is considered to be **minor**.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

No. 46 The Serpentine

The portion of the proposed additions that would cause the greatest view loss impacts to No.46 would meet the stipulated 8.0m height requirement as well as the building envelope and side and rear setback controls. Given that the impact is considered moderate and that the view loss does not arise as a result of non-compliance, the view sharing outcome is assessed as reasonable.

The proposal is not considered to result in an unreasonable view loss for the neighbouring dwelling at No.46 The Serpentine and will satisfy the provisions of this clause.

No. 50 The Serpentine

It is noted that the south-eastern corner of the proposed living room on the upper "entry" level will be extended to the south by only 800mm, with the existing open balcony at that level, and the balcony and

bedroom to the Bedroom Level below being unchanged. It is recognised that the south-eastern extremity of the proposed roof will be up to 450mm above Council's 8.0m height control and well as outside the required building envelope. However, it is not considered that this element will result in any significant view loss.

The proposal is not considered to result in an unreasonable view loss for the neighbouring dwelling at No.50 The Serpentine and will satisfy the provisions of this clause.

No. 52 The Serpentine

The proposal is not considered to result in an unreasonable view loss for No.52 The Serpentine and will satisfy the provisions of this clause.

No. 31C The Serpentine

The view loss resulting from the proposal is predominantly as a result of the increased roof height and the proposed upper "entry" level rear addition on the south-west elevation. These areas of greatest view loss impacts would within meet the stipulated 8.0m height requirement as well as the building envelope and side and rear setback controls. The south-eastern extremity of the proposed roof which is above the Council's 8.0m height control is not considered to create any significant view loss impact given the location of the existing vegetation. The proposal has incorporated a low pitch skillion roof design to minimise the overall height and bulk and reduce view loss impacts.

The proposal is not considered to result in an unreasonable view loss for No.31C The Serpentine and will satisfy the provisions of this clause.

Nos. 31 and 31D The Serpentine

The view loss resulting from the proposal is predominantly a result of the increased roof height and the proposed garage addition.

It is recognised that the south eastern extremity of the proposed roof will be up to 450mm above Council's 8.0m height control and well as outside the required building envelope on the north-east elevation. However, as described elsewhere in this report, these breaches are a consequence of the site slope and the location of the existing development. Furthermore the proposal incorporates a low pitch skillion roof design to minimise the overall height and bulk. Overall, the alterations and addition to the dwelling would represent a minor increase to the existing built form as viewed Nos.31 and 31D.

It is recognised that the garage does not meet the required front setback or building envelope requirement. However, as described elsewhere in this report, the garage is considered to meet the objectives of these controls. The inclusion of a garage on site is not unreasonable, and the proposed location of the garage is the most logical and practical, considering the existing hardstand space, site topography and constraints. The height, width and bulk of the garage structure has been reduced from the original submitted plans and the design is considered acceptable.

The proposal is not considered to result in an unreasonable view loss for Nos.31 and 31D The Serpentine and will satisfy the provisions of this clause.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

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

1. Nature and Scope of Views

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

- *Any existing obstructions of the view;*
- *Composition of the view (e.g. is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);*
- *Are existing obstructions permanent or temporary;*
- *The curtilages of important elements within the view.*

Comment to Principle 1:

The existing views obtained from the public domain, in this case being The Serpentine, consists of filtered and unfiltered views to the south, south-east and south-west of the ocean, horizon and North Bilgola and South Bilgola Headlands. Existing obstructions to the views include dwellings and vegetation. The built obstructions are permanent in nature. The vegetation obstructions are large, well established Norfolk Island Pine trees on the Council Road Reserve. These are relatively permanent in nature as they are unlikely to be removed in the foreseeable future. The current views obtained from the road can be classified as static views. The change to the available outlook from the road will be permanent, assuming the application is approved and the proposal is maintained for the life of the development. See photographs and submitted perspectives below:



Photo 12: Existing views from The Serpentine approaching the subject site from the east.



Photo 13: Existing views from The Serpentine looking over the subject site from the north.





Photo 14 & 15: Existing views from The Serpentine approaching the subject site from the west.



Perspectives 1 & 2: Perspectives of view loss from The Serpentine as a result of the proposed development (supplied by applicant)

2. Locations of View Interruptions

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

Comment to Principle 2:

The affected view is available from the road and road reserve of The Serpentine. The Serpentine does not contain any formal footpath. It is noted The Serpentine is not classified as a major road, thus traffic frequency is not considered to be significant.

3. Extent of Obstructions

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

Comment to Principle 3:

The location where views are obtained are limited to the roadway. Views are currently obtained from a seated position in a car travelling along The Serpentine; or from a standing position on the street. The proposed development will obstruct views to the ocean, but the ocean horizon is expected to be retained. When travelling from the west, the proposed development is expected to obstruct a portion of North Bilgola Headland over the roof of No.50 The Serpentine. The proposal is not expected to impact views of South Bilgola Headland. The views of the ocean and headlands are filtered by existing vegetation when approaching the site from the east or the west.

4. Intensity of the use of the Relevant Public Spaces

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

Comment to Principle 4:

The Serpentine is a secondary road, used to gain access to the residential properties along the road, and to access Bilgola Beach. The street does not contain any formal pedestrian footpath. The nature of the street does not encourage people to stop and gather and views are maintained over and between other properties along the street.

5. Documentation of the View

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

Comment to Principle 5:

The Serpentine is identified as part of Council's Scenic Streets Register, which states (of the whole road):

The Serpentine; at Bilgola Beach, has beautiful coastal views from almost everywhere along its entirety and forms part of the Bicentennial Coastal Walkway. It showcases the coastline to daytrippers, holiday makers and residents, offering panoramic views of the Pacific Ocean, Avalon Beach and Bilgola Beach as well as the wider coastline. In contrast to the remnant subtropical vegetation of Bilgola Valley, most of the length of The Serpentine on the northern and southern headlands is characterised by low coastal heathland and cultural plantings of Norfolk Island Pines. These are of a similar age to those planted in the valley during the 1920s and 1930s. Other cultural plantings include three Californian Redwoods (Sequoia sp.) near the access road to The Serpentine from the Marist Brother's retreat. The seedlings were brought back from America in 1966 by Fred Thom, the grandson of Sir Henry Parkes. Bilgola North Headland is popular for watching migrating whales and stargazing with regular viewings by various astronomy groups. The common theme of no formal road verges helps the casual feel of the road, in such a dramatic natural setting, it feels a little more special."

Overall Comment

The view loss from the public domain is predominantly caused by the proposed garage structure. The height, width and bulk of the garage structure has been reduced from the original submitted plans. Additionally, where possible, transparent building materials have been used, in accordance with Clause C1.3 View Sharing of the P21 DCP. The inclusion of a garage on site is not unreasonable, and the proposed location of the garage is the most logical and practical, considering the existing hardstand space, site topography and constraints. The garage structure is non-compliant with the front building line.

To shift the garage south in an attempt to reduce view loss would likely not result in a significant improvement, and would require a significant redesign. It should also be noted that numerous other properties along the lower side of The Serpentine feature double garages within the front setback. To approve the proposed development would not be setting a precedent, as the proposal is consistent with the existing character of the locality. Although it is recognised that this portion of the Serpentine is frequently used by cars and cyclists, it should also be noted that draft community consultation plan indicates that the Newport - Avalon Pedestrian Link is not proposed on this section of The Serpentine as it is proposed to be located to the south of the subject site along the headland reserve.

