

# AGENDA

## NORTHERN BEACHES LOCAL PLANNING PANEL

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

**WEDNESDAY 7 OCTOBER 2020**

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



**Peter Robinson**  
**Executive Manager Development Assessment**

**Panel Members**

Peter Biscoe	Chair
Steve Kennedy	Urban Design Expert
Annelise Tuor	Town Planner
Nick Lawther	Community Representative

**Quorum**

A quorum is three Panel members

**Conflict of Interest**

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



## Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 7 October 2020

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 16 September 2020	
<b>3.0</b>	<b>PUBLIC MEETING ITEMS .....</b>	<b>5</b>
3.1	DA2020/0455 - 50-52 Golf Avenue, Mona Vale - Demolition works and construction of a residential flat building .....	5
3.2	MOD2020/0332 - 173-175 Riverview Road, Avalon Beach - Modification of Development Consent N0193/14 granted for demolition of the existing dwelling and erection of new single dwelling, swimming pool and driveway .....	153
3.3	DA2020/0661 - Lot 7356/1167221 Huston Parade, North Curl Curl - Construction of a Telecommunications Facility with associated equipment.....	188
<b>4.0</b>	<b>NON PUBLIC MEETING ITEMS .....</b>	<b>249</b>
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. These applications do not satisfy that criterion.	
4.1	DA2020/0645 - 37-43 Federal Parade, Brookvale - Alterations and additions to a school to provide Solar Panels.....	249

## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 16 SEPTEMBER 2020**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 16 September 2020 were adopted by the Chairperson and have been posted on Council's website.

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### 3.0 PUBLIC MEETING ITEMS

ITEM 3.1	DA2020/0455 - 50-52 GOLF AVENUE, MONA VALE - DEMOLITION WORKS AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING
AUTHORISING MANAGER	STEVE FINDLAY
TRIM FILE REF	2020/583631
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plan and Elevations 3 <a href="#">↓</a> Clause 4.6 - Height of Buildings 4 <a href="#">↓</a> Clause 4.6 - Density Controls

#### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

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#### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Density Controls for Certain Residential Accommodation Development Standard of Clause 4.5A pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/0455 for demolition works and construction of a residential flat building at Lot 1 DP 133456 & Lot 2 DP 133456 & Lot 1 DP 963829, 50-52 Golf Avenue, Mona Vale subject to the conditions and for the reasons set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0455
<b>Responsible Officer:</b>	Alex Keller
<b>Land to be developed (Address):</b>	Lot 1 DP 133456, 50 - 52 Golf Avenue MONA VALE NSW 2103 Lot 2 DP 133456, 50 - 52 Golf Avenue MONA VALE NSW 2103 Lot 1 DP 963829, 50 - 52 Golf Avenue MONA VALE NSW 2103
<b>Proposed Development:</b>	Demolition works and construction of a residential flat building
<b>Zoning:</b>	R3 Medium Density Residential R3 Medium Density Residential R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Estia Investments Pty Ltd
<b>Applicant:</b>	Golf Avenue Pty Ltd
<b>Application Lodged:</b>	08/05/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New multi unit
<b>Notified:</b>	22/05/2020 to 05/06/2020
<b>Advertised:</b>	22/05/2020
<b>Submissions Received:</b>	12
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 8.3% and 4.5A Dwelling density: 9.8%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 9,574,594.00

### EXECUTIVE SUMMARY

The proposal is referred to the Local Planning Panel as it is an application categorised as 'contentious development', having received more than 10 unique submissions objecting to the proposal. The proposal is subject to SEPP No.65 Design Quality of Residential Apartment Development and seeks a



Clause 4.6 variation to dwelling density and building height. In both cases, the variations to the development standards under Pittwater Local Environmental Plan 2014 have been assessed in detail against the relevant objectives and are supported.

Principal environmental impact considerations are density, height, views, building bulk, landscaping, traffic and parking access, privacy, overshadowing, urban character, construction impacts (during works) and stormwater management.

There were 12 public submissions received that have been considered and addressed within this report. Conditions have been applied where appropriate to address the concerns; including, landscaping, privacy, bulk, overshadowing, height, views, traffic safety, parking, noise, construction work and dilapidation.

The proposal will not have an unreasonable impact in relation to view sharing considerations, privacy or solar access. Additional amenity impacts that may arise during construction works are addressed by standard conditions, including dilapidation, dust, noise, site management and removal of a de-commissioned underground storage tank (UST) that was once used for site operations, ancillary to the former (now vacant) nursing home building.

During the assessment period, some minor design changes were necessary to address traffic access, privacy and view consideration issues. The changes affected minor elements of the design and revised details were also provided for landscaping. Amended plans were sought to illustrate those changes which could otherwise be achieved by conditions and therefore re-notification is not required, however the amended plans have remained publicly viewable. Some supplementary information was also provided by the Applicant to further address traffic access for the basement carparking.

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

The proposed residential flat building is considered to be a suitable and appropriate development for the site and is in context with the residential scale and intensity of the medium density zone.

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

## PROPOSED DEVELOPMENT IN DETAIL

The proposal involves the following:

- Demolition of all existing structures and selected trees on site;
- Construction of a part 2/part 3 storey residential flat building with basement carparking;
- Ancillary site works including excavation, site preparation, landscaping, bin storage, fencing, stormwater and drainage works, pathways and retaining walls.

The configuration of the buildings are as follows:

**RL8.8 to 9.4 Basement / Carpark** - Parking for 33 cars (28 resident and 5 visitor car spaces, including a wash bay space and 4 car spaces being suitable for disability access), lift (3) and stair access, storage space, bicycle storage, plant and services rooms, driveway ramp (OSD under), garbage bin / bulk store room, part residential Unit (C-G.04) recreational room, bedroom (1) living room, bathroom,



laundry storage, landscape courtyard.

**RL12.40 to RL15.50 Front Building (Module A) Five (5) Residential Units (2 Levels) A-G.01, A-G.02, A-G.03, A-1.01, A-1.02**

Lobby area with lift and stair access, 5 x 3 bedroom apartments; including kitchen / living / dining, bathrooms, terrace / balcony, laundry and storage, external bin holding area.

**RL11.9 to RL18.1 Rear Building (Module B and Module C) Nine (9) Residential Units (4 Levels) C-G.04, C-G.03, B-G.01, B-G.02, B-1.01, B-1.02, B-2.01, C-1.03, C-1.04**

Lobby area with lifts (2) and stair access, 8 x 3 bedroom apartments and 1 x 4 bedroom apartment; including kitchen / living / dining, bathrooms, study, terrace / balcony, laundry and storage.

**18.10 to 21.3 Roof** - Roof, roof top plant enclosures, roof terrace (part of Apartment B-2.01), Lift overrun, parapet.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater 21 Development Control Plan - A4.9 Mona Vale Locality  
Pittwater 21 Development Control Plan - C1.3 View Sharing  
Pittwater 21 Development Control Plan - C1.5 Visual Privacy  
Pittwater 21 Development Control Plan - D9.6 Front building line  
Pittwater 21 Development Control Plan - D9.7 Side and rear building line  
Pittwater 21 Development Control Plan - D9.10 Landscaped Area - General

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 133456 , 50 - 52 Golf Avenue MONA VALE NSW 2103 Lot 2 DP 133456 , 50 - 52 Golf Avenue MONA VALE NSW 2103
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	Lot 1 DP 963829 , 50 - 52 Golf Avenue MONA VALE NSW 2103
<b>Detailed Site Description:</b>	<p>The site is an L-shaped parcel of land with a 24 metres (m) street frontage to Golf Avenue, a depth of 70.3m and a total area of 2,548 square metres (sqm). Erected on the site is a single-storey brick building used for the purpose of a nursing home (now vacant).</p> <p>The site is located near the end of Golf Avenue, and adjoins land along the northern boundary that is adjacent the local neighbourhood centre located at No.5-9A Darley Street East. The site is surrounded by residential apartment buildings, with some adjacent buildings being four storeys high.</p> <p>The adjoining development to the west comprises a four-storey residential flat building with garaging on the first floor and three levels of residential accommodation above. This development, which overlooks the site, is a dominant feature of the built form for this immediate precinct. The site context is characterised mainly by three to four storey residential flat buildings of varying styles and density with many having been established in the 1980-90's era. There are no items of environmental heritage identified on the site or adjacent land.</p> <p>The site is located in close proximity to Mona Vale Beach and Mona Vale Golf Club. The site is in reasonable walking distance of the Mona Vale shopping village which includes medical centres, the Park View Hotel, Council's library, community centre and administration offices. Public transport is readily accessible with major set-down/pickup facilities at the entrance to Golf Avenue, off Pittwater Road.</p> <p>The site is approximately 150m from Mona Vale Beach and is mapped as "Class 5" acid sulfate soils. The site contains a number of trees around the boundary areas some of which are to be retained. There are no significant rock outcrops and the land has a moderate slope to the east with a lower section / lower level in the north-east corner. A de-commissioned UST also exists on the site that was once used on association with the nursing home operations.</p>

Map:



## SITE HISTORY

Between 1965 and 1970 the original residential structures on site were demolished and the current L-shape nursing home facility was constructed.

**Development Consent No.80/301** for the installation of an underground storage tank (UST) for petrol in association with 'Peninsula Gardens Nursing Home' was approved by Council on 23 October 1980.

**Development Consent No.90/348** for sunroom extension and change from a 64 bed to 72 bed nursing home was approved by Council on 30 October 1990.

**Development Consent No.98/042** for alterations and additions was approved by Council on 30 April 1998.

All existing structures on site are to be completely demolished and the proposed building footprint area excavated for basement carparking. Therefore, the safe handling and appropriate disposal of demolition waste, including any UST, asbestos, lead paint, soil and existing building material, is addressed by conditions.

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

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

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



Section 4.15 Matters for Consideration'	Comments
environmental planning instrument	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 as a nursing home for aged and disabled persons for extended period of time. The proposed development retains the residential use of the site, consistent with the current use, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is relevant to this application and design considerations have been made to provide a building that achieves good design outcomes consistent with the general design principles of SEPP 65 due to the medium density residential surroundings. The required certificate has been provided.</p> <p>Overall the proposal provides a landscape setting and a building that is consistent with the streetscape and nearby development and does not cause unreasonable impacts in terms of scale, density, bulk, amenity, parking, access, privacy, overshadowing, views and visual appearance.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to engineering and minor design concerns raised to assist with reducing impacts on views, privacy, overshadowing and providing some improved details on the plans for screening, window / terrace design and parking access. The plan revisions are minor in nature and assist to address concerns raised, by ameliorating issues that would otherwise be addressed by various conditions for amendments to be included with the construction certificate drawings.</p> <p>Amended plans were provided which improved privacy treatments and minor changes to roof form, additional landscaping elements and a more balanced view sharing outcome, while maintaining the building aesthetics and streetscape presentation. (See Revision "B" plan details)</p> <p>All submissions have been considered in the context of those originally made and any subsequent submissions. Conditions are recommended to address a number of submission issues where appropriate, which were not resolved by plan amendments already carried out. Contact</p>

Section 4.15 Matters for Consideration'	Comments
	<p>was made with selected persons that raised issues that were influential to the design amendments requested to assist in the final assessment and appreciation of the original concerns. Full re-notification of the plans pursuant to the CPP was not required due to the plan changes being minor and that could otherwise have been addressed by conditions.</p> <p>Clause 92 of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clauses 93 and/or 94 of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A 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 of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. The construction of a residential flat building on the site, to replace the vacant aged care facility, is considered to have a positive contribution to the demand for modern and improved housing stock in the locality. The street is dominated by apartment buildings of varying styles, ages and densities. The proposed building is consistent with the housing typology in the street and surrounding area.</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 considering the land was previously developed for as a nursing home, which is now a vacant and partly dilapidated building.



Section 4.15 Matters for Consideration'	Comments
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	Consideration of issues have been made in the public interest in the context of any submissions pursuant to the Act, Pittwater DCP, Pittwater LEP and SEPP's. Conditions and / or amended plans have addressed issues. 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 22/05/2020 to 05/06/2020 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 12 submission/s from:

Name:	Address:
Ms Vicki Fiona Wright	Po Box 988 MONA VALE NSW 1660
Withheld	MONA VALE NSW 2103
Ms Therese Mary Garrick	7 / 48 Golf Avenue MONA VALE NSW 2103
Ms Kristine Joyce Rynell	62 Kevin Avenue AVALON BEACH NSW 2107
Susan Jane Williams-Green	Glendale 171 Lachlan Valley Way FORBES NSW 2871
Ms Natasha Louise Scarf	4 / 48 Golf Avenue MONA VALE NSW 2103
Mr John Bowman Mills	12 / 48 Golf Avenue MONA VALE NSW 2103
Mr Benjamin James Donald Lowe	2 / 48 Golf Avenue MONA VALE NSW 2103
Ms Fiona Lucy Connolly	8 / 46 Golf Avenue MONA VALE NSW 2103
Mr Clive Gordon Harper	7 / 48 Golf Avenue MONA VALE NSW 2103
Mrs Lynette Sylvia Butcher	Po Box 481 MONA VALE NSW 1660
Proprietors of Strata Plan 3246	13 Darley Street East MONA VALE NSW 2103

The following issues were raised in the submissions:



1. Solar access / overshadowing
2. View impacts
3. Traffic and Carparking
4. Noise, dust, air and amenity
5. Waste materials and management
6. Building height
7. Privacy / overlooking impacts
8. Dilapidation risk
9. Overdevelopment / density
10. Property value

In addition to considerations under the DCP, LEP and SEPP the submission issues have been considered and addressed as follows:

***1. Concerns with regard to solar access / overshadowing impacts created by the proposal toward adjacent land including No. 48 and No.54 Golf Avenue.***

Comment:

Detailed shadow diagrams (DA600, DA601 and DA610 drawn by PBD Architects) for 21 June (mid winter) have been provided by the applicant and consideration of this issue is provided within this report under the heading *Part C1.4 Solar Access* and *SEPP 65 - Design Quality of Residential Apartment Development*. The diagrams demonstrate that the RFB will be consistent with the objectives of the Pittwater DCP controls and SEPP 65/ADG provisions to maintain reasonable solar access to adjacent land.

Consideration of this issue includes solar access to the rear common open space (drying courtyard) within No.48 Golf Avenue and window spaces along the western elevation of No.54 Golf Avenue. In this regard, spatial separation between the proposed building and No.48 Golf Avenue is sufficient to allow air flow and natural ventilation to external drying areas, including direct sunlight between 11am and 1pm on 21 June to the drying area (see Solar Study 'Sun eye view' DA600 to DA601 prepared by *PBD Architects*). The proposal will increase afternoon shadow to No.54 Golf Avenue, however these units also have east facing balconies and the overshadowing cast by the proposal, is not an unreasonable change in consideration of the building height, setback and medium density surroundings. Landscaping is provided to balance considerations of privacy and overshadowing with tree heights proposed that are commensurate with the building height or if taller have small canopy areas (palms).

In summary, this objection issue is not considered to warrant refusal of the application and no special conditions are recommended.

***2. Concerns with regard to view impacts created by the proposal for properties overlooking the site from No.48 & No.46 Golf Avenue including outlook from adjacent land at No.54 Golf Avenue and southerly outlook from Darley Street East (rear of the site).***

Comment:

The subject site and surrounding lands were inspected to assess view sharing. Where direct access was not available, a direct view line, or a compatible view line or position in reasonable proximity to ensure a comparative appreciation of views / outlook was used, taking into account particular submission issues regarding identifiable view corridors, including the amenity of the outlook.

A detailed consideration of view sharing is provided within this report under the heading *Part C1.3 View Sharing* and view analysis information prepared by the applicant, has been reviewed and analysed. In summary, the proposal has been subject to some minor changes to reduce the parapet / roof height to reduce view impacts and will not create an unreasonable view impact on coastal views from adjacent or





surrounding properties. The proposal is consistent with the objectives of the Pittwater DCP control and the LEC Planning Principle on view sharing.

In summary, this objection issue is not considered to warrant refusal of the application and conditions are recommended to ensure additional roof plant (antenna / panels or the like) are kept within the shown (low profile) screened enclosures on the roof.

**3. Concern that the proposal will affect traffic and parking, including potential damage to the road surface in Golf Avenue.**

Comment:

The proposal is compliant with the parking requirements for residents and visitor spaces, including accessible parking and car wash facilities pursuant to the Pittwater DCP. A detailed traffic and parking report has been provided and Council's Traffic Engineers are satisfied with the design and layout of the driveway access and internal access (swept paths), parking area including visual safety as per supplementary details provided in Traffic Report, dated 11 September 2020 prepared by *Traffix*.

Council's Traffic Engineer has not required that the subject DA be referred to the Traffic Committee for the new driveway position and the proposal provides an appropriate driveway design to comply with Australian Standards for sight distances, gradients, safe passing widths including traffic control devices for the basement access. Potential impact on road surfaces and associated public assets in the road reserve are addressed by conditions for security bonds required to ensure protection of assets within the road reserve. In order to assist traffic and parking management, the use of the basement area (once completed) enables trade / construction related parking (where appropriate for material unloading) to be located on-site during works to reduce reliance on Golf Avenue public parking areas.

This issue has been considered in detail under *Part B6 Access and Parking*. In summary, this objection issue does not warrant refusal of the application.

**4. Concern that the construction phase will create amenity impact of dust, air, noise, waste material and associated impacts.**

Comment:

Issues of site management for dust and noise control, including access and the length of time for works is subject to construction industry standards and legislation applicable, including occupational health and safety laws. Conditions of consent are included under General Requirements and Prescribed Conditions including compliance with Australian Standards. Asbestos material if present / uncovered during demolition is subject to safe handling procedures in compliance with Australian Standards and occupation health and safety laws.

Overall amenity issues of dust, noise, work hours, pollution control, safety and the like are required to be managed on site during demolition and construction works by the site manager and as supervised by the Principal Certifying Authority.

A detailed traffic management plan during demolition and construction is addressed by conditions as recommended by Council's Traffic Engineer.

In summary, this objection issue does not warrant refusal of the application and appropriate conditions are applied to address noise, dust, work hours, traffic management and the like in accordance with Council requirements and industry standards.

**5. Concern that the proposal has insufficient communal landscaped open space to comply with the SEPP 65 requirements.**

Comment:

This issue has been addressed within this report under the heading SEPP 65 - 'Apartment Design Guide' (ADG). In summary, the proposal has provided larger areas of private open space and more landscape area than the ADG requires. The site is situated in a location that has convenient access to the Mona Vale beachfront reserve and the internal space for each apartment provides generous open plan living areas. The common open space areas are generally allocated as landscaped access areas (along the western entry path) and courtyard space in the central area of the site, between the two buildings.

In summary, this objection issue does not warrant refusal of the application and appropriate conditions are applied to address waste issues.

**6. Concern that the building exceeds the 8.5m building height control of the Pittwater LEP**Comment:

A number of minor amendments have been made by the applicant during the course of the assessment in consideration of this issue, including associated impacts of views, solar access, building bulk and amenity. The height variation is considered in detail under the Pittwater LEP section heading "Clause 4.6" within this report.

In summary, this objection issue does not warrant refusal of the application and has been addressed by the design response required by Council, including recommended conditions.

**7. Concern regarding privacy and potential overlooking impacts toward adjacent land No.54 Golf Avenue (including Unit 8), Unit within No.48 Golf Avenue and adjacent land to the rear of the site (accessed from Darley Street East).**Comment:

The applicant has provided additional details for privacy screening to be used at first floor level, revised landscaping and privacy analysis for units at the rear of the site. In addition, landscape screen planter boxes, sliding and fixed screens are included for balcony elements. At ground floor level, private courtyards will include internal privacy fencing and boundary landscape screen planting. Replacement of boundary fencing structures is subject to the *Dividing Fences Act* which is not administered by Council and therefore subject to private arrangements between adjoining property owners.

In summary, this objection issue does not warrant refusal of the application and is addressed by conditions.

**8. Concern that excavation and demolition may lead to dilapidation of adjacent property assets.**Comment:

The proposal has been submitted with a Geotechnical Risk Assessment prepared by EI Australia Pty Ltd. The report provides consideration with regard to the development work in relation to site suitability, engineering techniques, stormwater, excavations, vibrations, retaining walls, foundation support, mechanical / machinery use and inspections. Through implementation of the recommendations provided in the geotechnical report and conditions of consent, the development can be achieved with no unreasonable risk to adjacent properties or structures.

This issue is addressed by conditions to ensure the recommendations of the Geotechnical report are adhered to and a detailed dilapidation report is prepared for adjoining private property.

Specific conditions and asset damage bonds are also applied to protect Council assets within the road



reserve.

Therefore, subject to development conditions and management during Construction Certificate stage, this issue does not warrant refusal of the application.

**9. Concern that the proposal is an overdevelopment of the site (being 14 Units) and should be limited to the density restriction.**

Comment:

The density controls of 1 dwelling per 200 sqm under the PLEP limits the site to 12.7 Units. The proposal seeks approval for 14 Units and has submitted a "Clause 4.6" variation to the development standard. The density variation is considered in detail under the Pittwater LEP section heading "Clause 4.6" within this report.

The development standards are permitted to be varied pursuant to Clause 4.6 of the 'standard template' LEP. This issue is addressed by the written submission provided by the applicant, development assessment and design of the proposal. During the assessment elements of the proposal were reduced or subject to minor amendments / supplementary detail to address amenity concerns, however the density of the proposed development remained unchanged. In summary, the proposal is not considered to be an overdevelopment of the site pursuant to the merit considerations of amenity impacts, character and built form and the objectives of the development standard.

**10. Concern is raised that the proposal will cause a loss in adjacent property value due to the scale of the proposal and amenity impacts.**

Comment:

The proposal has been designed to be consistent with the R3 Medium Density zone and the objectives of the relevant development controls in order to minimise unreasonable impacts on adjacent land. Subject to merit considerations where applied the development maintains appropriate landscaped setbacks that are consistent with similar apartment buildings that have been developed in the locality pursuant to Pittwater LEP, Pittwater DCP and SEPP 65.

Issues of amenity have been addressed by design and conditions to ensure reasonable privacy, solar access, noise amenity, view outlook and spatial separation consistent with the medium density urban environment. The proposal does not cause any unreasonable impact on coastal views and solar access or isolate adjacent land from other re-development options.

No supporting evidence has been provided to substantiate any reduction in surrounding land values that would be present at a future date upon completion of the proposed development. This issue is not a matter that can be assessed pursuant to the EP&A Act 1979.

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

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	<p><b>General Comments</b></p> <p>Environmental Health has been requested to comment on the proposed development for the potential of contamination. As part of this referral Environmental Health have considered, potential for</p>

Internal Referral Body	Comments
	<p>contamination, car wash bays in the basement, and dewatering during excavation.</p> <p>The geotechnical report by <i>El Australia</i> referenced as E24490.G03 and dated 12 February 2020, has conducted borehole logs, borehole testing and groundwater analysis, none of which has resulted in any concerns of prior contamination. The previous use of the site is unlikely to have caused significant contamination and the bore holes undertaken only indicate limited fill below the concrete layer comprising of sand with shell fragments. Based on this and the previous use of the site as a nursing home, Environmental Health do not believe further investigation into contamination is required. A condition is to be imposed that should evidence of contamination be found the applicant is to notify Council.</p> <p>The Geotechnical report references groundwater discharge during excavation but does not address water quality, monitoring and limits of water quality to be discharged from the site. It is recommended that NECC provide comments on the dewatering proposal for this development.</p> <p>The plans and SEE reference a car wash bay in the basement car park. A condition has been imposed that the car wash bay is to be bunded and directed to sewer to prevent pollution from washing of cars from entering the environment.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p>The application seeks approval for the demolition of an existing building and associated structures, and the construction of a residential flat building comprising 14 apartments, infrastructure and external landscape works (Revised plans by <i>Black Beetle Landscape Architecture and Design</i> dated 11.9.2020).</p> <p>Council's Landscape section have assessed the application against the following documents relevant to landscape assessment:</p> <ul style="list-style-type: none"> <li>• Pittwater 21 DCP, including B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; and D9 Mona Vale Locality.</li> <li>• State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65)</li> <li>• The Apartment Design Guide</li> </ul> <p>Landscape Plans and a Arboricultural Impact Assessment is provided with the development application in accordance with Council's DA Lodgement requirements. The landscape proposal generally provides adequate landscape treatment to deep soil areas around the perimeter of the site and on-slab structures to satisfy SEPP65</p>



Internal Referral Body	Comments
	<p>Principle 5: Landscape, as well as the design criteria of the Apartment Design Guide of the following objectives: 3E Deep Soil Zone is 16% and exceeds the required 7% design objective; 4O Landscape Design provides a landscaped setting with planting along the perimeter to reduce the built form, as well as provide privacy to private open spaces; and 4P Planting on Structures are designed appropriately. 3D Communal and Public Open Space is not provided by the design as all apartments have large private open spaces attached to each apartment.</p> <p><b>Recommendation:</b> The landscape component of the proposal is acceptable, subject to conditions for the completion of landscape works, and subject to protection of existing trees nominated for retention within the site and on adjoining property.</p>
NECC (Development Engineering)	<p>Stormwater and development engineering matters have been considered.</p> <p><b>Recommendation:</b> No objections to the proposed apartment building with basement carparking subject to conditions.</p>
Strategic and Place Planning (Urban Design)	<p>Generally, the proposal has addressed all the issues identified in the Pre-lodgement Meeting (provided below) except for some breach in building height for the third storey element of about 0.38m maximum. The additional building height breach will have minor impact on shadows and view-sharing issues.</p> <p><b>PLM Urban Design Comments:</b></p> <p>1. The 8.5mm building height has been breached (1m approx.) with the proposed third storey. The height control calls for a built form of a 2 storey building with a roof form. It is recommended that the third storey be treated as a 'room in the roof' well set backed from the 2 storey built form. The 4.2m at 45 degree envelope control should also be complied with. As the site is surrounded by higher residential units, view sharing will be a critical issue. As such the building height and envelope controls should be strictly complied with to pursue an increase in density from 13 permissible to 16 units (pre-DA) proposed. <b>Response:</b> The proposal is now for 14 units and the third storey unit has been further set-back from the edge of the building with planters incorporated.</p> <p>2. The site slopes down to the north-eastern corner where a residential unit is proposed to utilise the exposed section of the basement carpark. Carpark structure should not protrude greater than 1m above natural ground level. The entry door/ lobby to the sunken apartment should be made more generous in-view of the less optimal basement carpark entry point and higher usage by other residents accessing the carpark.</p>

Internal Referral Body	Comments
	<p><b>Response:</b> The sunken apartment is now part of a maisonette unit which is entered from the ground floor area.</p> <p>3. There is a shortage of landscape area of 2.7% which could be used to further articulate the building facades with big landscape indent areas especially along the eastern façade of the front building and northern façade of the back building. This will help to break down the flatness and monotony of the long facades proposed. Communal open spaces should be incorporated into the landscape concept. The basement ramp should be shifted away from the eastern boundary to create a 2m wide deep-soil landscape buffer.</p> <p><b>Response:</b> The building facades are now well articulated with landscaped indents (revised landscaping plan 11.9.2020). The basement ramp has been relocated to create a landscaped buffer on the eastern boundary.</p> <p>4. Privacy screens integrated into the architecture of the building design should be incorporated into the upper level residential units to address overlooking issues to next door neighbours. The third storey balconies proposed should be limited in size and well set-backed from the edges and planters incorporated to avoid overlooking and noise nuisance issues to adjacent neighbours.</p> <p><b>Response:</b> Privacy screen details have been incorporated (revised plans dated 8.9.2020).</p> <p>5. A comprehensive view analysis should be submitted to illustrate the view-sharing strategy.</p> <p><b>Response:</b> View-sharing analysis have been demonstrated.</p> <p>6. Compliance with the Apartment Design Guide should be demonstrated in future submission.</p> <p><b>Response:</b> Apartment Design Guide compliances have been demonstrated.</p> <p><b>Recommendation:</b> No objection to approval.</p>
Traffic Engineer	<p><b>Revised Traffic Engineering Comments 21.9.2020 (based on Amended Plans / Details)</b></p> <p>The Applicant has addressed most of the concerns previously raised regarding the access driveway and parking, with the following amendments:</p> <p>- Minimum width of 5.5m for the first 6.0m of the access driveway within the property boundary, to allow vehicles entering from Golf Avenue to wait without queuing on the road and provide a passing bay when vehicles are exiting from the basement car park.</p>

Internal Referral Body	Comments
	<p>- Linemarking of waiting bays on the basement level to provide passing opportunities in the car park.</p> <p>- Provision of convex mirrors at opposite ends of the single lane parking aisle to provide visibility of entering vehicles and minimise conflict within the basement car park.</p> <p>- Relocation of Lift C to improve circulation within the car park.</p> <p>However the Applicant still proposes a standard traffic light system to control entering traffic to the basement car park. Traffic Signal systems should only be considered where other alternatives are not possible, as any issues arising from repair or maintenance of any mechanical/electrical systems would impact safe access to the car park. The request to widen the access driveway to provide a passing bay and provision of an appropriately located convex mirror at the bottom of the ramp, would avoid the need for a traffic signal system.</p> <p>The proposal is acceptable subject to the condition that in lieu of the traffic light system to regulate vehicle entering and exiting the property, indicated on DA100 – Basement Plan Issue B; that an appropriately located convex mirror be provided at the bottom of the ramp to the basement car park in conjunction with the passing bay provided by widening the access driveway to 5.5m for the first 6.0m within the property boundary.</p> <p><b>Recommendation:</b> No objection to approval, subject to conditions.</p> <p><b>COMMENTS 25/8/20</b></p> <p>The Applicant proposes a Traffic Signal system to regulate vehicle entering and exiting the property, with the signals located on the property boundary at the top of the driveway and the corresponding signal located at the bottom of the ramp to the basement car park.</p> <p>The proposal would require that vehicles queue on Golf Avenue when a vehicle exits the property.</p> <p>Traffic Signal systems should only be considered where other alternatives are not possible.</p> <p>Council requires that the vehicular access be widened from 4m to a minimum 5.5m wide for the first 6 metres measured from the property</p>



Internal Referral Body	Comments
	<p>boundary to allow for vehicles to pass and so that vehicles are not encroaching on the Council Public Road Reserve. .</p> <p>Convex mirrors are required at the bottom of the ramp to provide visibility of vehicles entering the property and minimise vehicular conflict.</p> <p>The location of Lift C and Lobby obstruct circulation within the car park and makes manoeuvring into designated parking spaces difficult or requiring multiple reversing manoeuvres. These facilities should be relocated as they cause obstruction to vehicle movement as well as restricts sight lines to other vehicles.</p> <p>Furthermore, the car park layout and reduced aisle width of 4m does not allow 2 vehicles to pass. The limited manoeuvrability within the car park requires that any waiting areas for passing be clearly marked and that the convex mirrors be provided around the carpark where the sight lines to other vehicles is restricted.</p> <p>The current proposal is unacceptable and issues raised should be addressed and resubmitted for consideration.</p>
Waste Officer	<p>Waste Management Assessment has considered the waste details and requirements.</p> <p><b>Recommendation:</b> No objection to approval subject to conditions.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid and a referral response was provided on 2 July 2020 with comments and requirements in relation to existing electricity assets that have been included with the recommended conditions (external referral Authorities).</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.

In association with the previous nursing home use the installation of 10,000L underground fuel storage tank was approved by Council for the site in 1981. The tank was decommissioned (filled with sand) in 1998.

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary Environmental Site Investigation dated 28 February 2020 and prepared by *EI Australia*. In its conclusion, the investigation states:

*"The site and neighbouring properties were free of statutory notices and licencing agreement issued under the Contaminated Land Management Act 1997 and Protection of the Environment Operations Act 1997 The site was not included in the List of NSW Contaminated Sites Notified to the EPA.*

*On review of the Conceptual Site Model (CSM) developed as part of this DSI, it was concluded that the model remains valid for the proposed development, however data gaps remain that require closure to satisfactorily characterise the site. These include:*

- *Fill materials beneath the footprint of the house.*
- *Quality of soil in vicinity of the identified UST.*

*Based on finding from this DSI conducted in accordance with the investigation scope agreed with the Client and with consideration of the Statement of Limitation (Section 12), EI conclude that soil contamination was observed in localised area of the site and will require remediation. In view of the proposed development scope, and currently available information, EI consider that the contamination identified can be remediated to fender the site suitable for the proposed land use, provided recommendations detailed in Section 11 are implemented.*

*EI note that the site contamination issues can be managed through the development application process in accordance with the State Environmental Planning Policy 55 (SEPP 55) - Remediation of Land, with the requirements for remediation and validation incorporated into conditions of development consent."*

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, Clauses 7(1)(b) and 7(1)(c) of the SEPP must be considered.

Clause 7(1)(b) stipulates that *"if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out"*.

Given the claimed potential of contamination on the site as noted in the Phase 1 Investigation, a Phase 2 Environmental Site Assessment ("Validation Report") should be provided to confirm whether contamination limits present, at what levels and at what outer locations. The Environmental Site Assessment has been provided which confirms the location and type of contaminants on the site and provides recommendations for the remediation of the site to enable the development to be safely carried out. In this regard, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the



investigation are included as conditions in the Recommendation of this report.

Clause 7(1)(c) stipulates that *"if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose"*.

Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

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

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

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

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

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

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

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

As previously outlined, the proposed development is for the erection of a part2/part 3 storey residential flat 'housing' development plus basement car parking.

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

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

Clause 28 of SEPP 65 requires:

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

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



## DESIGN REVIEW PANEL

The proposal pre-dates the introduction of the Northern Beaches Council Design and Sustainability Advisory Panel (DSAP) and is not required to go to that Panel. Nevertheless, the urban design quality has been assessed by Council's Urban Designer and the Planner has carried out a detailed assessment against the provisions of SEPP 65 and the ADG.

## DESIGN QUALITY PRINCIPLES

### Principle 1: Context and Neighbourhood Character

*"Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change."*

#### Comment:

The subject site is located in an area that is characterised by a mix of older style three or four-storey "walk-up" residential flat buildings in the vicinity and the broader area of Mona Vale, interspersed with some smaller housing styles (e.g terrace style) but mostly 3 storey apartment buildings within the medium density residential zone. More recently constructed apartment buildings have basement parking and passenger lift access.

The scale and architecture of the development is distinctly more modern than the adjacent buildings but maintains a consistent height and landscape setting to the street. The older style apartment buildings (Circa 1960-70) tend to lack landscaping in favour of ground level parking. The proposed building maintains a visual outlook toward the street and is a site that has been developed previously for part single storey aged care building within the local medium density area along the northern side of Golf Avenue.

In terms of building bulk, the design has responded to the envelope, streetscape and setbacks, with external appearance including facades with sandstone walls, off-form concrete, rendered walls, deep balconies and using various architectural elements such as curved recesses, giving the building a distinct subtle aesthetic. Consideration of the surrounding context and socio-economic character of the Mona Vale area suggests that the development is designed to be larger (3 and 4 bedroom) style apartments with 14 units in the building.

The provision of landscaping provided around the perimeter of the development contributes to providing a transition / buffer between properties given the large floor plate for the two buildings and single (consolidated) lot site area for an apartment building. The applicant has designed the proposal to retain some trees at the rear and will not adversely impact on the large tree (fig "T7") located on the western side of the site.

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





- Figure 1: Streetscape character proposed / indicative for the subject development.

## 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 site is overlooked by a 4 storey building from the higher land to the west and in turn the subject building overlooks land to the east that is lower than the subject site. Therefore, window placement, internal room layout and the building's height and shape are critical considerations. The shape of the building above ground level is influenced by the built form controls, site shape and depth and need to provide adequate vehicle access, landscaping, side setbacks, building envelope and height. The third storey element has a marginal breach of the height for the roof cladding, parapet and planter box (see Height Limit Diagram DA560 dated 8.9.2020 drawn by PBD Architects). The third storey element has a minor breach of the height limit and may be related as a breach of the PLEP density controls. However the building maintains consistency with the objectives of the control and is not "jarring" in the streetscape or creates excessive bulk that is opposing to adjacent sites, due to the design response addressing floor layout, privacy, wall heights, landscaping, fenestration and building bulk.

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

The development is considered to achieve a scale, bulk and height that is appropriate for surrounding





and existing developments and is designed in a manner that is not unreasonable in terms of building form and scale to adjacent medium density housing.

### Principle 3: Density

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

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

#### Comment:

The development provides 13 x 3 bedroom apartments and 1 x 4 bedroom apartment is consistent with many of the larger style apartments in the Mona Vale area, comparable the the variable sizes and scale of existing building complexes in the locality. The site is within convenient proximity to local reserves, schools, community facilities, shops and public transport links from Mona Vale to Manly, Dee Why/Brookvale and the Sydney CBD.

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

### Principle 4: Sustainability

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

#### Comment:

The development application is accompanied by a BASIX Certificate which indicates the development achieves an adequate design for water and energy conservation including thermal comfort. The development provides an adequate cross-ventilation and shading devices and balconies, as well as screening devices (including eaves / balcony overhangs) and landscaping to mitigate the impacts of direct sunlight upon large surface areas of glazing.

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

### Principle 5: Landscape

*"Good design recognises that together, landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management."*

**Comment:**

The site provides a perimeter of landscaping around the two main building elements (that comprise module A, B and C) with the majority of landscaped open space at the front and rear setbacks. Given the width and cross fall of the site, the provision of a full 4.5m (or wider) landscaped side setback is possible for the building above ground and the applicant has designed the proposal with landscaped side setbacks (including consideration for the basement to have 1m soil cover where the basement is closer to the side boundaries). Therefore, consideration has been given to reinstating appropriate landscaping above the basement areas (that encroach into the side setback) and maintaining a full 6.0m deep soil setback to the rear of the site.

The DA is accompanied by a detailed landscaped plan and schedule of plantings as discussed under the Landscape Assessment referral within this report. The landscape plan drawn by *Black Beetle Landscape Architecture*, dated 11.9.2020, demonstrates that the establishment of landscaping will assist to mitigate the building bulk of the development and will assist with privacy screening and amenity outlook, along the side setbacks and particularly toward the rear with appropriate plant selection. The provision of landscaping has been designed for practical establishment and long-term management including the landscaping area to be re-instated in the front setback. A revision to the original landscape plan has been provided to assist with accommodating related public submission issues and Council's Landscape Referral Response matters raised with details provided by the Applicant and prepared by Black Beetle Pty Ltd (see covering letter, dated 15.9.2020).

**Principle 6: Amenity**

*"Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility."*

**Comment:**

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

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

**Principle 7: Safety**

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

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

**Comment:**

The development will incorporate an adequate standard of safety features for the comfort and security of residents. The development will provide increased opportunities to what is present for casual



surveillance of the streetscape and adjoining front setback areas. The basement access has a security access for vehicles and there is a ground floor foyer for pedestrian entry.

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

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

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

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

##### Comment:

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

Specifically, the development comprises 14 apartments consisting of 13 x 3 bedrooms and 1 x 4 bedroom, each which are suitable for a family or couples with generous living areas and modern internal layouts. The site is located within the Mona Vale medium density area which is dominated by older style apartments from the 1970-90's era with a mix of older style and contemporary apartment buildings. The site contains a vacated aged care building that is no longer fit for use and is located toward the eastern end of Golf Avenue Mona Vale. As such, the development provides opportunity to redevelop the land and provide new apartments (including some adaptable Units) providing high quality apartment style housing that is in demand within the Mona Vale area. The units have large floor plans for each of the apartments and include underground off-street parking making them suitable for families or couples seeking spacious apartment living, in close proximity to the beach and Mona Vale CBD.

#### **Principle 9: Aesthetics**

*"Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape."*

##### Comment:

This assessment report details the built form of the development against the control requirements and objectives, as can be found later in the report. The development is considered to be of good design and of proportions that enable the building to provide essential elements of landscaping, carparking, private open space and generous internal amenity. The aesthetics of the external appearance of the building are contemporary and elements of the design serve practical functions to assist with solar access, privacy, minimising view loss, minimising overshadowing and the like.

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





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

### **APARTMENT DESIGN GUIDE**

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

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

	<p>area whilst maintaining adequate setbacks to surrounding developments to minimise overshadowing.</p> <p>The architecture of the site and the building setbacks are appropriate for the streetscape, and the front and rear setback areas maintain a wide landscape component.</p> <p>Given that the existing development on the site consists of low density housing the redevelopment of this site into a medium density development, appropriate for the R3 zone is inevitably going to have a greater overshadowing impact than that of the existing (predominantly) single storey building.</p> <p>In regards to the above, the height and shape of the proposed building is considered design response which could be expected upon the land and is without unreasonable detrimental impact upon surrounding land. The proposal has included a number of refinements to ensure no unreasonable privacy and solar access considerations that are influenced by height, setbacks apartment layout, screening and landscaping.</p> <p>(Solar access is also considered in detail under the heading "Submissions" within this report)</p>
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<b>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 provides an appropriate presentation to Golf Avenue and the private domain with a well defined residential character. This includes landscaped treatment, balconies, entry area, including integration of the driveway access and bin / letter box area with the building design.</p> <p>It is considered that the proposal does not create an unreasonable impact on the amenity of the public domain by virtue of visual interest and character of the streetscape.</p>
<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 principle usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</li> </ol>	<p><b>Does not comply. Satisfactory on merit.</b></p> <p>1. 324sqm (12.7%) The development has 'communal open space' area, however this is allocated for the pedestrian access and adjacent landscaping from the street entry to the each of the buildings, but does not serve as recreational space.</p> <p>The building proposes 14 Units and the site is located 150m from Mona Vale Beach front (including the coastal link track) and therefore the nexus for a large area of communal open space within the site is less warranted given the close proximity to Robert Dunn Reserve. Therefore, the demand for communal</p>

		<p>open space is less warranted than that with a larger unit complex.</p> <p><b>Consistent</b></p> <p>2. Communal areas will receive a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) being the central courtyard and entry area along the western boundary.</p>												
<b>Deep Soil Zones</b>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	<p><b>Consistent</b></p> <p>The site is calculated to have deep soil zones within the region of 16% (390 sqm), thereby complies with the minimum requirement of the ADG.</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><b>Up to 12m (4 storeys)</b></td><td><b>6m</b></td><td><b>3m</b></td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	<b>Up to 12m (4 storeys)</b>	<b>6m</b>	<b>3m</b>	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p><b>Consistent</b></p> <p>The development is a part 3 storey residential flat building that is below 12.0m in height, thereby requiring the spatial separation of 6.0m to habitable rooms and balconies and 3.0m to non-habitable rooms.</p> <p>The development is assessed as providing a reasonable level of visual and acoustic privacy to adjoining properties as a minimal number of large living area openings from primary living spaces</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
<b>Up to 12m (4 storeys)</b>	<b>6m</b>	<b>3m</b>												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

	<p><i>habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	<p>facing east or west. The use of fixed and sliding screens allow privacy and internal solar access outlook to be regulated to optimise privacy and amenity for daily residential living.</p> <p>The spatial separation proposed is considered acceptable given the predominant two storey configuration and separation of the building into two distinct modules. The building floor layout and design responds to the surrounding development to minimise overlooking from living areas within the building. In summary, the architecture of the proposal has been designed to minimise impacts where the distance separation is closer to adjacent buildings and to provide and appropriate response to existing adjacent development.</p>
<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>Pedestrian access into the building is easily identifiable from Golf Avenue.</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 driveway entry to the street has been assessed as satisfactory by Council's Development Engineer.</p>
<b>Bicycle and Car Parking</b>	<p>For development in the following locations:</p>	<p><b>Consistent</b></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>Visual and environmental impacts are minimised.</p>	<p>The proposed provision of car parking has been assessed as satisfactory in accordance with the Pittwater DCP.</p> <p>All car parking is provided off street in the basement car park and thereby has minimal visual and environmental impacts on the local area.</p> <p>5 bicycle racks are provided use by occupants / visitors.</p>
<b>Part 4 Designing the Building</b>		
<b>Amenity</b>		
<b>Solar and Daylight Access</b>	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter</li> </ul>	<p><b>Consistent</b></p> <p>The development achieves a satisfactory provision of solar and daylight access to 72% (4/14) given the orientation of the building, setbacks and topography. The amenity of the principle living areas is enhanced by open plan living spaces and spatial separation to side boundaries.</p> <p>In summary, the building contains 14 apartments, and solar access is addressed to ensure for natural light / internally amenity without undue impact on privacy.</p> <p>Therefore, 10 of the 14 the apartments will receive adequate natural light internally between</p>

		9am and 3pm on the 21 June. The 4 Units south facing Golf Avenue have large floor to ceiling window spaces to the street and have side windows to allow internal direct sunlight to the living areas to allow morning or afternoon period.												
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"><li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. 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><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 development comprises of 14 units and has been designed to achieve natural cross ventilation.</p> <p>Therefore, the application is assessed as having 100% of apartments being naturally cross ventilated and satisfying the requirements of this control.</p>												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>If located in mixed used areas</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>	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	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	<p><b>Consistent</b></p> <p>The development achieves satisfactory floor-to-ceiling levels as per the ADG and BCA.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
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<b>Apartment Size and Layout</b>	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35sqm</td></tr><tr><td>1 bedroom</td><td>50sqm</td></tr><tr><td>2 bedroom</td><td>70sqm</td></tr><tr><td>3 bedroom</td><td>90sqm</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12sqm each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"><li>• 3.6m for studio and 1 bedroom apartments</li><li>• 4m for 2 and 3 bedroom apartments</li></ul> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	Apartment type	Minimum internal area	Studio	35sqm	1 bedroom	50sqm	2 bedroom	70sqm	3 bedroom	90sqm	<b>Consistent</b> <p>The development has a satisfactory apartment size and layout per unit as per the ADG guide.</p> <p>Apartment sizes range from 113 sqm to 218sqm</p>					
Apartment type	Minimum internal area																
Studio	35sqm																
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<b>Private Open Space and Balconies</b>	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>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>	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>Consistent</b> <p>Each apartment within the development has a courtyard area or balcony / terrace that are directly accessible from a living area.</p> <p>Usable* private open</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															

For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m.

space / balconies are:

1 Unit AG-1 has a terrace and garden area 50sqm (2 level Unit).  
2 Unit AG-2 has a principal balcony area 115sqm.  
3 Unit AG-3 has a principal balcony that is 95sqm.  
4 Unit BG-1 has a principal balcony that is 50sqm.  
5 Unit BG-2 has a principal balcony that is 53sqm.  
6 Unit CG-3 has a principal balcony that is 56sqm.  
7 Unit CG-4 has a principal balcony that is 167sqm (4 Brm / 2 level Unit).  
8 Unit A1-1 has a principal balcony that is 15sqm.  
9 Unit A1-2 has a principal balcony that is 15sqm.  
10 Unit B1-1 has a principal balcony that is 14sqm.  
11 Unit B1-2 has a principal balcony that is 19sqm.  
12 Unit C1-3 has a principal balcony that is 17sqm.  
13 Unit C1-4 has a principal balcony that is 16sqm.  
14 Unit B2-1 has a principal balcony that is 37sqm. (Roof terrace)  
(\*Areas that are obstructed by walls, infrastructure, narrow access and the like is not included but may be part of additional landscape space allocated to the Unit.)

