

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

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

**TUESDAY 22 SEPTEMBER 2020**



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



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

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
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<b>3.0</b>	<b>DEVELOPMENT DETERMINATION PANEL REPORTS .....</b>	<b>5</b>
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## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 15 SEPTEMBER 2020**

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#### **RECOMMENDATION**

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

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### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	MOD2020/0290 - 26 WEST STREET, BALGOWLAH - MODIFICATION OF DEVELOPMENT CONSENT DA2019/1317 ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2020/549268
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Report - Clause 4.6

#### PURPOSE

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

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#### RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Mod2020/0290 for Modification of Development Consent DA2019/1317 Alterations and additions to a dwelling house on land at Lot 901 DP 546541, 26 West Street, Balgowlah, subject to the conditions outlined in the Assessment Report.



## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0290
<b>Responsible Officer:</b>	Ashley Warnest
<b>Land to be developed (Address):</b>	Lot 901 DP 546541, 26 West Street BALGOWLAH NSW 2093
<b>Proposed Development:</b>	Modification of Development Consent DA2019/1317 Alterations and additions to a dwelling house
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Gaenor Anne Meakes Mark Jonathon Richards
<b>Applicant:</b>	Kerrie Shimeld
<b>Application Lodged:</b>	07/07/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	15/07/2020 to 29/07/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 55.3%
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

The proposal involves the modification of development consent No. DA2019/1317 granted for alterations and additions to a existing dwelling house. The application specifically involves a new roof form over the approved rear extension and existing garage, alteration to the front and rear stairs, and various internal and external changes.

The modification does not increase the approved building height however, the new roof form will result in an increase in the wall height variation along the northern elevation. The modification application will result in a bulk and scale that is consistent with the previously approved dwelling house. The proposal has been designed to minimise any impact on views and does not result in any unreasonable impacts to adjoining or surrounding properties.



The application has also been assessed against the planning controls of the MDCP 2013, and whilst there are still minor variations to the setback controls, these have been found to be consistent with the objectives and requirements of the control. In this regard, the built form will provide appropriate separation and design to minimise amenity impact.

The assessment concludes that the proposed design is appropriate for the site and would not have any unreasonable impacts on access to sunlight or any other unreasonable amenity or visual impact.

Therefore, it is recommended that the variations to the planning controls be supported and the application be approved.

### **PROPOSED DEVELOPMENT IN DETAIL**

The application involves modifications to Development Consent No. DA2019/1317 which was granted for the alterations and additions to an existing dwelling house. The proposed works are as follows:

- New roof over existing garage
- New car hoist within the new garage roof form
- New roof form over previously approved rear extension
- Relocate front stairs
- Various internal layout changes
- New sliding door to south wall of lower living room
- Retain the existing rear timber stairs between the lower level and the rear yard

### **ASSESSMENT INTRODUCTION**

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

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

### **SUMMARY OF ASSESSMENT ISSUES**

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)



Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot 901 DP 546541 , 26 West Street BALGOWLAH NSW 2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the eastern side of West Street.</p> <p>The site is regular in shape with a frontage of 17.07m along West Street and a depth of 28.3m.</p> <p>The site has a surveyed area of 565.4m<sup>2</sup> and a slope of 66.1% that falls from the west to the east.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing elevated two storey rendered brick dwelling house.</p> <p>The rear of the site contains a variety of low lying shrubs and vegetation and several palm trees. The unmade road to the north of the site is heavily vegetated.</p> <p><u>Detailed Description of Adjoining/Surrounding Development</u></p> <p>Along the eastern side of West Street and adjoining and surrounding development is characterised by similar elevated two to three storey dwelling houses with the street presence of a single storey dwelling house.</p> <p>The western side of West Street is characterised by two to three storey residential dwelling houses.</p>

Map:







## **SITE HISTORY**

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- **Development Application - DA2019/1317**  
Alterations and additions to a dwelling house. Approved 24/03/2020.
- **Development Application - 179/11**  
Alterations and additions to the existing dwelling house. Approved 18/08/2011.

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

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/1317, in full, with amendments detailed and assessed as follows:

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

<b>Section 4.55 (2) - Other Modifications</b>	<b>Comments</b>
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/1317 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposal will not significantly alter the footprint of the previously approved structure</li> <li>• When viewed from the public</li> </ul>



Section 4.55 (2) - Other Modifications	Comments
	domain or from the neighbouring properties, the development will largely present the same visual impact and appearance to that originally approved
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2019/1317 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2013 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed

Section 4.15 'Matters for Consideration'	Comments
	development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the	The site is considered suitable for the proposed development.



Section 4.15 'Matters for Consideration'	Comments
development	
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this application.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/07/2020 to 29/07/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

### REFERRALS

No referrals were sent in relation to this application

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

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

#### SEPP 55 - Remediation of Land

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





### SEPP (Infrastructure) 2007

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

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

#### Comment

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

### Manly Local Environmental Plan 2013

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

#### Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	13.6m	13.2m	55.3%	No
Floor Space Ratio	0.45:1	0.43:1	Unchanged	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

#### Detailed Assessment



## Manly Development Control Plan

### Built Form Controls

Built Form Controls	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	N: 8.0m (based on gradient 1:1.2)	12.0m	12.3m	No
	S: 8.0m (based on gradient 1:1.1)	13.2m	12.6m	No
4.1.2.2 Number of Storeys	2	2	Unchanged	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.9m	Unchanged	Yes
	Pitch: maximum 35 degrees	26 degrees	Unchanged	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Consistent with prevailing setback	Unchanged	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 4.0m (based on wall height)	1.0m	Unchanged	No
	S: 4.4m (based on wall height)	1.0m	Unchanged	No
	Windows: 3.0m	1.0m	Unchanged	No
4.1.4.4 Rear Setbacks	8.0m	15.6m	Unchanged	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55%% of site area	62.1%	Unchanged	Yes
	Open space above ground 25% of total open space	10.7%	Unchanged	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	89.3%	Unchanged	Yes
	3 native trees	4 trees	Unchanged	Yes
4.1.5.3 Private Open Space	18m <sup>2</sup>	37.7m <sup>2</sup>	Unchanged	Yes
Schedule 3 Parking and Access	2 spaces	2 spaces	Unchanged	Yes

### Compliance Assessment

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

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

#### Detailed Assessment

##### **4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)**

The proposal does not comply with the wall height requirements along the northern and southern elevations. The proposal provides for a wall height of 12.3m along the northern elevation and 12.6m along the southern elevation, whereas the requirement is a maximum of 8.0m. The proposed modification of the roof form to a more simplified design results in the 30cm increase in the northern wall height. The wall height for the southern elevation is reduced from 13.2m to 12.6m which will provide for a minor reduction in the bulk and scale of the proposal.

The additional wall height along the northern elevation and the reduction in wall height along the southern elevation is considered to be reasonable and consistent with the previous approval and therefore is supported on merit.



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

No changes are proposed to the previously approved side setback arrangements.

#### **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**

Section 7.12 contributions were levied on the Development Application.

#### **CONCLUSION**

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

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

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

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

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

The proposal involves the modification of Development Consent No. DA2019/1317 for alterations and additions to an existing dwelling house. The application specifically involves a new roof form over the approved rear extension and existing garage, alteration to the front and rear stairs, and various internal



and external changes.

Whilst there is a further noncompliance with the wall height requirement under the MDCP 2013, the bulk and scale of the approved dwelling will not be significantly increased. The proposal is suitable for the site considering the manner in which it is designed on this significantly constrained site (steep slope) and the lack of unreasonable amenity or visual impact.

On balance, the proposal should be approved as the design is reasonable for the site and locality by virtue of the appropriate scale and separation from surrounding development, and on the basis that there will not be unreasonable amenity impacts.

Therefore, the variations to the planning controls should be supported and the application approved.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes the proper and orderly planning for the site or the locality. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

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

## **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0290 for Modification of Development Consent DA2019/1317 Alterations and additions to a dwelling house on land at Lot 901 DP 546541,26 West Street, BALGOWLAH, subject to the conditions printed below:

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

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

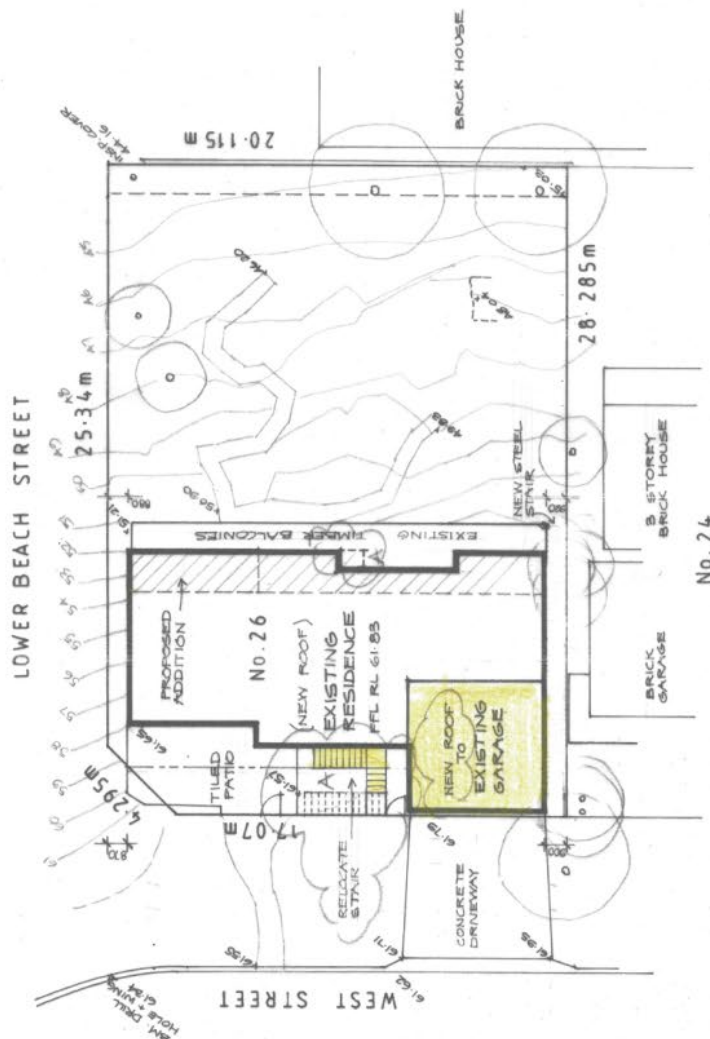
#### **a) Modification Approved Plans**

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DGW 1219 - 1/5 - Rev. A	13/05/2020	Shimdesign
DGW 1219 - 2/5 - Rev. B	01/07/2020	Shimdesign
DGW 1219 - 3/4 - Rev. B	01/07/2020	Shimdesign
DGW 1219 - 4/4 - Rev. B	01/07/2020	Shimdesign

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

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



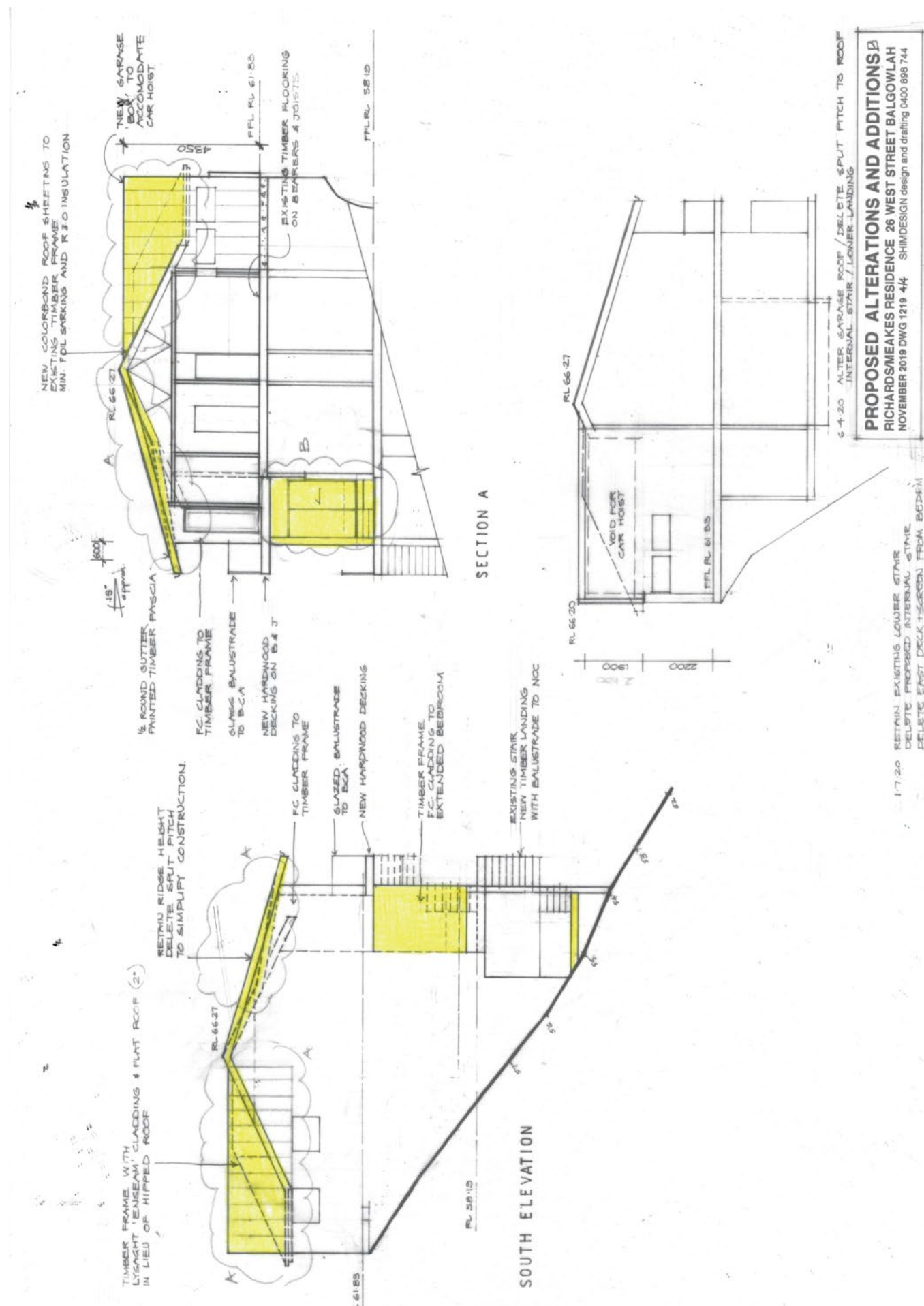


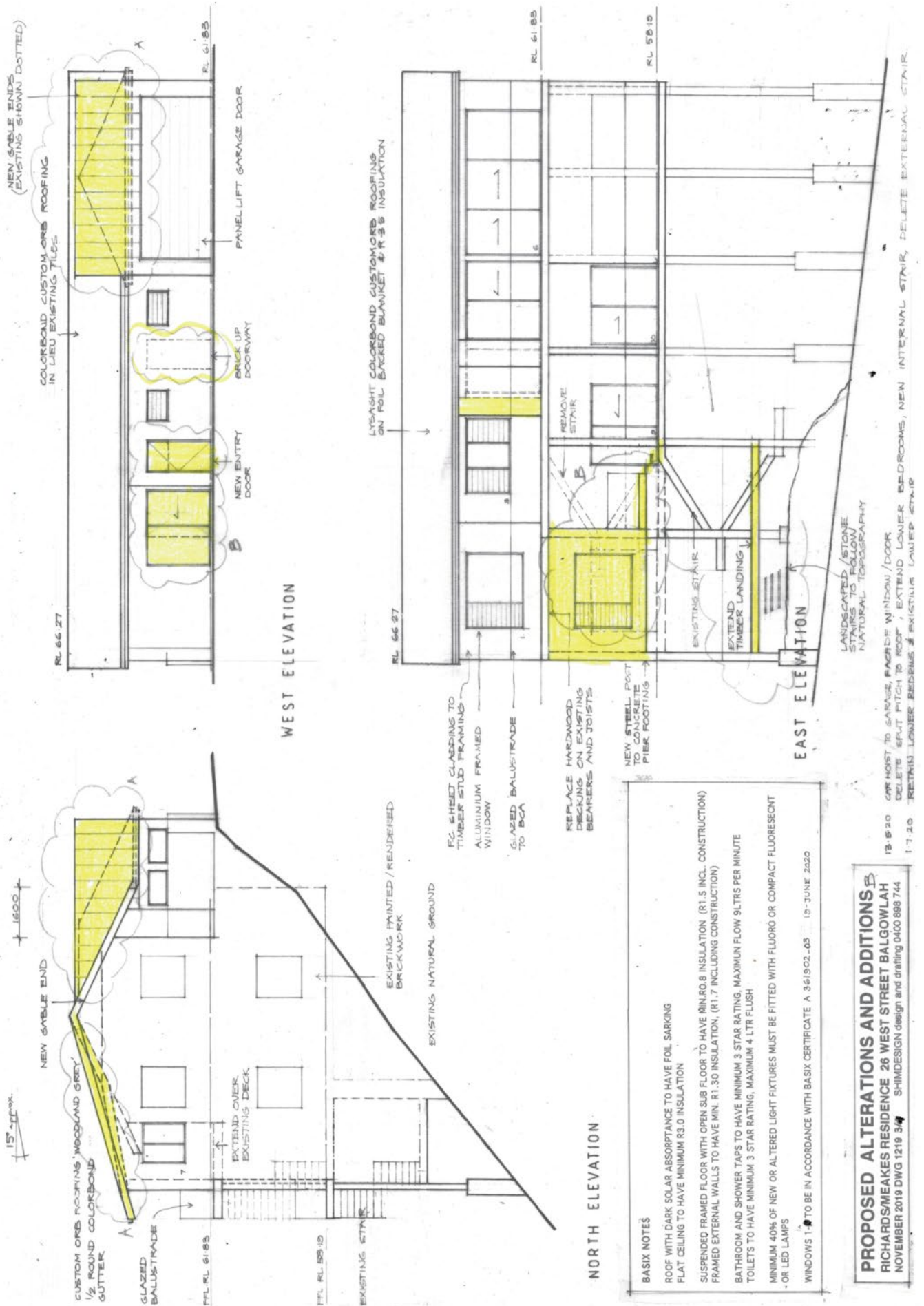
SITE PLAN 1:200  
LOT 901 DP 546541  
AREA 565.4 m

NOTES  
ALL DIMENSIONS SHOULD BE VERIFIED ON SITE BY THE BUILDER WHO WILL BE RESPONSIBLE FOR THE ACCURATE SETTING OUT OF THE JOB  
ALL CONSTRUCTION IS TO COMPLY WITH THE RELEVANT BUILDING CODES AND LOCAL COUNCIL REQUIREMENTS  
ALL DIMENSIONS THAT RELATE TO SITE BOUNDARIES AND EASEMENTS ARE SUBJECT TO VERIFICATION BY A SITE SURVEY  
ROOF WATER AND SUBSOIL DRAINAGE TO BE DISPOSED OF IN THE APPROVED MANNER OR AS DIRECTED  
DOWN PIPE LOCATION TO BE DETERMINED BY THE ROOF PLUMBER  
ELECTRICAL, POWER AND LIGHT OUTLETS TO BE DETERMINED BY THE OWNER  
STRUCTURAL DETAIL AND DESIGN TO BE APPROVED BY A STRUCTURAL ENGINEER  
ANY ADDITIONAL DETAILING SHALL BE RESOLVED BETWEEN THE OWNER AND THE BUILDER  
ALL LEVELS TO AUSTRALIAN HEIGHT DATUM

A 13.5.20 ALTER ROOF (EXISTING RIDGE HEIGHT MAX)  
ALTER 4 AND ACCESS STAIRS, EXTEND LOWER BEDROOMS A

**PROPOSED ALTERATIONS AND ADDITIONS**  
RICHARD S/MEAKES RESIDENCE 26 WEST STREET BALGOWLAH  
NOVEMBER 2019 DWG 1219 1/5 SHIMDESIGN design and drafting 0400 899 744









## SHIMDESIGN

51 careel head road avalon nsw 2107  
mob 0400 898 744  
email k2shimeld@gmail.com

15-06-2020

Dear Ashley

DA 2019/1317 26 West Street, Balgowlah

### REQUEST FOR VARIATION TO HEIGHT OF BUILDINGS DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF MANLY LEP2013

#### Clause 4.3 Building Height

Clause 4.3 of the Manly LEP 2013 and the associated map prescribe a maximum building height of 8.5m for this site. Due to the existing development and the topography of the site, the proposed new works will have a maximum height of approximately 13m.

The proposal is considered acceptable and meets the objectives of the clause, with sufficient environmental planning grounds to justify contravening the development standard.

Compliance is impossible and unnecessary in this case, as the proposal achieves the objectives of the clause.

The objectives of Clause 4.3 are as follows;

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

#### Clause 4.6 Exceptions to Development Standards



## SHIMDESIGN

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Clause 4.6 of the Manly Local Environmental Plan 2013 allows for exceptions to Development Standards. The objectives of this Clause 4.6 are;

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

The clause goes on to state:

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

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

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

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

*(4) 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.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the height of building development standard.

The NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the DP&I's Guide.

**Clause 4.6(3) and 4.6(4)**



## SHIMDESIGN

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The proposal is considered against the four matters required to be established under Clause 4.6.

### **1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:**

The most common way of establishing that compliance with a standard is unreasonable and unnecessary is to establish that the objectives of the standard are met, even though the standard is not complied with: see *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245.

This objection relies on this method.

Compliance with the objectives of the height standard is addressed under Point 4 below.

Additionally,

- Compliance with the development standard is unreasonable and unnecessary as the proposal will have limited impact on the streetscape.

- Exceedance of the height control will not create additional building bulk nor result in unreasonable environmental impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for the locality or adjoining properties.

- The proposal does not seek to increase the number of storeys nor raise the ridge or floor levels or existing approved building height, but merely extend a lower pitch of roof over the existing decking to provide additional space to the living, kitchen and bedroom.

- Compliance is unreasonable given the extremely steep natural topography and limited building platform of the site. The existing side and front setbacks and location of the established dwelling restrict development, expansion or renovation to any other dimension.

### **2. There are sufficient environmental planning grounds to allow Council to be satisfied that a variation to the development standard should be supported.**

- The proposal achieves the desired outcomes of the development standard in that the proposed height and roof form is consistent with the topographic landscape and prevailing building height. The proposal preserves the environmental and solar amenity of neighbouring properties and public views and access and is consistent with the height, bulk and scale of the desired future character of the locality with negligible impact to the streetscape or neighbouring properties.

- The development is constrained by the siting of the existing development and sloping topography of the site.

- The proposal promotes good sustainable design and enhances the amenity of the occupants and the immediate area, justifying the flexible application of the development standard.





## SHIMDESIGN

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**3. The applicants written request has adequately addressed the matters required to be demonstrated.**

**4. 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.**

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

Comment: The existing surrounding development comprises a mix of one, two and three storey detached residential dwellings on varied sized allotments. The proposed roof extension is over the existing decking and follows the slope of the land.

**Objective b)** *To control the bulk and scale of the building.*

Comment: The existing approved wall and roof heights lie outside the 8.5m limit.

**Objective c)** *To minimize disruption to the following – views to and from nearby residential development and public spaces and views between public spaces.*

Comment: The proposed height variation does not affect any neighbouring property or views or vistas to or from a public space. The neighbours to the high side of West Street have been approached and are happy that the ridge height shall not be altered and their ocean and harbour views shall not be affected. The neighbouring dwelling to the southern side is set forward of the proposed works. (Only the garage lies adjacent)

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

Comment: Solar access to the unformed Lower Beach Street and public pathway shall not be affected as it lies to the Northern boundary. There is a significant landscaped buffer to the pathway.

**Objective e)** *To ensure the height and bulk of any proposed structure has regard to existing vegetation and topography and any other aspect that may conflict with bushland.*

Comment: The proposed works do not result in any variation to the existing landscaped area or impervious area. The site is within a residential setting with significant bushland and indigenous landscaping to the lower eastern half of the site.

### Conclusion

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that strict compliance with the development standard would be unreasonable and unnecessary.