It is therefore considered a reasonable development. The value of the view from The Serpentine is reasonably retained in that views to ocean and surrounding headlands are still available from the public domain.

- *Canopy trees take priority over views. (En, S)*

The proposed development does not unreasonably impact upon trees. The valuable Norfolk Island Pine on the boundary adjoining the front boundary is retained.

C1.4 Solar Access

Description of Non-Compliance

The property to the south-west at No. 46 The Serpentine is most affected by the proposed development in relation to solar access. At No. 46 The Serpentine, the main private open space is located to the south of the dwelling. The submitted shadow diagrams demonstrate that at No. 46 The Serpentine:

- The private open space area currently receives a small portion of sunlight at various points between 9am and 3pm.
- The south facing (rear) windows are always in self-shadow due to its orientation.
- The east facing (side) windows are partially overshadowed at 9am only.
- The north facing (front) windows and adjoining clothes line are not overshadowed.

The subject site and adjacent sites are in self-shadow in the afternoon due to the steep topography of the land. Furthermore, these sites are additionally overshadowed due to the location of two large Norfolk Island Pine Trees located directly to the north of the sites (at a higher topography). The 'Access to Sunlight' Planning Principle from the Land and Environment Court case known as *Benevolent Society v Waverley Council [2010] NSWLEC 1082* specifies that overshadowing by vegetation should be ignored. Therefore, in calculating the additional shadowing impact of the development, the shadowing impact of these trees has been excluded.

The proposed development results in:

- A minor increase to overshadowing to the private open space area of No. 46 The Serpentine at 9am and midday;
- A negligible increase to overshadowing of the east facing (side) windows at 9am only;
- A minor increase to overshadowing of the north facing (front) windows and clothes line at 9am only. There would be no more overshadowing to this north facing façade after 10.30am.

It should be noted that the swimming pool at No. 46 The Serpentine receives a minimum of 3 hours sunlight between 9am and 3pm. It is also of note that No. 46 The Serpentine has approval for the demolition of the existing dwelling and erection of a new dwelling (ref: N0894/99) which was approved through the Land and Environment Court in 2002. This approval obtained a Construction Certificate and Notice of Commencement in 2007. Given the works have commenced, this dwelling is technically currently under construction. When fully constructed, the proposed living room, dining room and kitchen would extend substantially further to the south that what currently exists on site and the principle open space would be located far closer to the existing pool.

Given the aspect of the development, the proposal would only result in an increase in overshadowing to first floor west facing (side) window of No.50 The Serpentine at 3pm. The proposal would not result in additional overshadowing to the Private Open Space of No 50 The Serpentine.

The subject site has a slope of approximately 33%, which is considered a steep and adverse slope. Where there is adverse slope or topography, reasonable solar access to main private open space and to windows to principal living areas will be assessed on a merit basis. Subject to that merit assessment, consent may be granted where a proposal does not comply with the standard, provided the resulting development is consistent with the general principles of the development control, the desired future character of the locality and any relevant State Environmental Planning Policy. The proposal is consistent with the desired future character of the locality for the reasons detailed in the section of this report relating to A4.3 Bilgola Locality of the Pittwater 21 DCP 2014. The State Environmental Planning Policies relevant to this application are addressed throughout this report. The proposed development is acceptable in relation to the relevant outcomes of this clause of the P21 DCP, as follows:

Residential development is sited and designed to maximise solar access during mid-winter. (En)

The proposed additions would be situated atop of the existing footprint of the dwelling. The location of these additions is considered reasonable and appropriate given the siting of the existing building and constraints of the site. The proposal would maintain significant setback from the southern (rear) boundary and would maintain compliant side setbacks with the exception of a portion of the replacement roof on the eastern elevation which would maintain the setback of the existing dwelling.

The proposal incorporates a low pitched skillion roof to minimise the overall bulk of the development. The minor breach in height to the south-eastern extremity of the proposal is not considered to result in unreasonable overshadowing impact. The proposed development is acceptable in relation to the relevant built form controls within the P21 DCP, for the reasons detailed throughout this report. In this way, the proposed development is reasonable in its context. Overall the proposal represents a modest increase to the existing built form which is sited and designed to provide reasonable solar access in consideration of the topography of the site and surrounding areas.

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)

The proposal provides a reasonable level of solar access to the subject site and surrounding sites, considering the site's slope and context. The level of overshadowing resulting from the proposed development is a product of the steep topography of the site and the surrounding land. In this way, overshadowing impacts on the property to the south-west are inherently exacerbated compared to flat land. The property to the south-west is particularly vulnerable to overshadowing. To require strict adherence to the solar access requirements in this case would unreasonably restrict development of the subject site. The proposed development demonstrates it is acceptable in relation to the objectives of all built form controls, for the reasons detailed in this report. As such, given the reasonableness of the proposed additions, the overshadowing impact is considered reasonable.

Reduce usage and/dependence for artificial lighting. (En)

The subject site achieves adequate solar access in order to reduce its reliance upon artificial lighting. As above, the proposal provides a reasonable level of solar access to the subject site and surrounding sites, given the context of the area's topography and the vulnerability of the site's to the south-west.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

C1.5 Visual Privacy

Description of Non-compliance

Clause C1.5 of the P21DCP stipulates that private open space areas of adjoining properties are to be protected from direct overlooking within 9.0m by building layout, landscaping, screening devices or greater spatial separation. The proposed development contains elevated balconies and side facing windows that are setback approximately 3.5m from the south-western side boundary of No.46 The Serpentine. It is of note that the development proposes to extend existing balconies on similar setbacks.

Furthermore, the proposal contains side facing windows in the north-eastern elevation, 1.2m from the north-western boundary of No.50 The Serpentine. The proposal does not seek to extend the existing elevated balconies located adjacent to the boundary of No.50 The Serpentine.

Merit Assessment

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

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*

Comment:

No.46 The Serpentine

The proposal seeks to extend existing elevated balconies adjacent to the south-western side boundary of No.46 The Serpentine. A submission was submitted by the occupant of No.46 The Serpentine. The submission raises concern of the potential privacy impacts that may arise as a consequence of the proposed development. In response to this concern, a site visit was undertaken at No.46 The Serpentine to ascertain the potential privacy impacts. It is noted that the area of concern contains private open space within the rear yard of the property, comprising a terrace and a swimming pool area. Photo 16 depicts the subject site (No.48 The Serpentine) when viewed from the rear private open space of No.46 The Serpentine.



Photo 16 - View from the rear private open space of No.46 The Serpentine looking towards the subject site

Bedroom Level Balcony

The proposed extension to the bedroom level balcony represents a continuation of an existing arrangement and would place the balcony further to the south and away from the principle private open space of No.46 The Serpentine. Furthermore, the topography of the site means that private open space of No.46 The Serpentine is elevated higher than this proposed balcony. The provided landscape plan also denotes the provision of additional landscape treatment, particularly along the south-western side boundary which will assist in the mitigation of overlooking opportunities. In turn, no additional privacy measures are recommended for this proposed balcony.

Entry (Upper) Level Balcony

The Privacy Planning Principle established by the NSW Land and Environment Court in *Meriton v Sydney City Council [2004] NSWLEC 313 at 45-46* stipulates that overlooking from living areas is more objectionable than overlooking from rooms where people tend to spend less time (i.e. bedrooms). Considering this proposed balcony adjoins living spaces and are likely to be regularly used by the occupants of the site, the proposal cannot be supported in its current form, as it would allow for downward overlooking into the adjoining private open space at No.46 The Serpentine.