All apartments contain 3

		or more bedrooms and the principle balconies have minimum dimensions that exceed 3.0m (for the principal circulation space in the central area of the balcony).										
<b>Common Circulation and Spaces</b>	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p><b>Consistent</b></p> <p>Maximum of 3 apartments per floor for shared lift / corridors.</p>										
<b>Storage</b>	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>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> <p>At least 50% of the required storage is to be located within the apartment.</p>	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>	<p><b>Consistent</b></p> <p>Each apartment has a satisfactory provision of at least 50% storage located in each apartment. (Additionally the units has walk-in-robos, laundry and kitchen / living and bedroom storage). Internal storage varies from 5.2 to 11.5 cubic metres and basement storage (adjacent carparking) of 8.6 cubic metres per Unit is provided. All Units have between 13.8 to 20.2 cubic metres of storage in compliance with the ADG.</p> <p>As the building has lift access the provision of storage in the apartments (such as cupboard space) and basement storage (such for bicycles) is satisfactory to enable items to be transferred to and from a car.</p>
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>											
<b>Acoustic Privacy</b>	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	<p><b>Consistent - subject to design measures/conditions</b></p> <p>The design and layout of the building has been composed to minimise</p>										



		<p>acoustic impacts that may arise from the garage door and circulation areas.</p> <p>Given that the development is not large (being only 14 units) it is not anticipated that the circulation spaces would regularly produce noise that could be offensive to adjoining bedrooms. Internal lift access is provided from the basement and the pedestrian entry is located adjacent</p> <p>It is considered that the design of the building, anticipated usage and current construction standards (insulation and the like) would mitigate any unreasonable or detrimental acoustic impact.</p> <p>A condition is included to ensure no unreasonable noise impact from air conditioning or lift motors.</p>
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	<p><b>Consistent</b></p> <p>The architecture and layout of the building has been designed to minimise the impacts of external noise and pollution (bins storage) and to mitigate noise transmission. The development is considered acceptable in this respect as the bins are stored in the basement and will be brought up to the street level bin holding area on collection days.</p>

Configuration		
<b>Apartment Mix</b>	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	<p><b>Consistent</b></p> <p>The application proposes 14 'family sized' apartments to accommodate for a potential buyers / tenants suitable for larger units that can accommodate working couples or 'young' families. A total of three (20%) of the 14 apartments are adaptable Units with accessibility design considerations included.</p>
<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 development incorporates contemporary architecture and design features to enhance compliance with the built form controls and to create a contemporary visual impact on all facades with landscaping to enhance the building setting.</p> <p>The general surrounding area is contextualised by mix of new and older-style brick / concrete apartment buildings, many with parking at their ground floor level or underground with 3 levels of apartments above and internal stair access. The contemporary addition of this proposed site re-development will not detract from the existing medium density streetscape.</p> <p>It is considered that the development respects the desired future character of</p>

		Mona Vale locality in the context of the pattern and style of adjacent and nearby development on the eastern side of Pittwater Road within the R3 Medium Density Zone.
<b>Roof Design</b>	<p>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.</p> <p>Test whether the roof space can be maximised for residential accommodation and open space.</p>	<p><b>Consistent</b></p> <p>The development provides a low pitched and partly flat roof with a minimal number of elements such as skylights, service installations. Therefore, the roof shape does not create an unreasonable impact on building bulk, views or visual appearance. Neutral low reflective colours are proposed.</p> <p>The lift overrun (which part of the highest elements of the building) is integrated within the south western quarter of the building and not prominent to the street. The rooftop plant areas are also enclosed with low (1m) screens for visual and acoustic considerations.</p>
<b>Landscape Design</b>	<p>Was a landscape plan submitted and does it respond well to the existing site conditions and context.</p>	<p><b>Consistent</b></p> <p>The development application is accompanied by a landscaped plan and planting schedule. The landscape plan shows that the large street tree fig ("T7") near the western corner of the site will be retained. This tree is in good vigor and contributes to the amenity</p>

		<p>of surrounding land.</p> <p>The plans and schedule indicate that the provision of plantings proposed is an appropriate response to the scale of development proposed and the adjoining developments.</p> <p>Selection of trees (6m+ in height) at appropriate spacing / separation includes; Willow Myrtle, Blueberry Ash, Kenia Palm, Cabbage Tree Palm, Water Gum, and Frangipani. See Landscape Plan schedule dated 11.9.2020 drawn by <i>Black Beetle Pty Ltd</i>.</p>																																			
<b>Planting on Structures</b>	<p>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</p> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m<sup>3</sup></td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m<sup>3</sup></td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m<sup>3</sup></td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <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		<p><b>Consistent</b></p> <p>As per the landscaped plans accompanying the application is satisfactory to ensure the front rear and side setbacks are to be planted with grasses and small / medium height plants which will be an appropriate landscaped solution.</p> <p>Selected larger plantings will be used in the front, side and rear setbacks to enhance the visual impact of the development and to maximise landscape setting for the building.</p>
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent																																	
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Turf			200mm																																		



<b>Universal Design</b>	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.	<b>Consistent</b>  Greater than 20% of the apartments incorporate the Livable Housing Guidelines silver level universal design features.
<b>Adaptive Reuse</b>	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	<b>Not Applicable</b>  Site is to be cleared of all existing structures. No existing building elements of the site are utilised in this development proposal.
<b>Mixed Use</b>	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>Not Applicable</b>  The development is for a residential flat building which is a permissible development within the R3 medium density residential zone.
<b>Awnings and Signage</b>	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.  Signage must respond to the existing streetscape character and context.	<b>Not Applicable</b>  Golf Avenue has a constructed footpath to the end of the street and to Pittwater Road.
<b>Performance</b>		
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	<b>Consistent</b>  BASIX Certificate commitments are included with architectural plan package.
<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 has been reviewed by Council's Development Engineers who raises no objections to the proposal, subject to conditions to address stormwater runoff in compliance with Council Policy.
<b>Waste Management</b>	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and	<b>Consistent</b>  A waste management

	recycling.	plan has been provided to accompany the development application and appropriate conditions ensuring compliance with waste management requirements have been included in the recommended conditions of this report.
<b>Building Maintenance</b>	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	<b>Consistent</b>  The building materials selected for the subject development are of a high quality and will achieve a longevity that is both sustainable and expected for a development of this nature.

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

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

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

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

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

Comment: The application is not being refused on any grounds contained within Cl. 30 (1) (a), (b) or (c).

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

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

*(3) To remove doubt:*



- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

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

Comment: The assessment of this application against the criteria and requirements of SEPP 65 has adequately demonstrated consideration has been given to Cl. 30 (2) (a) and (b) as per the above assessment.

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

A BASIX certificate has been submitted with the application (see Certificate No. 1090600M dated 24 April 2020). The BASIX Certificate is also supported by an ABSA Assessor Certificate 0004780160, dated 23 April 2020 with rating standard for all 14 Units demonstrating a average energy rating standard performance of 6.1.

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	45

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

#### SEPP (Infrastructure) 2007

##### Ausgrid

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

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

##### Comment:

The proposal was referred to *Ausgrid* and a referral response was provided on 2 July 2020 with comments and requirements in relation to existing electricity assets that have been included with the



recommended conditions (external referral Authorities).

#### Other Service Infrastructure Authorities

The proposal was not required to be referred to the *Roads and Maritime Service* and no other Service Authority referral requirements are raised pursuant to the SEPP.

#### **Pittwater Local Environmental Plan 2014**

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.2m	8.3% 55mm to 710mm	No*
Dwelling Density Site area 2,548.7sqm	1 dwelling per 200 sqm	1 dwelling per 182sqm	9.8%	No*

\* Refer to detailed merit assessment pursuant to Clause 4.6 within this report under the heading "Pittwater LEP 2014".

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.5A Density controls for certain residential accommodation	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

#### Detailed Assessment

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

##### **1. VARIATION - Clause 4.3 Height of Buildings**

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





Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.2m
Percentage variation to requirement:	8.3%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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



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

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

Comment:

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

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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



- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

*"The subject buildings are similar in height to other buildings in this immediate locality as there is a common theme for buildings to be three storeys, and the building immediately to the west, is four storeys. The third storey component of the proposal is not visible from Golf Avenue due to the topography of the land and has minimal impact on any view loss or solar access. This assessment included a comprehensive view sharing analysis undertaken by the project architects. The additional height of the third storey is across a small proportion of the overall floor plate.*

*When viewed from Golf Avenue, takes the form of a two-storey residential flat building of a highly articulated and modulated development which is compatible with the character of development in this immediate precinct. The proposed development adopts built form and scale in response to its immediate context, adopting a highly sculptural building form composed with splayed balconies that are orientated towards the ocean views to the east while creating visual interest within the immediate context. The forms respond carefully to the need for privacy as well as outlook. This is also designed in a way that it would not affect the streetscape of Golf Avenue.*

*The scale and bulk of the built form is designed to effectively moderate the scale of the building when perceived from the street and surrounding locations; it includes facades with sandstone walls, off-form concrete, rendered walls, deep balconies and using various architectural elements such as dynamic curved recesses, giving the building a distinct form.*

*The elevations are varied in expression and designed primarily to respond to significant views, setbacks and the site. The building has a modern and clean aesthetic, tempered by environmental control, site response and landscape elements.*

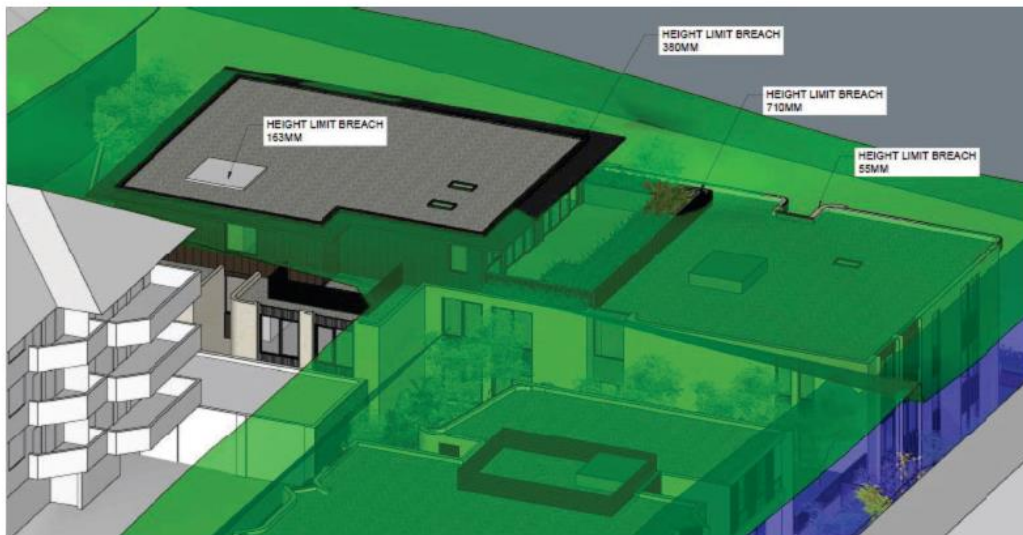
*The contemporary form and design will contribute to the immediate context in the form of a development that holds presence with the streetscape of Mona Vale.*

*The proposal responds well to the topography and greater urban context of the neighbourhood and the desired character of the locality. The proposed residential development has been designed to respond cohesively to the existing neighbourhood and streetscape. Elements such as building form, landscaping and building alignment are used to respond thoughtfully to the immediate locality. The adjoining development, No 48 Golf Avenue, being four storeys in height (approximately 12m), is a dominant built form feature in this area and there is a common theme of residential apartment buildings along Golf Avenue that represent three- to four-storey development such as No 54 Golf Avenue."*

Comment:

The height controls were considered as part of a pre-lodgement concept and the proposal has been refined to further minimise non-complying height elements. The extent of non-compliance is illustrated in the image below (Insert 5):





- *Figure 2: Height non-compliance occurs at the rear of the site, generally associated with eaves, planter box corner (710mm), roof / parapet 380mm, lift overrun (163mm).*

Potential issues associated with overlooking, solar access, view lines and building bulk have been considered and the height variation does not create any unreasonable impacts from the breach to the building height plane. Therefore, there is sufficient environmental planning grounds to justify the contravention of the development standard.

The upper storey of the building is stepped in from the side and rear boundaries and generally site lower than buildings at No.46-48 Golf Avenue. The non-compliance is minor in height despite covering Unit B2-1 roof profile the non-compliance does not unreasonably detract from the control for the medium density area. The development, although non-compliant, achieves consistency with the Objectives of the Development Standard and will maintain an appropriate appearance in the context of adjacent and newer apartment buildings in the area and when viewed from adjoining properties and the street. The applicants written request outlines reasons as to why compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development.

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

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the 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 residential flat building is compatible with the height and scale of surrounding and nearby developments which is visible from the streetscape of Golf Avenue and Darley Street East precinct. Variability in building heights characteristic between various residential developments that is often influenced by the larger area of the parent landholding (including width and depth). Examples of height and scale (in many instances) are greater than what is proposed in this application in the character of the area. In this case, the variation does not abandon the control and the variation occurs across a narrow horizontal plane at the rear of the "L" shaped site.

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

Comment:

The proposed buildings represent a contemporary form and design which will contribute to the immediate context in the form of a development that is the right fit for the neighbourhood and consistent with the streetscape of this precinct and is consistent with the scale of surrounding development.

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

Comment:

The subject development does not result in adverse impacts by way of overshadowing of neighbouring properties. Shadow diagrams have been prepared by the project architects, being drawings DA610, Shadow Diagrams prepared by PBD Architects to demonstrate compliant solar access.

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



Comment:

The location of the building height variation does not create an unreasonable impact on views. A detailed view analysis has been provided and assessment made pursuant to Pittwater DCP within this report. The proposal maintains consistency with this objective for view sharing as the variation to the height is located at the rear of the site and principal views to the south east are maintained and overall the view assessment ranks the view impact as 'moderate' for the development as a whole.

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

Comment:

The proposal takes into consideration the topography of the land and the buildings have been designed to complement the landform, being a slight slope from Golf Avenue to the north-eastern corner where there is existing excavation at the rear. The building, when viewed from Golf Avenue, represents a two-storey development.

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

Comment:

The building is situated adjacent established urban development and does not impact natural areas of the visible beachfront environment or any heritage items.

## Zone objectives

The underlying objectives of the R3 Medium Density Residential zone are:

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

Comment:

The variation to the height control is associated with a residential unit at a third storey level and does not prevent the achievement of this objective to provide housing within the medium density zone. The building has been designed with adequate landscape buffers to adjacent land on all sides and detailed landscaping that is appropriate for the coastal environment.

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

Comment:

The apartments proposed are all 3 bedrooms or more and contribute to the supply of larger ('family' size) apartment suitable for working couples, or young families, including persons that may seek the convenience / lifestyle of the location with accessibility and parking options provided within the building.

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



residents.

Comment:

The variation to the height control is not relevant to this objective as there are no 'other land uses' proposed for the building.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Comment:

The proposal includes no 'other land uses' within the building.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

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

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

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

**2. VARIATION - Clause 4.5A Density Controls for Certain Residential Accommodation**

**Description of non-compliance:**

Development standard:	Density controls for certain residential accommodation
Requirement:	1 dwelling per 200sqm
Proposed:	1 dwelling per 182 sqm
Percentage variation to requirement:	9.8%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.5A - Density controls for certain residential accommodation 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 4.5A - Density controls for certain residential accommodation development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

Comment:

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

In doing so, the Applicant's written request has adequately demonstrated that compliance with the





development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

*"Council has approved other developments with a variation to density control. It is also essential to understand that the character of this area (both Golf Avenue and Darley Street East) is dominated by residential apartment buildings and in this precinct there are no single detached dwellings in Golf Avenue and only two single detached dwellings in Darley Street East.*

*The residential density of one dwelling per 200sqm of site area has been breached on other developments that have been approved by Council in this immediate locality under this current LEP. These include the following:*

- 18 Golf Avenue, Mona Vale (3,542sqm/18 units/ FSR or 1 dwelling per 196 sqm/ minor variation),*
- 22 Golf Avenue (2,362sqm/12 units/ FSR or 1 dwelling per 196sqm / minor variation),*





- 30 Golf Avenue (2,577sqm/13 units FSR or 1 dwelling per 198sqm / minor variation).  
These buildings will remain a strong component of the existing character of the area. They are a contributing factor to the character of the area and are not in compliance with the one dwelling per 200sqm of site area, as prescribed under the prevailing LEP Density Control.

*There is no FSR control under Pittwater LEP 2014.*

- The adjoining development, being four storeys in height, is a dominant land feature in this area and there is a common theme of residential apartment buildings along Golf Avenue that represent three- to four-storey development.
- The development is compliant with landscaping requirements, setbacks, building footprint, massing and scale of development.
- The development does not create overshadowing on existing adjacent developments.
- The density control aims at achieving a planned density within this immediate precinct; however, Council must appreciate that the density of residential units based on their site area along Golf Avenue represents breaches with this density control.

*The development represents a minor variation by one unit to the stipulated control which equates to 14 apartments. The variation is less than 10% of this control and the end result of the building proposed represents a built form and scale in response to its immediate context.*

- The scale and bulk of the built form have been designed to effectively moderate the scale of the building when perceived from Golf Avenue and surrounding locations.
- The contemporary form and design will contribute to the immediate context in the form of a development that holds presence with the streetscape of Mona Vale.
- The density of 14 apartments on this site is considered sustainable within the existing and future availability of infrastructure, public transport, community and culturally significant facilities and environmental qualities of the site.
- The apartments are generous in size and align with the areas of Mona Vale, which is a reflection on current market demands.

*The development could be reduced by one unit by combining other units into one, resulting in the same footprint, massing and scale of the development that is presented as part of this application. This, indeed, is an important factor in considering the objective of the density control requirement in that one can achieve a building which would possess the same identical scale by enlarging one or two of the apartments and reducing the number. The end result would be the same development that is currently before Council for consideration. The dis-benefit would be an impact on providing a lesser number of dwellings, which impacts upon one of the main objectives of the Department of Planning to increase new housing supply in areas that are readily accessible to public transport, adequate infrastructure and in close proximity to community, retail and recreation facilities.*

*- To justify the variation to the density control, a view analysis has also been undertaken consistent with the NSW Land and Environment Court Principles established in Tenacity Consulting Pty Ltd v Warringah Council {2004} NSWLEC140 and Davies v Penrith City Council {2013} NSWLEC 1141."*

Comment:

An analysis of nearby development demonstrates the following outcomes in applying this development control:

No.10 Golf Avenue – 4,721 sqm / 17 Units having FSR of 1 per 277sqm – complies

No.18A Barrenjoey Road – 1,283 sqm / 6 Units FSR of 1 per 213 sqm – complies

No.49 Darley Street – 4,726 sqm / 20 Units FSR of 1 per 236 sqm – complies

No.32 Golf Avenue – 1,395 sqm / 4 Units FSR of 1 per 348 sqm – complies

No.21 Darley Street – 2,075 sqm / 6 Units FSR of 1 per 345 sqm – complies



No.18 Golf Avenue – 3,543 sqm / 18 Units FSR or 1 per 196 sqm – **variation**

No.22 Golf Avenue – 2,362 sqm / 12 Units FSR or 1 per 196 sqm – **variation**

No.30 Golf Avenue – 2,577 sqm / 13 Units FSR or 1 per 198 sqm – **variation**

No.36 Golf Avenue – 3,113 sqm / 15 Units FSR or 1 per 207 sqm - complies

The site is currently occupied by a nursing home facility that has been vacated for some time and redevelopment of the site for housing (apartments) is consistent with the orderly and economic use of the land which it is zoned for medium density. The site is one of few remaining lots suitable for redevelopment in the vicinity by account of the surrounding number of large existing apartment blocks in Golf Avenue, therefore future further 'abandonment' of the development control is a low risk for further precedent / variations to PLEP.

The streetscape presentation, landscaping, setbacks and overall visual appearance of the building is considered to be consistent with the desired future character whereby the additional unit density is toward the rear of the site and not readily visible (if associated solely with Unit B2.01. The density control is an average calculated across the whole of the site area which generally leads to larger single units rather than the same number of smaller 1 or 2 bedroom Units.

The building presents as a high quality flat building designed and built from internal and external amenity within a landscape setting. The additional density, of 14 units does not dominate the streetscape and the building remains at a 'human scale' with adequate open space areas, privacy, solar access and view sharing maintained.

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

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

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

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

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

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

#### Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the density controls for certain residential accommodation development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

#### **Objectives of development standard**



The underlying objectives of the standard, pursuant to Clause 4.5A – 'Density controls for certain residential accommodation' of the PLEP 2014 are:

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

*a) to achieve planned residential density in certain zones,*

Comment:

The residential density planned influences development design responses to provide larger spacious apartments, rather than more smaller units for the same area, dependent on the site area. In this case, a residential density is achieved with spacious (3 bedroom or larger) apartments with a landscape setting.

*b) to ensure building density is consistent with the desired character of the locality,*

Comment:

The projected density for the site is "12.7" Unit or 1 dwelling per 200sqm with the proposal having been designed to have 14 units or 1 dwelling per 182sqm. The proposal achieved the DFC by maintaining a two storey appearance to the street, landscaped setbacks and appropriate design response for parking, access, privacy, wall articulation, view sharing and amenity considerations

## Zone objectives

The underlying objectives of the R3 Medium Density Residential zone are:

The underlying objectives of the R3 Medium Density Residential zone are:

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

Comment:

The variation to the density control is associated with 14 units on the site and does not prevent the achievement of this objective to provide housing within the medium density zone. The building has been designed with adequate landscape buffers to adjacent land on all sides and detailed landscaping that is appropriate for the streetscape and surrounding environment.

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

Comment:

The apartments proposed are all 3 bedrooms or more and contribute to the supply of larger ('family' size) apartment suitable for working couples, or young families, including persons that may seek the convenience / lifestyle of the location with accessibility and parking options provided within the building.

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



residents.

Comment:

The variation to the density control is not relevant to this objective as there are no 'other land uses' proposed for the building.

- To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.

Comment:

The proposal includes no 'other land uses' within the building.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Low Density Residential zone.

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

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

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

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m (or established building line - 6.2m)	7.05m Basement	N/A	Yes
		9.1m to 10.0 Front wall	N/A	Yes
		0.0m Bin holding area	100%	No*
		5.8m to 6.8m Blade screen wall / eaves	6%	No*
			6%	No*



		Balcony edge 6.2m to 8.2m		
Rear Building Line	$S = 3 + (H-2) / 4$	6.0m Basement 6.0m	N/A	Yes
		Balcony / terrace 7.6m Wall line	N/A	Yes
Side Building Line	$S = 3 + (H-2) / 4$ (Eastern boundary)  (4.0m to 4.5m)	0.0m to 1.0m Hydrant enclosure & ramp 4.5m	100%	No*
		Basement and Lower level	N/A	Yes
		4.2m to 6.2m Ground level	N/A	Yes
		6.0m to 3.8m Wall line	N/A	Yes
	$S = 3 + (H-2) / 4$ (Western boundary)  (4.0m to 4.5m)	16.4m Level 2		
		2.0m to 5.3m Basement	N/A	Yes
Building envelope	45 degrees at 4.2m	3.0m to 6.0m Ground level	N/A	Yes
	45 degrees at 4.2m	3.0m to 6.0m Level 1	N/A	Yes
Landscaped area (Site area 2,548.7sqm)	50% 1274 sqm	7.4m to 9.0m Level 2	N/A	Yes
		47.3% 1205 sqm	2.7%	No*

\*Refer to detailed merit assessment under the heading 'Built Form Controls' within this Report.  
(Note: SEPP 65 prevails over Pittwater DCP where there is inconsistency between the built form controls. See assessment details under the heading SEPP 65)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.9 Mona Vale Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.3 Greywater Reuse	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)	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
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	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
C1.9 Adaptable Housing and Accessibility	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	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
C5.1 Landscaping	Yes	Yes
C5.17 Pollution control	Yes	Yes
C5.18 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	Yes	Yes
D9.7 Side and rear building line	Yes	Yes
D9.9 Building envelope	Yes	Yes
D9.10 Landscaped Area - General	No	Yes
D9.12 Fences - General	Yes	Yes
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

#### Detailed Assessment

#### **A4.9 Mona Vale Locality**

Consistency with the desired future character (DFC) of the Mona Vale Locality is addressed as follows:

*Future development will maintain a building height limit below the tree canopy and minimise bulk and scale.*

#### Comment:

- The DFC emphasises that building height limit is a development control measure to ensure the landscape setting is dominant over local trees in this urban zone and the proposal has maintained compliance and allowed landscape space for the amenity provided by new canopy trees adjacent the building. In addition some minor design refinements have been during the assessment to better respond to the DFC and reduce impacts associated with building bulk which is satisfactory.

*Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like.*

#### Comment:

- The proposal has incorporated appropriate façade modulation to provide visual interest and amenity including a contemporary roof form. This includes the recess sections and window treatment along the side elevations to minimise privacy impacts and incorporate balcony elements and screens where appropriate. A balance of shade elements for windows and screens assist to provide facade modulation and include use of some screens, feature materials and balconies to add to the visual interest of the building and break up building bulk along the



wall planes.

*Building colours and materials will harmonise with the natural environment.*

Comment:

- The DFC seeks that external colours and materials should include colours and material in a palette style that is in harmony with the coastal environment and the urban locality. The colours and materials selected are represented on the plans which is consistent with the DFC to include sandstone, masonry, concrete walls and materials that provides visual interest and suitable for the urban setting.

In summary, the design of the RFB appropriately responds to the topography and site constraints including the streetscape and context of adjacent land uses. The proposal maintains appropriate separation to the adjacent buildings. There are no natural hazards present on the site such as flooding, slope or acid sulfate residues that are prohibitive for the redevelopment of the site. A landscape setting is provided for the building and the size and scale of the building warrants the use of a basement carparking to provides off street parking for visitors and residents without an unreasonable amenity impact on the surrounding amenity.

### **C1.3 View Sharing**

*All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.*

Comment:

- The proposal has been considered in the context of surrounding views and adjacent development, in particular potential views toward Mona Vale beach and a detailed consideration of view sharing is provided below. The surrounding and nearby properties have been visited (where access is available) or appropriate nearby vantage points used to consider views.

*The proposal must demonstrate that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.*

Comment:

- The four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal as follows:

#### **1. Nature of the views affected:**

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

Comment:





- A site visit of the subject property, adjacent buildings of No.46 and No.48 Golf Avenue and No.13 Darley Street East investigating potential view lines from the vicinity revealed that the 3 storey flat building at No.54 Golf Avenue and buildings along Surfview Road and dense canopy trees in the vicinity Surfview Road and Darley Street East substantially blocks views of the coastline from the north east to south east with only a minor gap to the north east, however the distant ocean horizon to the is visible above 54 Golf Avenue (RL19.10). A substantial view corridor to the south east existing that includes the beachfront, golf course area, and Warriewood headland. The headland element and foreshore area being a focal (iconic) point to the view (land / water interface). The view is partly interrupted by Norfolk Pine trees in Golf Avenue but includes elements of the fore-dune open space area along the southern end of Mona Vale Beach.



- 
- *Figure 3: North eastern view toward Surfview Road (First floor level No.48 Golf Avenue).*



- 
- *Figure 4: Easterly / South easterly view over site toward ocean horizon and Warriewood Headland (First floor level No.48 Golf Avenue).*

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

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

### Comment:



- Views from No.48 Golf Avenue are across the side boundary but are interrupted by development and canopy growth on properties to the northeast by development along Surfview Road. Views to the south east from Level 1 within No.48 Golf Avenue are possible from standing position, but the existing concrete balustrades for the balconies obstruct view lines from a sitting position. An alternative view is available from side bedroom windows on the northern elevation at Level 1 (see Insert 1 above) however the view is across a rear boundary (western side of the subject site) and will be obscured by proposed Unit B-2.01. The north-easterly views however are principally retained for Level 2 and above within No.48 Golf Avenue due to the much higher floor level. Views toward Warriewood Headland are gained from kitchen and living areas and balconies within No.48 Golf Avenue. While this view is across a side boundary the building of No.48 Golf Avenue has a staggered balcony arrangement intended to capitalise on the eastern and south-eastern view. Therefore, this water view is highly valued (see Insert 2 above).

Due to the higher topography of No.46 Golf Avenue and high boundary wall the views across the site the proposed building is setback from the rear boundary and is offset from the north-eastern view line.

### 3. Extent of impact

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

#### Comment:

- The extent of the impact is greatest for the rear Level 1 Unit (northern) within No.48 Golf Avenue because the viewing angle is diagonally across the depth of the site but the existing view is from balcony / living area and is highly valued since it is more restricted than units closer to Golf Avenue. The alternate view from north facing windows has limited water views due to the pattern and density of development along Darley Street East and Surfview Road. The impact on views for the rear units at Level 1 within No.48 Golf Avenue is assessed as being **moderate**. It is not assessed as minor as there are other elements of the proposal that will affect the view, including parapets, roof top plant enclosures and Unit B-2.01 when considering the whole of the view from northwest to the southeast. The view line to Warriewood Headland will be marginally affected but mostly affects the foreground area where the existing Norfolk Pine trees are located and the land area. The majority of water view area is maintained.

### 4. Reasonableness of the proposal that is causing the impact

*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

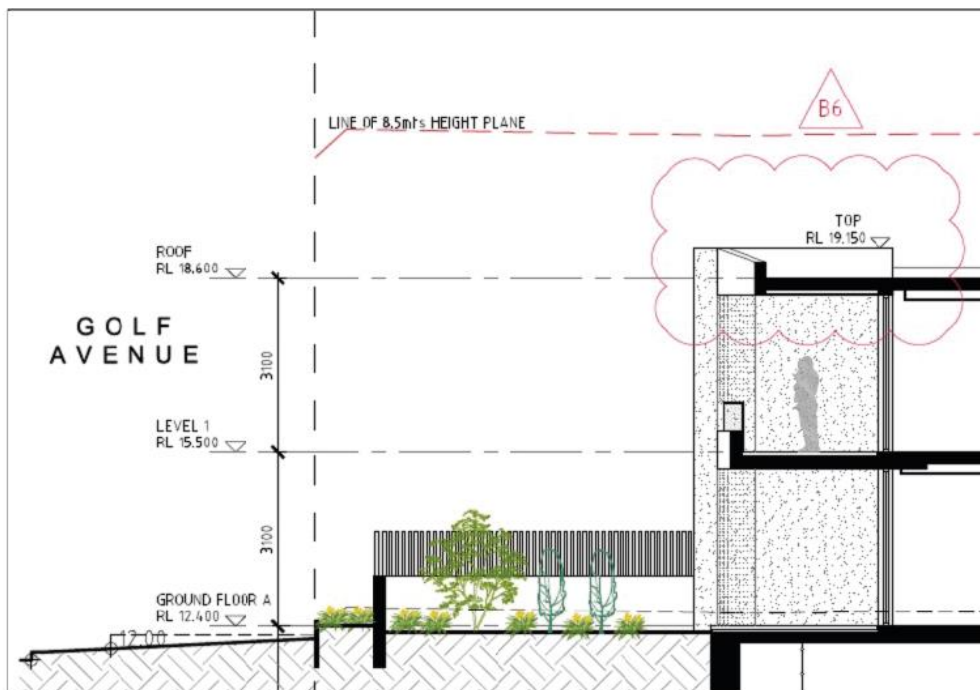


Comment:

- In final consideration of the view assessment criteria pursuant to the NSW Land and Environment Court's planning principles for view sharing, the development has been subject to some minor amendments to ensure water view impacts are minimized by lowering the front of the building roof level and additional view analysis including landscape (tree planting) considerations to provide a reasonable development for the medium density location that is compatible in terms of amenity, views, building bulk, setbacks and spatial separation with a skillful design. In this regard, view sharing impacts are reasonable in context of the surrounding urban environment and location.



- Figure 5: View impact reduced by lowering of parapet and clerestory parapet element at the front of the building from RL19.55 shown to RL19.15 (Figure 6 below)



- Figure 6: Parapet level change (reduced by 400mm).

**Pittwater DCP Merit Assessment**

*Where a view may be obstructed, built structures within the setback areas are to maximise visual access through the structure e.g. by the provision of an open structure or transparent building materials.*

Comment:

- The building has been setback on an appropriate alignment to provide appropriate side setbacks for the development and a low profile roof with acceptable floor to floor heights (that are not excessive). Due to the established pattern of existing residential apartment buildings at No.48 Golf Avenue and development along Surfview and Darley Street East views directly east and north east are limited at first floor level. The applicant has demonstrated that view impacts are not unreasonably affected given the pattern of surrounding development and views considered, in part and as a whole, from surrounding land.

*Views are not to be obtained at the expense of native vegetation.*

Comment:

- The proposal has included landscaping and around the periphery of the building and the DCP gives priority to canopy trees in terms of views. Notwithstanding the tree planting proposed is appropriate within the setback areas, subject to conditions, including the street frontage whereby a landscape setting is required that is commensurate with the height of the building including native trees have been selected that are suitable to the coastal environment. The existing large fig tree at the rear is to be retained.

Conclusion

The proposal is considered satisfactory in terms of view sharing issues with the design changes made (Issue B dated 8.9.2020, drawn by PBD Architects) and pursuant considerations made pursuant to *Clause 1.3 View Sharing*.

**C1.5 Visual Privacy**

Merit consideration of residential visual privacy is addressed as follows:

*Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*

Comment:

- The proposal has been designed to ensure balanced privacy for the design by the use of landscaping, window screens, balcony spaces and building separation to adjacent building windows. Additional detail has been provided for privacy screens to demonstrate screening (see Privacy detail DA900, and Section C detail DA301, dated 8.9.2020, drawn by *PBD Architects*). The use of privacy screens includes fixed and sliding screens to enable sunlight and privacy to be increased / optimised throughout the day. At ground floor level privacy is adequately screened by a combination of ground level planting, boundary fencing, separation and window positioning.
- At the upper level bedrooms are generally located toward the side walls with kitchen / dining / living areas oriented toward Golf Avenue or the northern (rear) setback. While bedrooms are generally low use rooms during the day and used for sleeping at night additional details for privacy screening is provided as show on the plans for screening devices (PS-1, PS-2 and PS-3) to minimise privacy impacts toward Units within No.54 Golf Avenue. Spatial separation and



higher floor levels within No.48 and No.48 Golf Avenue provides greater privacy separation and an overlooking advantage to these two properties across the site. With regard to dwellings to the north addressed to Darley Street East, the proposal provides a wide landscape rear setback, privacy screens to all balconies and landscape planters to limit overlooking. This includes the top level Unit B-2.01 and the private open space terrace area provided for that unit that is setback and has a surrounding landscape planter to ensure no unreasonable privacy or overlooking impacts.

*A sense of territory and safety is provided for residents.*

Comment:

- The proposed flat building has a high level of definition between the public domain and the interior of the building including appropriate use of landscaping, fencing, staff facilities and entry areas to ensure a sense of territory, safety and security for occupants. This includes formal landscaping with pathway connections to clearly defined foyer / entry points and secure basement parking with lift access.

*Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.*

Comment:

- The proposal maintains appropriate levels of both visual privacy through design elements integrated to balcony areas (such as dimensions and planter boxes) and orientation of internal living and screening devices relative to adjoining living or bedroom and bathrooms and open space areas to ensure no unreasonable impact. Where terraces / balconies are located toward a side boundary the area / dimensions design of the balcony / terrace includes screening devices and narrow balcony widths are provided to limit usability off bedrooms. Angled and slot style windows are also used along the side elevations, particularly for the upper floors to limit privacy impacts.

*Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.*

Comment:

- The proposed building, is within a medium density urban environment and views have been restricted from individual Units to maintain consistency with this objective. No private open space located along eastern side of No.54 Golf Avenue as the balcony are located on the eastern side of this building. However fixed privacy screening devices and landscaping is provided to limit overlooking and viewing opportunities between the subject building and No.54 Golf Avenue. For the properties of No.48 and No.54 Golf Avenue these properties generally overlook the site from a higher level, and a wider side building separation distance exists due to the existing building positions / orientation. For the properties to the north (addressed to Darley Street East) a wide and commensurate rear setback is provided to maximise landscape buffer. In addition to this privacy screen planter boxes for balconies and privacy screens are to be provided to limited direct views toward the rear yards of these properties.

Within the development itself terrace areas at the lower level are recesses to ensure upper units cannot look into any lower unit terraces. In addition to this the side walls provided for the upper terraces restrict cross views toward adjacent private open space / balconies and terraces.





#### D9.6 Front building line

The proposal has a partial non-compliance for built form elements forward of the front setback alignment (average), including the bin enclosure / entry awning / front blade wall feature. The minimum required 6.5m or greater corresponding building alignment applies.

Comment:

Merit consideration of the non-compliance with the front setback control and objectives is addressed as follows:

- It is considered that the RFB building proposed satisfies the objectives of the front setback control by a design appearance that is consistent with the desired future character of the Locality that is consistent with other medium density development nearby and the building is in keeping with the height of the natural environment.
- The RFB proposal does not have an unreasonable impact on views and vistas to and/or from public/private places and the setback reinforces and appropriately relates to the spatial characteristics of the existing urban environment.
- The setback does not unreasonably impact on the amenity of residential development adjoining, including pedestrian safety, landscaping and vehicle access / egress, subject to conditions.

#### D9.7 Side and rear building line

The proposal includes a variation to the side setback for the basement ramp that is setback 1.0m (at 1m deep) along the ramp until it curves back under the building within the main basement area. A hydrant booster is also located on a nil setback adjacent the ramp.

Merit consideration objectives on the control as relevant to the variation to the side setback is addressed as follows:

Comment:

- The variation to the side setback for the basement ramp does not create an unreasonable impact on surrounding amenity. A narrow landscape buffer is provided (adjacent No.54 Golf Avenue) and the ramp area is also utilised for an on-site detention (OSD) tank underneath. The passing bay / driveway width is required to optimise safe access in connection with the traffic engineering / development engineering requirements for vehicle to be able to pass or clear the street frontage prior to entering the basement parking.
- The overall design of the bulk and scale of the building, landscaping setting and spatial separation to adjacent development is considered to be consistent with the desired future character of the Locality in the context of the objectives for the R3 Medium Density Zone.

#### D9.10 Landscaped Area - General

The proposal has 1,205 sqm of landscaping, which is a 2.7% shortfall of landscaped open space based on the requirements of the DCP, which is 50% of the site area.





Merit consideration of the variation to landscaped open space is addressed as follows:

Comment:

- The proposed RFB building includes a built form that is screened and softened by landscaping which includes canopy trees as well as small, medium plantings within the setback areas to compliment the amenity of the building. Landscaping planting is commensurate with the scale and form of development inclusive of the allows to use ground level open space areas as common open space for the enjoyment of residents and visitors to the RFB.
- An arboricultural assessment report provides a detailed assessment of trees to be retained that those to be removed within the site. The landscape plan prepared by *Black Beetle Landscape Architecture and Design* includes a mix of native landscape planting that used screening plants, massed planting where appropriate and lawn areas with canopy trees to provide a landscape setting for the building.
- Edge planting is also used along the driveway and against the side of the building where appropriate to provide a buffer to adjacent property or the edge of the building (No.48 and No.54 Golf Avenue) to soften the appearance of hard surface areas / pathways / terraces.
- The landscaping proposed will not unreasonably obstruct driver or pedestrian visibility and provides visual interest to the building when viewed from street. Landscaping elements are integrated in to the building design by the use of wide setbacks and building modulation, including planter boxes on balcony spaces at the front and rear elevations.
- The proposed two sections / modules of the RFB includes a built form that is screened and softened by landscaping which includes canopy trees as well as small, medium plantings within the setback areas to compliment the amenity of the building. Landscaping planting is commensurate with the scale and form of development inclusive of the allows to use ground level open space areas as common open space for the enjoyment of residents and visitors to the RFB. Major trees on the site will be maintained on the far western boundary and replacement planting provided where some existing trees are unsuitable to be retained (due to construction work or species type).
- An arboricultural assessment report provides a detailed assessment of trees to be retained that those to be removed within the site. The landscape plan prepared includes a mix of native landscape planting that used screening plants, massed planting where appropriate and lawn / garden areas with canopy trees to provide a landscape setting for the building. Edge planting is also used along the driveway and against the side of the building where appropriate to provide a buffer to adjacent property or the edge of the building to soften the appearance of hard surface areas / wall planes.
- The landscaping proposed will not unreasonably obstruct driver or pedestrian visibility and provides visual interest to the building when viewed from street. Landscaping elements are integrated in to the building design by the use of wide setbacks and building modulation, including planter boxes on balcony / terrace spaces at the front, side and rear elevations.
- Overall a landscape setting is maintained for the curtilage of both buildings with minimal offset in parts of the site such as the driveway entry, pedestrian access and setback zones where the basement is close to the surface.

(Note: In addition, to the above merit assessment see further comments within this report under the



heading "SEPP 65 Design Quality of Residential Apartment Development" regarding non-compliance with the SEPP provisions for landscape open space)

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

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2019**

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

A monetary contribution of \$95,746 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$9,574,594.

## **CONCLUSION**

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of 'Clause 4.3 Height of Buildings' and 'Clause 4.5A Density controls



for certain residential accommodation' has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

The proposed residential flat building is considered to be a suitable and appropriate form of development for the site and is in context with the residential scale and pattern of development in the R3 Medium Density Residential zone. Principal environmental impact considerations with the proposal relate to the dwelling density control (Clause 4.6 variation), views, bulk, private open space, traffic and parking access, building height (Clause 4.6 variation), spatial separation (such as wall height and landscape areas), privacy, overshadowing, urban character, construction impacts (during works) and stormwater management.

The public submissions received have been considered and are addressed within this report, and by plan amendments provided to accommodate those issues, or by way of conditions applied where appropriate to address those concerns, including; landscaping, privacy, bulk, overshadowing, views, traffic safety, parking, access, excavation work and view sharing. The proposal will not have an unreasonable impact in relation to view sharing considerations from adjacent and nearby properties in Golf Avenue. Additional amenity impacts such as may commonly arise during construction works are addressed by standard conditions (including dilapidation, dust, noise, site management and the like). Suitable conditions are recommended to address stormwater engineering, vehicle access and landscape related issues as detailed in this report.

During the assessment period, a number of design changes were made by the applicant to overcome technical issues and assist in ensuring a design response that did not create unreasonable impacts on adjacent land while ensuring acceptable standards of internal amenity for the building as required by SEPP 65 and the ADG. The issues raised by submissions received have been considered in the context of the proposal and some supplementary information / plan changes were provided to further assist engineering, traffic, landscaping, solar access, privacy, view considerations and some technical / compliance issues.

The requirements of the Pittwater LEP and Pittwater DCP apply and in this regard matters relating to desired future character, setbacks, building envelope, density, height, bulk and scale, external materials, overshadowing, privacy, views, stormwater and traffic have been addressed. In this case the non-compliances with the dwelling density and height controls, as well as merit assessment of setbacks and landscaping controls are addressed in accordance with the objectives and requirements of those considerations.

On balance, the proposal (as amended) does not create unreasonable amenity impacts and has appropriate merit for the type of redevelopment of the land proposed. The application has adequately addressed the concerns raised, environmental considerations, including the variations to the planning controls, and is therefore recommended for approval.

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



## RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause "4.3 Height of Building" and clause "4.5A Density Controls for certain residential accommodation" development standards pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the Development Standards and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/0455 for Demolition works and construction of a residential flat building on land at Lot 1 DP 133456, 50 - 52 Golf Avenue, MONA VALE, Lot 2 DP 133456, 50 - 52 Golf Avenue, MONA VALE, Lot 1 DP 963829, 50 - 52 Golf Avenue, MONA VALE, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA004 A Site Plan	9.4.2020	PBD Architects
DA100 B Basement Plan	8.9.2020	PBD Architects
DA101 B Ground Floor Plan	8.9.2020	PBD Architects
DA102 B Level 1 Plan	8.9.2020	PBD Architects
DA103 B Level 2 Plan	8.9.2020	PBD Architects
DA103 B Roof Plan	8.9.2020	PBD Architects
DA200 B Elevations 1	8.9.2020	PBD Architects
DA201 B Elevations 2	8.9.2020	PBD Architects
DA202 B Elevations 3	8.9.2020	PBD Architects
DA300 B Section A	8.9.2020	PBD Architects
DA301 B Section B & C	8.9.2020	PBD Architects
DA400 B Materials Schedule 1	8.9.2020	PBD Architects
DA401 B Materials Schedule 2	8.9.2020	PBD Architects
DA900 B Privacy Screen Details	8.9.2020	PBD Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
Stormwater Management Plan Sheet 1	23.4.2020	Taylor Consulting
Stormwater Management Details Sheet 2	23.4.2020	Taylor Consulting
Driveway Plan Sheet 3	23.4.2020	Taylor Consulting



Driveway Long Sections Sheet 4	23.4.2020	Taylor Consulting
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**Reports / Documentation – All recommendations and requirements contained within:**

Report No. / Page No. / Section No.	Dated	Prepared By
Construction Traffic Management Plan 19.656r02v02	April 2020	Traffix
Site Investigation Report E24490.E02_Rev01	28.2.2020	EI Australia
Geotechnical Report E24490.G03	12.2.2020	EI Australia
BCA Assessment Report	22.4.2020	Building Group Control
Access Report 20018	April 2020	Access-i
Arboricultural Impact Assessment	April 2020	Urban Forestry Australia
BASIX Certificate 1090600	24.4.2020	Eco Certificates Pty Ltd

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>		
Drawing No.	Dated	Prepared By
LA LP 01/06 Landscape Plan Basement Plan	11.9.2020	Black Beetle Landscape Architecture
LA LP 02/08 Landscape Plan Ground Floor	11.9.2020	Black Beetle Landscape Architecture
LA LP 03/06 Landscape Plan Level 2	11.9.2020	Black Beetle Landscape Architecture
LA LP 04/03 Landscape Plan Schedule	11.9.2020	Black Beetle Landscape Architecture

<b>Waste / Sediment / Works Management Plan</b>		
Drawing No/Title.	Dated	Prepared By
DA002 A Demolition Plan	9.4.2020	PBD Architects
Operational Waste Management Plan SO469	21.4.2020	EF Recycling Solutions
Waste Management Plan	23.4.2020	PBD Architects
Erosion and Sediment Control Plan Sheet 5	28.4.2020	Taylor Consulting
DA570 Excavation Diagram	20.4.2020	PBD Architects

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.  
(In the conditions "interim/final" is intended to allow a Certifier to select the suitable or appropriate time or phase to meet the requirement.)



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

2. **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	2.7.2020

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

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

3. **Roof top installations**

Roof top satellite dishes, solar panels, antenna, venting plant and the like are not to be placed in any roof top areas outside the two roof plant enclosures shown on the approved plans (issue B) dated 8.9.2020 drawn by *PBD Architects*.