## SHIMDESIGN

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This proposal is consistent with the height standard and zone objectives and the lack of adverse impact arising demonstrates sufficient environmental planning grounds to justify contravening the standard and supporting the submission. Thus the development shall also be within the public interest.

Yours sincerely

Kerrie Shimeld  
For Mark Richards and Gaenor Meakes

A handwritten signature in black ink, appearing to read 'Kerrie Shimeld', written over the printed name.

### ITEM 3.2

**MOD2020/0311 - 977-979 BARRENJOEY ROAD, PALM BEACH -  
MODIFICATION OF DEVELOPMENT CONSENT DA2019/1400  
GRANTED FOR ALTERATIONS AND ADDITIONS TO A  
DWELLING HOUSE INCLUDING SWIMMING POOL**

## REPORTING MANAGER

## Tony Collier

**TRIM FILE REF**

**2020/549274**

## ATTACHMENTS

- 1 **Assessment Report**  
2 **Site Plan & Elevations**  
3 **Clause 4.6**

## PURPOSE

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

## RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Mod2020/0311 for Modification of Development Consent DA2019/1400 granted for alterations and additions to a dwelling house including swimming pool on land at Lot 1 DP 1260124, 977-979 Barrenjoey Road, Palm Beach, subject to the conditions outlined in the Assessment Report.



## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0311
<b>Responsible Officer:</b>	Nick Keeler
<b>Land to be developed (Address):</b>	Lot 1 DP 1260124, 977 - 979 Barrenjoey Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Modification of Development Consent DA2019/1400 granted for alterations and additions to a dwelling house including swimming pool
<b>Zoning:</b>	E4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Jodebal Pty Ltd
<b>Applicant:</b>	Deborah Balderstone
<b>Application Lodged:</b>	15/07/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	24/07/2020 to 07/08/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 42.1%
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

This application submitted to seek modification of development consent DA2019/1400 granted for alterations and additions to a dwelling house, including construction of a swimming pool is referred to the Development Determination Panel due to a breach of the building height development standard by over 10%.

The maximum height of the proposed development is 12.08m, representing a 42.1% (3.58m) breach of the 8.5m building height development standard. The proposed development remains generally compliant with the numeric controls Pittwater 21 Development Control Plan. The proposed modification is not likely to impact upon surrounding public domain. No trees or significant vegetation is required to be removed to facilitate the proposed modifications. As a result of the public exhibition of the application,



Council received no submissions.

The proposed modification also incorporates works within the road reserve. These works include the demolition of an existing stairway and construction of a new stairway, relocation of the bin storage area and associated landscaping, earthworks and fencing. Discussion between Council's Road Reserve and Development Engineering teams has occurred regarding the proposed works in the road reserve. Referral of the application to Transport for NSW for concurrence is not necessary in this instance as the works do not impact the road surface or kerb. Council's Road Reserve team has provided support to the construction of the new stairway, however the proposed bin storage area and associated works are not supported. This position has been incorporated into the recommended consent conditions.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

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

## PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify development consent DA2019/1400 granted for alterations and additions to a dwelling house, including construction of a swimming pool. The proposed modifications include the following:

### Front of site

- Relocate stairs from street frontage to more practical location
- Existing stairs to be demolished
- Relocate and reduce size of existing bin enclosure
- Addition of extensive native planting fronting the street
- Remove one of the existing gates in the front fence.

### Level 4

- Add chimney over "Lucy's Bedroom"
- Add Cover (roof) over entry area associated with relocated front stairs

### Level 3

- 750mm extension of stairwell to enable larger landings in internal stairwell.
- Storage area in "Lucy's bedroom" to become "desk".
- Additional west facing window adjacent to proposed desk.

### Level 2

- Modifications to kitchen layout
- Roof over the loggia extended to the edge of the balcony (height variation).
- Pool fence added to western edge of pool. (infinity edge deleted.)
- Relocate water tanks under the pool area





- Southern doors from Family Room changed from sliders to bi-fold.
- Pool stairs moved to corners.
- Cabana bathroom made smaller to allow for storage space and revised access to “access void”.

#### Level 1

- Excavation extended behind pool to allow for water tanks. (15,000 litres)
- Under pool storage areas reconfigured to allow for home offices x 2 and additional bunkroom/bathroom.
- Revised windows to bunkroom and study areas/ doors
- Area above proposed study to be used for pool equipment.
- Doors under pool area changed to cavity sliders and slightly widened.
- Walkway slightly widened to allow for a more freeform pathway to better blend into existing mature garden.

For the avoidance of doubt, the proposed fireplace will be conditioned as to prohibit the use of solid fuel or oil.

#### **AMENDED PLANS**

Amended plans were received on 27 July 2020 which reduced the size of the swimming pool to allow more planting around the pool area and to include a planter at the side of the deck to allow for screen planting.

The amendments were considered to be minor and did not require the re-notification of the application.

#### **ASSESSMENT INTRODUCTION**

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

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

#### **SUMMARY OF ASSESSMENT ISSUES**

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings



Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater 21 Development Control Plan - D12.5 Front building line  
Pittwater 21 Development Control Plan - D12.8 Building envelope  
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

#### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 1 DP 1260124 , 977 - 979 Barrenjoey Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Barrenjoey Road.</p> <p>The site is irregular in shape with a frontage of 35.655m along Barrenjoey Road and a depth of 31.09m. The site has a surveyed area of 1,233m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two-storey residential dwelling with an attached double carport at the front of the dwelling. A boatshed and two jetties are located along the waterfront.</p> <p>The site falls approx. 19m from the street frontage along the eastern boundary towards the waterfront along the western boundary. The average gradient of the site is 65.5%.</p> <p>The site contains a number of trees and shrubby vegetation along the side boundaries and in the street verge. A large flat grassed area is located at the rear of the property adjacent to the waterfront. A number of exposed rock outcrops are found throughout the site.</p> <p>The site is currently under construction pursuant to the approved development under DA2019/1400.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by low density residential dwellings with ancillary structures.</p>

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:

Application **N0419/09** for alterations and additions to the dwelling was approved on 11/03/2010 by Council staff under delegated authority.

Application **N0115/10** for demolition of the existing dwelling at 977 Barrenjoey road and additions to number 979, construction of a swimming pool, inclinator, boat shed and front fencing was approved on 17/06/2010 by Council staff under delegated authority.

Application **N0115/10/S96/1** for modification to roof, garage, boat shed, sea wall, windows and minor internal adjustments was approved on 08/12/2010 by Council staff under delegated authority.

Application **N0115/10/S96/2** for modification to partially delete the level 3 floor plate, introduce a pitched roof to the carport, reconfigure internal access core and extend the inclinator to the frontage of the property was approved on 08/04/2011 by Council staff under delegated authority.

Application **N0115/10/S96/3** for modification involving changes to decking and the window schedule was approved on 11/12/2012 by the former Pittwater Application Determination Panel.

Pre-lodgement Meeting **PLM2019/0234** was held on 12/11/2019 for Modification of Consent N0115/10 for Demolition of the existing dwelling at 977 Barrenjoey road and additions to number 979, construction of a swimming pool, inclinator, boat shed and front fencing.

Application **DA2019/1400** for alterations and additions to a dwelling house, including construction of a swimming pool was approved on 06/05/2020 by Council staff under delegated authority.

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





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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/1400, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/1400 for the following reasons:</p> <p>The proposed modifications do not fundamentally alter the approved built form.</p> <p>The increased building height is not expected to unreasonably increase the bulk and scale of the dwelling.</p> <p>Details of the proposed fireplace on the southern side of the dwelling have not been provided. The change from a gas fireplace to a wood fireplace is not supported and is to be removed by condition.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that	Development Application DA2019/1400 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
consent, and	
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environmental Plan 2014 and Pittwater 21 Development Control Plan.
(i) the regulations, if the regulations so require,	
or	
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

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

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



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

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the original application that included a certificate (prepared by The Fire Consultants, dated 30/11/2019) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. An amendment to this report has been provided (dated 04/09/2020) stating the proposed modifications conform to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/07/2020 to 07/08/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	It is noted that there are existing and proposed works within the Barrenjoey Road road reserve.  No objections to the proposed works in principle are raised, however advice should be sought from Roads Assets section regarding works in the road reserve.
NECC (Development Engineering)	No Development Engineering objection subject to replacing Condition "6" of DA2019/1400 with the recommended geotechnical condition and additional conditions.
Road Reserve	Road Reserve supports the proposed stairway, but does not support the proposed bin enclosure and associated retaining walls as this would privatise the use of Council's road reserve and result in additional permanent structures in the road reserve. It is noted that there is a bin enclosure space already available from an earlier approval.





Internal Referral Body	Comments
	This development consent does not provide approval of works within the Council road reserve and will require a separate approval under Section 138 of the Roads Act.

#### **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. A364115\_04, dated 08/07/2020). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

##### **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 development is not considered likely to negatively impact upon the matters raised above in subclause (1).

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
  - (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
  - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposed development has been designed, sited and will be managed to avoid an adverse impact referred to in subclause (1).

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

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



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

Comment:

The proposed development is not likely to cause an adverse impact on the matters referred to above.

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

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

Comment:

The proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

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

**Pittwater Local Environmental Plan 2014**

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m Subclause 2D - 10.0m	Dwelling - 7.9m Rear pergola - 10.0m Swimming pool fences - 9.6m	Dwelling - 7.9m Rear pergola - 12.08m Swimming pool fences - 10.2m	Nil 42.1% 20%	Yes No No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
7.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

#### Detailed Assessment

#### 4.3 Height of buildings

While the site is identified as having a maximum building height of 8.5m, subclause (2D) allows for development to exceed 8.5m, but not more than 10.0m if:

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and
- (b) the objectives of this clause are achieved, and
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

In this case, the original development was approved under the provisions of subclause (2D). The modification proposes to extend the length of the pergola above the rear deck. This results in the height of the pergola encroaching beyond the 10.0m limit permitted by subclause (2D).

As such, the 8.5m building height standard is applicable to this application.

#### 4.6 Exceptions to development standards

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the PLEP 2014, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the EP&A Act, which is a freestanding provision that in itself authorises the development to be approved, notwithstanding any breach of development standards.

Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a written request under Clause 4.6 in order to determine the modification application. Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications.

Nevertheless, due to the significant numerical breach of the development standard, a merit assessment of the variation in light of Clause 4.6 has been included in this assessment.

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	12.08m
Percentage variation to requirement:	42.1%



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:

While a written justification by the applicant is not strictly required as this is a modification application, the applicant has supplied one.

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:





*The proposed loggia roof extension is located to complement the existing dwelling siting and to avoid impacting upon the surrounding natural environment.*

*The height non-compliance proposed by development will not alter public views as it is hidden from street view and dwarfed by the upper level RLS when viewed from the waterway.*

*There will be no detrimental impact on private views with works being open and located to ensure neighbour's amenity is retained.*

*From no perspective will the structure present with excessive bulk.*

*The proposed structures will not result in any unreasonable overshadowing or privacy impacts to surrounding properties and will provide sun protection to the subject site.*

It is considered that the applicant has provided sufficient justification to vary the development standard.

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. 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 modification is generally consistent with the scale of the approved development. The non-compliant portion of the building will not be visually dominant due to its projection outwards from the building rather than upwards.

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

Comment:

The building is generally consistent with the height and scale of surrounding buildings and other nearby development.

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

Comment:

No additional overshadowing impacts will be caused by the proposal.

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

Comment:

No views are expected to be impacted by the proposal.

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

Comment:

While additional areas of excavation are proposed, these are not linked to the portion of the building that exceeds the building height. The building is considered to appropriately respond to the topography of the site.

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

Comment:

The proposed development is not expected to unreasonably impact upon the scenic qualities of the natural environment.

## Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

The proposed modification remains generally consistent with the approved development low



density residential dwelling and is unlikely to impact upon the ecological, scientific and aesthetic values of the locality.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

The proposed changes are not expected to unreasonably impact upon the ecological, scientific and aesthetic values of the locality.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:

The proposed modification remains appropriately integrated into the landform and landscape at a low density scale.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

The proposed development is not expected to cause unreasonable impact to the foreshore and riparian areas or wildlife corridors.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living 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. However, as applications made under Section 4.55 do not strictly rely on the development standard variation requirements of Clause 4.6 for determination, concurrence of the Secretary is not required for this application.

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	10.0m	0.6m	Unaltered	As approved
Rear building line	Foreshore building line	Behind foreshore building line	Unaltered	As approved
Side building line	N - 2.5m	>2.5m	Unaltered	As approved
	S - 1m	1.6m	Unaltered	As approved
Building envelope	N - 3.5m	Within envelope	Unaltered	As approved
	S - 3.5m	Outside envelope	Unaltered	As approved
Landscaped area	60% (739.8m <sup>2</sup> )	41% (505.4m <sup>2</sup> )	Unaltered	As approved



Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	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
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 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
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
areas		
D12.14 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **D12.5 Front building line**

The proposed modification does not alter the approved front building setback.

#### **D12.8 Building envelope**

The proposed modification does not alter the approved building envelope encroachment.

#### **D12.10 Landscaped Area - Environmentally Sensitive Land**

The proposed modification does not alter the approved amount of landscaped area.

#### **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**

Section 7.12 contributions were levied on the Development Application.

#### **CONCLUSION**

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects and all other documentation supporting the application and public submissions. In this regard, the application is considered to be acceptable and is recommended for approval, subject to conditions.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP 55, SEPP BASIX, SEPP Coastal Management, PLEP 2014, the relevant codes and policies of Council, and the relevant provisions of the P21DCP.

The application was referred to internal departments and external authorities. No issues have been identified within these referrals that cannot be addressed through relevant conditions of consent.

The application attracted no submissions.

Based on the assessment contained in this report, the proposed development subject to conditions addressing some of the issues raised is considered on balance, acceptable and it is recommended that the Development Determination Panel approve the application.

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

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0311 for Modification of Development Consent DA2019/1400 granted for alterations and additions to a dwelling house including swimming pool on land at Lot 1 DP 1260124,977 - 979 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

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

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

#### a) Modification Approved Plans



<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A01 Issue S455	20/08/2020	The EC Workshop
A02 Issue S455	20/08/2020	The EC Workshop
A03 Issue S455	20/08/2020	The EC Workshop
A04 Issue S455	20/08/2020	The EC Workshop
A05 Issue S455	20/08/2020	The EC Workshop
A06 Issue S455	20/08/2020	The EC Workshop
A06A Issue S455	20/08/2020	The EC Workshop
A06B Issue S455	20/08/2020	The EC Workshop
A07 Issue S455	20/08/2020	The EC Workshop
A08 Issue S455	20/08/2020	The EC Workshop
A10 Issue S455	20/08/2020	The EC Workshop
A10A Issue S455	20/08/2020	The EC Workshop
A11 Issue S455	20/08/2020	The EC Workshop
A11A Issue S455	20/08/2020	The EC Workshop
A15 Issue S455	20/08/2020	The EC Workshop

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate No. A364115_04	08/07/2020	Certified Energy
Bush Fire Hazard Assessment Report	04/09/2020	The Fire Consultants
Geotechnical Assessment (Ref: AG 19206)	07/07/2020	Ascent Geotechnical Consulting

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

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

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Native Planting to Street Front - All Sheets	Undated	Unnamed

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.

**B. Add Condition No 1B - Limit of Consent to read as follows:**

This consent only approves of works within the subject site and does not approve of any works within Council's road reserve. Any works with Council's road reserve will be the subject of an application made under Section 138 and 139 of the Roads Act 1993.

Reason: To clarify the limitation of the consent.



**C. Modify Condition No. 6 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans to read as follows:**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Ascent Geotechnical consulting dated 7th July, 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 Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**D. Add Condition No. 12A - Fireplace to read as follows:**

The fireplace must not incorporate the combustion of solid fuel or oil for heat generation.

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

Reason: To ensure exhaust gas and smoke do not impact upon nearby dwellings.

**E. Add Condition No. 12B - Submission Roads Act Application for Civil Works in the Public Road to read as follows:**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

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

- Staircase structural design. All levels from the road to the property.
- Enclosed bin area including any other structures is not approved within Council's road reserve. Structural details for the reinstatement of the road reserve are to be provided.
- Use of Council road reserve as private property is not permitted.
- No gates within the public road is permitted and must be removed.
- No structure is permitted within the road reserve other than stairs, driveway and associated structures.

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.

**F. Add Condition No. 18A - Civil Works Supervision to read as follows:**

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.

**G. Add Condition No. 25A - Certification Works within the public road to read as follows:**

The Applicant shall submit a Structural Engineers' certificate certifying that the stairs was constructed in accordance within this development consent and S138 Road Acts approval.

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

Reason: Compliance with this consent.





REFER TO A02  
FOR ROAD RESERVE  
LANDSCAPE DETAILS

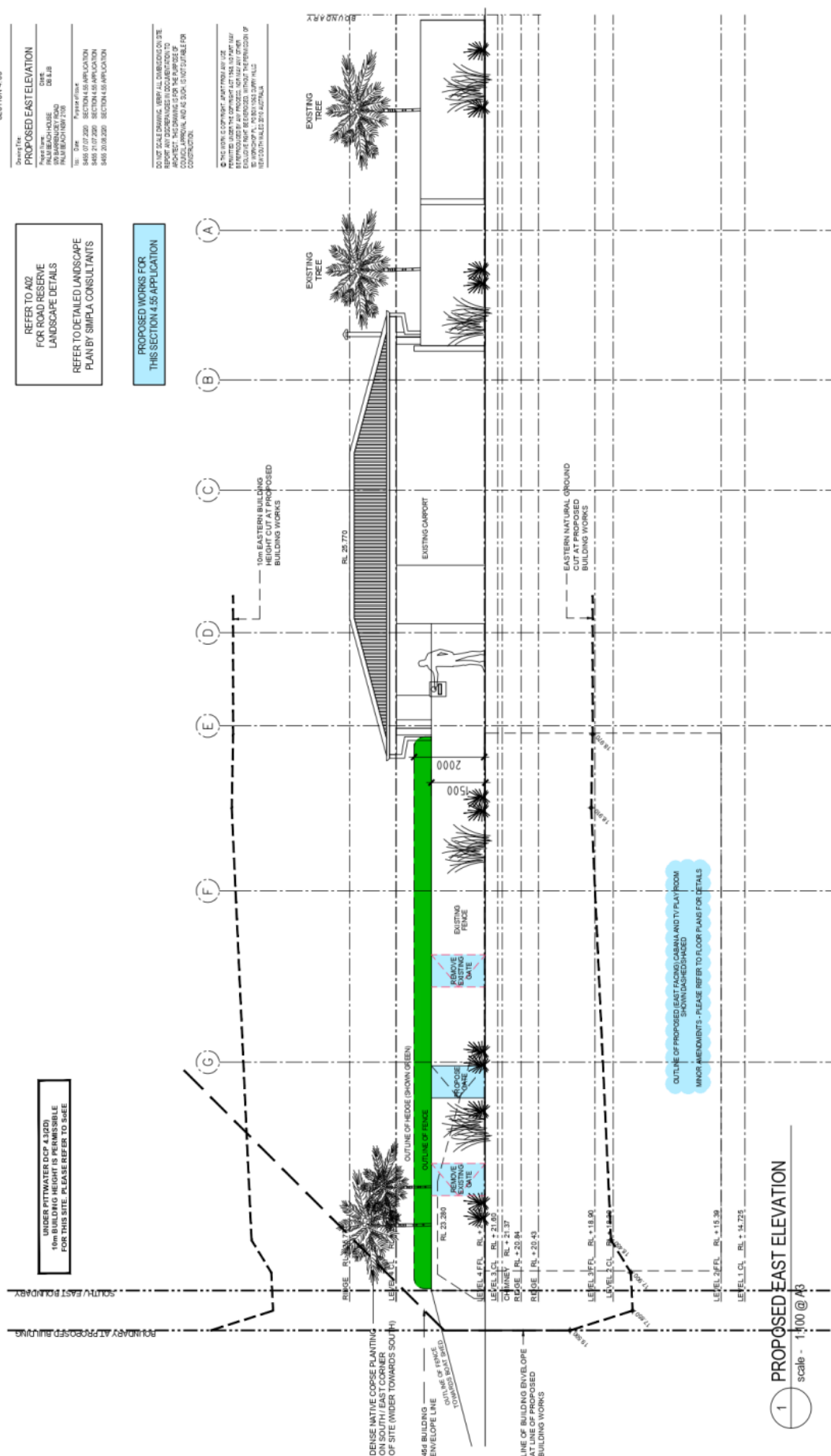
REFER TO DETAILED LANDSCAPE  
PLAN BY SIMPLA CONSULTANTS

PROPOSED WORKS FOR  
THIS SECTION 4.55 APPLICATION

UNDER PITTWATER DCP 4.3(2D)  
10m BUILDING HEIGHT IS PERMISSIBLE  
FOR THIS SITE. PLEASE REFER TO 50EE

OUTLINE OF PROPOSED (EAST FACING) CABANA AND TV PLAY ROOM  
SHOWN DASHED LINES

1 PROPOSED EAST ELEVATION  
scale - 1/4" = 1'-0" @ A3





**THE  
EC WORKSHOP**

100%  
FINAL  
DATE: 20/07/2020  
DRAWN BY: J. B. 1001/20  
CHECKED BY: J. B. 1001/20  
SCALE: 1:100  
SHEET NO. 1001/20

**A10** S455 19/10/08

SECTION 4.55

**PROPOSED WEST ELEVATION**

100%  
FINAL  
DATE: 20/07/2020  
DRAWN BY: J. B. 1001/20  
CHECKED BY: J. B. 1001/20  
SCALE: 1:100  
SHEET NO. 1001/20

100%  
FINAL  
DATE: 20/07/2020  
DRAWN BY: J. B. 1001/20  
CHECKED BY: J. B. 1001/20  
SCALE: 1:100  
SHEET NO. 1001/20

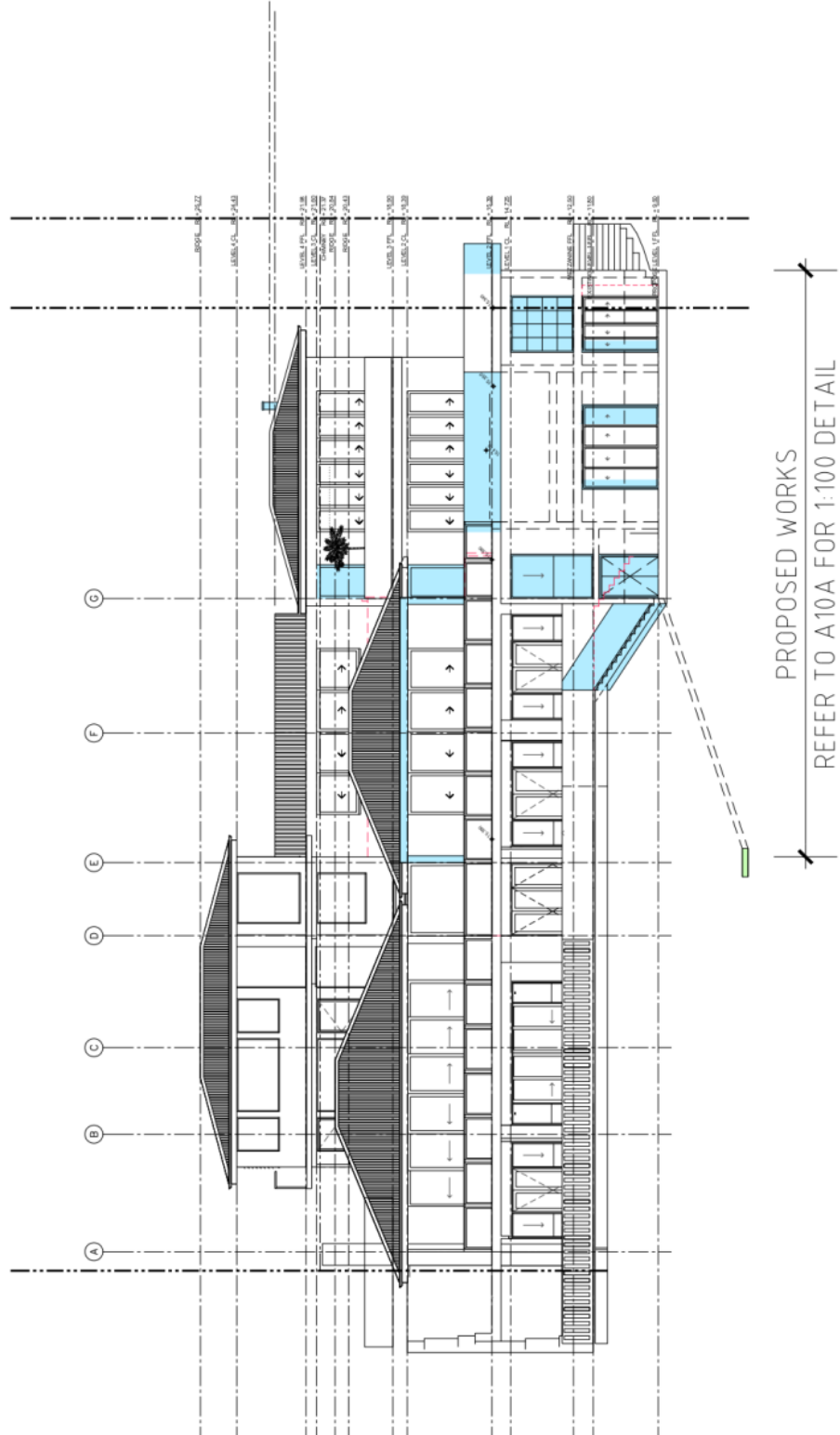
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**1** PROPOSED OVERALL WEST ELEVATION  
scale - 1:150 @ A3

REFER TO A10  
FOR ROAD RESERVE  
LANDSCAPE DETAILS  
REFER TO DETAILED LANDSCAPE  
PLAN BY SIMPLA CONSULTANTS

PROPOSED WORKS FOR  
THIS SECTION 4.55 APPLICATION





### **Clause 4.6 Exceptions to Development Standards**

#### **Height**

#### **977-979 Barrenjoey Road, Palm Beach**

Clause 4.6 of the Pittwater Local Environmental Plan 2014 (PLEP 2014) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* being:

- (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 aims and objectives of Pittwater LEP 2014 Clause 4.6 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.*

Under Clause 4.6(3) and (4) of the PLEP 2014, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

It is of interest that the consent authority specifies a number of development standards that cannot be varied under Clause 4.6, listed in Clause 4.6(8). Clause 4.3 - Height of buildings is not one of the standards excluded, it must therefore be assumed that the standard for height of buildings, is one of the development standards that can have an appropriate degree of flexibility applied under clause 4.6.