To mitigate the privacy impacts, a suitable condition has been included within this consent requiring the balcony to incorporate balustrading of solid, non-transparent material or opaque glazing measured at a height of at least 1.0m above the finished floor level on the south-western elevation. The solid balustrade will prevent downward overlooking when in a sitting position and when standing back from the edge of the decks. Under these circumstances, the privacy impacts are considered to be reasonable within a residential environment.

Side Facing Windows

Privacy screening is proposed on the living room and bedroom side facing windows on the south-western elevation facing No.46 The Serpentine to mitigate privacy impacts. However, no details of this

screening has been submitted with the application. It is therefore recommended a condition be imposed in order to maintain privacy between the occupants of each property for these windows to install privacy screens of horizontal louvre style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or that the glass is to be fitted with obscured glazing.

The south-western elevation also contains a en-suite window (WB07). A condition of consent has been imposed which requires such window to be finished in obscured glazing to ensure loss of privacy is adequately minimised.

Pool and Terrace Area

The landscape plan denotes the provision of additional landscape treatment, particularly along the south-western side boundary which will assist in the mitigation of overlooking opportunities to the pool and terrace area.

Subject to recommended conditions, the privacy impacts are considered to be reasonable within a residential environment.

Nos. 50 and 52 The Serpentine

A submission was submitted by the occupants of Nos. 50 and 52 The Serpentine. These submissions raised concern of the potential privacy impacts that may arise as a consequence of the proposed development.

Balconies

The proposal does not seek to extend the existing balconies adjacent to Nos.50 and 52 The Serpentine. As this is an existing arrangement, no additional privacy measures are recommended.

Side Facing Windows

Screening is proposed on one of the living room side facing windows in the north-eastern elevation facing No.50 The Serpentine to mitigate privacy impacts. However, no details of this screening has been submitted with the application. It is therefore recommended that a condition be imposed in order to maintain privacy between the occupants of each property for these windows to install privacy screens of horizontal louvre style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.

The north-eastern elevation also contains windows to the stairwell (WE05 & WE06), bedroom level bathroom (WB02) and entry level toilet (WE04). A condition of consent has been imposed which requires these windows to be fitted with obscured glazing to ensure loss of privacy is adequately minimised.

Pool and Terrace Area

The landscape plan denotes the provision of additional landscape treatment along the north-eastern side of the proposed terrace areas which will assist in the mitigation of overlooking opportunities towards No.50 The Serpentine. This is considered acceptable.

Subject to recommended conditions, the privacy impacts are considered to be reasonable within a residential environment.

- *A sense of territory and safety is provided for residents.*

Comment:

The proposed development is considered capable of providing a sense of territory and safety for

residents on the subject site and adjoining properties.

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

D3.1 Character as viewed from a public place

Description of Non-Compliance

The proposed garage with a setback between 0.7m and 2.8m from the front boundary, is inconsistent with the specific requirements of this clause, which prescribe that parking structures must not be the dominant site feature when viewed from a public place, and should be located behind the building line, preferably setback further than the primary building.

It should be noted that the location of this garage is a result of the site's topography, existing site constraints and access gradients that limit the siting opportunities of such structure. Furthermore, the siting of the garage structure is consistent with a permitted variation prescribed by the front building line development control, which allows parking forward of the front building line on steeply sloping sites.

Merit Consideration

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

- *To achieve the desired future character of the Locality.*

Comment:

The proposed garage is reasonably sited within the context of the site, as well as that of the streetscape. The garage will provide for two (2) compliant on-site parking spaces, which is consistent with surrounding development and satisfies the desired character of the locality.

- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment.*

Comment:

The proposed garage is appropriately sited atop of the existing hardstand space such that site disturbance is minimised and the visual outcome of the development will remain consistent and comparable with that of other properties along the lower side of The Serpentine. The garage has been designed to minimise bulk and scale and where possible, transparent building materials have been used to facilitate an open design. Further, no significant vegetation removal is required to facilitate the works, therefore the development is considered to respond to, reinforce and sensitively relate to the spatial characteristics of the existing built and natural environment

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

Comment:

The garage has been designed with a low pitch skillion roof to minimise height, bulk and scale. The height and scale of the garage would be in keeping with that of other properties along the lower side of The Serpentine.

- *The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation.*

Comment:

The proposal does not require any significant vegetation to be removed as part of the application. The location of the garage atop an existing hardstand space would limit the need to remove vegetation that may be required for a compliant development.

- *High quality buildings designed and built for the natural context and any natural hazards.*

Comment:

The garage has been designed to minimise bulk and scale and where possible, transparent building materials have been used to facilitate an open design. The proposed development will be conditioned to meet all relevant Australian Standards and BCA requirements. It is therefore anticipated the works to be high quality and built for the natural context and any natural hazards.

- *Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum.*

Comment:

The development will appear as one storey as viewed from the street, due to the steep cross fall of the site away from the frontage. The slope of the site means that the garage would be below average eye level when viewed from the street and would appear "human scale".

- *To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.*

Comment:

This matter has been addressed elsewhere in this report (refer to Clause C1.3 View Sharing under Pittwater Development Control Plan). In summary, the assessment of this application has found that the development achieves consistency with the planning principles outlined within the Land and Environment Court Case of *'Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor (2013) NSW LEC 1046'* and the extent of qualitative impact upon view sharing is considered to be moderate and the proposal is reasonable in this instance.

- *To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.*

Comment:

As above, the proposal does not require any significant vegetation to be removed as part of the application. The location of the garage atop an existing hardstand space would limit the need to remove vegetation that may be required for a compliant development. Landscaping is proposed to be enhanced to assist in the softening of the built form.

- *To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land.*

Comment:

As discussed elsewhere in this report (refer to Clause C1.3 View sharing), the proposal will proportionately hinder the availability of ocean views from the streetscape.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D3.6 Front building line**Description of Non-Compliance**

The proposed development is inconsistent with the 6.5m minimum front building line prescribed by this development control, with the proposed garage setback at a distance of between 0.7m and 2.8m from the front boundary.

Pittwater 21 DCP contains a variation clause which reads as follows:

- *Where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable*

The site is considered to be steep at an average gradient of 33% across the site. This is considered to warrant consideration of a reduced or nil setback for the garage to enable a parking area that is safe and practical for the resident. It should be noted that the garage is proposed to be sited atop of the existing hardstand space which would minimise the need/extent of disturbance on the environmentally sensitive site.

The presentation of the proposed garage is consistent with other garages along this particularly steep stretch of The Serpentine. As detailed earlier within this report under Clause D3.1 *Character as viewed from a public place*, the proposal is considered to meet the desired character of the streetscape through use of appropriate building materials, low scale roof and the enhancement of landscaping to assist in the softening of the built form. The siting of the proposed garage is supported on merit, as the proposal is compatible with the character of The Serpentine, would not facilitate additional site disturbance/removal of additional vegetation, and will not detract from consistency with the outcomes of this development control.

D3.7 Side and rear building line**Description of Non-compliance**

The proposed swimming pool and associated pool coping is set back a minimum of 2.2m from the western side boundary, failing to comply with the 2.5m requirement. The variation of this clause however states that *for swimming pools and spas a 1 meter minimum setback from the boundary to the pool coping may be permitted subject to the following*. The 'following' is listed below.

Merit Consideration

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

- *satisfactory landscaping within the setback from the pool or spa coping to the side or rear boundary, and*

Comment:

Sufficient landscaping and screen planting is proposed between the pool coping and western side boundary.