4. **Prescribed Conditions**

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

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



that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

## 5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not



commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) All sound producing lift plant, door motors, air conditioning machinery or fittings and the like, to service the building must not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room (s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.





- (o) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2008
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

#### 6. **Demolition Traffic Management Plan; Staff and Contractor Parking**

As a result of the site constraints, limited vehicle access and parking, a *Demolition Traffic Management Plan* (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of 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 DTMP 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. These communications must be documented and submitted to Council prior to work commencing on site.

- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

***Staff and Contractor Parking***

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

The DTMP 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 Demolition Traffic Management Plan is submitted.

Reason: To ensure minimum impact of construction activity on local parking amenity.  
(DACTRBOC3)

## FEES / CHARGES / CONTRIBUTIONS

### 7. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$95,745.94 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$9,574,594.00.

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

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

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



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

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

#### 8. **Security Bond**

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

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

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

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

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

#### 9. **Construction, Excavation and Associated Works Bond (Installation of 375mm RCP Drainage Line Golf Parade)**

The applicant is to lodge a bond of \$75,000 as security against any damage or failure to complete the construction of the 375mm RCP stormwater drainage line and inlet pits in Golf Parade as part of this consent.

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

Reason: Protection of Council's infrastructure.

#### 10. **Construction, Excavation and Associated Works Bond (Maintenance for civil works)**

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

Reason: To ensure adequate protection of Council infrastructure.

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

#### 11. **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.

12. **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 – PITTWATER DCP21, and generally in accordance with the concept drainage plans prepared by *Taylor consulting*, drawing number 1-3, dated 23 April 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 Professionals Australia RPENG(Civil).

The drainage plans must address the following: i. Provision of basement pumpout plans/details including calculations for sizing of the pumps and sump.

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.

13. **Submission Roads Act Application for Civil Works in the Public Road- Construction of 375mm RCP line in Golf Parade**

The Applicant is to submit an application for approval for the proposed construction of a 375mm RCP stormwater line in Golf Parade within Council's roadway. Engineering plans for the new development works within the road reserve are to be generally in accordance with the drainage concept plans prepared by Taylor Consulting dated 23 April 2020 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 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 with NER or RPENG (Civil) accreditation. The design must include the following information:

- 1) A catchment and HGL analysis using the DRAINS model is to be prepared to support the sizing of the new 375mm RCP line.
- 2) All service utility locations are to be detailed on the drainage line long section.
- 3) The downstream drainage line running from Pit SPP 54358 to Pit SPP 54357 is to be condition reviewed and the report submitted to Council to determine if this line needs to be renewed as part of this application.

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.

14. **Utilities Services**

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





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

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

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

15. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

16. **Sub-Soil Seepage**

The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line being the new inlet pit in Golf parade and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

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

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

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

17. **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.

18. **On slab landscape works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

- i) 300mm for lawn
- ii) 600mm for shrubs
- iii) 1m for small trees

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: to ensure appropriate soil depth for planting and secure waterproofing and drainage is installed

19. **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.

20. **Compliance with Standards**

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

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

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

21. **Construction Traffic Management Plan**

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

The CTMP must address following:-

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



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

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

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

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming appropriate measures have been considered for site





access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site. (DACTRCPC1)

## 22. Waste and Recycling Requirements

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

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

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

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

## 23. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, and in accordance with the recommendations of the Arboricultural Impact Assessment prepared by Urban Forestry Australia dated April 2020.

The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment under Appendix C Tree Protection Devices, and Appendix D Tree Protection Plan, including:

- i) oversee and approve tree protection measures during all stages of development - demolition, excavation and construction within the tree protection zone, and the location and installation of the tree protection fencing for T1 - Paperbark located within the road verge,
- ii) oversee and approve tree protection measures during all stages of development - demolition, excavation and construction within the tree protection zone, retention of the existing wall and construction of the new wall in front, retention of existing ground levels and ground protection, and the location and installation of the tree protection fencing for T7 - Port Jackson Fig located within the site,
- iii) oversee and approve tree protection measures should existing roots be encountered within the tree protection zone of T2, T3, T4, T13, T14, T15, and T16 within adjoining properties.

All tree protection measures specified must:

- a) be in place before work commences on the site, and





- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) as listed under items i). ii). and iii) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note: A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: tree protection

24. **Pre-Construction Dilapidation Report**

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

Property / Properties:

- o 46 Golf Avenue
- o 48 Golf Avenue
- o 54 Golf Avenue
- o 17 Darley Street East
- o 13 Darley Street East
- o 11 Darley Street East
- o 9 Darley Street East

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

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

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

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

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

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

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



must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

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

**26. Tree removal within the property**

This consent approved approval to remove the following trees within the property as recommended in the Arboricultural Impact Assessment:  
T10 Giant Bird of Paradise, located as shown in Appendix G: Tree Location Plan.

The following Exempt Species do not require Council consent for removal:  
T5, T6, T8, T9, T11, T12, T17, T18, T19, T20, T21, T22, and T23, located as shown in Appendix G: Tree Location Plan.

Reason: to enable authorised building works

Note: Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

**27. Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site. Separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane. A Transport for NSW Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly (DACTRDPC1)

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

**28. 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.

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

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

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005;
- and



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

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

30. **Survey Certificate**

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

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof line, parapet, roof top screening elements and ridge heights are in accordance with levels indicated on the approved architectural plans (Issue B) dated 8.9.2020 drawn by *PBD Architects*.

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

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

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

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

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

32. **Progress Certification (Road & Subdivision)**

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

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

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

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

33. **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.

34. **Footpath Construction**

The applicant shall reconstruct the existing concrete footpath in accordance with the following:

- (a) All footpath works are to be constructed in accordance with Council's engineering drawings.
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to issue of the occupation certificate

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

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

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

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

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.

36. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5.5 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.

37. **Requirement to Notify about New Contamination Evidence**

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment.

38. **Protection of existing street trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages.





Existing street trees within the frontage of the development site shall be protected by tree protection fencing to the extent and alignment as determined by an Arborist with minimum AQF Level 5 in arboriculture, and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

Unless identified by the development consent, no tree roots over 25mm diameter are to be damaged or cut and all structures are to be bridged over such roots.

Should any problems arise with regard to the existing or proposed trees on public land during the construction or bond period, Council's Public Trees section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: street tree protection

39. **Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture
- iii) removal of existing tree roots greater than 25mm is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots greater than 25mm diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.
- xi) the tree protection measures specified in this clause must:



- i) be in place before work commences on the site, and
- ii) be maintained in good condition during the construction period, and
- iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment prepared by Urban Forestry Australia dated April 2020.

The Certifying Authority must ensure that:

d) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: tree and vegetation protection

40. **Implementation of Demolition Traffic Management Plan**

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

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.  
(DACTREDW1)

41. **Implementation of Construction Traffic Management Plan**

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

*Staff and Contractor Parking - CTMP*

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

Reason: to ensure compliance of the developer/builder in adhering to the Construction Traffic



Management procedures agreed and are held liable to the conditions of consent.  
(DACTREDW2)

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

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

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

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

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

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

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

44. **Landscape completion**

Landscaping is to be implemented in accordance with the Landscape Plans identified as LP01 (issue 06), LP02 (issue 08), LP03 (issue 06), and LP04 (issue 03), prepared by Black Beetle Landscape Architecture and Design, inclusive of the following conditions:

i) all tree planting shall be located at least 3 metres from any building, located at least 2 metres from common boundaries and at least 4 metres from each and all other trees.

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

Reason: environmental amenity.

45. **Condition of retained vegetation - Project Arborist**

Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: tree protection

46. **Post-Construction Dilapidation Report**

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

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





- Should any damage have occurred, suggested remediation methods.

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

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

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

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

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

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

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

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

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

48. **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.

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

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

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

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

50. **Garbage and Recycling Facilities**

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

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

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

51. **House / Building Number**

The street address building number is to be affixed to the fence / letterbox point to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

52. **Sydney Water**

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

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

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

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

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

53. **Convex Mirrors**

A convex mirror is to be installed at an appropriate location at the bottom of the ramp to the



basement car park in conjunction with a passing bay provided by widening the access driveway to 5.5m for the first 6.0m within the property boundary, in lieu of the traffic light system (indicated on Basement and Ground Floor Plans DA100, DA101 Issue B).

Convex mirrors are also to be installed at opposite ends of the single lane parking aisle. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To provide visibility of entering vehicles and minimise conflict within the basement car park. (DACTRFPOC1)

54. **Linemarking of Waiting Bays– Internal; Accessible Parking Spaces**

*Linemarking of Waiting Bays– Internal.*

All waiting bays in the basement car park are to be clearly linemarked.

*Accessible Parking Spaces*

Where accessible parking spaces are provided they must be in accordance with AS2890.6:2009

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

Reason: To ensure compliance with Australian Standards and minimize conflicts in the basement car park. (DACTRFPOC3)

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

The proposal shall be constructed in accordance with Northern Beaches Council Waste Management Plan (WMP) and WMP details provided by the applicant.

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

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

56. **Waste/Recycling Compliance Documentation**

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

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

57. **Positive Covenant for Waste Services**

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

Northern Beaches Council Council shall be nominated as the party to release, vary or modify such covenant.



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

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

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

Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

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

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

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

59. **Landscape maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: to maintain local environmental amenity

60. **Transfer of Waste Bins between Basement Binroom and Collection Bay**

The owners corporation is responsible to ensure that the waste bins are presented in, and removed from, the collection bay at the appropriate times.

Waste bins are to be transferred from the basement bin room to the collection bay no earlier than 4.00pm on the day prior to collection. Waste bins, once emptied, are to be transferred from the collection bay to the basement bin room no later than the evening of the day of collection.

Reason: To ensure waste bins do not remain in the collection bay for an excessive amount of time. To ensure waste bins are available for resident use in the basement bin room for the maximum amount of time. (DACHEGOG1)

61. **Washing of Vehicles**

Washing of vehicles/boats is to be conducted in a car wash bay, which is roofed and bunded to exclude rainwater. All wastewater from car washing is to be discharged to the sewer under a Trade Waste Agreement from Sydney Water. Alternative water management and disposal options may be possible where water is recycled, minimised or re-used on the site. Any such alternative option is to comply with all relevant Standards.

Reason: To ensure that wastewater is disposed of in a manner that is not harmful to the environment.



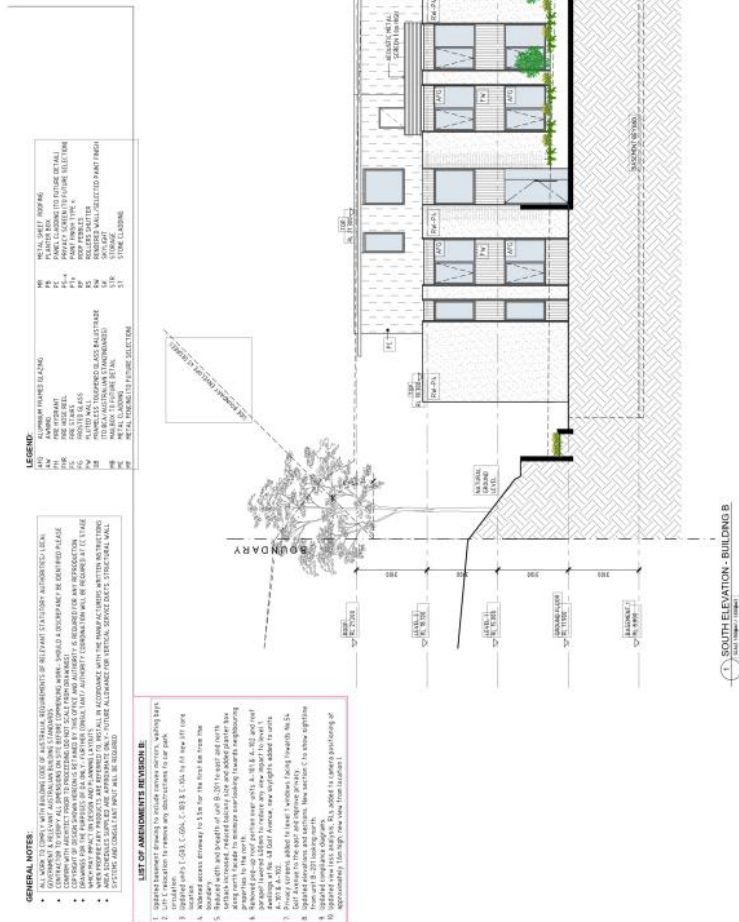












DEVELOPMENT APPLICATION DRAWINGS			
PROJECT	DATE	DESCRIPTION	ISSUE
PROPOSED RESIDENTIAL FLAT BUILDINGS 50-52 GOLF AVENUE, MONA VALE NSW 2103	05/03/20	AMENDED DEVELOPMENT APPLICATION	1
	05/03/20		2
CLIENT: PMA PROPERTY			
<div>DA202</div> <div>ELEVATIONS - 03</div> <div>ISSUE 8</div> <div>JOB No. 1937</div>			
<div>PBD ARCHITECTS</div> <div>Level 2, 100 Albert Street, Surry Hills NSW 2010</div> <div>P: (02) 9558 6146 E: info@pbdarchitects.com.au W: www.pbdarchitects.com.au</div>			



Appendix B: Statement of Environmental Effects  
50-52 Golf Avenue, Mona Vale

## APPENDIX B

### CLAUSE 4.6: EXCEPTIONS TO DEVELOPMENT STANDARD – HEIGHT OF BUILDINGS - CLAUSE 4.3 PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

#### Clause 4.6: Exceptions to Development Standards – Height of Buildings – Clause 4.3 (1) and (2) Pittwater LEP 2014 (PLEP2014)

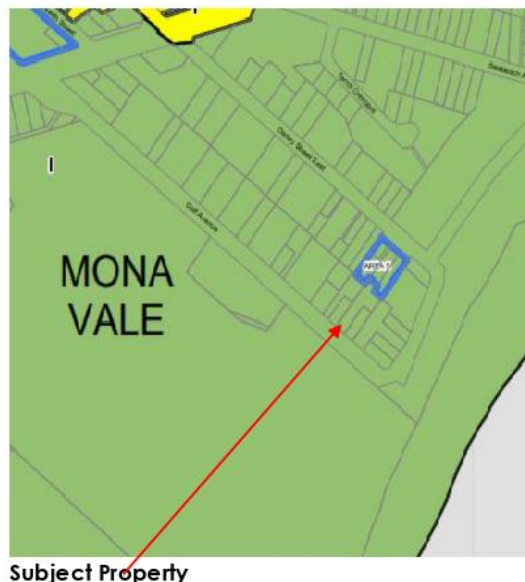
##### 1. Introduction

This Clause 4.6 Application has been prepared on behalf of the applicant in support of a Development Application for the construction of a two-storey and one three-storey residential flat buildings comprising 14 apartments and associated infrastructure and landscaping.

The request seeks to vary the height of buildings development standard (**HoB**) under Clause 4.3 (1) and (2) of PLEP2014 pursuant to Clause 4.6: Exceptions to Development Standards under PLEP2014.

Clause 4.3 (1) and (2) specifies that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map, which is shown below.

##### HEIGHT OF BUILDING



#### Pittwater Local Environmental Plan 2014

##### Height of Buildings Map - Sheet HOB\_018

##### Maximum Building Height (m)

B	4
C	5
G	7
H	8
I	8.5
K	10.5
L	11
M	11.5
N	13

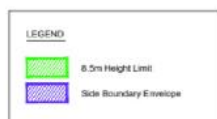
Appendix B: Statement of Environmental Effects  
50-52 Golf Avenue, Mona Vale

**Comment:** The height of buildings map defines an 8.5m height limitation. It is noted that the development does exceed the height limitation, as per the documentation provided by the project architect. The variation in height is considered minor and ranges from 140mm to 723mm. This variation is considered reasonable from a planning, urban design and environmental perspective and is justified by way of the following documentation. The variation of a development standard has been pursuant to Clause 4.6: Exceptions to Development Standards under PLEP2014.

2. Variation to the maximum height of buildings requirement



Drawing DA – 560 – Height Limit Diagrams



Appendix B: Statement of Environmental Effects  
50-52 Golf Avenue, Mona Vale

**Comment:** Notwithstanding there are minor breaches in the height of buildings (range from 140mm to 723mm), it is important for Council to appreciate that the building immediately to the west of the site is four storeys high (approximately 12m high) and there are a number of examples of buildings in this precinct which exceed the 8.5m height restriction including the building to the east of the subject site, which is three storeys.

The following architectural documents also define the 8.5m height limitation and any minor breaches above this standard:

## Elevations – Drawing DA200



## East Elevation



## South Elevation – Drawing D200



Appendix B: Statement of Environmental Effects  
50-52 Golf Avenue, Mona Vale



West Elevation – Drawing D201



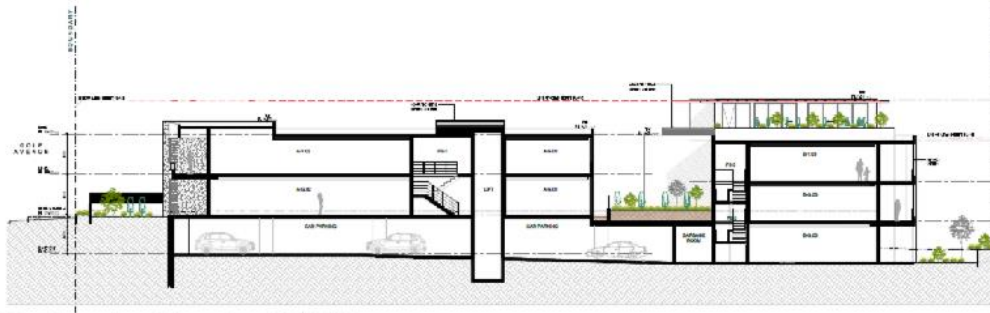
North Elevation – Drawing D201



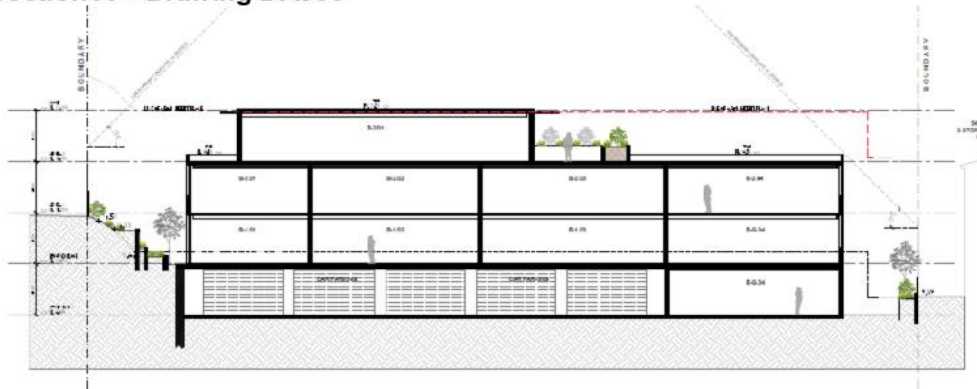
South Elevation Drawing D202



Appendix B: Statement of Environmental Effects  
50-52 Golf Avenue, Mona Vale



Section A – Drawing DA300



Section B – Drawing DA301

The image below demonstrates to Council that the proposal, when viewed from Golf Avenue, takes the form of a two-storey residential flat building of a highly articulated and modulated development which is compatible with the character of development in this immediate precinct. The finished product will substantially enhance the built form environment and streetscape along Golf Avenue and, in particular, towards the end of the cul-de-sac.



Source: LAAN Studio, 20 April 2020

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**Appendix B: Statement of Environmental Effects**  
**50-52 Golf Avenue, Mona Vale**

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**Clause 4.6: Exceptions to Development Standards** contends that strict compliance with the height of buildings control, as prescribed within Clause 4.3 (1) and (2) of Pittwater Local Environmental Plan 2014 is unreasonable and unnecessary in the circumstances of the case and that exceedance of the maximum height standard by way of minor variations can be supported by Council in considering the merits of the proposal.

The maximum height of buildings control is a development standard to which exceptions can be granted pursuant to Clause 4.6 of the LEP. The relevant Objectives and Provisions of the Clause 4.6 are as follows:

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.*
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.*
5. *In deciding whether to grant concurrence, the Secretary must consider:*
  - a. *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - b. *the public benefit of maintaining the development standard, and*
  - c. *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Appendix B: Statement of Environmental Effects  
50-52 Golf Avenue, Mona Vale**3. Compliance with Clause 4.6(4) Exceptions to Development Standards****3.1 The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)(a). The compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,**

Subclause (3)(a) of Clause 4.6 prescribes that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council [2018] NSWLEC 118* the position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in **one or more** of the following ways:

- *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
- *The underlying objective or purpose is not relevant to the development.*
- *The underlying objective or purpose would be thwarted if compliance with the standard was required.*
- *The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard.*
- *The zoning of the land is unreasonable or inappropriate.*
- *Some other way.*

**3.1.1 The objectives of the development standard are achieved notwithstanding non-compliance with the standard**

The objectives of Clause 4.3 (1) and (2) are as follows:

- (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.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

A comment on each of the objectives is set out below.

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

**Comment:** The proposed development does ensure that the two residential flat buildings, by virtue of their height and scale, is consistent with the desired character of this locality. It is important for Council to understand that the height variations are minor, ranging from 140mm to 723mm. Compliance with objective (a) is justified in terms of the following:

**Appendix B: Statement of Environmental Effects  
50-52 Golf Avenue, Mona Vale**

- The proposed development adopts built form and scale in response to its immediate context, adopting a highly sculptural building form composed with splayed balconies that are orientated towards the ocean views to the east while creating visual interest within the immediate context. The forms respond carefully to the need for privacy as well as outlook. This is also designed in a way that it would not affect the streetscape of Golf Avenue.
- The scale and bulk of the built form is designed to effectively moderate the scale of the building when perceived from the street and surrounding locations; it includes facades with sandstone walls, off-form concrete, rendered walls, deep balconies and using various architectural elements such as dynamic curved recesses, giving the building a distinct form.
- The elevations are varied in expression and designed primarily to respond to significant views, setbacks and the site. The building has a modern and clean aesthetic, tempered by environmental control, site response and landscape elements.
- The contemporary form and design will contribute to the immediate context in the form of a development that holds presence with the streetscape of Mona Vale.
- The proposal responds well to the topography and greater urban context of the neighbourhood and the desired character of the locality.

**Source: SEPP65 Design Statement, PBD Architects, April 2020**

In addition to the above comments from the project architect, the following is also submitted:

- The development comprises a high-quality, architectural design that responds and contributes to its context.
- The development contributes in a positive manner to the character of the area that exists along Golf Avenue and Darley Street East.
- The building is two storeys in height when viewed from Golf Avenue and sits below the current ocean views of the neighbouring buildings to the west.
- The proposed residential development has been designed to respond cohesively to the existing neighbourhood and streetscape. Elements such as building form, landscaping and building alignment are used to respond thoughtfully to the immediate locality.

The adjoining development, No 48 Golf Avenue, being four storeys in height (approximately 12m), is a dominant built form feature in this area and there is a common theme of residential apartment buildings along Golf Avenue that represent three- to four-storey development such as No 54 Golf Avenue.

- The development is compliant with landscaping requirements, setbacks, building footprint, massing and scale of development and, notwithstanding the minor breach in height, the development is compatible with the existing streetscape and built environment.

The consistency of the development with the desired future character is further justified in terms of the following:

- The character of the locality has been carefully analyzed in preparing the site analysis plan and considering any unique characteristics of the individual site and its opportunities and constraints that have been clearly identified prior to the design undertaken. A real appreciation of the neighbourhood character was an essential ingredient in determining what is the character of the Mona Vale precinct and, in particular, Golf Avenue and Darley Street East. The proposed development does contribute to the overall character of the area and in other words it is deemed to be a "good neighbourhood fit".



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50-52 Golf Avenue, Mona Vale**

- This conclusion is based upon the fact that along the entire stretch of Golf Avenue the built environment comprises residential apartment buildings or multi-unit housing varying from two storeys to four storeys. The adjoining development at No. 48 Golf Avenue is a dominant built form from a street perspective as the building represents significant height, scale and mass. There is not one single detached dwelling along Golf Avenue.
- In respect to Darley Street East, the character of this area is also dominated by multi-unit housing development including residential flat buildings, shop-top housing with commercial retail premises on ground level, and a seniors living development with an associated nursing home. Along this section of Darley Street East, there is only two single detached residential dwellings. It is correct to define the character of this neighbourhood as a precinct dominated by residential flat buildings and a variety of accommodation types including seniors living development, aged care and, towards the Mona Vale beachfront, shop-top housing.
- A number of the existing residential apartment buildings have been substantially upgraded with modern facades which has enhanced the character of buildings which have been erected some decades ago. The character of the area is also blessed with the Mona Vale Golf Course which extends for the full extremity on the southern side of Golf Avenue and is an identifying feature that enhances the outlook from the dwellings in Golf Avenue and provides an essential area of public open space. The proposal has no adverse impacts on this facility.
- The proposal reflects the character of the area in that due consideration has been given to existing streetscape elements and pattern of development as perceived from Golf Avenue along with the existing vegetation on the site and potential impacts on privacy, views and amenity. This area is also strongly characterized by its close relationship and location to the Mona Vale beachfront and the coastal walks along the fringe of the eastern boundary of the golf course and the Mona Vale Beach recreational area.
- The proposed development does not have any negative impacts as a result of the minor height variation upon Mona Vale Beach, the coastal walkways, the golf course or the commercial retail facilities in Darley Street and is likely to contribute in a positive manner to the commercial and retail viability of the existing neighbourhood facilities.
- The minor breach in height relates to a very small portion of the overall building footprint and, in fact, the height of Building A is well below the prescribed Control.

To demonstrate how this development is deemed to be a good neighbourhood fit, reference is made to the architect's image (below) of the development when viewed from Golf Avenue towards the front façade which shows a two-storey presentation to the street.

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The development is consistent with the desired character of the locality in the following ways:

- The development is located close to commercial centres, public transport and community facilities.
- The development is supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.
- The development maintains a building height limit below the local tree canopy and exceeding the height control does not change the overall bulk and scale.
- The building utilizes façade modulation and incorporates shade elements including covered courtyards and balconies.
- Building colours and materials have been designed to harmonise with the natural environment.
- A balance is achieved between maintaining the landforms, landscapes and other features of the natural environment and development of land.
- Locally native tree canopies and vegetation will be enhanced.

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

**Comment:** Refer to comments above relating to objective (a), which demonstrate that the proposed residential buildings are compatible with the height and scale of surrounding and nearby developments. As set out in objective (a) above, the Golf Avenue and Darley Street East precinct is dominated by residential developments of a height and scale (in many instances) greater than what is proposed in this application. The height and scale of adjoining buildings are reflected in the photographs that follow.

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Neighbouring residential flat building to the west of the site, source: Tomasy Planning 2020



Neighbouring residential flat building to the west of the subject site, source: Tomasy Planning 2020



**Appendix B: Statement of Environmental Effects**  
**50-52 Golf Avenue, Mona Vale**

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Photographs of existing buildings in Golf Avenue, source: Tomasy Planning 2020



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Photographs of existing buildings in Golf Avenue, source: Tomasy Planning 2020



View of adjacent three-storey buildings at 54 and 56 Golf Avenue to the east of the site  
Source: SEPP65 Design Statement, PBD Architects, April 2020

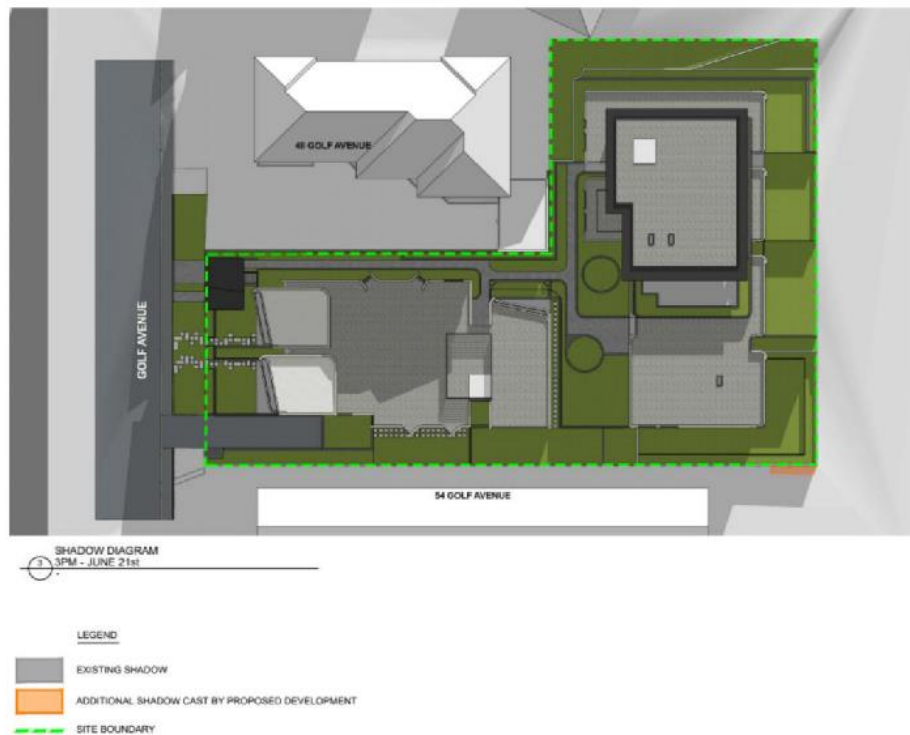
*(c) to minimise any overshadowing of neighbouring properties,*

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**Comment:** The subject development does not result in adverse impacts by way of overshadowing of neighbouring properties. Shadow diagrams have been prepared by the project architects, being drawings DA610, Shadow Diagrams, June 21, dated 20 April 2020:



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

**Comment:** To justify the variation to the height of building control, a view analysis has also been undertaken consistent with the NSW Land and Environment Court Principles established in *Tenacity Consulting Pty Ltd v Warringah Council* {2004} NSWLEC 140 and *Davies v Penrith City Council* {2013} NSWLEC 1141.

The following view loss assessment takes into account the planning principles of *Tenacity Consulting vs. Warringah City Council* [2004] NSWLEC 140. The four-step assessment for view loss is as follows:

- The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.
- The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.
- The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly



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valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

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

If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The proposal will not adversely impact views within the public domain and the neighbouring property. The adjoining development to the west enjoys views from some of their balconies towards the ocean and, in part, Mona Vale Beach. The project architects have undertaken a series of photographs to assist in the assessment of the view impact with the steps outlined in *Tenacity vs Warringah Council* [2004] NSWLEC140.

**Step 1 – Assessment of views to be affected**

- Water view are valued more highly than land views;
- Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons;
- Whole views are valued more highly than partial views, e.g. water view, in which the interface between land and water is visible is more than valuable that one in which it is obscured.

**Comment:** The development at No. 48 Golf Avenue does have existing water views towards the ocean and the Warriewood headland from the units on the eastern side of the building and, in particular, above level one of the residential component of the building. These views do not embrace any iconic views; however, some of the views do capture the interface between land and water. Those views from No 48, which include the interface between land and water, are not impacted upon as a result of the proposed development. Photographs that have been taken demonstrate that, from level two and above at the premises at 48 Golf Avenue, views are not adversely impacted upon. In respect to level one of 48 Golf Avenue, part of their view is impacted upon; however, they still maintain water views but of a reduced nature from some, but not all, apartments. Views from level one are partial due to the vegetation and adjoining buildings; they do not enjoy full, uninterrupted views of the ocean or any interface of water and land. The minor breach in height referred to in this Appendix is not a contributing factor in the view loss for level 1 apartments at 48 Golf Avenue. Their views towards the Mona Vale Golf Club and coastal walkway are not impacted upon.

In respect of No 46 Golf Avenue, their views are not adversely impacted upon, as demonstrated in the photographs that form part of the view analysis.

The view analysis did not reveal any evidence of adverse impacts resulting from this development on adjoining parcels of land in Darley Street East. In particular, the buildings highlighted in Council's Pre-DA Notes (PLM 2020/0032).



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**Step 2 – Consider from what part the property the views are obtained**

The second step is to consider from where the views are obtained.

- Protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries.
- View is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views.
- The expectation to retain side views and sitting views is often unrealistic

In respect to the neighbouring residential apartment building at 48 Golf Avenue:

Property	Where views obtained from	Are views potentially impacted by the proposal?
<b>No. 48 Golf Avenue: Level 1</b>	Views obtained from existing balcony of main living area in a standing position, filtered partial views in a southerly direction. These views are obtained by way of a side boundary view towards the Mona Vale Golf Course and adjoining coastal walkway	Minimal impact, some view loss, view loss acceptable.
<b>No. 48 Golf Avenue: Level 2</b>	Views obtained in an easterly direction towards the ocean and beachfront	No impact
<b>No. 48 Golf Avenue: Level 3</b>	Views obtained in an easterly direction towards the ocean and beachfront	No Impact
<b>No 46 Golf Avenue: Levels 1, 2, 3 – rear building; camera locations A, B,C, D</b>	Existing filtered views towards the ocean may be enhanced as a result of the proposed development as part of the exercise is the removal of existing vegetation	No impact

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Details of photographs taken as part of the view loss study are shown below:



View loss analysis camera location – DA800

Location A: existing view, L1, 46 Golf



Proposed view, Location A, L1, 46 Golf

Location B: existing view, L2, 46 Golf



Proposed view, Location B, L2, 46 Golf

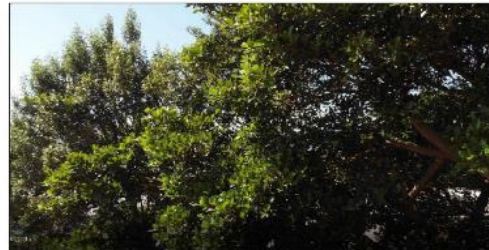
View loss analysis DA801

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Location C, existing view, L3, No 46



Location D, L1, existing view, No 46



Location C, L3, proposed, No 46

Location D, L1, proposed view, No 46

View loss analysis DA802

Location D, L2, No 46, existing view



Location E, L1, No 48, existing view



Location D, L2, No 46, proposed

Location E, L1, No 48, proposed

View loss analysis DA803



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Location E, L2, No 48, existing



EXISTING VIEW FROM NO 48, MONA VALE  
LOCATION E, L2

Location E, L3, existing, No 48



EXISTING VIEW FROM NO 48, MONA VALE  
LOCATION E, L3



PROPOSED VIEW FROM NO 48, MONA VALE  
LOCATION E, L2

Location E, L2, No 48, proposed



PROPOSED VIEW FROM NO 48, MONA VALE  
LOCATION E, L3

Location E, L3, No 48 proposed

View loss analysis DA804

Location F, L1, existing, No 48



EXISTING VIEW FROM NO 48, MONA VALE  
LOCATION F, L1

Location F, L2, existing, No 48



EXISTING VIEW FROM NO 48, MONA VALE  
LOCATION F, L2



PROPOSED VIEW FROM NO 48, MONA VALE  
LOCATION F, L1

Location F, L1, proposed, No 48



PROPOSED VIEW FROM NO 48, MONA VALE  
LOCATION F, L2

Location F, L2, proposed, No 48

View loss analysis DA805



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**Location F, L3, existing, No 48**



**Location G, L1, existing, No 48**



**Location F, L3, proposed, No 48**

**Location G, L1, proposed, No 48**

**View loss analysis DA806**

**Location G, L2, existing, No 48**



**Location G, L2, proposed, No 48**

**Location G, L3, proposed, No 48**

**View loss analysis DA807**

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**Location H, L1, existing, No 48**



**Location H, L2, existing, No 48**



**Location H, L1, proposed, No 48**

**Location H, L2, proposed, No 48**

**View loss analysis DA808**



**48 Golf Avenue -  
Camera location H: Level 3,  
Existing view**



**48 Golf Avenue -  
Camera location H: Level 3,  
Proposed view**

**View loss analysis DA809**

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**50-52 Golf Avenue, Mona Vale**

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**Step 3 – To assess the extent of the impact**

- This should be done for the whole of the property, not just for the view that is affected.
- The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them).
- The impact may be assessed quantitatively, but in many cases this can be meaningless.

**Comment:** Refer to the view loss study prepared by PBD Architects which shows direction and location of photos, analysis, description of impact and key water views for each of the levels of 48 Golf Avenue and relevant levels of the residential flat building at the rear of No 46 Golf Avenue.

It is evident from the view loss analysis and supporting photographs that no significant views will be impacted upon by the proposed development as a result of the minor variations to the exceedance of height of buildings control. The only minor impact from the proposal relates to the two units on level one at No 48 Golf Avenue. In a standing position their current filtered view loss in a south-easterly direction is impacted upon; however, the considered impact is reasonable.

**Public views obtained from Golf Avenue**

In respect of views obtained from the public roadway (Golf Avenue), there will be no impact as a result of the proposed development as (due to the slope and location of 50-52 Golf Avenue, Mona Vale) there are no views towards the ocean or Mona Vale beachfront when standing on Golf Avenue. Current views to the Mona Vale golf course and the Mona Vale hospital are not impeded in any way as a direct result of the proposal.

**Step 4 – To assess the reasonableness of the proposal that is causing the impact**

- Development that complies with all planning controls would be considered more reasonable than one that breaches them.
- Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.
- With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

**Comment:** The proposed development complies with the relevant DCP and ADG requirements in terms of the following:

- Communal open space
- Deep Soil Planting
- 50% of the site landscaped
- Visual privacy
- Car parking requirements
- Solar and daylight access
- Natural ventilation
- Apartment size and layout
- Private open space and balconies



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- Acoustic privacy
- Unit mix
- Landscape design
- Energy efficiency
- Waste management
- Accessibility
- Front building line setback
- Side and rear building line setback
- Building envelope
- Character of area as viewed from a public space (Mona Vale Golf Course and coastal walkway).

The proposed buildings represent a contemporary form and design which will contribute to the immediate context in the form of a development that is the right fit for the neighbourhood and consistent with the streetscape of this precinct. The minor breach in height of buildings control does not result in an adverse impact on view loss to neighbouring properties. It is considered that the view loss study prepared by PBD Architects has comprehensively detailed impacts to views from various levels of the building at No 48 Golf Avenue and the rear building (residential flat building) at No 46 Golf Avenue.

It is therefore respectfully submitted that this assessment of views has demonstrated that the impact to existing views is of a minimal nature and any minor impact is considered acceptable from a view-sharing perspective.

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

**Comment:** The subject proposal takes into consideration the topography of the land and the buildings have been designed to complement the landform, being a slight slope from Golf Avenue to the north-eastern corner. The building, when viewed from Golf Avenue, represents a two-storey development.

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

**Comment:** There are no adverse impacts resulting from the proposed development on the natural environment, heritage conservation areas or heritage items.



Appendix B: Statement of Environmental Effects  
50-52 Golf Avenue, Mona Vale**Additional Matters to be addressed under Clause 4.6 Requirements****3.1.2 The underlying objective or purpose is not relevant to the development**

The underlying objective or purpose of the development standard is not relevant to the development application and this is demonstrated in the matters raised above.

**3.1.3 The underlying objective or purpose would be thwarted if compliance with the standard was required.**

The underlying objective or purpose of the standard would not be defeated or thwarted if compliance with the standard were required.

**3.1.4 The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard.**

**Comment:** Within the Golf Avenue/Darley Street East precinct, there are a number of residential flat buildings that substantially exceed the 8.5m height limitation. In particular, the building at No 48 Golf Avenue is four storeys high. The height of the building exceeds 12m. Since the introduction of Pittwater Council LEP 2014, there have been limited DAs approved in this immediate precinct. A number of the buildings were approved under the former LEP. Although there is no evidence of abandonment of the height standard in this immediate precinct since 2014, it is important for Council to appreciate that the height of other buildings that abut and surround the subject site breach the 8.5m standard. These buildings are of a substantial nature with many being considerably upgraded to modernize design and, in some instances, to comply with prevailing BCA Standards. These buildings would not be demolished as it would be economically unviable to demolish them and replace them with complying developments under the current LEP Standards.

**3.1.5 The zoning of the land is unreasonable or inappropriate.**

**Not applicable.** The zoning of the land being R3 Medium Density under PLEP2014 permits residential flat buildings and multi-dwelling housing as permissible land uses. Accordingly, the proposed development fits within the parameters of the legal framework of PLEP2014. The proposal represents development that is typified and expected within a medium-density residential zoning.

**3.1.6 Some other way.**

**Not applicable.** The above represents that these five ways are not exhaustive of the ways in which an applicant must demonstrate that compliance with a development standard is unreasonable or unnecessary. In this instance, it is sufficient to establish only one way, which is compliance with the objectives of the development standard. In this regard, this report demonstrates that the development standard is unreasonable and unnecessary. Refer to Section 3 of the report titled, "Compliance with Clause 4.6(4) Exceptions to Development Standards. Section 3.1.1".

**3.2 The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)(b). That there are sufficient environmental planning grounds to justify contravening the development standard.**

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

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development standard by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

Also, in the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council* [2018] NSWLEC118 the position that there are sufficient environmental planning grounds to justify contravening the development standards identifies that in *Four2Five Pty Ltd. v. Ashfield Council* [2015] NSWLEC90 it is necessary to determine:

- 'Environmental planning grounds' by their nature, being grounds that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979* including Section 1.3 of the EPA Act;
- Must be 'sufficient'
  - Firstly, the environmental planning grounds advanced in the written request must be sufficient to 'justify contravening the development standard'. The focus of Clause 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.
  - Secondly, the written request must 'demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard' so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i).

**3.2.1 Sufficient environmental planning grounds to justify contravening the development standard.**

In preparing this report, consideration has been given to the relevant Objectives of the *Environmental Planning and Assessment Act 1979* (NSW) (**the Act**) – under Section 1.3 of the Act. The relevant sections that are applicable to this proposal are set out below:

**1.3 Objects of Act**

The objects of this Act are as follows:

- (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,
- (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.

In respect to the objectives referred to above, the following is submitted to demonstrate that there are sufficient environmental planning grounds to justify the variation in the Development Standard under the provisions of Clause 4.5A of PLEP2014:

- The exceedance of the building height control requirement under PLEP2014 is supportable in that the variation is considered to be of a minor nature, and the proposed residential development has been designed to respond cohesively to the existing neighbourhood and streetscape. The development is compliant with the relevant DCP and ADG requirements in terms of the following:

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**50-52 Golf Avenue, Mona Vale**

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- Communal open space
  - Deep Soil Planting
  - 50% of the site landscaped
  - Visual privacy
  - Car parking requirements
  - Solar and daylight access
  - Natural ventilation
  - Apartment size and layout
  - Private open space and balconies
  - Acoustic privacy
  - Unit mix
  - Landscape design
  - Energy efficiency
  - Waste management
  - Accessibility.
- The proposed buildings represent a contemporary form and design which will contribute to the immediate context in the form of a development that is the right fit for the neighbourhood and consistent with the streetscape of this precinct.
  - The minor breach in height controls does not result in an adverse impact on view loss to neighbouring properties. It is considered that the view loss study prepared by PBD Architects has comprehensively detailed impacts to views from various levels of the building at No 48 Golf Avenue and the rear building (residential flat building) at No 46 Golf Avenue.
  - The proposal reflects the character of the area in that due consideration has been given to existing streetscape elements and pattern of development as perceived from Golf Avenue, along with the existing vegetation on the site and potential impacts on privacy, views and amenity. This area is also strongly characterized by its close relationship and location to the Mona Vale beachfront and the coastal walks along the fringe of the eastern boundary of the golf course and the Mona Vale Beach recreational area.
  - The proposed development does not have any adverse impacts upon Mona Vale Beach, the Warriewood headland, the coastal walkways, the golf course or the commercial retail facilities in Darley Street.
  - The contemporary architectural style coupled with the orientation and configuration of the site enables a highly articulated aesthetic broken down in the following elements:
    - Massing and façade details are designed to respond to both desired character of the area and the existing context.
    - Considering the materiality of the existing neighbourhood and new developments the proposal features a restrained palette of sandstone clad walls, off-form concrete walls, composite panel cladding and rendered walls, as well as timber look soffits on balconies for a natural and elegant finish.
    - The elevations are varied in expression and designed primarily to respond to sun, views, setbacks and the site. The building has a modern and clean aesthetic, tempered by environmental control, site response and landscape elements.
  - The proposal does not have any adverse impacts upon flora and fauna.
  - No unacceptable environmental impacts will flow from the proposed development during construction and when the development has been completed. The proposal will not

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contribute to any adverse environmental impacts in terms of solar access, overshadowing, visual and acoustic privacy or bulk and scale.

- An approval of this development with a minor variation to the height of buildings control would be unlikely to set a precedent of other similar developments in this immediate locality, noting that there are many other residential flat buildings along Golf Avenue which are dominant by way of their height, scale, massing and, in many cases, lack of articulation and modulation.

In considering the above, there are sufficient environmental planning grounds to justify the minor contravention to the development standard.

**3.3 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**

The following requires that the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.3 Height of Buildings Control of PLEP 2014 and the R3 Medium Density Residential Zone under PLEP2014.

**3.3.1 The objectives of Clause 4.3 Height of Buildings**

Refer to Section 3.1.1 of Clause 4.6: Exceptions to Development Standards for detailed assessment.

**3.3.2 The objectives of R3 Medium Density Residential under PLEP2014**

**1 Objectives of zone**

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

**Comment:** The proposal does provide for the housing needs of the community within a medium density residential environment. The site the subject of the development currently comprises a single-level aged care nursing home, which represents a total underutilisation of the site. The proposed development possesses the following features, which will ensure it is the "right fit" for the neighbourhood:

- The proposal has been designed to respond cohesively to the existing neighbourhood and streetscape. Elements such as building form, landscaping and building alignment have been used to respond thoughtfully to the immediate locality.
  - The scale and bulk of the built form have been designed to effectively moderate the scale of the building when perceived from Golf Avenue and surrounding locations such as Mona Vale Golf Course, and the coastal walkway.
- *To provide a variety of housing types within a medium density residential environment.*

**Comment:** the development represents a type of housing, being residential apartments with direct access from the basement carparking to the unit. This type of development is in high demand, with residents seeking alternate accommodation to single detached dwellings on individual parcels of land.

The proposal will assist in supplying the market with a variety of housing types which are compatible with the existing built and natural environments, in close proximity to community facilities, transport, shopping and recreational activities.



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The Mona Vale precinct, east of Pittwater Road, has very limited development opportunities as the precinct is dominated by residential flat buildings and to permit a minor variation to the height of building control represents a building which utilises existing infrastructure by way of public transport, recreation and community facilities, together with retail/commercial development.

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

**Comment:** Not applicable as the proposal is for residential accommodation by way of two residential apartment buildings. The development does not seek approval for shop-top housing or any commercial or retail activities.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

**Comment:** Not applicable.

It is submitted that the proposal meets the relevant Objectives of the R3 Residential Zoning.