## 1. Environmental Planning Instrument Details (Pittwater LEP 2014)

### 1.1 What is the name of the environmental planning instrument that applies to the land?

Pittwater Local Environmental Plan 2014 (PLEP 2014)

### 1.2 What is the zoning of the land?

E4 Environmental Living

### 1.3 What are the objectives of the zone?

- *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.*

**1.4 What is the development standard being varied?**

Cl 4.3 of the Pittwater Local Environmental Plan 2014, Height of Buildings

**1.5 Under what clause is the development standard listed in the environmental planning instrument?**

Cl 4.3 of the Pittwater Local Environmental Plan 2014

**1.6 What are the objectives of the development standard?**

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

**1.7 What is the numeric value of the development standard in the environmental planning instrument?**

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 10m pursuant to Clause 4.3(2D) (for a lot with slope exceeding 30%)

**1.8 What is proposed numeric value of the development standard in your development application?**



The numeric value of the development standard in this development application is a maximum 12.08m .

**building height** (or **height of building**) means:

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to 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.*

**1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?**

The percentage variation sought is 20.8%.

## 2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

### 2.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*



*5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in Wehbe) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

## **2.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC**

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. *Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;*
2. *That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);*
3. *That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;*
4. *All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.*

## **2.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7**

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

*Preston CJ noted that the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

## **2.4 Zhang v City of Ryde**

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:



1. *The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;*
2. *The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and*
3. *The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.*

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

### 3. Consideration

The following section addresses the provisions of clause 4.6 of the PLEP 2014 together with principles established in the NSW Land and Environment Court Case Law outlined above.

**Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?**

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered.

The five ways outlined in *Wehbe* include:

#### 3.1 Five (5) Part Test - *Wehbe v Pittwater*

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The objectives of the standard are:





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

The development will not alter the bulk and scale of the existing dwelling when viewed from Barrenjoey Road. The proposed development adopts a built form which is consistent with the existing dwelling on the site and neighbours within the locality. The development will not alter the bulk and scale of the existing dwelling when viewed from the waterway/public domain and remains consistent with the streetscape in the locality.

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

The variation is reasonable as the RL will be unchanged from the approved RL18.7 and the apparent structure will be dwarfed when viewed from the water by the bulk of the existing structure. It is only a 1.25 metre extension to the existing approved structure.

The large drop in the ground level results in a vastly greater height than is apparent for the bulk of the dwelling.

The generous width of the site also aids in ensuring that the impacts are further reduced for neighbours with the overall development proposal being a positive addition to the site and locality.

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

The shadowing is reasonable as is demonstrated in the accompanying plans.

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

The proposed development will have no impact on any neighbouring properties views.

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

The proposed additions will allow for the dwelling continue to respond to the waterfront site and the character of the Palm Beach waterfront will be retained.

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



The 2.5 metre height variation will be appropriate when considered in the context of its environment. There will be no detriment to the natural surrounds or any item of heritage significance.

**2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).**

This exception to development standards request does not rely on this reason.

**3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).**

This exception to development standards request does not rely on this reason.

**4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).**

This exception to development standards request does not rely on this reason.

**5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).**

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.

### **3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

There are sufficient grounds to permit the variation of the development standard. In particular:

- The variation is will not be easily discernible, particularly when considered in the context of surrounding development which has similar RLs.
- The area of variation will be of negligible impact to neighbours with reasonable privacy and solar access implications.



- The loggia roof is an open and transparent structure and will not create bulk.

**3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.**

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

**Zone – E4 Environmental Living**

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Consistent.

The proposal provides elevated open structure breaching the height limit which has no impact on the special ecological, scientific or aesthetic values, with an attractive and positive result proposed, complementing the existing dwelling.

- *To ensure that residential development does not have an adverse effect on those values.*

Consistent.

The proposal will not result in changes to the natural, environmental and aquatic environment.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Consistent.

The development will retain a low density detached dwelling enhancing its amenity and being appropriate to the scale of the topography and large lot.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Consistent

The proposal will have a nil impact.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effect as the variation is minimal. The



development will present to the waterway as a barely discernible change, complementary to the locality and its character.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

**3.4 Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,**

The non-compliance will not raise any matter of State or Regional Significance.

**3.5 Clause 4.6(5)(b) the public benefit of maintaining the development standard,**

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

**3.6 Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence**

**How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.**

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

*(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.*

Strict compliance with the 10 metres height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, protecting the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats and promoting good design and amenity of the built environment.*

The proposed development is for alterations to an existing dwelling on land zoned E4 Environmental Living.

The proposed loggia roof extension is located to complement the existing dwelling siting and to avoid impacting upon the surrounding natural environment.

The height non-compliance proposed by development will not alter public views as it is hidden from street view and dwarfed by the upper level RLS when viewed from the waterway.

There will be no detrimental impact on private views with works being open and located to ensure neighbour's amenity is retained.

From no perspective will the structure present with excessive bulk.

The proposed structures will not result in any unreasonable overshadowing or privacy impacts to surrounding properties and will provide sun protection to the subject site.



<b>ITEM 3.3</b>	<b>MOD2020/0081 - 2 DELMAR PARADE, DEE WHY - MODIFICATION OF DEVELOPMENT CONSENT DA2017/1183 GRANTED FOR A MIXED USE DEVELOPMENT COMPRISING RETAIL SHOPS AND SHOP TOP HOUSING</b>
<b>REPORTING MANAGER</b>	<b>Steve Findlay</b>
<b>TRIM FILE REF</b>	<b>2020/549351</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report 2 Site Plan &amp; Elevations</b>

**PURPOSE**

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approve** Mod2020/0081 for Modification of Development Consent DA2017/1183 granted for a Mixed Use Development comprising retail shops and shop top housing on land at Lot 1 DP 710661, 2 Delmar Parade, Dee Why, subject to the conditions outlined in the Assessment Report.



## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0081
<b>Responsible Officer:</b>	Tony Collier
<b>Land to be developed (Address):</b>	Lot 1 DP 710661, 2 Delmar Parade DEE WHY NSW 2099
<b>Proposed Development:</b>	Modification of Development Consent DA2017/1183 granted for a Mixed Use Development comprising retail shops and shop top housing
<b>Zoning:</b>	Warringah LEP2011 - Land zoned B4 Mixed Use
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Margaret Mary Wells Simon Andrew Wykeham Wells Timothy William Wykeham Wells Peter Guilford Leonard Yvette Maree Leonard
<b>Applicant:</b>	Landmark Group Australia Pty Ltd
<b>Application Lodged:</b>	02/03/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	28/07/2020 to 11/08/2020
<b>Advertised:</b>	14/03/2020
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

The proposal involves modifications of Development Consent DA2017/1183 granted by the Sydney North Planning Panel (SNPP) for demolition works and construction of a Mixed Use Development, comprising retail shops and shop top housing.

In a communication from the Panel on 10 August 2020 which included the document '*Instruction of the Functions Exercisable by Council on behalf of Sydney District or Regional Planning Panels - Applications to Modify Development Consents*' pursuant to Clause 123BA of the Environmental



Planning and Assessment Regulation 2000. The Instruction took effect on 1 August 2020 and applies to applications to modify development consents made but not determined before 1 August 2020.

The Instruction stipulates that a council is not to determine an application under section 4.55(2) of the Act to modify a development consent granted by a regional panel if the application:

- proposes amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
- proposes amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
- meets the criteria relating to conflict of interest, contentious development or departure from development standards set out in Schedule 1 to this instruction.

Note: Clause 123BA of the Regulation requires councils to determine all other applications for the modification of development consents under section 4.55(2) of the Act, as well as applications for the modification of development consents under section 4.55(1) and section 4.55(1A) of the Act.

The Development Application (DA2017/1183) was determined by the SNPP but no condition was recommended by Council and amended by the Panel and no condition was added by the Panel.

The application meets the criteria under Schedule 1 of the Instruction in that:

- a) There is no conflict of interest;
- b) The application is not contentious development as there are only 2 submissions received in response to the public exhibition of the proposal; and
- c) The application does not include a departure from the Height of Buildings Development Standard already approved by the Panel.

The application therefore satisfies the requirements of the Instruction and may be determined by Council.

The site is located on the southern corner of the intersection of Delmar Parade and Pittwater Road and is situated within the B4 Mixed Use zone and the Dee Why Town Centre as defined by the Warringah Local Environmental Plan 2011.

The assessment has found that the proposed development is satisfactory in relation to built form, character and streetscape, and internal and external residential amenity.

The public exhibition of the application resulted in two (2) individual submissions being received which raised concerns with the proposed development. The issues raised include:

- Southern setback (Level 4 and above) may prejudice the development and impact on the amenity of No. 816 Pittwater Road;
- Impact on business at No. 816 Pittwater Road if the CTMP notice period is reduced from 14 days to 5 days;
- Reduction to the floor-to-ceiling height of the basement and impact on through-site linkage to No. 816 Pittwater Road; and
- Retention of requirement for a median island on Delmar Parade as condition under DA2017/1183.

The issues raised in the submissions have been addressed in the "Public Notification" section of this



report and in summary they do not warrant refusal of the proposal.

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

## **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks to modify consent DA2017/1183 granted by the SNPP on 12 September 2018, for a mixed use development comprising retail shops and shop top housing, by amending the overall design of the development to include the following key changes.

The Applicant states that the changes are:

*"...to achieve a significant improvement to the apartment layouts and residential amenity, a rationalised basement and ground floor layout with better streetscape interface, and a significant improvement to the architectural merit of the design. The amended proposal retains the same number of apartments as those which were originally approved"*

### **Architecture**

The modified design departs from the verticality of the approved podium and separated tower format and employs horizontal layering through the use of continual lines of brick balcony balustrades within the first 4 storeys of the podium and exposed floor level edges within the recessed levels above.

The figures below show the development as approved under DA2017/1183 and as proposed by this modification.



The development as approved under DA2017/1183.





The development as modified (view from Delmar Parade).



The development as modified (view from Pittwater Road).

This design appears as a more streamlined building which is accentuated by the curve to all levels at the corner of Pittwater Road and Delmar Parade.

The colour and material scheme used in the development emphasises the contextual relationship between the podium and tower elements with the heavier tones used in the podium and lighter tones used in the tower.

Internally, the modification includes extensive changes to the commercial area at ground floor level and to the apartment mix and shape at the levels above.

The changes reduce the southern side setbacks at the basement levels from 1.5m to nil and the above podium levels from 6.0m to 3.0m.

### **Internal Changes**

#### **Basement Level 2 (SFL 21.700)**





- Eastern and south-western walls moved to nil setback;
- South-eastern wall setback increased from 5.6m to 8.2m;
- Increase of residential parking spaces from 48 spaces to 55 spaces;
- Relocation of lift core (2 x lift shafts) and fire stairs;
- Relocation of driveway ramp to the southern boundary;
- Reduction of bike parking from 80 spaces to 73 spaces; and
- Increase in storage from 159m<sup>3</sup> to 193m<sup>3</sup>.

#### Basement Level 1 (SFL 24.900)

- Eastern and south-western walls moved to nil setback;
- South-eastern wall setback increased from 5.6m to 8.2m;
- Reduction of residential parking from 31 spaces to 22 spaces;
- Retention of 15 visitor parking spaces;
- Increase of retail spaces from 1 space to 10 spaces;
- Relocation of lift core (2 x lift shafts) and fire stairs;
- Relocation of driveway ramp to the southern boundary;
- Increase of bike parking from nil to 8 spaces; and
- Increase of storage from 157m<sup>3</sup> to 231m<sup>3</sup>.

#### Ground Level (SFL 28.100)

- Retail Café GFA increased from 76.3m<sup>2</sup> to 208m<sup>2</sup>;
- Commercial premises consolidated from 4 units to 2 units (combined GFA increased from 229m<sup>2</sup> to 325m<sup>2</sup>);
- Reduction of retail parking spaces from 14 spaces to 7 spaces;
- Replacement of 25m<sup>2</sup> deep soil area (relocated to the first floor) and 2 retail spaces with OSD tank, sewer zone and plant room;
- Reconfiguration of waste storage rooms, services and amenities;
- Relocation of lift core (2 x lift shafts) and fire stairs; and
- Relocation of internal driveway ramp to the southern boundary.

#### Level 1 (SFL 32.400)

- Southern setback reduced from 6.1m to 6.0m;
- Reduction of 1 bedroom units from 11 units to 9 units;
- Increase of 2 bedroom units from 2 units to 5 units;
- Increase to wall length along south-western boundary;
- Redesign of unit configurations;
- Removal of the enclosed 'Community Space' within the centre of the development;
- Consolidation of triangular 'Communal Courtyard' at the southern end of the development;
- Inclusion of landscaped 'Communal Courtyard' along the eastern edge of the development; and
- Relocation of lift core (2 x lift shafts) and fire stairs.

#### Level 2 (SFL 35.500)

- Southern setback reduced from 6.1m to 6.0m;
- Reduction of 1 bedroom units from 11 units to 9 units;



- Increase of 2 bedroom units from 3 units to 5 units;
- Increase to wall length along south-western boundary;
- Redesign of unit configurations;
- Replacement of Unit 23 with walkways over Level 1 'Communal Courtyard'; and
- Relocation of lift core (2 x lift shafts) and fire stairs.

#### Level 3 (SFL 38.600)

- Southern setback reduced from 6.1m to 6.0m;
- Reduction of 1 bedroom units from 11 units to 9 units;
- Increase of 2 bedroom units from 3 units to 5 units;
- Increase to wall length along south-western boundary;
- Redesign of unit configurations;
- Replacement of Unit 37 with walkways over Level 1 'Communal Courtyard'; and
- Relocation of lift core (2 x lift shafts) and fire stairs.

#### Level 4 (SFL 41.700)

- Southern setback reduced from 6.1m to 6.0m;
- Reduction of 1 bedroom units from 11 units to 9 units;
- Increase of 2 bedroom units from 3 units to 5 units;
- Increase of 3 bedroom units from Nil to 2 units;
- Increase to wall length along south-western boundary;
- Redesign of unit configurations;
- Relocation of lift core (2 x lift shafts) and fire stairs.

#### Level 5 (SFL 44.800)

- Southern setback reduced from 6.1m to 6.0m;
- Reduction of 1 bedroom units from 10 units to 1 unit;
- Increase of 2 bedroom units from Nil to 9 units;
- Increase to wall length along south-western boundary;
- Redesign of unit configurations; and
- Relocation of lift core (2 x lift shafts) and fire stairs.

#### Level 6 (SFL 47.900)

- Southern setback reduced from 6.1m to 6.0m;
- Reduction of 1 bedroom units from 10 units to 1 unit;
- Increase of 2 bedroom units from Nil to 5 units;
- Increase of 3 bedroom units from Nil to 3 units;
- Increase to wall length along south-western boundary;
- Redesign of unit configurations; and
- Relocation of lift core (2 x lift shafts) and fire stairs.

Numerically, the modification amends DA2017/1183 in the following manner:

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	DA2017/1183	Modification	Difference
Building Height	23.7m - Building 23.78m - Lift Overrun	23.5m - Building 23.78m - Lift Overrun	-0.2m No change
<b>Residential</b>			
1 Bedroom	63 (88.7%)	30 (42.2%)	-33
2 Bedroom	8 (11.3%)	36 (50.7%)	+28
3 Bedroom	0	5 (7.1%)	+5
<b>Total</b>	<b>71</b>	<b>71</b>	<b>No change</b>
Retail/Cafe GFA	76.3m <sup>2</sup>	208m <sup>2</sup>	+131.7m <sup>2</sup>
Commercial GFA	229m <sup>2</sup>	325m <sup>2</sup>	+96m <sup>2</sup>
<b>Car Parking</b>			
Residential	79	77	- 2 spaces
Visitor	15	15	No change
Commercial	15	17	+2 spaces
<b>Total</b>	<b>109</b>	<b>109</b>	<b>No change</b>
Bike Parking	80	81	+1 space
Storage (Basement)	316m <sup>3</sup>	424m <sup>3</sup>	+108m <sup>3</sup>
Communal Area	460.6m <sup>2</sup>	575.2m <sup>2</sup>	+114.6m <sup>2</sup>
Landscaped Area	321.8m <sup>2</sup>	346.7m <sup>2</sup>	+24.9m <sup>2</sup>

### Proposed Amendment to Conditions

The application requests specific amendment to the following conditions:

- Condition 2 - Amendments to the Approved Plans;
- Condition 6(k) - General Requirements;
- Condition 15 - Stormwater Disposal;
- Condition 26 - Treatment of Southern (Front) Elevation; and
- Condition 28 - Construction Traffic Management Plan.

The amendments are discussed as follows:

### Condition 2. Amendments to the Approved Plans

The applicant seeks to delete Condition 2(a) as they claim that Condition No. 2(a) is no longer relevant as the amendments to the design have resolved this issue.

Relevantly, Condition 2(a) requires:

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

*a) Units 45, 46 and 47 are to have exclusive use of the open terrace area immediately in front of those units which form part of the Level 4 podium facing Pittwater Road. In this regard, those areas are to form an extension of the private open space areas for the units. The remainder of the landscaped and paved terrace areas on this part of Level 4 are to be for communal use. Suitable screens are to be erected to ensure that the private spaces are separate to the communal spaces and privacy is afforded to the individual apartments".*

The modified design negates the need to impose Condition 2(a) as this was related to the original



design which has changed in the modified version.

Therefore, the requirements of Condition 2(a) as imposed, may be deleted. However, new amendments will be required for the modified plans and these are included in an amended Condition 2(a).

#### **Condition 6. General Requirements**

The applicant seeks to delete sub-condition (k) as there are no swimming pools in the development.

The condition imposed under sub-condition (k) is not applicable to the development as a swimming pool is not included in the proposal.

Therefore, Condition 6(k) , as imposed, may be deleted.

#### **Condition 15. Stormwater Disposal**

The applicant seeks to delete the wording "*the plans must indicate the provision of a rainwater tank in accordance with the BASIX certificate*" as the amended development does not rely on the need for a rainwater tank in the BASIX Certificate.

Council's Development Engineer has confirmed that the above wording may be deleted from Condition 15.

Therefore, Condition 15 is to be amended to read as follows:

##### **15. Stormwater Disposal.**

*Plans indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments, shall be submitted prior to the issue of the Construction Certificate.*

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

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

#### **Condition 26. Treatment of Southern (Front) Elevation**

The applicant seeks to delete Condition 26 as the amended design resolves the issue raised in the condition.

The modification application includes design options to the southern wall which abuts No. 816 Pittwater Road however, on review of these options, neither satisfies the aesthetic of the building nor the intent of the condition. In this respect, it is considered that the Condition 26 be amended to read as follows:

##### **26. Treatment of the southern wall facing 816 Pittwater Road.**

*The external podium wall facing No. 816 Pittwater Road is to be finished with a design (including complimentary colours and textures) sufficient to avoid a blank wall, which relates to the architecture of the building.*

*The final design is to be approved by Council's Manager Development Assessment and is to be incorporated into the final architectural plans prior to the issue of the Construction Certificate.*



*Reason: To ensure the aesthetic quality of the development enhances the streetscape.*

#### **Condition 28. Construction Traffic Management Plan**

The applicant seeks to amend bullet point 10 of Condition 28 which that *"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"*.

The applicant seeks to change the 14 day notification requirement to 5 days as they claim that *"a 14 day notice period is excessive as it significantly impacts flexibility for the construction program for the site and does not adequately allow for unforeseen circumstances such as weather, delivery issues etc. It is considered that a 5 day period as requested is more than sufficient notice for the implementation of temporary traffic measures"*.

#### **AMENDED PLANS**

Amended plans were received as follows:

26 June 2020

This amendment addressed issues raised by Development Assessment. The amendments involved the following:

##### Basement and Ground Floor

- Relocation of deep soil zone at the south-eastern corner from the basement level to the Level 1 podium.
- Inclusion of inter-allotment sewer line, OSD tank and plant at the south-eastern corner from the basement level.
- Minor reconfiguration of plant and car parking
- Widening of driveway entry from 6.3m to 6.6m.

##### Level 1

- Expansion of communal open space at the south-eastern end of the site.
- Rationalisation and reconfiguration of the landscaped communal open space area within the central part of the site and along the eastern edge of the site.
- Reconfiguration of inner-facing courtyards of the apartments facing Pittwater Road to improve acoustic privacy.
- Increase to the entry courtyard of Unit 111 to rationalise service cupboards.
- Minor reconfiguration of units 113 and 114 to respond to landscape amendments.

##### Level 2 and 3

- Rationalisation of circulation space to respond to reconfigured communal open space at Level 1 and to improve acoustic amenity.
- Addition of a vertical planting structure to the circulation corridor (adjacent to Units 204 and 304) to improve amenity.
- Increase to the entry courtyard of Units 211 and 311 to rationalise service cupboards.
- Removal of balcony blade wall to Units 207 and 307 to provide a more contiguous and usable





private open space area.

#### Level 4, 5 and 6

- Rationalisation of circulation space to respond to reconfigured communal open space at Level 1 and to improve acoustic amenity.
- Minor increase to the area of Units 408 and 508 to rationalise service cupboards.
- Addition of a vertical planting structure to the circulation corridor (adjacent to Units 403 & 404; 503 & 504 and 602 & 603) to improve amenity.
- Additional of landscaping to the southern terrace of Unit 401.
- East facing windows to Units 406 to 410, 506 to 510 and 606 to 609 changed to opaque glass.
- Addition of 0.5m high privacy screen to the east facing balconies of Units 407 to 410, 507 to 510 and 606 to 609.

The amended plans were renotified between 22 July 2020 and 11 August 2020.

#### 16 July 2020

This amendment addressed issues raised by Council's Traffic Engineer. The amendments were internal which shallowed out the internal driveway and relocated internal car parking spaces as a result of the realigned driveway. Given the minor nature of the amendments, renotification of the amended plans was not considered to be necessary.