- *Council is satisfied that the adjoining properties will not be adversely affected, and*

Comment:

The proposed landscaping would provide a privacy and noise buffer between adjoining neighbours while also enhancing the bushland character of the area. The proposed swimming pool's setback is consistent with that of adjoining and surrounding development and therefore provides spatial separation in keeping with the character of the area. Given these factors, it is not considered that the setback will have an adverse or unreasonable impact on adjoining properties.

- *the pool or spa is not more than 1 metre above ground level (existing), and*

Comment:

The swimming pool is predominantly in-ground and less than 1.0m above existing ground level. Given the topography of the land, the proposed pool would be well below the ground level of the adjoining neighbour to the south-west (No.46 The Serpentine).

- *that the outcomes of this clause are achieved without strict adherence to the standards, and*

Comment:

The proposed in-ground swimming pool is consistent with swimming pool development in the surrounding locality. The bulk and scale of the pool will not have an adverse or unreasonable visual impact as it is located predominantly in-ground and will be visually enclosed with existing and proposed landscaping. The in-ground nature of the pool would also ensure there are no impacts on views. It is considered that the development has been appropriately located within the rear yard, as it will retain the existing character of the streetscape and result in minimal amenity impacts to adjoining neighbours. Furthermore, the location ensures that there will be no impact on existing vegetation of significance. It is therefore considered that the outcomes of this clause are achieved without strict adherence to the standards.

- *where the site constraints make strict adherence to the setback impractical, and*

Comment:

The 0.3m variation to the side setback for the pool coping is considered acceptable and a practical response to the existing site.

- *where strict compliance with these requirements will adversely impact on the views of adjoining residential properties.*

Comment:

As the proposed swimming pool is predominantly in-ground, there will be not impact on the views of adjoining residential properties.

Having regard to the above assessment, it is concluded that the proposed development satisfies the variation and is consistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that

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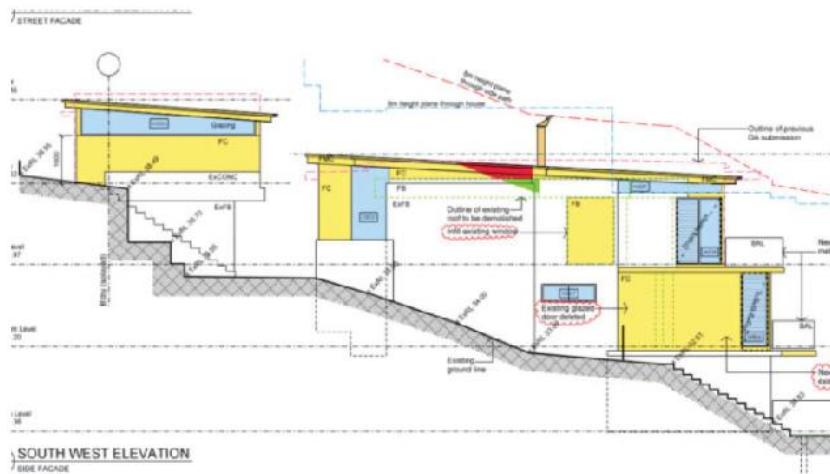


Figure 4: Additional envelope breach on the south-western elevation shown in pink, existing envelope breach shown in green

Merit Consideration

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

- *To achieve the desired future character of the locality.*

Comment:

The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development in the locality and generally in keeping with the desired future character of the locality. This is further discussed in the section of this report relating to A4.3 Bilgola Locality of the Pittwater 21 DCP.

- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

Comment:

The proposed garage has been designed to minimise height, bulk and scale. The height and scale of the garage would be in keeping with that of other properties along the lower side of The Serpentine. The proposed dwelling would be generally consistent with the form of the existing dwelling when viewed from The Serpentine. The proposal includes adequate landscaping in order to screen the built form of the proposed development when viewed from Bilgola Beach. The proposed development is generally set below the height of the trees adjoining the site and in the locality. It is considered that the bulk and scale of the proposal would not be out of character with the existing streetscape and wider locale.

- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*

Comment:

The proposed garage is appropriately sited atop of the existing hardstand space such that site

disturbance is minimised and the visual outcome of the development will remain consistent and comparable with that of other properties along the lower side of The Serpentine. Similarly, the dwelling additions are situated within the footprint of the existing building. Further, no significant vegetation removal is required to facilitate the works, therefore the development is considered to respond to, reinforce and sensitively relate to the spatial characteristics of the existing built and natural environment.

- *The bulk and scale of the built form is minimised.*

Comment:

Whilst a minor portion of the development exceeds the height control of 8.0m, it is noted the vast majority of the built form will remain within the 8.0m maximum height. Further, the development will appear as single storey when viewed from the street due to the steep cross fall of the site away from the frontage, and the bulk and scale of the development would not appear inconsistent with existing development along The Serpentine. The slope of the site means that the garage and dwelling would be below average eye level when viewed from the street and would appear "human scale".

The proposal incorporates a low pitched skillion roof and appropriate use of materials and finishes in order to minimise the overall bulk of the development. Furthermore, the proposal includes adequate landscaping in order to screen the built form of the proposed development. Given the level of compliance with the side setbacks and only a minor breach to the height control, the development will not appear out of place within the street or from surrounding public places.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment:

As detailed elsewhere within this report (refer to Clause C1.5 Visual privacy and C1.4 Solar access), a reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

The application is supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D3.11 Landscaped Area - Environmentally Sensitive Land

Description of Non-compliance

The control requires a minimum of 60% (429.9m²) of the site area to be landscaped. The site area is 716.5m²

The application proposes a total landscaped area of 41.13% (293.8m²), representing a variation of 31.45%.

Provided the outcomes of this control are achieved, impervious areas less than 1.0m in width and impervious areas used for outdoor recreational purposes (only up to 6% of site area) can be included in the landscaped area calculation. The inclusion of this variation to the landscaped area increases the calculation to 361.4m² or 50.4% of site area.

It should be noted that the reduction in landscaped area is primarily a result of the proposed pool and terrace area. The proposed garage and additions to the dwelling would be over existing built upon footprints.

Merit Consideration

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

Achieve the desired future character of the Locality.

Comment

As discussed in the section of this report relating to A4.3 Bilgola Locality of the Pittwater 21 DCP 2014, the proposal is consistent with the desired future character of the locality.

The bulk and scale of the built form is minimised.

Comment

As detailed elsewhere within this report (refer to Clause D3.9 Building envelope and D3.7 Side and rear building line), the proposal achieves an appropriate level of bulk and scale. The proposal will provide sufficient landscape buffers, which will assist in visually breaking down the built form. Overall, it is considered that the proposal's design reasonably mitigates the visual impact of the built form.

A reasonable level of amenity and solar access is provided and maintained.

Comment

As detailed elsewhere within this report (refer to Clause C1.5 Visual privacy and C1.4 Solar access), a reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings.

Vegetation is retained and enhanced to visually reduce the built form.

Comment

The development does not require the removal of significant vegetation. The existing and proposed landscape treatments on site are sufficient and ensure the site is not dominated by the built form.

Conservation of natural vegetation and biodiversity.

Comment

No native vegetation or wildlife species will adversely be affected by the proposed works.

Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.

Comment

The proposal has been reviewed by Council's Development Engineer, having regard to provisions for stormwater management and has raised no objections subject to conditions included in the recommendation of this report. It is considered the site contains a reasonable amount of pervious surface which will contribute to the prevention of soil erosion and siltation of natural drainage channels.