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## APPENDIX A

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### CLAUSE 4.6: EXCEPTIONS TO DEVELOPMENT STANDARD – DENSITY CONTROLS CLAUSE 4.5A PLEP 2014

#### Clause 4.6: Exceptions to Development Standards – Density Controls for Certain Residential Accommodation Clause 4.5A of Pittwater LEP 2014 (PLEP2014)

##### 1. Introduction

This Clause 4.6 Application has been prepared on behalf of the applicant in support of a Development Application for the construction of a two-storey and one three-storey residential flat buildings comprising 14 apartments and associated infrastructure and landscaping.

The request seeks to vary the density control under Clause 4.5A of PLEP2014 regarding the maximum of “one dwelling per 200m<sup>2</sup> of site area” pursuant to Clause 4.6: Exceptions to Development Standards under PLEP2014.

The site comprises an area of 2,548.7sqm which equates to 12.7 dwellings based upon the density control of one dwelling per 200sqm, which would be rounded to 13 dwellings. The proposal is for 14 dwellings which is an increase of one dwelling over and above the density standard. This exceedance of the standard represents a variation of 9.8%. This variation is considered reasonable from a planning, urban design and environmental perspective and is justified by way of the following documentation.

The variation of a development standard has been pursuant to Clause 4.6: Exceptions to Development Standards under PLEP2014.

#### Density Controls for Certain Residential Accommodation (Clause 4.5A of Pittwater LEP 2014)

Relevant sections of Clause 4.5A are set out below:

- (1) The objectives of this clause are as follows:
  - (a) to achieve planned residential density in certain zones,
  - (b) to ensure building density is consistent with the desired character of the locality.
- (2) Development consent must not be granted to development for a purpose specified in Column 1 of the table to this clause on land in the zone shown opposite that development in Column 2 of that table unless the development complies with the density requirements specified in Column 3 of that table.
- (3) This clause does not apply to land in the Warriewood Valley Release Area.

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Column 1	Column 2	Column 3
Specified development	Zone	Density
Attached dwellings	R3 Medium Density Residential	A maximum of 1 dwelling per 200 square metres of site area.
Multi dwelling housing	R3 Medium Density Residential	A maximum of 1 dwelling per 200 square metres of site area.
<b>Residential flat buildings</b>	<b>R3 Medium Density Residential</b>	<b>A maximum of 1 dwelling per 200 square metres of site area.</b>
Semi-detached dwellings	R3 Medium Density Residential	A maximum of 1 dwelling per 200 square metres of site area.
Seniors housing	R3 Medium Density Residential	A maximum of 1 dwelling per 200 square metres of site area.
Serviced apartments	R3 Medium Density Residential	A maximum of 1 dwelling per 200 square metres of site area.
Shop top housing	B1 Neighbourhood Centre	A maximum of 1 dwelling per 150 square metres of site area.

Clause 4.6: Exceptions to Development Standards contends that strict compliance with the density controls as prescribed within Clause 4.5A of Pittwater Local Environmental Plan 2014 is unreasonable and unnecessary in the circumstances of the case and that exceedance by one additional dwelling can be supported by Council in considering the merits of the proposal.

The maximum density control is a development standard to which exceptions can be granted pursuant to Clause 4.6 of the LEP. The relevant Objectives and Provisions of the Clause 4.6 are as follows:

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.
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:

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- 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.
5. In deciding whether to grant concurrence, the Secretary must consider:
- a. whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - b. the public benefit of maintaining the development standard, and
  - c. any other matters required to be taken into consideration by the Secretary before granting concurrence.

**1. Compliance with Clause 4.6(4) Exceptions to Development Standards****3.1 The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)(a). The compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,**

Subclause (3)(a) of Clause 4.6 prescribes that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council* [2018] NSWLEC 118 the position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in one or more of the following ways:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose is not relevant to the development.
- The underlying objective or purpose would be thwarted if compliance with the standard was required.
- The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard.
- The zoning of the land is unreasonable or inappropriate.
- Some other way.

**3.1.1 The objectives of the development standard are achieved notwithstanding non-compliance with the standard**

The objectives of Clause 4.5A: Density Controls for Certain Residential Accommodation are as follows:

(a) To achieve a planned residential density in certain zones;

**Comment:** The proposed development does achieve a planned residential density within the Mona Vale precinct to which this area relates in terms of the following:



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- The development comprises a high-quality, architectural design that responds and contributes to its context.
- The development contributes in a positive manner to the character of the area that exists along Golf Avenue and Darley Street East.
- The building is two storeys in height when viewed from Golf Avenue and sits below the current ocean views of the neighbouring buildings to the west.
- The proposed residential development has been designed to respond cohesively to the existing neighbourhood and streetscape. Elements such as building form, landscaping and building alignment are used to respond thoughtfully to the immediate locality.



- It is important for Council to acknowledge that the residential density of one dwelling per 200sqm of site area has been breached on other developments that have been approved by Council in this immediate locality under this current LEP. These include the following:
- 18 Golf Avenue, Mona Vale (3,542sqm/18 units/ FSR or 1 dwelling per 196 sqm/ minor variation),
- 22 Golf Avenue (2,362sqm/12 units/ FSR or 1 dwelling per 196sqm / minor variation), 30 Golf Avenue (2,577sqm/13 units FSR or 1 dwelling per 198sqm / minor variation). It is noted that there is no FSR control under Pittwater LEP 2014.
- The adjoining development, being four storeys in height, is a dominant land feature in this area and there is a common theme of residential apartment buildings along Golf Avenue that represent three- to four-storey development.
- The development is compliant with landscaping requirements, setbacks, building footprint, massing and scale of development.
- The development does not create overshadowing on existing adjacent developments.
- The density control aims at achieving a planned density within this immediate precinct; however, Council must appreciate that the density of residential units based on their site area along Golf Avenue represents breaches with this density control. It is

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acknowledged that a number of the residential flat buildings have been erected for some time. It is unlikely, from an economical perspective, that these residential flat buildings would be demolished, and the site redeveloped in the foreseeable future. Therefore, these buildings will remain a strong component of the existing character of the area. They are a contributing factor to the character of the area and are not in compliance with the one dwelling per 200sqm of site area, as prescribed under the prevailing LEP Density Control.

- The development represents a minor variation by one unit to the stipulated control which equates to 14 apartments. The variation is less than 10% of this control and the end result of the building proposed represents a built form and scale in response to its immediate context.
- The scale and bulk of the built form have been designed to effectively moderate the scale of the building when perceived from Golf Avenue and surrounding locations.
- The contemporary form and design will contribute to the immediate context in the form of a development that holds presence with the streetscape of Mona Vale.
- The density of 14 apartments on this site is considered sustainable within the existing and future availability of infrastructure, public transport, community and culturally significant facilities and environmental qualities of the site.
- The apartments are generous in size and align with the areas of Mona Vale, which is a reflection on current market demands.
- The development could be reduced by one unit by combining other units into one, resulting in the same footprint, massing and scale of the development that is presented as part of this application. This, indeed, is an important factor in considering the objective of the density control requirement in that one can achieve a building which would possess the same identical scale by enlarging one or two of the apartments and reducing the number. The end result would be the same development that is currently before Council for consideration. The disbenefit would be an impact on providing a lesser number of dwellings, which impacts upon one of the main objectives of the Department of Planning to increase new housing supply in areas that are readily accessible to public transport, adequate infrastructure and in close proximity to community, retail and recreation facilities.
- To justify the variation to the density control, a view analysis has also been undertaken consistent with the NSW Land and Environment Court Principles established in Tenacity Consulting Pty Ltd v Warringah Council {2004} NSWLEC140 and Davies v Penrith City Council {2013} NSWLEC 1141.
- The following view loss assessment takes into account the planning principles of Tenacity Consulting vs. Warringah City Council [2004] NSWLEC 140. The four-step assessment for view loss is as follows:
  - o *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*
  - o *The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

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- o *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*
- o *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.*

*If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

The proposal will not adversely impact views within the public domain and the neighbouring property. The adjoining development to the west enjoys views from some of their balconies towards the ocean and, in part, Mona Vale Beach. The project architects have undertaken a series of photographs to assist in the assessment of the view impact with the steps outlined in *Tenacity vs Warringah Council* {2004} NSWLEC140.

**Step 1 – Assessment of views to be affected**

- Water view are valued more highly than land views;
- Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons;
- Whole views are valued more highly than partial views, e.g. water view, in which the interface between land and water is visible is more than valuable that one in which it is obscured.

**Comment:** The development at No. 48 Golf Avenue does have existing water views towards the ocean and the Warriewood headland from the units on the eastern side of the building and, in particular, above level one of the residential component of the building. These views do not embrace any iconic views; however, some of the views do capture the interface between land and water. Those views from No 48, which include the interface between land and water, are not impacted upon as a result of the proposed development. Photographs that have been taken demonstrate that, from level two and above at the premises at 48 Golf Avenue, views are not adversely impacted upon. In respect to level one of 48 Golf Avenue, part of their view is impacted upon; however, they still maintain water views but of a reduced nature. Views from level one are partial due to the vegetation and existing buildings and they do not enjoy full, uninterrupted views of the ocean or any interface of water and land. Their views towards the Mona Vale Golf Club and coastal walkway are not impacted upon.

In respect of No 46 Golf Avenue, their views are not adversely impacted upon, as demonstrated in the photographs that form part of the view analysis.

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The view analysis did not reveal any evidence of adverse impacts resulting from this development on adjoining parcels of land in Darley Street East. In particular, the buildings highlighted in Council's Pre-DA Notes (PLM 2020/0032).

**Step 2 – Consider from what part of the property the views are obtained**

The second step is to consider from where the views are obtained.

- Protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries.
- View is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views.
- The expectation to retain side views and sitting views is often unrealistic

In respect to the neighbouring residential apartment building at 48 Golf Avenue:

Property	Where views obtained from	Are views potentially impacted by the proposal?
<b>No. 48 Golf Avenue: Level 1</b>	Views obtained from existing balcony of main living area in a standing position, filtered partial views in a southerly direction. These views are obtained by way of a side boundary view towards the Mona Vale Golf Course	Minimal impact, some view loss, view loss acceptable.
<b>No. 48 Golf Avenue: Level 2</b>	Views obtained in an easterly direction towards the ocean and beachfront	No impact
<b>No. 48 Golf Avenue: Level 3</b>	Views obtained in an easterly direction towards the ocean and beachfront	No Impact
<b>No 46 Golf Avenue: Levels 1, 2, 3 – rear building; camera locations A, B,C, D</b>	Existing filtered views towards the ocean may be enhanced as a result of the proposed development as part of the exercise is the removal of existing vegetation.	No impact



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Details of photographs taken as part of the view loss study are shown below:



**View loss analysis camera location – DA800**

**Location A: existing view, L1, 46 Golf**

**Location B: existing view, L2, 46 Golf**



**Proposed view, Location A, L1, 46 Golf**

**Proposed view, Location B, L2, 46 Golf**

**View loss analysis DA801**

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**Location C, existing view, L3, No 46**



**Location C, L3, proposed, No 46**

**Location D, L1, existing view, No 46**



**Location D, L1, proposed view, No 46**

View loss analysis DA802

**Location D, L2, No 46, existing view**



**Location D, L2, No 46, proposed**

**Location E, L1, No 48, existing view**



**Location E, L1, No 48, proposed**

View loss analysis DA803



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**Location E, L2, No 48, existing**



**Location E, L3, existing, No 48**



**Location E, L2, No 48, proposed**



**Location E, L3, No 48 proposed**

**View loss analysis DA804**

**Location F, L1, existing, No 48**



**Location F, L2, existing, No 48**



**Location F, L1, proposed, No 48**



**Location F, L2, proposed, No 48**

**View loss analysis DA805**

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**Location F, L3, existing, No 48**



**Location F, L3, proposed, No 48**

**Location G, L1, existing, No 48**



**Location G, L1, proposed, No 48**

**View loss analysis DA806**

**Location G, L2, existing, No 48**



**Location G, L2, proposed, No 48**

**Location G, L3, existing, No 48**



**Location G, L3, proposed, No 48**

**View loss analysis DA807**



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**Location H, L1, existing, No 48**



EXISTING VIEW FROM 48 GOLF AVENUE  
LOCATION H, Level 1

**Location H, L2, existing, No 48**



EXISTING VIEW FROM 48 GOLF AVENUE  
LOCATION H, Level 2



PROPOSED VIEW FROM 48 GOLF AVENUE  
LOCATION H, Level 1



PROPOSED VIEW FROM 48 GOLF AVENUE  
LOCATION H, Level 2

**Location H, L1, proposed, No 48**

**Location H, L2, proposed, No 48**

**View loss analysis DA808**



EXISTING VIEW FROM 48 GOLF AVENUE  
LOCATION H, Level 3

**48 Golf Avenue -  
Camera location H: Level 3,  
Existing view**



PROPOSED VIEW FROM 48 GOLF AVENUE  
LOCATION H, Level 3

**48 Golf Avenue -  
Camera location H: Level 3,  
Proposed view**

**View loss analysis DA809**

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**50-52 Golf Avenue, Mona Vale**

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**Step 3 – To assess the extent of the impact**

- This should be done for the whole of the property, not just for the view that is affected.
- The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them).
- The impact may be assessed quantitatively, but in many cases this can be meaningless.

**Comment:** Refer to the view loss study prepared by PBD Architects which shows direction and location of photos, analysis, description of impact and key water views for each of the levels of 48 Golf Avenue and relevant levels of the residential flat building at the rear of No 46 Golf Avenue.

It is evident from the view loss analysis and supporting photographs that no significant views will be impacted upon by the proposed development. The only minor impact from the proposal relates to the two units on level one at No 48 Golf Avenue. In a standing position their current filtered view loss in a south-easterly direction is impacted upon; however, the considered impact is reasonable.

**Public views obtained from Golf Avenue**

In respect of views obtained from the public roadway (Golf Avenue), there will be no impact as a result of the proposed development as (due to the slope and location of 50-52 Golf Avenue, Mona Vale) there are no views towards the ocean or Mona Vale beachfront when standing on Golf Avenue. Current views to the Mona Vale golf course and the Mona Vale hospital are not impeded in any way as a direct result of the proposal.

**Step 4 – To assess the reasonableness of the proposal that is causing the impact**

- Development that complies with all planning controls would be considered more reasonable than one that breaches them.
- Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.
- With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

**Comment:** The proposed development complies with the relevant DCP and ADG requirements in terms of the following:

- Communal open space
- Deep Soil Planting
- 50% of the site landscaped
- Visual privacy
- Car parking requirements
- Solar and daylight access
- Natural ventilation
- Apartment size and layout
- Private open space and balconies
- Acoustic privacy

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- Unit mix
  - Landscape design
  - Energy efficiency
  - Waste management
  - Accessibility
  - Front building line setback
  - Side and rear building line setback
  - Building envelope
  - Character of area as viewed from a public space (Mona Vale Golf Course and coastal walkway).

The development will have minimal traffic impact on the existing road system as a result of one additional dwelling. To reduce the density to 13 dwellings would not result in any change to the building massing, shadow or solar impacts.

The proposed buildings represent a contemporary form and design which will contribute to the immediate context in the form of a development that is the right fit for the neighbourhood and consistent with the streetscape of this precinct. The minor breach in density control does not result in an adverse impact on view loss to neighbouring properties. It is considered that the view loss study prepared by PBD Architects has comprehensively detailed impacts to views from various levels of the building at No 48 Golf Avenue and the rear building (residential flat building) at No 46 Golf Avenue.

It is therefore respectfully submitted that this assessment of views has demonstrated that the impact to existing views is of a minimal nature and any minor impact is considered acceptable from a view-sharing perspective.

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50-52 Golf Avenue, Mona Vale**Objective (b) - Density Controls for Certain Residential Accommodation  
Clause 4.5A of Pittwater LEP 2014**

(b) to ensure building density is consistent with the desired character of the locality.

The character of the locality has been carefully analyzed in preparing the site analysis plan and considering any unique characteristics of the individual site and its opportunities and constraints that have been clearly identified prior to the design undertaken. A real appreciation of the neighbourhood character was an essential ingredient in determining what is the character of the Mona Vale precinct and, in particular, Golf Avenue and Darley Street East. The proposed development does contribute to the overall character of the area and in other words it is deemed to be a good neighbourhood fit.

This conclusion is based upon the fact that along the entire stretch of Golf Avenue the built environment comprises residential apartment buildings varying from two storeys to four storeys. The adjoining development at No. 48 Golf Avenue is a dominant built form from a street perspective as the building represents significant height, scale and mass. There is not one single detached dwelling along Golf Avenue.

In respect to Darley Street East, the character of this area is also dominated by multi-unit housing development including residential flat buildings, shop-top housing with commercial retail premises on ground level, and a seniors living development with an associated nursing home. Along this section of Darley Street East, there is only two single detached residential dwellings. It is correct to define the character of this neighbourhood as a precinct dominated by residential flat buildings and a variety of accommodation types including seniors living development, aged care and, towards the Mona Vale beachfront, shop-top housing.

A number of the existing residential apartment buildings have been substantially upgraded with modern facades which has enhanced the character of buildings which have been erected some decades ago. The character of the area is also blessed with the Mona Vale golf course which extends for the full extremity on the southern side of Golf Avenue and is an identifying feature which enhances the outlook from the dwellings in Golf Avenue and provides an essential area of public open space.

The proposal reflects the character of the area in that due consideration has been given to existing streetscape elements and pattern of development as perceived from Golf Avenue along with the existing vegetation on the site and potential impacts on privacy, views and amenity. This area is also strongly characterized by its close relationship and location to the Mona Vale beachfront and the coastal walks along the fringe of the eastern boundary of the golf course and the Mona Vale Beach recreational area.

The proposed development does not have any negative impacts upon Mona Vale Beach, the coastal walkways, the golf course or the commercial retail facilities in Darley Street and is likely to contribute in a positive manner to the commercial and retail viability of the existing neighbourhood facilities.

To demonstrate how this development is deemed to be a good neighbourhood fit, reference is made to the architect's image (over the page) of the development when viewed from Golf Avenue towards the front façade which shows a two-storey presentation to the street.



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The development is consistent with the desired character of the locality in the following ways:

- The development is located close to commercial centres, public transport and community facilities.
- The development is supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.
- The development maintains a building height limit below the local tree canopy and exceeding the density control does not change the overall bulk and scale.
- The building utilizes façade modulation and incorporates shade elements including covered courtyards and balconies.
- Building colours and materials have been designed to harmonise with the natural environment.
- A balance is achieved between maintaining the landforms, landscapes and other features of the natural environment and development of land.
- Locally native tree canopies and vegetation will be enhanced.

It is submitted that the proposed development complements the character of this immediate locality and, as such, the proposal provides an appropriate density for a residential development in the immediate and surrounding context.

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50-52 Golf Avenue, Mona Vale**Additional Matters to be addressed under Clause 4.6 Requirements****3.1.2 The underlying objective or purpose is not relevant to the development**

The underlying objective or purpose of the development standard is not relevant to the development application and this is demonstrated in the matters raised above.

**3.1.3 The underlying objective or purpose would be thwarted if compliance with the standard was required.**

The underlying objective or purpose of the standard would not be defeated or thwarted if compliance with the standard were required.

**3.1.4 The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard.**

**Agreed.** Northern Beaches Council has granted development consents for other multi-unit housing developments and residential flat buildings in this immediate precinct that breach the Density Controls under the Provision of Clause 4.5A of PLEP2014. It is noted that in reviewing Council's Development Consent Register and On-line Website Information, the following developments had breached the density standard:

- No 18 Golf Avenue
- No 22 Golf Avenue
- No 30 Golf Avenue,

Notwithstanding that Council has given previous approvals to a breach in development standard for density controls, it is acknowledged that Council must treat each application on its merits and, in this regard, it is submitted that the breach in the density control by one additional dwelling is justified and represents a minor variation.

**3.1.5 The zoning of the land is unreasonable or inappropriate.**

**Not applicable.** The zoning of the land being R3 Medium Density under PLEP2014 permits residential flat buildings and multi-dwelling housing as permissible land uses. Accordingly, the proposed development fits within the parameters of the legal framework of PLEP2014. The proposal represents development that is typified and expected within a medium-density residential zoning.

**3.1.6 Some other way.**

**Not applicable.** The above represents that these five ways are not exhaustive of the ways in which an applicant must demonstrate that compliance with a development standard is unreasonable or unnecessary. In this instance, it is sufficient to establish only one way, which is compliance with the objectives of the development standard. In this regard, this report demonstrates that the development standard is unreasonable and unnecessary. Refer to Section 3 of the report titled, "Compliance with Clause 4.6(4) Exceptions to Development Standards. Section 3.1.1".

**3.2 The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)(b). That there are sufficient environmental planning grounds to justify contravening the development standard.**

Subclause (3)(a) of Clause 4.6 prescribes that development consent must not be granted for development that contravenes a development standard unless the consent authority has

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**Appendix A: Statement of Environmental Effects**  
**50-52 Golf Avenue, Mona Vale**

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considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

Also, in the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council* [2018] NSWLEC118 the position that there are sufficient environmental planning grounds to justify contravening the development standards identifies that in *Four2Five Pty Ltd. v. Ashfield Council* [2015] NSWLEC90 it is necessary to determine:

- 'Environmental planning grounds' by their nature, being grounds that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979* including Section 1.3 of the EPA Act;
- Must be 'sufficient'
  - o Firstly, the environmental planning grounds advanced in the written request must be sufficient to 'justify contravening the development standard'. The focus of Clause 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.
  - o Secondly, the written request must 'demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard' so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i).

### **3.2.1 Sufficient environmental planning grounds to justify contravening the development standard.**

In preparing this report, consideration has been given to the relevant Objectives of the *Environmental Planning and Assessment Act 1979* (NSW) (**the Act**) – under Section 1.3 of the Act. The relevant sections that are applicable to this proposal are set out below:

#### **1.3 Objects of Act**

The objects of this Act are as follows:

- (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,
- (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.

In respect to the objectives referred to above, the following is submitted to demonstrate that there are sufficient environmental planning grounds to justify the variation in the Development Standard under the provisions of Clause 4.5A of PLEP2014:

- The exceedance of the density controls requirement under PLEP2014 is supportable in that the variation is considered to be of a minor nature, and the proposed residential development has been designed to respond cohesively to the existing neighbourhood

**Appendix A: Statement of Environmental Effects**  
**50-52 Golf Avenue, Mona Vale**

and streetscape. The development is compliant with the relevant DCP and ADG requirements in terms of the following:

- Communal open space
  - Deep Soil Planting
  - 50% of the site landscaped
  - Visual privacy
  - Car parking requirements
  - Solar and daylight access
  - Natural ventilation
  - Apartment size and layout
  - Private open space and balconies
  - Acoustic privacy
  - Unit mix
  - Landscape design
  - Energy efficiency
  - Waste management
  - Accessibility.
- The proposed buildings represent a contemporary form and design which will contribute to the immediate context in the form of a development that is the right fit for the neighbourhood and consistent with the streetscape of this precinct.
  - The minor breach in density control does not result in an adverse impact on view loss to neighbouring properties. It is considered that the view loss study prepared by PBD Architects has comprehensively detailed impacts to views from various levels of the building at No 48 Golf Avenue and the rear building (residential flat building) at No 46 Golf Avenue.
  - The proposal reflects the character of the area in that due consideration has been given to existing streetscape elements and pattern of development as perceived from Golf Avenue, along with the existing vegetation on the site and potential impacts on privacy, views and amenity. This area is also strongly characterized by its close relationship and location to the Mona Vale beachfront and the coastal walks along the fringe of the eastern boundary of the golf course and the Mona Vale Beach recreational area.
  - The proposed development does not have any adverse impacts upon Mona Vale Beach, the Warriewood headland, the coastal walkways, the golf course or the commercial retail facilities in Darley Street.
  - The contemporary architectural style coupled with the orientation and configuration of the site enables a highly articulated aesthetic broken down in the following elements:
    - Massing and façade details are designed to respond to both desired character of the area and the existing context.
    - Considering the materiality of the existing neighbourhood and new developments the proposal features a restrained palette of sandstone cladded walls, off-form concrete walls, composite panel cladding and rendered walls, as well as timber look soffits on balconies for a natural and elegant finish.
    - The elevations are varied in expression and designed primarily to respond to sun, views, setbacks and the site. The building has a modern and clean aesthetic, tempered by environmental control, site response and landscape elements.
  - The proposal does not have any adverse impacts upon flora and fauna.



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**Appendix A: Statement of Environmental Effects**  
**50-52 Golf Avenue, Mona Vale**

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- No unacceptable environmental impacts will flow from the proposed development during construction and when the development has been completed. The proposal will not contribute to any adverse environmental impacts in terms of solar access, overshadowing, visual and acoustic privacy or bulk and scale.
- An approval of this development with a minor variation to the density controls would be unlikely to set a precedent of other similar developments in this immediate locality, noting that there are many other residential flat buildings along Golf Avenue which are dominant by way of their height, scale, massing and, in many cases, lack of articulation and modulation.

In considering the above, there are sufficient environmental planning grounds to justify the minor contravention to the development standard.

**3.3 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**

The following requires that the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.5A Density Controls of PLEP 2014 and the R3 Medium Density Residential Zone under PLEP2014.

**3.3.1 The objectives of Clause 4.5A Density Controls**

Refer to Section 3.1.1 of Clause 4.6: Exceptions to Development Standards for detailed assessment.

**3.3.2 The objectives of R3 Medium Density Residential under PLEP2014**

**1 Objectives of zone**

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

**Comment:** The proposal does provide for the housing needs of the community within a medium density residential environment. The site the subject of the development currently comprises a single-level aged care nursing home, which represents a total underutilisation of the site. The proposed development possesses the following features, which will ensure it is the "right fit" for the neighbourhood:

- The proposal has been designed to respond cohesively to the existing neighbourhood and streetscape. Elements such as building form, landscaping and building alignment have been used to respond thoughtfully to the immediate locality.
- The scale and bulk of the built form have been designed to effectively moderate the scale of the building when perceived from Golf Avenue and surrounding locations such as Mona Vale Golf Course, and the coastal walkway.
- The density of the development is considered sustainable within the existing and future availability of infrastructure, public transport (B Line bus), community facilities (Mona Vale Library) and recreation facilities, which include the golf course and Mona Vale Beach.

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**Appendix A: Statement of Environmental Effects**  
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- ***To provide a variety of housing types within a medium density residential environment.***

**Comment:** the development represents a type of housing, being residential apartments with direct access from the basement carparking to the unit. This type of development is in high demand, with residents seeking alternate accommodation to single detached dwellings on individual parcels of land.

The proposal will assist in supplying the market with a variety of housing types which are compatible with the existing built and natural environments, in close proximity to community facilities, transport, shopping and recreational activities. Permitting the increased density within the same massing of the proposed built form allows for smaller dwellings, which better suit market demand and assist in producing more affordable housing.

The Mona Vale precinct, east of Pittwater Road, has very limited development opportunities as the precinct is dominated by residential flat buildings and to permit a minor variation to the density control represents a sound use of the existing infrastructure by way of public transport, recreation and community facilities, together with retail/commercial development.

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

**Comment:** Not applicable as the proposal is for residential accommodation by way of two residential apartment buildings. The development does not seek approval for shop-top housing or any commercial or retail activities.

- ***To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.***

**Comment:** Not applicable.

It is submitted that the proposal meets the relevant Objectives of the R3 Residential Zoning.

ITEM 3.2	MOD2020/0332 - 173-175 RIVERVIEW ROAD, AVALON BEACH - MODIFICATION OF DEVELOPMENT CONSENT N0193/14 GRANTED FOR DEMOLITION OF THE EXISTING DWELLING AND ERECTION OF NEW SINGLE DWELLING, SWIMMING POOL AND DRIVEWAY
AUTHORISING MANAGER	ANNA WILLIAMS
TRIM FILE REF	2020/583718
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plan and Elevation

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. Mod2020/0332 for Modification of Development Consent N0193/14 granted for demolition of the existing dwelling and erection of new single dwelling, swimming pool and driveway at Lot 6 DP 236812 & Lot 5 DP 236812, 173-175 Riverview Road, Newport subject to the conditions and for the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	MOD2020/0332
Responsible Officer:	Consultant Planner (Steven Layman Consulting Pty Ltd)
Land to be developed (Address):	Road reserve adjoining Lots 5 & 6 DP 236812, 173-175 Riverview Road, Avalon Beach NSW 2107
Proposed Development:	Construction of Letterbox
Zoning:	Pittwater LEP 2014 – E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No (original DA approved by the Court)
Owner:	Northern Beaches Council (road reserve)
Applicant:	Midvena Pty Limited
Application Lodged:	27/07/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	
Notified:	04/08/2020 to 18/08/2020
Advertised:	No
Submissions Received:	27
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$10,000.00

### EXECUTIVE SUMMARY

The proposal is for the retention of an existing letterbox structure located to the south of the existing driveway to the site under a Section 4.55(2) Modification Application. The letterbox is located on the road reserve of Riverview Road ('the site'), a Council owned road. Adjoining the site is private property legally described as Lots 5 and 6 in DP 236812 and is known as 173-175 Riverview Road Avalon Beach ('the subject site').

The site and adjoining site are located within the E4 Environmental Living zone, with the adjoining site having a water frontage to Pittwater along its western (rear) boundary. The site adjoins the road reserve of Shorebrace, which provides informal public access to the foreshore of Pittwater.

The notification of the application resulted in a total of 27 submissions being received, all of which objected to the proposal, with the following issues raised:

- Privatisation of public land, particularly to the foreshore area;
- Retrospective approval cannot be granted as the *Windy Dropdown* case does not apply (beyond Council's power to approve);





- Encroachment of public land;
- Unauthorised works and deliberate subversion of the planning controls
- Land is community land under the Local Government Act 1993;
- Inconsistent with Council resolution of October 2019;
- Potential ecological impacts to the remnant spotted gum forest on the site;
- Undesirable precedent for other similar structures;
- Obstructs the footpath;
- Alternative locations available for the structure;
- No public benefit; and
- Multiple structures (not just the letterbox)

These issues are further considered in this report and are considered to be reasons for refusal of the Modification Application.

The development has been assessed against the provisions of *State Environmental Planning Policy (Coastal Management) 2018*, the *Pittwater Local Environmental Plan 2014* ('PLEP 2014') and the *Pittwater Development Control Plan 2014* ('PDCP 2014'). This assessment has revealed that the proposal fails to comply with a number of these planning controls including the provision of adequate public access and the privatisation of public land.

The proposed letterbox is also the subject of a Building Information Certificate Application, which has been held in abeyance until this Modification Application has been determined.

It is also relevant to note that there are other works which have been constructed on Shorebrace to benefit the adjoining site, which do not form part of this Modification Application. These works include a retaining wall, sandstone pathways and stairs as well as associated lighting, irrigation and landscaping.

The proposal is considered to be unsatisfactory in the context of the site given it in effect privatises the road reserve and the entry to the road reserve which adjoins the foreshore of Pittwater. It is considered that the proposal does not satisfy the relevant controls.

Accordingly, it is recommended that the Northern Beaches LPP, as the determining authority, refuse the application for the reasons detailed within the recommendation section of this report.

## PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the retention (and to complete the construction) of a letterbox, which has been erected on the site (**Figure 1**). This retrospective approval is sought through the provisions of Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* ('EP&A') Act 1979 as outlined in *Windy Dropdown Pty Ltd v Warringah Council (2000) 111 LGERA 299* ('Windy Dropdown').

In *Windy Dropdown*, Talbot J held that an application that relates to development which has been already carried out can be made pursuant to Section 96 (now known as Section 4.55), stating that Section 96 is a broad and facultative provision "*that enables a consent authority to deal with unexpected contingencies as they arise during the course of construction of development or even subsequently*" (*Windy Dropdown* [32-33]). The reference to "*subsequently*" clearly encompasses post-construction, and there is no basis on which to conclude that it does not also apply to post-occupation.

This was subject to the development to which the consent as modified relates being substantially the same development, which for the current application is considered in this report. Accordingly, the Court was in a position to consider the application on the merits. In this way, it is within the Council's power to consider and determine this modification application on its merits, which is outlined in this report.



**Figure 1: The letterbox on the Riverview Road (Source: Google maps)**

The letterbox is an aerofoil ("tear drop") shaped structure which is 3.9 metres long, 750mm wide and 1.2 metres high above ground at street level and is contained within a sandstone clad structure and associated retaining wall which extends down the site and along Riverview Road (**Figure 2**). The letterbox structure adjoins the upper flight of sandstone steps which provide pedestrian access to the dwelling on the adjoining site (No 173-175 Riverview Road) and which are located within the road reserve of Riverview Road and Shorebrace (**Figure 3**).



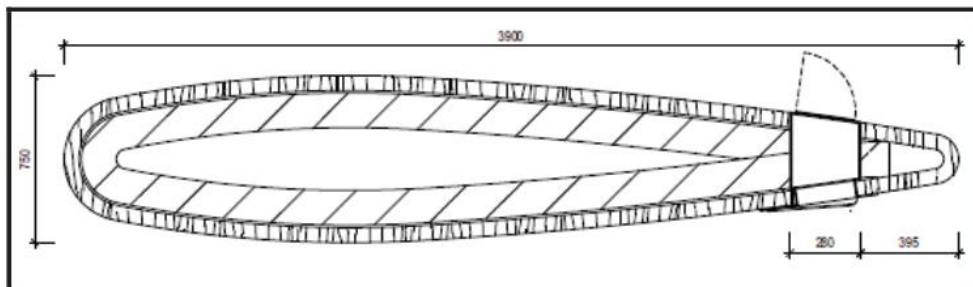
**Figure 2: Retaining wall and sandstone works associated with the mail box in Riverview Road looking North (Source: author's photo)**



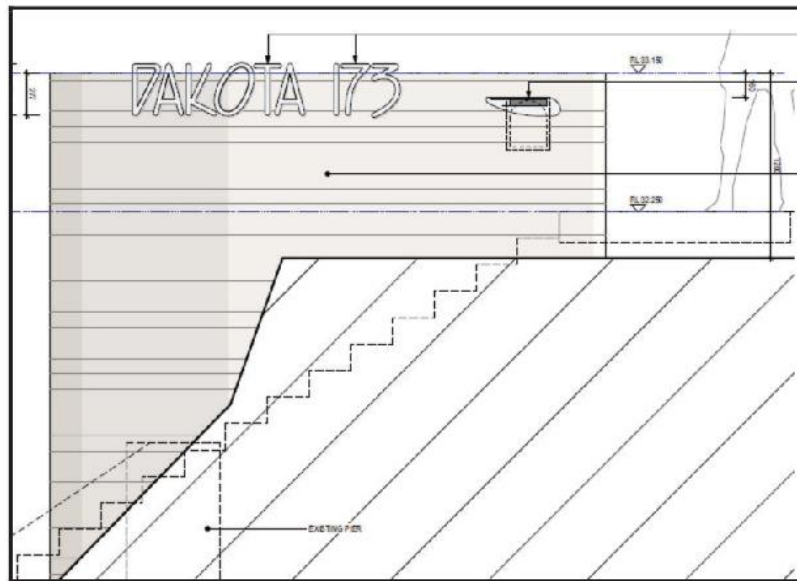


**Figure 3: Sandstone mailbox structure and retaining wall looking NE towards Riverview Road (Source: author's photo )**

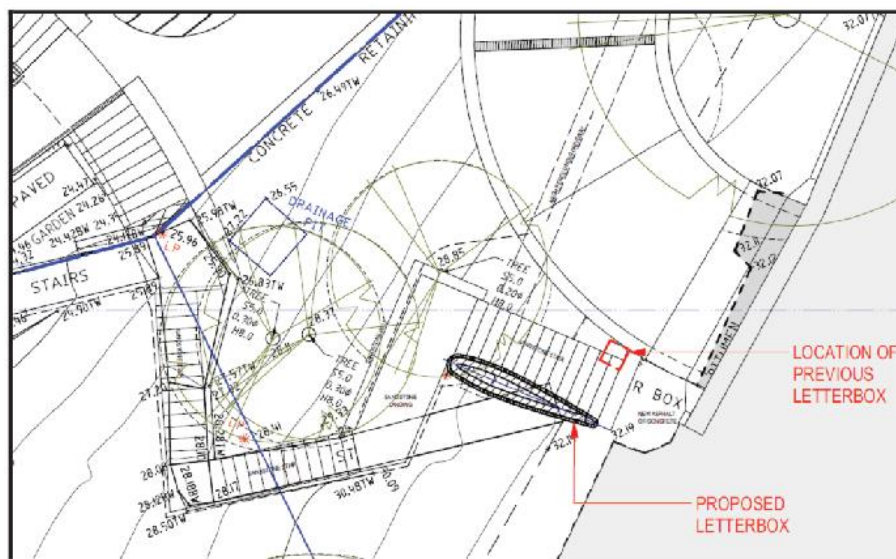
The letterbox is located to the south of the driveway crossing from Riverview Road. A slot for letters and a steel box is located in the eastern end of the structure, with steel street numbers and the word 'Dakota' proposed to be fixed to the structure (which has not been completed to date). The letterbox is illustrated in **Figures 4, 5A and 5B**.



**Figure 4: Letterbox Structure constructed on the site  
(Source: Mark Hurcum Design Practice Architects, March 2020)**



**Figure 5A: Letterbox Structure on the site**  
(Source: Mark Hurcum Design Practice Architects, March 2020)



**Figure 5B: Location of the Letterbox on the Suite**  
(Source: Mark Hurcum Design Practice Architects, March 2020)

## ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the *Environmental Planning and Assessment Act 1979*, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;





- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT

*State Environmental Planning Policy (Coastal Management) 2018* – Cl 13: Coastal Environment Area

*State Environmental Planning Policy (Coastal Management) 2018* – Cl 14: Coastal Use Area

Pittwater Local Environmental Plan 2014 – Cl 1.2: Aims of the Plan

Pittwater Development Control Plan 2014 – Section B6.1: Access Driveways & Works in the Public Road Reserve

Pittwater Development Control Plan 2014 – Section C1.24: Public Road Reserve Landscaping & Infrastructure

Pittwater Development Control Plan 2014 – Section D1.8 Front Building Line

Environmental Planning and Assessment Regulation 2000 (Clause 115(1)(h)) - no owner's consent

## SITE DESCRIPTION

<b>Property Description:</b>	Road reserve of Riverview Road adjoining Lots 5 and 6 in DP 236812, No 173-175 Riverview Road, Avalon Beach NSW 2107 ( <b>Figure 6</b> ).
<b>Detailed Site Description:</b>	<p>The site is located on the western side of Riverview Road, the eastern side of Pittwater and the northern side of Shorebrace (unformed public road reserve) (<b>Figure 7</b>).</p> <p>The site has a combined street boundary of 35.56 metres which consists of 17.5 metres to Riverview Road and an angled boundary of 18 metres to Shorebrace, the road reserve adjoining the southern boundary of the site.</p> <p>The dimensions of the adjoining site include northern and southern side boundaries comprising 49.375 metres and 58.215 metres respectively, while the western boundary comprises the Mean High Water Mark ('MWHM') to Pittwater. The adjoining site has a total area of 2,055 m<sup>2</sup> by title.</p> <p>The adjoining site slopes steeply down to Pittwater, with an approximate fall of 29.4 metres from the street frontage to the MWHM. A five-storey concrete and sandstone dwelling house exists on the adjoining site, with a swimming pool in the rear yard, a curved elevated driveway and a boat shed and timber jetty on the waterfront. An inclinometer also exists along the southern side boundary adjoining Shorebrace.</p> <p>Shorebrace is an unformed road reserve (gazetted in July 2007) located between Riverview Road and Pittwater which is legally described as Lot 501 DP 1119052. This parcel is also steeply sloping down to Pittwater and comprises largely bush and scrub with some stairs having been constructed by both</p>

	<p>the previous and current owners of No 173-175 Riverview Road. The road reserve of Riverview Road does not have any formal description.</p> <p>The stairs and pathways on the southern boundary provide access to the lower levels of the private dwelling at No 173-175, however, encroach onto Shorebrace (public reserve) and do not provide any formal public access to the foreshore.</p> <p>Adjoining development to the north comprises a three (3) storey rendered dwelling house known as No 177 Riverview Road. Development on the opposite side of Riverview Road to the east comprises a three (3) storey clad dwelling house.</p>
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Figure 2: The Site (Source: Northern Beaches Council)

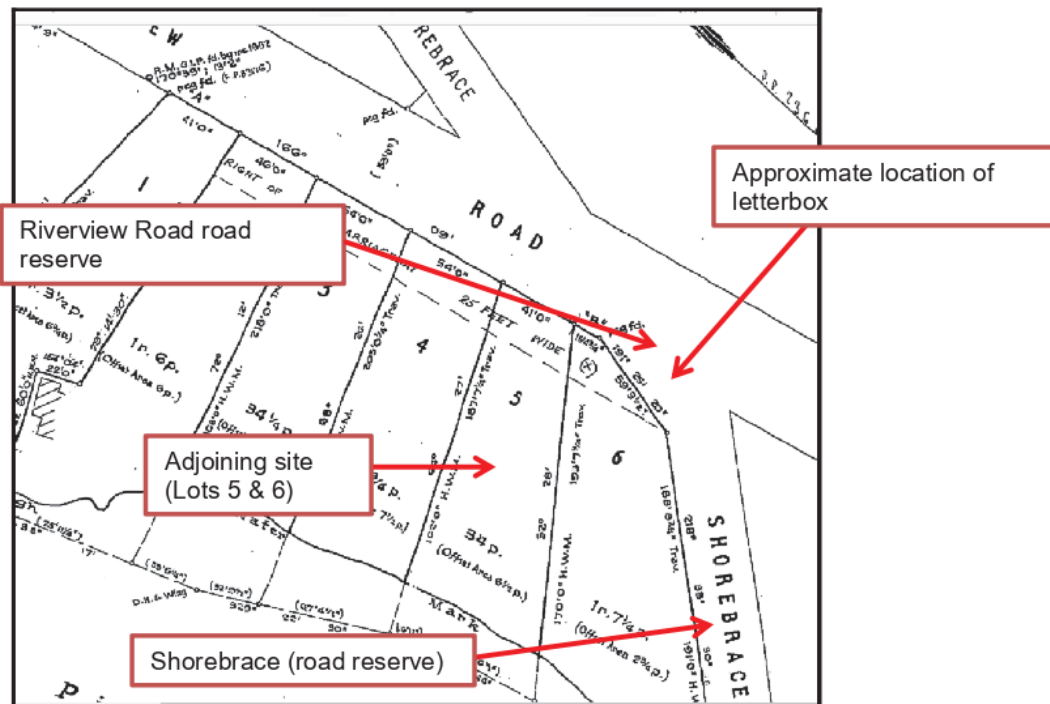


Figure 3: Shorebrace - road reserve adjoining to the south of the site  
(Source: Deposited Plan - Legalstream)

## SITE HISTORY

A search of Council's records indicates the following:

- Development Application N0194/14 was lodged on 19 June 2014 with Council for the demolition of the existing dwelling and the erection of a new single dwelling-house, swimming pool and driveway on the adjoining site. On 9 October 2014, Council's Application Determination Panel refused the application.
- On 19 December 2014, N0194/14 was approved through consent orders in the Land and Environment Court of NSW.
- A Construction Certificate Ref No 15/015 was issued on 1 June 2015 by Prince Certifiers for N0194/14 for the construction of the new dwelling, swimming pool and driveway on the adjoining site. Appointment of the PCA as Prince Certifiers and Notice of Commencement was also lodged, with construction set to commence on 3 June 2015.
- An inspection undertaken by Council Officers on 27 September 2018 revealed the following observations (as noted in the Stop Work Order outlined below):
  - A retaining wall constructed on Council's road reserve adjacent to the front of 173 Riverview Road, Avalon Beach.
  - Stone stairs constructed on Council's road reserve adjacent to the front of 173 Riverview Road, Avalon Beach.
  - A stone clad, besser block structure containing a letter box, constructed on Council's road reserve adjacent to the front of 173 Riverview Road, Avalon Beach.
  - Renovation of existing stairs on Council Land (known as Shore Brace) adjacent to 173 Riverview Road, Avalon Beach.



- On 2 October 2018, a Stop work order (Reference: EPA2018/0246) was issued by Council for the following:

*Immediately stop and cease all unauthorised building works being carried out on Council's road reserve and on Council's land known as Shore Brace adjacent to the premises known as 173 Riverview Road, Avalon Beach as no prior development approval has been obtained.*

*This includes but is not limited to the structures south of the driveway entry and within the Shore Brace, namely the retaining wall, stone stairs and pathway, and the stone clad besser block structure containing a letter box.*

The reasons given for the order included that the Council had received a complaint alleging that unauthorised building work have been constructed (substantiated at a site inspection on 27 September 2018) and that the building work required consent (which had not been granted) as it was not considered to be exempt development under the provisions set out within the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. These works were also not part of the approval of N0194/14 (adjoining site).

Other reasons for the Order were that the site is identified as within a geotechnical hazard area under the PLEP 2014 and the structural integrity of the building works or compliance with the requirements of the Building Code of Australia (BCA) were unknown. Accordingly, the Stop Work Order stated that the building work may pose a serious risk to occupants, neighbouring properties and the general public if the structures were to fail and collapse. The Stop Work Order stated that it is in the public interest that this unsatisfactory state of affairs be remedied as soon as possible.

- On 22 October 2019, a report was prepared to Council's meeting from the Executive Manager of Transport and Civil Infrastructure, titled '*Private Works on Council road reserve – Shorebrace and Riverview Road Avalon Beach*'. The purpose of that Council report was to consider an encroachment application in respect of these works on Council's road reserve, with Council responding to complaints about the works which were considered by residents to result in the privatisation of Council road reserve and limitation of access to the Pittwater waterway along the western arm of Shorebrace.

The recommendations of this report adopted by Council included the following:

- A. Pursuant to sections 138 and 139 of the Roads Act 1993, Council approve the following works which are the subject of encroachment application (ME2018/00047) subject to the following conditions:
  - a. The retaining wall, subject to certification by an appropriately qualified structural engineer, and the installation of safety railings.
  - b. The sandstone pathways and stairs, subject to the installation of hand railings and access signage in locations determined by Council's engineers to ensure public safety.
  - c. Entry stairs, noting that a gate on the stairs or pathways on the public road reserve shall be prohibited.
  - d. The ancillary structures and fittings (lighting and irrigation).
- B. Further to the conditions included at A, additional appropriate conditions be imposed on the consent pursuant to section 139 of the Roads Act 1993, including conditions requiring:
  - a. A positive covenant (drafted to the satisfaction of Council) be registered on the relevant property title to ensure on-going maintenance and repair of approved works. Any costs associated with creation or registration of the covenant are to be borne by the applicant.