#### 10 August 2020

This amendment addressed issues raised by Council's Waste Management Department. The amendments were internal to the bin storage rooms together with minor changes to the external doors accessing those rooms. Additionally, the amendments included recycling bin storage solution to the residential levels above. Given the minor nature of the amendments, renotification of the amended plans was not considered to be necessary.

### **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

Assessment - Dee Why Town Centre Contributions Plan 2019  
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Development Control Plan - C3 Parking Facilities

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 710661 , 2 Delmar Parade DEE WHY NSW 2099
<b>Detailed Site Description:</b>	<p>The subject site is located at No. 2 Delmar Parade, Dee Why and is legally described as, Lot 1 in Deposited Plan 710661.</p> <p>The site is located on the south-western junction of Pittwater Road and Delmar Parade and has street frontages to Pittwater Road of 40.98m and Delmar Parade of 29m, generally at the southern entry to the Dee Why Town Centre.</p> <p>The site is 2,060m<sup>2</sup> in area.</p> <p>The site currently accommodates a two storey commercial building (Repco Auto Repairs and National Australia Bank Branch), which includes an open air customer car park to the rear. Vehicle access is currently gained from Delmar Parade.</p> <p>Development surrounding the subject site is a mix of commercial, retail and residential buildings. To the north of the site is 822 Pittwater Road, which is a 7 to 8 storey, mixed use building. To the east of the site is a commercial office development.</p> <p>To the south of the site is No. 814 - 816 Pittwater Road, which is currently used by Avis Car Hire and further to the south, is the Stony Range Garden. The sole frontage and access point to the Avis site is off Pittwater Road. This Avis site was the subject of previous approval, which was granted by Land and Environment Court on 26 June 2008 for a 31 residential unit development, however this consent was never activated and has since lapsed.</p> <p>West of the site on the opposite side of Pittwater Road is a service station, a residential flat building and detached dwellings in the R2 zone.</p> <p>The land is moderately sloping with a level difference of approximately 1.5m between the south western corner and the north eastern corner.</p>

Map:



## SITE HISTORY

The Development Application (DA2017/1183) was considered at the SNPP on 13 June 2018. In the Assessment Report, Council outlined a case for refusal of the application based on the following grounds:

1. Site isolation of the adjoining property to the south, 814-816 Pittwater Road, Dee Why (known as the Avis site);
2. Approval from the NSW Roads and Maritime Services (RMS) was not provided;
3. Non-compliance with the requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and associated Apartment Design Guide (ADG);
4. Non-compliance with the Building Height - Clause 4.3 Height of Buildings development standard of the Warringah Local Environmental Plan 2011;
5. Non-compliance with the requirements of Warringah Development Control Plan (WDGP 2011), in relation to site amalgamation, number of storeys, Clause C2 - Traffic, Access and Safety and Clause C4 – Stormwater.

At the meeting, the Panel concurred with the reasons for refusal in the Assessment Report, however made the decision to defer the determination of the application to allow the Applicant to attend to and respond to the following:

- *“An offer of purchase submitted to the owner of the adjoining Avis site based on an independent valuation and a response from the owner including the valuation (or evidence of lack of response);*
- *In case of a negative or no response, the provision of a right-of-way through the subject site that could be utilised as access to the Avis site in case it gets redeveloped in the future;*
- *Evidence of support from the RMS for the traffic impact of the proposal;*
- *A minimum setback of 6m from the front southern boundary above podium level and from the rear southern boundary from the ground;*
- *Improved access to and quality of the communal open space at podium level, which is to be*





*achieved by the deletion of Unit 45 and above;*

- *Provision of deep soil planting along the eastern boundary at ground level to a minimum area of 5m x 5m;*
- *Re-calculation of the GFA on the basis that garbage facilities not in the basement and corridors which are enclosed on their long side are included as floor space;.*

The Panel noted that, *"if the above issues are satisfactory resolved, the panel may accept that an increase in the height of the development above the current control (3.0m) may be acceptable. Similarly, the Panel may accept that a four-storey has merit on this site".*

A Supplementary Report was prepared and submitted to the Panel on 12 September 2018, which addressed the above matters.

The Panel approved the application on 12 September 2018.

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

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2017/1183, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2017/1183 for the following reasons:</p> <p>Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice</p>

Section 4.55 (2) - Other Modifications	Comments
originally granted was modified (if at all), and	<p>Bignold established the following test in the Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289 where His Honours states:</p> <p><i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i></p> <p><i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i></p> <p><i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i></p> <p>The applicant has provided the following justification to support their argument that the modifications are substantially the same:</p> <p><b>"Test 1: Is the proposal a modification of the original proposal, in that it does not radically transform the original proposal?"</b></p> <p><i>The modification to the approved development represents a refinement and improvement and is not a radical transformation because it does not alter the fundamental nature of the approved development. Whilst some components are proposed to be changed more than other components, collectively the amended development is conceptually the same as that which has previously been approved. The proposed amendment remains for the demolition of existing structures and the construction of a 7 storey mixed use buildings with a 4 storey podium and 3 storey component above; the general site and building layout remains the same; the collection of residential and non-residential uses remain the same, the exact number of residential apartments remains the same, there is little change to the non-residential quantum, and the vehicle access and egress and internal circulation is essentially the same. The proposed internal reconfigurations and other rationalisations do not render the approved development radically transformed when considered within the context of the overall approval for the site.</i></p> <p><b>Test 2: Is the proposed development essentially or materially the same development as the development for which consent was originally granted?</b></p>



Section 4.55 (2) - Other Modifications	Comments
	<p><i>In considering whether the proposed modified development is materially or essentially the same, it is necessary to undertake both a quantitative and qualitative assessment of the differences. The comparative task needs to assess not only the physical features of the changes, but also the environmental impacts of the changes.</i></p> <p><u>Quantitative Assessment</u>  <i>On an assessment of the quantitative components of the consent which are approved, the application as proposed to be amended is essentially and materially the same development and therefore substantially the same development.</i></p> <p><u>Qualitative Assessment</u>  <i>The site layout, arrangement of uses and building configuration across the site is essentially the same as that which has been approved. In particular:</i></p> <ul style="list-style-type: none"> <li><i>The amended proposal continues to comprise a recessed 3 storey element above a 4 storey podium and 2 basement levels.</i></li> <li><i>The commercial component is located in the same position on the ground floor and continues to address and activate the street interfaces.</i></li> <li><i>The same number of residential apartments are retained and are still positioned in a perimeter edge arrangement such that they face both streets and the eastern boundary. The top three levels continue to be recessed with the same street setback above the podium.</i></li> <li><i>The amended proposal maintains the same overall configuration of the site, quantum of residential units and mix of uses, building location, and a similar size and form. Whilst the architectural expression has been rationalised, this does not represent a radical departure from the approved development and represents a reasonable design progression which achieves an improvement when compared to the approved development.</i></li> </ul> <p><i>Qualitatively, the amended proposed is considered to be essentially and materially the same as the approved development for the site when considered holistically as it retains predominantly the same:</i></p> <ul style="list-style-type: none"> <li><i>Purpose for a mixed use development comprising commercial and residential uses;</i></li> <li><i>Site arrangement including location of uses;</i></li> <li><i>Range of indicative uses and activities; and</i></li> <li><i>Vehicle access arrangements, internal circulation and exit arrangements, and car parking location.</i></li> </ul>

Section 4.55 (2) - Other Modifications	Comments
	<p><b>Test 3: Is the way in which the development is to be carried out essentially or materially the same?</b></p> <p><i>There is no change to the way in which the development is to be carried out.</i></p> <p><b>Test 4: Does the proposed modification affect an aspect of the development that was important, material or essential to the development when it was originally approved?</b></p> <p><i>Development consent is approved for a mixed use development of the site. The proposal as amended retains all of the same indicative uses, features and facilities of the approved development.</i></p> <p><i>The physical arrangement of open space, buildings and vehicular access and internal circulation necessary to facilitate the development all remain essentially the same and whilst the open space provision has been reconfigured this is to achieve an improved outcome.</i></p> <p><i>There is no aspect of the approved development which was important, material or essential to the development when it was approved which is proposed to be removed or substantially altered. Accordingly, the proposed amendments to the approved development do not affect an aspect of the development that was considered an essential or critically important component of the overall development as originally approved.</i></p> <p><i>In conclusion, having regard to the guidance provided by the relevant case law and having undertaken a detailed comparison of the quantitative and qualitative elements of the development, the proposed Section 4.55(2) modification application to the approved Development Consent DA2017/1183 has been demonstrated to satisfy the "substantially the same development test" pursuant to Section 4.55(2)(a)".</i></p> <p>Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i>, it is concurred with that the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Act.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed	Development Application DA2017/1183 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Environmental Plan 2011 and Warringah Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land).

Section 4.15 'Matters for Consideration'	Comments
environmental planning instrument	<p>Public consultation on the draft policy was completed on 13 April 2018.</p> <p>This matter was addressed in the assessment of DA2017/1183 where the 'Due Diligence Contamination Investigation Report', prepared by Douglas Partners dated February 2016 concluded that</p> <p><i>"From the results of the preliminary investigations generally low levels of contaminants appear to be present in soil and groundwater at the site.</i></p> <p><i>The presence of hydrocarbon odours in two bores (BH1 and 2) indicates the potential for Contamination to be present in the central area of the site, although any such contamination (if encountered) is anticipated to be manageable during the construction process (bulk excavation, tanked basement, etc.). Therefore, it is expected that the site can be made suitable for the proposed development. This would need to be confirmed by undertaking a detailed site investigation (in the order of four to five additional test bores including one further centrally located groundwater well)".</i></p> <p>That application was also referred to Council's Environmental Health Officer who raised no objection to the proposal subject to conditions. Accordingly, based on the information submitted, it was considered that the requirements of SEPP had been satisfied and the land was considered to be suitable for the development subject to conditions.</p> <p>The modification of DA2017/1183 (i.e. this application) does not alter the depth of the excavation to accommodate the basement carpark and, although the basement marginally increases in area, is not considered to compromise the findings of the 'Due Diligence Contamination Investigation Report' nor the conditions imposed in DA2017/1183.</p>
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission</p>

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

## EXISTING USE RIGHTS





Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/07/2020 to 11/08/2020 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 2 submission/s from:

Name:	Address:
Mrs Geraldine Anne Moorman	12 / 19 - 23 Delmar Parade DEE WHY NSW 2099
Tomasy Planning	1073 Pittwater Road COLLAROY NSW 2097

Two (2) submissions have been received, raising the following concerns:

- **Reduction to the southern side boundary setback (Level 4 and above) and impact this may have in prejudicing future development of the neighbouring property to the south.**
- **Additional overshadowing of neighbouring property to the south.**
- **Amendment of the Construction Traffic Management Plan from 14 day notice period to 5 day notice period and its impact on business to the south.**
- **Reduction to the height of the basement from 4.5m to 4.3m and the impact this would have on the future through-site-link to the neighbouring property to the south.**
- **Traffic flow into the carpark and imposed Condition 27 which requires the installation of a median island in Delmar Parade to restrict right-turn movements.**

The above issues are discussed in detail below:

- **Reduction to the southern side boundary setback (Level 4 and above) and impact this may have in prejudicing future development of the neighbouring property to the south.**

The submission states:

*"The Statement of Environmental Effects (SoEE) refers to "the application seeks approval for a range of refinements to the development". The SoEE also states, "The amended proposal retains the same number of apartments as those which were originally approved and also adheres to the heights and majority of the setbacks established by the approved development". In respect of the changes to the approved setback, it is noted that on the southern boundary, which abuts our client's property, from level 4 and above, the building now has a reduced setback from the southern boundary of 3m. The modification has also introduced screened secondary windows to the residential apartments that abut the common boundary of our client's property. Notwithstanding that the 3m setback is ADG compliant, it is imperative that this reduced setback does not prejudice any future redevelopment on our client's property. It is therefore important for Council to acknowledge that any future development on 814-816*



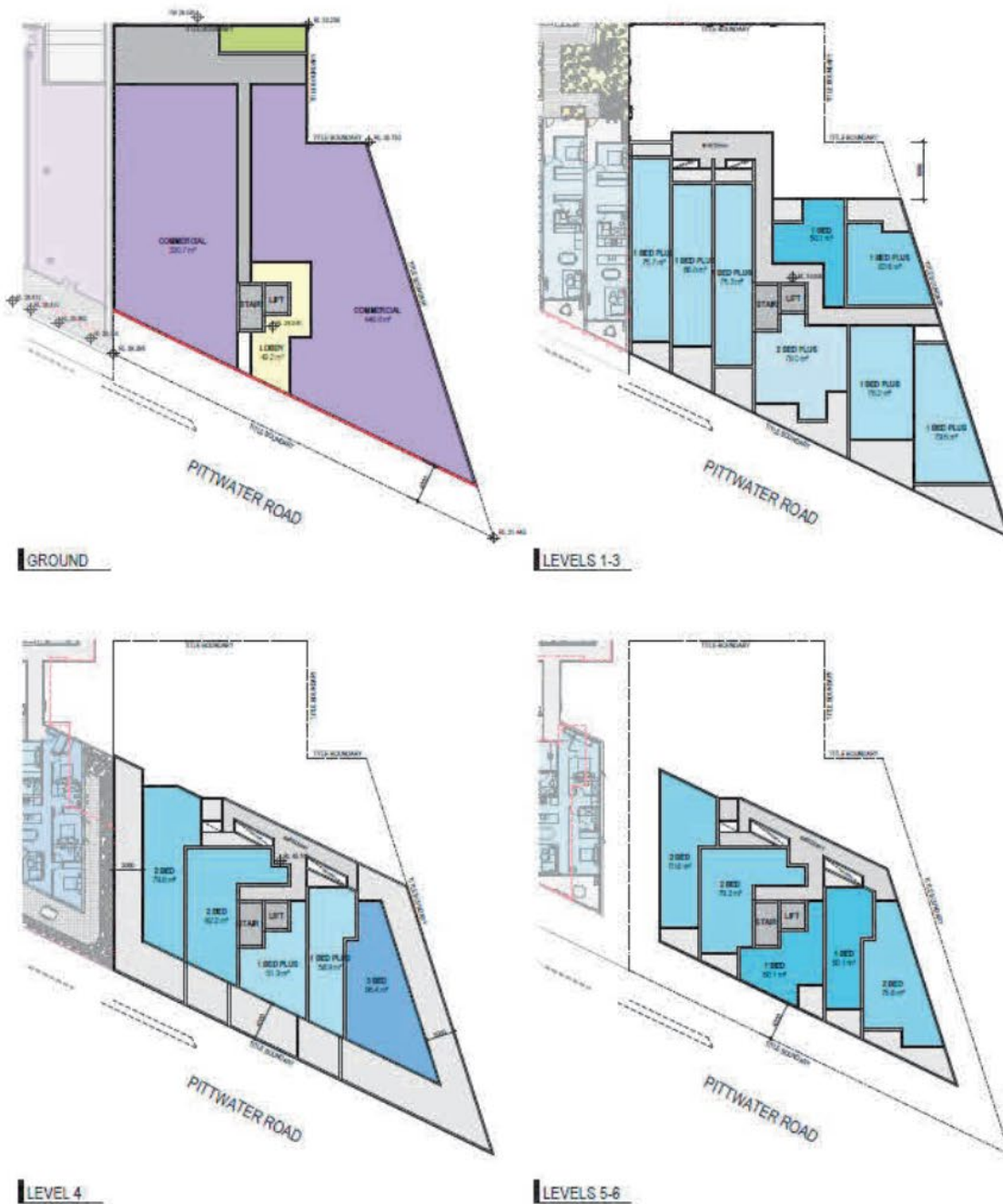
*Pittwater Road, along the northern boundary shall be developed with a setback being ADG compliant, as per the modification now before Council. Our client should not be prejudiced as a result of the reduced setback and the introduction of windows (which were not, previously, part of the approved development) along the southern boundary of the proposed building.*

*In respect of the reduced setback of the building on level 4 and above, the applicant should provide further documentary evidence that there is no increase in shadow impacts on our client's property as a result of moving the building closer to the southern boundary".*

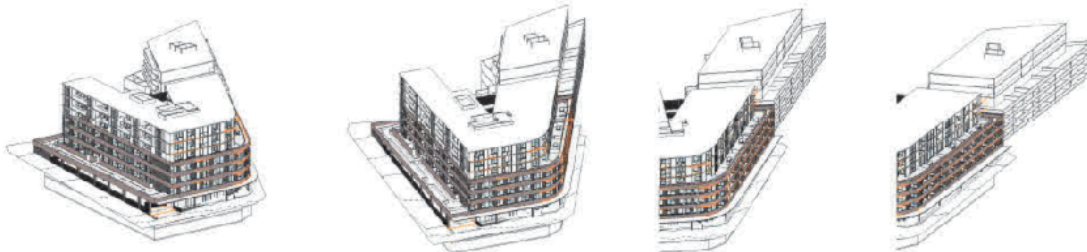
Comment

The setback of the south-facing wall to Levels 4, 5 and 6 abutting No. 816 Pittwater Road has been reduced from a variable distance of between 4.5m and 6.0m to 3.0m. With exception to the angled privacy screens which conceal narrow vertical profile windows to a bedroom, the wall is blank and therefore satisfies the Design Guidance under Clause 3F of the ADG.

Notwithstanding, the applicant has provided concept plans for No. 816 Pittwater Road to demonstrate that No 816 Pittwater Road would not be prejudiced in its development potential and unreasonably impacted by the subject application. The figures below show the possible configuration of development at No. 816 Pittwater Road.



The 3D 'view from the sun' schematics below expand on the above diagrams to illustrate the overall appearance of the concept in conjunction with the subject development:



As can be seen, because of the orientation of No. 816 Pittwater Road to the subject site (and the 'V' shaped layout of the the subject development) the concept would enable acceptable levels of amenity.

This issue does not warrant the refusal of the application.

- **Amendment of the Construction Traffic Management Plan from 14 day notice period to 5 day notice period and its impact on business to the south.**

The submission states:

*"Implications relating to the amendments to the CTMP from a 14 day notice period to a 5 day notice period: if this part of the modification were to be approved by Council, it would have severe ramifications on our client's business, which is a car and truck rental facility. We respectfully request Council not support a 5 day notice period. If Council is of the opinion that this 14-day period can be reduced, it should be at least 10 working days. Our clients and their management team for the Avis Rental Car facility need an absolute minimum of 10 working days so that they can plan around this type of disruption to their day-to-day business".*

#### Comment

The submission refers to Condition 28 which relevantly states (in part):

#### **28. Construction Traffic Management**

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

*The CTMP must address following:*

- *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.*

*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.*

Council's Traffic Engineer has reviewed Condition 28 and the request to amend the condition and advise that the relevant part of the condition may be amended to read as follows:

- *The proposed manner in which adjoining property owners will be kept advised of the time frames for completion of each phase of development/construction process. It must also specify that a minimum five (5) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure with the exception for any temporary road closure, for which a minimum fourteen (14) days notification must be provided.*

The condition has been expanded to specify the notification periods required for different phases of the development and emphasising that the 14 day notification period is only applicable to temporary road closures.

Condition 28 has been amended accordingly.

This issue does not warrant the refusal of the application.

- **Reduction to the height of the basement from 4.5m to 4.3m and the impact this would have on the future through-site-link to the neighbouring property to the south.**

The submission states:

*"At the time the approval was granted for DA2017/1183, a Condition was placed on the Consent to ensure that adequate arrangements had been made regarding vehicular access including service vehicles from Delmar Parade to our client's property.*

*It would appear from the review of the plans submitted with the Modification and the SoEE that supported the application, it is proposed to reduce the height of the basement from 4.5m to 4.3m. The height of the basement that forms part of the vehicular access arrangements to our client's property were set at 4.5m. Any reduction in the height would severely impact upon their site link/basement connection, which was approved under DA2017/1183. The terms of the side and shape of the agreed access arrangements were the subject of protracted negotiations with the previous owner and in consultation with Council's Assessment Officer. The terms of the Condition relating to access are set out on the following page and the approved drawings that accompanied the Development Consent for DA2017/1183 clearly depict the height of the basement".*

#### Comment

The submission refers to Condition 65 which states:



**65. Right of Access (through-site vehicle link)**

*A right of access (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and the accompanying 88B instrument to ensure a through-site vehicle access within the ground level to No. 814 -816 Pittwater Road, Dee Why (Avis site) as detailed on the approved plans.*

*The terms of the right of way (available from Northern Beaches Council), are to be prepared by a registered surveyor to Northern Beaches Council's standard requirements at the applicant's expense.*

*Activation of the through site link will only occur upon redevelopment and physical commencement of a mixed-use development on 814-816 Pittwater Rd Dee Why (Avis Site).*

*Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issue of any Subdivision Certificate.*

*Reason: To allow the reasonable development of the neighbouring site.*

The modified proposal reduces the floor-to-ceiling height of the ground floor from 4.5m to 4.3m (thereby lowering the overall building height by 0.2m).

The reduced floor-to-ceiling height does not impede vehicular movement through the site as the 4.3m high floor-to-ceiling enables the travel of normal passenger vehicles and Council's Heavy Rigid Vehicles (which requires a clearance height of 3.9m) to service waste.

Furthermore, Condition 65 will remain imposed under DA2017/1183.

This issue does not warrant the refusal of the application.

- **Traffic flow into the carpark and imposed Condition 27 which requires the installation of a median island in Delmar Parade to restrict right-turn movements.**

The submission states:

*"I have no issue with the internal layout changes proposed for this 71 unit development at 2 Delmar Parade.*

*My submission is that council does not lose sight of the approval condition of the existent application relating to traffic flow into this building's carpark. The approval requires as follows as a condition in Condition 27 " Median island along Delmar Parade to restrict right turn movements in and out of the access driveway". This was put in place based on RMS recommendation as this end of Delmar Parade next to Pittwater Road is already both a u turn hotspot and also traffic streams across into Delmar from the northbound Pittwater Road lane when the traffic flow is held back at the Sturdee Parade lights. This is the only gap in the constant Pittwater road traffic flow that residents can use to be able to get across*



into their own street. So if a vehicle stops/pauses to consider entering this building's carpark it is a high risk of rear ending collision from the following cars. So the conditions from the original approval need to stay in place.

Also Condition 28 on the conditions also require a traffic management plan during construction - which will need some significant safety review as trucks may need to come down Delmar Parade which already has narrow stretches, blind corners and weight limits - as these vehicles will not be able to - as per Condition 27 condition - just come off Pittwater road and turn directly right into the site due to the close proximity of the site access point to Pittwater Road. For if the RMS says its not safe for general traffic into the constructed building to do that right turn , then it cant be safe for large trucks to do it either.

So this submission is okay with the interior changes but a reminder to council that conditions related to traffic management in the original approval are still valid - as the local residents were clear to council that Delmar Parade already has a number of traffic safety matters and these were factored in during the approval process for 2 Delmar Parade.

From a personal perspective I am making it clear that I do not agree that these RMS conditions will solve the safety matters on Delmar Parade - however, given how the planning panel chairperson explained to us that a DA will never be knocked back on the basis of traffic issues, the RMS conditions are better than nothing".

#### Comment

With exception to the minor amendment to Condition 28 (see commentary above related to the Construction Traffic Management Plan), Conditions 27 and 28 remain as originally imposed under DA2017/1183.