To preserve and enhance the rural and bushland character of the area.

Comment

The bushland character of the area will be maintained as no significant vegetation is required to be removed as a result of the proposed development. Proposed landscaping will assist in enhancing bushland character of the area.

Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.

Comment

Sufficient pervious surfacing is provided on-site which will enable the infiltration of water to the water table, whilst minimising run-off and assisting with stormwater management.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, subject to conditions, in this particular circumstance.

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 \$7,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$750,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

The assessment of the proposal against the provisions of Pittwater 21 DCP has found that the proposed development does not strictly comply with the requirements of the applicable controls related to the Bilgola locality, character as viewed from a public place, landscaped area, building envelope, front and side building lines, visual privacy and solar access.

It is considered that these non-compliances would not result in unreasonable amenity impacts to surrounding properties or result in a development that is out of character with the style and scale of surrounding newer development in the immediate area.

Sixteen (16) submissions were received in response to the notification of the application. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report. A number of these concerns initially raised within the submissions were concurred with by Council's assessment of the application, and amended plans were subsequently received to revise the design of the proposal. Nine (9) submissions were received in response to the notification of the amended design.

A number of concerns raised in the submissions are concurred with by Council's assessment of the application, particularly those relating to impacts upon privacy levels, however, conditions have been applied to address these concerns. The assessment of the amended scheme reveals the resident's issues do not warrant the refusal or further amendment of the application.

On the balance, although the proposed development is non-compliant with a number of planning controls, it is considered that many of these are a consequence of the context of the site and the existing built form. Overall, it is considered that the proposed alterations and additions represent a relatively modest increase to the existing built form. The proposed works do not include significant site disturbance or environmental impact to facilitate additional floor area as the proposed additions are largely sited upon the existing building footprint.

Subject to the recommended conditions of consent, it is considered that the amended design of the proposal would result in a development that displays reasonable scale and density compatible with the surrounding development of The Serpentine and would not result in unreasonable amenity impacts to surrounding properties.

Accordingly, the application is referred to the NBLPP with a recommendation for approval.

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

RECOMMENDATION

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/0318 for Alterations and additions to a dwelling house including swimming pool on land at Lot 102 DP 16393, 48 The Serpentine, BILGOLA BEACH, 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
1811/01 Issue.C1 (Site Plan)	22/07/20	Bawtree Design
1811/02 Issue.C1 (Garage Level)	22/07/20	Bawtree Design
1811/03 Issue.C1 (Entry Level)	22/07/20	Bawtree Design
1811/04 Issue.C1 (Bedroom Level)	22/07/20	Bawtree Design
1811/05 Issue.C1 (Garden Level)	22/07/20	Bawtree Design
1811/07 Issue.C1 (Elevations)	22/07/20	Bawtree Design
1811/08 Issue.D1 (Elevations)	22/07/20	Bawtree Design
1811/09 Issue.E (Sections)	14/07/20	Bawtree Design
1811/10 Issue.C (Garage Elevation & Section)	10/06/20	Bawtree Design
Schedule of External Materials and Finishes	June 2020	Bawtree Design

Engineering Plans		
Drawing No.	Dated	Prepared By
11638-C1.00 Rev.C (Stormwater Management Plan)	01/03/2020	Waddington Consulting Pty Ltd.
11638-C1.01 Rev.C (Stormwater Management Details)	01/03/2020	Waddington Consulting Pty Ltd.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (A359190)	18/03/2020	Bawtree Design
Traffic Engineer Report	04/09/2020	TRAFFIX
Stormwater/Vehicular Crossing Report	25/10/2019	Waddington Consulting

(11638 – L2)		Pty Ltd.
Fireplace Specifications	July 2015	Oblica
Geotechnical Report/Coastal Bluff Management Report Issue.1 (2019-065.1)	11/06/2020	Crozier Geotechnical Consultants

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L-01 Issue.E (Site Plans)	11/06/2020	Sitedesign+Studios
L-02 Issue.E (Entry Level)	11/06/2020	Sitedesign+Studios
L-03 Issue.E (Bedroom Level)	11/06/2020	Sitedesign+Studios
L-04 Issue.E (Lower Ground Floor)	11/06/2020	Sitedesign+Studios
L-05 Issue.E (Section A)	11/06/2020	Sitedesign+Studios
L-06 Issue.E (Planting Details)	11/06/2020	Sitedesign+Studios
L-07 Issue.E (Notes)	11/06/2020	Sitedesign+Studios
L-08 Issue.E (Specification)	11/06/2020	Sitedesign+Studios
1811/19 Issue.A (Erosion & Sediment Control Plan)	12/03/2020	Bawtree Design

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	16/03/2019	Vaughan Milligan 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. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	24/04/2020

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house.

A dwelling house is defined as:

"dwelling house means a building containing only one dwelling."

(development is defined by the Pittwater Local Environment Plan 2014 (as amended) Dictionary)

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

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

4. **Prescribed conditions (Demolition):**

(a) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

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

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

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

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

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

(c) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

being excavated or on the adjoining allotment of land.

Reason: Legislative Requirement.

5. **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.

6. **General requirements (Demolition):**

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- o 8.00 am to 5.00 pm Monday to Friday only.

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

(b) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

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

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

7. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

8. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$7,500.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$750,000.00.

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

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

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

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

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

9. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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).

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

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

10. **Stormwater Disposal**

The applicant is to dispose stormwater in accordance with Northern Beaches Council's Pittwater 21 DCP 2014 Clause B5.10. Details by an appropriately qualified and practicing Civil Engineer demonstrating compliance with Council's DCP and the recommendations of the Geotechnical Report by Crozier Geotechnical Consultants dated 4 June 2019, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated 11 June 2020 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Traffic Management and Control**

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

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

13. **Amendments to the approved plans**

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

- **"Entry Level" Balcony** - The upper "entry level" balcony is to incorporate solid balustrading on the south-western elevation constructed of non-transparent material or opaque glazing measured at a height of at least 1.0m above the finished floor level.
- **"Entry Level" Window (WE08)** - Privacy screens are to be installed on the "entry level" south-western window (labelled WE08) adjoining the Living Room as shown on the approved plans. The privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.
- **"Entry Level" Window (WE07)** - Privacy screens are to be installed on the "entry level" north-eastern window (labelled WE07) adjoining the Living Room as shown on the approved plans. The privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.
- **"Bedroom Level" Window (WB06)** - Privacy screens are to be installed on the "bedroom level" south-western window (labelled WB06) adjoining Bedroom 01 as shown on the approved plans. The privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.
- **"Bedroom Level" Window (WB07)** - The "bedroom level", south-western window (labelled WB07) adjoining en-suite 01 shall be fitted with obscured glazing.
- **"Bedroom Level" Window (WB02)** - The "bedroom level", north-eastern window (labelled

- WB02) adjoining the bathroom shall be fitted with obscured glazing.
- **"Entry Level" Window (DE02)** - The "entry level", south-western window (labelled DE02) adjoining the entry walkway shall be fitted with obscured glazing.
- **"Entry Level" Windows (WE06; WE05 & WE04)** - The "entry level", north-eastern windows (labelled (WE06; WE05 & WE04) adjoining the WC and stairwell shall be fitted with obscured glazing.
- **"Bedroom Level" Door (DB01)** - The "bedroom level", north-eastern door (labelled DB01) adjoining the laundry shall be of solid construction, or obscured glazing.
- **Pool Fencing** - The pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the south-western boundary (adjoining No.46 The Serpentine).