- b. Removal and redesign/modification of the sandstone letter box reduced in size (not greater than 600mm x 600mm x 1000mm high) and relocated to the north of the driveway. Details to be submitted to Council for approval.
  - c. The extension of kerb and gutter to restrict the parking of vehicle on the verge.
  - d. Completion of the retaining wall base to the satisfaction of Council.
  - e. The reinstatement of the road shoulder / verge above the retaining wall and completion of additional landscaping as part of a weed control and planting plan, to be approved by Council staff, prepared by a suitably qualified person using only endemic plant species.
  - f. Design details of the above to be submitted to Council for approval prior to undertaking further works.
- C. Authority be delegated to the Chief Executive Officer to do all things necessary to give effect to this resolution.
- D. An appropriate street facing sign be installed outside Shore Brace Reserve detailing the boundaries of the Reserve, highlighting that it is public land, that it provides access to the water front, and including any other relevant information staff deem appropriate.

In summary, this Council resolution required the removal of the letterbox and for it to be rebuilt to the north of the driveway crossing to No 173-175 and for the letterbox to comprise smaller structure. Council appeared to support the retention of the remainder of the works, which do not form part of this Modification Application, subject to various works and certification being provided. This is a separate matter for Council to resolve.

- On 2 June 2020, a Building Information Certificate (BIC) Application was lodged with Council for the letterbox, with the reason for the application being for “unauthorised works”. This application remains undetermined.
- On 27 July 2020, MOD 2020/0332 was lodged with Council (the subject of this report) for a letterbox.

#### History of the subject Development Application

The application was lodged on 27 July 2020 and notified to adjoining and adjacent property owners from 4 August 2020 to 18 August 2020. There has been no correspondence from Council and no amended plans have been submitted.

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

The subject development application has been publicly exhibited in accordance with the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000* and the Pittwater Development Control Plan 2014.

As a result of the public exhibition process, Council is in receipt of 27 submissions from:

Name:	Address:
Craig Boaden	34 Trappers Way Avalon Beach
C Baker	Avalon Beach
Richard & Chris Shields	61 Bynya Rd Palm Beach
Denise Biddulph	Palm Beach

Name:	Address:
Paul & Fran Biancardi	304 Hudson Parade Clareville
Julie & Paul Westcott	31 Rayner Rd Whale Beach
Keith Woodward & Lindy Crozier	5 Cabarita Rd (postal address 182 Riverview Rd) Avalon Beach
Len & Liz McKinnon	Northern Beaches
Michele Petrie	185 Riverview Road Avalon Beach
Derek & Patricia Rynenberg	178 Riverview Road Avalon Beach
Toby Gunning & Jo Doring	19 Crane Lodge Place Palm Beach
Diana & John Smythe	207 Riverview Road Avalon Beach
Adam & Jess L'Green	728 Barrenjoey Rd Avalon
Kylie Herbst & Chris Zonca	174 Riverview Road Avalon Beach
Russell & Jane Reeves	10 Bakers Road Church Point
Trevor Hannah	180B Riverview Rd Clareville
Mark Bennett	-
Peter & Vicki L'Green	1 Shorebrace Avalon Beach
Peter & Jane Roberts	158 Riverview Road Avalon Beach
John Sheehan	3 Shorebrace Clareville
Julie & Rex Hoebe	131 Riverview Road Avalon Beach
Anna Lenahan	123 Bynya Rd Palm Beach
Brian & Jan Milton	157 Riverview Road Avalon Beach
Sue Martin	19 Hudson Parade Clareville
Michael Hall	201 Riverview Road Avalon Beach
Greg Johnson	70 Florida Road Palm Beach
John Jenkins	162 Whale Beach Road Whale Beach

The following issues were raised in the submissions:

- Privatisation of public land, particularly to the foreshore area;
- Retrospective approval cannot be granted as the *Windy Dropdown* case does not apply (beyond Council's power to approve);
- Encroachment of public land;
- Unauthorised works and deliberate subversion of the planning controls
- The land is community land
- Inconsistent with Council resolution of October 2019;
- Potential ecological impacts to the remnant spotted gum forest on the site;
- Undesirable precedent for other similar structures;
- Obstructs the footpath;
- Alternative locations available for the structure;
- No public benefit; and
- Multiple structures (not just the letterbox)

The matters raised within the submissions are addressed as follows:

- Privatisation of public land, particularly to the foreshore area

The privatisation of public land, being the public road reserve of both Riverview Road and Shorebrace, was raised in the majority of submissions. The concern was that the letterbox results in this entrance to the road reserve resembling private property, with the likely future installation of a gate across the stairs adjacent to the letterbox likely to exacerbate this privatisation.

Comment:

The location of the letterbox at the top of the road reserve at the point at which pedestrian access is the most available sends a signal that the land on which it is situated is privately used by this adjoining property. This privatisation of public land is particularly unsatisfactory given foreshore access is also provided at this point. This concern is valid and warrants refusal of the application as outlined in this report.

- Retrospective approval cannot be granted as the *Windy Dropdown* case does not apply (beyond Council's power to approve)

Concerns were raised that the Modification Application could not be considered by Council under the provisions of the *Windy Dropdown* case as the proposed works were not on the same land as the original development consent and were not in the same ownership of that adjoining land.

Comment:

In *Scrap Realty Pty Ltd v Botany Bay City Council* [2008] NSWLEC 333, Preston CJ considered this question as to whether a Modification Application could be extended to other land. As outlined further in this report, *Scrap Realty* held that Modification Applications can be lodged for land which was not part of the original development consent.

The *Windy Dropdown* case enables a consent authority to deal with works retrospectively. It is also not constrained by the fact that the development has otherwise been completed. In this way, it is within the Council's power to consider and determine this Modification Application on its merits.

- Encroachment of public land

Concerns were raised that the proposed letterbox encroaches onto public land.

Comment:

The letterbox is on public land, being the road reserve of Riverview Road. While there are other works located on the Shorebrace road reserve, such works are not part of this Modification Application. Council can pursue remediation of these works separately to this Modification Application pursuant to the Orders regime of Part 9 of the EP&A Act.

- Unauthorised works and deliberate subversion of the planning controls

There were significant concerns that the works were unauthorised and that the owner of the adjoining land had intentionally undertaken works without approval.

Comment:

The letterbox does not have development consent notwithstanding that consent is required for such works. Accordingly, the letterbox and associated structures are considered to be unauthorised works. The intentions of the adjoining owner are not abundantly clear, however, there are a range of enforcement actions which the Council can undertake to remedy the unauthorised works.

- The land is community land

A concern was raised that the land was 'Community' land and therefore it cannot be sold, exchanged or otherwise disposed of unless reclassified by Council as 'Operational' land pursuant to the Chapter 6, Part 2 of the *Local Government Act 1993* ('LG Act').

Comment:

The land upon which the letterbox is located is the road reserve of Riverview Road (and not Shorebrace which is also a road reserve). It is assumed that the Riverview Road reserve is not community land and accordingly is not subject to the restrictions imposed on community land. The notes to Chapter 6, Part 2 of the LG Act state the following in relation to the classification of land:

*“Operational land would ordinarily comprise land held as a temporary asset or as an investment, land which facilitates the carrying out by a council of its functions or land which may not be open to the general public, such as a works depot or a council garage”.*

It is assumed that the Riverview Road reserve is “land which facilitates the carrying out by a Council of its functions”. If the land subject to the Modification Application is not community land, as assumed, it is open to Council to grant the modified consent following a merit assessment of the proposal.

- Inconsistent with Council resolution of October 2019

There were concerns raised that the Council’s resolution of 19 October 2019 had been ignored. This resolution (discussed in further detail in this report) recommended various works to be undertaken to the various structures on the road reserve of both Riverview Road and Shorebrace as well as the demolition of the letterbox and replacement with a smaller structure.

Comment:

The Modification Application seeks to regularise the letterbox through the provisions of Section 4.55(2) of the EP&A Act as interpreted by the Land & Environment Court in the Windy Dropdown case. This application does not prevent the Council from taking enforcement action to give effect to its recommendations of 19 October 2019. This Modification Application still requires assessment as provided for in the EP&A Act.

- Potential ecological impacts to the remnant spotted gum forest on the site

The site contains remnants of the *Pittwater Spotted Gum Endangered Ecological Community (EEC)* and therefore needs to be protected under the *Biodiversity Conservation Act 2016*.

Comment:

There are no physical works proposed in this Modification Application and the potential impact on the EEC has been previously considered by Council, which concluded that no further ecological assessment was required.

- Undesirable precedent for other similar structures

There were concerns that approval of this Modification Application would result in an undesirable precedent being set in the area.

Comment:

Letterboxes encroaching on public land are not uncommon in the area, although in this case, the letterbox is large and is located at the entrance to a public area providing foreshore access which exacerbates its impact. It is these aspects of the proposal which result in the proposal being unacceptable as further outlined in this report.



- Obstructs the footpath

The submissions raised the issue that the proposal obstructed the footpath.

Comment:

The letterbox is located relatively close to the carriageway of Riverview Road. It is likely that a footpath of 1.5 metres in width would be unable to be provided in this location and in this way, it is considered that the proposal obstructs the footway. This issue is further considered in this report.

- Alternative locations available for the structure

The submissions highlighted that there were alternate locations for the letterbox as the site comprised a large area.

Comment:

The site comprises two (2) allotments with a combined street frontage to Riverview Road of 35.56 metres. Of this frontage, approximately 17.49 metres comprises a straight line frontage to Riverview Road on the northern side of the existing driveway on the site. While a bus stop exists along this straight line street frontage, there is still sufficient room on the northern side of the driveway in which to locate a letterbox. The obstruction of the footpath and the privatising of public land are unnecessary in this instance given there are alternative locations for the letterbox (**Figure 8**)



**Figure 4: Street frontage – Possible alternate location for a letterbox (Source: Google Maps)**

- No public benefit

There is no public benefit of the letterbox in its current location; it only serves the adjoining owner.

Comment:

The letterbox is for the private use of the adjoining owner and accordingly there is no public benefit of the structure, notwithstanding it is located on public land, it obstructs the footpath and in effect privatises access to the foreshore.

- Multiple structures and/or mis-description

There were concerns raised that the proposed structure comprised more than just the letter box and that it included retaining walls and stairs.

Comment:

The Modification Application specifically relates to the letterbox as outlined on the application form and the Statement of Environmental Effects. The other works which formed part of Council's resolution of October 2019 are not described on the application form or the Statement of Environmental Effects and so do not form part of this application.

## REFERRALS

There were no internal or external referrals sent or necessary for this Development Application. Any Roads Act Approval can be undertaken following the determination of the Modification Application.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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

### Section 4.46 – Integrated Development

The proposal is located within the road reserve and will require a Section 138 approval under the *Roads Act 1993*. Pursuant to Section 4.46(3), development is not integrated development in respect of this consent required under section 138 of the *Roads Act 1993* if, in order for the development to be carried out, it requires the development consent of a council and the approval of the same council.

In this instance, the proposal would require a Section 138 approval from Northern Beaches Council who is also the consent authority for this Modification Application. Accordingly, this application is not considered to be for integrated development.

### Section 4.55(2) – Modification Applications

Modification applications are subject to the provisions of Section 4.55 of the EP&A Act, with this modification application being lodged subject to Section 4.55(2) – other modifications. The requirements of this section of the EP&A Act are considered below in the context of this application:

- (2) **Other modifications** *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 ...*

Comment: The test as to whether a modification is substantially the same development has been the subject of significant case law. It has generally been held that the term 'modify' means 'to alter without radical transformation' (*Scrap Realty Pty Limited v Botany Bay City Council* [2008] NSWLEC 333 at [14] ('Scrap Realty') and *Moto Projects (No 2) Pty Ltd V North Sydney C* [1999] NSWLEC 280 [27] ('Moto Projects').

Bignold J, held in Moto Projects:

*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.*

*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).*

Such a test relies more on just stating that the development was for a certain use and that as amended it will be for precisely the same use, for it to be substantially the same development.

The development consent as approved (and which has not been modified) is for a dwelling house, swimming pool and driveway. The proposal involves a letterbox which is ancillary to the use of the site for a dwelling.

In quantitative terms, the letterbox was not a material or essential physical element of the approved development and accordingly cannot be held to have been important or an essential feature of the approved development (Moto Projects at [68]) such that it cannot be altered in some way (refer to **Figure 9**), or in this case added to the approved development. Qualitatively, the concept of a letterbox forming part of a dwelling house use of the site is a reasonable one.

Similarly, the land to which this modification application relates is different to the site for which the development consent was issued. The extension or enlargement of an area for an application (including one for modification) is within the scope of Section 4.55 (*Scrap Realty Pty Ltd v Botany Bay City Council* [2008] NSWLEC 333).

*Preston CJ confirmed this is Scrap Realty:*

*18. It is true that a consent authorises the carrying out of development on only the land the subject of the development consent. Development cannot be approved in abstract, isolated from the land to which it relates. The development and the land on which the development is carried out are indivisible. However, this does not preclude the consent being modified to extend the development approved by the consent to other land. This still entails a modification of the consent - it alters the description of the land to which the consent applies so as to permit the carrying out of development on that land as well.*

*19. As far as the condition precedent is concerned, the alteration is of “the development” - it expands the area on which development is carried out. There obviously will be questions of fact and degree in ascertaining whether the development before and after modification can be said to be substantially the same. Nevertheless, an expansion of the area on which development is carried out by adding land not the subject of the original consent is not inherently outside the concept of modification of the development under s 96.*



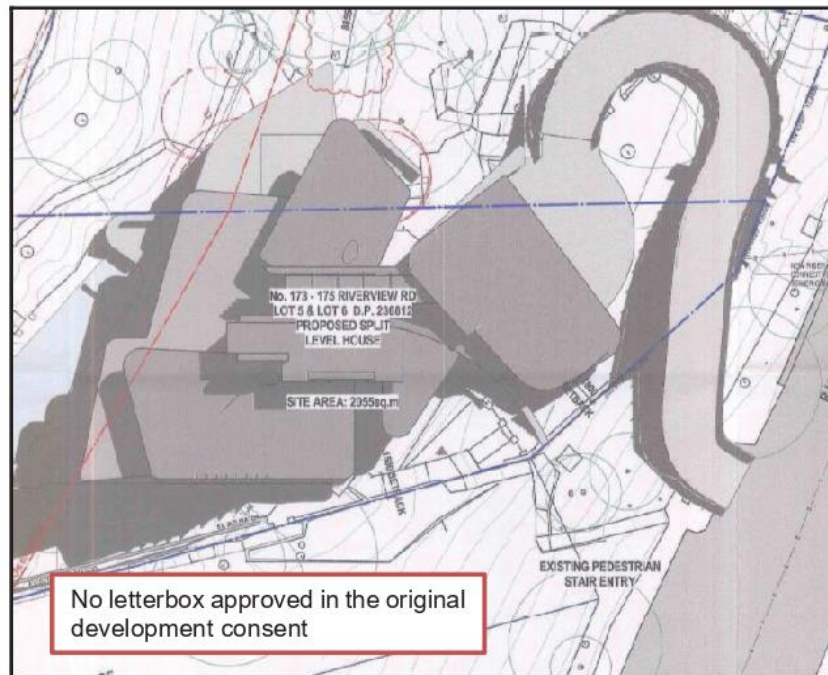


Figure 5: Approved Site Plan for the site (Source: Northern Beaches Council)

Accordingly, it is considered that the proposed modification can be considered substantially the same development as the development for which consent was originally granted and such an application is capable of being extended to the adjoining road reserve.

- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) 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*

Comment: The application does not require concurrence.

- (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 that requires the notification or advertising of applications for modification of a development consent, and*

Comment: The application has been notified in accordance with the Pittwater DCP 2014.

- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1) and (1A) do not apply to such a modification.*

Comment: The submissions have been considered in this assessment report.



- (3) *In determining an application for modification of a consent under this section, 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 consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

Comment: The Section 4.15(1) matters have been considered in this assessment report.

- (4) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

Comment: Noted.

In addition to the requirements of the EP&A Act, the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) also provides requirements for Modification Applications pursuant to Clause 115(1). These matters are considered in **Table 1** below.

**Table 1: Clause 115(1) Matters**

Matter	Comment	Comply
a) Applicant details	Provided	Yes
b) Description of development	Provided	Yes
c) Title of the land	Provided	Yes
d) Description of proposed modification	Lodged pursuant to Section 4.55(2) of the EP&A Act.	Yes
e) Whether to correct a minor error, mis-description or miscalculation, or some other effect,	The proposed modification is to modify the original consent granted by the Court and will be substantially the same development as the approved development, pursuant to Section 4.55(2) of the EP&A Act.	N/A
f) Description of the expected impacts	Provided	Yes
g) Undertaking that modified development will remain substantially same as development originally approved	The modified development will remain substantially the same development as that originally approved.	Yes
h) Owners consent (if the applicant is not the owner of the land, a statement that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),	This has not been provided and while it does not prevent an assessment of the modification application on its merits, it does prevent the modification application from being approved.	No
i) Statement as to whether the application is being	This Modification Application is made to the consent authority pursuant to Section 4.55(2) of the EP&A Act.	Yes

Matter	Comment	Comply
made to the Court - (under section 4.55) or to the consent authority (under section 4.56).		

#### Section 4.15(1) – Evaluation (matters for consideration)

The matters for consideration in the assessment of this modification application are outlined below in Table 2.

Table 2: Matters for Consideration - S 4.15(1) of the EP&A Act

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 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 over an extended period of time and the proposal retains the use of the site for residential. Accordingly, the site is not considered to be a contaminated.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	<i>Pittwater Development Control Plan 2014</i> applies to the proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p>Division 8A (Cl 98-98E inclusive) of the EP&amp;A Regulation 2000 – requires the consent authority to consider “Prescribed conditions” of development consent. These matters will be addressed in conditions where relevant.</p> <p>Clause 49(1) of the EP&amp;A Regulation 2000 requires owner’s consent of a development application. This Clause is not relevant to this application to the extent that a modification application has been lodged. However under clause 115(1)(h) owners’ consent is ultimately required for this application.</p> <p>Clause 50(1) of the EP&amp;A Regulation 2000 requires that the application to be lodged with the required information. This information has been provided.</p> <p>Clause 50(1A) 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>Clause 54 &amp; 109 of the EP&amp;A Regulation 2000 allows Council to request additional information. No additional information has been requested in this application.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 77 of the EP&amp;A Regulation 2000 requires that the consent authority must give notice to any relevant public authorities regarding the application, which is not required in this instance.</p> <p>Clause 92 of the EP&amp;A Regulation 2000 requires the consent authority to consider <i>AS2601 – 1991: The Demolition of Structures</i>. No demolition is proposed.</p> <p>Clause 93 &amp;/or 94 of the EP&amp;A Regulation 2000 requires the consent authority to consider building upgrades (including fire safety). This Clause is not relevant to this application.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be addressed via a condition of consent.</p> <p>Clause 115 of the EP&amp;A Regulation 2000 outlines the requirements for a modification application (considered in Table 1). Owners consent is required by CI 115(1)(h), which has not been provided. Council owns the land (road reserve of Riverview Road) upon which the proposal is located.</p> <p>Clause 119 of the EP&amp;A Regulation 2000 requires the modification application to be notified and/or advertised in the same manner as the original application. This has been undertaken.</p> <p>Clause 143A 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) <i>Environmental Impact</i> – the environmental impacts of the proposal on the natural and built environment are addressed in this report.</p> <p>(ii) <i>Social Impact</i> – the proposal is not anticipated to have any detrimental social impacts in the locality.</p> <p>(iii) <i>Economic Impact</i> – the proposal is not anticipated to have any adverse economic impacts in the locality considering the nature of the existing and proposed use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is not considered suitable for the development as it privatises public land and will obstruct public access to the foreshore and the footpath area.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	Refer to the discussion on 'Notification and submissions received' in this report.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (e) – the public interest	The proposal is considered to be inconsistent with the public interest as the proposal obstructs public access to public land and in effect privatises public land.

#### **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

#### **BUSHFIRE PRONE LAND**

The site is not classified as bushfire prone land.

#### **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)**

It is noted that *State Environmental Planning Policy (Infrastructure) 2007* and *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* are not relevant to the proposal.

##### *State Environmental Planning Policy 55 – Remediation of Land ('SEPP 55')*

Clause 7(1)(a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the site and adjoining site have been used for road and 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. The land is considered to be suitable for the proposed use for a letterbox.

##### *State Environmental Planning Policy (Coastal Management) 2018*

*State Environmental Planning Policy (Coastal Management) 2018* ('Coastal Management SEPP') applies to the proposal. The Coastal Management SEPP commenced on 3 April 2018 and gives effect to the objectives of the *Coastal Management Act 2016* from a land use planning perspective. The site is located within two (2) of the mapped areas, including the *Coastal Environment Area* and the *Coastal Use Area*.

The relevant clauses of the Coastal Management SEPP to the proposal are considered below (it is noted that the site is not located in the Sydney Harbour REP 2005 area):



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

- (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*
  - (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) coastal environmental values and natural coastal processes,*
  - (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) Aboriginal cultural heritage, practices and places,*
  - (g) the use of the surf zone.*
- (2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
  - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
  - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

#### Comment:

The proposal does not require the removal of any significant vegetation or require any significant changes to the natural landform. The proposal also does not result in any adverse impacts on the coastal environment or processes given the distance of the works from the waterway and the minor extent of the works proposed.

Council has previously considered potential impacts on significant vegetation that would have existed on Shorebrace and which had been removed previously for some of the works undertaken by the adjoining owner. This includes vegetation likely to have comprised the Pittwater Spotted Gum Forest Endangered Ecological Community (PWSG EEC). Council's assessment, undertaken for the report to Council in October 2019, concluded that the likely impact to this EEC was not significant and that no further ecological assessment was required.

It is considered that the Marine and surf zone environments will not be adversely affected by the proposal. The site is not known to contain any items of Aboriginal cultural heritage, practices or places and there is also no other heritage item present on the site.

However, the proposal is considered to adversely impact on existing public open space and safe access to and along the foreshore. The proposal, being located across the frontage of (but not within) Shorebrace, impedes public access to and along the foreshore as there are limited other suitable access points along the street frontage of Shorebrace which would allow foreshore access given the steep nature of this frontage with the only suitable access being in the vicinity of the letterbox (**Figure 10**). It is noted that this foreshore access is not formalised, however, it is understood that the area is used by local residents to access the foreshore.

Furthermore, there is potential for a gate to be installed on this letterbox structure in the future which is likely to further restrict future public access to the foreshore. The privatisation of this public land

by the proposal is also of concern as it gives the impression that this land is privately owned, contrary to the SEPP.

As a result, it is considered that the proposal is contrary to Clause 13(1)(e) of the Coastal Management SEPP in that the proposal restricts public access to the foreshore. The proposal also fails to adequately satisfy Clause 13(2) in that the development has not been designed or sited to avoid adverse impacts to public access as such impacts could have been avoided if the letterbox was designed and sited in an alternate location which would have less impact on the public land. In this way, the proposal is also inconsistent with Clause 13(2) of the Coastal Management SEPP.



Figure 6: Restricted Public Access to the foreshore (Source: Google Maps)

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

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



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

Comment:

The proposal is considered to have minimal impact on the overshadowing, wind funnelling and the loss of views from public places to foreshores and the visual amenity and scenic qualities of the coast given the minor nature of the works and their location away from the foreshore. The site is also not known to possess any heritage or cultural items.

As outlined for Clause 13, the proposal is considered to cause an adverse impact on existing, safe access to and along the foreshore. In this way, the proposal is also considered to be contrary to Clause 14(1)(a)(i) of this SEPP.

The proposal has not been designed and sited to avoid an adverse impact on public access as required by Clause 14(1)(b)(i) and for this reason it is unacceptable. It is considered that the proposal could have been designed to avoid this impact, with the letterbox located away from the frontage to Shorebrace as required by Clause 14(1)(b)(ii) of the SEPP.

The bulk, scale and size of the proposal is minimal and is located away from the foreshore such that there are no visual impacts arising from the proposal when viewed from the waterway (consistent with Clause 14(1)(c) of the SEPP).

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

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

Comment:

The proposal is setback a significant distance from the coastal zone and accordingly it is considered that the proposal is unlikely to increase the risk of coastal hazards.

**16 Development in coastal zone generally—coastal management programs to be considered**

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The proposal is setback a significant distance from the coastal zone and accordingly it is considered that the proposal is unlikely to be inconsistent with any certified coastal management program applying to the site.

**PITTWATER LOCAL ENVIRONMENTAL PLAN 2014**

Is the development permissible? Proposal is ancillary to dwelling houses	Yes
After consideration of the merits of the proposal, is the development consistent with:	
Aims of the LEP?	No
Zone objectives of the LEP?	Yes

#### Principal Development Standards

Standard	Requirement	Proposed	% variation	Complies
Height of Buildings	8.5 metres	1.2 metres	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent – no demolition proposed	N/A
7.1 Acid sulphate soils – there is no significant excavation proposed	Yes
7.2 Earthworks - there is no significant excavation proposed	Yes
7.6 Biodiversity - The site is noted on mapping (refer to detail below)	Yes
7.7 Geotechnical hazards - The site is noted on mapping (refer to detail below)	Yes
7.8 Limited development on foreshore area – No works proposed on the foreshore	N/A
7.10 Essential services – There are adequate services on the site	Yes

#### Detailed Assessment

##### **Clause 1.2 – Aims**

The particular aims of the LEP state (Cl 1.2(2)) emphasis added:

- (a) *to promote development in Pittwater that is economically, environmentally and socially sustainable,*
- (b) *to ensure development is consistent with the desired character of Pittwater's localities,*
- (c) *to support a range of mixed-use centres that adequately provide for the needs of the Pittwater community,*
- (d) *to retain and enhance land used for employment purposes that is needed to meet the economic and employment needs of the community both now and in the future,*
- (e) ***to improve access throughout Pittwater, facilitate the use of public transport and encourage walking and cycling,***
- (f) *to encourage a range of housing in appropriate locations that provides for the needs of the community both now and in the future,*
- (g) *to protect and enhance Pittwater's natural environment and recreation areas,*
- (h) *to conserve Pittwater's European and Aboriginal heritage,*
- (i) *to minimise risks to the community in areas subject to environmental hazards including climate change,*
- (j) *to protect and promote the health and well-being of current and future residents of Pittwater.*

It is considered that the proposal is contrary to aim (e) in that the proposal obstructs public access to the foreshore and privatises public land. This has been discussed in this report.

##### **Clause 2.3 – Zone objectives and Land Use Table**

The site is located within the E4 Environmental Living zone, which includes the following objectives:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*



- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The proposal is not specifically inconsistent with any of these objectives.

#### **Clause 7.6 Biodiversity**

Pursuant to Clause 7.6(3), before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters:

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

As outlined above, Council has previously considered the potential impact on the PWSG EEC and concluded that there were no significant impacts and that there was no requirement for any further assessment of this issue. In this way, Council was satisfied that the development has been designed and sited to avoid any significant adverse environmental impact consistent with Clause 7.6(4) of the PLEP 2014.

#### **Clause 7.7 Geotechnical hazards**

This clause applies to the site as it is identified as “Geotechnical Hazard H1” on the Geotechnical Hazard Map of PLEP 2014. Before determining this application, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks—

- (a) *site layout, including access*
- (b) *the development’s design and construction methods,*
- (c) *the amount of cut and fill that will be required for the development,*
- (d) *waste water management, stormwater and drainage across the land,*
- (e) *the geotechnical constraints of the site,*
- (f) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

It is considered that given the proposal involves no further physical works, that it could be satisfactory in relation to these matters, subject to certification from a suitably qualified person or persons.

Clause 7.7(4) requires that development consent must not be granted unless the consent authority is satisfied that the development will appropriately manage wastewater, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land. It is considered that given the proposal involves no further physical works, that it could be satisfactory in relation to these matters, subject to certification from a suitably qualified person or persons.

The consent authority also needs to be satisfied that the development is designed and sited to avoid any geotechnical risk or significant adverse impact on the development and the land surrounding the development. It is considered that given the proposal involves no further physical works, that it could be satisfactory in relation to these matters, subject to certification from a suitably qualified person or persons.

The proposal has been considered in relation to the provisions of the PLEP 2014 and found to be inconsistent with one of the aims of the Plan.

## PITTWATER DEVELOPMENT CONTROL PLAN 2014

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
<b>Section B: General Development Controls</b>		
B3.1: Landslip Hazard – no further works proposed	Yes	Yes
B3.7 Estuarine Hazard - Low density residential – no development proposed on the waterfront	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community – no works proposed and assessed by Council as no impact in October 2019	Yes	Yes
B5 Water Management (no changes to existing stormwater management on the site)	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve – discussed below	No	No
<b>Section C: Development Type Controls</b>		
C1.24 Public Road Reserve - Landscaping and Infrastructure – discussed below	No	No
<b>Section D: Locality Specific Development Controls</b>		
D1.8 Front building line – discussed below	Yes	No

### Detailed Assessment

#### B6.1 Access driveways and Works on the Public Road Reserve

##### Outcomes

*Safe and convenient access*

*Adverse visual impact of driveways is reduced*

*Pedestrian safety*

*An effective road drainage system*

*Maximise the retention of trees and native vegetation in the road reserve.*

##### Controls

##### Ancillary Structures within the Road Reserve

*Ancillary structures within the Road Reserve will be supported for the purposes of structurally supporting the access driveway only. Ancillary structures include retaining walls.*

*Encroachment into the road reserve is to be minimised.*

*Where retaining walls and structures are visible from a public place, preference is given to the use of textured finishes of dark earthy tones or sandstone-like finishes.*

*All structural elements within the Road Reserve must be certified by a Structural Engineer.*

*In addition, where the land is identified on the Landslip Hazard Map, the design of all structural elements must satisfy the Landslip Hazard Controls.*

Comment:

The proposed letterbox is considered to be contrary to the outcomes of this DCP control as safe and convenient access to the public is adversely impacted by the proposal as it privatises the public frontage to the road reserve which provides foreshore access. Furthermore, the proposal does not assist in pedestrian safety as a future footpath may be obstructed by the proposal given the restricted road reserve available for a footpath in the future if provided by Council.

The proposal is inconsistent with this DCP control given it encroaches into the road reserve; with such an encroachment not minimised given there are alternative locations for such a structure along the property frontage.

#### **C1.24 Public Road Reserve - Landscaping and Infrastructure**

##### **Outcomes**

*Desirable character of the Pittwater streetscape (S)*

*Consistency in the design and construction of landscape works in the road reserve (En)*

##### **Controls**

###### Landscaping General - All Development

*Landscaping within the public road reserve is to include street trees planted at 6m centres.*

*Street trees are to be planted to encourage the free passage of pedestrians.*

*Street trees should not interfere with existing powerlines.*

*All existing trees over 3m in height and native vegetation within the road reserve areas are to be retained where practical. The existing trees are to be protected during the construction of works through temporary perimeter fencing that is 1.8m high.*

*New tree plantings are to be a minimum 35 litre size with 1m x1m hole and backfilled with suitable planting medium.*

*Trees are to be appropriately supported by two stakes (minimum 50mm x 50mm) with Hessian ties.*

*To ensure a consistent streetscape the new tree plantings are to be the same as the existing adjacent street trees.*

*Where appropriate, Council encourages the use of local endemic native species according to the list of local native species in Pittwater*

*Grassed areas are to be turfed with Couch species (weed free) and even grade to a maximum 4% grade.*

*All work is subject to a Section 139 approval from Council.*

*Dwelling Houses, Secondary Dwellings and Dual Occupancy*

*The location of new landscaping (street trees) is not to hinder the future construction of a 1.5m wide footpath in location to be nominated by Council and is subject to a Section 139 approval from Council.*

Comment:

The proposed letterbox is considered to be inconsistent with the outcomes of this control as the desirable character of the Pittwater streetscape is not maintained. This proposed encroachment of the road reserve obstructs the provision of a footpath in the future and privatises the public domain, particularly having regard to the foreshore access gained from Shorebrace.

The proposal is contrary to the controls in that a 1.5 metre wide footpath could not be provided in the future if required given the location of the letterbox.

**D1.8 Front building line**

**Outcomes**

*To achieve the desired future character of the Locality (S)*

*The amenity of residential development adjoining a main road is maintained (S)*

*Vegetation is retained and enhanced to visually reduce the built form (En)*

*Vehicle manoeuvring in a forward direction is facilitated (S)*

*To encourage attractive street frontages and improve pedestrian amenity*

*To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment*

**Controls**

*The minimum front building line shall be in accordance with:*

*All other land zoned R2 Low Density Residential, R3 medium Density Residential or E4 Environmental Living - 6.5, or established building line, whichever is the greater*

*Built structures (including swimming pools), other than driveways, fences and retaining walls are not permitted within the front building setback.*

*Where new streets or access ways are proposed in residential flat building and multi dwelling housing development, a minimum front setback of 3m must be provided between the carriageway and dwellings.*

**Variations**

*Where the outcomes of this control are achieved, Council may accept a minimum building setback to a secondary street of half the front building line.*

*Where the outcomes of this control are achieved, Council may accept variation to these building lines in the following circumstances:*

- considering established building lines;*
- degree of cut and fill;*
- retention of trees and vegetation;*
- where it is difficult to achieve acceptable levels for building;*





- for narrow or irregular shaped blocks;
- where the topographic features of the site need to be preserved;
- where the depth of a property is less than 20 metres.

*On steeply sloping or constrained sites, reduced or nil setbacks for car parking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable.*

*On-site wastewater treatment systems and rainwater tanks are permitted within the front building line provided that they do not exceed 1m in height above ground level (existing).*

Comment:

It is considered that the proposal is inconsistent with the following outcomes of this DCP control:

*To encourage attractive street frontages and improve pedestrian amenity*

*To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment*

The proposal encroaches into the road reserve and does not improve pedestrian amenity. The structure is likely to obstruct the provision of a footpath in this location in the future given its minimal setback from the road carriageway. Similarly, this location of the structure fails to adequately relate to the spatial characteristics of the area, where development is adequately setback from the street.

While a letterbox is permitted to exceed the front building setback requirement, the proposed letterbox in its current location is inconsistent with the outcomes of this control as outlined above.

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

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats as outlined in this report.

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

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

#### **7.12 CONTRIBUTIONS**

The *Northern Beaches Section 7.12 Contributions Plan 2019* applies to the Northern Beaches Local Government Area with some exceptions. Pursuant to Clause 2.5, the Plan does not apply to development applications where the proposed cost of carrying out development is up to and including \$100,000. Accordingly, the Plan does not apply to this proposal.

#### **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 Environmental Plan 2014;*
- *Pittwater Development Control Plan 2014;* 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 results in unreasonable impacts on public land for the reasons outlined in this report.

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

- Inconsistent with the Coastal Management SEPP;
- Inconsistent with the aims of the PLEP 2014;
- Inconsistent with the objects of the EP&A Act as the proposal does not promote the orderly and economic use and development of land;
- Inconsistent with controls of the PDCP 2014; and
- Not in the public interest.

The application attracted 27 submissions, which raised several issues, some of which are considered to warrant refusal of the application as outlined in this report. The issues of the privatisation of land and the obstruction of the public domain are issues which warrant such a refusal.

The assessment of the application against the provisions of the Coastal Management SEPP found that the proposal is unsatisfactory with a number of the requirements. The proposal is also contrary to some of the aims of the PLEP 2014 and controls of the PDCP 2014. The public interest is not served by this proposal.

Based on this assessment, it is recommended that the Northern Beaches Local Planning Panel refuse the application for the reason detailed within the recommendation attached to this report.

## RECOMMENDATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, REFUSE modified consent to Modification Application No. 2020/0332 for the retention of a letterbox structure within the road reserve of Riverview road adjoining land at Lots 5 and 6 in DP 236812, 173-175 Riverview Road, Avalon Beach for the reasons outlined as follows:

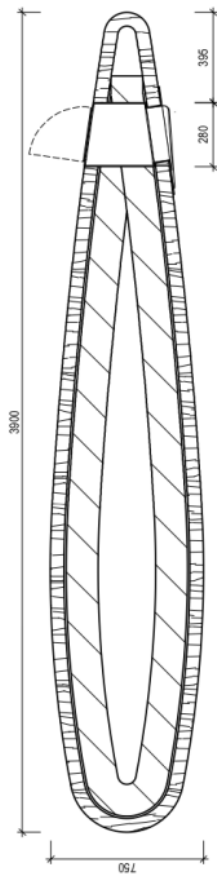
1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed modification is inconsistent with *State Environmental Planning Policy (Coastal Management) 2018* in that the proposal is inconsistent with:
  - (a) Clause 13(1)(e) as the proposal restricts public access to the foreshore;
  - (b) Clause 13(2) as the proposal has not been designed or sited to avoid adverse impacts to public access given alternate locations which would have less impact on the public land are available;
  - (c) Clause 14(1)(a)(i) as the proposal results in an adverse impact on existing safe access to and along the foreshore; and
  - (d) Clause 14(1)(b) as the proposal has not been designed and sited to avoid an adverse impact on public access.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed modification is inconsistent with the *Pittwater Local Environmental Plan 2014* pursuant to:
  - (a) Clause 1.2(2)(e) in that the proposal is contrary to aim (e) as the proposal obstructs public access to the foreshore and in effect privatises public land.

3. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed modification is inconsistent with the *Pittwater Development Control Plan 2014* pursuant to:
  - (a) *Section B6.1 Access driveways and Works on the Public Road Reserve* in that the proposal is considered to be contrary to the outcomes of this DCP control as safe and convenient access to the public is adversely impacted as it seeks to privatise the public frontage and does not assist in pedestrian safety as a future footpath may be obstructed by the proposal;
  - (b) *Section C1.24 Public Road Reserve - Landscaping and Infrastructure* in that the proposed letterbox is inconsistent with the outcomes of this control as the proposed encroachment of the road reserve obstructs the provision of a future footpath and privatises the public domain, particularly having regard to the foreshore access gained from Shorebrace; and
  - (c) *Section D1.8: Front building line* in that the proposal is inconsistent with the outcomes of this control as it does not improve pedestrian amenity nor ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.
4. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the site is not suitable for the development as it obstructs the public domain and privatises public land;
5. Pursuant to Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*, the proposed modification is unacceptable as outlined in submissions made in accordance with this Act or the regulations;
6. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest; and
7. Pursuant to Clause 115(1)(h) of the *Environmental Planning and Assessment Regulation 2000*, owner's consent has not been provided from Council for the works proposed within the road reserve of Riverview Road.

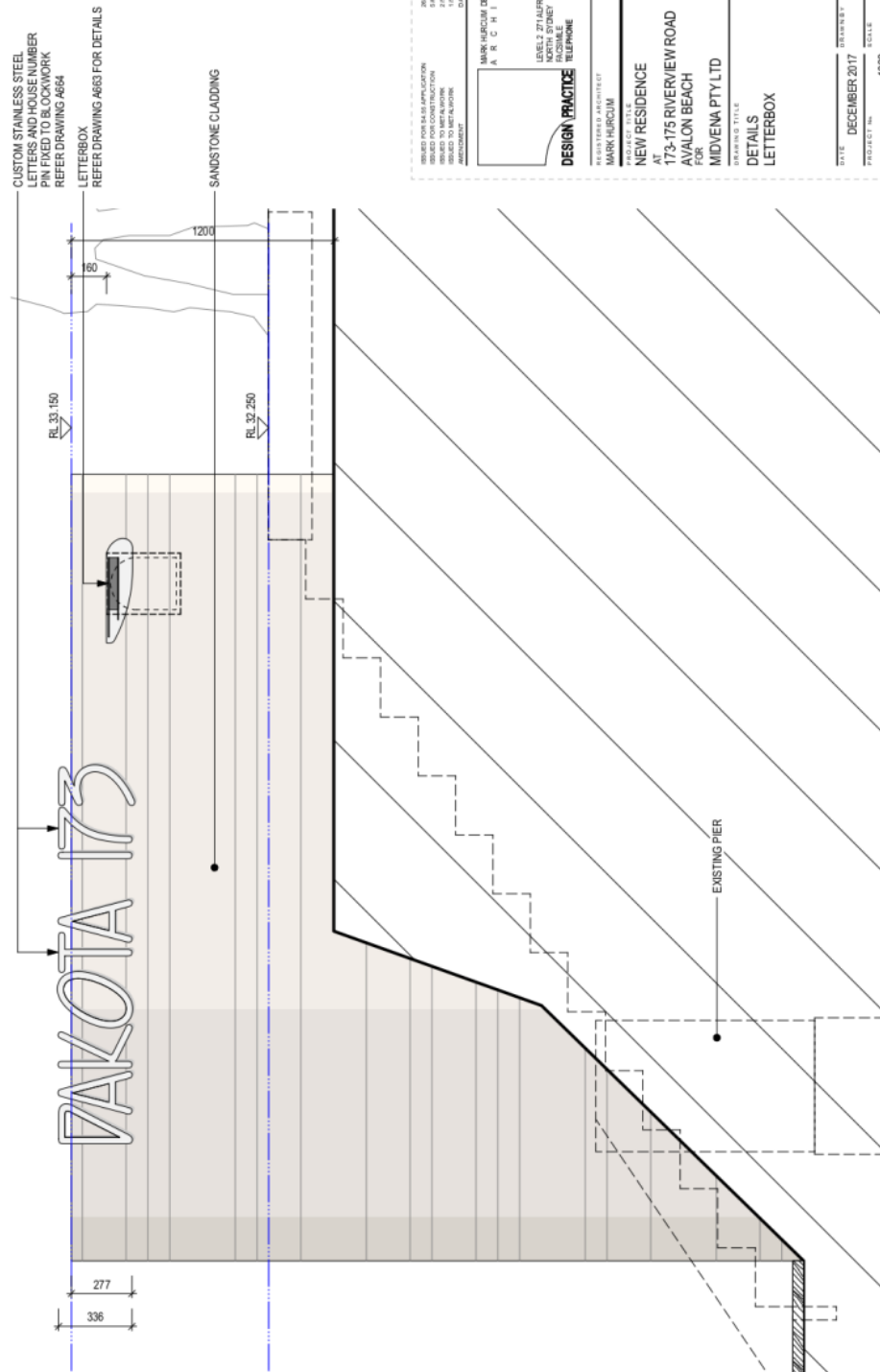








1 PLAN  
Scale: 1:20



2 FRONT ELEVATION  
Scale: 1:20

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PROJECT NO. 173  
PROJECT NAME  
PROJECT ADDRESS  
PROJECT DATE

MARK HURCLIM  
ARCHITECT  
Reg No. 5605

NEW RESIDENCE  
AT  
173-175 RIVERVIEW ROAD  
AVALON BEACH  
FOR  
MIDVENA PTY LTD

DESIGNED TITLE  
LETTERBOX

DATE: DECEMBER 2017  
DRAWN BY: KT  
PROJECT No.: 1322  
SCALE: 1:20 @ A3  
DESIGNED TITLE  
LETTERBOX

1322 A664 Section Details 1:20  
Thursday, 26 March 2020

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<b>ITEM 3.3</b>	<b>DA2020/0661 - LOT 7356/1167221 HUSTON PARADE, NORTH CURL CURL - CONSTRUCTION OF A TELECOMMUNICATIONS FACILITY WITH ASSOCIATED EQUIPMENT</b>
<b>AUTHORISING MANAGER</b>	<b>RODNEY PIGGOTT</b>
<b>TRIM FILE REF</b>	<b>2020/583750</b>
<b>ATTACHMENTS</b>	<b>1 <a href="#">↓</a>Assessment Report</b> <b>2 <a href="#">↓</a>Site Plan and Elevation</b>

## PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/0661 for construction of a Telecommunications Facility with associated equipment at Lot 7356/1167221 Huston Parade, North Curl Curl subject to the conditions and for the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0661
<b>Responsible Officer:</b>	Sarah McNeilly (Consultant Planner)
<b>Land to be developed (Address):</b>	Lot 7356 DP 1167221 Huston Parade, North Curl Curl (Field No.5 Abbott Road)
<b>Proposed Development:</b>	Replacement of existing 22m light pole with 25.7m light pole with integrated telecommunications facility on top and associated outdoor unit and landscape works.
<b>Zoning:</b>	RE1 Public Recreation
<b>Development Permissible:</b>	Yes (pursuant to SEPP Infrastructure) (prohibited under WLEP)
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Northern Beaches Council/ Crown Land
<b>Applicant:</b>	Optus Mobiles Pty Ltd
<b>Application Lodged:</b>	18/06/2020
<b>Integrated Development:</b>	Yes (Nominated Integrated Development)
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Infrastructure
<b>Notified:</b>	28/07/2020 to 27/08/2020
<b>Advertised:</b>	Yes
<b>Submissions Received:</b>	390
<b>Clause 4.6 Variation:</b>	No
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$249,975

### EXECUTIVE SUMMARY

The proposal seeks Development Consent for the construction and operation of a new telecommunications facility (and floodlight pole co-location) at Lot 7356 DP1167221, Abbott Road Sportsground, North Curl Curl. Specifically, this will include:

- A 22.5m metre flood light pole with structural capacity to support telecommunications equipment and lighting;
- Three (3) panel antennas attached on a turret mount providing an overall height of 25.7 metres;
- An Optus vandal proof outdoor cabinet, screened by landscaping and on a raised metal platform (2940mm (H) x 2380mm (W) x 3150mm (D));
- Fourteen (14) remote radio units;
- Underground power and fibre connections; and
- Associated ancillary equipment.

The applicant has stated that the proposed telecommunications facility is required due to a lack of mobile phone coverage in the immediate Curl Curl area.

The public notification of the application resulted in 376 letters of concern and 14 supporting letters. The issues raised included health, environmental and visual concerns.

A previous application (DA2017/0298) was refused by Council in 2017 at an alternate location at Adam Street Reserve (John Fisher Park), accessed from Griffin Road in Curl Curl.

The current application sits within a sporting field with 12 existing light poles, one of which will be removed to allow for the new telecommunications pole. Council's Urban Design officer is not supportive of the proposal based on the visual impact and scale of the structure.

However, based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the current proposal is worthy of approval, and development consent is recommended subject to conditions of consent.

### PROPOSED DEVELOPMENT IN DETAIL

The proposed development results in the removal of an existing 22 metre light structure being removed and replaced with a telecommunications facility (with an overall height of 25.7 metres) comprising:

- A 22.5m flood light pole with structural capacity to support telecommunications equipment and lighting;
- Three (3) panel antennas (2600mm (H) x 548mm (W) x 150mm (D) attached on a turret mount providing an overall height of 25.7 metres;
- An Optus vandal proof outdoor cabinet, screened by landscaping and on a raised metal platform (2940mm (H) x 2380mm (W) x 3150mm (D));
- Fourteen (14) remote radio units;
- Underground power and fibre connections; and
- Associated ancillary equipment.

The new pole will sit immediately to the west of the pole to be removed, with the associated cabinet housing ancillary equipment located further to west and screened by landscaping proposed and detailed in an accompanying landscape plan. The pole sits within a sporting field where twelve (12) existing light poles sit around the perimeter providing night lights for recreational users.