This issue does not warrant the refusal of the application.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application was referred to Council's Development Assessment Department who did provided:</p> <p><i>"The application has been investigated with respects to aspects relevant to the Building ( objections to approval of the development subject to inclusion of the attached conditions</i></p> <p><i>Note: The proposed development may not comply with some requirements of the BCA a be determined at Construction Certificate Stage".</i></p>
Environmental Health (Industrial)	The application was referred to Council's Environmental Health Department who did not
Landscape Officer	<p>The application was referred to Council's Landscape Officer who did not raise any object</p> <p><i>"The landscape plans provided with the application are noted.</i></p> <p><i>Subject to conditions as provided, no objections to the proposed landscape works are ra</i></p>

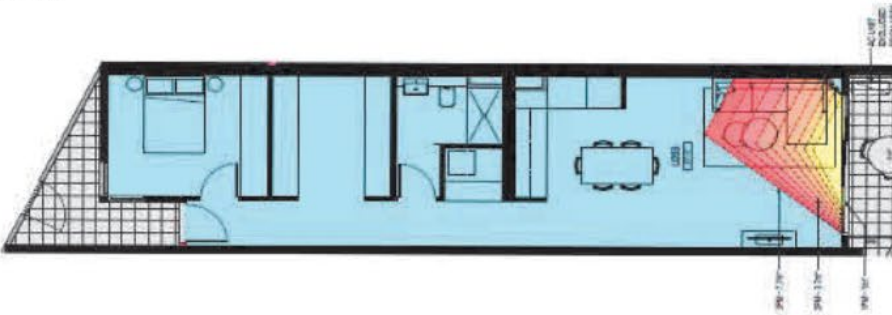

Internal Referral Body	Comments
	<p><i>regarding street tree planting as the landscape plans do not address this aspect".</i></p> <p>Conditions imposed by Council's Landscape Officer are included in the draft conditions c</p>
NECC (Development Engineering)	<p>The application was referred to Council's Development Engineer for review. The followin</p> <p><i>"The new stormwater drainage plans detailing the provision of On site Detention are sati</i></p> <p><i>Additionally the new basement configuration is to be tanked in accordance with the Geot</i></p> <p><i>approximately 4m below the existing ground levels.</i></p> <p><i>Also the basement entry point has changed and a wider vehicle crossing is required".</i></p> <p>Conditions imposed by Council's Development Engineer are included in the draft conditio</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The application was referred to Council's Stormwater and Floodplain Engineer who did n</p> <p>provided:</p> <p><i>"The proposed modifications do not alter the minimum floor level of the basement car pa</i></p> <p><i>risk is still appropriately managed by the existing conditions of consent for flooding".</i></p>
Strategic and Place Planning	<p>The application was referred to Council's Strategic and Place Planning Department who</p> <p>been provided:</p> <p><i>"The application is identified within the Dee Why Town Centre under Warringah Local Er</i></p> <p><i>Centre Planning Proposal and associated amendments to Warringah Development Cont</i></p> <p><i>2020 and applies to this application, which was lodged on 2 March 2020.</i></p> <p><i>The proposed modifications largely relate to internal layout and configurations, design ar</i></p> <p><i>acceptable in terms of Council's Strategic Planning, provided that Development Assessn</i></p> <p><i>Why Town Centre of WLEP 2011 and Part G1 Dee Why Town Centre under WDCP 201</i></p> <p>The application has been considered under Part 7 Dee Why Town Centre of the WLEP 2</p> <p>2011 where it was considered to satisfy the relevant controls.</p>
Strategic and Place Planning (Urban Design)	<p>The application was referred to Council's Senior Urban Designer for review The following</p> <p><i>"The proposed modifications cannot be supported for the following reasons:</i></p> <ol style="list-style-type: none"> <li><i>1. The SEPP 65 Apartment Design Guide (ADG pg 37) provides guidelines on buildi</i></li> <li><i>ADG states that when applying separation distances to buildings on adjoining site</i></li> <li><i>boundary will apply. The minimum separation distance for buildings 5 storey and</i></li> <li><i>building setback will be required at the fifth storey and above to all common boun</i></li> <li><i>building envelopes which includes balconies. The building separation distance at</i></li> <li><i>non-habitable rooms i.e. 6m setback to common boundaries. Additional shadow (</i></li> <li><i>protect solar access to surrounding future developments.</i></li> <li><i>2. ADG requirement of the maximum number of apartments off a circulation core o</i></li> </ol>


Internal Referral Body	Comments																	
	<p>(14 proposed). The depth of the proposed units facing Pittwater Road is now deeper which will have compromised amenity (ADG pg 97). The solar analysis submitted do for 70% of the residential units (ADG pg 79).</p> <p>3. The monotonous 'pancake' built form approach needs more vertical elements/ primary material treatment. The Dee Why Town Centre Masterplan rationale behind the towers on top of building podium built form as per the approach of the previously top of the podium. The 3m increase in building height is also introduced to make to achieve better public domain amenities. The facade treatment along Pittwater Road amount of traffic noise.</p> <p>4. The underside of the proposed street awning is to be no less than 3.2m above the back 1m from the face of the kerb. Where street trees are required, it should be s</p> <p>5. The deep soil planting pocket park proposed in the south-eastern corner of the site s current location. This location could also be considered as a future access point to th avoiding the constraints of a future basement access for cars and service vehicles as</p> <p><u>Planning Comments in Response to Urban Design Issues</u></p> <p>The following comments are in response to the issues raised by the urban design section difference of opinion on these matters, the merits of the proposal from a planning perspective deemed to warrant support and approval for the reasons given.</p> <p>1. The habitable rooms and balconies in the development are arranged to face outw Delmar Parade.</p> <p>Given that the habitable rooms and balconies facing Pittwater Road and Delmar Road road widths, the following assessment considers the separation to No. 4 Delmar Road</p> <table><tr><th>Height</th><th>Level</th><th>Rooms</th></tr><tr><td rowspan="3">12m (Requires 6m setback)</td><td>1</td><td>6m to 8m</td></tr><tr><td>2</td><td>6m to 8m</td></tr><tr><td>3</td><td>6m to 8m</td></tr><tr><td rowspan="3">25m (Requires 9m setback)</td><td>4</td><td>6m to 8m</td></tr><tr><td>5</td><td>6m to 8m</td></tr><tr><td>6</td><td>6m to 8m</td></tr></table> <p><b>Note:</b> Distances are to the side boundary.</p> <p>With respect to the non-compliances at Level 1 (balconies), it is noted that these area along the eastern side of the development. As such, these terraces are bou this respect, and given that they are separated from the boundary by the addition that these features would unreasonably impact upon the building separation of N</p> <p>The remainder of the separations at Levels 1 to 3 comply with the requirement of</p> <p>With respect to the non-compliances at Levels 4, 5 and 6, it is noted that the Livir</p>	Height	Level	Rooms	12m (Requires 6m setback)	1	6m to 8m	2	6m to 8m	3	6m to 8m	25m (Requires 9m setback)	4	6m to 8m	5	6m to 8m	6	6m to 8m
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Internal Referral Body	Comments																															
	<p>obscure glazing while the eastern edges of the balconies include landscaped planter boxes mounted at the top of wall of each planter box.</p> <p>Furthermore, although design concepts have been submitted which demonstrate that design could be refined to offset its habitable rooms and balconies from the combined 9m wide driveway and footpath which is to extend along the entire western side of the site and the future building at No. 4 Delmar Parade). The combination of the concepts is detailed below:</p> <table><tr><th>Separation</th><th>Level</th><th>Rooms</th></tr><tr><td rowspan="3">12m (2 x 6m)</td><td>1</td><td>15m to 15m</td></tr><tr><td>2</td><td>15m to 15m</td></tr><tr><td>3</td><td>15m to 15m</td></tr><tr><td rowspan="3">18m (2 x 9m)</td><td>4</td><td>15m to 15m</td></tr><tr><td>5</td><td>15m to 15m</td></tr><tr><td>6</td><td>15m to 15m</td></tr></table> <p><b>Note:</b> Distances are building-to-building.</p> <p>As can be seen, the non-compliant separation distances are at Levels 4, 5 &amp; 6.</p> <p>With respect to the non-compliances at Levels 4, 5 and 6, it is noted that the Livir has obscure glazing while the eastern edges of the balconies include landscaped planter boxes mounted at the top of wall of each planter box.</p> <p>Although numerically non-compliant, from a performance aspect it is considered that the design is a response to the constraint of the site at this elevation given the irregular lot shape without unreasonable setbacks to Delmar Parade, particularly given the regular shape and large developable area of the site.</p> <p>2. With respect to the maximum number of apartments off a circulation core, the development is detailed below:</p> <table><tr><th>Level</th><th>Number of Apartments</th></tr><tr><td>1</td><td>14</td></tr><tr><td>2</td><td>14</td></tr><tr><td>3</td><td>14</td></tr><tr><td>4</td><td>10</td></tr><tr><td>5</td><td>10</td></tr><tr><td>6</td><td>9</td></tr></table> <p>The development benefits from an open plan corridor system which allows for a circulation system that would otherwise be available in an enclosed corridor system.</p> <p>The corridors lead out onto (and over) the central communal open space area that would otherwise be provided in an enclosed corridor system.</p> <p>The internal walkway has been redesigned at all levels to better respond to the site and the apartments facing Pittwater Road.</p>	Separation	Level	Rooms	12m (2 x 6m)	1	15m to 15m	2	15m to 15m	3	15m to 15m	18m (2 x 9m)	4	15m to 15m	5	15m to 15m	6	15m to 15m	Level	Number of Apartments	1	14	2	14	3	14	4	10	5	10	6	9
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Internal Referral Body	Comments
	<p>With respect to solar access, the applicant has submitted detailed 'view-from-the-balconies of the apartments facing Pittwater Road receive between 1m<sup>2</sup> and 7.7m<sup>2</sup> satisfies the Design Guidance of Clause 4A which stipulates "to maximise the open spaces, a minimum of 1m<sup>2</sup> of direct sunlight, measured at 1m above floor level,</p> <p>The figure below illustrates the quantum of solar access received (as shaded in y Road.</p>  <p>This is considered to be acceptable on merit.</p> <p>3. Although the modified design presents a more horizontal aspect than the vertical Centre, it is considered to include sufficient vertical elements that complement the built form.</p> <p>The figure below details the strong vertical elements which are built into the linea</p>  <p>The modified design of the building is considered to be appropriate to its context as it provides a more streamlined form which visually flows into and out of the Ce</p> <p>Unlike tower elements which are most commonly sited within the core of the cent Pittwater Road) is a book-end to the Centre which, in a similar manner to 844 Pitt transition of scale between the high-rise tower developments within the Centre ar</p>

Internal Referral Body	Comments
	<p>This is considered to be acceptable on merit.</p> <p>4. The underside of the awning (which forms the underside of the balconies within the walkway which extends around the northern and western perimeter of the building) on the sloping topography at the southern end of the site, this end of the walkway is set back 3.2m from the footpath.</p> <p>Although the height of the underside of the awning is not set at 3.2m from the footpath, that the awning does not extend over the footpath, and instead is sited within the site only.</p> <p>The width of the awning is 4.0m and is setback 3.4m from the face of the kerb. The trees which has been addressed by Council's Landscape Officer via condition.</p> <p>This is considered to be acceptable.</p> <p>5. The deep soil planting pocket park which was proposed in the south-eastern corner of Level 1 to form an extension of the communal areas. This relocation was considered to be a "pocket park" from the remainder of the site and enabling a more cohesive landscape.</p> <p>The elevated landscaped area does not impede the through-site link to No. 816 F Street.</p> <p>The figure below shows the communal open space area (formerly the sunken pool area):</p> 
Strategic and Place Planning (S94)	The application was referred to Council's Contributions Officer with respect to the possible impact on the Plan 2019. The following comments have been provided:

Internal Referral Body	Comments
Warriewood Valley)	<p><i>"The contributions plan applicable to the modification application is the contributions plan was the Northern Beaches Council Contributions Plan 2018. Condition 8 relates to the provisions section 7.12 of the EP&amp;A Act and the Northern Beaches Council Contributions Plan 2018."</i></p> <p><i>The modification application does not identify a change to the original development cost. The modification application is unlikely to increase the overall cost of development, the modification is required".</i></p> <p><u>Assessment Planner Comment</u> The applicant has submitted a letter from a Quantity Surveyor (Newton Fisher Group) with the following statement:</p> <p><i>"We in our capacity as Quantity Surveyors can confirm that we have reviewed the \$4.55 million project located at Dee Why. Having reviewed the documentation the proposed Development is within budget."</i></p> <p>The estimated cost of works for DA2017/1183 was \$20,303,413. Therefore, the modification is within budget.</p>
Traffic Engineer	<p>The application was referred to Council's Traffic Engineer who did not raise any objections.</p> <p><u>"Car Park Design"</u></p> <ul style="list-style-type: none"> <li><i>The swept path analysis indicates that the access driveway will accommodate two vehicles which is satisfactory.</i></li> <li><i>The amended right of way has improved the two-way through flow within the right of way bay and the ramp going down to the basement car park.</i></li> <li><i>It is proposed in the traffic consultant's response to the earlier Council's comments that the conflict points at the following locations:</i> <ul style="list-style-type: none"> <li><i>between the site access and the loading bay</i></li> <li><i>between the basement one ramp and loading bay</i></li> <li><i>between the aisle and access into 814-816 Pittwater Road</i></li> </ul> </li> <li><i>In addition to the above traffic measures the following are to be installed in the car park:</i> <ul style="list-style-type: none"> <li><i>priority control (give way) at the intersection of the right of way and ramp going down to the basement car park</i></li> <li><i>signal system for the loading dock</i></li> </ul> </li> </ul> <p><u>Parking Allocation</u> The amended right of way has resulted in the removal of a disabled parking space and associated parking spaces, the parking allocation for all uses shall meet the minimum requirements as follows:</p> <ul style="list-style-type: none"> <li><i>18 retail parking spaces.</i></li> <li><i>14 residential visitor spaces.</i></li> <li><i>57 resident spaces.</i></li> </ul> <p><i>In this regard two of the residential spaces are to be allocated to resident visitor spaces</i></p>



Internal Referral Body	Comments
	<p><u>Installation of Security Gate</u> The resident parking spaces are to be separated from the non-residential parking spaces; regarding the placements of the security gate, the resident visitor spaces can be located the security gate is not possible otherwise.</p> <p><u>Customer Parking</u> All retail parking spaces are to be available for the customers use during the retail business hours. The car parking is to clearly signposted at the entrance of the car park.</p> <p><u>Conclusion</u> The proposal can be supported by traffic team subject to conditions".</p> <p>Conditions imposed by Council's Traffic Engineer are included in the draft conditions of consent.</p>
Waste Officer	<p>The application was referred to Council's Waste Management Department who did not raise any objections. The following conditions were provided:</p> <p>"The proposal is approved with conditions.</p> <ul style="list-style-type: none"> <li>The doors that provide access to the waste storage room from the kerb need to be designed to allow for servicing without obstructing access and maneuvering of bins.</li> <li>To allow unobstructed access for collection staff to service the bins, the pathway to the Collection Point on Delmar Parade needs to: <ul style="list-style-type: none"> <li>a) be solid, concrete, continuous, non-slip</li> <li>b) be a maximum ramp gradient of 1 in 8.</li> <li>c) have a minimum opening of 1,500mm provided in the balustrade immediately adjacent to the Collection Point on Delmar Parade".</li> </ul> </li> </ul> <p>Conditions imposed by Council's Waste Management Department are included in the draft conditions of consent.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Roads and Maritime Services (Traffic Generating Development)	<p>The application was referred to the RMS pursuant to Section 138 of the Roads Act, 1993.</p> <p>In their response, the RMS did not raise any objection to the proposed modifications. No additional conditions were imposed beyond those already imposed under DA2017/1183.</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.

This matter was addressed in the assessment of DA2017/1183 where the 'Due Diligence Contamination Investigation Report', prepared by Douglas Partners dated February 2016 concluded that

*"From the results of the preliminary investigations generally low levels of contaminants appear to be present in soil and groundwater at the site.*

*The presence of hydrocarbon odours in two bores (BH1 and 2) indicates the potential for Contamination to be present in the central area of the site, although any such contamination (if encountered) is anticipated to be manageable during the construction process (bulk excavation, tanked basement, etc.). Therefore, it is expected that the site can be made suitable for the proposed development. This would need to be confirmed by undertaking a detailed site investigation (in the order of four to five additional test bores including one further centrally located groundwater well)".*

That application was also referred to Council's Environmental Health Officer who raised no objection to the proposal subject to conditions. Accordingly, based on the information submitted, it was considered that the requirements of SEPP had been satisfied and the land was considered to be suitable for the development subject to conditions.

The modification of DA2017/1183 (i.e. this application) does not alter the depth of the excavation to accommodate the basement carpark and, although the basement marginally increases in area, is not considered to compromise the findings of the 'Due Diligence Contamination Investigation Report' nor the conditions imposed in DA2017/1183.

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

The development is required to comply with SEPP 65, and the associated Apartment Design Guide (ADG) provides additional details and guidance for applying the nine design quality principles outlined in SEPP.

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





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

Clause 28 of SEPP requires that in determining a development application for consent to carry out development to which SEPP 65 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 ADG.

### DESIGN REVIEW PANEL

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

### DESIGN QUALITY PRINCIPLES

#### Principle 1: Context and Neighbourhood Character

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

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

#### Comment

The site is located within the Dee Why Town Centre as defined by the Warringah Local Environmental Plan 2011.

Contextually, the site features as a gateway into and out of the Centre being the last of two notable sites situated at the southern end of the Centre.

The modified design of the building is considered to be appropriate to this context as it provides a more streamlined form which visually flows into and out of the Centre than the approved tower scheme. Unlike tower elements which are most commonly sited within the core of the centre, the subject site (and its neighbour to the south (i.e. 816 Pittwater Road) is a bookend to the Centre which, in a similar manner to 844 Pittwater Road at the northern end of the Centre, establishes a transition of scale between the high-rise tower developments within the Centre and the more modest built forms around the periphery of the Centre.

The images below show a comparison of the northern and southern ends of the Town Centre and their similar context as they visually perform as important transitional bookends to the centre.



View of No. 844 Pittwater Road looking south-east towards the core of the Dee Why Town Centre.



Comparative view of the subject site looking north-east towards the core of the Dee Why Town Centre.

Accordingly, it is considered that the modified proposal satisfies this principle.

## **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 proposed development is considered to contain a number of examples of good design in terms of its built form, including the composition of building setbacks, levels of articulation, use of balconies, podiums, fine-edged roof forms, recessing and strongly defined elements.

The proportions, transitions, materials and elongated north-south flow of the building are considered to be favourable aspects of its built form. The building responds well to its particular location, being a 'Gateway Site'. The facades of the building provide some good transitions, incorporating areas of strength to the corner and relief where required to the neighbouring properties to the south and to Pittwater Road.

The development incorporates strong vertical design elements to emphasise the corner status of the building and the gateway significance of the site.

Accordingly, it is considered that the modified proposal satisfies this principle.

**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 modified proposal achieves the same density as that approved under DA2017/1183.

Accordingly, it is considered that the modified proposal satisfies this principle.

**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 proposed works include demolition of all structures currently on the site and excavation works to accommodate the new development.

The applicant has submitted an updated Waste Management Plan which, in conjunction with the Construction Management Plan required by the approved DA2017/1183 detail the disposal and recycling of demolition and excavation materials.

In addition, an updated BASIX certificate (see Certificate No. 1068650M-05 dated 28 August 2020) for the residential component of the development has been submitted with the application. The certificate confirms that the development is capable of achieving the water and energy targets and has obtained a pass for thermal comfort.

Furthermore, the application is also accompanied by an ABSA Certificate (refer to certificate No. WDMBTPK06A dated 20 February 2020) which indicates that the development will achieve an average NatHERS star rating of 6.8 out of 10 under the Nationwide House Energy Rating Scheme.

Accordingly, it is considered that the modified proposal satisfies this principle.

**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 modified proposal includes a landscape scheme which responds to the streetscape through the provision of a landscaped podium edge facing Pittwater Road and a lower landscaped podium facing No. 4 Delmar Parade and No. 816 Pittwater Road.

The communal landscaping scheme is more fragmented than that approved under DA2017/1183 but benefits from the ability to provide a variety of spaces instead of being generally contained within one level. This continues to enable social interaction but also allows for privacy, equitable access and respect for neighbouring amenity.

Accordingly, it is considered that the modified proposal satisfies this principle.

#### **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 modified development provides a high level of amenity both internally and externally.

Given the challenge of the irregular shape of the site and its location to a major arterial road, with exception to a number of minor matters of inconsistency with the Apartment Design Guide (each of which is supportable on merit or via condition) the modified design provides for 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.

Accordingly, it is considered that the modified proposal satisfies this principle.

#### **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 modified design provides a more cohesively contained development than the tower design approved under DA2017/1183.

The modified design satisfies the principles of CPTED and includes 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.

Generally, the development provides secure access which is separated from all vehicular access



points. All apartments provide balconies and windows which provides passive surveillance over Pittwater Road, Delmar Parade and the properties to the east (i.e. No. 4 Delmar Parade).

Accordingly, it is considered that the modified proposal satisfies this principle.

### **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 provision of a mix of apartment sizes in this location is considered reasonable due to the site's close proximity to major bus interchanges, commercial facilities and opportunities within the DYTC and being within walking distance to the beach and public amenities and facilities and the future Dee Why Town Centre redevelopment.

Accordingly, it is considered that the modified proposal satisfies this principle.

### **Principle 9: Aesthetics**

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

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

#### Comment

The modified development exhibits a high standard of architectural aesthetic which would contribute positively to the transitional streetscape at the southern end of the Town Centre.

The design incorporates a substantial use of glazing, recessed balconies, architectural framing and a variety of materials and textures which are integrated and will provide a visual "uplift" of this site and this portion of Town Centre.

The building provides a modern and contemporary form with a well-considered use of physical and material articulation and modulation to provide a distinctive and strongly defined corner element to the southern gateway of the Town Centre. The quality of urban design would provide for further impetus for redevelopment and enhancement of the transitional town centre streetscapes.

Accordingly, it is considered that the modified proposal satisfies this principle.

### **APARTMENT DESIGN GUIDE**

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

Development	Criteria / Guideline	Comments
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Control		
Part 3 Siting the Development		
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	<p><b>Consistent</b></p> <p>A Site Analysis Plan (in conjunction with the Statement of Environmental Effects) has been submitted with the application.</p> <p>The application also includes the following reports to inform the assessment of the application:</p> <ul style="list-style-type: none"> <li>• SEPP 65 Design Statement;</li> <li>• Geotechnical Site Investigation; and</li> <li>• Traffic and Parking Assessment</li> </ul>
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<p><b>Consistent</b></p> <p>As discussed elsewhere in this report under the Design Quality Principles and within the relevant clauses under the WDCP 2011, the development responds to the streetscape and site and optimises solar access within the development to neighbouring properties.</p>
<b>Public Domain Interface</b>	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p><b>Consistent</b></p> <p>The development is considered to provide a satisfactory transition between the private and public domains without compromising safety and security.</p>
<b>Communal and Public Open Space</b>	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> <li>1. Communal open space has a minimum area equal to 25% of the site</li> <li>2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid winter)</li> </ol>	<p><b>Consistent</b></p> <p>Given the site area of 2,060m<sup>2</sup>, the development is required to provide 515m<sup>2</sup> communal open space.</p> <p>The development provides 575.2m<sup>2</sup> communal open space (which includes soft landscaping, seating areas and associated walkways).</p> <p>This is an increase of 114.6m<sup>2</sup> from DA2017/1183 which proposed 321.8m<sup>2</sup>.</p> <p>Without the development of No. 4 De Parade (to the east), the principal communal open space arrayed along the eastern side of the development would receive 100% direct sunlight for a 2 h period between 9am and 3pm on 21</p>

		<p>June.</p> <p>Subject to the future development of Delmar Parade, the principal communal open space area will receive a minimum 50% direct sunlight for a 2 hour period between 9am and 3pm on 21 June which will be primarily gained between 10am and Noon (inclusive).</p>												
<b>Deep Soil Zones</b>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr> </tbody> </table> <p>Achieving the design criteria may not be possible on some sites including where:</p> <ul style="list-style-type: none"> <li>the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres);</li> <li>there is 100% site coverage or non-residential uses at ground floor level.</li> </ul> <p>Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure.</p>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	<p><b>Acceptable on merit</b></p> <p>Given the site area of 2,060m<sup>2</sup>, the development is required to provide a (144.2m<sup>2</sup>) deep soil zone within a minimum dimension of 6.0m.</p> <p>The development does not provide a deep soil landscaping within the minimum dimension of 6.0m. However, it does provide an increase to the overall landscaping on the site by 24.9m<sup>2</sup> with notable areas being contained within consolidated pockets at the central courtyard area and along the eastern edge of the podium.</p> <p>It is noted that DA2017/1183 provides 116.6m<sup>2</sup> deep soil area within the minimum dimension of 6.0m.</p> <p>Notwithstanding, and in accordance with the Design Guidance of Clause 3E-1, the development is located within the Delmar Why Town Centre and is constrained by its shape and that there is 100% site coverage of non-residential uses at the ground floor level.</p> <p>Furthermore, the development achieves acceptable stormwater management and provides alternative forms of planting at the podium level.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m <sup>2</sup>	-	7%												
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m													
Greater than 1,500m <sup>2</sup>	6m													
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m													
<b>Visual Privacy</b>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td></td><td></td><td></td></tr> </tbody> </table>	Building height	Habitable rooms and balconies	Non-habitable rooms				<p><b>Acceptable on merit</b></p> <p>The habitable rooms and balconies in the development are arranged to face outward to Pittwater Road, Delmar Parade and towards No. 4 Delmar Parade.</p>						
Building height	Habitable rooms and balconies	Non-habitable rooms												

Up to 12m (4 storeys)	6m	3m
Up to 25m (5-8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m

**Note:** Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.

Given that the habitable rooms and balconies facing Pittwater Road and Delmar Parade comply with the separation requirements due to the widths, the following assessment considers the separation to No. 4 Delmar Parade only:

Height	Level	Rooms	Balcor
12m Req 6m	1	6m to 8m	4m & 5
	2	6m to 8m	6m
	3	6m to 8m	6m
25m Req 9m	4	6m to 8m	7m
	5	6m to 8m	7m
	6	6m to 8m	7m

**Note:** Distances are to the side boundary.

With respect to the non-compliances Level 1 (balconies), it is noted that the features are terraces which abut the communal open space area along the eastern side of the development. As such, these terraces are bounded by screen fencing and hedging to maintain privacy. In this respect, and given that they are separated from the boundary by the additional landscaping within the communal area, it is not considered that these features would unreasonably impact upon the building separation to No. 4 Delmar Parade.