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.

14. **Boundary Identification Survey**

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

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

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

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

15. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

16. **Tree Protection Plan**

Prominent existing Norfolk Island Pines of significance exist within the road verge,. A Tree Protection Plan is required to illustrate how the existing trees will be protected during construction works, requiring tree protection fencing to exclude access and storage within the tree protection zone, and potential damage to the trunk and branches during deliveries in close

proximity to the development site.

a) A Tree Protection Plan shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures to protect the following trees:

i) Norfolk Island Pines within the road verge fronting No. 46 and No. 50.

b) The Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture, incorporating the following:

- i) layout of the development, including existing and proposed underground services,
- ii) location of all trees identified for retention, including extent of canopy,
- iii) access routes for construction deliveries and activity,
- iv) location of tree protection fencing / barriers,
- v) root protection in the form of mulching or boards proposed within the tree protection zone,
- vi) trunk and branch protection within the tree protection zone,
- vii) location of stockpile areas and materials storage that shall be excluded from the tree protection zone,
- viii) Inspection hold points,
- ix) other general tree protection measures.

c) Tree protection methods are to be in accordance with AS4970-2009 Protection of Trees on Development Sites

Reason: tree protection.

17. **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:

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

18. **Coastal Bluff Engineering Assessment Implementation**

The advice and recommendations contained in the approved Geotechnical Risk Management Report (Revised) prepared by Crozier Geotechnical Consultants dated June 2020 in support of the development application and must be incorporated as required into construction plans and structural specifications for the development.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are

minimised

19. **Coastal Bluff Engineering Assessment Implementation**

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

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

20. **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

21. **Landscaping**

A minimum 60% (by number of plants) of the landscaping for this development must be local native species as per the species list of the Pittwater Ward, as per the Native Plant Guide on Council's website. No Grevillea or Banksia hybrids are to be used in the landscaping for this development. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Biodiversity conservation and management

22. **Design Impact on Coastal Processes and Public/Private Amenity**

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

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

23. **Compliance with standards (Demolition):**

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

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

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

24. **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.

25. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

26. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

Erosion and sedimentation prevention measures must be installed on all sites to prevent the migration of sediment off the site into any waterway, drainage systems, public reserves, road reserve or adjoining private lands.

Erosion and sedimentation prevention measures must be installed in accordance with Managing Urban Stormwater: Soils and Construction (Landcom 2004) on the downstream side of any works undertaken on the boundary of the site or on public lands adjoining the site to prevent the migration of sediment off the site into any waterway, drainage systems, public reserves, road reserve or adjoining private lands.

Appropriate devices are to be in place at all times to prevent the migration of sediment off the site.

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

28. **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) and the Erosion and Sediment Control Plan prepared by Bawtree Design prior to commencement of any other works on site.

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

mesh or matting.

The discharge of sediment-laden waters from the site may result in clean-up orders and/or fines under Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

Reason: Protection of the receiving environment

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

30. **Road Reserve**

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

Reason: Public safety.

31. **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.

32. **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.

33. **Survey Certificate**

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

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

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

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

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

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

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

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

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

35. **Traffic Control During Works**

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

Reason: Public Safety.

36. **Tree and vegetation protection**

- a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.
- xi) the tree protection measures specified in this clause must:
 - i) be in place before work commences on the site, and
 - ii) be maintained in good condition during the construction period, and
 - iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: tree and vegetation protection.

37. **Geotechnical Issues**

All conditions outlined in Geotechnical Site Investigations (Revised) report prepared by Crozier Geotechnical Consultants dated June 2020 are to be complied with and adhered to throughout development.

Reason: To ensure excavation, foundations, footings, etc. are undertaken in an appropriate manner and structurally sound.

38. **Native Vegetation Protection**

Guards or fences are to be provided around native vegetation as identified/ nominated on the approved plans. The guards or fences are to be installed prior to the commencement of any work on the site. No works, including utility installations (eg water, sewer, telephone, drainage), are to be undertaken within 4 metres of the trunk of any such trees. The tree guards shall be a minimum 1200mm high at least four (4) metres from the base of the nominated tree/s and constructed from timber posts and rails or posts and suitable plywood panels.

Reason: To protect and retain trees/the natural environment proposed for retention.

39. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC). Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

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

40. **Landscape completion**

Landscaping is to be implemented in accordance with the approved Landscape Plans L-01 to L-08 inclusive, prepared by Site Design + Studios, inclusive of the following conditions:

- i) tree planting shall be installed at 75 litre container size, located within a 9m² deep soil area and be located a minimum of 5 metres from existing and proposed buildings, and at least 3 metres from other trees,
- ii) tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.

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

Reason: environmental amenity.

41. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, and in particular the existing Norfolk Island Pines street trees within the road verge fronting No. 46 and No. 50 The Serpentine, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during

- excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: tree protection.

42. **Stormwater Disposal**

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

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

43. **Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

44. **Installation of solid/fuel burning heaters**

Installation work must be carried out by an appropriately experienced and qualified person in accordance with the relevant provisions of AS2918:2001 – Domestic Solid Fuel Burning Appliances – Installation

Reason: To ensure the installation is completed in a legislatively compliant manner.

45. **Certification of solid fuel burning heaters**

A certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, manufacturer specifications and requirements, is to be submitted to Council prior to the operation of the solid fuel heater.

Reason: To ensure the system operates in a legislatively compliant manner.

46. **Tree Planting**

At least two locally native canopy trees are to be planted onsite to replace trees approved for removal. Canopy tree species are to be as per the approved Landscape Plan, consistent with locally native species growing onsite and/or selected from the list pertaining to the vegetation community growing in the locality as per the vegetation mapping and native gardening booklet available on the Northern Beaches Council website. All native trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: Tree replacement.

47. **Acoustic Treatment of Pool Filter**

The pool filter is to be acoustically treated so that it does not emit any noise louder than 5dB (A) above background noise at the nearest residential receiver. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure the acoustic amenity of the neighbouring residents.

48. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

(h) Refer also to Condition 13 "Pool Fencing - The pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the south-western boundary (adjoining No.46 The Serpentine).

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

Reason: To protect human life (DACPLF09)

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

49. **Maintenance of solid fuel heaters**

The owner/occupier shall ensure the heater is maintained and serviced according to the manufacturer's specifications.

Reason: To ensure that works do not interfere with reasonable amenity expectations of

residents and the community.

50. **Operation of solid fuel burning heaters**

You must take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures should include:

- Using dry seasoned hardwood
- Storing wood in a dry well ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke

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

51. **Landscape maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: to maintain local environmental amenity.

52. **Control of Weeds**

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

Reason: Weed management.

53. **No Planting Environmental Weeds**

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

Reason: Weed management.

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

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

Reason: To protect Aboriginal Heritage.