### ASSESSMENT INTRODUCTION

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

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



- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

#### SUMMARY OF ASSESSMENT ISSUES

- Warringah DCP - D4 Electromagnetic Radiation
- Warringah DCP - D7 Views
- Warringah DCP - D9 Building Bulk
- Warringah DCP - E7 Development on land Adjoining Public Open Space
- SEPP (Infrastructure) 2007 Clause 115 – Guidelines (Visual impact)
- SEPP (Coastal Management) 2018
- Coastal Management Act 2016
- Community public recreation impacts
- Section 4.15(1)(e) - Public Interest of Environmental Planning and Assessment Act 1979
- Proximity to School

#### SITE DESCRIPTION

<b>Property Description:</b>	Lot 7356 DP 1167221 Abbot Road Sportsground (Field 5), North Curl Curl
<b>Detailed Site Description:</b>	<p>The subject allotment comprises a large area of public open space separated into eight (8) parts and divided by Curl Curl Lagoon and Griffin Road. The allotment has an area of 14517.3m<sup>2</sup> and is zoned RE1 Public Recreation.</p> <p>Surrounding allotments consist of further public open space including sand dunes, parkland and the Abbott Road netball courts, soccer and AFL fields. North Curl Curl Public School is located approximately 300 metres north west of the site. The area immediately to the north of the site across Abbott Road is low density residential with residential uses being the primary land use surrounding the open space area in all directions.</p> <p>The area of the site relevant to this proposal is known as Abbott Road Fields and is accessed from Abbott Road. It includes multiple existing turfed fields used for sports including soccer and baseball, a pedestrian path along the Abbott Road perimeter, baseball nets on the southern side and it is bounded by vegetation on its perimeter with the lagoon to the south.</p>



Blue star indicates approximate position of proposed installation

## SITE HISTORY

There are numerous applications relevant to the broader parklands surrounding Curl Curl Lagoon and Beach in its entirety, which primarily deal with the surf club and community centres. There is one Development Application for a similar use at Griffin Road, refused by Council in 2017. No applications are recorded in Council's records for Abbott Road Reserve where the proposed works are to be located.

### Pre-lodgement Meeting (PLM2016/0056)

The applicant attended a pre-lodgement meeting at Council on 1<sup>st</sup> July 2016, wherein the applicant was advised that the option of a monopole at the selected location (Griffin Road, North Curl Curl) was not supported due to the concerns in relation to visual impact and scenic impacts on the character of the parkland setting.

### Development Application (DA2017/0298)

DA2017/0298 was submitted to Council on 5 April 2017 for a 25m high telecommunications facility at an alternate location at (Adam Street Reserve) Griffin Road, North Curl Curl. It was refused by Council on 19 July 2017 for the reasons outlined as follows:

1. *"Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.*
2. *Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development will have unacceptable impacts with regard to environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.*

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the Clause 115(3) of SEPP (Infrastructure) 2007 – (Guidelines).
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause D4 Electromagnetic Radiation of the Warringah Development Control Plan 2011.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D7 Views of the Warringah Development Control Plan 2011.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan 2011.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause E7 Development on land Adjoining Public Open Space of the Warringah Development Control Plan 2011.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy No 71 – Coastal Protection”

#### **Review of Determination (REV2018/0005)**

Rev2018/0005 was lodged with Council on 9 February 2018 to review the refusal of DA2017/0298. This was withdrawn by the applicant on 6 March 2018.

#### **Pre-lodgement Meeting (PLM2020/0072)**

*“The proposal is not acceptable and requires redesign prior to submission.*

*The design of the monopole is critical. It should be designed to be as “slender” as possible and no higher than the existing floodlights. The pole should have a similar appearance to the existing lighting structures within the reserve and the panel antennas should be as discreet in volume as possible to give the appearance of an extension of the pole itself.*

*The proposed development must demonstrate that it will maintain the visual and scenic quality of the locality and avoid visual clutter and proliferation of structures when viewed from surrounding residential development as well as the public domain.”*

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

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

As a result of the public exhibition process council is in receipt of 390 submissions plus a petition with 114 signatures (of which 12 persons have already made online submissions) from:

<b>Name:</b>	<b>Address:</b>
Amanda Thompson	17 Carew Street, Dee Why
Steph Rawling	17 Corrie Road, North Manly
Kathryn Mitchell	21 Whistler Street, Manly
Nadia Butler	7a Hope Street, Seaforth



Name:	Address:
Blake Hayes	15 Spring Road Street, North Curl Curl
Joanna Hayes	15 Spring Road Road, North Curl Curl
Juliet George	22 Bellevue Parade, North Curl Curl
Amy White	21 - 21 Eric Street, Freshwater
Hayley Phillips	14 Fay street Street, North Curl Curl
Edward Phillips	41 Jocelyn Street, North Curl Curl
Rebecca Peattie	9 / 111-113 Harbord Road, Freshwater
Lauren Gray	5 / 2 Carlton Street, Freshwater
Jemma Cursons	13 / 108 Fisher Road, Dee Why
Sabrina Althoff	206 / 11 Mooramba Road, Dee Why
Ellie Cowan	1 / 39 Austral Avenue, North Manly
James Dyer	11 / 80 Old Pittwater Road, Brookvale
Victoria Bridgstock	5 / 29 - 33 Waine Street, Freshwater
Sally Keene	38 Parr Avenue, North Curl Curl
Mike Hayes	15 Spring Road, North Curl Curl
Juliet Wolak	88 Abbott Road, North Curl Curl
Daniella Cartiere	2 / 25 Playfair Road, North Curl Curl
Jenny Billing	-
Lauren Dyer	11 / 80 Old Pittwater Road, Brookvale
Gemma Ap Geraint	11 Manuela Place, Curl Curl
Renee Delsorte	23a Playfair Road, North Curl Curl
Chris Wolak	88 Abbott Road, North Curl Curl
David Gledhill	Manly Seaside's Baseball Club
Kelly Slade	9 / 14 Banksia Street, Dee Why
Miranda Floriano	30 Abbott Road Street, North Curl Curl
Freddie Evrard	-
Brent France	9 Rabaul Road, North Curl Curl
Meliana Lee	11 Adam Street, Curl Curl
T Green	3 Jocelyn Street, North Curl Curl
Michael Jones	46 Griffin Road, North Curl Curl
Troy Wilson	6 Rabaul Road, North Curl Curl
Sheikh Islam	17 Griffin Road, North Curl Curl
JoJo Burke	733D Warringah Road, Forestville
Lindsay Brain	12 The Strand, Dee Why
Celine Herit	41 Jocelyn Street, North Curl Curl
Kevin Perkins	99 Headland Road, North Curl Curl
Cath Perry	91 Quirk Street, Dee Why
James McNeil	Unit 4 / 24 The Crescent, Dee Why
John Dransfield	24 Curl Curl Parade, Curl Curl
Helen Dransfield	24 Curl Curl Parade, Curl Curl
Christopher Marks	5 / 14 Stuart Street, Manly
Sophie Mady	19 Spring Road, North Curl Curl
Luisa Arrangov	99 b Pitt Road, North Curl Curl
Zeljke Vladimir	27 / 20 Mooramba Road Dee Why
Sarah Whitehead	7 Rabaul Road, North Curl Curl



Name:	Address:
Colin Whitehead	7 Rabaul Road, North Curl Curl
Georgina White x 2	33 Pitt Road, North Curl Curl
Yarima Gavilan Herrera	58 Abbott Road, North Curl Curl
Aja Elshaikh	14 Rabaul Road, North Curl Curl
Andrew Whitaker	Curl Curl North Public School P&C Association Playfair Road, North Curl Curl
Raphaelle Mady	444 Abercrombie Street, Darlington
Susan Bruce	41 Bellevue Parade, North Curl Curl
Stephen Page	35 Austin Avenue, North Curl Curl Sydney
Jennifer Dixon	4 / 658 Pittwater Road, Brookvale
Leanne Ralph	128 Headland Road, North Curl Curl
Klara Kuba	8 / 43 Adams Street, Curl Curl
Wendy Berryman	49 Bennett Street, Curl Curl
Stephen Kelly	38 Abbott Road, North Curl Curl
Leanne Ippolito	38 Delaigh Avenue, North Curl Curl
Katrina Salisbury	12 Spring Road, North Curl Curl
Ruth Clarkson	4 Griffin Road, North Curl Curl
Suzanne Fairlie	114 Pitt Road, North Curl Curl
Simo Popovac	135 Headland Road, North Curl Curl
Paula Cowan, President Pam Rawling, Secretary	Curl Curl Lagoon Friends Executive Committee
Mike Nikotin	3 Curl Curl Parade, Curl Curl
Janet Daniel	102 Headland Road, North Curl Curl
Roger Daniel	102 Headland Road, North Curl Curl
Guy Dickens	8A Rabaul Road, North Curl Curl
Linda Marks	8a Rabaul Road, North Curl Curl
Mary Indersmith	10a Rabaul Road, North Curl Curl
Details withheld	unknown
Pamela Rawling	1 / 32 Brighton Street, Freshwater
A Sanbrook	27 Stirgess Avenue, Curl Curl
Craig Stephen	88 Pitt Road, North Curl Curl
Deborah Plunkett	18 Lillie Street, North Curl Curl
Russell Plunkett	18 Lillie Street, North Curl Curl
Damian Hendriks	18 Ian Avenue, North Curl Curl
Lucy Kelly	36 Kalang Road, Elanora Heights
Mike Lee	11 Adams Street, Curl Curl
Richard Ruppung	100A Abbott Road, North Curl Curl
Jaden Harris	289 Headland Road, North Curl Curl
Ann Sharp	77 Brighton Street, Curl Curl
Adam Johns	44 - A Abbott Road, North Curl Curl
Amy Haynes	81 Bennett Street, Curl Curl
Beate Schroefl	7 Ross Street, North Curl Curl
Val Braun	11 Spring Road, North Curl Curl
Patrick Counsell	87 Brighton Street, Curl Curl
Bruce McLennan	46 Abbott Road, North Curl Curl

Name:	Address:
Di Elliffe	13 / 2 - 4 Beach Street, Curl Curl
Stefan Olk	6 Baree Place, Warriewood
Jennifer Olk	6 Baree Place, Warriewood
Tim Dodd	54 Abbott Road, North Curl Curl
Mark Wright	36 Makim Street, North Curl Curl
Michael Rosato	6 Spring Road, North Curl Curl
Luke Falzon	2 Abbott Road, North Curl Curl
Stephen Grant	20 Spring Road Road, North Curl Curl
Michelle Puhl	60 Abbott Road RD North Curl Curl NSW 2099
Deborah Cox	18 Stirgess Avenue, Curl Curl
Paula Cowan	36 Playfair Road, North Curl Curl
Lisa Hunt	24 Delaigh Avenue, North Curl Curl
Jeanine Engel	113 Pitt Road, North Curl Curl
Amaris Leong	126 Abbott Road, North Curl Curl
Veronica Lowe	-
Cameron Glover	46 Wheeler Parade, North Curl Curl
Sabrina Kost	-
Andrea Markillie	49a Monash Parade, Dee Why
Jenny McGregor	17 / 55 Delmar Parade, Dee Why
Leahna Harvey	182 Pitt Road, North Curl Curl
Kemal Husain	53 Bellevue Parade Street, North Curl Curl
Jodie Pidcock	53 Bellevue Parade, North Curl Curl
Cameron Swan	17 Tango Avenue, Dee Why
Nicole Edgley	2 Surf Road, North Curl Curl
Nora Ross	Quirk Street, Dee Why
Rania Millard	39 Coles Road, Freshwater
Felicity Darcy	3 Stewart Avenue, ST Curl curl
Lucia Jadronova	7 / 64 Carrington Parade, Curl Curl
Andreas Kyriacou	41 Surfers Parade Street, Freshwater
Anita Kalcic	35 Quirk Street, Dee Why
D Lowe	4 / 34 Milson Road Street, North Sydney
Debra Hardy	80 Soldiers Avenue, Freshwater
Anna Jones	20 Abbott Road, North Curl Curl
Alice O'Connell	23 Spring Road ST North Curl Curl
Sally Liebke	73 Brighton Street, Curl Curl
Kristin Gosling	16 Quirk Street, Dee Why
Emma Graham	4 Pitt Road, Sydney
Sally Flemming	6 Pitt Road, Curl Curl
Beth Cowling	24 Carew Street, Dee Why
Louisa Hunter	7 Delaigh Avenue Street, North Curl Curl
Lisa Fay	18 / 28 McDonald Street Street, Freshwater
Shannon Golgerth	4 / 58 - 60 Oaks Avenue, Dee Why
Lyn Pinson	-
Michelle Lowery	66 Adams Street, Curl Curl
Edwina Alice Morgan	16 Smith Avenue Street, Allambie Heights

Name:	Address:
Stephanie Hodson	55 Parr Avenue, North Curl Curl
Heidi Ruettinger	43 Gardere Avenue, Curl Curl
Kymberlie Hall	1 / 37 Moore Road, Freshwater
Natalie Wilson	3 Travers Street, Curl Curl
Shantelle Blake	14 Cornwell Road, Allambie Heights
Keiran Deck	5 / 9 Orchard Street, Balgowlah
Amy Pareezer	5 / 20 - 22 Cassia Street, Dee why
Zoe Brailey	23 Gardere Avenue, Curl Curl
Holly Teu	14 Patrick Street, Beacon Hill
David Dubois	N/A
Peter Brailey	23 Gardere Avenue, Curl Curl
Katherine Dybalski	56 Cassia Street, Dee Why
Diana Van Der Heide	21 / 6o Lynwood Avenue, Dee Why AVE Sydney
Leah Gason	69 Hay Street, Collaroy
Camille Morgan	3 Redman Street Street, Seaforth
Christine Bostridge	6a Spring Road Street, North Curl Curl
Kev Markillie	PO Box 55 Street, Dee Why
Emma Lovell	34 Beach Street, Curl Curl
Lyndall Flemming	6 Pitt Road, North Curl Curl
Andrew Cowling	24 Carew Street, Dee Why
Felicity Watson	88 Lawrence Street, Freshwater
Shannon Nunn	6 / 145 Woodland Street, Balgowlah
Katie Barnard	Dee Why
Simone Collignon	37 Bushey Place, Dee Why
Rebecca Thornhill Robinson	96 Wyadra Avenue, Freshwater
Elizabeth Portocarrero	8 St Johns Close, Brookvale
Tracy Turner	42 Carlton Street, Freshwater
Acacia Grant	20 Spring Road North Curl Curl
Robert Bending	160a Garden Street Narrabeen
Katie Chatfield	6 Janice Place, Narrabeena
Mark Catanzariti	10 Lalchere Street, Curl Curl
Scott Mellis	7 Lillie Street, North Curl Curl
Noni Mellis	7 Lillie Street, North Curl Curl
Kate Jeffrey	136 - B Pitt Road, North Curl Curl
Fran Villegas	49 Griffin Road, North Curl Curl
Brianna Sandstrom	8 Carew Street, Dee Why
Helen Girdlestone	68 Headland Road, North Curl Curl
Amy Stead	24 William Street, Fairlight
Peter Schydlo	Abbott Road, North Curl Curl
Jeanne Schydlo	Abbott Road, North Curl Curl
Michelle Peters	38 Austin Avenue, North Curl Curl
Wendy Hayfield	17 Undercliffe Street, Dee Why
Pam Ahrens	35 Parr Avenue, North Curl Curl
Vincent Roperti	6 / 5 Vuko Place, Warriewood
Matt Cooper	3 / 22 Ashburner Street, Manly

Name:	Address:
Richard Knell	5 / 29 Rangers Road, Cremorne
Ken Tweedale	52 Pitt Road, North Curl Curl
Jessica Britten	6a Lillie Street, North curl Curl
Kate Bagnell	33 Grant Street, Woodlands
Ines Glas	7 / 64 Francis Street, Manly
Deb Zimmer	55 Headland Road, Sydney
Simon Hawkes Lynn	74 Westmoreland Avenue, Collaroy
Vanessa Van Der Heide	20 Adams Street, Curl Curl
Alena Turley	5A Corrie Road, North Manly
Rebecca Lawson	18 Wheeler Pde Street, Dee Why
Lee Price	12 Reid Avenue, North Curl Curl
Helen McDougall	12 Reid Avenue, North Curl Curl
Catherine Denney	28 Tango Avenue, Dee why
Beatrice Player	18 Spring Road, North Curl Curl
REBECCA HARRIS	32 Stewart Avenue, Curl Cur
Sarah Byles	41 Adams Street, Curl Curl
Rachel Thomas	GPO Box 4103, North Curl Curl
Jenny Jackson	35 Spring Road, North Curl Curl NSW
Heidi Zhou	19 Spring Road, North Curl Curl
Mark Cruise	14A Bolta Place, Cromer
Lauren Pye	7 / 26 - 32 Boronia Street, Dee Why
Trent Sandstrom	8 Carew Street, Dee Why
Kate PETERS	96A Abbott Road, North Curl Curl
Lara Tocchini	14 Taiyul Road, North Narrabeen
Tianjin Lawless Jennings	1 / 59 Robert Street, Freshwater
Lauren Beness	24 Moore Road, Freshwater
Alice Hatt	-
Lace Cogan	136 Parr Parade, Narrabeena
Rhiannon Swan	17 Tango Avenue ,Dee Why
Natalie Fitzpatrick	7 Kwani Place, Narrabeena
Maxine Gourley	87 Griffin Road, North Curl Curl
Shannon Brunell	Balgowlah
Rebecca Duff	12 Ardsley Avenue, Frenchs Forest
Robert Davies	11 Stewart Avenue, Curl Curl
Sasha Havlik	22 Fay Street, North Curl Curl
Taylor Wye	3 / 19 - 21 Stewart Avenue, Curl Curl
Richard Shepherd	44 Playfair Road, North Curl Curl
Laura Smart	309 / 910 Pittwater RD Dee Why
Louise Johnson	44 Playfair Road, North Curl Curl
Hana Havlik	North Curl Curl
Kim Shelley	7 Pitt Road Street, North Curl Curl
Ann Newton	15 Urunga Street, North Balgowlah
Victoria Howell	33 Austin Avenue, North Curl Curl
Katherine Manu	15 Tango Avenue, Dee Why
Diana Shiland	120 Pitt Road, North Curl Curl



Name:	Address:
Daniel Peters	96A Abbott Road, North Curl Curl
Simone Bourgeois	2 / 20 Curl Curl Parade, Curl Curl
John Walsh	5 Stirgess Avenue, Curl Curl
Lance Stockdale	9 Lalchere Street, Curl Curl
Judith Hayden	32 Abbott Road, Nth Curl Curl
Adrianna Kalous	106 Pitt Road, North Curl Curl
K Burke	1 Burilla Avenue, North Curl Curl
Susie Morgan	1 Burilla Avenue, North Curl Curl
Geraldine Carporzen	48A Golf Parade Street, Manly
Sara Gray	27 Brighton Street, Curl Curl
Claire Salem	21 Makim Street, North Curl Curl
Will Cowling	Carew Street, Dee Why
Julie Harvey	26 Delaigh Avenue, North Curl Curl
Emma Carr	2 / 34 Austin Avenue, North Curl Curl
Mione Collins	27 Tango Avenue, Dee Why
Rosamund Horsley	2 / 37 Adams Street, Curl Curl
Neil Frederiksen	24 Surf Road, North Curl Curl
Caroline Jackson	29 Parr Avenue, North Curl Curl
Jane Lush	8 Burilla Avenue, North Curl Curl
Chris Thomas	9 / 43 Adams Street, Curl Curl
Cristina Hugo	85a Wyndora Avenue, Freshwater
Meghan Cady	5 Stewart Avenue, Curl Curl
Melanie Sinton	44 Abbott Road Road, North Curl Curl
Robert Mohan	27 Robertson Road, North Curl Curl
Blake Lovely	13 Spring Road, North Curl Curl
Lewis Edgley	2 Surf Road, North Curl Curl
Karl Black	1 / 17 Wheeler Parade, Dee Why
Malcolm Fisher	37 - King Street, Manly Vale
Stephen Talbot	14 Spring Road, North Curl Curl
Cassandra Sananes	31 Griffin Road, North Curl Curl
Kit Lowe	13 Robertson Road, North Curl Curl
Julian Dibbs	4 Brighton Street, Curl Curl
Marnie Clarkson	4 Griffin Road, North Curl Curl
Sean Coady	-
Viktorija McDonell	17 / 28 McDonald Street, Freshwater
Lee Bush	9 Spring Road, North Curl Curl
Dan Marshall	-
Kylie Trabona	67 Griffin Road, North Curl Curl
Katie Rudd	5 Farnell Street, Curl Curl
Sylvia Raptis	27 Robertson Road, North Curl Curl
Justin Cooper	-
Nicci Barnes	9 Spring Road, North Curl Curl
Jason Thompson	65 Griffin Road, North Curl curl
Bernadette Vogel	49 Gardere Avenue, Curl Curl
David England	2 Seaview Avenue, Curl Curl

Name:	Address:
Delma Latimer	North Curl Curl
L.Gordon Latimer	North Curl Curl
Stuart Wye	15 Bellevue Parade, North Curl Curl
Paul Bull	33 Pitt Road, North Curl Curl
Mardi Hall	82 - 82 Pitt Road, North Curl Curl
Christine Falzon	2 Abbott Road, North Curl Curl
Stefan Olk	6 Baree Place, Warriewood
Jennifer Olk	6 Baree Place, Warriewood
Arnold Barkhordarian	26a Surf Road, North Curl Curl
Melanie Martin	2 / 84 Wyadra Avenue, Freshwater
Bernadette Holland	6 / 37 - 37 Adams Street Curl Curl
Angus Keene	38 Parr Avenue, North Curl Curl
Simon Yeandle	40 Bellevue Parade, North Curl Curl
Sophire Wright	-
Jacob Chapple	-
Jennifer Jones	44 Tango Avenue, Dee Why
Angelica Rosato	1 / 6 Spring Road, North Curl Curl
Rita Rosato	6b Spring Road, North Curl Curl
Lisa Podmore	4 / 37 Adams Street ST Curl Curl
Allison Berridge	18 / 3 Greenwood Place, Freshwater
Michael Rosato	6 Spring Road, North Curl Curl
Frank Rosato	6B Spring Road, North Curl Curl
Jude Nicoll	81 Quirk Street, Dee Why
Grace Shepherd	44 Playfair Road, North Curl Curl
Nadya Anderson	58 Pitt Road, North Curl Curl
Toula McFadden	23 Tasman Street, Dee Why
Mary Anne Brickwood	25 Blackwood Road, North Curl Curl
Cameron Glover	46 Wheeler Parade, Dee Why
Sita Paling	34 Stewart Avenue, Curl Curl
Christopher Smyth	8 Adams Street, Curl Curl
Haydon Bray	13 Pitt Road, North Curl Curl
Hayley Rabbits	2 / 100 Howard Avenue, Dee Why
Vince Carnovale	12b Charles Street, Freshwater
Jennifer Merrin	10 The Drive, Freshwater
Lucia Plane	62 Bower Street, Manly
Matthew Baker	-
Melanie Amon	3 / 35 Eurobin Avenue, Manly
Alex Patison	36 Tango Avenue, Dee Why
Elaine Patison	36 Tango Avenue, Dee Why
Emma Carr	2 / 34 Austin Avenue, North Curl Curl
Claire Cooper-Southam	66 Richard Road, Scotland Island,
Morgan Irvine	1/32 Westminster Ave - 1 Ross ST North Curl Curl
Amy Down	7 Nicholson Street, North Manly
Marie France Stockdale	3 / 5 - Ilikai Place, Dee Why
Marie Taylor	28 Stewart Avenue, Curl Curl

Name:	Address:
Monika King	26 Orara Road, Allambie Heights
Stuart Marshall	123 Headland Road, North Curl Curl
Michael Gaffney	2 / 51 Adams Street, Curl Curl
Frances Kelly	12 Griffin Road, North Curl Curl
Yana Hately	4 / 110 - 116 Lawrence Street, Freshwater
Bernard Phelan	50 Bellevue Parade, North Curl Curl
Kevin Mascarenhas	28 Chandos Street, Manly Vale
Craig Gibbons	29 Brighton ST Curl Curl
Shaun Hately	4 / 110 - 116 Lawrence Street, Freshwater
Alana Jones	Playfair Road, North Curl Curl
Natalie Kingston	12 Stewart Avenue, Curl Curl
Michelle Burns	30 Griffin Road, North Curl Curl
Lauren Farquhar	11 Creer Place, Narrabeena
Tara Riggs	43 Bennett Street, Curl Curl
William Davies	36 Stirgess Avenue, Curl Curl
Suzanne Davies	36 Stirgess Avenue, Curl Curl
Raymond Cox	3 Austin Avenue, North Curl Curl,
Angela Peterson	30 Robertson Road, North Curl Curl
Dena Oxborrow	-
Sophie Stack	-
Brian Twemlow	211 Headland Road, North Curl Curl
Monique France	9 Rabaul Road, North Curl Curl
Diane Brook	5 Jocelyn Street, North Curl Curl
Jean Dumas	2 Murray Road, Freshwater
Camilla Dumas	2 Murray Road, Freshwater
Barbara Boyce	13 Blackwood Road, North Curl Curl
Jamie Bakewell	30 Stewart Avenue, Curl Curl
Gregory Jepson	1 Rabaul Road, North Curl Curl
Rodger Fishwick	14 Abbott Road, North Curl Curl
Dave Harvey	48 Stirgess Avenue, Curl Curl
Melissa Firth	4 - Ross Street, North Curl Curl
Laura Snyder	4 Ross Street, North Curl Curl
Sally Taylor	31 - Farnell Street, Curl Curl
Philippe Mady	19 Spring Road, North Curl Curl
Vicky Ballantyne	5 Adams Street Street, Curl Curl
Stephen Brickwood	25 Blackwood Road, North Curl Curl
Scott OConnell	23 Spring Road Road, North Curl Curl
Judith Hayden	32 Abbott Rd Abbott Road, North Curl Curl
Stephen Brickwood	25 Blackwood Road, North Curl Curl
Elizabeth Teasdale	43 Pitt Road, North Curl Curl
Kirstie Ashley	1 Rabaul Road, North Curl Curl
Margaret Ward	6 Manuela Place, South Curl Curl
Robert Starkey	3 / 32 Brighton Street, Freshwater
Juliane Grabbert	115 Pitt Road Street, North Curl Curl
Kellie Petherick	28 Franklin Street, Curl Curl

<b>Name:</b>	<b>Address:</b>
Rosalind de Rome	33 Spring Road North Curl Curl
Sabrina Kost	-
David Dubois	-
Susan Stack	4 Spring Road, North Curl Curl
Zali Steggall OAM	2 / 17 - 19 Sydney Road, Manly
Mark Stack	4 Spring Road North Curl Curl
Tino Grabbert	115 Pitt Road Street, North Curl Curl
Victor Mady	19 Spring Road, North Curl Curl
Sophie Stack	-
Chris Hansen	120 Abbott Road Street, North Curl Curl
Peter Caheny	40 Bennett Street, Curl Curl
James Griffin MP	Shop 2, 2 Wentworth Street, Manly
Michael Briody	1 Ellen Street, Curl Curl
Trevor Matthews	6 Tanderra Place, Curl Curl
A Sanbrook	27 Stirgess Avenue, Curl Curl
Rodney Rayner	39 Pitt Road, North Curl Curl
Helen Rayner	39 Pitt Road, North Curl Curl
Christopher Rynd	15 Jamieson Avenue, North Curl Curl
Chris Willcocks	7 Travers Road, Curl Curl
Evan Matthews	6 Tanderra Place, Curl Curl
Bruce McLennan	46 Abbott Road, North Curl Curl
Kit Rynd	15 Jamieson Avenue, North Curl Curl
Tim Fielding	-
David O'Brien	14 Playfair Road, North Curl Curl
Louise Waddington	35 Ross Street, North Curl Curl
Andy Postle	PO Box 6051 Narraweena
Ian Bonner	11A Grainger Avenue, North Curl Curl

#### **Issues raised in submissions:**

##### **1. Health Risks**

- Area should be kept free of electromagnetic devices/microwave radiation (effects on health)
- Proximity to residences, schools, playing fields, children's playground, youth centre, beaches and waterways
- Inadequate evidence to prove the health impacts of Electromagnetic Emissions (EME) emitted from the 5G phone tower to local residents and visitors
- Australian Standards are extremely high and don't take into account uncertainty about the long-term effects of this relatively new technology
- Long term effects of EMF radiation are unknown, especially with regard to children's development, health and wellbeing.
- Health risks to surrounding waterways and wetlands
- World Health Organisation acknowledges that EMEs are potentially carcinogenic
- Rising non-genetic aggressive breast cancer and Motor Neurone Disease (MND) cases being investigated relating to radiation which is concentrated surrounding mobile phone towers
- Radiation harming soft tissue cells increasing chances of cancer and tumours
- National Code of Practice for Mobile Phone Base Station Deployment is premised on location atop high buildings and not in parkland



- No safety studies that can assure us that there are no negative health effects from this type of construction, in fact quite the opposite; there is substantial evidence suggesting there are very serious health risks.
- Does the Council warrant that there are and will be no adverse health effects that can be attributed to RF EME, even at low emissions?
- The Federal government continues to undertake research into this area

Planners Comments:

The Australian Government has adopted standards for electromagnetic emissions for such facilities, to ensure these types of infrastructure structures can be safely developed. Council relies on these standards to make sure that any proposed telecommunications facility achieves the required health standards and does not pose unnecessary risks to the public. The proposed development meets these requirements and accordingly, health risks are not an issue for the application as is acknowledged by Council's Health officer.

## **2. School Health Risks**

- The tower is within 300m of Curl Curl North Public School, already not compliant with the Department of Education which states towers as the one proposed should be no more than 500m from a school.
- Other schools within the range of possible exposure to radiation. These schools include Manly Selective High School and Freshwater Senior Campus with other students also travelling through this area daily to get to school.
- We should be cautious when considering the installation of telecommunications towers in close proximity to school and recreational facilities which are regularly used by students.
- Curl Curl North Public School currently use sports fields for recreational activities as well as their school playground due to construction
- Newly built classrooms are closer to the boundary placing it closer to the tower.
- 12-13 schools use fields for weekly sport eg. PSSA

Planners Comments:

The location of the telecommunications tower meets all relevant health requirements. The Australian standards do not specify a distance from schools or playing fields and accordingly, this is not a planning consideration in the assessment of the proposal.

## **3. Public open space and recreational area**

- More need for open space for mental health and physical activity for residents, adults and children.
- The proposed location is located within a major sporting fields used regularly for sports games, training and relaxation
- The site is zoned RE1, Public recreation and the proposal is at odds with the objectives of this zone.

Planners Comments:

The existing open space will remain available to the public and its use will be unaffected by the proposed development. The structure meets all health requirements and accordingly the public open space area will remain appropriate for all sporting and personal physical activity uses. The objectives of the open space zone are met with the recreational uses retained, natural environment preserved and appropriate management of the public space.

Council's landscape and parks officers have advised that the location of the elevated platform associated with the monopole would be better sited elsewhere to minimise impact upon the use of the area for its intended sporting use. The relocation of this elevated platform could be supported subject to conditions recommended by Council's Parks and Reserves Department.

## **4. Visual Impacts**

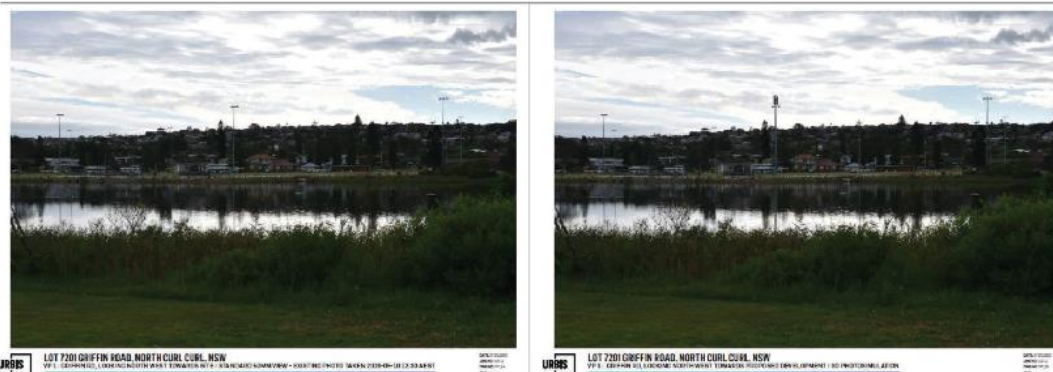
- Proposed tower unsightly and large
- View from beach
- Tower visually conspicuous in reserve due to height and central location
- Visual impact to highly valuable community asset
- Visual Impact Assessment accompanying application concedes the proposal will have a high impact
- Visual Impact Assessment provided by Optus is deficient and one sided
- Light towers have not been through DA process and are precedent Optus using as precedent
- Conflict with the Northern Beaches Council Curl Curl Beach Landscape Master Plan
- Permanent structure that is totally out of line with the surrounding landscape.
- No other structures in the vicinity of a similar height
- Adjacent tree buffer is approximately 15 metres in height and will not fully screen the structure
- In order for the height of 25 metres to be achieved, the base of the tower would be required to be wide enough to provide structural strength for the tower and would create a negative visual impact at its base
- View already interrupted by Optus lines.
- Equipment shelter not clearly shown or addressed in visual impact assessment

Planners Comments:

The height of the proposed monopole is compatible with the light pole it replaces and with the surrounding light poles within the sporting field. The siting of the new Optus structure is well considered ensuring that it is not out of place. However, Council's Urban Design Officer has recommended refusal stating, *"it will still be substantially taller than the other lighting poles and therefore will still be noticeable"*. This view is not concurred with, as the additional 3.7 metres in height is not considered vastly different, and not to the detriment of the open space area.

The applicant submitted on 16 September 2020 *"Response to Submissions"* and stated the following in relation to visual impacts:-

*"The telecommunications facility will co-locate with a council flood light pole, which will ultimately reduce the potential for unnecessary structures and visual clutter within the site. The existing floodlight has an overall height of 22.00 metres, while the proposal would have an overall height of 25.70 metres. There are also more than twenty other floodlight poles or other vertical elements of varying heights on John Fisher Park (please see Viewpoint 5 (VP5) in Appendix B of the VIA for an illustration of these vertical elements), so the proposed facility would have a high degree of visual consistency with other elements within the site. The proposal will comply with the existing built form and surroundings of existing infrastructure such as floodlight poles, light poles, power poles throughout and surrounding the site."*



Appendix B – Photo simulations of the proposed development – Visual Impact Assessment by Urbis dated 7 May 2020 (view point from southern side of Curl Curl Lagoon)





Appendix B – Photo simulations of the proposed development – Visual Impact Assessment by Urbis dated 7 May 2020 (view point from Abbott Road)

The recommendation of this report diverges from the advice from Council's Urban Design Officer with the impact of the additional 3.7 metres considered reasonable and of minimal impact.

## 5. Inappropriate location

- There are alternative options such as industrial areas e.g. 27 Sydenham Road, Brookvale
- All parkland inappropriate, proposed land zoned RE1
- Other sites considered by Optus with lesser structures ruled out for visual impacts
- According to Code, as far as practical a telecommunications facility is to be mounted on an existing building or structure and integrated with the design and appearance of the building or structure, you will find plenty of those in Brookvale
- Optus should look at improving existing surrounding towers rather than adding new ones, one structure is already located at Mary McKillop Park.
- Been rejected in the years 2015 and 2017 as a result of community consultation and locational factors, to which a community agreement with council claims, "no towers were to be erected in public parks and reserves".
- Central location on Field 5, makes structure more prominent
- Better to locate on high ground where height of structure can be lower and lesser impact
- Better located adjacent existing development e.g. community centre or rear of art centre
- Can relocate to industrial area such as Brookvale

### Planners Comments:

This application can only consider the proposed location and the impacts in this space. The applicant has looked at some of the suggested alternative locations and these have been discounted for various technical and other reasons.

SEPP Infrastructure permits the proposed development within this zone and accordingly such structures can be considered by Council. Given that the proposal is considered to be of a scale and overall impact consistent with the character and landscape of the area, the development is considered appropriate.

## 6. Environment (Flora and Fauna)

- Detrimental impacts on flora and fauna
- Curl Curl Lagoon Estuary Management Plan breached
- Preservation of natural parks and wildlife breached by Optus use
- Natural corridor been rehabilitated recently, and bush regeneration has done in this area – proposed development is to the detriment of these works
- Community and Council have spent an enormous amount of time and money on rehabilitation work in Curl Curl Lagoon and surrounding reserves, beach (less than 200 m away) and John Fisher Park
- Effect on local wildlife which is slowly coming back after the pristine lagoon was destroyed by the tip and runoff from local industries
- Wildlife just returning to area following rehabilitations works

- Excavation and or disturbance to natural ground on the site could result in toxins from previous land use to seep through, undoing and remediation work that has been completed in order to enhance the surrounding environment

Planners Comments:

Council's Environmental Officers have indicated that they have no objections to the development based on the imposition of conditions which ensure the maintenance and consideration of environmental factors. The advice provided is that the natural habitats will be retained and protected adequately, and that the development is appropriate subject to appropriate management and construction.

The community rehabilitation works will be unaffected.

**7. Impacts on local community**

- Property values decreased
- Local community opposed
- Community lose control of land if leased
- Community being taken advantage of by big business who are more worried about profit than community health and the environment
- Inadequate time to review as a community
- Note not all the Community were contacted based on the very short time frame we had to consult the Community
- Overwhelmingly opposed to this mobile tower proposal in any park, reserve, public land, near homes, schools or beach
- Inadequate community consultation by Optus
- Beach is tourist attraction which would be detrimentally impacted by eyesore. Loss of interest would impact local economy
- Tower will deter locals from using the area
- Too close to sporting fields such as the soccer fields, netball courts and baseball fields.
- Parents will take their kids out of sport to avoid fields
- Deterrent to move to the area and people more likely to relocate due to the unknown impacts of emissions, thus would be detrimental to the community and local economy.

Planners Comments:

The community consultation process by Optus and the notification process by Council have been undertaken accordingly to relevant requirements.

Telecommunication towers are generally an unpopular development within the local community. However, they are a necessity of modern life and this proposal allows for a structure which is compliant with health requirements. The proposed location is considered to be a reasonable and appropriate choice to solve the flawed mobile coverage in this locality and is not to the detriment of any valid planning consideration.

**8. Proposed installation is Unnecessary**

- Phone reception in South Curl Curl consistent and adequate
- Benefits low, with mobile coverage adequate and limited number of users
- Optus has successfully operated without this tower
- The argument of improved communications for users of the park is not essential
- Small area of bad reception is accepted by residents

Planners Comments:

Varying comments were received from the public stating that the phone reception is both good and bad in the area. Similarly, some find this acceptable and others, unacceptable. This is not a relevant ground for refusal of the application.

**9. Future Additions**



- Full impact not addressed as other providers may want to use tower and also locate enclosures, antennas etc. at site, resulting in greater environmental impacts
- Other towers and enlargement possible in the future as co-sharing is encouraged
- Sets precedent for other towers and telecommunications companies.

Planners Comments:

Should the application be approved, and the structure built, any future additions to the monopole and Optus development would be subject to a new and separate Development Application. The impacts of these would be considered at that time. It is acknowledged that co-sharing is encouraged and that applications may result in the future.

**10. Documentation Deficient**

- Light poles not existing and should not be shown
- Plans inadequate/ no dimensions
- Difficult to work out location
- Size and location not clear
- Notification was insufficient
  - proposed location is inaccurate
  - advised to be in Hudson Parade but is actually to be on sporting fields adjacent to Abbotts road
  - Notification period was too short and was done inadequately

Planners Comments:

The plans and documentation are accurate and adequate to allow for assessment of the application.

The notification period and the notification area was also extended, and a new sign located on the site to clarify location following concerns/issues in the original notification period.

**11. Submissions in favour of the proposal**

- Poor service will be resolved in this area
- Better service enabling working from home easier/running own business/conducting everyday life
- The 25.7 metre structure will replace an existing light pole and will not change the view much, rather it will blend in with the existing lights.

Planners Comments:

The lack of service in the Curl Curl area is noted.