The remainder of the separations at Levels 1 to 3 comply with the requirement of Clause 3F-1.

With respect to the non-compliances Levels 4, 5 and 6, it is noted that the Living Rooms have been fitted with highlight windows and obscure glazing while the eastern edges of the balconies include landscaped planter boxes which are backed by 0.5m high privacy screens mounted at the top of wall of each planter.

box.

Furthermore, although design concepts have been submitted which demonstrate that No. 4 Delmar Parade can be developed to compliance, that design could be refined to offset its habitable rooms and balconies from those proposed in the subject development particularly given the combined 9m wide driveway and footpath which is to extend along the entire western side of No. 4 Delmar Parade (i.e. between the subject site and the future building at No. 4 Delmar Parade). The combination of combined 9m wide driveway and the proposed separations are detailed below.

Separation	Level	Rooms	Balcony
12m (2 x 6m)	1	15m to 17m	13m to 14m
	2	15m to 17m	15m
	3	15m to 17m	15m
18m (2 x 9m)	4	15m to 17m	16m
	5	15m to 17m	16m
	6	15m to 17m	16m

**Note:** Distances are building-to-building.

As can be seen, the non-compliant separation distances are at Levels 4, 5 and 6.

With respect to the non-compliances at Levels 4, 5 and 6, it is noted that the Living Rooms have been fitted with highlight windows and obscure glazing while the eastern edges of the balconies include landscaped planter boxes which are backed by 0.5m high privacy screens mounted at the top of wall of each planter box.

Although numerically non-compliant, from a performance aspect it is considered that the solutions presented adequately address the constraint of

		site at this elevation given the irregular lot shape without unreasonably impact upon the development potential of no Delmar Parade, particularly given the regular shape and large developable area of that site which will allow for design variation.
<b>Pedestrian Access and entries</b>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p><b>Consistent</b></p> <p>The development provides an access and legible building entry which defines the private property from the public domain.</p>
<b>Vehicle Access</b>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p><b>Consistent</b></p> <p>The development includes a 6.6m wide driveway and crossover which facilitates adequate sightline distances along the adjacent footpath.</p> <p>The driveway is sited in the same location as approved under DA2017/1183.</p>
<b>Bicycle and Car Parking</b>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p>	<p><b>Consistent</b></p> <p>The site is located within a B4 Mixed zone.</p> <p>A comparison between the RMS Guide to Traffic Generating Developments and Warringah Development Control Plan 2011 (WDCP) reveals that the two parking rates are identical.</p> <p>Therefore, the parking requirements of the WDCP have been applied.</p> <p>The development provides car parking surplus to the requirements of the WDCP (see Clause 'C3 - Parking Facilities' in the WDCP section of this report) by 13.3</p>



	Visual and environmental impacts are minimised.	spaces.
		<p><u>Bicycle parking</u></p> <p>The ADG does not include any numerical requirement for the provision of bicycle parking. This is addressed under Clause C3(A) of the WDCP 2011 whereby the development has been found to comply with the requirements of</p> <p>All parking is provided within a ground floor parking area which is (with exception to the entry) concealed from view from the street and adjoining properties.</p>
<b>Part 4 Designing the Building</b>		
<b>Amenity</b>		
<b>Solar and Daylight Access</b>	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:	<b>Consistent</b>
	<ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	The development provides 94.3% (67 apartments) which receive a minimum 2 hours direct sunlight between 9am and 3pm at mid winter.
	<ul style="list-style-type: none"> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	<p><b>Consistent</b></p> <p>The development includes 5.6% (4) apartments which do not receive direct sunlight between 9am and 3pm at mid winter.</p>
<b>Natural Ventilation</b>	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:	<b>Consistent</b>
	<ul style="list-style-type: none"> <li>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.</li> </ul>	The development provides 87.3% (62 apartments) which are naturally cross ventilated.
	<ul style="list-style-type: none"> <li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li> </ul>	<p><b>Consistent</b></p> <p>The overall depth of cross-through</p>

		apartments do not exceed 18m.												
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>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p><b>Consistent</b></p> <p>The development provides the following floor-to-ceiling heights:</p> <ul style="list-style-type: none"><li>Habitable Rooms: 2.8m</li><li>Non-Habitable Rooms: 2.8m</li><li>Commercial: 3.8m</li></ul>
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
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Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
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>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p> <p>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>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p><b>Consistent</b></p> <p>The development provides the following apartment sizes:</p> <ul style="list-style-type: none"><li>1 Bedroom: 50m<sup>2</sup> to 86m<sup>2</sup>.</li><li>2 Bedroom: 75m<sup>2</sup> to 102m<sup>2</sup>.</li><li>3 Bedroom: 91m<sup>2</sup> to 111m<sup>2</sup>.</li></ul> <p><b>Consistent</b></p> <p>Each room has a window in an external wall with a total minimum glass area of not less than 10% of the floor area of room.</p> <p><b>Not applicable</b></p> <p>All apartments are open plan layout.</p> <p><b>Acceptable on merit</b></p> <p>The development includes habitable room depths of between 7m and 8.7m</p>		
Apartment type	Minimum internal area													
Studio	35m <sup>2</sup>													
1 bedroom	50m <sup>2</sup>													
2 bedroom	70m <sup>2</sup>													
3 bedroom	90m <sup>2</sup>													

The non-compliant units are:

Unit	Depth
101	8.2m
109	8.7m
201	8.2m
209	8.7m
301	8.2m
309	8.7m
401	8.6m
402	8.6m
403	8.6m
404	8.6m
502	8.6m
602	8.6m

Of the non-compliant units listed above, the additional depths of between 0.2m and 0.7m are not considered to be unreasonable impact upon the internal amenity of the habitable rooms, particularly given that the primary living area is located towards the window while the kitchen is located towards the rear.

Furthermore, it is noted that the units in question are larger in width than the minimum requirement of 4m and cross through, thereby providing greater level of amenity (such as cross-flow ventilation) than that of more narrow single aspect apartments.

Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).

#### **Acceptable subject to condition**

The development includes the following internal areas of master bedrooms which do not comply with the 10m<sup>2</sup> requirement:

Unit	Room Area
101/201/301	9m <sup>2</sup>
102/202/302	9m <sup>2</sup>
103/203/303	9m <sup>2</sup>
104/204/304	9m <sup>2</sup>

		<table><tr><td>105/205/305</td><td>9m<sup>2</sup></td></tr><tr><td>106/206/306</td><td>9m<sup>2</sup></td></tr><tr><td>114/214/314</td><td>9.4m<sup>2</sup></td></tr><tr><td>402</td><td>9m<sup>2</sup></td></tr><tr><td>502</td><td>9.5m<sup>2</sup></td></tr></table> <p>The above rooms could be enlarged to achieve the required 10m<sup>2</sup> without affecting the internal amenity of the relevant apartment.</p> <p>A condition is included in the draft consent to address this</p>	105/205/305	9m <sup>2</sup>	106/206/306	9m <sup>2</sup>	114/214/314	9.4m <sup>2</sup>	402	9m <sup>2</sup>	502	9.5m <sup>2</sup>																	
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502	9.5m <sup>2</sup>																												
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	<b>Consistent</b>  All bedrooms have a minimum dimension of 3m (excluding built in wardrobes)																											
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"><li>3.6m for studio and 1 bedroom apartments</li><li>4m for 2 and 3 bedroom apartments</li></ul>	<b>Consistent</b>  All apartments achieve widths of greater than 4m.																											
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	<b>Consistent</b>  All cross-through apartments have width greater than 4.0m.																											
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	<b>Acceptable on merit</b>  The development provides the following private open space and balcony sizes: <table><tr><th>Type</th><th>Area</th><th>Depth</th></tr><tr><td>1 Bedroom</td><td>8m<sup>2</sup> to 19m<sup>2</sup></td><td>2m</td></tr><tr><td>2 Bedroom</td><td>10m<sup>2</sup> to 75m<sup>2</sup></td><td>2m</td></tr><tr><td>3 Bedroom</td><td>18m<sup>2</sup> to 67m<sup>2</sup></td><td>2m to 2.4m</td></tr></table> <p>Units 607 and 608 are 3 bedroom apartments which have balcony depth of 2.0m. Although this is below the 2.4m requirement, it is noted that the outer edge of the balconies include 1.0m wide planter boxes which would provide a landscaped edge to the balconies without unreasonably impacting upon the usability of the balcony areas.</p>	Type	Area	Depth	1 Bedroom	8m <sup>2</sup> to 19m <sup>2</sup>	2m	2 Bedroom	10m <sup>2</sup> to 75m <sup>2</sup>	2m	3 Bedroom	18m <sup>2</sup> to 67m <sup>2</sup>	2m to 2.4m
	Dwelling Type	Minimum Area	Minimum Depth																										
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3 Bedroom	18m <sup>2</sup> to 67m <sup>2</sup>	2m to 2.4m																											
	For apartments at ground level or on a podium or similar structure, a private open space is provided	<b>Acceptable on merit</b>																											

	<p>instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m.</p>	<p>The development includes 14 apartm which are sited at the podium level.</p> <p>The following private open space is provided for each unit:</p> <table><tr><th>Unit</th><th>Area</th><th>Depth</th></tr><tr><td>101</td><td>8m<sup>2</sup> &amp; 11m<sup>2</sup></td><td>1m to 2.4</td></tr><tr><td>102</td><td>8m<sup>2</sup> &amp; 10m<sup>2</sup></td><td>1m to 1.8</td></tr><tr><td>103</td><td>8m<sup>2</sup> &amp; 11m<sup>2</sup></td><td>1m to 2m</td></tr><tr><td>104</td><td>8m<sup>2</sup> &amp; 10m<sup>2</sup></td><td>1m to 1.8</td></tr><tr><td>105</td><td>8m<sup>2</sup></td><td>1m to 3m</td></tr><tr><td>106</td><td>8m<sup>2</sup></td><td>1m to 3m</td></tr><tr><td>107</td><td>5m<sup>2</sup> &amp; 12m<sup>2</sup></td><td>1m to 3m</td></tr><tr><td>108</td><td>11m<sup>2</sup></td><td>1m to 1.8</td></tr><tr><td>109</td><td>21m<sup>2</sup></td><td>2m</td></tr><tr><td>110</td><td>3m<sup>2</sup> &amp; 15m<sup>2</sup></td><td>1m to 2m</td></tr><tr><td>111</td><td>24m<sup>2</sup></td><td>1m to 3.1</td></tr><tr><td>112</td><td>23m<sup>2</sup></td><td>1m to 3.1</td></tr><tr><td>113</td><td>11m<sup>2</sup></td><td>1m to 1.8</td></tr><tr><td>114</td><td>31m<sup>2</sup></td><td>1.8m to 4</td></tr></table> <p>Of the above units, apartments 101 to 110 face outward and towards Pittwa Road and Delmar Parade and thus have balconies to those streets and are not considered as typical podium apartments. This is considered to be an acceptable outcome given the unique shape and orientation of the site.</p> <p>Units 111 to 114 are sited towards the communal open space area which faces east and thus are more representative of podium apartments. With exception to Unit 113 (which is a 1 bedroom apartment) these units achieve compliance with the ADG.</p>	Unit	Area	Depth	101	8m <sup>2</sup> & 11m <sup>2</sup>	1m to 2.4	102	8m <sup>2</sup> & 10m <sup>2</sup>	1m to 1.8	103	8m <sup>2</sup> & 11m <sup>2</sup>	1m to 2m	104	8m <sup>2</sup> & 10m <sup>2</sup>	1m to 1.8	105	8m <sup>2</sup>	1m to 3m	106	8m <sup>2</sup>	1m to 3m	107	5m <sup>2</sup> & 12m <sup>2</sup>	1m to 3m	108	11m <sup>2</sup>	1m to 1.8	109	21m <sup>2</sup>	2m	110	3m <sup>2</sup> & 15m <sup>2</sup>	1m to 2m	111	24m <sup>2</sup>	1m to 3.1	112	23m <sup>2</sup>	1m to 3.1	113	11m <sup>2</sup>	1m to 1.8	114	31m <sup>2</sup>	1.8m to 4
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<b>Common Circulation and Spaces</b>	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>Where Design Criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level.</p> <p>Achieving the design criteria for the number of apartments off a circulation core may not be possible. Where a development is unable to</p>	<p><b>Acceptable on merit</b></p> <p>The development provides the following per level:</p> <table><tr><th>Level</th><th>No. Apartment</th></tr><tr><td>1</td><td>14</td></tr><tr><td>2</td><td>14</td></tr><tr><td>3</td><td>14</td></tr></table>	Level	No. Apartment	1	14	2	14	3	14																																					
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1	14																																														
2	14																																														
3	14																																														



	achieve the design criteria, a high level of amenity for common lobbies, corridors and apartments should be demonstrated, including: <ul style="list-style-type: none"><li>• sunlight and natural cross ventilation in apartments.</li><li>• access to ample daylight and natural ventilation in common circulation spaces.</li><li>• common areas for seating and gathering.</li><li>• generous corridors with greater than minimum ceiling heights.</li><li>• other innovative design solutions that provide high levels of amenity.</li></ul>	4	10										
		5	10										
		6	9										
		The development benefits from an open plan corridor system which allows for greater level of access to daylight and natural ventilation than would otherwise be available in an enclosed corridor system.											
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	The corridors lead out onto (and over) the central communal open space and thereby providing an enhanced sense of openness than would otherwise be provided in an enclosed corridor system.											
		Not applicable											
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td></tr><tr><td>1 bedroom apartments</td><td>6m<sup>2</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>2</sup></td></tr><tr><td>3+ bedroom apartments</td><td>10m<sup>2</sup></td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m <sup>2</sup>	1 bedroom apartments	6m <sup>2</sup>	2 bedroom apartments	8m <sup>2</sup>	3+ bedroom apartments	10m <sup>2</sup>	Consistent	
		Dwelling Type	Storage size volume										
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		1 bedroom apartments	6m <sup>2</sup>										
		2 bedroom apartments	8m <sup>2</sup>										
		3+ bedroom apartments	10m <sup>2</sup>										
	The development requires the following storage: <ul style="list-style-type: none"><li>• 1 Bedroom x 30 = 180m<sup>3</sup></li><li>• 2 Bedroom x 36 = 288m<sup>3</sup></li><li>• 3 Bedroom x 5 = 50m<sup>3</sup></li><li>• Total Required = 518m<sup>3</sup></li></ul>												
The development provides a total of 518m <sup>3</sup> of which 50% is located within basement car park and 50% is located within each respective apartment.													
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											
		All garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, private open spaces and circulation areas are located more than 3m away from bedrooms.											
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent											
		The development is designed to minimise acoustic impact from neighbouring development and the local road network as well as minimising noise transmission to neighbouring land uses.											
Configuration													
Apartment	Ensure the development provides a range of	Consistent											

<b>Mix</b>	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>The development provides the following apartment mix:</p> <ul style="list-style-type: none"> <li>• 1 Bedroom: 30 (42.2%)</li> <li>• 2 Bedroom: 36 (50.7%)</li> <li>• 3 Bedroom: 5 (7.1%)</li> </ul>
<b>Ground Floor Apartments</b>	Do the ground floor apartments deliver amenity and safety for their residents?	<b>Not applicable</b>
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<p><b>Consistent</b></p> <p>The proposed building includes progressive setbacks and good levels of vertical and horizontal articulation such that the resulting building alignments and proportions that are generally balanced and reflective of the internal layout and structure.</p> <p>Through the provision of progressive setbacks, articulation and the use of a variety of materials, the development is considered to contribute towards the existing or future local context of the commercial and residential character of the local area.</p>
<b>Roof Design</b>	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	<p><b>Consistent</b></p> <p>The development includes a flat roof form which is considered to be consistent with development in the local area and Town centre.</p> <p>The roof is non-trafficable and cannot be used for common open space.</p>
<b>Landscape Design</b>	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<p><b>Consistent</b></p> <p>The landscape design for the development includes a reasonable level of vegetation that contributes towards the architectural scale of the proposed building without under-utilizing or overcrowding the site such that it impedes upon solar access and which is considered to contribute towards the landscape character of the streetscape and neighbourhood while providing for acceptable levels of internal and external amenity.</p>
<b>Planting on Structures</b>	When planting on structures the following are recommended as minimum standards for a range	<b>Consistent</b>

	of plant sizes:				The development includes 1m x 1m v high planters at Level 1 and at Levels 5 & 6 which enable the planting of shrubs.	
	Plant type	Definition	Soil Volume	Soil Depth		Soil Area
	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm		10m x 10m or equivalent
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm		6m x 6m or equivalent
	Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm		3.5m x 3.5m or equivalent
	Shrubs			500-600mm		
	Ground Cover			300-450mm		
	Turf			200mm		
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features				<b>Consistent</b>  The development includes 15 apartm (i.e. 21%) which satisfy the Livable Housing Guideline's silver level unive design features.	
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				<b>Not applicable</b>	
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain?  Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.				<b>Consistent</b>  The development has accessibility to regular public transport routes along Pittwater Road.  The ground floor accommodates reta and car parking only. All residential u is located on the levels above.	
Awnings and Signage	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.				<b>Consistent</b>  Awnings are located along the Pittwa Road and Delmar Parade street	

	Signage must respond to the existing streetscape character and context.	frontages and compliment the design the building.  Signage is not part of this application
<b>Performance</b>		
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	<b>Consistent</b>  The BASIX Certificate submitted with application (see Certificate No. 1068650M-05 dated 28 August 2020) indicates that the development will achieve above target scores for water (40) and energy (34) usage while Thermal Comfort will achieve a target pass.
<b>Water Management and Conservation</b>	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<b>Consistent</b>  The application includes Drainage PI and a Geotechnical Site Investigation which takes into account water disposal measures and the impact of the development on any groundwater seepage.
<b>Waste Management</b>	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	<b>Consistent</b>  The application includes a Waste Management Plan which demonstrates safe and convenient collection and storage of waste and recycling.
<b>Building Maintenance</b>	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	<b>Consistent</b>  The application includes a Schedule of Materials and Finishes which ensure longevity and sustainability of the building.

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

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

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

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



Design Guide,

(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

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

Comment

The development satisfies the requirements of Clause 30(1)(a), (b) and (c).

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

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

(3) To remove doubt:

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

It is considered 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.

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

A BASIX certificate has been submitted with the application (see Certificate No. 1068650M-05 dated 28 August 2020).

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

Commitment	Required Target	DA2017/1183 (Approved)	MOD2020/0081 (Proposed)
Water	40	42	40
Thermal Comfort	Pass	Pass	Pass
Energy	25	25	34



**SEPP (Infrastructure) 2007**Clause 45 - Electricity Infrastructure

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

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

The application was referred to Ausgrid under clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised.

It is noted that Ausgrid provided their comments and conditions to the referral made under DA2017/1183 and, given that no fundamental change has been made to the approved development within the road reserve and to nearby electricity infrastructure, it is considered that the development would not compromise the conditions imposed by Ausgrid under DA2017/1183 pertaining to street lighting and the proximity of underground cables in Pittwater Road and Delmar Parade.

**Clause 102 - Residential development adjacent to a road corridor**

Clause 102 applies to residential development adjacent to a road corridor or freeway with an annual average daily traffic volume of more than 40,000 vehicles and which the consent authority considers would be likely to be adversely affected by road noise or vibration. The RMS has published traffic volume maps for NSW ('Traffic Volume Maps for Noise Assessment for Building on Land Adjacent to Busy Roads'). The noise assessment for the development is indicated on Map 12 as mandatory under Clause 102 of the SEPP Infrastructure.

Clause 102(2) also requires the consent authority to consider any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.

The supporting guidelines (as published by The Department of Planning in 2008) guide development adjacent to railway lines and along motorways, tollways, freeways, transit ways and other 'busy' roads. For new residential developments, internal noise levels of 35 dB (A) have been set for bedrooms during the night-time period and 40 dB (A) for other habitable rooms.

Clause 102(3) prohibits the consent authority from granting consent to residential development adjacent to a road corridor or freeway unless it is satisfied that appropriate measures will be taken to ensure that the above-mentioned LAeq levels are not exceeded. As the site is located adjacent to Pittwater Road which has volume in order of 47, 000 vehicles per day, this Clause applies to the proposed development.

In this regard, the applicant has submitted an acoustic report (prepared by Wilkinson Murray, dated 25 February 2020). In summary, the acoustic report recommends design measures to minimise the acoustic impact of the traffic on residential development.



Therefore, the subject application is considered to satisfy the provisions of Clause 102 subject to a condition to be included in the consent if the application is worthy of approval to adopt the recommendations of the acoustic report in the design of the proposed development, one of which relevantly states:

*"Apartments facing Pittwater Road and Delmar Parade will require improved glazing to ensure that the acoustic amenity of future residences is protected. Preliminary recommendations provide options for upgraded laminated glazing".*

#### Clause 106 - Traffic Generating Development

Pursuant to Clause 106(1) (a) the clause applies to new premises of the relevant size or capacity. (2) In this clause, "relevant size or capacity" means: "in relation to development on a site that has direct vehicular or pedestrian access to any road-the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3".

Clause 106 'Traffic generating development' of the SEPP Infrastructure requires the application be referred to the RMS within seven days, and take into consideration any comments made within 21 days, if the development is specified in Schedule 3 of the SEPP Infrastructure.

Schedule 3 of SEPP Infrastructure requires that the following residential flat developments are referred to the RMS as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Apartment or residential flat building	300 or more dwellings	75 or more dwellings
Commercial premises	10,000m <sup>2</sup> in area	2,500m <sup>2</sup> in area
Refreshment rooms	200 or more motor vehicles	300m <sup>2</sup>
Shops and commercial premises	4,000m <sup>2</sup>	1,000m <sup>2</sup>

The development, as modified by this application, consists of:

- 71 residential apartments;
- 208m<sup>2</sup> GFA Retail/Cafe; and
- 340m<sup>2</sup> GFA Commercial Premises.

The modification maintains the approved number of residential apartments but seeks to increase the approved commercial floor area from 305.3m<sup>2</sup> GFA to 548m<sup>2</sup> GFA.

In their response, the RMS did not raise any objection to the proposed modifications. No additional conditions were imposed beyond those already imposed under DA2017/1183.