55. **Dead or Injured Wildlife**

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

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

LEGEND	
	Items to be demolished
	Existing walls
	New roof extension
	New dwelling extension (enclosed)
	New balcony / terrace / pool extension
	New facade extension / alterations
	New or adjusted glazed openings
	Extent of previous DA submission
MATERIALS	
Ex	Existing
Ext	Existing
BAL	HDC steel 10 x 40mm flat balusters with 12 x 75mm posts & rail
CONC	Off form concrete
FB	Face brickwork
FC	9mm fibre cement sheet with v jointing on 18mm cavity battens over RFL sarking on timber frame
FMC	4mm composite alum. folded cladding sarking on timber framing
ST	Stone cladding
	F: finished paint
	F: honed



1 SITE PLAN

2 BASIS

3 CALCULATIONS

PROD. C/T	12/07/20	Approved DA issue - Windows - floor numbers added
A	15/08/20	Approved DA issue
B	27/09/20	Consent issued
C	11/03/21	DA issue
DATE	12/07/20	DA issue

DA ISSUE

PROJ. C/T	12/07/20	Approved DA issue - Windows - floor numbers added
A	15/08/20	Approved DA issue
B	27/09/20	Consent issued
C	11/03/21	DA issue
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DA ISSUE	
PROJ. C/T	12/07/20
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B	27/09/20
C	11/03/21
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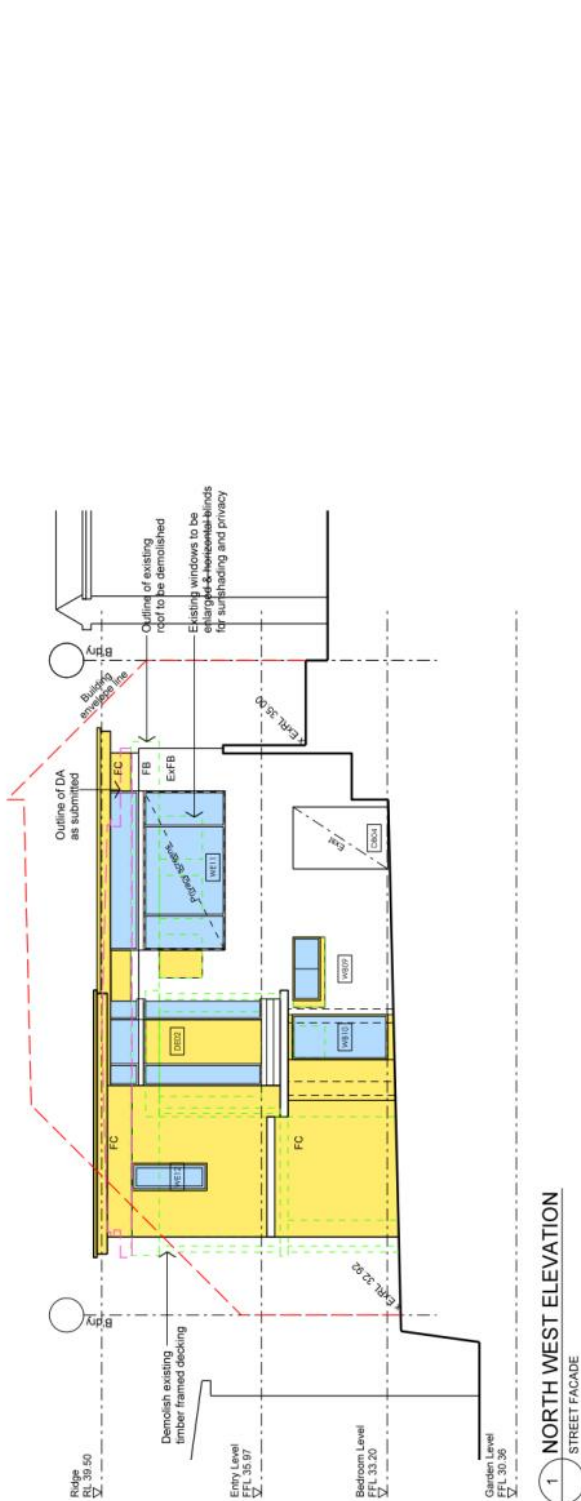
DA ISSUE	
PROJ. C/T	12/07/20
A	15/08/20
B	27/09/20
C	11/03/21
DATE	12/07/20

DA ISSUE	
PROJ. C/T	12/07/20
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DA ISSUE	
PROJ. C/T	12/07/20
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	Items to be demolished
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	Extent of previous DA submission
MATERIALS	
Ex	Existing
Exst	Existing
BAL	HDC steel 10 x 40mm flat balusters with 12 x 75mm posts & rail
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FMC	4mm composite alum. folded cladding sarking on timber framing
ST	Stone cladding
	F: finished paint
	F: honed

CT	12/07/20	Approved DA issue - When - later numbers added
C	15/08/20	Approved DA issue
B	27/08/20	Consent issue
A	11/09/20	DA issue
STP/10		
DA ISSUE		
Alterations & additions to existing dwelling, 10/10/2020		
ELEVATIONS		
Bawtree Design		
Architect & interior design		
10/10/2020		
7/7/20 Australia Street Cammerdown NSW 2050		
T: 02 9525 8226 B: 02 9525 2251 E: info@bawtree.com.au		
BY THE DESIGNER TO BE USED IN CONJUNCTION WITH THE SITE PLAN AND ELEVATIONS AND DRAWINGS. ANY USE OF THIS DRAWING WITHOUT THE DESIGNER'S PERMISSION IS STRICTLY PROHIBITED.		
SHEET	SCALE	DRAWING NO.
A3	1:100	1811/07
		C1





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**APPENDIX:
CLAUSE 4.6 – BUILDING HEIGHT**

Vaughan Milligan Development Consulting Pty Ltd

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

48 THE SERPENTINE, BILGOLA BEACH

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT
CONTROL AS DETAILED IN CLAUSE 4.3 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014**

**FOR CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING
INCLUDING A NEW DOUBLE GARAGE**

For: For proposed construction of alterations and additions to an existing dwelling
including new double garage
At: 48 The Serpentine, Bilgola Beach
Owner: Ben & Lucy Feek
Applicant: Ben & Lucy Feek
C/- Vaughan Milligan Development Consulting

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

Pittwater LEP 2014 – Clause 4.3 prescribes a maximum building height for the subject site of 8m in this portion of Bilgola Beach. This control is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The south-eastern extremity of the proposed low pitch skillion roof which has been included in the revised design will provide a height of 8.45m above natural ground level which exceeds Council's maximum building height by 0.450m or 5.6% and therefore does not comply with this control.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is clause 4.3 of PLEP 2014 a development standard?

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act includes:

"(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work."

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- (b) Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard.

3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

Clause 4.6(1) of PLEP provides:

(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.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [1], [4] & [51]* where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better

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environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP provides:

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

Clause 4.3 (the Maximum Height Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of PLEP provides:

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

The proposed development does not comply with the maximum building height control development standard pursuant to clause 4.3 of PLEP which specifies a maximum building height of 8m in this area of Bilgola Beach. The additions to the existing dwelling will result in a maximum building height of 8.45m or exceed the height control by 0.45m or 5.6%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

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

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

(5) *In deciding whether to grant concurrence, the Secretary must consider:*

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

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of PLEP from the operation of clause 4.6.

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The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the E4 Environmental Living Zone, which are noted as:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The proposal will provide for the construction of alterations and additions to provide for increased amenity for the site's occupants.

The non-compliance with the height control to the south-eastern extremity of the roof over the upper floor terrace arises as a result of the extent of the existing development in the site's sloping towards the south-east.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes to match existing dwelling, in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum building height control, the new works will provide attractive alterations and additions to a residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed alterations and additions will not see any adverse impacts on the views enjoyed by neighbouring properties.

The works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in The Serpentine and the wider public view of the site, together with from the surrounding private properties, will be largely maintained.

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5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum building height standard contained in clause 4.3 of PLEP.
- 5.2 Clause 4.3 of PLEP specifies a maximum building height of 8m, in this area of Bilgola Beach.
- 5.3 The proposed additions and alterations to the existing dwelling will have a maximum height of 8.45m, which exceeds the height control by 0.45m or 5.6%.