**REFERRALS**

Internal Referral Body	Comments
Environmental Health – industrial use	<p>Council's Environmental Health officer has provided the following comments:</p> <p><i>"The proposed telecommunications facility will comprise a 22.5 metre monopole, six panel antennas, fourteen remote radio units, council floodlights, an outdoor cabinet and other associated ancillary equipment and will have a total height of 25.7m (including antennas and floodlights). The main issue for consideration is Electromagnetic Radiation and Councils flood lighting of playingfields.</i></p> <p><i>Due to public concern about possible health effects of electromagnetic energy (EME) the applicants comments are repeated here to assist the reader:</i></p>

Internal Referral Body	Comments
	<p><b>EME &amp; HEALTH</b></p> <p><i>Optus acknowledges some people are genuinely concerned about the possible health effects of electromagnetic energy (EME) from mobile phone base stations and is committed to addressing these concerns responsibly. Optus, along with the other mobile phone carriers, must strictly adhere to Commonwealth Legislation and regulations regarding mobile phone facilities and equipment administered by the Australian Communications and Media Authority (ACMA).</i></p> <p><i>In 2003 the ACMA adopted a technical standard for continuous exposure of the general public to RF EME from mobile base stations. The standard, known as the Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2003, was prepared by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and is the same as that recommended by ICNIRP (International Commission for Non-Ionising Radiation Protection), an agency associated with the World Health Organisation (WHO). Mobile carriers must comply with the Australian Standard on exposure to EME set by the ACMA.</i></p> <p><i>The Standard operates by placing a limit on the strength of the signal (or RF EME) that Optus can transmit to and from any network base station. The general public health standard is not based on distance limitations, or the creation of 'buffer zones'. The environmental standard restricts the signal strength to a level low enough to protect everyone at all times. It has a significant safety margin, or precautionary approach, built into it.</i></p> <p><i>The use of the Standard in development applications involving Telecommunications Facilities was tested and supported by decisions made in the New South Wales Land and Environment Court, having particular regard to Telstra Corporation Limited Vs Hornsby Shire Council [2006] NSWLEC 133 which tested whether the proposed EME levels will harm the health and safety of the residents.</i></p> <p><i>The Land and Environment Court ruled in favour of Telstra, on the basis that the Standards set by the ACMA are scientifically proved &amp; robust.</i></p> <p><i>The Court stated that Councils should adopt these standards when measuring and determining EME levels, given that it is the ACMA that has the responsibility for ensuring exposure limits do not adversely affect the health and amenity of the community. The Court further stated that it was not appropriate for the Court to set aside or disregard the existing safety standard nor is it appropriate for the Court to pioneer its own standards. The Court ruled it was appropriate for safety standards to be set by authorities with special expertise, such as ARPANSA. In order to demonstrate compliance with the standard, ARPANSA created a prediction report using a standard methodology to analyse the maximum potential impact of any new</i></p>

Internal Referral Body	Comments
	<p><i>telecommunications facility. Carriers are obliged to undertake this analysis for each new facility and make it publicly available. Importantly, the ARPANSA-created compliance report demonstrates the maximum signal strength of a proposed facility, assuming that it's handling the maximum number of users 24 hours a day.</i></p> <p><i>In this way, ARPANSA requires network carriers to demonstrate the greatest possible impact that a new telecommunications facility could have on the environment, to give the community greater peace of mind. In reality, base stations are designed to operate at the lowest possible power level to accommodate only the number of customers using the facility at any one time. This design function is called 'adaptive power control' and ensures that the base station operates at minimum, not maximum, power levels at all times.</i></p> <p><i>The maximum environmental EME level from the site at Curl Curl, once it is operational, has been estimated as being will within the ACMA mandated exposure limit (refer to Appendix E). This maximum level is extremely low and the maximum environmental EME level from the site, once it is operational, will comply with the ACMA mandated exposure limit. Optus complies with the public health and safety standard by a significant margin.</i></p> <p><i>and also</i></p> <p><i>Optus relies on the expert advice of national and international health authorities such as the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and the World Health Organisation (WHO) for overall assessments of health and safety impacts. The WHO advises that all expert reviews on the health effects of exposure to radiofrequency fields have concluded that no adverse health effects have been established from exposure to radiofrequency fields at levels below the international safety guidelines that have been adopted in Australia</i></p> <p><i>The estimated maximum EME is 1.42% of the 100% public exposure limit.</i></p> <p><i>Lighting is to be restricted to the playing areas and approved times of operation."</i></p> <p><b>Recommendation:</b> Approval – subject to conditions</p>
Environmental Health – Acid Sulfate soils	<p>Council's Environmental Health Officer has provided the following comments:</p> <p><i>"The applicant advises: As required by SEPP 55, a preliminary site investigation has been undertaken (refer to Appendix S)</i></p>

Internal Referral Body	Comments
	<p><i>The preliminary site investigation recommends that:</i></p> <ul style="list-style-type: none"> <li>• <i>An Acid Sulfate Soils Management Plan needs to be commissioned prior to commencement of excavation work. Details are available in the Acid Sulfate Soils report issued separately (Ref: CUAB-19- PASSA);</i></li> <li>• <i>If required, excavated soils can be re-used on-site subject to treatment and testing of the soils in accordance with an Acid Sulfate Soils Management Plan as per Recommendation 1 above;</i></li> <li>• <i>Should any evidence become apparent during site/earth works that asbestos or asbestos fragments (or other contaminants including hydrocarbon odours) are present in soils then appropriate actions should be undertaken in accordance with relevant guidelines and regulations;</i></li> <li>• <i>Any soils imported to the Site must be validated as suitable for Public Open Space land use; and</i></li> <li>• <i>On-site soils meet the contamination criteria for classification as General Solid Waste. All soils to be taken offsite must take into the presence of Potential Acid Sulfate Soils at the Site prior to being disposed of to a suitable landfill facility."</i></li> </ul> <p><b>Recommendation:</b> Approval – subject to conditions</p>
Environmental Health – contaminated lands	<p>Council's Environmental Health Officer has provided the following comments:</p> <p><i>"Applicant advises:</i> <i>As required by SEPP 55, a preliminary site investigation has been undertaken (refer to Appendix S)</i> <i>The preliminary site investigation recommends that:</i></p> <ul style="list-style-type: none"> <li>• <i>An Acid Sulfate Soils Management Plan needs to be commissioned prior to commencement of excavation work. Details are available in the Acid Sulfate Soils report issued separately (Ref: CUAB-19-PASSA);</i></li> <li>• <i>If required, excavated soils can be re-used on-site subject to treatment and testing of the soils in accordance with an Acid Sulfate Soils Management Plan as per Recommendation 1 above;</i></li> <li>• <i>Should any evidence become apparent during site/earth works that asbestos or asbestos fragments (or other contaminants including hydrocarbon odours) are present in soils then appropriate actions should be undertaken in accordance with relevant guidelines and regulations;</i></li> <li>• <i>Any soils imported to the Site must be validated as suitable for Public Open Space land use; and</i></li> <li>• <i>On-site soils meet the contamination criteria for classification as General Solid Waste. All soils to be</i></li> </ul>



Internal Referral Body	Comments
	<p><i>taken offsite must take into the presence of Potential Acid Sulfate Soils at the Site prior to being disposed of to a suitable landfill facility (these matters will be dealt with in the Acid Sulfate referral)</i></p> <p><i>additionally they advise:</i></p> <p><b>4.1 General History</b>  <i>A review of the John Fisher Park and Abbott Road Land Plan of Management (2001) identifies the Site and the surrounding areas history as;</i></p> <p><i>The site now occupied by John Fisher Park, also referred to as Abbott Road Fields was previously low lying, poorly draining estuarine flats. The area supported Swamp Mahogany (Eucalyptus robusta) heath and scrub, dominated by Swamp Oak (Casuarina glauca). Due to its poorly drained soils, swamp lands and dense vegetation, the area was not suited to colonisation by early settlers who were looking for agricultural land (Benson and Howell, 1990). Early in the 20th century, part of the land was cleared and drainage was improved for the establishment of market gardens. These gardens retained some proportion of the previous native vegetation. Following World War I, the northern beaches of Sydney became popular holiday resorts.</i></p> <p><i>As motor cars improved access to northern areas, small cottages were built behind the beaches from Manly to Newport. Following World War II intensive urban development began to spread along the coastal beaches and up onto the sandstone plateaus. In response to urban development and population growth in the local area, in 1951 the market gardens were converted into a tip. This involved extensive filling with both putrescible and non-putrescible wastes and resulted in the straightening of the previously more winding Greendale Creek. As a result of the change in hydrology and the addition of fill, the banks of the creek were progressively raised and steepened, narrowing the creek. Filling was followed by civil works which continued up until the mid-1970's, after which the park was developed as open space, with numerous sporting facilities. The finished park was named after John L. Fisher, Shire President at the time the project began. The park is also referred to as Abbott Road Fields. Sources and supporting information are provided in Appendix G.</i></p> <p><b>4.2 Heritage Registers</b>  <i>The Site was listed (at the time of preparation of this report) as a heritage item under Australian and NSW Heritage registers. A statement of significance show The Memorial Gateway has historical, technical and aesthetic significance as a man-made and high visual element designed as a formal entrance to the newly established playing fields for both Manly High School and its adjoining sports grounds. It also has a high degree of social significance in its association with famous local sports identities. Schedule 5 of Council's LEP did not list the site as a heritage item. The</i></p>

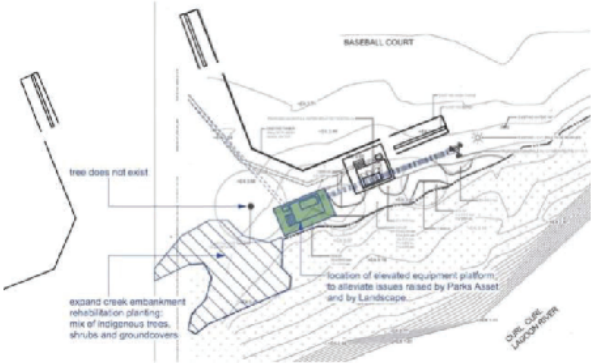
Internal Referral Body	Comments
	<p><i>search did not identify the presence of any items of national or state significance in the vicinity of the Site. The results of the heritage database search are provided in Appendix D. Canopy Enterprises PSI/WC Part of Abbott Road Fields, Curl Curl 2096 Ref: CUAB-19-PSI Page 12</i></p> <p><b>4.3 EPA Records</b>  <i>Search of the NSW EPA's public register under the Protection of the Environment Operations Act 1997 (POEO Act) was undertaken (Appendix E). The search for the Site did not identify any records in the database for the Site. A search was conducted of the EPA's public contaminated land register (Appendix E). The search showed no entry for the Site. There is a site located 1.2km west of the site which has been notified to the EPA under Section 60 of the contaminated Land Management Act 1997 (CLM Act). The property is listed as a "Landfill". It is assigned an EPA Site Management Class of "Regulation under CLM Act not required" which means that "The EPA has completed an assessment of the contamination and decided that regulation under the Contaminated Land Management Act 1997 is not required."</i></p> <p><i>In summary the site was a previous landfill capped and used as playing fields, The limited construction work for a communications tower only is likely to uncover a small quantity of previous landfill and needs to be managed.(Acid Sulfate Soil is dealt with in another referral)</i></p> <p><i>The applicant has carried out limited boring and testing and is not expecting any significant issues but acknowledges that the material removed will need to be examined with regard to potential contaminants including asbestos."</i></p> <p>Environmental Health will require this material to be managed and covered after excavation, pending testing and then appropriately reused on site or removed and disposed of appropriately, conditions will be added below.</p> <p><b>Recommendation:</b>  Approval – subject to conditions</p>
Natural Environment- Coastal	<p>Council's Natural Environment Officer has provided the following comments:</p> <p><i>"The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011.</i></p> <p><b>Coastal Management Act 2016</b>  <i>The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.</i></p>

Internal Referral Body	Comments
	<p><i>The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</i></p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b>  <i>As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</i></p> <p><i>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</i></p> <p><b>Comment:</b>  <i>On internal assessment and as also assessed in the submitted Statement of Environmental Effects (SEE) report prepared by URBIS dated 4 May 2020, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</i></p> <p><i>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</i></p> <p><b>Warringah LEP 2011 and Warringah DCP 2011</b>  <i>No other coastal related issues identified.</i></p> <p><i>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011. The proposal is therefore supported.</i></p> <p><b>Note:</b> <i>Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.</i></p> <p><b>Recommendation:</b>  Approval</p>
Natural Environment - Flood	<p>Council's Flood Officer has provided the following comments:</p> <p><i>"The proposed telecommunications installation is located within a flood prone area. Conditions are included to ensure that electricals are appropriately protected from flooding.</i></p> <p><i>The proposal is therefore supported."</i></p> <p><b>Recommendation:</b>  Approval – subject to conditions</p>

Internal Referral Body	Comments
Property and Commercial Development	<p>Council's Property and Commercial Development Officer provided the following comments:</p> <p><i>"The proposal is for the erection of a new 25.7 metre high telco facility at John Fischer park, North Curl Curl.</i></p> <p><i>The relevant Plan of Management for the site should be checked to ensure that the proposal is consistent with the objectives and future development permitted in the PoM.</i></p> <p><i>Property advises that a proposed new pole of this height will likely attract other carriers in future to co-locate on the same pole and each other carrier will require similar equipment on ground within the Council managed Crown Reserve. This may lead to a situation where the pole and ground area become cluttered with equipment similar to the situation at Plateau Park Collaroy Plateau which has become a target for vandalism.</i></p> <p><i>In relation to the proposed works, the proposed equipment on ground appears to be very close to the existing baseball spectator area.</i></p> <p><i>Any proposed development consent for this proposal should be subject to a separate formal agreement between the carrier and Council's Park and Recreation Group (as Crown Land Manager) for the proposed new pole regarding pole ownership, renewal/replacement, maintenance, electricity usage, floodlights, shut down provisions etc on the proposed new pole.</i></p> <p><i>The proposal is therefore supported."</i></p> <p><b>Recommendation:</b> Approval</p>
Parks, Reserves and Foreshores	<p>Council's Parks, Reserves and Foreshores Officer provided the following comments:</p> <p><i>"The development proposal is for construction and ongoing operation of a telecommunications facility located within the Abbott Road sportsground in North Curl Curl. The proposal includes co-locating the telecommunications facility with Council's existing flood lighting, as well as a shelter on the ground levels for associated equipment.</i></p> <p><i>As reported in the Statement of Environmental Effects, the facility comprises the replacement of a 22 metre lighting pole with a 22.5 metre monopole, six panel antennas, nine remote radio units, council floodlights, an outdoor cabinet and other associated ancillary equipment. The new structure will have a total height of 25.7m (including antennas and floodlights).</i></p> <p><i>The Parks Assets Referral is considered against State Environmental Planning Policy (Infrastructure) 2007, and the NSW Telecommunications Facilities Guideline including Broadband 2010, Warringah LEP, and Warringah DCP, and</i></p>



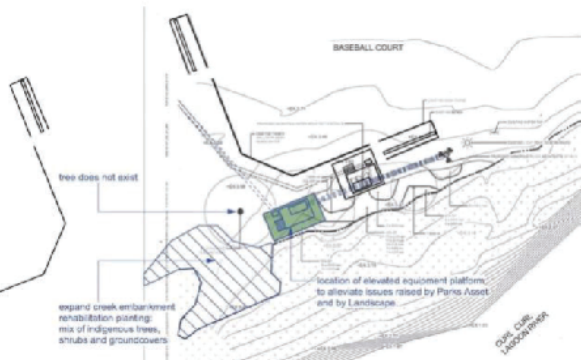
Internal Referral Body	Comments
	<p><i>Parks analysis against the following considerations as described in the Statement of Environmental Effects: suitability of the site for development; site selection and exploration of alternative locations; community concerns and opinions; compliance with relevant state policies and controls; and environmental impacts.</i></p> <p><i>The Land upon where the proposal is located is identified as RE1 Public Recreation, and in this zone telecommunications facilities are not permitted under the Warringah LEP. Under clause 115 of the State Environmental Planning Policy (Infrastructure) 2007, which prevails over the Warringah LEP, the proposed telecommunication facility is permitted with consent from Council.</i></p> <p><i>A total of eight suggested locations are analysed for suitability to secure optimal service improvements as outlined in the Statement of Environmental Effects. In consideration of location, analysis of colocation has been undertaken, concluding inadequate location and upgrade options to secure the required service improvements to the Curl Curl area. All locations result in some form of impact in terms of distance from residential, sporting and educational land use areas. In terms of recreational amenity the subject of this Parks Referral, it is considered that the utilisation of the proposed monopole with combined sportsfield flood lighting and telecommunications does not change the use of the land for its existing recreational purposes.</i></p> <p><i>The selected site from the applicant is Field No. 5 at the Abbott Road Sportsground in North Curl Curl.</i></p> <p><i>It is Parks determination that the selected site does not substantially impact upon the recreational use of the land, whereas other alternative sites require new infrastructure or similar additions, and are in locations that impact residential, sporting and educational land use areas.</i></p> <p><i>The proposal includes removal of the existing sports floodlighting pole in a west direction approximately 3 metres and replacement with the proposed monopole supporting sports field floodlighting and telecommunications on top, as well as the installation of a elevated equipment platform upon the ground. Parks Assets considers that the location of the elevated equipment platform upon the ground as indicated on the plans impacts upon the access and useability of the baseball facility behind the batting net for players and spectators (player dug-out and storage of game equipment, and safe location to watch games) and should be located elsewhere to minimise impact upon the use of the area for its intended sporting use, and an alternative location is available as shown below:</i></p>

Internal Referral Body	Comments
	 <p> <i>With the requirement to relocate the elevated equipment platform, it is considered that the use of the land as recreational remains the same and is not impacted by this proposal. Construction co-ordination to ensure continued public access and sporting use shall be a condition of consent.</i> </p> <p> <i>Given the above considerations, Parks can support the application subject to resolution of the planning consideration of permissible use within the zone, and thereupon subject to the applicant entering into a Memorandum of Understanding agreement that maintenance associated with the development is undertaken by the operator of the telecommunication facility, including repairs of any physical public open space upon the ground impacted during construction and following completion for the life of the development, and that Council access is not restricted by the operator of the telecommunication facility, as well as any other agreements considered necessary by Council, with Parks Assets requiring the following agreement with the operator of the telecommunication facility:</i> </p> <ul style="list-style-type: none"> <li>• repair of ground following excavation works</li> <li>• ownership of responsibility and procedures for the replacement of Council's floodlighting</li> <li>• ongoing maintenance of telecommunication facility and equipment, including co-ordination with Council and communications with community</li> <li>• times of operation for ongoing works</li> </ul> <p> <i>Furthermore, conditions of consent shall be imposed on any approval including: Working on and Access to Reserves Permit, Construction Management Plan - Council Assets, Installation and Maintenance of Sediment and Erosion Control, Dilapidation Report of Land owned or managed by Council, Protection of trees and vegetation within Land owned or managed by Council, Protection of Council's Public Assets, Removal of All Temporary structures/Materials and Construction Rubbish, and</i> </p>

Internal Referral Body	Comments
	<p><i>Certification of sports flood lighting levels.</i></p> <p><i>The proposal is therefore supported.</i></p> <p><b>Recommendation:</b> <i>Approval subject to conditions"</i></p>
Urban Design	<p>Council's Urban Design Officer provided the following comments:</p> <p><i>"The proposal should addressed the following issues:</i>  <i>1. There is a discrepancy to the overall height of the structure described in the documents submitted. The drawings indicate an overall an overall height of 25.7m while the SEE states 28.3m the existing light pole is 22m so it could be 3.7m or 6.3m additional height. The proponent should clarify.</i>  <i>2. Based on all the options/locations studied and proposed to date, the current proposed location seems to be the best option as it replaces a lighting pole but it will still be substantially taller than the other lighting poles and therefore will still be noticeable.</i></p> <p><i>The proposal is therefore unsupported."</i></p> <p><b>Recommendation:</b> Refusal</p> <p><u>Planner's comment:</u>  A revised SEE was provided which resolved the discrepancy in height. The additional 3.7 metres in height is not considered unreasonable in this location and given the setting with 11 other neighbouring light poles, will be of minimal impact. Accordingly, the recommendation of this report does not concur with Council's Urban Design Officer.</p>
Landscape	<p>Council's Landscape Officer provided the following comments:</p> <p><i>"The development proposal is for construction and ongoing operation of a telecommunications facility located within the Abbott Road sportsground in North Curl Curl. The proposal includes co-locating the telecommunications facility with Council's existing flood lighting, as well as a shelter on the ground levels for associated equipment.</i></p> <p><i>As reported in the Statement of Environmental Effects, the facility comprises the replacement of a 22-metre lighting pole with a 22.5 metre monopole, six panel antennas, nine remote radio units, council floodlights, an outdoor cabinet and other associated ancillary equipment. The new structure will have a total height of 25.7m (including antennas and floodlights). The Landscape Referral is considered against State Environmental Planning Policy (Infrastructure) 2007, and the NSW Telecommunications Facilities Guideline including Broadband 2010, Warringah LEP, and Warringah DCP including D1 Landscaped Open Space and Bushland Setting, D4 Electromagnetic Radiation, D9</i></p>

Internal Referral Body	Comments
	<p><i>Building Bulk, and D21 Provision and Location of Utility Services.</i></p> <p><i>The Landscape analysis against the Warringah DCP controls requires development to minimise built form and impact of development when viewed from adjoining properties, streets, waterways and public recreation land.</i></p> <p><i>The Land upon where the proposal is located is identified as RE1 Public Recreation, and in this zone, telecommunications facilities are not permitted under the Warringah LEP. Under clause 115 of the State Environmental Planning Policy (Infrastructure) 2007, which prevails over the Warringah LEP, the proposed telecommunication facility is permitted with consent from Council.</i></p> <p><i>A total of eight suggested locations are analysed for suitability to secure optimal service improvements as outlined in the Statement of Environmental Effects. In consideration of location, analysis of colocation has been undertaken, concluding inadequate location and upgrade options to secure the required service improvements to the Curl Curl area. All locations result in some form of impact in terms of distance from residential, sporting and educational land use areas, as well as visual impacts to the landscape. It is considered that rather than add additional visual, heritage and environmental impacts elsewhere, the proposal provides the least impact of the presented options due to its location.</i></p> <p><i>The selected site from the applicant is Field No. 5 at the Abbott Road Sportsground in North Curl Curl.</i></p> <p><i>The selected site does not substantially add new visual elements into the landscape, as the existing Abbott Road playing fields include eleven flood lighting poles around the perimeter that are visible in the immediate vicinity. Similarly, tall flood lighting occupies nearby Reub Hudson playing fields. The proposal adds an additional 3.7 metres in height with telecommunications equipment flush-mounted to the top section of the monopole. Other alternative sites would require new infrastructure or similar additions, and are in locations that impact residential, sporting and educational land use areas. It is noted that the existing Abbott Road floodlighting is most visible in the immediate vicinity and is less visible in surrounding areas or is otherwise set against a background of residential and hillside landform.</i></p> <p><i>The proposal includes removal of the existing sports floodlighting pole in a west direction approximately 3 metres and replacement with the proposed monopole supporting sports field floodlighting and telecommunications on top, as well as the installation of a elevated equipment platform upon the ground. Council's Landscape Referral assessment considers that the location of the elevated equipment platform upon the ground as indicated on the plans impacts upon the access and useability of the</i></p>



Internal Referral Body	Comments
	<p>baseball facility behind the batting net for players and spectators (player dug-out and storage of game equipment, and safe location to watch games) and should be located elsewhere to minimise impact upon the use of the area for its intended sporting use, and an alternative location is available as shown below:</p>  <p>With the requirement to relocate the elevated equipment platform and provide additional landscape embankment rehabilitation planting, it is considered that the visual impact is minimised.</p> <p>Given the above considerations, Landscape Referral can support the application subject to resolution of the planning consideration of permissible use within the zone, and thereupon subject to amended landscape plans to comply with the above sketch, requiring:</p> <ul style="list-style-type: none"> <li>• relocation of the elevated equipment platform</li> <li>• additional creek embankment rehabilitation planting containing a mix of indigenous trees, shrubs and Groundcovers.</li> </ul> <p>The proposal is therefore supported.</p> <p>Recommendation: Approval – subject to conditions”</p>
Biodiversity & Bushland	<p>“A number of controls under the Warringah DCP apply to the proposed location, including E3 Threatened Species and High Conservation Habitat, E4 Wildlife Corridor and E5 Native Vegetation. The proposal has also been assessed against the NSW and Commonwealth biodiversity legislation, as well as State Environmental Planning Policy (Coastal Management) 2018 cl. 13 Development on land within the coastal environment area.</p> <p>Swamp Oak Floodplain Forest of the NSW North Coast, Sydney Basin and South East Corner Bioregions vegetation community, an Endangered Ecological Community listed under both the NSW and Commonwealth biodiversity legislation, has been mapped within the study area. The John Fisher Park Telecommunications Facility - Flora and Fauna Assessment and Biodiversity Management Plan</p>

Internal Referral Body	Comments
	<p><i>(Eco Logical Australia 2019) has concluded that "despite the disturbed nature and extensive recent revegetation within the subject site, it is considered likely that the vegetation community is revegetated Estuarine Swamp Oak Forest, which aligns with Swamp Oak Floodplain Forest Endangered Ecological Community, listed under the BC and EPBC Acts. No threatened flora or fauna were observed during the field survey, and no threatened fauna are likely to use the study area as foraging habitat, due to the recent clearing and the fact that the replanted vegetation as not matured to a point where it can provide habitat for threatened species."</i></p> <p><i>While construction of the proposed telecommunications facility will result in the removal of recently planted native vegetation within the study area, the proposal is unlikely to result in a significant impact to TECs, threatened flora and threatened fauna likely to be found within the study area. Recommendations have been included to minimise the potential impacts, and a Biodiversity Management Plan is proposed to be implemented that includes several mitigation measures.</i></p> <p><i>The proposal is therefore supported."</i></p>

External Referral Body	Comments
Natural Resources Access Regulator	<p>A response form NRAR was received dated 1 July 2020 which provided the following comment:</p> <p><i>"The Natural Resources Access Regulator (NRAR) has reviewed documents for the above development application and considers that, for the purposes of the Water Management Act 2000 (WM Act), the proposed works are exempt from the need to obtain a controlled activity approval and no further assessment by this agency is necessary.</i></p> <p><i>Controlled Activity Not Required</i>  <i>The proposed works are of insufficient size and scale and/or do not involve carrying out a work, removing or depositing material on waterfront land, or carrying out an activity which affects the quantity or flow of water in a water source."</i></p>
Ausgrid	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

#### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for recreational purposes for an extended period of time. The proposed development retains the recreational use of the site. It is noted the site has been filled and suitable reports and conditions have been included to ensure compliance with this SEPP.
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)(iia) – Provisions of any planning agreement	None applicable
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. Should the Development Application be approved, these matters will be addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000: No additional information was requested however an amended Statement of Environmental Effects and Response to Submissions was received from the applicant to address matter raised during the assessment of this development 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. Should the Development Application be approved, these matters will be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). Should the Development Application be approved, this matter will be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report. In summary it is noted that the proposed structure is not supported due to an inappropriate visual impact, being of greater height and scale than the surrounding light poles within the sporting field.</p> <p>(ii) The proposed development will have a negligible and appropriate social impact in the locality enhancing mobile coverage fitting within the existing sport field context.</p> <p>(iii) 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 'Matters for Consideration'	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report
Section 4.15 (1) (e) – the public interest	The development is considered to be in the public interest providing a needed telecommunications facility.

#### 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)

##### State Environmental Planning Policy Coastal Management 2018

SEPP Coastal Management 2018 applies to all land within the NSW Coastal Zone as defined by the NSW Coastal Protection Act 1979 and the location of the proposed telecommunications facility is nominated within the NSW Coastal Zone area. Additionally, Curl Curl Lagoon is also listed in Schedule 1 of this SEPP as a coastal lake.

Matters for Consideration	Comment	Consistent
<p>(a) The aims of the policy are:</p> <p>(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and</p> <p>(b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and</p> <p>(c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and</p> <p>(d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values,</p>	<p>The proposal, is considered to be consistent with the aims of the policy for the following reasons:</p> <p>a) The proposal will not be to the detriment of the natural, recreational and economic attributes of the NSW coast.</p> <p>b) Public access will not be impacted.</p> <p>c) The proposal does not have potential to provide new public access to the foreshore.</p> <p>d) The development will have no impact.</p> <p>e) The visual amenity of the foreshore is retained with views from the coast appropriate.</p> <p>f) The scenic value of the beach will be retained.</p> <p>g) There will be no impact as a result of the proposal.</p>	Yes



Matters for Consideration	Comment	Consistent
<p>customs, beliefs and traditional knowledge, and</p> <p>(e) to ensure that the visual amenity of the coast is protected, and</p> <p>(f) to protect and preserve beach environments and beach amenity, and</p> <p>(g) to protect and preserve native coastal vegetation, and</p> <p>(h) to protect and preserve the marine environment of New South Wales, and</p> <p>(i) to protect and preserve rock platforms, and</p> <p>(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the <i>Protection of the Environment Administration Act 1991</i>), and</p> <p>(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and</p> <p>(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals, and</p> <p>(m) likely impacts of development on the water quality of coastal water bodies, and</p> <p>(n) the conservation and preservation of items of heritage, archaeological or historic significance, and</p> <p>(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities, and</p> <p>(p) only in cases in which a development application in relation to proposed development is determined:</p> <p>(i) the cumulative impacts of the proposed development on the environment, and</p>	<p>h) The proposal will not affect the marine environment of NSW.</p> <p>i) No rock platforms are affected by the proposal.</p> <p>j) The proposal is considered to be in accordance with the principles of ecologically sustainable development.</p> <p>k) The proposal will be of acceptable bulk and scale for the location.</p> <p>l) No impacts will result as a result of the proposed development.</p> <p>m) There will be no impact on water quality as a result of proposed development.</p> <p>n) No heritage items are impacted by the proposed development.</p> <p>o) Not applicable.</p> <p>p) Not applicable.</p>	

Matters for Consideration	Comment	Consistent
(ii) measures to ensure that water and energy usage by the proposed development is efficient.		
(b) Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved	The public access to the foreshore is not altered by the proposal.	YES
(c) Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability	The proposal does not have potential to provide new public access to the foreshore.	YES
(d) The suitability of development given its type, location and design and its relationship with the surrounding area	The proposal is well sited away from the foreshore and has an appropriate relationship with the surrounding area, being compatible with neighbouring structures in the sporting field.	YES
(e) Any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore	There is no significant loss of view or overshadowing of the foreshore as a result of the proposal.	YES
(f) The scenic qualities of the New South Wales coast, and means to protect and improve these qualities	The proposal is considered appropriate with regard to impacts on scenic qualities of the New South Wales coast and the associated public open space area.	YES
(g) Measures to conserve animals (within the meaning of the <i>Threatened Species Conservation Act 1995</i> ) and plants (within the meaning of that Act), and their habitats	There is no remanent native vegetation or potential habitat for threatened species on the subject site, as such measures to conserve animals, plants or their habitat are not required.	YES
(h) Measures to conserve fish (within the meaning of Part 7A of the <i>Fisheries Management Act 1994</i> ) and marine vegetation (within the meaning of that Part), and their habitats	The proposal involves a telecommunications facility and therefore additional measures to conserve fish and marine vegetation are not required.	YES
(i) Existing wildlife corridors and the impact of development on these corridors	The proposal does not significantly impact upon any existing wildlife corridors.	YES

Matters for Consideration	Comment	Consistent
(j) The likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards	The proposal is not considered to increase the likely impacts of coastal processes and coastal hazards to the site.	YES
(k) Measures to reduce the potential for conflict between land-based and water-based coastal activities	The proposal is unlikely to create any potential conflict between land based and water based coastal activities.	YES
(l) Measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals	The proposal is not in the vicinity of any known aboriginal sites and does not require any specific measures for the preservation of cultural places, values, customs or beliefs.	YES
(m) Likely impacts of development on the water quality of coastal water bodies	The proposal is unlikely to create any additional impact to water quality.	YES
(n) The conservation and preservation of items of heritage, archaeological or historic significance	The subject site does include heritage items. The alterations and additions proposed will not impact on any neighbouring heritage sites.	YES
(o) Only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities	Council has not prepared a draft LEP that specifically applies to the site in regards to compact towns and cities.	YES
(p) Only in cases in which a development application in relation to proposed development is determined: (i) the cumulative impacts of the proposed development on the environment, and (ii) measures to ensure that water and energy usage by the proposed development is efficient	The cumulative impacts of the proposal are satisfactory.	YES
S13) A provision of an environmental planning instrument that allows development within a zone to be consented to as if it were in a neighbouring zone, or a similar provision, has no effect.	The proposal does not attempt to allow development within a zone to be consented to as if it were in a neighbouring zone.	YES
S14) A consent authority must not consent to an application to carry out development on land to which this Policy applies if, in the opinion of the consent	The proposal is unlikely to result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.	YES

Matters for Consideration	Comment	Consistent
authority, the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.		
S15) The consent authority must not consent to a development application to carry out development on land to which this Policy applies in which effluent is proposed to be disposed of by means of a non-reticulated system if the consent authority is satisfied the proposal will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform.	The proposal does not involve a non-reticulated effluent disposal system that will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform.	YES
S16) The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.	The proposed development will not discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.	YES

#### SEPP 55 – Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. John Fisher Park (also known as Abbott Road Playing Fields) is on the 'List of NSW contaminated sites notified to EPA' not the 'Contaminated Land: Record of Notices'. According to the EPA the reasoning for the contamination was "landfill". The EPA has completed an assessment of the contamination and decided that regulation under the Contaminated Land Management Act 1997 is not required.

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 telecommunications facility use.

#### SEPP (Infrastructure) 2007

Division 21 of SEPP (Infrastructure) permits the development of 'Telecommunication Facilities' which are defined as;

*"(a) any part of the infrastructure of a telecommunications network, or*



(b) any line, cable, optical fibre, fibre access node, interconnect point, equipment, apparatus, tower, mast, antenna, dish, tunnel, duct, hole, pit, pole or other structure in connection with a telecommunications network, or  
(c) any other thing used in or in connection with a telecommunications network.”

Clause 115 of the SEPP specifically permits development with consent as follows:

*“(1) Development for the purposes of telecommunications facilities, other than development in clause 114 or development that is exempt development under clause 20 or 116, may be carried out by any person with consent on any land.”*

Accordingly, the telecommunication facility proposed at John Fisher Reserve can be considered as a development permitted with consent, even though it is a prohibited use under the provision of the Warringah LEP.

As the determining Authority, Council must consider “any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Secretary for the purposes of this clause and published in the Gazette”.

The principles of the Guideline are addressed below.

Principle	Consideration	Consistent
Principle 1: A telecommunications facility is to be designed and sited to minimise visual impact.	The structure and associated facilities are considered to be appropriately sited within the context of the sporting field and the surrounding lighting structures.	Yes
Principle 2: Telecommunications facilities should be collocated wherever practical	The application satisfactorily demonstrates that co-location is not an available or practical option in this case. Co-location is not considered practicable where there is no existing tower or other suitable telecommunications facility that can provide equivalent site technical specifications including meeting requirements for coverage objectives, radio traffic capacity demands and sufficient call quality.	Yes
Principle 3: Health standards for exposure to radio emissions will be met.	The application contains an EME Environmental Report showing the predicted levels of electromagnetic energy to comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard, and demonstrating compliance with the Mobile Phone Networks Code. The application demonstrates the facility is designed and can be installed and operated so the maximum human exposure levels to radiofrequency emissions comply with the Radiation Protection Standard.	Yes
Principle 4:	Sydney Airport is 20km from the site. The siting and height of the facility meets the	Yes

Minimise disturbance and risk, and maximise compliance	requirements of the Civil Aviation Regulations 1988 and Airports (Protection of Airspace) Regulation 1996 of the Commonwealth. A consent condition requires written verification to be provided prior to the issue of a Construction Certificate. The proposed facility minimises site disturbance and impacts on the natural attributes of the site.	
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### 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. A response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

### Warringah Local Environmental Plan 2011

Is the development permissible under WLEP 2011?	No  Telecommunications facility is a prohibited land use in the RE1 Public Recreation zone. However, this use is permissible with consent under Clause 115 of State Environmental Planning Policy (Infrastructure) 2007.
After consideration of the merits of the proposal, is the development consistent with:	
Aims of the LEP?	Yes
Zone objectives of the LEP?	Yes

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	-	N/A	-	N/A

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
5.3 Development near zone boundaries	N/A
5.5 Development within the coastal zone	Yes
5.10 Heritage Conservation	Yes

6.1 Acid Sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on Sloping Land	Yes
6.5 Coastal Hazards	N/A

#### Detailed Assessment

#### **Aims of LEP**

The development does not satisfy the aims specifically (clause 1.2(f) of the WLEP) which requires:  
In relation to environmental quality, to:

- (i) *achieve development outcomes of quality urban design, and*
- (ii) *encourage development that demonstrates efficient and sustainable use of energy and resources, and*
- (iii) *achieve land use relationships that promote the efficient use of infrastructure, and*
- (iv) *ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment, and*
- (v) *protect, conserve and manage biodiversity and the natural environment, and*
- (vi) *manage environmental constraints to development including acid sulfate soils, land slip risk, flood and tidal inundation, coastal erosion and biodiversity,*

The development is of similar scale and design to the surrounding light poles within the sporting field and results in a reasonable and appropriate development. The large public open space area will not be detrimentally impacted and accordingly, the development as proposed satisfies the aims of the LEP.

#### **RE1 Public Recreation**

The objectives of the RE1 zone are not considered to be fulfilled as is detailed below.

- *To enable land to be used for public open space or recreational purposes.*

The installation of a telecommunications monopole within the public open space area continues to allow for use for recreation purposes. The proposed location of the ancillary structure is not supported by Council officers and accordingly conditions of consent will ensure it is appropriately relocated to ensure it does not disrupt the use of the space.

- *To provide a range of recreational settings and activities and compatible land uses.*

The recreational setting is retained.

- *To protect and enhance the natural environment for recreational purposes.*

The natural environment is retained and protected.

- *To protect, manage and restore public land that is of ecological, scientific, cultural or aesthetic value.*

The installation of the structure, replacing an existing lighting pole allows for achievement of this objective with the Optus pole to replace an existing structure of similar scale and location.

- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

The development is appropriate when considered against the values of the zone and can be supported subject to conditions of consent.

## Heritage

The site includes three heritage items being:

- Coastal Cliffs landscape conservation heritage area – Item C10
- South Curl Curl Pool – Item I129
- WW1 Obelisk – Item I109
- Building known as “Stewart House” – Item I128

All items are located a significant distance from the subject site and are not impacted by the proposal. The heritage significance of each of the above is retained and is not at odds with the development proceeding.

## Warringah Development Control Plan 2011

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste management	Yes	Yes
D4 Electromagnetic Radiation	Yes	Yes
D7 Views	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D12 Glare and Reflection	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Habitat	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development Adjoining Public Open Space	Yes	Yes
E8 Waterways and Riparian lands	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

### Detailed Assessment

#### Objectives of DCP

The objectives of the DCP are met by the proposed development as is demonstrated in the following:

- *To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood*

Comment: The development responds to the location of the site replacing a structure (Light pole) with another of compatible scale (Optus pole).

- *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome*



Comment: The new telecommunications pole and ancillary structure are of compatible scale to the neighbouring structures and will site well within the sporting field setting. The impact on the streetscape and parkland is negligible and the overall landscape will not be detrimentally impacted.

- *To inspire design innovation for residential, commercial and industrial development*

N/A

- *To provide a high level of access to and within development.*

N/A

- *To protect environmentally sensitive areas from overdevelopment or visually intrusive development so that scenic qualities, as well as the biological and ecological values of those areas, are maintained*

Comment: Scenic qualities and natural qualities are not detrimentally impacted by the installation of the telecommunications tower which is considered to be of compatible scale to the structure which it will replace.

- *To achieve environmentally, economically and socially sustainable development for the community of Warringah*

Comment: This is achieved with the new telecommunications facility being infrastructure required by the community and located in an appropriate space with reasonable and sustainable impacts.

#### **D4 Electromagnetic Radiation**

##### Description of Non-compliance

The DCP requires that mobile phone base station and associated infrastructure and equipment do not result in an adverse visual impact on the natural or built environment. The proposed development is 25.7 metres in height and greater in height than surrounding light poles by 3.7metres.

##### Merit consideration

The proposal will comply with relevant standards with regard to electromagnetic radiation levels and has a reasonable and appropriate visual impact which is not to the detriment of the natural environment.

The views of the structure within the sporting fields are acceptable being of compatible height and scale to the existing light poles with the difference of 3.7 metres not excessive when considered against the 22 metre height of the existing light poles.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in Section 4.15(1)(a)(iii) of the Environmental Planning and the Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **D7 Views**

The DCP requires the reasonable sharing of views. The proposed development includes a 25.7 metre structure and an ancillary structure.

##### Merit consideration

The DCP requires the reasonable sharing of views. The proposed development includes a 25.7 metre structure and an ancillary structure.

The views to the ocean and from many areas in the locality will be reasonable with the proposal development, with visual concerns being more based on the immediate view to the structure within the Abbott Road fields.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **D9 Building Bulk**

### Description of Non-compliance

The DCP requires minimisation of the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes. Similarly, it is required that the building height and scale needs to relate to topography and site conditions.

### Merit consideration

The proposed telecommunications pole height is not considered unreasonable in this location and given the setting with 11 other neighbouring light poles, will be of minimal impact.

Having regard to the installation of the monopole, antennae and associated structures, and the scale of the structure in comparison to the open space surrounds, it is concluded that the proposed development is consistent with the relevant objectives of the WDCP and the objectives specified in Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **E7 Development on Land Adjoining Public Open Space**

### Description of Non-compliance

The DCP requires development on land adjoining public open space complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces.

### Merit consideration

The telecommunications facility is consistent with the public open space landscape character with the height, scale and siting similar to the lighting pole it will replace. It is of negligible impact on the enjoyment of the open space or the visual aesthetic of the Reserve.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the WDCP and the objectives specified in Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **Northern Beaches Section 7.12 Contributions Plan 2019**

A monetary contribution of \$2499.75 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost \$249,975.22.

## **John Fisher Park Plan of Management**

The site is covered by the John Fisher Park Plan of Management. The Plan does not include development in the nature of the telecommunications facility as proposed. The structure of the

POM bases its forward planning on the premise of retention and improvement of the natural environment and improvement and upgrading of sporting and community facilities.

It is considered that the proposed development is consistent with the key objectives being:

- *To provide a sound basis for the future management of John Fisher Park and Abbott Road Land, guiding the major strategies and actions that are needed to achieve the vision for John Fisher Park and Abbott Road Land.*
- *To manage John Fisher Park and Abbott Road Land in accordance with ecologically sustainable development principles.*
- *For a participatory style of management to be encouraged in all aspects of park operations so as to develop a sense of ownership between the community and the park.*
- *To be consistent with and contribute to Council's overall management plan*
- *To incorporate Curl Curl Lagoon Rehabilitation Study recommendations and other relevant studies into the plan.*

These objectives envisage an open space area used by the community and retained as ecologically sustainable parkland. The installation of the telecommunications tower is compatible with these objectives. The proposed monopole will allow for a development that is consistent with the objectives of the POM. In this case the development is considered to satisfy the objectives.

## 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 Environmental Planning Instruments and draft EPI's;
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy 71 – Coastal Protection
- Warringah Local Environment Plan 2011;
- Warringah Development Control Plan 2011;
- Codes and Policies of Council AND
- John Fisher Park Plan of Management

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application, and does not result in any unreasonable impacts for the surrounding open space, residents or streetscape subject to the conditions contained within the recommendation.

The visual impact and scale of the development is considered to be reasonable and appropriate to and compatible with the location. In particular the height difference of the new structure is not vastly different to the surrounding light poles and the structure will replace an existing light pole, resulting in the new development being entirely compatible with its setting.

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

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

## RECOMMENDATION

THAT Council as the consent authority approve Development Consent to DA2020/0661 for Installation of a Telecommunications Facility (Monopole) with associated equipment shelter on land at Lot 7356 in DP 1167221 Abbott Road, North Curl Curl (Abbott Road Fields), subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S2711-P1 (Rev 1)	30 April 2020	Lendlease
S2711-P2 (Rev 1)	30 April 2020	Lendlease
L100 (Rev A)	15 July 2019	Urbis
L101 (Rev A)	15 July 2019	Urbis
L102 (Rev B)	2 August 2019	Urbis
L103 (Rev B)	2 August 2019	Urbis

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation	20 December 2018	AW Geotechnics
Aboricultural Impact Assessment	23 July 2019	Ecological
Environmental EME Report	30 April 2020	Land Lease
EPBC Act Protected Matters Report	1 July 2019	Department of Environment and Energy
Flora and Fauna Assessment and Biodiversity Management Plan	23 July 2019	Ecological
Preliminary Acid Sulfate Soils Assessment	May 2019	Canopy Enterprises



Preliminary Site Investigation inclusive of Supplementary Sampling & Waste Classification	May 2019	Canopy Enterprises
Waterways Impact Statement	23 July 2019	Ecological

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	2 October 2018	P. Marzullo

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	27 July 2020
Natural Resources Access Regulator	Response Natural Resources Access Regulator	1 July 2020

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

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

## 3. Prescribed Conditions (Crown Land Only)

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

Reason: Legislative Requirement.

## 4. General Requirements (Crown Land Only)

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

restricted to:

- i 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(c) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

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

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

(f) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

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

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

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

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

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

Note: Systems can be registered at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

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

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

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

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

**FEES / CHARGES / CONTRIBUTIONS****6. Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$2,499.75 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$249,975.22.

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

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

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

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

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

**7. Security Bond**

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

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

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

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

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



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

### 8. Prior to construction certificate - Acid Sulfate Management

Prior to works commencing an Acid Management Plan as required by the Preliminary Assessment by Urbis Pty Ltd May 2020 shall be prepared to the satisfaction of the Certifying Authority.

Reason: To ensure Acid Sulfate Soil is properly managed.

### 9. Working and Access to Reserves Permit

Works (undertaken by principal contractors working without Council supervision) on Land owned or managed by Council require a "Working on Reserves" permit prior to commencement.

Applications can be obtained from Council's website or the Parks and Recreation business unit. Reason: public safety and the protection of Council infrastructure.

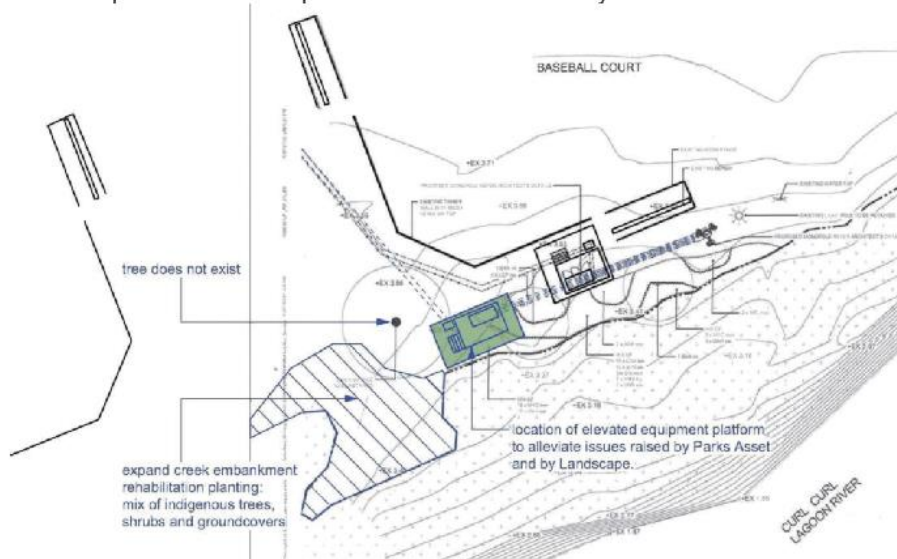
### 10. Amended Landscape Plan

An Amended Landscape Plan shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:

- i) relocation of the elevated equipment platform, as per attached sketch,
- ii) additional creek embankment rehabilitation planting containing a mix of indigenous trees, shrubs and groundcovers.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: preserve landscape and recreational amenity.





All new development must be designed and constructed to ensure structural integrity up to the **Flood Planning Level of 4.16m AHD**, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

**Building Components and Structural Soundness – C3**

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 4.16m AHD.

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

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

**12. Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure all bushland protection measures are carried out according to the conditions of consent. The Project Ecologist will provide certification that conditions relating to the Biodiversity Management Plan (Eco Logical Australia 2019) are carried out. The Project Ecologist will ensure that all conditions relating to the biodiversity management of the property are fully implemented.

The Project Ecologist must have one of the following memberships/accreditation

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

**Reason:** To ensure bushland management.

**13. Implementation of Flora and Fauna Assessment Recommendations and Biodiversity Management Plan**

All requirements in the John Fisher Park Telecommunications Facility - Flora and Fauna Assessment and Biodiversity Management Plan (Eco Logical Australia 2019) are to be implemented prior, during and post construction.

Details demonstrating pre-construction compliance are to be certified by the project ecologist and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area, in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

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

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

**15. Dilapidation Report of Land owned or managed by Council**

A dilapidation report established at the commencement of the works shall contain a survey of pre-existing land features including photographic record of the Land under Council's care control and management adjoining the development, detailing the physical condition of items such as, but not exclusively limited to, natural waterways, native vegetation, sporting facilities and amenities, sports field surfacing and markings, and other physical assets such as crossovers, driveways, footpaths, utilities, furniture, play equipment, gardens, bushland, and any rock outcrops.

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

Any damage to Council's public assets shall be made good by the applicant and/or the contractor like for like, to the satisfaction of Council.

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

Reason: protection of Council's assets.

**16. Construction Management Plan - Council Assets**

Prior to commencement of works on site, appropriate environmental site management measures must be in place and incorporate the following throughout demolition and construction:

- i) access to and from the site during construction and demolition,
- ii) safety and security of the site, road and footpath area including details of proposed fencing, hoarding and lighting,
- iii) methods of loading and unloading machinery and building materials,
- iv) location of storage materials, excavation and waste materials,
- v) methods to prevent material being tracked off the site onto surrounding roadways and waterways,
- vi) erosion, sediment and dust control measures, and
- vii) protection of existing trees and vegetation including the tree protection zone, in accordance with AS 4970-2009 Protection of Trees on Development Sites,
- viii) consideration of organised community sports use of the land in close proximity to development works to ensure no impact upon such recreational activities.

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

Construction materials must not be stored on Land owned or managed by Council without approval and without prior identification of required areas within the Construction Management Plan. Safe pedestrian access free of trip hazards must be maintained at all times on or adjacent to any public access routes connected to Land owned or managed by Council.

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

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

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

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

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

**18. Acid Sulfate Soil**

The Acid Management Plan (as required by the Preliminary Assessment by Urbis Pty Ltd May 2020) shall be complied with during construction and records of disposal or treatment on site of Acid Sulfate Soil shall be supplied to the Certifying Authority.

Reason: To ensure the management of Acid Sulfate Soil and to protect the Environment.

**19. Protection of trees and vegetation within Land owned or managed by Council**

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

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

Reason: tree and vegetation protection and management.

**20. Storage of Materials on Land owned or managed by Council**

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

The storage of building materials on Land owned or managed by Council is prohibited, unless identified in the approved Construction Management Plan.

Reason: public safety and environmental protection.

**21. During works -Excavated Material**

Material excavated on the site is to be stored completely covered with a waterproof membrane and tested by an appropriately qualified person for chemical contamination as well as asbestos related material prior to its treatment and reuse on site or disposal to an authorised disposal facility.

(Records of testing, treatment and disposal shall be supplied to the certifying Authority before commissioning of the tower)

Reason: To manage in an environmentally responsible way, potential contaminants in excavated fill material.

**22. Tree and vegetation protection - General**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.



b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970- 2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree

(s) is prohibited.

Reason: tree and vegetation protection.

## 23. Condition of existing trees and vegetation

During the construction period the applicant is responsible for ensuring all existing trees and vegetation required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified protection measures are adhered to, or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees and vegetation shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,



- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species, an increase in the amount of deadwood not associated with normal growth,
- vi) an increase in kino or gum exudation,
- vii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- viii) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees and vegetation.

**24. Off-site Disposal of Contaminated Soil - Chain of Custody**

'Chain of Custody' documentation shall be kept and submitted for the transport and disposal of any contaminated excavation fill material from the site .

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and Council within seven (7) days of transport.

Reason: For protection of the environment

**25. Survey Certificate**

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

- (a) At completion of the monopole and installation of antennas confirming the finished height is in accordance with levels indicated on the approved plans.

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

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

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

**26. Landscape completion**

Landscaping is to be implemented in accordance with the approved Amended Landscape Plan.

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

Reason: environmental amenity.

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

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

The applicant may be held liable to any damage to public infrastructures in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition.

In this regard, where required, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.

Reason: protection of Council's assets.

**28. Certification of sports flood lighting levels**

Written certification by a suitably qualified professional is to be provided to Council prior to the use of the new lights to demonstrate that the lighting complies with the requirements of AS4282- 1997 'Control of the Obtrusive Effects of Outdoor Lighting' and AS256 -2007 Sports Lighting.

Reason: ensure residential premises are not affected by inappropriate or excessive illumination and that appropriate illumination levels are provided for sport and recreation.

**29. Removal of All Temporary Structures/Materials and Construction Rubbish**

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

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

Reason: to protect reserve amenity and public safety.

**30. Prior to completion of all work and ongoing use**

The levels of radio frequency (RF) electromagnetic energy (EME) around the wireless base station shall be measured by a suitably qualified person using methodology developed by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and a certificate of compliance with applicable standards shall be issued to the certifying Authority and a copy to Council.

Levels shall include those from all sources in the area to 500m distance from the tower so the accumulative impact is documented.

Reason: To ensure the levels of radio frequency (RF) electromagnetic energy (EME) are compliant with Australian Standards and do not pose a risk to the community.

**31. Records required -excavated material**

Records of testing , treatment and disposal of excavated material shall be supplied to the certifying Authority before commissioning of the tower.

Reason: To document the management of potential contaminants in excavated fill material

**32. Certification of Planting, Biodiversity Management and ongoing work**

The Project Ecologist or Ecological Consultant is to certify that:

- a) Native plant selection and planting as per John Fisher Park Telecommunications Facility - Flora and Fauna Assessment and Biodiversity Management Plan has been completed;
- b) All actions prescribed in the approved John Fisher Park Telecommunications Facility - Flora and Fauna Assessment and Biodiversity Management Plan have been undertaken fully and where relevant completed and that an appropriate program of regeneration and maintenance has been entered into to comply with requirements of the Plan;
- c) That areas/features requiring protection have been adequately protected and are in an acceptable condition.

Reason: Bushland management

**ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES****33. Environmental and priority weed control**

All weeds within the development works area are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: preservation of environmental amenity.

**34. Lighting Spill and Glare**

Flood lighting shall be installed and used to ensure that light spill and glare is contained within the playing areas and non-habitable areas.

Lighting shall be turned off immediately following any approved playing activities and times.

Reason: To ensure that light spill and glare does not adversely impact on residential premises.

**35. Landscape maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Amended Landscape Plan.

Reason: to maintain local environmental amenity.

**36. Control of Weeds**

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

Reason: Weed management.

**37. No Planting Environmental Weeds**

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

Reason: Weed management.

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

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

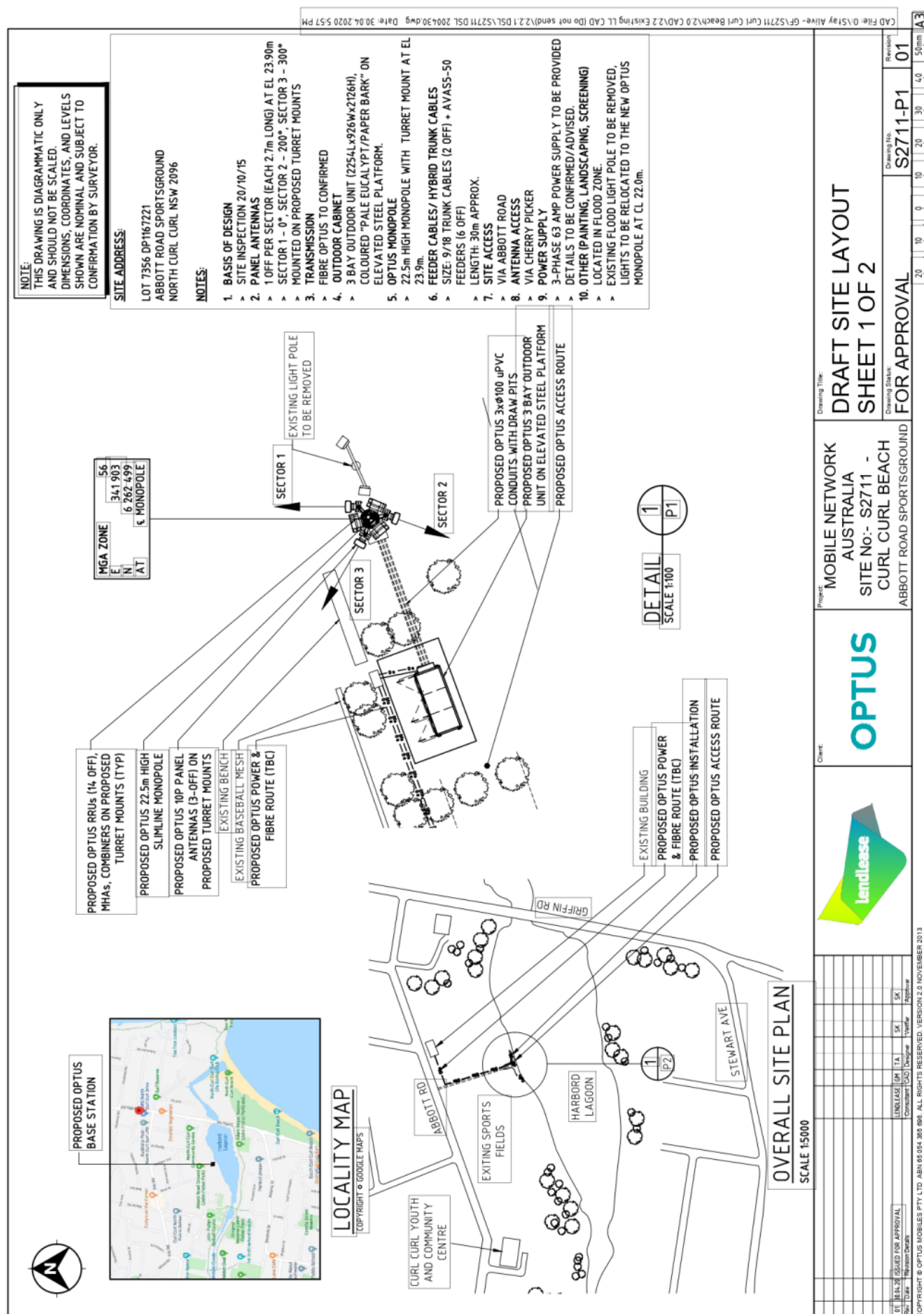
Reason: To protect Aboriginal Heritage.

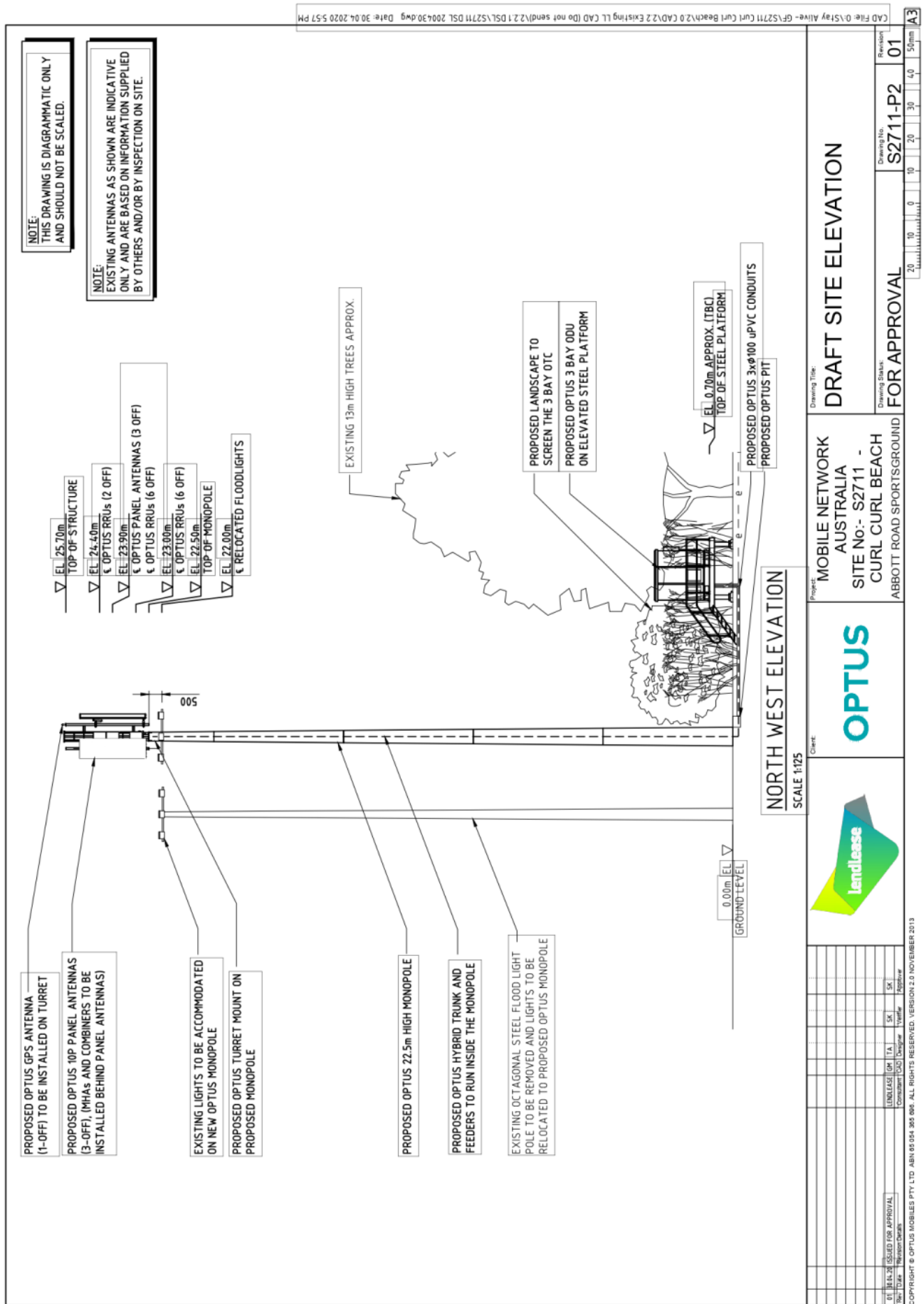
**39. Dead or Injured Wildlife**

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

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







## 4.0 NON PUBLIC MEETING ITEMS

ITEM 4.1	DA2020/0645 - 37-43 FEDERAL PARADE, BROOKVALE - ALTERATIONS AND ADDITIONS TO A SCHOOL TO PROVIDE SOLAR PANELS
AUTHORISING MANAGER	ANNA WILLIAMS
TRIM FILE REF	2020/583586
ATTACHMENTS	1 <a href="#">↓ Assessment Report</a> 2 <a href="#">↓ Site Plan and Elevations</a> 3 <a href="#">↓ Clause 4.6</a>

### PURPOSE

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

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/0645 for alterations and additions to a school to provide solar panels at Lot 100 DP 1250521, 37-43 Federal Parade, Brookvale subject to the conditions and for the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0645
<b>Responsible Officer:</b>	Anne-Marie Young
<b>Land to be developed (Address):</b>	Lot 100 DP 1250521, 37 - 43 Federal Parade BROOKVALE NSW 2100
<b>Proposed Development:</b>	Alterations and additions to a school to provide Solar Panels
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	The Trustees of the Order of Hermits of St Augustine in Australasia
<b>Applicant:</b>	Solahart Industries Pty Ltd
<b>Application Lodged:</b>	16/06/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	29/06/2020 to 13/07/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 16.8%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 380,491.97

### EXECUTIVE SUMMARY

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

The Development Application (DA) seeks consent for the installation of solar panels on the roof of two buildings within the grounds of St Augustine's College, namely the Gould Building and Brimson Hall. Both buildings exceed the 8.5m maximum building height development standard. The proposed solar panels will sit between 120mm and 135mm above the roof line of the subject buildings. As such, the application is being referred to the NBLPP as the installation of the panels on the roof of the buildings will breach the 8.5m by more than 10% (16.8% breach).





Principle development issues with the development relate to visual impacts and amenity impacts of the panels on the surrounding residential area. Due to the shallow pitch of the roof of the Gould Building and the existing parapet the proposed panels will not be visible from the public domain or result in unreasonable adverse impacts on neighbouring residential amenity.

The panels on the roof of Brimson Hall have already been installed and a condition requires the submission and approval of a Building Information Certificate (BIC) for the retrospective work. The subject development application therefore only makes an assessment of whether the continued use of the panels is acceptable. Due to the slope of the roof to the hall and the typography of the land which rises steeply to the north the panels are visible from surrounding residential properties. The applicants argument that the location of the panels is the most logical and practical position to capture solar energy is supported. In order to reduce impacts on residential amenity the panels have been treated with an anti-reflective coating which will minimise glare from the panels to neighbouring properties.

The solar panels will allow for electricity generation to minimise energy consumption with an estimated reduction of the schools annual power consumption by 39%, a saving of \$43,000 on their electricity bill each year and will offset 254,000kgs of carbon each year. The reduction of carbon has significant environmental benefits which meet the objectives of clause D22 of the Warringah DCP. Given the significant environmental benefits and the measures to reduce environmental impacts associated with the visual impact and glare the continued use of the panels on Brimson Hall is supported.

Two (2) submissions were received following notification. The submissions raised issues with respect to the works having been complete, the scale of the proposal and visual impacts on the character of the residential area and health concern relating to solar panels. There is no evidence to suggest that solar panels pose a health risk. The visual impact of the proposal has been assessed as acceptable given the environmental benefits and the measures to reduce glare and a condition requires the submission and approval of a BIC.

On balance, the proposal is recommended for approval. having considered relevant issues and the the assessment of the plans and supporting information submitted.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal is for the installation of a 588 x 395w solar photovoltaic (PV) cell system on the roof of two separate buildings, Brimson Hall (the gymnasium) and the recently renovated Gould building.

The panels on the roof of the Brimson hall (gymnasium) comprises:

333 panels with a dimension of 2015 x 1000 x 35 mm mounted at a 10 degree slope.

The panels on the roof of the Gould Building comprises:

255 panels with a dimension of 2015 x 1000 x 35 mm mounted at a 10 degree slope.

A site inspection confirmed that the panels have already been installed on the roof of the gymnasium and the applicant was advised that a Building Information Certificate (BIC) will be required to be lodged and approved for the retrospective work. The subject DA can only assess the use of the panels to the gymnasium.



### Proposed roof plan

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings



Warringah Development Control Plan - D3 Noise  
Warringah Development Control Plan - D11 Roofs  
Warringah Development Control Plan - D12 Glare and Reflection  
Warringah Development Control Plan - D22 Conservation of Energy and Water

#### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 100 DP 1250521 , 37 - 43 Federal Parade BROOKVALE NSW 2100
<b>Detailed Site Description:</b>	<p>The St Augustine's College campus ("the school") is described as 37- 43 Federal Parade, Brookvale, comprising Lots 100 DP 1173782, Lot 17 DP 11209 and Lot B DP 295193 which provides for a total area of 24,830m<sup>2</sup> for the school. The St Augustine's College campus (Primary and Secondary school) has frontages to Federal Parade to the north, Alfred Road to the east, Gulliver Street to the south and Consul Road to the west. The application relates to two existing buildings, namely Brimson Hall located along the western boundary and the Gould Building located along the southern boundary.</p> <p>Vehicular access to the site is currently available from Alfred Street, Gulliver Street and Federal Parade. The school bus zones and student drop off/pick up zone is within Alfred Street. The formal car parking for the school is within the school grounds and the open car park facing Gulliver Street</p> <p>The site is on Council's Landslip Risk Mapping as 'Area A' with no significant landslip risk.</p> <p>The dominant land use to the west and to the north are primarily low density residential dwelling houses, with two storey medium density development on the southern side of Gulliver Street. Other major land uses to the east and south of the site include Brookvale Park and Sports Stadium, Brookvale Primary School and mixed business uses along Pittwater Road.</p>

Map:





## SITE HISTORY

On 2 February 1995, Development Application No. DA6000/4368 for the primary school classrooms fronting Gulliver Street were approved by Council (Consent 95/57). This consent limits school enrolments to a maximum of 820 students, but the school has since exceeded this limit (as identified in EPA2013/0102).

On 19 June 2014, Development Application No. DA2013/1336 for alterations and additions to the school was granted deferred commencement approval. The deferred commencement conditions related to Council's drainage system. On 13 November 2014 the deferred commencement conditions were satisfied.

### History relating to subject DA

On 31 August 2020, the applicant lodged plans and elevation of the proposed solar panels.

On 2 September 2020, the applicant lodged a clause 4.6 variation to the height of buildings development standard.

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning	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



Section 4.15 Matters for Consideration'	Comments
instrument	2018. The subject site has been used for educational purposes for an extended period of time. The proposed development retains the educational use and the relates solely to the installation of solar panels. The proposal is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Detailed plans showing the dimensions of the solar panels was requested.</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 clause is not relevant to this application.</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 of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and	<p>(i) <b>Environmental Impact</b></p> <p>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>



Section 4.15 Matters for Consideration'	Comments
economic impacts in the locality	<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 29/06/2020 to 13/07/2020 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 2 submission/s from:

Name:	Address:
Mr Paul Karl Stephens	47 A Federal Parade BROOKVALE NSW 2100
Carolyn Joyce Ali	47 Federal Parade BROOKVALE NSW 2100

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

- The works are almost complete prior to approval.
- The amount of panels / scale of development is out of character with the residential area.
- Health concerns relating to the solar panels.

The matters raised within the submissions are addressed as follows:



- The works are almost complete prior to approval.  
Comment:  
A site inspection confirmed that the panels have been installed on the roof of Grimson Hall, the gymnasium building which fronts Federal Parade. The applicant has been informed that a Building Information Certificate will be required to be approved for retrospective consent for these panels. A condition is included in the recommendation to this effect.
- The amount of panels / scale of development is out of character with the residential area.  
Comment:  
It is appreciated that given the slope in the roof of the gymnasium building and the typography of the land to the north that the panels are visible from the neighbouring residential properties, especially those along Federal Parade. It is also agreed that the number of panels is considerable, however, the location of the panels on the north facing roof is the most practical location to make the proposal financially feasible in terms of energy cost saving. It is noted that due to the design of the roof of the Gould Building it is unlikely that the panels will be visible, refer to discussion under clause 4.6.
- Health concerns relating to the solar panels.  
Comment:  
There is no evidence to suggest that solar panels pose a health risk to the public.

## REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	No objections to the proposed installation of solar panels onto the existing school building roofs subject to conditions.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid a response was received on 17 August 2020 advising that the proposal is acceptable subject to conditions. The Ausgrid conditions are included in the recommendation.

## 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 educational purposes for a significant period of time with no prior land uses. The proposal relates to the installation of solar panels, in this regard it is considered that the development 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 continued educational land use.

## **SEPP (Infrastructure) 2007**

### Ausgrid

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

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

### Comment:

The proposal was referred to Ausgrid a response was received on 17 August 2020 advising that the proposal is acceptable subject to conditions. The Ausgrid conditions are included in the recommendation.

## **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

#### Clause 4.3 (Height of Buildings)

There is no allocated height limit. The solar panels are proposed to sit between 30mm - 40mm above the existing north facing sloping panels. The panels will not sit above the highest part of the existing roof. Refer to discussion under the Build Form Control section of the Manly DCP.

### Compliance Assessment





Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

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

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.9m
Percentage variation to requirement:	16.8%

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

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

##### Clause 4.6 Exceptions to development standards:

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

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

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

##### Comment:

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

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

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



- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:



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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- The panels will sit 120mm above the existing roof line on the Brimson Hall building and 135mm above the roof line of the Gould building. The panels will not result in unreasonable visual impacts from public views. The panels sit below other objects on the roof, such as ventilation units, skylights and parapet walls.
- Although the panels on the Brimson Hall building are visible from residential properties to the north, including those along Federal Parade, they do not give rise to impact on views or solar access due to the low profile of the panels. In addition, the panels will have an anti-reflective coating to minimise glare.
- The Panels on the roof of the Gould Building and will not be visible from the public domain due to the 10 degree slope of the roof and the existing parapet wall which runs along the perimeter of the roof.
- The panels are compatible with the height of the existing school buildings and will not protrude past the highest point of each building.
- The proposed location of the panels are the best suited for the school to get the best return on investment and the most amount of energy production. It is calculated that the school will reduce their annual power consumption by 39%, they will save \$43,000 on their electricity bill each year and will offset 254,000kgs of carbon each year. This amount of reduction of carbon is not only good for the environment, but is also a great way to educate the students about sustainable living. Instilling into them at an early age the positive effects of solar energy. This will in turn be passed onto the parents of the students and result in more solar power installed for homes in the area.

The buildings which will be used for the solar installation are existing building, namely Brimson Hall gymnasium building and the Gould Building.

#### *Brimson Hall*

Brimson Hall is located within the western boundary of the site setback 8.3m from the frontage to Federal Parade and has a maximum height of 9.8m.

A site visit confirmed that the panels have already been installed on the roof of the Brimson Hall,



therefore, the subject DA can only assess the use of the panels on the roof of this building. The applicant has been requested to lodge a separate BIC for the retrospective work.

The panels have been installed 120mm above the roof line of the building, the panels sit below the ridge height. Due to the slopping roof design and the typography of the land which rises steeply to the north the panels are visible from neighboring properties, including those along Federal Parade. The applicants justification for the location of the panels on the north facing roof slope as the most practical location for the panels is supported. The applicant also noted that an anti-reflective coating has been applied to the panels to minimise glare from the panel to help protect residential amenity

#### *Gould Building*

The Gould Building is located within the southern boundary of the site and has a maximum height of 9.8m. It is proposed that solar panels will be installed 135mm above the roof line of the building. Due to the design of the roof of the Gould Building with a shallow roof pitch and a parapet it is unlikely that the proposed panels will be visible from the public domain or result in unacceptable environmental or amenity impacts on surrounding uses.

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 R2 Low Density Residential zone. An assessment against these objectives is provided below.

#### **Objectives of development standard**

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

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

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





*development,*

Comment:

The subject site has been used as a educational establishment associated with St Augustines College for some time. The existing buildings on the site are of a greater height, scale and density than the surrounding low density one and two storey dwellings. The subject application relates to the installation of solar panels on the roof of the two existing school buildings. The panels will project 135mm above the roof plane of the Gould Building and are consistent with the height of the buildings within the school complex. The height of the panels has therefore been assessed as meeting objective (a) of the height control.

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

Comment:

Due to the design of the roof of the Gould Building with the 10 degree pitch and parapet it is unlikely that the panels will be visible from the public domain. As such, the proposal meets objectives b and will not give rise to visual impact, disruption of views, loss of privacy or solar access.

As discussed above, the panels have already been installed on the roof of Brimson Hall. It is acknowledged that the panels are visible from surrounding residential properties to the north, however, the panels have been coated with an anti-reflective coating to minimise adverse amenity impacts associated with glare. Given that the north facing roof is the most practical location for the panels the continued use of the panels has been assessed as meeting objective (b) of the height control.

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

Comment:

The site is an established educational use and the addition of the solar panels of the roof of two existing buildings will not have an unreasonable adverse impact on the scenic quality of Warringah's coastal and bush environments. The development has been assessed as meeting objective (c) of the height control.

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

Comment:

As discussed above, it is unlikely that the panels will be visible on the roof of the Gould building. In order to minimise the potential amenity impacts by way of glare the panels an anti-reflective coating is applied to the panels. The development has been assessed as meeting objective (d) of the height control.

## Zone objectives

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

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



Comment

The subject site relates to an existing educational establishment, St Augustines College. The

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

Comment

The site will continue to provide an educational facility to provide for the day to day needs of re

- *To ensure that low density residential environments are characterised by landscaped settings:*

Comment

The site will not alter the existing landscape characteristics of the site.

Conclusion:

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

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

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

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

**Warringah Development Control Plan**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes

#### Detailed Assessment

#### **D3 Noise**

The plant associated with the solar panels is housed next to the internal plant room in the gym building which is sited away from the boundaries. As such, it is not anticipated that the plant associated with the solar panels will give rise to any acoustic impacts to neighbouring residential properties.

#### **D11 Roofs**

Clause D11 requires:

- 1. Lift overruns, plant and other mechanical equipment are not to detract from the appearance of roofs.*
- 2. Roofs should complement the roof pitch and forms of the existing buildings in the streetscape.*
- 3. Articulate the roof with elements such as dormers, gables, balconies, verandahs and pergolas.*
- 4. Roofs shall incorporate eaves for shading.*
- 5. Roofing materials should not cause excessive glare and reflection.*
- 6. Service equipment, lift overruns, plant and other mechanical equipment on the roof shall be minimised by integrating as many services, etc as possible into the building.*

#### Comment

The proposed solar panels are to be installed on the roof of the Gould Building. The panels are 35mm thick and will be constructed 135mm above the height of the roof line. Due to the pitch of the roof and the parapet the equipment will be integrated into the existing structure with minimal impacts on surrounding properties.

As discussed above the continued use of the panels that have been installed on the roof of Brimson Hall has been assessed as acceptable given that the northern roof slope is the most practical location for the panels and an anti-reflective coating has been applied to the panels to minimise impacts associated with glare.

#### **D12 Glare and Reflection**

Clause D12 requires

*Sunlight reflectivity that may impact on surrounding properties is to be minimised by utilising one or more of the following:*

- Selecting materials for roofing, wall claddings and glazing that have less reflection eg medium to*



dark roof tones;

- Orienting reflective materials away from properties that may be impacted;
- Recessing glass into the façade;

#### Comment

The applicant has confirmed that the panel uses an anti-reflective coating on the glass which will ensure that the light reflections will be directed away from the neighbouring residential properties and not bounce back towards them.

### **D22 Conservation of Energy and Water**

Clause D22 requires

*The orientation, layout and landscaping of sites is to make the best use of natural ventilation, daylight and solar energy.*

*Site layout and structures are to allow for reasonable solar access for the purposes of water heating and electricity generation and maintain reasonable solar access to adjoining properties.*

*Buildings are to be designed to minimize energy and water consumption.*

*Landscape design is to assist in the conservation of energy and water.*

*Reuse of stormwater for on-site irrigation and domestic use is to be encouraged, subject to consideration of public health risks.*

*All development must comply with Council's Water Management Policy.*

#### Comment

The location of the panels on the roofs of the existing buildings is the most logical and practical position to capture solar energy. The solar panels will allow for electricity generation to minimise energy consumption. The applicant has calculated a reduction of the schools annual power consumption by 39%, a saving of \$43,000 on their electricity bill each year and will offset 254,000kgs of carbon each year. The reduction of carbon has significant environmental benefits which meet the objectives of clause D22.

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

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

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

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2019**

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

A monetary contribution of \$3,805 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$380,492.

### **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

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

Amenity impacts to residential properties located to the south in respect of visual impacts, reflectivity, view loss and acoustic impacts; and  
Sustainability and environmental benefits.

The proposed PV panels on the roof two buildings within the St Augustines school campus will offset the electricity consumed by the school. The panels extended between 120mm and 135mm above the roof of two buildings. Given that the existing buildings breach the height limit the proposal will represent a 16.8% variation to the standard.

The panels on the roof of the Gould Building will not be visible from the public domain and the continued use of the existing panels on the roof of Brimson Hall is supported given that this is the most practical location for the panels and anti-reflectivity coating has been applied to the panels to minimise glare.

The application was notified and two submissions have been received which raised issues with respect of the work having been completed and visual and health impacts. These issues are address in the report and by way of conditions.



In summary, the proposal is recommended for approval subject to conditions, provided in accordance with the Environmental Planning and Assessment Act 1979 and Regulations.  
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.



## RECOMMENDATION

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/0645 for Alterations and additions to a school to provide Solar Panels on land at Lot 100 DP 1250521, 37 - 43 Federal Parade, BROOKVALE, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
PV-1 Solar Roof Layuot	31 August 2020	Solahart
PV-2 Site elevation Gymnasium Building	31 August 2020	Solahart
PV-3 Site Elevation Goold/Lecceto Building	31 August 2020	Solahart

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

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

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

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

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



Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	17 August 2020

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

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

### 3. Prescribed Conditions

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

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

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





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

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

Reason: Legislative requirement.

#### 4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

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

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.



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

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$3,804.92 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$380,491.97.

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

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

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

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

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

### 6. Security Bond

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



the development site.

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

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

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

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

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

7. **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.

8. **Building Information Certificate**

A Building Information Certificate is required to be submitted for the panels that have been installed on the roof of the Brimson Building within one month of the date of consent.

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

Reason: The panels have been installed and retrospective development consent can not be issued for the work.

9. **Waste Management Plan**

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

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

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

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

10. **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.

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

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

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

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

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

12. **Environmental Reports Certification**

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

(a) Structural Assessment Report prepared by Geoff Ninnes Fong, Ref R23019, dated 29 May 2019 and prepared by Partners.

(b) Construction Methodology and Traffic Management Plan dated August 2019 and prepared by Monique Nichols, Northern Beaches Council.

In addition, certification is required to demonstrate compliance with condition (8) noise from electrical inverter equipment:

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

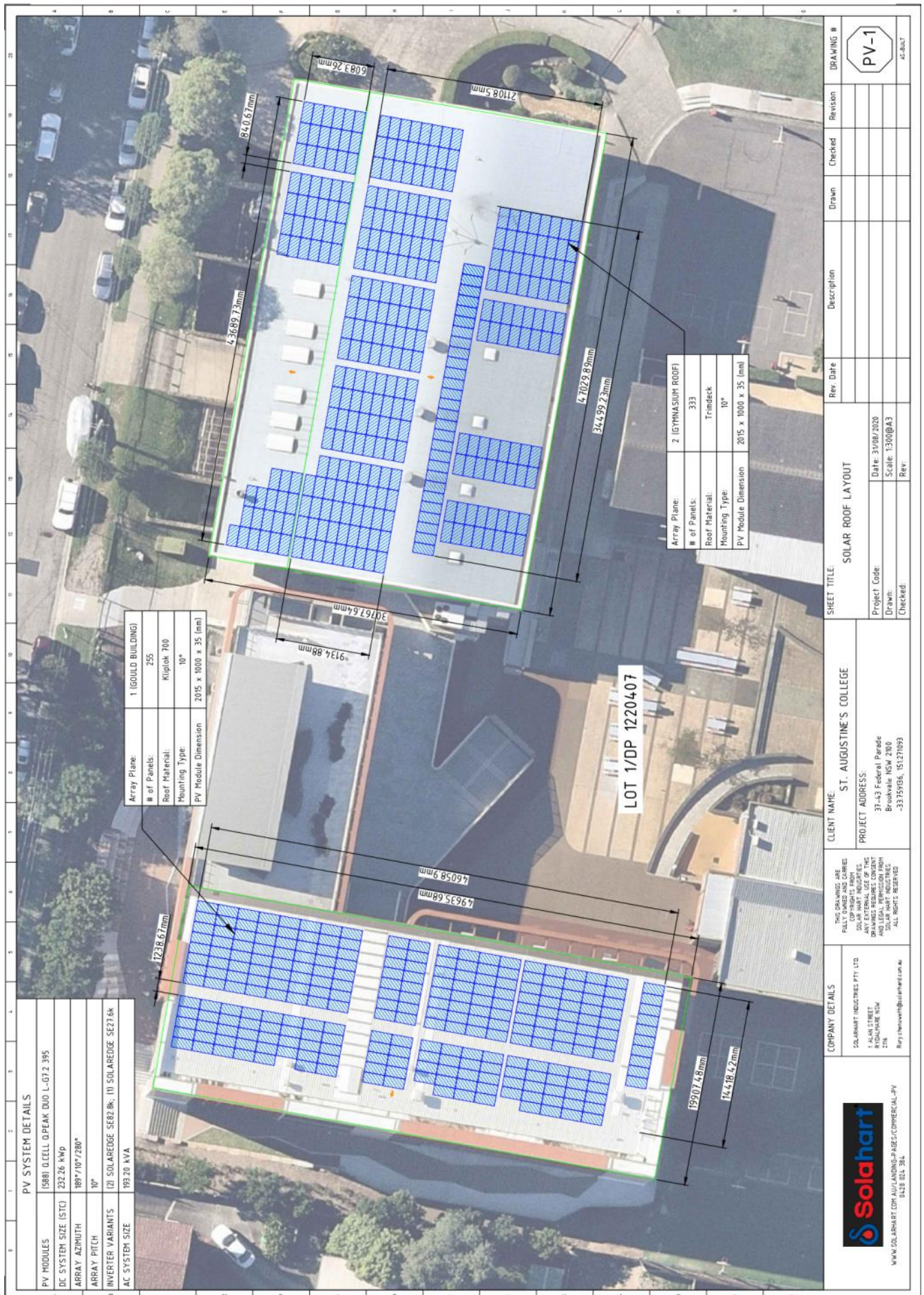
Reason: To ensure compliance with standards.

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

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

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

Reason: To ensure bushland management. (DACPLF01)











# **SOLAHART INDUSTRIES PTY LTD**

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## **REQUEST FOR A VARIATION TO DEVELOPMENT STANDARDS CLAUSE 4.3 MAXIMUM BUILDING HEIGHT PURSUANT TO CLAUSE 4.6 OF WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

### **SOLAR PHOTOVOLTAIC INSTALLATION ST AUGUSTINES COLLEGE NO. 37 FEDERAL PARADE, BOOKVALE**

#### **1. Introduction**

Cause 4.6 of Warringah Local Environmental Plan 2011 (WLEP 2011) allows for flexibility in the application of certain development standards to achieve *'better outcomes for and from development by allowing flexibility in particular circumstances.'*

In the case of the solar installation at St Augustines College, both buildings currently exceed the maximum height of 8.5m from ground level. Because the solar panels are roof mounted and may increase the total height of the building it is necessary to submit a WLEP clause 4.6 submission for a variation to the subject development standard, in order to enable development consent to be issued.

#### **2. The relevant development standard**

Clause 4.3 of WLEP 2011 sets out requirements in relation to heights of buildings. Sub-clause 4.3(2) requires that a building on any land is not to exceed the maximum height shown for land on the height of buildings map. The maximum height in this zone is 8.5m.

### 3. Requested variation to the standard

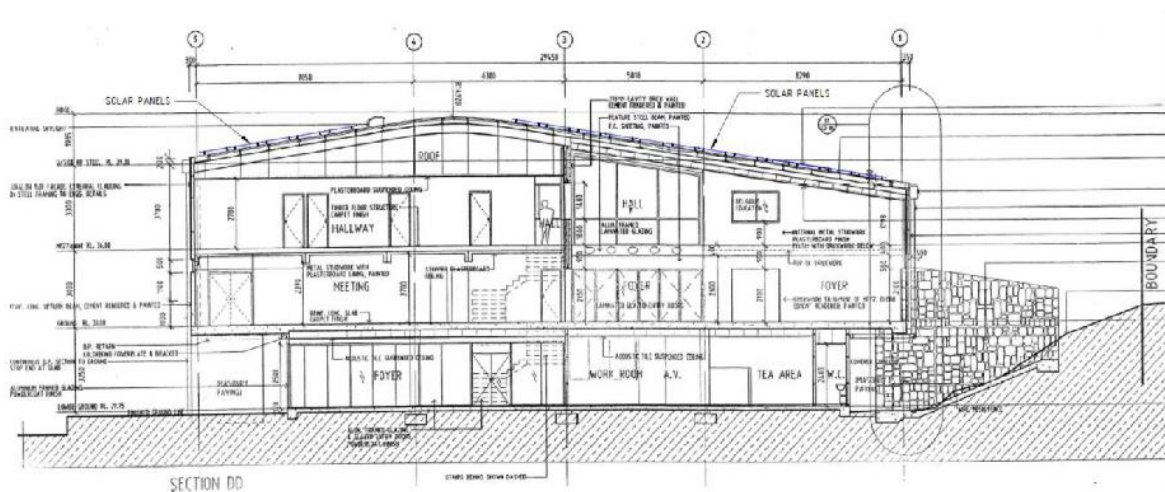
The proponent requests consent to install PV panels on the roof of Brimson Hall as the panels do not exceed the maximum height of the building and also do not exceed the height of ventilation ducting mounted on the roof. The proponent also requests consent to install panels on the roof of the newly renovated Gould building as the panels do not exceed the height of the building due to the slope of the roof, does not exceed the height of ventilation units and is hidden from public view by a parapet wall.

The proponent also asks the council to consider the positive environmental impact the installation of this system will have on the environment if permission to install was granted.

#### a) BRIMSON HALL

The location of the panels in relation to the building height can be seen in **Figure 1**.

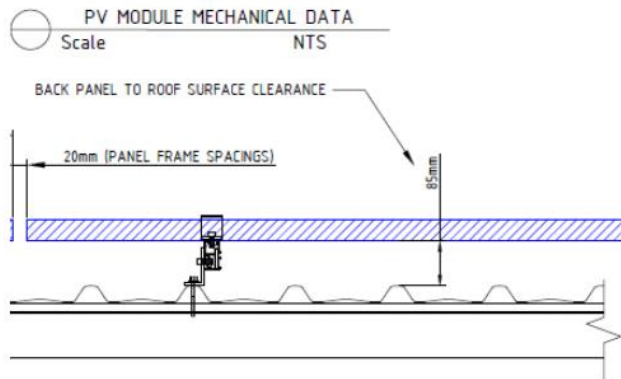
**Figure 1 – Location of proposed panels and possible height encroachment.** (taken from drawing PV-2 gymnasium building)



Although the panels on the norther face (left hand side) of the Brimson Hall can be seen from Federal Parade, they do not exceed the height of the building and they do not obstruct any vision or cast any shadows on the surrounding properties.

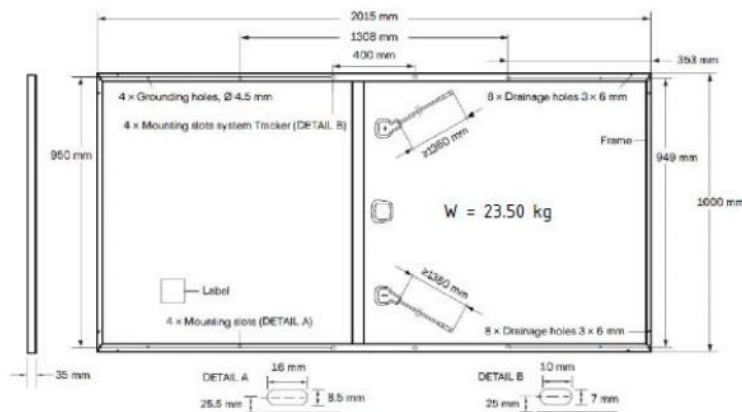
The mounting height of the panels in relation to the height of the buildings can be seen in **Figure 2**.

**Figure 2 – Panel height above roof line.** (taken from drawing PV-5 gymnasium building)



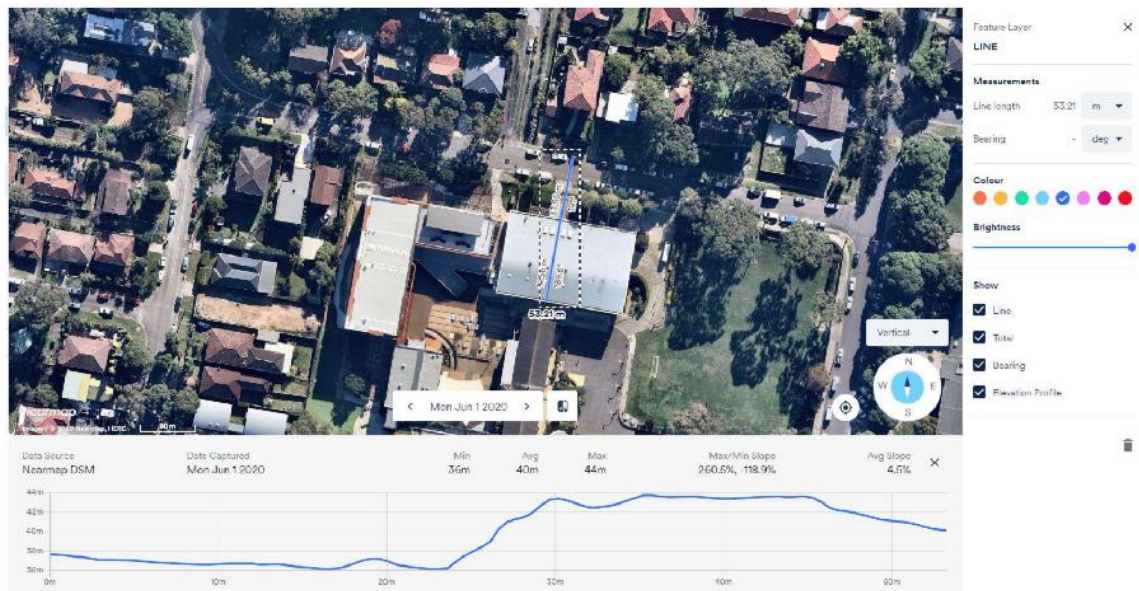
**Figure 2** shows from the top of the roofline to the bottom of the panel is a distance of 85mm. The panels are 35mm in thickness (**Figure 3**), therefore the total height of the installation on Brimson Hall is 120mm above the height of the roofline.

**Figure 3 – PV Panel Dimensions.**



The height of Brimson Hall building in relation to the street level of Federal Parade can be seen in **Figure 4**.

**Figure 4 – Elevation report from Federal Parade to Brimson Hall**



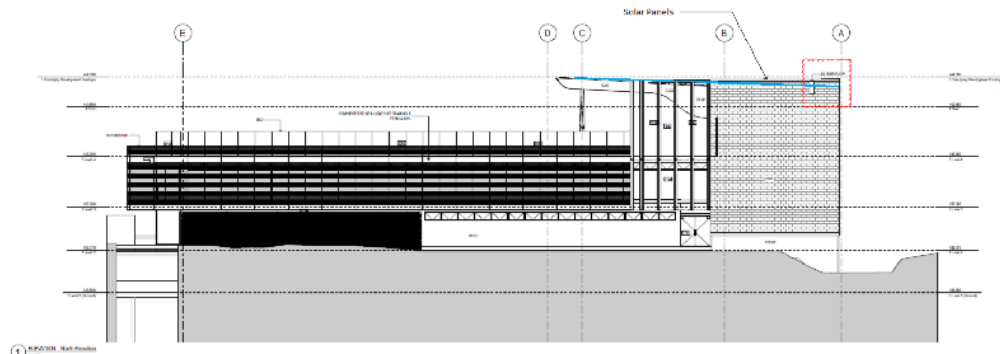
The elevation report from **Figure 4** shows that there is only 6m in height difference between Federal Parade and the roof of Brimson Hall. Although the height of the building is above 8.5m from the lowest point of the building, it is under 8.5m in relation to the boundary of public traffic.

#### **b) Gould Building**

The location of the panels in relation to the building height of the Gould Building can be seen in **Figure 5**.



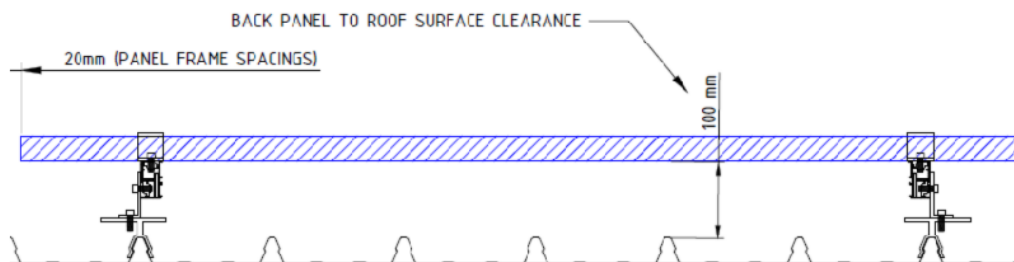
**Figure 5 – Gould Building North Elevation.**



The slope of the roof of the Gould building is 10°. A simple trigonometry calculation shows that the installation of the solar panels will be under the buildings total height due to the distance of the panel closest to the edge of the roof being 1.5m meters away.

$X \text{ (height)} = 1500\text{mm} * \tan 10 = 264\text{mm}$ . The permissible height of an object at 1.5m away from the edge of the highest point of the building (eastern side) is 264mm. The height of the panels will be 135mm above the roofline based on **Figure 6**. This means the height of the panels at the closest point to the eastern edge is 29mm under the complying development approved height of the building as per the schools development approval for their building works.

**Figure 6 – Panel Height on Gould Building.**



Further to the panels being mounted under the buildings maximum height, the panels will not be visible to the public due to the parapet wall surrounding the western side, northern side and eastern side of the building.

#### **4. Requirements of clause 4.6 – Exceptions to development standards**

The objectives of clause 4.6 are as follows:

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

Clause 4.6(3) requires that a request to contravene the control, to demonstrate:

- (a) “that the 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.”*

In considering whether to grant consent for a development that contravenes a development standard, a consent authority must be satisfied that:

- (i) the applicant’s 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 to be carried out, and*
- (iii) the concurrence of the Secretary has been obtained.*

These matters are addressed below.

#### **5. Compliance with the development standard is unreasonable or unnecessary**

It is considered that enforcing compliance would be unreasonable and unnecessary in this case, for the following reasons.

The proposal achieves the objectives of the height control.

The objectives of the control are noted and commented upon below: The objective for the height control are as follow:

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

The proposal achieves the above objectives as detailed in the following assessment.

- (a) To ensure buildings are compatible with the height and scale of surrounding and nearby development.*

The proposed solar installation is compatible with the height of both buildings as they do not protrude past the highest point on each building. Because this site is a school, they are permitted to apply for consent to build above the 8.5m restriction. The total height of the building would have been approved and we have kept our panels below the highest point to comply with previous approvals the school obtained during the building process.

- (b) To minimise visual impact, disruption of views, loss of privacy and loss of solar access.*

The installation of the panels have minimal visual impact from public views. In both cases the panels sit no more than 135mm above the roofline, which is already lower than other objects on the roof, such as ventilation units, skylights and parapet walls. Although the panels on the Brimson Hall building are visible from federal parade, they do not have any extra impact on views due to the low profile of the panels. The low profile does not cast any shadowing over surrounding properties, and has no effect on surrounding properties privacy.

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

The installation of the panels do not obstruct any scenic quality of Warringah's coastal environment due to the very low profile of the panels outlined above.

- (d) To minimise the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Visual impacts have been addressed above. The panels on Gould building will not be visible whatsoever and the visible panels on the northern face of Brimson Hall do not protrude above the maximum height of the building.

**6. There are sufficient environmental planning grounds to justify contravening the development standard.**

When designing a solar system it is our job to design the most practical solution for the best results. The proposed location of the panels are the best suited for the school to get the best return on investment and the most amount of energy production. We have calculated that the school will reduce their annual power consumption by 39%, they will save \$43,000 on their electricity bill each year and will offset 254,000kgs of carbon each year. This amount of reduction of carbon is not only good for the environment, but is also a great way to educate the students about sustainable living. Instilling into them at an early age the positive effects of solar energy. This will in turn be passed onto the parents of the students and result in more solar power installed for homes in the area. Only positive things can come from the approval of this system.

**7. Conclusion**

Although the buildings may be over the 8.5m height restrictions for their zone, the panels will not sit above the highest point of each building, therefore will not have any further impact on views from what is already there. The system will have a hugely positive environmental impact, a positive educational impact to the students and the school will be able to divert funds previously allocated to electricity bill to other areas of the school which can only benefit the teachers and students.

**Rory Chenoweth**

**Solahart Industries Pty Ltd**

**2020**