#### 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

Development Standard	Requirement	Approved	Proposed	Difference	Complies
4.3 - Height of Buildings	21m (maximum)	23.7m (Building) 23.78m (lift overrun)	23.5m (building) 23.78m (lift overrun)	-0.2m No change	No No

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes
7.3 Objectives for development within Dee Why Town Centre	Yes
7.4 Development must be consistent with objectives for development and design excellence	Yes
7.5 Design excellence within Dee Why Town Centre	Yes
7.10 Allowance for external ancillary plant and roof access	Yes
7.13 Mobility, traffic management and parking	Yes

#### Detailed Assessment

##### 4.3 Height of buildings

In *Gann v Sutherland Shire Council [2008] NSWLEC 157*, the Court was prepared to distinguish an earlier line of authority, and hold that, since Section 96 (now 4.55) was a “free-standing” provision, it could be utilised to modify a consent even where (in that case) no SEPP 1 or Clause 4.6 Objection could be lodged.

By application of that case in the context of this application, the Council can consider (and approve) a modification that still results in a breach of the height control, without reference to SEPP 1 or Clause 4.6, relying instead on the “free-standing” power of Section 4.55.

In this regard, the matters for consideration under SEPP 1 or Clause 4.6 provide a reasonable and consistent means of assessing any Section 4.55 that is beyond the provisions of the planning controls.

Whilst this modification application will result in a height that exceeds the maximum permitted by Clause 4.3 of WLEP 2011, the application does not strictly need to address the requirements of Clause



4.6. This application has been made under Section 4.55 of the EP&A Act, which is a free-standing provision which, in itself, authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant s.4.15 matters) and does not rely upon having a Clause 4.6 variation objection in order to determine the modification.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications.

Notwithstanding that Clause 4.6 does not apply to modification applications, the merits of the departure have been assessed and found that the development satisfies the underlying objectives of Clause 4.3 Height of Buildings under WLEP 2011 and the variation can be supported on its merit.

The modification reduces the approved breach of the development standard of 0.2m (i.e. from 23.1m to 22.9m) . Notwithstanding, this assessment considers that the modified development is essentially and substantially the same development as previously approved under DA2017/1183 and therefore no assessment against the objectives of Clause 4.6 is required and the departure from the development standard is supported in this instance.

#### **Warringah Development Control Plan**

##### Built Form Controls

<b>Standard</b>	<b>Requirement</b>	<b>Approved</b>	<b>Proposed</b>	<b>Complies</b>
B1 Wall height	N/A	N/A	N/A	N/A
B2 Number of storeys	N/A	N/A	N/A	N/A
B3 Side Boundary Envelope	N/A	N/A	N/A	N/A
B4 Site Coverage	N/A	N/A	N/A	N/A
B5 Side Boundary Setbacks	N/A	N/A	N/A	N/A
B7 Front Boundary Setbacks	N/A	N/A	N/A	N/A
B9 Rear Boundary Setbacks	N/A	N/A	N/A	N/A
D1 Landscaped Open Space and Bushland Setting	N/A	N/A	N/A	N/A

##### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A.5 Objectives	N/A	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities		
C3(A) Bicycle Parking and End of Trip Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C9 Waste Management	Yes	Yes
D2 Private Open Space	N/A	N/A
D3 Noise	Yes	Yes
D6 Access to Sunlight	N/A	N/A
D7 Views	Yes	Yes
D8 Privacy	N/A	N/A
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
D18 Accessibility and Adaptability	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
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes
3 Desired Character for the Dee Why Town Centre	N/A	Yes
4 Streetscape and Public Domain	Yes	Yes
5 Design and Architectural Diversity	Yes	Yes
7 Traffic and Parking	Yes	Yes
9 Sustainability	Yes	Yes
11 Landscaping	Yes	Yes

#### Detailed Assessment

### **C3 Parking Facilities**

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Residential				
1 Bedroom (29)	0.6/dwelling	17.4		
2 Bedroom (37)	0.9/dwelling	33.3	78	+20.3
3 Bedroom (5)	1.4/dwelling	7		
Residential Visitors	1/5 dwellings	14.2 (15)	13	-1.2 (2)
Commercial (548m <sup>2</sup> )	1/23.8m <sup>2</sup> GLFA	23	17	-6
<b>Total</b>		<b>95.7</b>	<b>108</b>	<b>+12.3</b>





**Note:** The commercial rate has been used due to its applicability within the Dee Why Town Centre for the retail / business component of shop top housing.

### 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.

### Dee Why Town Centre Contributions Plan 2019

The application was referred to Council's Contributions Officer with respect to the possible application of the Dee Why Town Centre Contributions Plan 2019. The following comments have been provided:

*"The contributions plan applicable to the modification application is the contributions plan in force at the time of the original development consent. This was the Northern Beaches Council Contributions Plan 2018. Condition 8 relates to the payment of development contributions was applied pursuant to section 7.12 of the EP&A Act and the Northern Beaches Council Contributions Plan 2018.*

*The modification application does not identify a change to the original development cost. Subject to confirmation from the assessment planner that the modification application is unlikely to increase the overall cost of development, the modification application is supported and no change to Condition 8 is required".*

#### Assessment Planner Comment

The applicant has submitted a letter from a Quantity Surveyor (Newton Fisher Group) which advises:

"We in our capacity as Quantity Surveyors can confirm that we have reviewed the \$4.55 architectural documentation in relation to the above noted project located at Dee Why. Having reviewed the documentation the proposed Development Value of \$20,303,413 is considered fair and reasonable".

The estimated cost of works for DA2017/1183 was \$20,303,413. Therefore, the modification application does not increase the overall cost of development.

### 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

Given the supporting comments provided by the applicant, and the court judgement by Justice Bignold established in the *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289*, it is considered that the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Environmental Planning and Assessment Act 1979.

The assessment of the application found the following areas of non-compliance:

**State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (Apartment Design Guide)**

- Clause 3E - Deep Soil Zones;
- Clause 3F - Visual Privacy;
- Clause 4D - Apartment Size and Layout;
- Clause 4E - Private Open Space and Balconies; and
- Clause 4F - Common Circulation and Spaces.

In each instance, the assessment of the above matters found that the development achieved consistency with the Design Guidance of the control and could be supported. In particular, the non-compliant separation under Clause 3F was considered to satisfy the performance solutions to adequately address the constraint of the site at the eastern elevation given the irregular lot shape without unreasonably impacting upon the development potential of No. 4 Delmar Parade. Other issues identified in the above list were also considered to be minor and supportable.

Of the above issues, special conditions have been included to address Clause 4D - 'Apartment Size and Layout' to increase the internal size of master bedrooms by 0.6m<sup>2</sup> to 1.0m<sup>2</sup>.

The matter of the departure of the design from the approved tower element has been discussed and has been considered to be appropriate to its context as a gateway site into and out of the Dee Why Town Centre, as it provides a more streamlined form which visually flows into and out of the Centre than the original tower scheme.

The submissions received in response to the notification of the application raised the following concerns:

- *Reduction to the southern side boundary setback (Level 4 and above) and impact this may have in prejudicing future development of the neighbouring property to the south.*
- *Additional overshadowing of neighbouring property to the south.*
- *Amendment of the Construction Traffic Management Plan from 14 day notice period to 5 day notice period and its impact on business to the south.*
- *Reduction to the height of the basement from 4.5m to 4.3m and the impact this would have on*



- *the future through-site-link to the neighbouring property to the south.*
- *Traffic flow into the carpark and imposed Condition 27 which requires the installation of a median island in Delmar Parade to restrict right-turn movements.*

Each of the above issues has been considered and addressed in this report and were found to not warrant the refusal of the application. With exception to amending Condition 28 (which relates to the Construction Traffic Management Plan), no special conditions were included in the draft consent as a result of the submissions.

Subsequent to confirming that the modification application does not satisfy the referral criteria to be considered by the SNPP (as contained in the document '*Instruction of the Functions Exercisable by Council on behalf of Sydney District or Regional Planning Panels - Applications to Modify Development Consents*' pursuant to Clause 123BA of the Environmental Planning and Assessment Regulation 2000) which commenced on 1 August 2020, the application may be determined by Council under delegation from the SNPP.

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

## **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0081 for Modification of Development Consent DA2017/1183 granted for a Mixed Use Development comprising retail shops and shop top housing on land at Lot 1 DP 710661,2 Delmar Parade, DEE WHY, subject to the conditions printed below:

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

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

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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
TP01.08 (Revision C) - Basement Level 2	7 August 2020	Rothelowman
TP01.09 (Revision D) - Basement Level 1	7 August 2020	Rothelowman
TP01.10 (Revision D) - Ground Level	7 August 2020	Rothelowman
TP01.11 (Revision B) - Level 1	4 August 2020	Rothelowman
TP01.12 (Revision B) - Level 2	4 August 2020	Rothelowman
TP01.13 (Revision B) - Level 3	4 August 2020	Rothelowman
TP01.14 (Revision B) - Level 4	4 August 2020	Rothelowman
TP01.15 (Revision B) - Level 5	4 August 2020	Rothelowman
TP01.16 (Revision B) - Level 6	4 August 2020	Rothelowman
TP01..17 (Revision A) - Roof Level	25 June 2020	Rothelowman

TP02.05 (Revision B) - Site Elevations (North)	16 July 2020	Rothelowman
TP02.06 (Revision A) - Site Elevations (South)	25 June 2020	Rothelowman
TP12.04 (Revision B) - Notification - East Elevation	4 August 2020	Rothelowman
TP02.08 (Revision A) - Site Elevations (West)	25 June 2020	Rothelowman
TP03.01 (Revision A) - Site Section 1	25 June 2020	Rothelowman
TP03.02 (Revision A) - Site Section 2	25 June 2020	Rothelowman
TP03.03 (Revision A) - Site Section 3	25 June 2020	Rothelowman
TP03.04 (Revision A) - Site Section 4	25 June 2020	Rothelowman
TP09.01 (Revision B) - Exterior Finishes	4 September 2020	Rothelowman

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Arboricultural Impact Assessment	November 2017	Urban Forestry Australia
Geotechnical Report	January 2016	Douglas Partners
Construction Management Plan	24 November 2017	Marchese Partners
Provision for Fire Engineering (20196-L01)	26 June 2020	Innova Services
Building Code of Australia Compliance Assessment Report	25 June 2020	Aramini + Leedham Consulting
NCC Part J Energy Efficiency Report (01002) - Version	4 February 2020	Senica Consulting Group
DA Noise Assessment (Version A) (19517)	25 February 2020	Wilkinson Murray
Statement of Compliance Access for People with a Disability	21 February 2020	Accessible Building Solutions

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

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

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

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Landscape Plan - Ground Floor (Issue E) - Sheet 1 of 6	25 June 2020	Paul Scrivener Landscape
Landscape Plan - Level 1 (Issue E) - Sheet 2 of 6	25 June 2020	Paul Scrivener Landscape
Landscape Plan - Level 2 and Level 3 (Issue E) - Sheet 3 of 6	25 June 2020	Paul Scrivener Landscape
Landscape Plan - Level 4 (Issue E) - Sheet 4 of 6	25 June 2020	Paul Scrivener Landscape
Landscape Plan - Level 5 and Level 6 (Issue E) - Sheet 5 of 6	25 June 2020	Paul Scrivener Landscape
Details (Issue E) - Sheet 6 of 6	25 June 2020	Paul Scrivener Landscape





Waste Management Plan		
Drawing No.	Dated	Prepared By
Site Waste Management Report (SW20/01001) - Version D	6 August 2020	Senica Consultancy Group

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

**B. Modify Condition 2 - Amendments to the approved plans to read as follows:**

**2.**  
**Amendments to the approved plans**

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

(a) The internal areas (excluding wardrobe space) of the master bedrooms of the following apartments are to be increased to a minimum of 10m<sup>2</sup>:

- 101 to 106; 114; 201 to 206; 214; 301 to 306; 314; 402 and 405.
- The doors that provide access to the waste storage room from the kerb are to be able to be latched in an open position flat against the wall for servicing without obstructing access and maneuvering of bins.
- To allow unobstructed access for collection staff to service the bins, the pathway and access between the Waste Storage Area and the Collection Point on Delmar Parade needs to:
  - a) be solid, concrete, continuous, non-slip
  - b) be a maximum ramp gradient of 1 in 8.
  - c) have a minimum opening of 1,500mm provided in the balustrade immediately outside the substation between the Waste Storage Area and the Collection Point on Delmar Parade. The eastern end of the walkway from the Waste Collection Room to the pathway adjacent to the approved driveway is to be open and free of any obstruction.

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

Reason: To ensure privacy is maintained for residential apartments.

**C. Modify Condition 3 - Compliance with other department, authority or service requirements to read as follows:**

**3.**  
**Compliance with other department, authority or service requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	18/12/2017
Transport for NSW	Referral Response - RMS	1 April 2020





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

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

**D. Amend Condition 6 - General Requirements to read as follows:**

**6.  
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 or 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.

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

**E. Amend Condition 15 - Stormwater Disposal to read as follows:**

**15.**

**Stormwater Disposal**

Plans indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments, shall be submitted prior to the issue of the Construction Certificate.

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

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

**F. Amend Condition 16 - Submission Roads Act Application for Civil Works in the Public Road to read as follows:**

**16.**

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

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. These works include the construction of a new kerb inlet pit within Delmar Parade to receive the stormwater discharge from the site. This inlet pit is to be connected to Council's adjoining stormwater gully pit via a 375mm RCP Pipe that is located in front of 4 Delmar Parade. The 375mm line is to run under the existing kerb and gutter.

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 new street pit and pipe system which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information: The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

The Council 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.

**G. Amend Condition 17 - On-Site Stormwater Detention to read as follows:**

**17. On-Site Stormwater Detention Details**

The Applicant is to provide stormwater 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 SGC, drawing number SW200, SW201, SW202, SW203, SW204, SW205, SW300 Issue C, dated 17/7/2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NER) or RPENG Civil (Professionals Australia)

The drainage plans must address the following:

- i. The discharge pipe from the onsite detention tank is to be connected to a new inlet pit to be constructed in Delmar Parade and connected by a 375mm Reinforced Concrete Pipe running under the kerbline to Council's adjoining stormwater pit (in front of 4 Delmar Parade).
- ii. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

**H. Delete Condition 26 - Treatment of the southern wall**

**I. Amend Condition 28 - Construction Traffic**

**Management Plan to read as follows:**

**28. Construction Traffic Management Plan**

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

The

CTMP must address the following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase;
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored on site, at all times;
- The proposed areas within the site to be used for the storage of excavated materials,



- construction materials and waste containers during the construction period;
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum five (5) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure with the exception for any temporary road closure, for which a minimum fourteen (14) days notification must be provided.
- 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.

**J. Add Condition 28A - Traffic Management and Control to read as follows:**

**28A. 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.

**K. Add Condition 28B - Tanking of Basement Level to read as follows:**

**28B. Tanking of Basement Level**

The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

**L. Add Condition 28C - Shoring of Council's Road Reserve (Temporary Road Anchors) to read as follows:**

**28C. 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.

**M. Add Condition 28D - Vehicle Crossings Application to read as follows:**

**28D. 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.

**N. Add Condition 28E - Pre-Commencement Dilapidation Report to read as follows:**

**28E. Pre-Commencement Dilapidation Report**

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

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

Reason: Protection of Council's infrastructure during construction.

**O. Add Condition 28F - Fire Safety to read as follows:**

**28F - Fire Safety**

The Building Code of Australia fire safety measures as detailed and recommended in the Building Code of Australia (BCA) Compliance Assessment Report prepared by Aramini and Leedham Consulting, dated 24/02/2020, are to be taken into consideration as part of the assessment for the Construction Certificate.

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

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

**P. Add Condition 28G - Access for Persons with a Disability to read as follows:**

**28G - Access for Persons with a Disability**

The recommendations made in the Statement of Compliance- BCA Access Report prepared by Accessible Building Solutions, Job No. 219313 and dated 21/02/2020, are to be taken into consideration as part of the assessment of the Construction Certificate

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

Reason: To ensure adequate provision is made for Persons with a Disability.

**Q. Add Condition 28H - On-Slab Landscape Planting and Associated Works to read as follows:**

**28H - 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.

**R. Add Condition 29A - Tree Protection to read as follows:**

**29A - Tree Protection**

(a) Existing trees which must be retained:

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

(b) Tree protection:

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with the recommendations of the Arboricultural Impact Assessment dated November 2019 prepared by Urban Forestry Australia 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.

**S. Amend Condition 32 - Vehicle Crossings to read as follows:**

**32. Vehicle Crossings**

The Applicant is to construct one vehicle crossing 6.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ Normal and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

**T. Add Condition 39A - Road Reserve to read as follows:**

**39A. 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.

**U. Add Condition 39B - Progress Certification (Road and Subdivision) to read as follows:****39B. Progress Certification (Road and Subdivision)**

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

- (a) Silt and sediment control facilities
  - (b) Laying of stormwater pipes and construction of pits in Delmar Parade
  - (c) Proof Roll- Base-course laid and compacted \*\*
  - (d) Kerb and gutter construction
  - (e) Pavement
  - (f) Landscaping and vegetation
  - (j) Clean-up of site, and of adjoining Council roadway and drainage system.
- (\*\*To be tested by a recognised N.A.T.A. approved laboratory).

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.

**V. Add Condition 39C - Civil Works Supervision to read as follows:****39C. 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.

**W. Add Condition 39D - Footpath Construction to read as follows:****39D. Footpath Construction**

The applicant shall construct a 1.5m wide concrete footpath in Delmar Parade 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.

**X. Add Condition 39E - Notification of Inspections (Infrastructure Works to be Handed over the Council) to read as follows:****39E.**

**Notification of Inspections (Infrastructure Works to be Handed over the 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 (e) Subgrade level / basecourse level (f) Sealing road pavement

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.

**Y. Amend Condition**

**42 - Reinstatement of Kerb to read as follows:**

**42.**

**Reinstatement of Kerb**

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

Details

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

Reason: To

facilitate the preservation of on street parking spaces.

**Z.**

**Amend Condition 44 - Stormwater Disposal to read as follows:**

**44. Stormwater****Disposal**

The stormwater drainage works shall be certified as compliant with Council's Stormwater Drainage from Low Level Properties Technical Specification and all relevant Australian Standards and Codes by a NPER Civil Engineer registered with Engineer's Australia.

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.

**AA. Add Condition 53A - Post-Construction Road Reserve Dilapidation Report (Major Development) to read as follows:**

**53A. Post-Construction Road Reserve Dilapidation Report (Major Development)**

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

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





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

**BB.**

**Add Condition 53B - Positive Covenant and Restriction as to User for On-Site Stormwater Disposal Structures to read as follows:**

**53B. 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.

**CC. Add Condition 53C - Installation of Traffic Measures in the Car Park to read as follows:**

**53C. Installation of Traffic Measures in the Car Park**

The following traffic measures are to be installed in the car park:

- Traffic convex mirror between the site access and the loading bay.
- Traffic convex mirror between the basement one ramp and loading bay.
- Traffic convex mirror between the aisle and access into 814-816 Pittwater Road.
- Priority control (give way) at the intersection of the right of way and ramp going down to the basement car park by installation of give way linemarking/ signposting on the ramp to give way to the vehicles on the right of way.
- signal system for the loading dock

Reason: To improve sight distance and prevent vehicular conflict within the car park

**DD. Add Condition 53D - Installation of Security Gate to read as follows:**

**53D. Installation of Security Gate**

The resident parking spaces are to be separated from the non-residential parking spaces by installation of a security gate. Given the constraints regarding the placements of the security gate, the resident visitor spaces can be located out of the secured car parking area, should the installation of the security gate is not possible otherwise.

Reason: provision of secure car parking area for residential component





**EE. Add Condition 53E - Landscape Completion Certificate to read as follows:**

**53E. Landscape Completion Certificate**

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

b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been established and maintained in accordance with the approved landscape plan.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

**FF. Add Condition 53F - Condition of Retained Vegetation (PLEP) to read as follows:**

**53F. Condition of Retained Vegetation (PLEP)**

Prior to the issue of an Occupation Certificate, a report prepared by an AQF Level 5 Arborist (or equivalent), shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

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

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

**GG. Add Condition 53G - Required Planting to read as follows:**

**53G. Required Planting**

Trees shall be planted in accordance with the following schedule:

Delmar Parade road reserve forward of the property, clear of driveway and intersection sightlines and generally in alignment with other street trees

No. of Trees	Species	Location	Minimum Pot Size
All trees	As indicated on the approved Landscape Plans	As indicated on the Landscape Plans	As indicated on the Landscape Plans
5	Tristaniopsis laurina 'Luscious'	Pittwater Road road reserve forward of the property, clear of driveway and intersection sightlines and generally in alignment with other street trees	100 litre
2	Tristaniopsis laurina 'Luscious'	Delmar Parade road reserve forward of the property, clear of driveway and	100 litre



		intersection sightlines and generally in alignment with other street trees	
--	--	---	--

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

Reason: To maintain environmental amenity.

#### **HH.**

**Add Condition 53H to read as follows:**

53H. Treatment of the southern wall facing 816 Pittwater Road

The external podium wall facing No. 816 Pittwater Road is to be finished with a design (including complimentary colours and textures) sufficient to avoid a blank wall, which relates to the architecture of the building.

The final design is to be approved by Council's Manager Development Assessment and is to be incorporated into the final architectural plans prior to the issue of any Occupation Certificate.

Reason: To ensure the aesthetic quality of the development enhances the streetscape.

#### **II.**

**Amend Condition 54 - Allocation of Spaces to read as follows:**

#### **54.**

##### **Allocation of Spaces**

The parking allocation shall meet the minimum requirements in accordance with Warringah DCP which requires the following:

- 18 retail parking spaces
- 14 residential visitor spaces
- 57 resident spaces

A plan demonstrating the above is to be submitted to and approved by the certifying authority prior to construction certification.

Reason: compliance with Warringah DCP.

**JJ. Add Condition 62A - Availability of Retail Parking Spaces to read as follows:**

##### **62A. Availability of Retail Parking Spaces**

All retail parking spaces are to be available and accessible for the customers use during the retail business hours. The presence of customer parking spaces within the car parking is to be clearly signposted at the entrance of the car park.

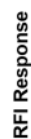
Reason: To ensure the retail spaces are available.

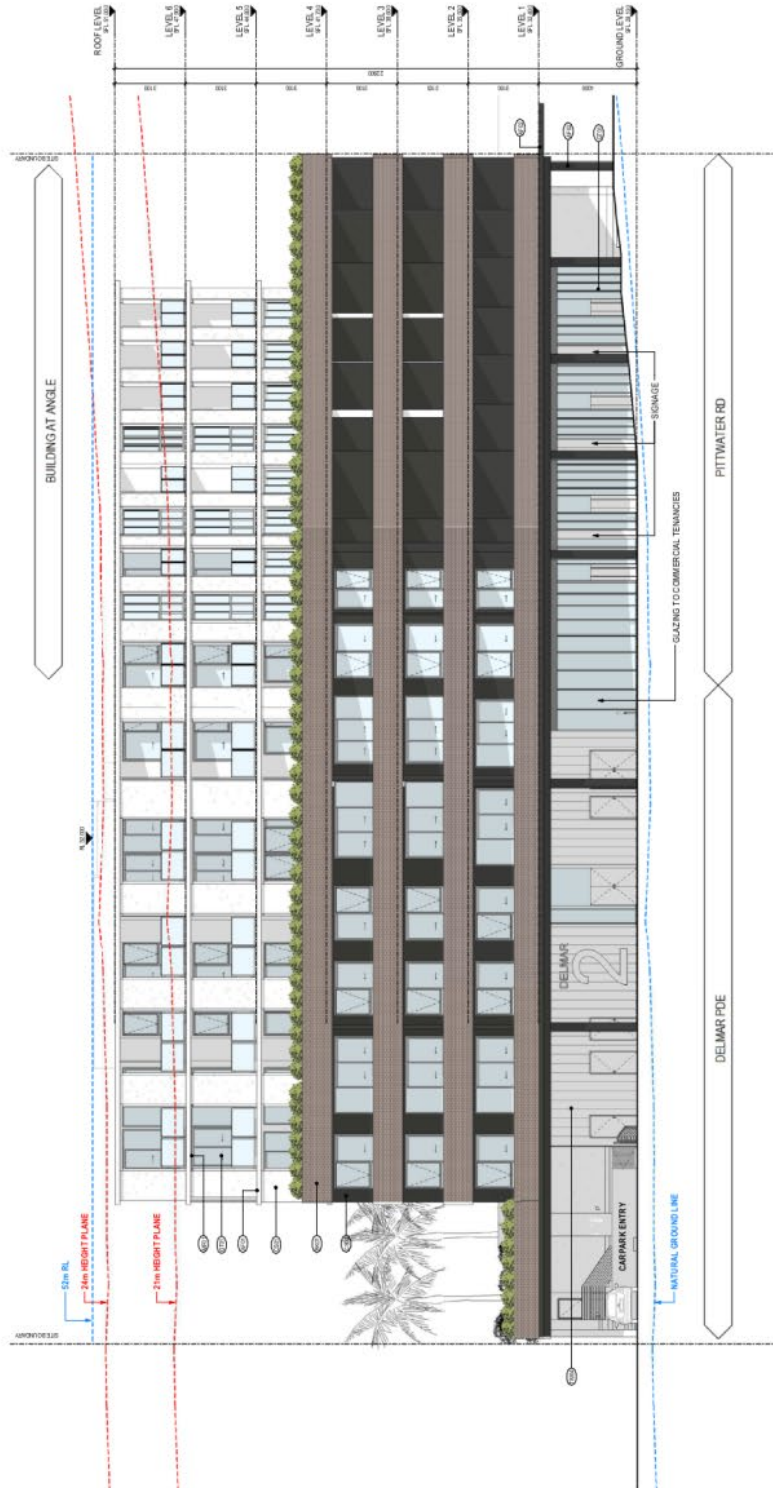
**KK. Add Condition 62B - Landscape Maintenance to read as follows:**

**62B. 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.





**RFI Response**

Response	RFI	Date	Response
P1	20.12.2019	20.12.2019	20.12.2019
P2	20.12.2019	20.12.2019	20.12.2019
A	20.12.2019	20.12.2019	20.12.2019
B	20.12.2019	20.12.2019	20.12.2019

NOTED: 2020.12.14 BY 1774

**SYMBOL LEGEND:**

	3m RL
	2m RL
	1m RL
	0m RL
	1m RL
	2m RL
	3m RL

**NOTES TO BE OBSERVED:**

1	APPLICABLE TO THIS PROJECT
2	APPLICABLE TO THIS PROJECT
3	APPLICABLE TO THIS PROJECT
4	APPLICABLE TO THIS PROJECT
5	APPLICABLE TO THIS PROJECT
6	APPLICABLE TO THIS PROJECT
7	APPLICABLE TO THIS PROJECT
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9	APPLICABLE TO THIS PROJECT
10	APPLICABLE TO THIS PROJECT

**2 DELMAR PARADE**  
2 Delmar Pde  
219132  
16.07.2020  
BR  
1:100  
TP02.05 B

**SITE ELEVATIONS - NORTH**  
219132  
16.07.2020  
BR  
1:100  
TP02.05 B

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Drawing No. **TP12.04 B**

Scale @ A3 / 1 : 200  
Scale @ A4 / 1 : 400

Author / BR

Date / 24.02.2020

Project No. / 219132

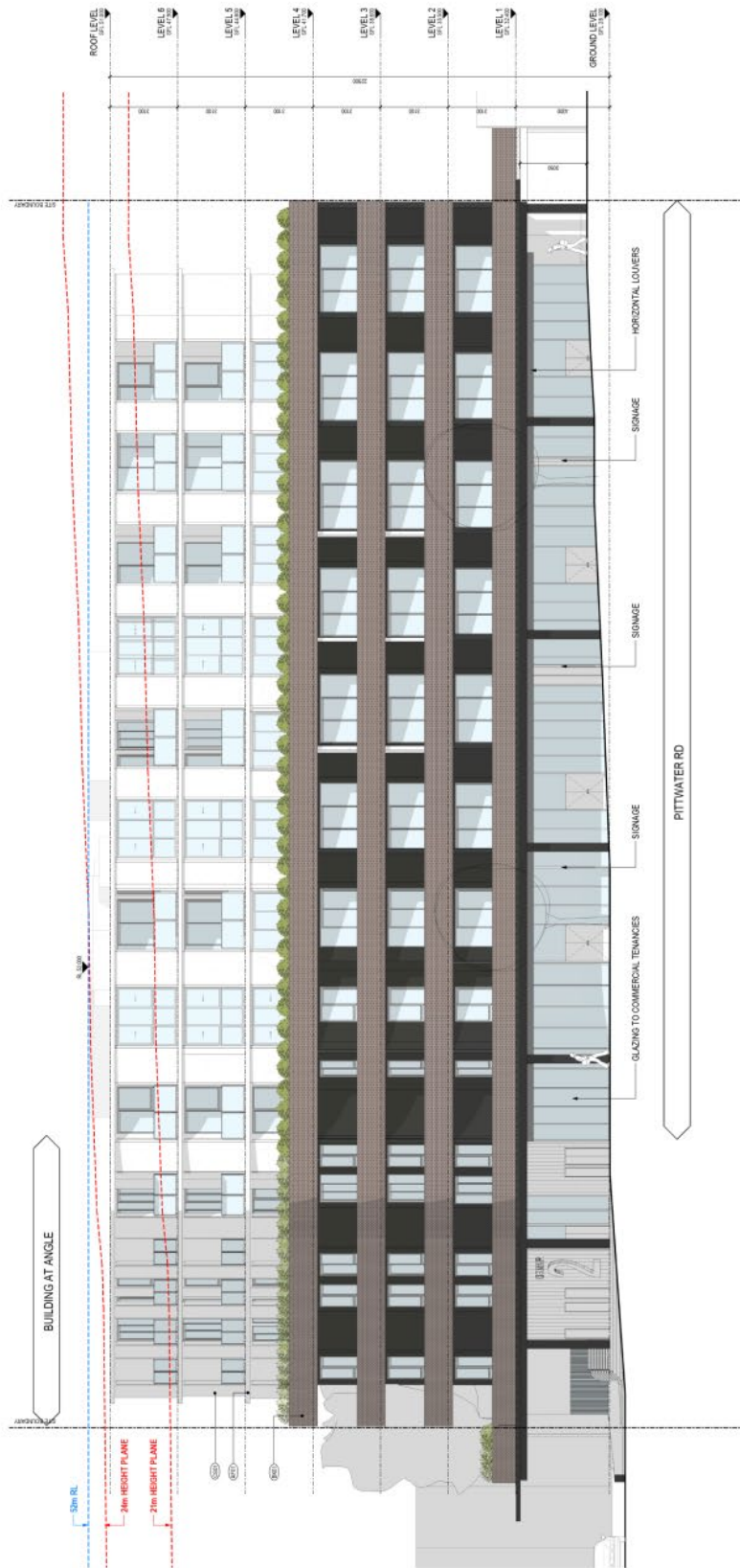
Drawing / NOTIFICATION - EAST  
ELEVATION

Project / 2 DELMAR PARADE  
2 Delmar Place  
Dee Why, NSW

Revisions /  
P1 24.02.2020 14:55 Submission  
A 25.05.2020 14:55 Submission RFI Response  
B 04.08.2020 14:55 Submission RFI Response

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4/08/2020 5:58:51 PM



**RFI Response**

Response	RFI	RFI Number	RFI Date	RFI Response Date
	1	28.12.2019	15.01.2020	
	2	12.02.2020	14.03.2020	
	3	28.03.2020	14.04.2020	
	4	28.03.2020	14.04.2020	
	5	28.03.2020	14.04.2020	
	6	28.03.2020	14.04.2020	
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	98	28.03.2020	14.04.2020	
	99	28.03.2020	14.04.2020	
	100	28.03.2020	14.04.2020	

**SYMBOL LEGEND:**

Symbol	Description
(Symbol)	Window
(Symbol)	Door
(Symbol)	Roof
(Symbol)	Ground Level
(Symbol)	20m Height Plane
(Symbol)	24m Height Plane
(Symbol)	Glazing to Commercial Tenances
(Symbol)	Signage
(Symbol)	Horizontal Louvers

**REVISIONS:**

Revision	Description	Date
1	Initial Design	15.01.2020
2	Revised Design	14.03.2020
3	Final Design	14.04.2020

**2 DELMAR PARADE**

**219132**  
**25.08.2020**  
**BR**

**SITE ELEVATIONS - WEST**

**219132**  
**25.08.2020**  
**BR**

**1 : 100**

**25.08.2020**  
**BR**

**TP02.08 A**

**25.08.2020**  
**BR**

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### ITEM 3.4

**MOD2020/0225 - 7/7-9 MARINE PARADE, MANLY -  
MODIFICATION OF DEVELOPMENT CONSENT DA3754/1990  
GRANTED FOR APPROVED RESTAURANT INVOLVING A 2  
TRIAL PERIOD FOR TRADING HOURS**

## REPORTING MANAGER

## Steve Findlay

**TRIM FILE REF**

**2020/549396**

## ATTACHMENTS

## 1 Assessment Report

## PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

## RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Mod2020/0225 for Modification of Development Consent DA3754/1990 granted for approved restaurant involving a 2 trial period for trading hours on land at Lot 7 SP 12796, 7/7-9 Marine Parade, Manly, subject to the conditions outlined in the Assessment Report.



## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0225
<b>Responsible Officer:</b>	Thomas Prosser
<b>Land to be developed (Address):</b>	Lot 7 SP 12796, 7 / 7 - 9 Marine Parade MANLY NSW 2095
<b>Proposed Development:</b>	Modification of Development Consent DA3754/1990 granted for approved restaurant involving a 2 year trial period for trading hours
<b>Zoning:</b>	Manly LEP2013 - Land zoned B1 Neighbourhood Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	R M A M Enterprises Pty Ltd
<b>Applicant:</b>	Bower Restaurant Pty Ltd T/As The Bower Manly
<b>Application Lodged:</b>	01/06/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	30/06/2020 to 14/07/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### **EXECUTIVE SUMMARY**

The application seeks to remove a trial period condition for hours of operation for a restaurant, and confirm the hours allowed under the trial to be permanent.

The application is referred to the DDP due the previous trial period condition being imposed by the DDP.

The proposed hours of operation are from 8am-7pm Sunday to Wednesday, and 8am-9:45pm Thursday to Saturday.

The existing restaurant is within the B1 Neighborhood Centre zone, and is within close proximity to residential development (including above and adjoining).





The proposed hours are defined as being up to within the "evening" period rather than "night" under the Noise Policy for Industry (2017) by the NSW EPA.

An assessment of the potential noise impacts during these hours has found that there can reasonable control and mitigation of noise. This includes through a continuation of existing conditions and an updated Operational Plan of Management for the restaurant.

Therefore, it is recommended that the application be approved.

### PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Condition 1 of DA3754/90 which is as follows:

*"1. Hours of Operation being 8am-7pm, 7 days a week, Thursday 8am - 9pm."*

In this regard, the proposal also seeks to delete a trial period condition and amend the above condition to allow trial period hours to be permanent. The trial period condition under MOD2017/0314 is as follows:

*"a) Notwithstanding Condition 1, the Premises is authorised to trade during the following extended hours: ("Trial Periods"):*

*(i) 7pm to 9.45pm on Friday and Saturday for a trial period of 2 years commencing on 11 April 2018 and ending on 11 April 2020; and*

*(ii) 9pm to 9.45pm on Thursday for a trial period of 1 year commencing on 11 April 2018 and ending on 11 April 2019*

*(b) If an application is lodged with Council to extend any of the Trial Periods and such application is lodged no earlier than 4 months and no later than 3 months before the end of the relevant Trial Periods and that application is diligently prosecuted then the relevant Trial Periods shall continue until such time as the application is finally determined.*

*(c) During the Trial Periods the Premises must be operated in accordance with a Plan of Management dated 1.02.2018 and amended by Council on 3.04.2018, where there is any conflict between these conditions and the Plan of Management, the Plan of Management shall prevail.*

*2. Seating to be restricted to 58 seats internally and 32 seats and 8 tables externally (licensed area only), with no further increase permitted due to inability to provide off-street parking."*

As such, the proposed hours of operation are as follows:

- 8am-7pm Sunday to Wednesday, and 8am-9:45pm Thursday to Saturday.

### 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**

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S79C Assessment  
 Manly Local Environmental Plan 2013 - 6.21 Noise impacts—licensed premises  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 4.2.8.6 Hours of Operation

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 7 SP 12796 , 7 / 7 - 9 Marine Parade MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site is commonly known as 7-9 Marine Parade Manly and known as Lot SP 12796. The site is located on the southern side of Marine Parade. The site is regular is shape and has a frontage of 17.025m to Bower Street. The site has a length on Bower Lane of 30.68m and an approximate site area of 570.9m<sup>2</sup>. The site currently contains a 3 storey mixed use building containing both commercial and residential uses. The site is relatively flat.</p> <p>The surrounding area includes dwelling houses, residential flat buildings, a café and shop top housing.</p>

Map:



## SITE HISTORY

The land has been mixed use for an extended period of time. A search of Council's records has revealed the following relevant history:

A Court Judgement/Order was issued on 23 January 2017, which included a modification to the original consent involving the addition of the following condition:

*"2A. Extended Hours Trial (a) Notwithstanding condition 1 the Premises is authorised to trade during the following extended hours for a trial period of 12 months commencing on 1 February 2017 and ending on 31 January 2017 ("Trial Period"): (i) 7pm to 9.45pm on Friday and Saturday. (b) During the Trial Period the Premises must be operated in accordance with the plan of management dated 23 December 2016 a copy of which is attached to these conditions where there is any conflict between these conditions and the Plan of Management, the Plan of Management shall prevail."*

An application (Mod2017/0314) requested a further 2 year trial period for trading hours for the restaurant for the above hours, and a 1 year trail period for up to 9:45pm on a Thursday. This was a modification of Development Consent DA3754/1990, and was granted consent on 11/04/2018.

This application seeks to make permanent the hours approved under the trial period.

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

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the





- development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for MOD2017/0314, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA3754/90 and MOD2017/0314.</p> <p>In this regard, the application seeks to confirm hours of operation in which have been granted under a trial period for MOD2017/0314. As the proposed hours are the same as the trial, this is substantially the same development.</p>
<p>(b) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan and Manly Development Control Plan.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA3754/90 and MOD2017/0314.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by	No submissions were received in relation to



Section 4.56- Other Modifications	Comments
the development control plan, as the case may be.	this application.

#### Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

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

Section 79C 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.  <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
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	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered 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





Section 79C 'Matters for Consideration'	Comments
	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 from 30/06/2020 to 14/07/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Ms Catherine Mary Veech	1 Bannerman Street CREMORNE NSW 2090
Ms Maria Burnette	1 / 7 - 9 Marine Parade MANLY NSW 2095
Mrs Doris Jean Vaughan O'Keefe Mr Alexander O'Keefe	2/7-9 Marine Parade MANLY NSW NSW 2095

The matters raised within the submissions are addressed as follows:

- Objection to trial extension based on noise in a residential area (if the restaurant is allowed to close at 11pm)**  
Comment:  
 The proposal is for hours of operation to be until 9:45pm, Thursday to Friday. The proposal does not seek to extend the hours of operation until 11pm. As further assessed in this report, the evening hours until 9:45pm for a restaurant are reasonable, subject to a plan of management and conditions which control noise impacts to nearby residences.
- Request that conditions in management plan are honoured; request that all conditions are honoured (including that no music is to be played and windows along Bower lane are to remain closed during the evening)**  
Comment:  
 All conditions and requirements under the Plan of Management are to be adhered to. Any evidence that these conditions are being breached, should be forwarded to Council for investigation.
- Issue of restaurant trading before opening hours**  
Comment:  
 Any evidence of the restaurant trading before the approved hours of operation should be forwarded to Council for investigation.



## 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><i>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.</i></p>
Environmental Health (Food Premises, Skin Pen.)	<p><b>General Comments</b></p> <p>Application to continue ongoing with extended hours of operation. Environment Health is not aware of any complaints specifically relating to noise issues over the past 2 years (the trial period) on extended operational hours. Our concerns included:</p> <ul style="list-style-type: none"> <li>Noise including vibration to residents within the same building,</li> <li>Impact of associated noise on neighbouring premises.</li> <li>Clean up and waste and recycling put out noise.</li> <li>Patrons leaving</li> </ul> <p>On the basis of no complaints, no objection is raised for the trial hours to continue indefinitely. Appropriate conditions that are ongoing for future business operators are therefore included.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

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



### SEPP 55 - Remediation of Land

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

### Manly Local Environmental Plan 2013

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

### Compliance Assessment

Clause	Compliance with Requirements
6.12 Essential services	Yes
6.21 Noise impacts—licensed premises	Yes

### Detailed Assessment

#### 6.21 Noise impacts—licensed premises

The site has an existing approval for the use of the land as a restaurant which involves a licensed premises.

The proposed modification is to confirm the hours approved under the trial period to be permanent.

There is residential accommodation in close vicinity of the restaurant, including above and adjoining.

Over first trial period (granted by the court) there was one complaint investigated in regards to music playing after 7pm. This was in relation to the court condition 2A(b) which required operation of the premises in accordance with the Plan of Management. The Plan of Management involved not playing music after 7pm, under 5.1 (j). As a result of this complaint, Council issued a verbal warning to the owners on Thursday the 16 November 2017.

Since then, there have also been complaints that have been investigated in regard to morning opening hours and the opening of doors. After warnings have been given, there has been no evidence of ongoing issues. Furthermore, there has been no evidence to show that the restaurant is operating later than the hours that a subject to extension.

Across the three years of trial periods, there is no evidence to show that the proponent has not reasonably acted within the confines of the consent.

As such, this confirms the trial period has shown that extended hours until 9:45 pm from Thursday to Saturday would reasonably restrict noise nuisance for surrounding residential development. This is



subject to continued compliance with all conditions and the Plan of Management.

### Manly Development Control Plan

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.2 Privacy and Security	Yes	Yes
3.8 Waste Management	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.8 Neighbourhood Centres (LEP Zone B1)	Yes	Yes
4.2.8.6 Hours of Operation	Yes	Yes
4.2.8.8 Waste Management	Yes	Yes
4.2.8.10 Local Character provisions	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

### 3.4.2 Privacy and Security

Under Clause 3.4.2.3 of the Manly DCP 2013, there are guidelines and requirements for acoustical privacy (noise nuisance) including the consideration of the '*Noise Guide for Local Government prepared by NSW Department of Environment, Climate Change and Water in 2010*'. The proposed use is an approved restaurant and classified as a licensed premises and as such an assessment under the following relevant parts of subclause 3.4.2.3 has been made:

#### Noise Guide for Local Government prepared by NSW Department of Environment, Climate Change and Water in 2010

#### *Comment:*

Under Subclause 3.1.4 of the Noise Guide for Local Government, guidelines are provided for considering noise in the DA process. In particular, this refers to the process of reviewing the noise impact assessment provided by the applicant. In this instance, an acoustic report was been provided and reviewed by Council's Environmental Health team for MOD2017/0314. In this regard, Council's Environmental Health officer did not raise an objection to the report with the exception of the following on a weeknight:

- *People leaving, talking, laughing, slamming of car doors –effectively uncontrolled people noise on exit - especially where alcohol has been consumed.*
- *Kitchen activity/mechanical exhaust , clean up , garbage put out, moving tables/chairs and the like , -effectively these issues are mainly building borne noise and vibration issues*

The Plan of Management was updated to adequately assist in addressing these issues and along with conditions of the consent. In addition, the lack of evidence of any offensive noise (through the complaint register) during the previous trial period, for the weekend nights which were also approved until 9:45pm provide a situation in which another trial until the same time of night with conditions would be



reasonable.

The acoustic report provided under MOD2017/0314 demonstrated that the following points were satisfied (as outlined in the Noise Guide for Local Government):

- i) The La10\* noise level emitted from the licensed premises must not exceed the background of noise level in any Octave Band Centre Frequency (31.5Hz to 8kHz inclusive) by more than 5dB between 7am and 12 midnight at the boundary of any affected residence.*
- ii) The La 10\* noise level emitted from the licensed premises must not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz to 8kHz inclusive) between 12 midnight and 7am at the boundary of any affected residence.*
- iii) The noise level from the licensed premises must not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am or as otherwise required under conditions of development consent.*
- iv) Balconies, verandahs, any roof top areas and any external access thereto must be closed to patrons between the hours of 10pm to 8am daily to minimise noise nuisance.*

Furthermore, Council's Environmental Health Officer supports the current application, subject to conditions provided.

#### **4.2.8.6 Hours of Operation**

Clause 4.2.8.6 of the Manly DCP 2013 for Hours of Operation provides the following provisions:

- a) Consideration will be given to the protection of acoustical privacy and the amenity of the residential neighbourhood in the determination and approval of hours of operation including hours for service deliveries and collections.*
- b) The appropriate hours of operation will be assessed and determined in the DA process stage with particular regard to the proximity to, and the likely impacts on residential accommodation. Also, applicants may be required to provide supporting documentation and/or mitigation measures with a DA to justify hours of operation that are considered by the Council to potentially impact on the neighbourhood.*

An assessment in regards to the above provisions follows:

A consideration of noise nuisance and the reasonableness of allowing the trial hours to be permanent has been made under Clause 6.21 of the Manly LEP of this report. This has found the proposal is reasonable in terms of acoustical privacy. Additionally, the existing conditions relating to amenity (including hours for service deliveries and collections), and including the requirements for a Plan of Management, will remain.

Given that the hours between 6.00pm to 10.00pm are defined as "evening" rather than "night" under the Noise Policy for Industry (2017) by the NSW EPA and that the restaurant is operating in a local centre zone, the proposed hours are reasonable, subject to conditions and a plan of management that provides suitable control on noise for nearby residential accommodation.

#### **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**

Section 7.12 contributions were levied on the Development Application.

## **CONCLUSION**

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

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

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

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

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

### **Conclusions on the Assessment of the Application**

The proposed hours of operation are appropriate given the context of the existing use and potential for reasonable measures to be implemented to provide control on noise emission to neighbouring properties. Furthermore, the trial period did not reveal any evidence of unreasonable noise emission during the extended operational hours.

As such, the proposed hours during an "evening" period (as defined under the Noise Policy for Industry (2017) by the NSW EPA) are appropriate for a restaurant, subject to conditions which provide control on amenity impact to surrounding residences.

Therefore, the application is 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 Council as the consent authority grant approval to Modification Application No. Mod2020/0225 for Modification of Development Consent DA3754/1990 granted for approved restaurant involving a 2 year trial period for trading hours on land at Lot 7 SP 12796,7 / 7 - 9 Marine Parade, MANLY, subject to the conditions printed below:

**A. Modify Condition 1 to read as follows:**

That the following applies to hours and operation of the premises:

1. Hours of Operation be from 8am-7pm Sunday to Wednesday, and 8am-9:45pm Thursday to Saturday.
2. Seating to be restricted to 58 seats internally and 32 seats externally, with no more than 8 tables externally (licensed area only).
3. The premises is to operate in accordance with the Plan of Management dated 1.02.2018 and, amended by Council on 3.04.2018 and 26.08.2020.

Reason: To maintain amenity for surrounding properties.

**B. Delete Condition 2A Extend Hours Trial which read as follows:**

a) Notwithstanding condition 1 the Premises is authorised to trade during the following extended hours: ("Trial Periods"):

(i) 7pm to 9.45pm on Friday and Saturday for a trial period of 2 years commencing on 11 April 2018 and ending on 11 April 2020; and

(ii) 9pm to 9.45pm on Thursday for a trial period of 1 year commencing on 11 April 2018 and ending on 11 April 2019

(b) If an application is lodged with Council to extend any of the Trial Periods and such application is lodged no earlier than 4 months and no later than 3 months before the end of the relevant Trial Periods and that application is diligently prosecuted then the relevant Trial Periods shall continue until such time as the application is finally determined.

(c) During the Trial Periods the Premises must be operated in accordance with a Plan of Management dated 1.02.2018 and amended by Council on 3.04.2018, where there is any conflict between these conditions and the Plan of Management, the Plan of Management shall prevail.

2. Seating to be restricted to 58 seats internally and 32 seats and 8 tables externally (licensed area only), with no further increase permitted due to inability to provide off-street parking.