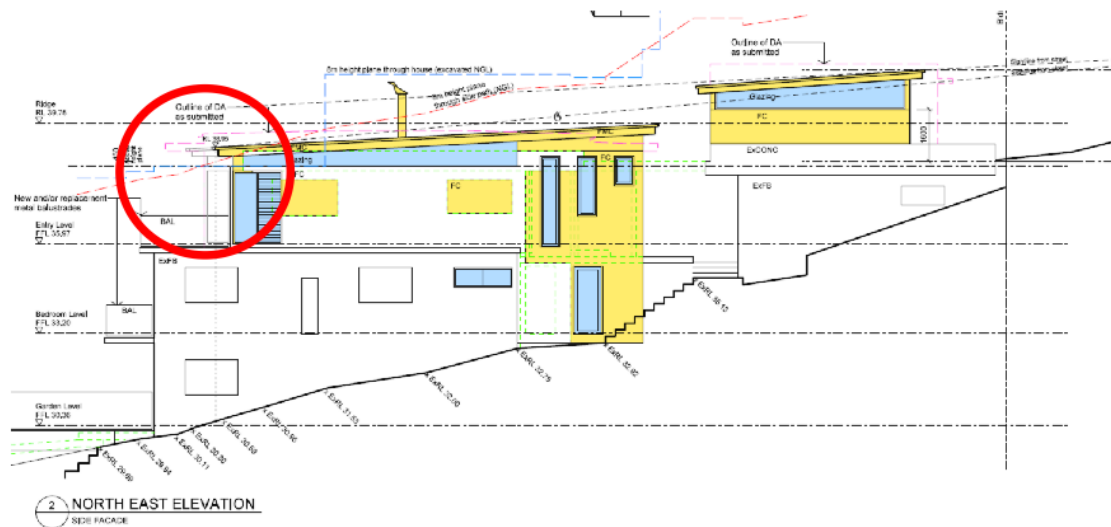


Fig 16: View of roof area breaching maximum building height control

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6.0 Relevant Caselaw

6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant*

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can demonstrate that compliance is unreasonable or unnecessary in more than one way.

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of PLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the E4 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of PLEP?

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7.0. Request for Variation

7.1 Is clause 4.3 of PLEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:

“(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work.”

- (b) Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard.

7.2 Is compliance with clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development.

The surrounding area is predominantly characterised by two and three storey development.

The proposal seeks to accommodate the new additions within a compatible building form, with the slope of the site towards the rear resulting in a portion of the roof being up to 8.45m in height.

The external form of the development follows the sloping topography of the site, which assists with minimising the visual bulk of the development.

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

The proposed height of the new works to the dwelling maintain consistency with the siting of surrounding development. The proposed roof height at the south eastern elevation of the dwelling is RL 38.95m and RL 39.75 at the northern elevation of the roof, which is only slightly above the ridgeline of the adjoining dwelling at No. 50 The Serpentine (RL 38.16m), and below the ridge height of the adjoining dwelling at No. 46 The Serpentine (RL 40.48m).

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(c) to minimise any overshadowing of neighbouring properties,

The proposal is accompanied by Shadow Diagrams (Drawing No. 1811/16a-16c & 1811/17a-17c) which demonstrate that the proposal will see any unreasonable diminution of the existing solar access currently received by No. 46 The Serpentine.

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

Due the steeply sloping topography of the site, whereby uphill properties are substantially elevated above the subject site, the proposal is not considered to result in any unreasonable view impacts on uphill properties.

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

Due to the sloping topography of the site, the proposal will present as a modest single storey development to The Serpentine.

The proposal has been designed to follow the sloping topography of the site, and is considered to be effectively integrated into the landform.

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

The proposal provides for the construction of alterations and additions to an existing dwelling in a manner which will retain the single dwelling character of the site and the immediate area.

Due to the sloping topography of the site, the proposal will present as a modest single storey development to The Serpentine.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and the wider Pittwater area.

This objective is achieved in that the proposal will not require any significant further site disturbance or excavation, with minimal alteration to the natural ground levels and through the retention of a generous landscaped area, will maintain the balance between landscaping and built form.

The proposal will not require the removal of any significant vegetation, and is therefore not considered to result in any adverse visual impact within the locality.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

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7.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

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

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council*

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[2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

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

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed additions will maintain the general bulk and scale of the existing surrounding newer dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of The Serpentine which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new works which retain the existing building, are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).
- The alterations and in particular the and in particular the inclusion of a low profile pitched hip roof form over the new floor area with the rear terrace placed behind and below the retained portion of the development demonstrates good design and improves the amenity of the built environment by creating improved and functional living area and also maintains the amenity of the existing dwelling house and neighbours in terms of views by locating the new floor area level, where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in

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[141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the E4 Environmental Living Zone?

- (a) Section 4.2 of this written request suggests the 1st test in *Wehbe* is made good by the development.
- (b) Each of the objectives of the E4 Environmental Living Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that *"The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone"*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the modest breach of the maximum building height by 0.45m at the south-eastern extremity of the new low pitch skillion roof, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the E4 Environmental Living zone for the following reasons:

- **To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.**

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form of development within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

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The E4 Environmental Living Zone contemplates low density residential uses on the land within an area that has special ecological, scientific or aesthetic values.

The housing needs of the community are appropriately provided for in this instance through the proposed alterations and additions to an existing dwelling which will provide for an appropriate level of amenity and in a form, and respect the predominant bulk and scale of the surrounding dwellings.

The proposal provides for the construction of alterations and additions to an existing dwelling in a manner which will retain the single dwelling character of the site and the immediate area.

Due to the sloping topography of the site, the proposal will present as a modest single storey development to The Serpentine.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and the wider Pittwater area.

This objective is achieved in that the proposal will not require any significant further site disturbance or excavation, with minimal alteration to the natural ground levels and through the retention of a generous landscaped area, will maintain the balance between landscaping and built form.

The proposal will not require the removal of any significant vegetation.

The compatible form and scale of the alterations and additions will meet the housing needs of the community within a single dwelling house which is a permissible use in this environmentally sensitive zone.

- **To ensure that residential development does not have an adverse effect on those values.**

For the reasons outlined above, the proposal will not have any adverse impacts on the ecological, scientific or aesthetic values of the site.

- **To provide for residential development of a low density and scale integrated with the landform and landscape.**

Due to the sloping topography of the site, the proposal will present as a modest single storey development to The Serpentine.

The proposal has been designed to follow the sloping topography of the site, and is considered to be effectively integrated into the landform.

- **To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.**

The site is not within the immediate vicinity of any riparian or foreshore vegetation

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or wildlife corridors. The proposal will not see the removal of any significant vegetation, and stormwater from the site will be suitably managed to minimise the impact of runoff within the locality.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

7.5 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.6 Has the Council considered the matters in clause 4.6(5) of MLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

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7.0 Conclusion

This development proposes a departure from the maximum building height control, with the proposed alterations and additions to the existing building to provide for a height of up to 8.45m.

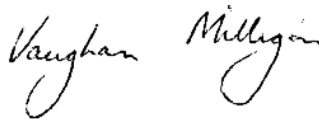
This variation occurs as a result of the sloping topography of the site and siting of existing development.

This objection to the maximum building height control specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.

In summary, the proposal satisfies all of the requirements of clause 4.6 of PLEP 2014 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner