

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 21 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

Paul Vergotis	Chair
Robert Hussey	Town Planner
Graham Brown	Town Planner
John Simmonds	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

Agenda for a the Northern Beaches Local Planning Panel to be held on Wednesday 21 October 2020

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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 7 OCTOBER 2020

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 7 October 2020 were adopted by the Chairperson and have been posted on Council's website.

3.0 PUBLIC MEETING ITEMS

ITEM 3.1	DA2020/0077 - 1 TABALUM ROAD, BALGOWLAH HEIGHTS - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL
AUTHORISING MANAGER	STEVE FINDLAY
TRIM FILE REF	2020/620716
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

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 MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/0077 for demolition works and construction of a dwelling house at Lot 20 DP 758044, 1 Tabalum Road, Balgowlah Heights subject to the conditions and for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0077
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 20 DP 758044, 1 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Kevin Scott Mooney
Applicant:	Kevin Scott Mooney

Application Lodged:	30/01/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	24/02/2020 to 09/03/2020
Advertised:	Not Advertised
Submissions Received:	12
Clause 4.6 Variation:	4.3 Height of buildings: 12.9%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,850,000.00
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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.

A 'Clause 4.6' Variation to Building Height under the Manly Local Environmental Plan 2013 accompanies the application and has been assessed in detail against the relevant considerations and is supported. Further, principal environmental impact considerations pursuant to the Manly Development Control Plan 2013 are; storey limit, setbacks, wall height, views, building bulk, landscaping, construction impacts, parking access, privacy, overshadowing, streetscape character and stormwater management.

The submissions received have been considered and addressed within this report. The applicant provided minor amendments to the plans to accommodate/respond to concerns about privacy, bulk,

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views, and landscaping works to reduce associated impacts, including deleting the proposed new swimming pool.

Amended plans were sought to illustrate the changes which could have otherwise been conditioned. Re-notification was not required, however the amended plans have been publicly viewable on the website. Conditions have been recommended where appropriate to address remaining issues, including, landscaping, views, traffic safety, construction work and dilapidation.

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

Overall, the non-compliances with the built form controls are supported on the grounds that the proposal will maintain consistency with the relevant objectives, with no unreasonable amenity impacts, subject to a number of special conditions.

No issues have arisen that would warrant the refusal of the application and therefore the proposed development (as revised) is recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The application proposes the demolition of a house and pool and the construction of a new dwelling house with basement garage, including, site preparation, excavation and landscaping.

The development is configured as follows:

- **RL69.1 Basement** - Garage parking, storage, plant / utility rooms, lift and stair access.
- **RL72.50 Level 1** - Terrace, guest room, bathroom, service equipment, demolished pool area landscaping, atrium, stairs and lift access.
- **RL75.56 Level 2** - Deck, bedrooms (4), bathrooms (3), laundry, drying court, storage, void, stairs and lift access.
- **RL78.62 Level 3** - Deck, kitchen, living, dining, family room, home office, bathroom, entry foyer, storage, lift and stair access.
- **RL81.73 to 82.73** - Roof level.

Ancillary works include site clearing/demolition and preparation, drainage and stormwater management, landscaping, driveway and ancillary works.

(Note: Originally a new pool/spa was proposed, however this has now been deleted from the application)

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral



to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 3.5.5 Landscaping

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

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

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 20 DP 758044 , 1 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The land is 753.8 square metres (sqm) in area and is located on the north western corner of Tabalum Road and Cutler Road. The site has a frontage of 18.29 metres (m) to Tabalum Road and an arc frontage of 35.05m to Cutler Road. There is a splay corner affecting the site (at the intersection Tabalum Road and Cutler Road).</p> <p>The land falls quite steeply from the Tabalum Road frontage at RL76.66 centrally to the rear boundary abutting No.6 Cutler Road at RL72.0 at the pool area. There is a retaining wall adjacent to the boundary with No.6 Cutler Road. The level at the base on the abutting property being approximately RL 68.18.</p> <p>The site contains a three storey (with attic) brick detached dwelling house with a rear swimming pool located off the Cutler Road frontage.</p> <p>Vehicular access to a three car garage at the lower house level is located off Cutler Road. Access to an additional covered car parking space is available from Tabalum Road adjacent to the house entry. Surrounding development consists of low density detached housing and Sydney Harbour National Park is adjacent the site to the east.</p>

The site is subject to bushfire hazard zone and is in a location where broad views of the Harbour area (toward Sydney Heads and Sydney CBD) are available from the site and surrounding land. From various vantage positions, views to the south, west and north are also available from surrounding land (and the site) due to the ridgeline topography.

There are no significant trees on the site or unique rock outcrops.

Map:



SITE HISTORY

Building Approval No.134/87 for a swimming pool was approved by Council in 1987.

The site will be cleared of all existing structures, including the dwelling, pool, garage, outbuildings and garden areas as part the required site preparation.

Therefore, no further consideration of site history works is required.

Prelodgement Meeting

No pre-lodgement meeting was held in relation to the proposed development.

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) –	See discussion on “Environmental Planning Instruments” in this report.

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Section 4.15 Matters for Consideration'	Comments
Provisions of any environmental planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information.</p> <p>Amended plans were submitted to assist in resolving/addressing issues relating to building bulk/scale, privacy, setbacks landscaping, views and the like. The amendments are minor design considerations appropriate to be addressed by conditions, however the applicant offered to include those matters on the plans as an alternative approach to using conditions to achieve the same outcome. This includes deletion of the new pool component from the DA to no longer include that element (replaced with landscape area). The principal objector was made aware that the amended plans were available to be viewed on Council's website. Formal re-notification was not required in accordance with the Community Participation Plan.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent as all existing building structures on site are to be demolished.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety, access, building work / materials the development). This matter is subject to BCA compliance for Construction Certificate stage for the new build rather than 'upgrade' of existing.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to</p>

Section 4.15 Matters for Consideration'	Comments
	consider the provisions of the Building Code of Australia (BCA also known as the National Construction Code). This matter has been addressed via a condition of consent. This includes but is not limited to fire safety, access, building work / materials the development. This matter has been addressed via a condition of consent and fire safety and is subject to BCA compliance appropriate for <i>Construction Certificate</i> stage.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the residential nature and character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development subject to conditions.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	<p>Subject to conditions, no matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p> <p>All submission issues have been considered and relevant considerations under the Manly LEP and Manly DCP including, but not limited to, surrounding amenity, views, landscaping, traffic, parking, construction/demolition and the built form of the proposal including ancillary works.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

A Bushfire Assessment Report dated 21.8.2019 has been provided to address fire safety and includes relevant requirements to comply with *Planning for Bushfire Protection* to ensure a a reasonable and satisfactory level of bushfire protection to the subject development. Appropriate conditions are recommended to comply with the relevant bushfire safety requirements.

NOTIFICATION & SUBMISSIONS RECEIVED

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The subject development application has been publicly exhibited from 24/02/2020 to 09/03/2020 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:
Mrs Peggy Alice Bawmer	6 Cutler Road CLONTARF NSW 2093
Gian Gazzilli	Address Unknown
Gianandrea Gazzilli	3 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mr Anthony Robert Bannerman Mrs Lisa Jane Bannerman	9 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Ms Carolyn Lesley Punshon	13 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mrs Jennifer Maree Menzies Mr Robert Menzies	26 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mr Johnson Hsu	5 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mr John Symon Marjory Symon	18 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mr James Francis Doyle Mrs Frances Mary Doyle	4 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mr Phillip John Thrush	6 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Jan Ritchie	Address Unknown
Mr Anthony Carmelo Raco Mrs Isabella Raco	24 Tabalum Road BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions:

1. Building height in the streetscape
2. View impacts
3. Dilapidation risk including construction works
4. Garage structures
5. Privacy
6. Overshadowing
7. Setbacks and pool structure
8. Noncompliance with development controls
9. Other Manly DCP Manly LEP matters

The matters raised within the submissions are addressed as follows:

- **1. Concerns with regard to height and streetscape impacts of the corner location and use of materials for the adjacent bushland setting of the National Park.**

Comment:

The site is zoned for Low Density Residential land use (urban land) and is situated on a ridgeline area close to Sydney Harbour National Park (adjacent). The site is separated from the National Park by a public road and does not share a common boundary with the National Park



land (unlike other properties in Tabalum Road). Landscaping considerations have been addressed in detail by Council's Landscape Officer and subject to conditions, including bushfire protection requirements and view considerations, the proposal has a compliant landscaped area pursuant to the Manly DCP requirements.

The proposal is consistent with setback requirements for properties with two frontages (corner lots) pursuant to the Manly DCP and detailed consideration of this issues has been made under *Clause 3.1.1 Streetscape (Residential area)*, *Clause 4.1.4 Setbacks (front, side and rear)* and *Building Separation*, within this report.

With regard to overdevelopment considerations, the building complies with the floor space ratio (FSR) and dwelling density provisions under the Manly LEP and DCP. Considerations of building height (including wall and maximum height controls) are addressed within this report under Manly LEP *Clause 4.6 Exceptions to development standards* and Manly DCP *Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)*. In response to this issue and need to reduce height and bulk, the applicant has accommodated those matters with the current plans. A number of amendments have been incorporated into revised plans, including the deletion of the swimming pool from the proposal, a minor reduction in roof height, inclusion of a privacy screen and a narrower balcony/eave width.

Due to the slope of the land, the proposal has sought to capitalise on positioning the garage areas within a new basement area, with 3 levels above, that "step-up" the slope. The non-compliance with the wall height and overall height are confined to the lower (leeward) side of the site and are partly influenced by the design maintaining continuity with the existing levels of the building and existing private open space level, with similar building setbacks. A landscape setting is provided for the building, including the use of landscape planters along terrace areas with materials and colours that are consistent with *Clause 5.4.1 Foreshore Scenic Protection Areas* and *Clause 5.4.1.1 Additional matter for consideration*.

In summary, the proposal will alter the existing shadow pattern toward adjacent land, however the proposal is consistent with the objectives of the Manly DCP control to maintain reasonable solar access to adjacent land.

- **2. Concerns with regard to view impacts created by the proposal for properties overlooking the site, along Tabalum Road.**

Comment:

A view analysis has been provided by the applicant (reference View Analysis by *Sanctum Design*). The subject site and surrounding lands were inspected during a site visit to consider view sharing, including access to alternate view lines available. Where direct access was not available, a direct view line was considered in best proximity and comparative consideration to view lines (including survey datum) analysis and taking into account particular submissions regarding views as received or identified following the notification of the application.

A detailed consideration of view sharing is provided within this report under *Part 3.4.3 Maintenance of Views*. In summary, the proposal will have a minor impact on existing views from particular adjacent and surrounding properties as assessed pursuant to the view assessment criteria. On balance, the proposal is consistent with the objectives of the Manly DCP control and the LEC Planning Principle in relation to views and does not warrant refusal of the application.

- **3. Concern that the proposal will affect dilapidation to adjacent properties, including**



noise, dust and amenity impacts during demolitions and construction work hours.

Comment:

A geotechnical report has been submitted that has assessed slope, stability and site conditions in the context of the proposed works pursuant to Clause 4.1.8 Development on sloping sites of MDCP. Recommendations from the Geotechnical report and standard conditions regarding excavation, construction methods (including OHS and compliance with relevant Australian Standards and the BCA) are imposed to address this issue. A dilapidation report will be required prior to works to ensure appropriate consideration/response to dilapidation risks for adjacent property assets (private and public). Site operational management including standard construction work hours, noise, dust, erosion control and the like are addressed by conditions and also form part of the Construction Certificate stage requirements and operational conditions.

In summary, this objection issue is not considered to warrant refusal of the application.

- ***4. Concern that the proposal has garage structures within the setback to Tabalum Road that creates streetscape impacts.***

Comment:

The site has two road frontages and is formally known as No.1 Tabalum Road, with the principle outlook from within the existing dwelling towards the harbour and city horizon. Due to the corner location the dwelling, it has a strong street presence along the two frontages. The proposed garage excavation and pool structure are to be demolished as part of the proposed works. The new garage is in a basement floor level similarly located to the existing lower level garage. The swimming pool has now been deleted in favour of reducing the scope of works, with replacement lawn area shown on the amended plans and appropriate re-instatement, including integrated refurbishment of the existing retaining structures as part of the construction certificate works.

This issue is addressed in further detail under *Part 4.1.4 Setbacks (front, side and rear) and Building Separation* within this report.

This issue does not warrant refusal of the application.

- ***5. Concern that the privacy screening to adjoining properties in Tabalum Road and Cutler Road overlooking potential toward adjacent land / property***

Comment:

This issue has been considered, including terrace areas, window near side boundaries, incorporation of fixed louvre privacy screens and site levels to ensure no unreasonable privacy impacts arise in relation to surrounding land. Mutual screen planting is provided and rooms and windows are appropriately located to ensure no unreasonable impact. High use areas such as living and kitchen areas are appropriately designed to maintain privacy to adjacent land with the principal outlook toward the south-west and maintaining a wide setback to No.6 Cutler Road. Low use rooms (bedrooms) are appropriately located and have been designed to not create unreasonable privacy impacts to adjacent land including acceptable window placement / style along side setback areas.

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

- ***6. Concern that the building and landscape elements will encroach on future views across the site toward the Harbour and surrounding views.***



Comment:

The inclusion of canopy trees is a requirement of the Manly DCP and the applicant has shown the landscape planting design drawn by *Paul Scrivener (revision C)*. Consideration of views includes alternative plant selection (addressed by condition) within the Tabalum Road frontage as there is a view line along the front setback area from the adjacent dwelling. Generally, the proposal includes a mix of small and medium trees and mixed species that have a height commensurate with the landscape setbacks and are suitably spaced around the perimeter of the dwelling to provide a landscape setting.

In summary, it is considered that the landscaping plan and recommended tree planting will not create an unreasonable impact on the amenity of surrounding land, subject to conditions as recommended.

This issue is not considered to warrant refusal of the application.

- **7. Concern that the proposal will create overshadowing impacts.**

Comment:

This issue has been considered pursuant to *Part 3.5.1 Solar Access* of the Manly DCP, including detailed consideration of the shadow diagrams (Rev B) provided by *Sanctum Design*. In summary, the building height, orientation, setbacks, wall height do not create any unreasonable impact on adjacent land. Compliant solar access is maintained between 9am and 3pm on 21 June for private open space and adjacent amenity that is appropriate for the low density residential environment.

This issue is not considered to warrant refusal of the application.

- **8. Concern that the proposal does not fully comply with all aspects of Councils development controls or requirements, including landscaping.**

Comment:

The proposal has been assessed in accordance with the Manly DCP and LEP development controls and consideration has been given to the submission including, but not limited to building height, FSR, wall height, storeys, setbacks, streetscape, amenity, pool position, excavation, fencing and landscaping. While there are a number of non-compliances, these are assessed on merit and overall the proposal is considered to be consistent with the objectives of those controls and has provided reasonable areas and quality of landscaping.

The development controls assist to ensure appropriate design response is provided and minimise amenity impacts of development on the natural and surrounding environment. Variation to the development controls is considered on merit and enables site constraints and other influencing factors to be accommodated, without unreasonable or unnecessary strict compliance. Manly DCP and LEP controls are permitted to be varied with appropriate considerations and in this case, subject to conditions, the proposal does not create an unreasonable precedent or impact against the planning control or to the amenity of surrounding land and the natural environment.

In summary, this objection issue is not considered to warrant refusal of the application, and has been the subject of detailed consideration within this report and conditions where appropriate.

- **9. Concern that the proposal is not consistent with listed elements of the Manly DCP and Manly LEP (as detailed in written submissions including matters outlined therein).**

Comment:

The assessment of the proposal has considered the submission matters in the context of the



proposed development and where appropriate the application information has addressed matters where clarification was sought in context with the relevant planning controls (with extensive and lengthy inclusions of the DCP / LEP). The matters raised have been considered in context to the application and addressed collectively where appropriate on balance with the whole of the LEP and DCP including context with the established pattern of surrounding development in the low density residential environment. A detailed response is not required where it is considered conventional matters are addressed appropriately by standard conditions. This includes matters that are appropriate to the construction certificate stage (site works, safety, BCA, excavation management). In further addressing those matters, the applicant has responded and accommodated the submission concerns with a considered approach, including minor amendments to the plans to reduce building bulk, height and improve amenity (privacy, views and the like). In addition, the applicant has deleted the swimming pool from the proposal (demolition of the pool remains). As those changes are relatively minor or otherwise achievable by conditions for the construction certificate plans, no re-notification of the revised plans was required as they materially improve amenity considerations by further reducing impacts on surrounding land.

This issue has therefore been considered by revisions to reasonably accommodate considerations by an inclusive design approach for the proposal. On balance the proposal is consistent with the objectives of the DCP and LEP and merit consideration has been made of the design in so far that issue is not considered to warrant refusal of the application subject to conditions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application is for the demolition of the existing house and swimming pool, and the construction of a new dwelling house, basement parking and associated landscape works. The amended site plans include deletion of the proposed pool, which shall be documented in the amended site and landscape plans as landscaping.</p> <p>The development application is assessed by Council's Landscape Referral section against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and in particular clauses 3.1 Streetscapes and Townscapes; 3.3.1 Landscaping Design; 4.1.5 Open Space and Landscaping; and 4.1.10 Fencing.</p> <p>Landscape Plans and Arboricultural Impact Assessment are submitted with the application in accordance with Northern Beaches Council's DA Lodgement Requirements.</p> <p>The landscape proposal includes augmenting the existing landscaping within the road verge of Cutler Road, through additional landscaping and street trees. Council do not support new landscaping of the road verge except for street trees and turf, and the road verge is to be utilised for safe pedestrian passage without obstruction. The proposed street trees are located to potentially obstruct pedestrian passage. A clear turfed width of at least 1.5 metres wide must be available for</p>

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Internal Referral Body	Comments
	<p>pedestrian access with the road verge. The existing landscape within the planters at the southern west end of the site upon Council land is proposed to be refurbished through replacement of the planter walling as required, and existing planting shall be retained and enhanced as proposed.</p> <p>Subject to amended Landscape Plans in accordance with the conditions of consent to achieve an appropriate landscape outcome in consideration of 3.3.1 Landscaping design, the landscape outcome is satisfactory. The recommendations of the Arboricultural Impact Assessment raise no issues.</p> <p><u>Planning Comment</u> Landscape assessment comments are concurred with, including recommended conditions of approval.</p>
NECC (Development Engineering)	<p>No Development engineering objections subject to conditions.</p> <p><u>Planning Comment</u> Engineering assessment concurred with, including recommended conditions of approval.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

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SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1040129S_04 dated 20 January 2020).

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

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. A referral response was not received within the 21 day statutory period and no objections are raised and no conditions are recommended from Ausgrid.

Other Service Infrastructure Authorities

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is not located within the Sydney Harbour Catchment as the boundary extends along the southern side of Cutler Road and eastern (opposite) side of Tabalum Road.

Given the close proximity of the SREP boundary line and visibility of the site the SREP is



considered. The scale of the proposed building and context with the existing house, adjacent urban backdrop and the works proposed (including height, materials, landscaping, topography and the like), referral to the *Foreshores and Waterways Planning and Development Advisory Committee* is not considered necessary. In context of the location the proposal and SREP boundary extending around the sides of the site the proposal remains consistent with the provisions of the SREP.

SEPP (Coastal Management) 2018

The site is not subject to SEPP Coastal Management (2018) as the boundary extends along the southern side of Cutler Road and eastern (opposite) side of Tabalum Road.

Comment:

The proposal is however considered to be consistent with Clause 14 and 15 of SEPP Coastal Management (2108) given the close proximity to the "Coastal Use Area" and "Development in the Coastal Zone Generally" areas.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.6m	12.9%	No*
Floor Space Ratio	FSR:0.4:1	FSR: 0.398:1	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes



Clause	Compliance with Requirements
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance:

Development standard:	Building Height
Requirement:	8.5m
Proposed:	9.6m
Percentage variation to requirement:	12.9%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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



(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,



- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *"The site has a slope of 4:1 and has been excavated for the current building level. The new dwelling has a flat roof and is proposed to replace the existing pitched roof. The non-complying section consists of part of the clerestory well setback from the street frontages and the roof over the rear verandah on level 3. The non-compliance is not visible from Tabalum Street and not prominent in Cutler Road where stepping in response to site slope is apparent. The areas of non-compliance are of light weight construction and visually recessive.*
- *When viewed from Tabalum Rd the building sits mostly below the height limit and the non-compliance is on the lower slope (opposite side the building away from overlooking dwelling in Tabalum Road) below the height limit.*
- *The proposed development produces new built form that is contextual to the locality and produces a form that is of well-considered contemporary design. The development steps down the site and responds more thoughtfully to the site characteristics than the existing building in achievement of objective to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality;*
- *The height encroachment is not apparent in the Tabalum Road streetscape being well setback from the street elevation where the building is well under the control and is visually recessive from Cutler Road and adjoining premises due to the steep topography which reduces visibility significantly. The proposal is contextual in scale and achieves objective to control the bulk and scale of buildings.*
- *The proposed encroaching portions of roof do not cause any significant effect on views from adjacent properties having regard to the tests in Tenacity v Warringah Council thus not offending objective to minimise view disruptions to and from residential land, including associated public spaces.*
- *The height of the proposed building does not exceed the top ridge level of the existing development (up to 1.17m less) and has a maximum rl below that of the abutting house No. 3 Tabalum Road (refer north elevation profile of NO.3 showing a 10.67m maximum overall height) again supporting the appropriateness of the proposed height in achievement of objectives to maintain development that is in context with the pattern and scale of surrounding development.*
- *The proposed height is well within the development potential of the site noting again that the existing building height exceeds MLEP 2013. A built form that is consistent with the surrounding built form and which successfully achieves and adds to the character of the locality will result.*



The upper level section that breaches the control is articulated and light weight in form, setback and not readily visible from the street frontages;

- *The breach of the control does not cause any adverse impact on the amenity of surrounding properties in relation to overlooking or overshadowing (refer shadow diagrams) in achievement of objective to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.*
- *The proposed development incorporates a high level of design skill. The rationale behind the design was having regard to the south facing slope to provide a clerestory in order to achieve the penetration of northern light into the proposed house;"*

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 an acceptable design that will not unreasonably impact the amenity of the surrounding urban or natural environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

In considering the proposal, it is noted that a reduction in the bulk, height, setbacks and selected elements of the proposal have been amended in response to submission issues and further detailed assessment considerations made with regard to the Manly DCP and LEP. The subject land is a corner site with a moderately steep slope (including existing excavation) that influence the design response such as floor levels, side and front setbacks, building footprint and future amenity considerations.

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 standards

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

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



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

Comment:

The proposed building height is below the 8.5m height control (including the maximum wall height) when viewed from the Tabalum Road frontage and therefore the building height is acceptable with regard to the streetscape when viewed in context with adjacent dwellings in Tabalum Road. The land has a gradient of 1:4 and therefore the building steps down the site with the resultant breach of the building height materialised on the low side of the site whereby roof elements exceed the height corresponding to height plane where it falls sharply to follow the existing ground level below.

The subject site is a corner lot and therefore Cutler Road frontage has a narrower setback however, open balcony elements and roof eaves with a flat roof form are used to reduce building bulk on the lower side of the building where the building transitions to the lower side of the site. Wide setbacks are maintained to No.6 Cutler Road for private open space and pool area. The position of the proposed dwelling is consistent with existing dwelling position in terms of streetscape and landscape setbacks.

b) to control the bulk and scale of buildings,

Comment:

The proposal complies with floor space requirements for the residential zone and the proposal includes the use of balcony elements, landscaping, changes in wall materials and variable setback to break up building bulk. The roof form is flat and includes a clerestory element for visual interest and internal amenity. The clerestory element has been reduced in size to reduce bulk and minimise any non-compliance with this element.

It is considered that the proposal is consistent with this objective.

c) to minimise disruption to the following:

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

Comment:

Detailed view considerations have been made with the assessment of the proposal, including consideration made by the applicant to future reduce potential view impacts with selected minor changes made to address concerns raised with regard to views from nearby residential development across the site toward any harbour, foreshore or district views and the like. The site is not in a location where principal public views lines are gained across the site from a public space (beach / lookout or similar). It is considered that the proposed building height variation maintains consistency with this objective.

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

Comment:



Detailed solar access diagrams are provided to demonstrate that the proposed height variation does not create any unreasonable impact on solar access to adjacent land. (See diagrams A18 to A23 drawn by *Sanctum Design*). It is considered that the proposed building height variation maintains consistency with this objective.

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

Comment:

The dwelling is adjacent a lookout point and carpark. The height and bulk of the proposed dwelling does not create any adverse impact (such as overshadowing or blocking public harbour views) on recreational land or existing vegetation for the adjacent National Park. It is considered that the proposed height variation maintains consistency with this objective.

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 proposed height variation does not offend this objective of the zone in that the use of the remains (for detached housing) and is provided within a landscape setting that is compatible with the height, density and pattern of surrounding development.

It is considered that the development satisfies this objective.

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

Comment:

This clause is not relevant to the proposal as no other (non-residential services or facilities) are proposed.

It is considered that the development satisfies this objective.

Conclusion:

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

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment:

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



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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area:	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 600sqm	Residential Area Dwelling - proposed 753.8sqm	N/A	Yes
	Dwelling Size: Minimum 134sqm (includes 5 bed 5 bathroom)	Dwelling 300 sqm	N/A N/A	Yes Yes
4.1.2.1 Wall Height*	North Elevation: 8.0m (based on site gradient 4.6:1)	7.8m	N/A	Yes
	South Elevation: 8.0m (based on site gradient 4.6:1) (Cutler Road)	8.2m	1.5%	No*
	East Elevation: 8.0m (based on site gradient 4.6:1) (Tabalum Road)	6.8m	N/A	Yes
	West Elevation: 8.0m (based site gradient 4.6:1)	7.8m	N/A	Yes
4.1.2.2 Number of Storeys	2	3 (basement garage, lift access / stairway and basement service, storage)	50%	No*
4.1.2.3 Roof Height	Height: 2.5m	1.13m	N/A	Yes
	Parapet Height: 0.6m	0.4m	N/A	Yes

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	Pitch: maximum 35 degrees	0 to 1 degree	N/A	Yes
4.1.4.1 Street Front Setbacks (Tabalum Road)	Prevailing building line / 6m (Tabalum Road)	Consistent with prevailing setback *Awning reduced by condition	N/A	Yes*
4.1.4.2 Side Setbacks and Secondary Street Frontages (North, West and Cutler Road frontage)	Windows: 3.0m	4.9m to 5.9m (North) 15.2m (West)	N/A N/A	Yes Yes
	North (No.3 Tabalum Road)	2.2m to 3.6m	N/A	Yes
	West (No.6 Cutler Road)	10.0m	N/A	Yes
	Secondary street frontage: (Cutler Road)	Consistent with prevailing setback* 3.3m Garage (Basement) 1.5m Landscape balcony planter (L1) 5.0m to 7.2m Dwelling wall (L2) 2.0m balcony to 4.4m Dwelling wall (L3)	N/A N/A N/A	Yes* Yes* Yes*
	Minimum frontage <50% for garage structures	<50% for garage on Cutler Road		
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open space (60%) area (Total site area req. 452sqm)	548sqm Site total 75%	N/A	Yes
	Open space above ground <40% of total open space	45 sqm 14.8%	N/A	Yes
4.1.5.2 Landscaped Area (500sqm to 800sqm site area) (Total site area 753.8.1sqm)	Landscaped area 40% of open space 160sqm	395 sqm 52% (Total LOS by Revision B)	N/A	Yes
	3 native trees	3 trees	N/A	Yes
4.1.5.3 Private Open Space	18 sqm per dwelling	262 sqm Ground Level 1	N/A	Yes
4.1.6.1 Parking Design and the	Maximum 50% of	6.0m garage	N/A	Yes



Location of Garages, Carports or Hardstand Areas*	frontage up to maximum 6.2m	34m road frontage		
Schedule 3 Parking and Access	2 spaces per dwelling	2 spaces per dwelling	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	No	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	No
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP		

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The DCP requirements and objectives, pursuant to Clause 3.1.1 Streetscape (Residential area), including sections 3.1.1.1 to 3.1.1.5, are addressed as follows:

Merit Assessment Comments:

- The proposal is required to be consistent with Complementary Design and Visual Improvement design outcomes including streetscape considerations for setbacks, materials and built form. As outlined in the built form controls table, the external walls of the dwelling are consistent with the DCP requirements and have acceptable materials in conjunction with articulation along wall planes to address visual impact on the street and adjacent land.
- Wall heights have been varied due to the sloping site, however the use of landscaping, window fenestration and other elements (such as balconies, openings) assist to ensure no unreasonable impacts of bulk. The building does however include ancillary elements that extend / protrude into the streetscape setback areas that are inconsistent with objectives of the control. This includes avoiding elevated structures such as elevated open space terraces, pools and the like that would dominate public space of the street boundary /setback area and complementing the existing character which should consider roof forms, front fences and garages. In this regard, the applicant has selected to delete the proposed pool, originally intended to be located in the south-west corner of the site. Therefore, this building structure has been deleted from the development application plans to reduce impacts on Cutler Road.
- In consideration of the Tabalum Road frontage the building has a lower profile presenting as part 2 storey (with a flat roof form) and the clerestory roof feature has been reduced in size to reduce roof bulk and also improve view sharing. The dwelling profile when viewed from Tabalum Road is consistent with or lower than adjacent houses on the same side of the road as the subject site. The Tabalum Road streetscape is also characterised sloping the natural topography either side of the road in that dwellings on the lower side generally have higher rear elevation / setting with 2 to 3 storey built form and those on the high (northern) side of the road are in an alternative elevated positions with 2 storeys overlooking the street, being positioned at a higher natural ground level. The variation to the 3 storey control does not create an unreasonable impact on surrounding land and is consistent with the pattern of surrounding



development on similar sloping positions.

The proposal includes a 7sqm walled portico awning at the road boundary pedestrian gate which is not a feature evident in the local streetscape precedent (such as a free standing entry awnings normally associated with higher density development). The entry area also has wide eaves with blade wall protruding to 4.4m with the front door setback 6.8m. Therefore the walled awning detracts from the prevailing streetscape low density streetscape and is inconsistent with Clause 3.1.1.2. It is recommended that this elements be deleted and a normal gate entry only to Tabalum Road with the blade walls reduced to maintain an open streetscape view line.

- No issue is raised with respect to clause 3.1.1.5 for the bin storage area as this is concealed from view as part of the basement garage excavation.

Having regard to the above assessment, and objectives of this clause it is concluded that subject to conditions the proposed development is consistent with the MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

General Amenity considerations pursuant to *Clause 3.4 Designing for Amenity* are considered as follows:

Merit Assessment Comments:

- Design considerations have been made to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and also to the proposed development for the new dwelling. Relevance of the density and pattern of development adjacent (commonly 2-3 storey dwellings) and local prevailing amenity, including privacy and solar access have been accommodated in the design, including screens, room orientation, windows, wall setbacks and landscaping. A number of selected changes to the plans have been made to accommodate issues raised by neighbouring properties to improve views, reduce bulk, improve privacy and address those concerns. While these changes could have been addressed by conditions, the applicant agreed to accommodate those matters directly into the plans, being a practical responsive approach.
- The design of the proposal is of a contemporary architecture and does not detract from the scenic amenity of the area. In particular, the visual pattern of bulk and design of a development is consistent with adjacent and nearby dwellings and has been considered from surrounding public and private viewpoints. In this regard, the applicant has responded to submissions made and reduced the extent of various elements of height, roof span, bulk, including deleting the pool element thereby reducing setback impacts.
- Adequate space on site is retained for open space to provide a landscape setting and meet the recreational needs of the occupier for the proposed open space areas and dwelling design for the redeveloped site for new house.
- The materials and finishes selected are suitable for the surrounding urban environment in terms of reflectivity including the roof material and style and window glazing extent for walls. The use of screens, wall articulation, natural materials and colours are appropriate for the residential



nature of the building and do not detract from the existing streetscape and surrounding amenity.

- In summary, the proposal has been designed to ensure no unreasonable amenity of existing and future residents and including privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts, subject to conditions.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.2 Privacy and Security

Specific privacy requirements and objectives, pursuant to *Clause 3.4.2 Privacy and Security*, are considered as follows:

Merit Assessment Comments:

- The proposal has been designed to ensure no unreasonable loss of privacy to adjacent and nearby development by the use of design responses including window size and placement of privacy screens, use of translucent glass and window design (width, position and sill heights) to maintain reasonable privacy for the urban environment, including by the configuration of ground level spaces and landscaping (ground level or planter boxes).
- Where walls are close to the adjacent boundaries of No. 3 Tabalum Road and No.9 Cutler Road windows are off-set where practicable or designed to ensure no unreasonable impact on the adjacent dwellings with regard to viewing across private open space. The building separation and landscaping is also provided to mitigate impacts on privacy appropriate to residential living in the surrounding residential environment.
- The proposed dwelling for No.1 Tabalum Road has been designed with appropriate response to ensure no unreasonable impacts on privacy (both acoustical and visual) including the consideration of the floor plan elements (bathrooms, bedrooms, living area, fencing, landscaping and the like) so that direct viewing is limited or consistent with the surrounding residential environment. Generally, the orientation of the dwelling is toward the south and westerly similar to the existing dwelling outlook. The proposal does not create direct unreasonable viewing toward properties adjacent the site in Tabalum Road or Cutler Road.
- Landscaping and privacy screening devices have been incorporated to mitigate direct viewing between windows and/or outdoor living areas of adjacent buildings. Overall the proposal provides an appropriate level of privacy in the context of the surrounding density of the residential living environment without unreasonably compromising access to light and air. Bedrooms areas, being normally occupied less during the day and used for sleeping at night will not be unreasonably impacted.
- In summary, the design of the proposed new dwelling provides a balanced street outlook and well located habitable rooms, including private open space with appropriate residential security consideration.



Having regard to the above assessment, and site inspection made to assess the privacy context in the local surroundings, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.3 Maintenance of Views

Specific view considerations and objectives, pursuant to *Clause 3.4.3 Maintenance of Views*, are addressed as follows:

Merit Assessment Comments:

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

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:

The views affected include water views toward the city skyline, Middle Harbour, Mosman and Sydney Heads. Tabalum Road and Cutler Road are in a ridgeline position with Sydney Harbour National Park separating the adjacent housing from the harbour foreshore area. At present the view is already affected by the high hipped roof profile of the existing house on the subject land. Impacts in the view also include power line structures, trees and other surrounding development that interrupt views at various points or angles / directions. Generally the site and surrounding residences have broad vistas with some views extending across 180 degrees from upper balconies or windows. Views at ground level are more interrupted by landscaping, buildings and associated structures.

The applicant has provided a view impact comparison, using the existing house superimposed with the proposed building outline to demonstrate views including iconic or valuable elements of water, foreshore, city skyline and the like. The view analysis demonstrates that some elements / margins of the view are gained (due to the lower roof) while other elements / margins are lost due to the wider building footprint. In the context of the whole of the water and land views the reduced margins are minor extensions / interruptions and do not fully obscure iconic elements. In this regard, views lines include a number of focal elements such as Sydney Heads, foreshore, marinas, public foreshore buildings, CBD skylines (Sydney/Chatswood).

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 across the site from No.2 to No.6 Tabalum Road are sitting and standing views and above



ground floor level (being the first storey, where existing), the height advantage gives a more favourable view that is less affected since the subject site is substantially lower and falls away steeply from Tabalum Road. The views from No.3 & No.5 Tabalum Road are at a greater side view angle, being over the side boundary of the subject site if looking southward toward the Harbour area / Middle Head. Further away from the site in Tabalum Road (such as No.12 Tabalum) the view impact is diminished due to the separation distance and alternate outlook dictated by the subdivision pattern. The adjacent dwelling of No.6 Cutler Road is significantly lower than the site and therefore has no principal outlook across the subject site. An alternative view across the front setback exists from No.3 Tabalum Road (corner window - living area) which is interrupted by the front gate awning and protruding blade walls at the front door proposed. This issue is proposed to be addressed by the following minor amendments (at CC stage) to the design:

- The external blade wall extensions on either side of the front entry are to be setback 5.0m from Tabalum Road boundary;
- The entry awning structure and side walls for the pedestrian gate entry to Tabalum Road is to be deleted; and
- Tree planting within the front setback to Tabalum Road is to be amended to ensure plants have a natural height that is 3.0 metres, or less, in order to minimise view impacts.

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 affected properties are on the opposite side of Tabalum Road that overlook the site in a westerly to south westerly direction and alternatively properties north of the site. View lines are at various angles in relation to distance from the site and floor levels from a particular viewing point. Surrounding properties are multi-storey dwellings with terraces, glazing and windows that overlook the street from the front of those dwellings or include front and side windows at first floor level. The opposite side of Tabalum Road (easterly) is approximately 2.0m higher at the building line. Building on the lower side of Tabalum Road generally have garage access at grade with broad views available from the rear (west)

Due to the angle street alignment the most direct view corridor is from No.4 Tabalum with other surrounding houses having a more diagonal view line over the subject site (except for No.2 Tabalum that faces south). Notwithstanding this all properties have a significant vistas southeast city horizon with the iconic views of the harbour area, including Middle Harbour area. The view across the site has partly encroached water views of North Harbour due to the pattern of development along Tabalum Road. In this regard the applicant has reduced the extent of some building elements (eaves, balcony, clerestory roof) to further positively reduce the view encroachment.

In this regard, the views from above ground floor that also overlook the site includes the wider district outlook toward Chatswood, Sydney CBD and Sydney Heads. The building alignment of the proposal is comparable (with the exception of the protruding blade walls and entry gate awning) with the existing house and overall has a minor view impact being across a side boundary with the view line generally being over the rear private open space and not the major building elements (see landscape comments regarding tree replacement considerations). Landscaping in the front setback will potentially impact the view line across the front setback area from No.3 Tabalum (see Landscape Site Plan - Paul



Scrivener Landscape Architect Sheets 1 to 4). To address this impact a condition for planting selection within the front setback to Tabalum Road be limited to a maximum 3m natural height.

On balance, considering the whole of the view, alternative view lines, pattern of surrounding development, district outlooks and the existing roof profile of the proposed dwelling in comparison to the proposed new roof, the view loss is qualitatively considered to be **minor**.

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:

An assessment of the non-compliance with the planning controls has been made and in summary the proposed roof form and height (include wall planes) does create any unreasonable impact due to maintaining a low roof profile with the building bulk including articulated wall plans and recessed elements (such as balconies). Roof elements have included in the roof style (being flat) does not create an unreasonable view impacts having been refined by the applicant minimise the minor non-complying elements for the upper level and roof elements. The blade walls at the front entry and front awning will interrupt the view from the front corner window (living area) of No.3 Tabalum, therefore a reduction of these elements is recommended to avoid view impact on the iconic view line of Sydney Heads (including Middle Head) across the front setback.

While some elements of the view space are obstructed, other elements of the view space are opened up which assists to balance the view impact. It is also noted the alternative view line of the Harbour entrance area remains unaffected by the proposal for dwellings opposite the site (north side) on Tabalum Road. Additionally, the design of the proposal is considered reasonable in terms of views across the site from No.3 and No.5 Tabalum Road and views from the living areas / terraces of No.4 to No.6 Tabalum Road, if looking toward the site to the land and water views beyond.

In summary, the overall view impact when considered in terms of the proposed building design approach, landscaping, height, setbacks, and floor to ceiling space is considered satisfactory and does not create an unreasonable view impact for any adjacent or surrounding properties.

The development is further considered against the Objectives of the DCP control as follows:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

Comment:

The proposal maintains view sharing with a reasonable design response that minimises impacts that are consistent with view sharing principles outlined above. The existing dwelling house and garage will be demolished and the profile or outline of the new development including the house and garage does not create an unreasonable loss of view sharing on balance with the change between quantitative and qualitative overall outlook.

- *To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised*



landmarks or buildings from both private property and public places (including roads and footpaths).

Comment:

Views from nearby development along Tabalum Road where dwellings overlook the site will not be unreasonably disrupted. Tabalum Road also has a significant vistas along the road corridor toward the Harbour and toward the west.

Public views along Tabalum Road are directed toward the south, rather than across the subject site due to the pattern of surrounding development and the direction of the street alignment and lookout area at the intersection of Cutler Road and Tabalum Road. The development of the site will present as part single / part two storey to Tabalum Road with the new garage on the low slope (off Cutler Road) with landscape space and planter box elements along the setback area. The density, height and distribution of landscaping is mindful of views and providing a balance to screen planting and privacy for the building required by the DCP. This is consistent with the visual impact of other detached dwellings in the vicinity of the site. Additionally, the setback from Tabalum Road in consideration of the proposed building height, envelope and alignment of the building will not have an unreasonable impact on views from adjacent properties and the applicant has reduced selected elements (balcony, eaves, clerestory) of the proposal to ensure minimal view interruption.

- *To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

Comment:

The proposal is consistent with the objectives of the Manly DCP to ensure development may take place and the design responds appropriately to the site constraints and opportunities without creating unreasonable view amenity impacts for surrounding development that overlook the site. The demolition of the existing house and garage has sought to maintain a low profile (lower than the existing house) and maintain view sharing as demonstrated. This is also supported in the 'View Sharing Assessment' submitted by the applicant, dated 20 January 2020 (and minor plan amendment dated Sept 2020). On balance, in considering the whole of views available from various positions and relevant properties and view lines in particular over / through the site, the proposal is considered to be consistent with this objective.

Having regard to the above assessment, and site inspection made to assess the view context in the local surroundings, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.5.5 Landscaping

Specific landscaping requirements and objectives, pursuant to *Clause 3.5.5 Landscaping*, are considered as follows:

Merit Assessment Comments:

- Landscaping has been selected that includes suitable trees and vegetation that is adaptable to the site conditions, including the site of ground level open space, soil / rocky conditions, available solar patterns, slope, proximity to existing vegetation, building services and to provide



amenity to the occupants.

- Detailed landscape referral assessment comments are provided under the heading "internal referrals" within this report. In summary, the landscaping has been amended by conditions to reduce the impact of high retaining walls close to Cutler Road frontage in the vicinity of the proposed swimming pool. This includes consideration by the applicant to exclude / delete the pool structure from the current application and retain this area as landscaping only for the current development application. This reduces the scope of works and lessens the potential impact on surrounding land.
- Landscape planting provided shown on the plans drawn by *Paul Scrivener Landscape Architecture (Sheet 1 to 4)* will assist to provide screening and complement the height and scale of the building by using a mix of small, medium and larger planting. Wide tree spacing has been used to ensure an open / spaced canopy that does not unreasonably impact surrounding views or outlook over the long term. The landscape planting has been considered by Council's landscape architect and conditions provided to address relevant issues identified.
- The use of native trees suitable for the local environment are slow growing and adapted for low water requirements and assist to provide habitat and food sources for insects, birds and arboreal animals. The site is within a bushfire prone area and therefore revisions are required at Construction Certificate stage and prior to Occupation to ensure planting is consistent with the bushfire requirements and recommendations provided within the Bushfire Assessment Report (to comply with NSW RFS *Planning for Bushfire Protection*).
- Landscape elements have been designed to complement the architecture of the building and provide amenity when viewed from public and private land. The proposal has been designed to retain the main landscape elements toward the Tabalum Road and Cutler Street frontages. Additional landscape spaces are provided to maintain a buffer to No.3 Tabalum Road and No.6 Cutler Road on the eastern and southern side of the site and is convenient to the principal living areas of the proposed new dwelling houses for the site.

Having regard to the above assessment and the context in the local surroundings, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance for landscaped open space provisions.

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

The DCP height requirements and objectives, pursuant to *Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys and Roof Height)*, are addressed as follows:

Merit Assessment Comments:

- The non-compliance with the wall height is limited to the east and west elevations toward the southern end of the side wall plane. The property has a moderately steep gradient and the floor to ceiling heights being proposed are consistent and are not unreasonable or excessive such that they create any unreasonable impact on view, amenity, overshadowing or building bulk and scale.
- The building presents as part single storey part two storey when viewed from Tabalum Road and two storeys with a subfloor area when viewed from Cutler Road due to the cross fall of the



site toward the south-eastern corner. The subfloor area (RL72.5) contains a bedroom, bathroom, covered outdoor private open space and stair access and lift. The basement garage area is a non-habitable space and integrated into the excavated zone (below ground) for plant room, utility / workshop storage, and lift /stair access to the garage. The garage entry is at grade and off set from the dwelling house and therefore does not appear as another storey directly below the house when viewed from Cutler Road. The stepping of each level for the house and inclusion of open balcony spaces with landscaping assist to break up wall heights and do not create unreasonable impacts for the building bulk in terms of amenity impacts. In this regard, the principal usable private open space for the terraces width / balcony area are located toward the south-east of the building to direct the outlook toward the public domain of the street.

- The requirements of this clause permit roof parapets to extend up to 0.6m above the actual wall height as a permitted additional element to wall height. The parapet feature is considered to be appropriate to the design of the roof form and satisfies the objectives of this clause under the DCP with minimal impact on views and amenity to adjacent land. The clerestory element has been reduced as part of the assessment consideration by the applicant to assist with view sharing and reduce the extent of the protruding roof elements.
- In summary, the proposal is considered to be of a satisfactory architectural design and built form with regard to wall height considerations pursuant to the Manly DCP. The non-compliance to the wall height controls does not create any unreasonable impacts of overshadowing, views, bulk or general amenity to adjacent land.
Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MDCP and the objectives specified in section 1.3 (a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Setback requirements and objectives, pursuant to *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation*, are addressed as follows:

Merit Assessment Comments:

- The proposal has maintained the central position of the existing building footprint with some variations for the new dwelling house, including elements toward the road frontage and a wider landscape presentation for Tabalum Road, to which the property is addressed (front entry door), with a new (relocated) vehicle access (garage) on the the lower side in Cutler Road. The site is oriented to present toward Tabalum Road Cutler Road being treated as the secondary road frontage (side setback) due to the corner location. There is no distinct setback line to Cutler Road until further west of the site due there being only one house further north before the National Park land. Therefore, the proposal is considered to address the desired development pattern of the street, the street edge (nature strip area) and the landscape character of the street (with consideration to not longer include the new pool structure in the south east corner of the site).
- The proposal is consistent with maintaining local amenity by the design response to ensure no unreasonable impact on privacy (by windows, balconies, screens, landscaping and the like) and providing equitable access to natural light, direct sunlight and air circulation for the proposed dwelling and the surrounding environment. In this regard, setbacks of 4.0m to 1.5m at ground level and increasing to 5.0m for the dwelling wall at the upper level. The dwelling design along



all elevations includes recessed elements and breaks in the side walls to reduce impacts of bulk and scale. Building separation is provided for No.3 Tabalum Road and varies from 1.4m to 3.6m along the side setbacks (generally 3m), with the non-compliance to the side boundary envelope limited to the upper corner of the side elevation (screen elements / parapet) at the southern end of the building (low side of these site) and does not have any unreasonable impact on Tabalum Road or adjacent properties.

- The proposal is consistent with the DCP objective to allow for the flexibility in the siting of buildings while allowing for view sharing and maintaining adequate space between buildings including views and vistas from private and public spaces. The location of the garages fronting Tabalum Road is not regularly on 6.0m with some being close to the boundary line along Cutler Road near the site. The garage entry will maintain safe and adequate traffic conditions, including visibility for car egress and pedestrians.
- Adequate side setbacks have been proposed to maintain natural features of landscaping including deep soil zones and appropriate planting subject to conditions. The proposed setbacks allow for compliance with the *Building Code of Australia* for maintenance, access, drainage work and emergency requirements (fire safety). The nature of development does not unduly detract from the context of the site and particularly in relation to road frontages and front and side setbacks including the context of neighbouring properties and the prevailing building lines in the immediate vicinity.
- Consistency is maintained to the Tabalum Road building line with neighbouring properties, including a minimum 6.0m front setback of the house. For Tabalum Road, a two storey character is dominant (with lower (basement style) level garages a common element at a third lower level on sloping sites). It is noted that some retaining wall features and pools within 6.0m the front setback for Cutler Road detract from the streetscape. Smaller elements of landscaping used to provide visual interest and amenity to the side setback areas and garage entry areas. The location of the site is also within a bushfire area due to the proximity of Sydney Harbour National Park and therefore landscaped open space is subject to the *Bushfire Assessment Report* provided to ensure appropriate planting as per NSW RFS *Planning for Bushfire Protection*.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.9 Swimming Pools, Spas and Water Features

Deletion of the swimming pool has been discussed with the applicant as it is an ancillary element to the dwelling house. The works associated with the pool (including potential impact on the streetscape and side setback structures) is abated by deletion of this element from the proposed works. No further assessment is required with the area to remain as landscape area shown with reinstatement of landscaping as indicated on the landscaping plans (Rev C).

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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



their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$28,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,850,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environment Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

2) The proposed development will be in the public interest because it is consistent with the objectives of



the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposal is considered to be a suitable form of development for the site, in that it maintains the similar context to the existing house and basement garage and pool currently on the site. The new building is lower in overall height, but with a larger footprint and internal areas. The building is consistent in height and scale to the existing pattern of surrounding residential development. Principal environmental impact considerations are views, bulk, landscaping, building height (including walls and envelope), privacy, overshadowing, construction impacts (during works).

The public submissions received have been considered and are addressed within this report, and conditions have been applied where appropriate to address those concerns, including; landscaping, privacy, bulk, overshadowing, views, traffic safety, parking, access and stormwater. In order to reduce impacts, the applicant has deleted the new pool construction from the proposed works and made minor changes to reduce bulk, improve privacy and accommodate further view sharing considerations.

The proposal will not have an unreasonable impact in relation to view sharing from adjacent and nearby properties in Tabalum Road or Cutler Road. General 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, some minor changes were made by the applicant to reduce the scope of works, accommodate view impact concerns, building bulk, streetscape and the like, including submissions received. These changes could have been addressed by conditions and they reduce the impacts of the development, therefore re-notification of the minor amendments was not required.

The requirements of the Manly LEP and Manly DCP apply and in this regard, matters relating to desired future character, setbacks, building envelope, bulk and scale, external materials, overshadowing, privacy, views, stormwater and traffic have been addressed. In this case, the non-compliances with the built form controls are addressed in accordance with the objectives and requirements of those considerations. The proposed variation to building height is supported pursuant to the request made to vary the development standard under Clause 4.6 of the MLEP and for the reasons outlined in the merit assessment provided.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/0077 for Demolition works and construction of a dwelling house on land at Lot 20 DP 758044, 1 Tabalum Road, BALGOWLAH HEIGHTS, subject to the conditions printed below:

DA2020/0077

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
A01 Site Plan Rev B	21.9.2020	Sanctum Design
A04 Excavation Plan Rev B	21.9.2020	Sanctum Design
A05 Garage Rev B	21.9.2020	Sanctum Design
A06 Level 1 Rev B	21.9.2020	Sanctum Design
A07 Level 2 Rev B	21.9.2020	Sanctum Design
A08 Level 3 Rev B	21.9.2020	Sanctum Design
A09 Roof Plan Rev B	21.9.2020	Sanctum Design
A10 Section A Rev B	21.9.2020	Sanctum Design
A11 Section B Rev B	21.9.2020	Sanctum Design
A12 East (Tabalum Streetscape) Elevation	21.9.2020	Sanctum Design
A13 South (Cutler Streetscape) Elevation	21.9.2020	Sanctum Design
A14 West Elevation	21.9.2020	Sanctum Design
A15 North Elevation	21.9.2020	Sanctum Design
A28 External Finishes Schedule	21.9.2020	Sanctum Design
A29 Window Schedule 1	21.9.2020	Sanctum Design
A30 Window Schedule 2	21.9.2020	Sanctum Design
A31 Window Schedule 3	21.9.2020	Sanctum Design
A32 Window Schedule 4	21.9.2020	Sanctum Design
A33 Window Schedule 5	21.9.2020	Sanctum Design

Engineering Plans		
Drawing No.	Dated	Prepared By
D01 B Stormwater Management Drainage Plans	30.9.2019	Northern Beaches Consulting Engineers
D02 B Stormwater Management Drainage Plans	30.9.2019	Northern Beaches Consulting Engineers
D03 B Stormwater Management Drainage Plans	30.9.2019	Northern Beaches Consulting Engineers
D04 A Stormwater Management Drainage Plans and Details	19.9.2019	Northern Beaches Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:



Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Assessment Report 191115	21.8.2019	Building Code and Bushfire Hazard Solutions
Geotechnical Investigation J2324A	22.10.2019	White Geotechnical Group
Arboricultural Impact Assessment Report	15.8.2019	Hugh The Arborist
BASIX Certificate 040129S_04	20.1.2020	Efficient Living 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:

Landscape Plans		
Drawing No.	Dated	Prepared By
Sheet 1 Landscape Site Plan Issue C	17.9.2020	Paul Scrivener Landscape
Sheet 2 Elevations and Detail Plan Issue C	17.9.2020	Paul Scrivener Landscape
Sheet 3 Planting Plan and Details Issue C	17.9.2020	Paul Scrivener Landscape

Waste / Demolition / Sediment Management Plan		
Drawing No/Title.	Dated	Prepared By
A03 Demolition Plan Revision B	21.9.2020	Sanctum Design
Waste Management Plan	4.10.2019	K Mooney

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

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

2. Prescribed Conditions

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



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

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:



- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a



safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$28,500.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,850,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount



unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's. MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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



7. Amendments to the approved plans

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

- (i) The external blade wall extensions on either side of the front entry are to be setback 5.0m from Tabalum Road boundary;
- (ii) The entry awning structure and side walls for the pedestrian gate entry to Tabalum Road is to be deleted; and
- (iii) Tree planting within the front setback to Tabalum Road is to be amended to ensure plants have a natural height that is 3.0 metres, or less, in order to minimise view impacts.

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

Reason: To ensure development is consistent with the streetscape and minimises view impacts upon surrounding land.

8. 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.

9. 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 Cutler Road 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:

- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- 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.

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

Should the proposal require shoring to support an adjoining property or Council land, the



Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

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

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

11. **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.

12. **Required Planting – Screening**

Screen planting is to be provided within a 2.0m landscape setback, within the site along along the common boundary with No.6 Cutler Road.

The selected planting are to be maintained as the selected species and density as shown on the approved landscape plans (Issue C dated 17.9.2020) prepared by *Paul Scrivener Landscape Architecture*.

Reason: Privacy amenity.

13. **Amended Landscape Plans**

An Amended Landscape Plan, based on the Landscape Plans (Issue C sheets 1, 2, 3, and 4) prepared by *Paul Scrivener Landscape Architecture*, shall be issued to the Certifying Authority prior to the issue of a Construction Certificate, to include the following details:

- i) the swimming pool demolished area maintained as soft landscaping, either lawn or gardens,
- ii) street trees shall be located at least 1.5 metres (m) from the back of kerb,
- iii) the proposed planting within the road verge from the new driveway eastward to Tabalum Rd is not permitted and shall be deleted,
- iv) the existing planting and walling within the road verge westward of the new driveway shall be retained, and planting shall be enhanced as documented in the Amended Landscape Plan,
- v) all tree planting shall be located within a 9square metres (sqm) deep soil area and be located a minimum of 3 metres from existing and proposed buildings,
- vi) all tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: landscape amenity.

14. **Transplanting Methodology Plan**

A Transplanting Methodology Plan, prepared by an Arborist with AQF minimum Level 5



qualifications in arboriculture, shall be documented to demonstrate the requirement for transplanting the proposed Cabbage Tree Palms as shown on the Landscape Plans and as recommended for transplanting in the Arboricultural Impact Assessment, and identified as T6 and T7, including:

- i) transportation to site, site delivery and access provisions,
- ii) Preparation of the transplantation site,
- iii) Preparation of the trees/palms to be transplanted,
- iv) transplanting methodology and installation works,
- v) post-transplanting care and duration,
- vi) ongoing maintenance program,
- vii) replacement strategy if transplanting fails in the long term.

The Transplanting Methodology is to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate

Reason: tree protection.

15. **Compliance with Standards**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **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, retaining walls and other similar items.

- o No.6 Cutler Road, Balgowlah Heights
- o No.3 Tabalum Road, Balgowlah Heights

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 arising 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.

17. **Tree removal within the property**

This consent approves the removal of the following trees within the property (as recommended in the Arboricultural Impact Assessment):

- T2 - Lillypilly
- T4 - Weeping Lillypilly
- T16 - Backhousia

The following Exempt Species do not require Council consent for removal:

- T8 - Yucca
- T9 - Yucca
- T15 - Kentia Palm

The following species are proposed for transplanting:

- T5 and T6 - Cabbage Tree Palms

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.

18. **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.

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, including:

- i) section 11. Arboricultural Work Method Statement and Tree Protection Requirements, and
- ii) section 12. Hold Points

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) 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.

19. **Tree removal within the road reserve**

This consent approves the removal of the following tree within the road reserve (as recommended in the Arboricultural Impact Assessment):

- T1 - Native Frangipani

Removal of the approved tree in the road reserve shall only be undertaken by a Council approved tree contractor.

Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services Section prior to removal.

Reason: public liability.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **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.

21. **Survey Certificate**

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

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

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.

22. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3 metres wide at kerb and 5.0 metres at boundary in accordance with Northern Beaches Council Drawing No A4-3330/1 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. The two 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.

23. **Tree and vegetation protection**

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

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

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.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment prepared by Hugh The Arborist, as listed in the following sections:

- i) section 7. Assessment of Construction Impacts,
- ii) section 8. Conclusions,
- iii) section 10. Recommendations,
- iv) section 11. Arboricultural Work methods Statement and Tree Protection Requirements,
- v) section 12. Hold Points.



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.

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

24. **Landscape completion**

Landscaping is to be implemented in accordance with the approved Amended Landscape Plans.

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.

25. **Post-Construction Dilapidation Report**

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

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

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

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

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

26. **Reinstatement of Kerb**

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

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

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



27. **Retaining wall**

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety

28. **House / Building Number**

House/building number is to be affixed to the building / letterbox to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

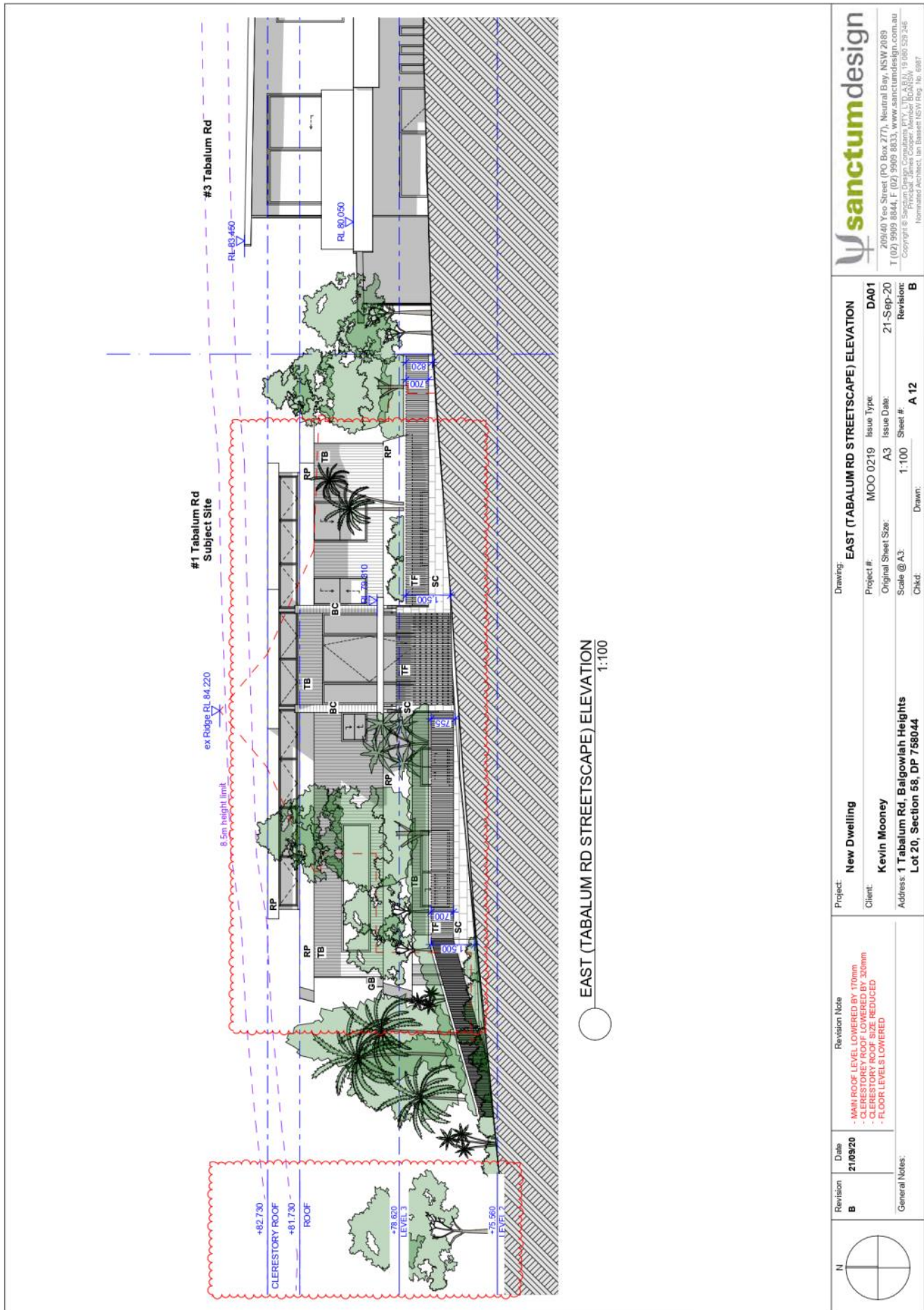
29. **Landscape maintenance**

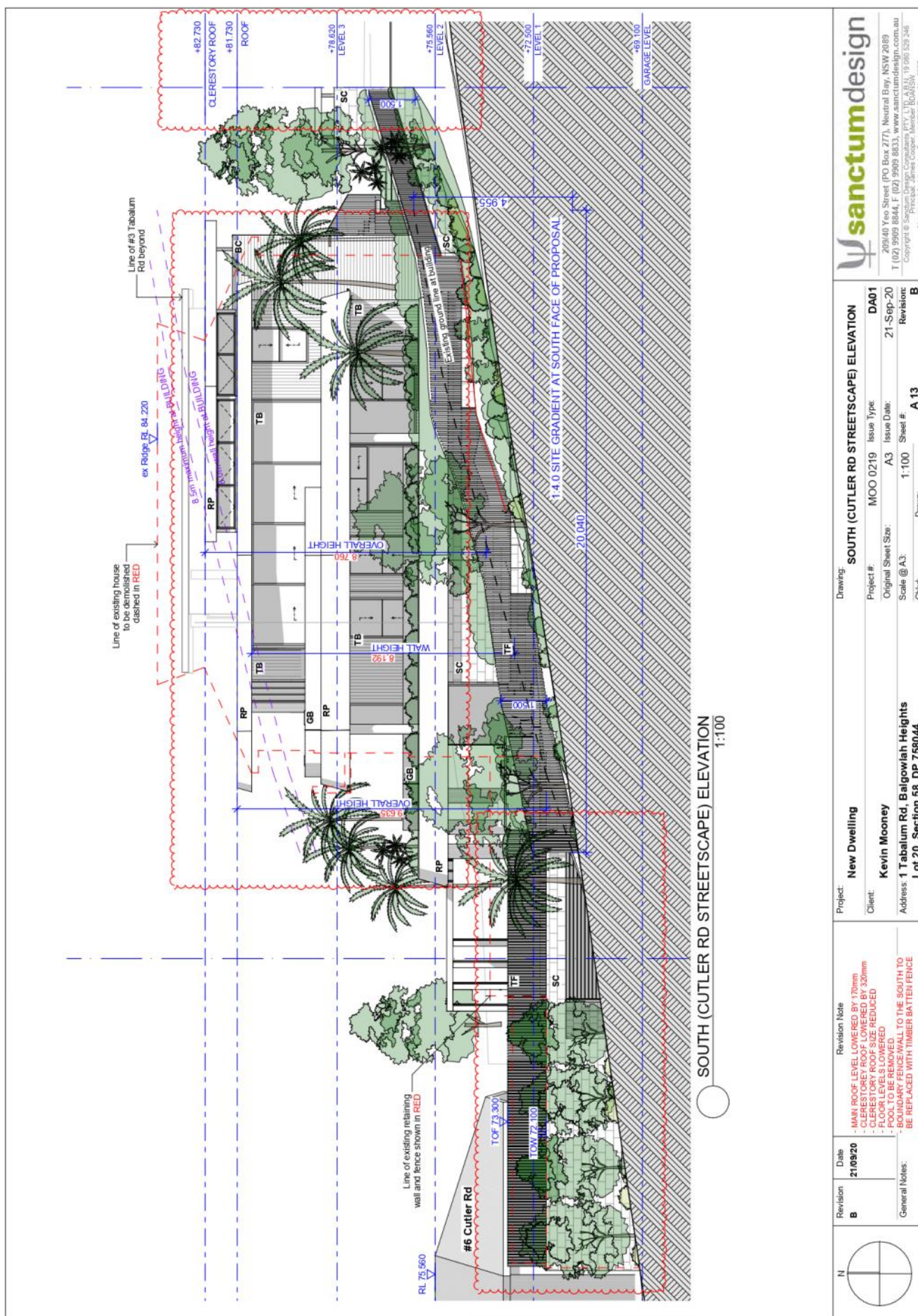
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

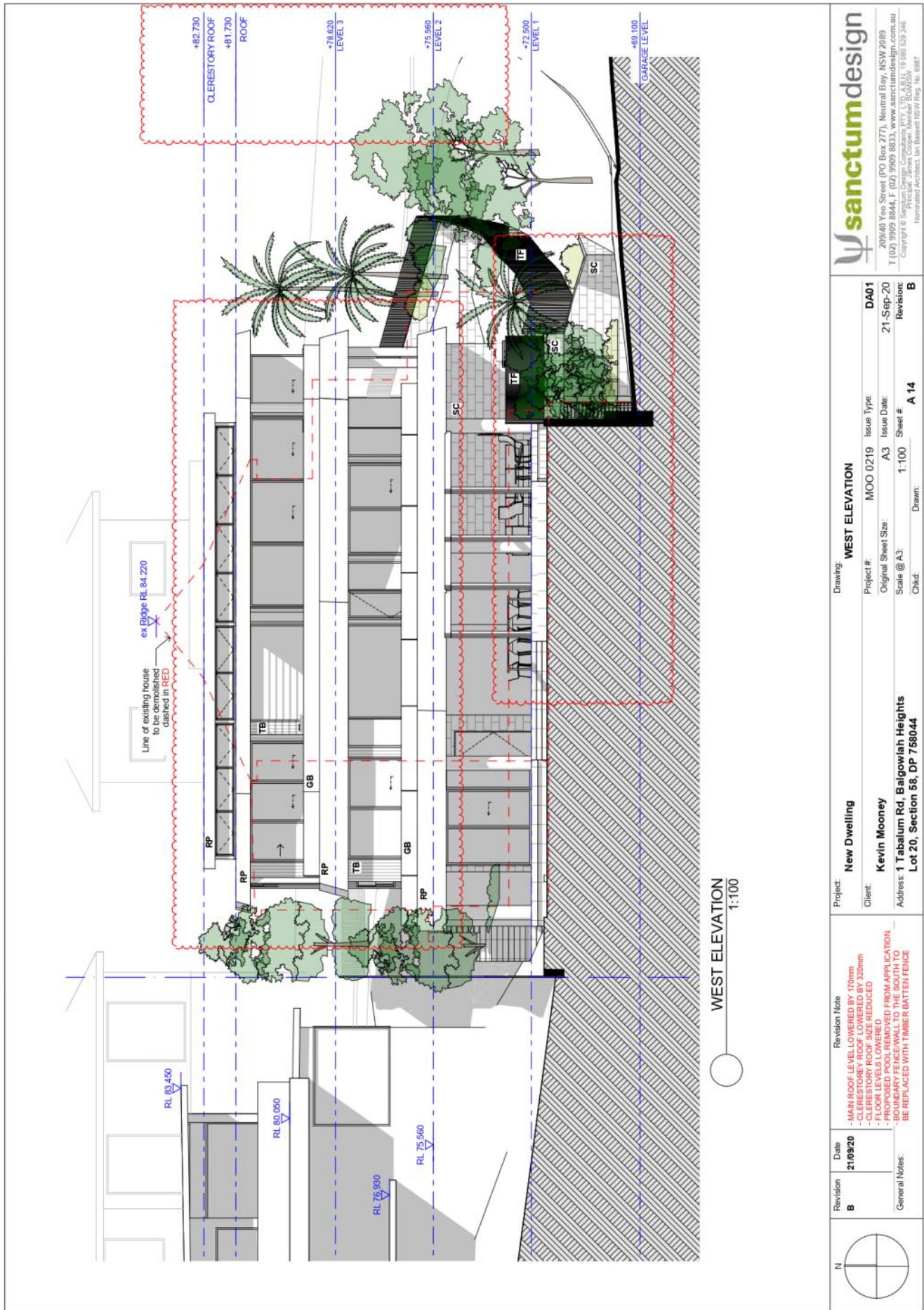
If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

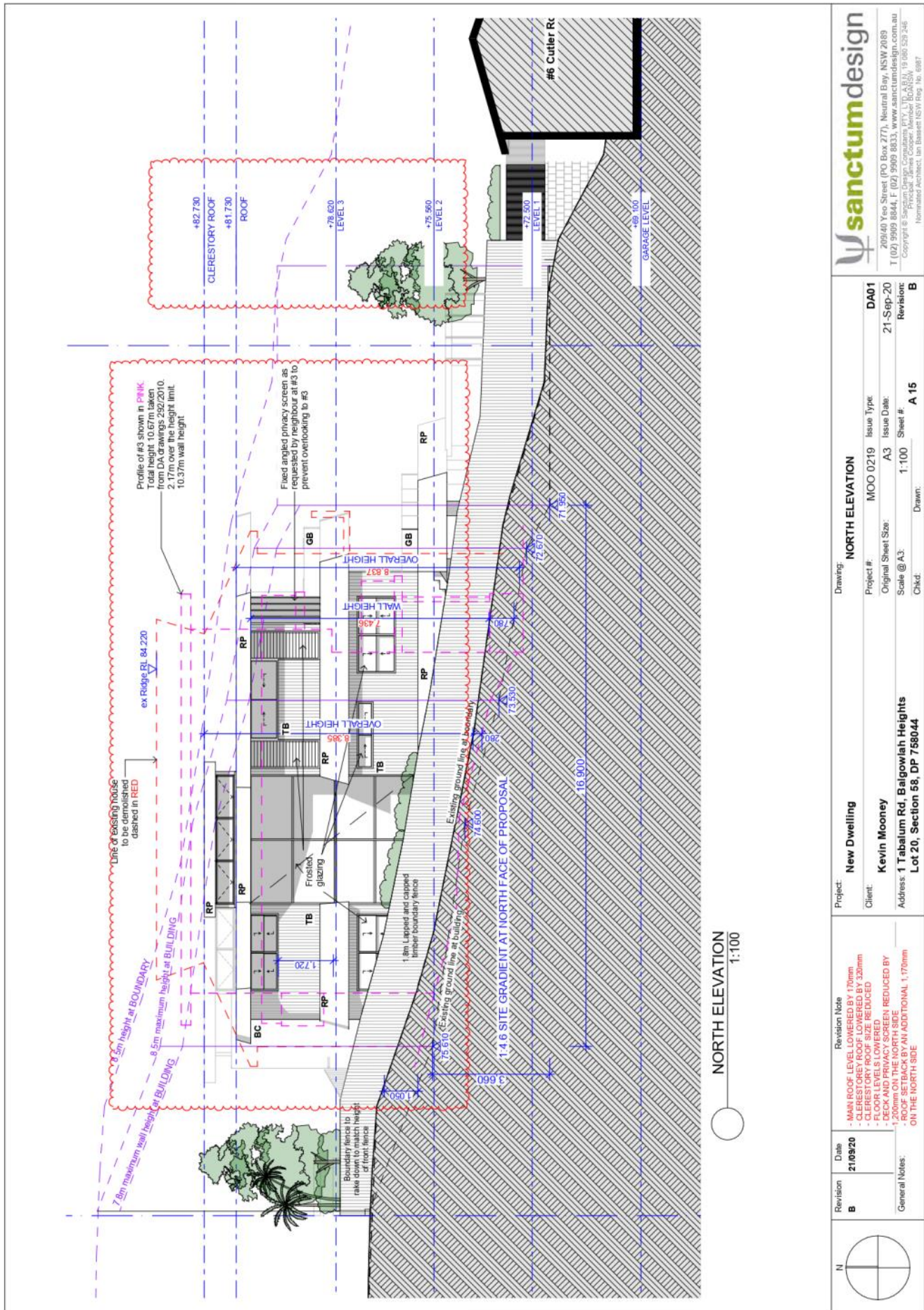
Reason: to maintain local environmental amenity.











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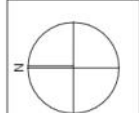
Drawing: NORTH ELEVATION
Project #: MOO 0219
Issue Type: DA01
Original Sheet Size: A3
Issue Date: 21-Sep-20
Scale @ A3: 1:100
Sheet #: A 15
Revision: B

Project: New Dwelling
Client: Kevin Mooney
Address: 1 Tabulam Rd, Balgowlah Heights
Lot 20, Section 58, DP 758044

Revision Note
- MAIN ROOF LEVEL LOWERED BY 170mm
- CLERESTORY ROOF LOWERED BY 320mm
- CLERESTORY ROOF SIZE REDUCED
- DECK AND PRIVACY SCREEN REDUCED BY 1,200mm ON THE NORTH SIDE
- ROOF SETBACK BY AN ADDITIONAL 1,170mm ON THE NORTH SIDE

Revision B
Date 21/03/20

General Notes:



1 Tabalum Road January 2020

**No. 1 Tabalum Road Balgowlah Heights
Objection pursuant to the provisions
of Cl. 4.6 of Manly Local Environmental Plan 2013**

This request for variation to a development standard has been prepared in relation to a Development Application that proposes demolition of the existing house and erection of a new dwelling house on the subject site.

The request has regard for the recent judgment in the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

In this instance the Manly LEP 2013 at Clause 4.3 Height of Buildings states “(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.*” The maximum building height specified is 8.5m.

No. 1 Tabalum Road as it currently exists already exceeds this height to the topmost point of the ridge and is at maximum 11.32m in height to the top of the roof ridge.

The maximum height of the proposed house is 9.805m at a point on the South elevation. The encroaching portions of the development are light weight and not readily visible in the streetscape nor from any neighbouring properties.

1.0 Cl.4.6 Exception to development standards MLEP 2013

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

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

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though it would contravene a development standard imposed by this or any other environmental planning instrument. This clause does not apply however to a development standard that is expressly excluded from the operation of this clause.

This clause would apply to the development standard in Cl.4.3 height of buildings.

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

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

1 Tabalum Road January 2020

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

Clause 4.6(4) states consent must not be granted for development that contravenes a development standard unless:

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

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

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

2.0 Zone Objectives

The subject site is zoned R2 Low Density Residential pursuant to the provisions of Manly Local Environmental Plan 2013 ("MLEP 2012"). The objectives of the R2 zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development achieves the objectives and is permitted in the zone. The proposal will result in additions that achieve contemporary low density development, with a high level of design quality. In so doing a development contextual with the locality is achieved. Notwithstanding the breach of the height control, the scale of the proposed development is sympathetic to and consistent with what is found on neighbouring sites.

1 Tabalum Road January 2020

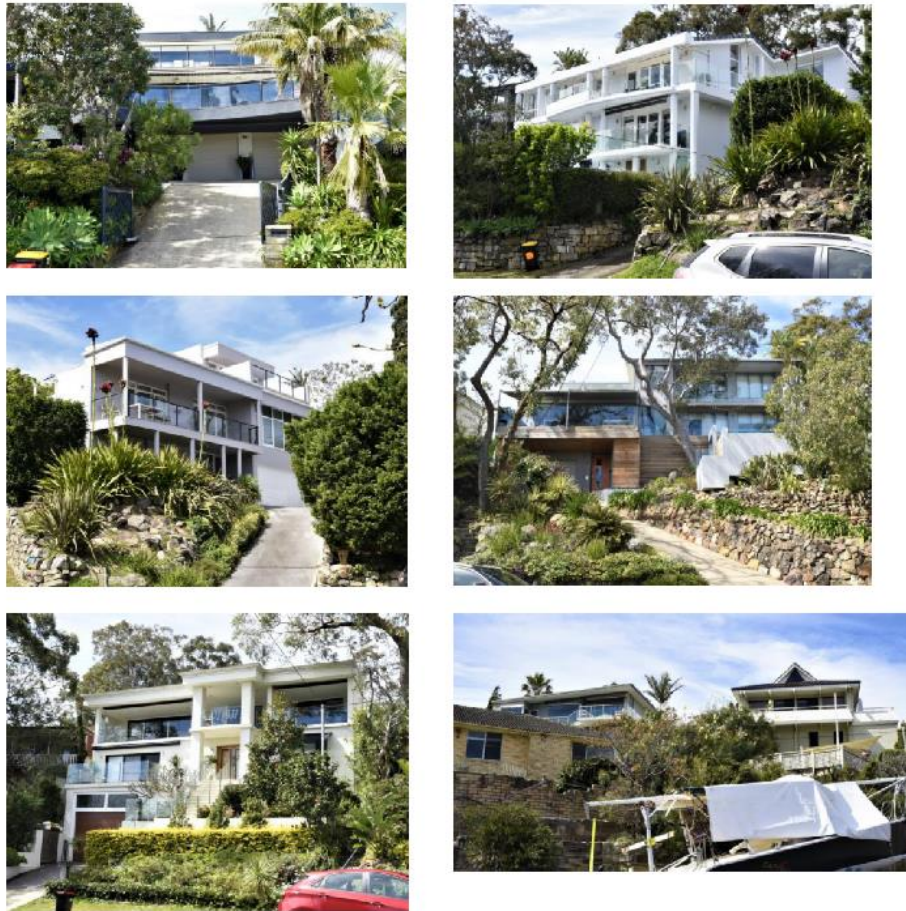


Fig 2. Adjacent height and scale, 10 – 18 Cutler Road, subject site & 3 Tabalum Road

The proposed development is therefore considered to be consistent with the stated zone objectives. Accordingly, there is no zone or zone objective impediment to the granting of consent.

3.0 Request to vary development standard of Building height Control

3.1 Compliance is unreasonable or unnecessary

Pursuant to Clause 4.3(2) of MLEP 2013 buildings on the site must not exceed 8.5m. The existing building predates the control by many years and already exceeds the 8.5m control having a maximum height to the top ridge of 11.32m measured from original ground level noting the definition of basement which refers to a space predominantly below ground level (existing) level.

The proposed development will result in a partial building height breach to a maximum of 1.305m (9.805m) but being less than the existing maximum building height of 11.32m.

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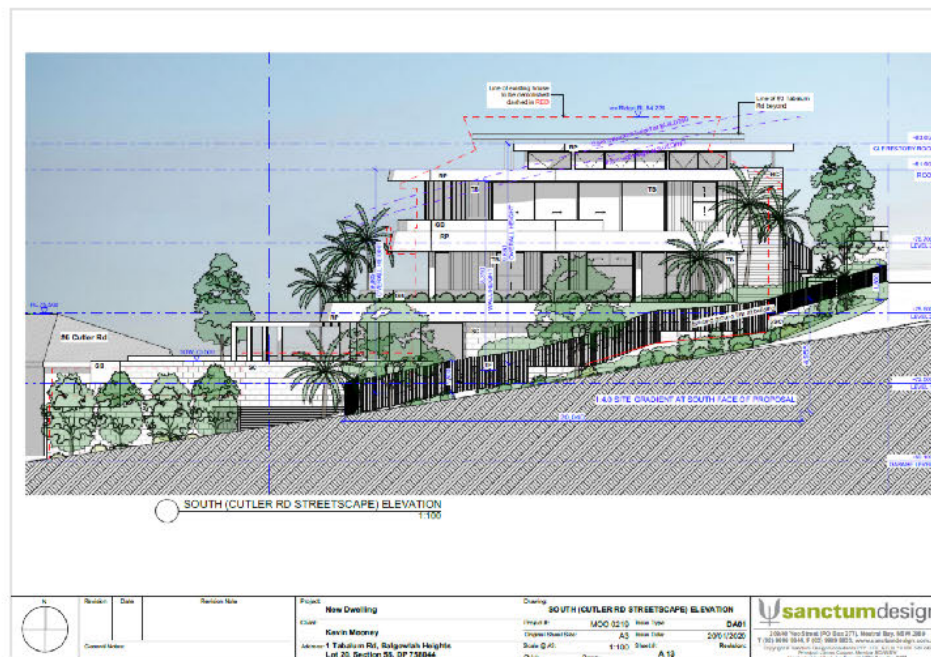


Fig. 3 South elevation of building indicating maximum height breach of 1.305m (9.805m).

The proposed building had height that in absolute terms has a top rl less than the maximum rl of the existing building acknowledging however that a flat roof is proposed to replace the existing pitched roof. The non-complying section consists of part of the clerestory well setback from the street frontages and the roof over the rear verandah on level 3. The non-compliance is not visible from Tabalum Street and not prominent in Cutler Road where stepping in response to site slope is apparent. The areas of non-compliance are of light weight construction and visually recessive.

The objectives of the height control standard are:

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

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
- (b) to control the bulk and scale of buildings,
- (c) to minimise disruption to the following:
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
 - (iii) views between public spaces (including the harbour and foreshores),
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

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

Having regard to the judgment in *Wehbe v Pittwater Council* (2007) LEC 827 & *Four2Five Pty Ltd v Ashfield* [2015] NSWLEC 90 it is considered that strict compliance with the development standard is both unreasonable and unnecessary and the objectives of the development standard are achieved notwithstanding the non-compliance for the following reasons:

- *The proposed development produces new built form that is contextual to the locality and produces a form that is of well-considered contemporary design. The development steps down the site and responds more thoughtfully to the site characteristics than the existing building in achievement of objective (a);*
- *The height encroachment is not apparent in the Tabalum road streetscape being well setback from the street elevation where the building is well under the control and is visually recessive from Cutler Road and adjoining premises due to the steep topography which reduces visibility significantly. The proposal is contextual in scale and achieves objective (b);*
- *The proposed encroaching portions of roof do not cause any significant effect on views from adjacent properties having regard to the tests in *Tenacity v Warringah Council* thus not offending objective (c);*
- *The height of the proposed building does not exceed the top ridge level of the existing development (up to 1.17m less) and has a maximum rl below that of the abutting house No. 3 Tabalum road (refer north elevation profile of NO.3 showing a 10.67m maximum overall height) again supporting the appropriateness of the proposed height in achievement of objectives (a) and (b);*
- *The proposed height is well within the development potential of the site noting again that the existing building height exceeds MLEP 2013. A built form that is consistent with the surrounding built form and which successfully achieves and adds to the character of the locality will result. The upper level section that breaches the control is articulated and light weight in form, setback and not readily visible from the street frontages;*
- *The breach of the control does not cause any adverse impact on the amenity of surrounding properties in relation to overlooking or overshadowing (refer shadow diagrams) in achievement of objective (d);*
- *The proposed development incorporates a high level of design skill. The rationale behind the design was having regard to the south facing slope to provide a clerestory in order to achieve the penetration of northern light into the proposed house;*
- *Objective (e) is not applicable to this site;*

3.2 Sufficient environmental planning grounds

In the subject case it is put forward that there are sufficient environmental planning grounds to justify a request to vary the development standard.

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Sufficiency is concluded noting that there is a significant portion of the existing structure that already breaches the height standard by up to 2.82m.

The breach of the 8.5m standard is not uncommon in the vicinity generally and the documentation accompanying the application provides a full environmental planning assessment of the proposed development.

It demonstrates that given the nature and form of the building on the site and the location of that part of the building that breaches the height control that sufficient environmental planning grounds exist to justify the breach including the relevant matters set out in section 1.3 of the Environmental Planning & Assessment Act 1979, Objects of Act specifically:

(c) to promote the orderly and economic use and development of land,

The development achieves this object because the non-complying portion of the upper level is proposed in a manner that does not impact the streetscape where compliance is apparent and because it does not adversely impact on the amenity of abutting properties whilst allowing the owners to reasonable and economically develop their property.

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

The site is opposite two landscape heritage items but due to the relative distance between the site and the subject items little relationship exists such that the impact can be assessed as neutral.

(g) to promote good design and amenity of the built environment

The non-complying portion of the development represents good design because it is able to be constructed in the manner proposed being set well back from the streetscape in a non-obtrusive position with minimal visibility whilst achieving high levels of residential amenity and not being associated with any adverse impact on abutting or adjacent properties.

3.3 Satisfaction the proposed development will be in the public interest

The preceding analysis of the proposed development has provided justification that compliance with the objectives of the zone and the objectives of the development standard have been achieved notwithstanding a breach of the development standard. Accordingly, the proposed development will be in the public interest.

3.4 Conclusions

Having regard to the provisions of Cl. 4.6, I am of the opinion that:

- *the proposed height of the house is consistent with development in the locality and achieves the zone objectives;*
- *the proposed non complying additions are at roof level, setback from street frontage and appearing as a lightweight clerestory and roof form;*
- *the proposed height is contextual in the streetscape noting that the overall maximum height is less than the existing house and less than the neighbouring house No.3 in terms of both wall and overall height;*
- *there are sufficient circumstances to justify the non-compliance with the development standard in this case given the lack of impact associated with the breach, the location and design of the proposal and the character of the locality;*
- *there are no adverse amenity impacts such as overshadowing, overlooking and material loss of view caused to surrounding properties by the non-compliance with the development standard;*
- *that having regard to the above that compliance with the building height standard is unreasonable or unnecessary in the circumstances of the case;*
- *that sufficient environmental planning grounds exist to justify the variation;*
- *that given the fact that the objectives of the zone and the development standard have been achieved, approval would be in the public interest;*
- *non-compliance with the development standard does not raise any matter of significance for State or Regional environmental planning;*

As such it is my opinion that the request is well founded and that there is no statutory impediment or planning merit reason to deny the granting of a variation in this case.



C.F. Blyth RP Director
Plansight Pty Ltd
1TabalumSEEV2

ITEM 3.2	DA2020/0264 - 57 MYOORA ROAD, TERREY HILLS - USE OF BUILDING FOR HARDWARE AND BUILDING SUPPLIES
AUTHORISING MANAGER	ANNA WILLIAMS
TRIM FILE REF	2020/624018
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan, Signage and Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/0264 for use of industrial building as a warehouse facility for storage and distribution of hardware and building supplies at Lot 2 DP 530175, 57 Myoora Road, Terrey Hills subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0264
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 2 DP 530175, 57 Myoora Road TERREY HILLS NSW 2084
Proposed Development:	Use of industrial building as a warehouse facility for storage and distribution of warehouse products.
Zoning:	Warringah LEP2011 - Land zoned IN2 Light Industrial
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Hardware & General Properties Pty Ltd
Applicant:	Hardware & General Properties Pty Ltd
Application Lodged:	16/03/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Infrastructure
Notified:	04/08/2020 to 18/08/2020
Advertised:	Not Advertised
Submissions Received:	29
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 35,000.00

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application No. DA2020/0264 for use of industrial building as a warehouse facility for storage and distribution of warehouse products.

The subject site is zoned IN2 Light Industrial under the provisions of the Warringah Local Environmental Plan 2011 (WLEP 2011), and the proposed development is permissible with consent.

Amendment have been made to the plans during the assessment and additional information has been received in relation to traffic and noise. The application (that this report is based on) was renotified from 4 August 2020 to 18 August 2020.

The public exhibition period generated a total of 29 individual submissions. The submission raised

DA2020/0264



concerns regarding traffic and parking, noise and safety and permissibility of use. These concerns have been addressed within the report, and overall, there were no matters raised that would warrant the refusal of the application.

The application has been referred to the Northern Beaches Local Planning Panel due to having more than 10 unique submissions.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the use of the existing building as a Warehouse or distribution centre pursuant to Warringah LEP 2011.

Specifically, the proposed development consists of:

- Use of the existing building as a warehouse and distribution Centre;
- Internal fit out including loading area, office space, storage facilities;
- Signage;
- Hours of Operation: 6:00am - 6:00pm Monday to Friday. 7:00am - 4:00pm Saturday (No operation Sunday and Public Holidays);
- 4 staff;
- 15 Parking Spaces;
- Front fencing;
- Racking.

AMENDMENTS TO THE SUBJECT APPLICATION

Following a preliminary assessment of the application Council wrote to the applicant outlining a number of issues that would not allow for Council to support the application in its current form on 1 June 2020. The issues included traffic and noise. Following receipt of the letter the applicant advised that they intended to amend the development application. Council agreed to accept amendments to the application.

The applicant provided a traffic and acoustic report to address concern raised by Council referral bodies.

The applicant subsequently provided additional information and amended plans to address the concern raised on 24 July 2020. The application was re-notified from 4 August 2020 to 18 August 2020 to neighbouring properties and objecting parties.

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 Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - C9 Waste Management
 Warringah Development Control Plan - D3 Noise
 Warringah Development Control Plan - D23 Signs

SITE DESCRIPTION

Property Description:	Lot 2 DP 530175 , 57 Myoora Road TERREY HILLS NSW 2084
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Myoora Road.</p> <p>The site is regular in shape with a frontage of 36.575m along Myoora Road and a depth of 76.2m. The site has a surveyed area of 2782m².</p> <p>The site is located within the IN2 Light Industrial zone and accommodates a industrial building.</p> <p>The front of the property is landscaped and relatively flat from the front to the rear with minimal cross fall.</p> <p>No easements or covenants restrict the proposed development.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by industrial development to the west and south. Residential development surround the site to the north and east.</p>

Map:



SITE HISTORY

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

DA2009/0335 - Alterations & additions to an existing building. (Approved 2 June 2009)

DA2006/1086 - Extension to an Existing Industrial Building. (Approved 27 December 2006)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for industrial purposes for an extended period of time. The proposed development retains the industrial use of the site, and 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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development

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Section 4.15 Matters for Consideration'	Comments
Assessment Regulation 2000 (EP&A Regulation 2000)	<p>consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to traffic, engineering, acoustic impact.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/08/2020 to 18/08/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 29 submission/s from:

Name:	Address:
Robert & Lynda Bale	16 Bindook Crescent TERREY HILLS NSW 2084
Mr Dennis John De Boos	3 Carramar Grove TERREY HILLS NSW 2084
Elizabeth Barraclough	Address Unknown
Mrs Kay Worrell	20 Nerang Avenue TERREY HILLS NSW 2084
Mr Dennis John Casper	307 / 0 Coonawarra Road TERREY HILLS NSW 2084
Withheld	TERREY HILLS NSW 2084
Ms Lesley Dawn Nalbandian	47 / 0 Tooronga Road TERREY HILLS NSW 2084
Tasman KB Pty Ltd	61 Myoora Road TERREY HILLS NSW 2084
Withheld	TERREY HILLS NSW 2084
Terrey Hills Progress Association	22 Myoora Road TERREY HILLS NSW 2084
Withheld	WARRIEWOOD NSW 2102
Withheld	BLACKTOWN NSW 2148
Withheld	TERREY HILLS NSW 2084
Mrs Georgina Sylvia Spinks	14 Bindook Crescent TERREY HILLS NSW 2084
Mr Alan David Brinkworth	22 Booralie Road TERREY HILLS NSW 2084
Mrs Rosemary Ann Brinkworth	22 Booralie Road TERREY HILLS NSW 2084
Mrs Elizabeth Ann Barraclough	64 Myoora Road TERREY HILLS NSW 2084
Mrs Margaret Sandra Thomas	11 Dandenong Road TERREY HILLS NSW 2084
John Anthony Harper	35 Booralie Road TERREY HILLS NSW 2084

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Name:	Address:
Ms Sally C White Ms Susan Phillips	207 Tooronga Road TERREY HILLS NSW 2084
Mr Peter Geoffrey Addison	2 Wanari Road TERREY HILLS NSW 2084
Withheld	TERREY HILLS NSW 2084
Mr John Barrie Arnold	27 Tiarri Avenue TERREY HILLS NSW 2084
Mr Benjamin Andrew Campbell	71 Booralie Road TERREY HILLS NSW 2084
Mr Peter Russell Storey	13 A Myoora Road TERREY HILLS NSW 2084
Withheld	TERREY HILLS NSW 2084
Paul Davenport	2 Carramar Grove TERREY HILLS NSW 2084
Withheld	TERREY HILLS NSW 2084
Duffys Forest Residents Association	PO Box 567 TERREY HILLS NSW 2084

The following issues were raised in the submissions and each have been addressed below:

- **Traffic and Safety**
- **Noise**
- **Permissibility**
- **Chemical use**
- **Pollution**
- **Biodiversity**
- **Built form non-compliance**

The matters raised within the submissions are addressed as follows:

- **Traffic and Safety**

Comment:

Concern is raised in regards traffic and potential dangers in regards to pedestrian safety as a result of the proposed use of the subject site. A traffic report was lodged as part of this application and reviewed by Council Traffic and Development Engineers. In summary, the proposed development is consistent with the underlying objectives of Part C2 Traffic, Access and Safety as well as C3 Parking Facilities of the Warringah DCP, subject to recommended conditions of consent, which have been included as part of this recommendation.

- **Noise**

Comment:

Concern is raised in regards to the noise impact that would result from use of the warehouse. While it is accepted there may be a noise impact associated with the off-street parking in terms of vehicles entering and exiting the site, the resulting impact is acceptable in this industrial context and not unreasonable in a IN2 Light Industrial Zone, this is further addressed under *Part D3 Noise* of this report. The application was referred off to Council's Environmental Investigations (Industrial) Officer for review and comment in regard to the hours of operation and noise impact of the proposal. Condition of consent have been imposed as part of this recommendation to mitigate noise impacts and allow for respite for neighbouring properties in the adjoining residential zone.



- **Permissibility**

Comment:

Concern is raised in regards to the permissibility of the proposed use of the existing premise. The application proposes to use the premise as a *'Warehouse or distribution centre'* which is permitted with consent within the IN2 Light industrial zone, pursuant to the Warringah LEP 2011. This use prohibits retail sales, and as such a condition has been imposed to ensure there is no retail sales throughout the operation of the building should the application be approved.

- **Chemical use**

Comment:

Concern is raised in regards to the potential use of chemicals on site. In relation to the proposed use of chemicals, the a condition of consent has been imposed by Council's Environmental (Industrial) Health Officer to ensure a trade waste permit is obtained if any contaminated wastewater is being discharged.

- **Pollution**

Comment:

Concern is raised in regards to pollution impacts as a result of the increased traffic on neighbouring residential properties. While it is acknowledged that an increase in general traffic will to increased pollution levels, the increase is not unreasonable in this industrial setting.

- **Biodiversity**

Comment:

An objection raised the potential impact of the proposed development on natural wildlife. The subject site is not located in a noted are of biodiversity and is not expected to have any adverse or detrimental impact on natural habitat of natural wildlife or vegetation. Physical works proposed are largely limited to existing built upon area, with only a minor area of landscaped open space being reduced to make way for storage racking. No significant natural vegetation is proposed for removal.

- **Built form non-compliance**

Comment:

This matter is addressed in detail elsewhere within this report (refer to B3 Side Setbacks under the Warringah DCP 2011 section of this report). In summary, the siting of the racking on the site, proposed building setbacks and resultant bulk and scale are considered to be appropriate in this industrial context and satisfy the requirements and objectives of Part B3 of the Warringah DCP 2011.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objections subject to conditions to ensure compliance with the Building Code of Australia.
Environmental Health (Industrial)	<p>Amended comments 19/08/2020</p> <p>An acoustic report was submitted to Council in support of the</p>

Internal Referral Body	Comments
	<p>development application of a Building Supplies warehouse at 57-59 Myoora Road, Terry hills. The acoustic report is referenced as 20110 – 57-59 Myoora Road, Terrey Hills – DA Acoustic Report – Revision 2 by Pulse Acoustic Consultancy dated 14 July 2020.</p> <p>The acoustic report has provided a number of administrative acoustic controls coupled with physical engineered controls and some elimination of noise noise sources. The controls proposed will be included as proposed conditions of consent.</p> <p>Environmental health recommend approval subject to a number of conditions being imposed on the development to ensure the operation of the business adhere to the recommendations in the acoustic report and do not cause a disturbance of amenity to neighboring residence.</p> <p>Recommendation</p> <p>APPROVAL - Subject to conditions</p>
NECC (Development Engineering)	<p>The subject site has an existing OSD system which is to remain. The proposed increase in impervious area will be accommodated by the existing OSD system. The existing driveway is to be widened to improve access to the site by trucks. The widening may impact upon an existing street tree which must be assessed by Council's Tree Management Officer. No objection to approval, subject to conditions as recommended.</p>
Traffic Engineer	<p><u>Traffic Comments in review of Amended Plans:</u> The following comments are provided on the revised plans and information provided by the applicant:</p> <p>Traffic generation:</p> <p>The projected traffic generation of the site is estimated based on on <i>daily</i> customer and staff visitation data at the Brookvale store, and is as follow:</p> <ul style="list-style-type: none"> - Supplier trucks – up to 1 vehicle per day - Hardware & General vehicles – up to 6 trucks vehicles per day - Call in Customers: up to 5 vehicles per day - Potential new customers: up to 10 vehicles per day - Staff: up to 4 vehicles per day <p>The expected traffic generated by the development during the morning and afternoon peak periods is proposed to be predominantly related to patron arrivals and departures, therefore the traffic report has assumed that the following traffic movements will arrive and depart during the peak periods:</p>

Internal Referral Body	Comments
	<p>- 30% of patron</p> <p>- 25% of truck/ute</p> <p>Based on the above, the following <i>weekday peak hour</i> traffic generation is projected to be:</p> <p>- 5 customer vehicles: 10 vehicle trips per hour</p> <p>- 2 trucks: 4 vehicle trips per hour</p> <p>Taking into consideration the site being located within the light industrial zone, the projected total traffic generation of 14 vehicle trips per peak hour is not considered to adversely impact the surrounding road network.</p> <p>Parking Provision:</p> <p>The traffic report has indicated the following in regards to the proposed parking provision:</p> <p><i>"Council's (Warringah) DCP specifies the following parking criteria in relation to the</i></p> <p><i>proposed development elements:</i></p> <p><i>Warehouse 1.3 spaces per 100 m² GFA</i></p> <p><i>Application of these criteria to the proposed development would indicate the following:</i></p> <p><i>Warehouse (including office area) 1,023.9m² 13.3 (13) spaces</i></p> <p><i>It is proposed to provide a total of 15 parking spaces in compliance with the Council's DCP criteria. Given the nature of the business, 1 of these spaces can accommodate one 10.7m rigid vehicle. 1 space will be designated for the proposed development will be suitable for disabled driver in accordance with BCA requirements.</i></p> <p><i>It is assessed that the proposed parking provision and arrangement will be suitable and appropriate to the needs of the business operation."</i></p> <p>Given the above, the proposed parking provision is considered acceptable.</p>



Internal Referral Body	Comments
	<p>Access and car parking design:</p> <p>The existing 4.0m wide driveway is proposed be widened to 7.0m to accommodate the turning path of the largest vehicle expected to access the site, which is a 10.7m truck, as well as to provide passing opportunities between entering and exiting vehicles. All vehicles are proposed to enter and exit the site in a forward direction.</p> <p>The traffic report indicates that the open style fencing and gate designs allow a relatively unobstructed view for exiting drivers to pedestrians on the footpath along the western side of Myoora Road and entering vehicles. There is no detailed information provided on the material of the proposed 2.4m high fencing. The proposed new fencing can be supported subject to provision of adequate sight line to the pedestrian for vehicles existing the driveway.</p> <p>The proposed access can be supported subject to condition.</p> <p>Conclusion: The proposal can be supported subject to condition.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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



SEPP 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposal is compatible with the existing and desired future character of the area and locality.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposal is consistent with the industrial building and outdoor advertising in the area and the locality.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposed site is not within any environmentally sensitive area, heritage area, natural or other conservation areas, open space areas, waterways, rural landscape or residential areas.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The proposal will not obscure or compromise any important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposal will not dominate the skyline or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposal respect the viewing rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The proposed scale, proportion and form of the signage is largely as existing, and considered appropriate and consistent with the established commercial nature of the surrounding area.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage is intended to replace the existing site signs.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The replacement signage will not create visual clutter and will improve the overall appearance of the store's signage as a result of the modern	YES

	design features.	
Does the proposal screen unsightliness?	There is no unsightliness to be screened.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signs are appropriate in height and scale, remaining comfortably below the maximum allowable height of 8.5m.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposed signs are to replace the existing site signs, and are considered compatible with the streetscape and surrounding development in regard to scale and proportion.	YES
Does the proposal respect important features of the site or building, or both?	The proposal is not considered likely to affect any important features within the site.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signs are a contemporary advancement to the existing site signage,	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	Not applicable.	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	No illumination is proposed for the signage.	YES
Can the intensity of the illumination be adjusted, if necessary?	No illumination proposed	YES
Is the illumination subject to a curfew?	No illumination proposed	YES
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposal will not reduce the safety for any public road, pedestrians or cyclists.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposal will not reduce the safety for pedestrians or children, by obscuring sight from public places.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

SEPP (Infrastructure) 2007

Ausgrid

DA2020/0264



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

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

Comment:

The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.50m	5.5m (Top of Signage)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	2.4m (Racking) 5.3m (Signage)	-	Yes
B3 Side Boundary Envelope	4m (North)	Within Envelope	-	Yes
	4m (South)	Within Envelope	-	Yes



B5 Side Boundary Setbacks	0.9m (North)	0m (Racking)	100%	No
	0.9m (South)	21m (Racking)	-	Yes
B7 Front Boundary Setbacks	6.5m	20m	-	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
D23 Signs	No	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The proposed racking to the northern side of the development is located with a nil setback to the northern boundary. This represents a 100% variation to the numeric control.

Merit consideration

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

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

Comment:

Sufficient landscaped open space is provided elsewhere on the site, specifically within the front setback, forward of the existing carpark, which is the primary address of the subject site.

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

Comment:

There are no significant changes external changes to the existing building on site. The non-compliance in this situation is limited to the racking on site, which will not unreasonably impact upon the bulk and scale of the overall development. In this regard, the bulk and scale of the proposed building is now adequate in its context and this objective is satisfied.

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

Comment:

The bulk and scale of the existing building on site remains unchanged. The side setback non-compliance is a result of the proposed racking along side the northern side of the property. The racking is proposed to a height of 2.4m, and will not contribute to visual bulk when viewed from the street.

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

Comment:

The proposed racking will not unreasonably compromise the amenity of the adjoining industrial property to the north (No. 59 Myoora Road).



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

Comment:

There are no significant views enjoyed from adjoining public and private properties that will be affected by the proposed nil side setbacks.

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

C2 Traffic, Access and Safety

Merit consideration

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

- *To minimise traffic hazards.*

Comment:

Increasing the hours of operation and intensity of the use of the site increase the potential traffic hazard particularly during morning operation, due to the concentrated traffic movements during these hours having consideration of the nearby school and business model of the proposal. The traffic report relies on measures to ensure traffic hazards will be minimised despite the increased intensity of use of the proposal. The application proposes adequate off-street carparking to offset the increased traffic impact the use of the building will cause.

- *To minimise vehicles queuing on public roads.*

Comment:

Adequate off-street parking is provided on site to ensure vehicle queuing on public roads is minimised to a reasonable level.

- *To minimise the number of vehicle crossings in a street.*

Comment:

The proposed development while widening the vehicle crossing to the site does not propose to increase the number of vehicle crossing between the street and the property, maintaining adequate on-street parking.

- *To minimise traffic, pedestrian and cyclist conflict.*

Comment:

The development allows for sightline for vehicles exiting the driveway and which facilitates sufficient sightlines to pedestrians and cyclists approaching the driveway along the footpath.



- *To minimise interference with public transport facilities.*

Comment:

Use of the premises will not interfere with public transport facilities.

- *To minimise the loss of "on street" kerbside parking.*

Comment:

The proposal has been designed to ensure no unreasonable impact or demand on kerbside parking within the vicinity of the site. In order to ensure compliance with this, a condition is imposed to ensure a operational management plan is prepared to manage both on-street and off-street parking area for visitors and staff.

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

C3 Parking Facilities

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Warehouse or Distribution Centre	1.3 spaces per 100 m ² GFA (including up to 20% of floor area as office premises space component. Office premises component above 20% determined at office premises rate).	13.3 Spaces	15	+1
Total		14 Car Spaces	15	Complies

C9 Waste Management

DA2020/0264



A detailed waste management plan has not been submitted with the application. To ensure proper disposal of demolition and builders' waste, a condition has been included in the consent requiring details prior to the issue of a construction certificate.

D3 Noise

Merit consideration

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

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

Comment:

The subject site and adjoining properties on the western side of the road are zoned IN2 Light Industrial under WLEP 2011. On the opposite and eastern side of the road, residential premises are present and zoned R2 Low Density Residential WLEP 2011.

As per comments contained within the Referral section - Council's Environmental (Industrial) Health Officer of this report, the proposed weekday commencement time cannot be supported for potential adverse noise impacts on nearby residential properties until 7am, namely from operational and parking related impacts.

On this basis, and consistent with the weekday commencement time of adjoining and surrounding commercial, industrial and light industrial properties, it is recommended that the weekday commencement time start at 6:00am. Between 6:00am and 7:00am only staff will be allowed on site. Members of the general public will only be allowed on site from 7:00am. Accordingly, a recommended condition of consent for the following hours of operation is provided for the warehouse and distribution centre:

Monday – Friday: 6:00am-6:00pm

Saturday: 7:00am - 4:00pm

Sundays and Public Holidays: Closed

No public access to the premise is permitted during the following hours:

Monday to Friday - 6:00am - 7:00am

Monday to Friday - 5:00pm - 6:00pm

- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment:

The recommended hours of operation are suitable and appropriate for the subject site given the fact that it is surrounded by an R2 - Low Density Residential zoning.

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



D23 Signs

Description of non-compliance and/or inconsistency

The application proposes five (5) pieces of signage consisting of the following:

Sign	Requirement	Width	Height	M ²	Complies
Freestanding signs (not being a sign elsewhere listed in this table, and includes a bulletin board, tenancy board, and the like)	Shall not exceed 2 metres in height above the existing natural ground level;	2.7m	0.9m	2.75m ²	No
	Shall not have an area greater than 4sqm;	2.7m	0.9m	2.61m ²	No
	Shall not project beyond the boundary of the premises; and Shall not be illuminated.	1.5m	0.5m	0.75m ²	Yes
Wall sign (painted onto a wall of a building or attached to the wall of a building, not being a sign elsewhere listed in this table)	Shall not extend within 200mm of the top and sides of the wall.	14m	1.2m	16.8m ²	No
	Shall not cover any window or architectural projections; Must be of a size and shape that relates to the architectural design of the building to which it is attached; Where illuminated, shall not be less than 2.7 metres above the existing natural ground level ground; and Shall not project more than 300mm from the wall.	0.7m	0.7m	0.49m ²	Yes

Merit consideration

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

- To encourage well designed and suitably located signs that allow for the identification of a land use, business or activity to which the sign relates.*

Comment:

The proposed signage is in replacement of those existing within the subject site to reflect the rebranding of the business, therefore the visual outcome will remain largely the same. The signage is well designed and suitably located so as to provide identification for the industrial usage.

- To achieve well designed and coordinated signage that uses high quality materials.*



Comment:

The replacement signage will appear visually consistent with the existing signage.

- *To ensure that signs do not result in an adverse visual impact on the streetscape or the surrounding locality.*

Comment:

The signage will not hinder the visual impact on the streetscape; the new signage will be modern and contemporary in design, and not dissimilar to other business identification signage within the surrounding locality.

- *To ensure the provision of signs does not adversely impact on the amenity of residential properties.*

Comment:

The proposed signage is sympathetic with the residential properties which surround the subject site. The proposed signage is not likely to cause any unreasonable impact upon amenity to the neighbouring residential properties.

- *To protect open space areas and heritage items or conservation areas from the adverse impacts of inappropriate signage.*

Comment:

Not applicable.

An assessment of the application has also found the development to be consistent with the requirements of *State Environmental Planning Policy No. 64 - Advertising and Signage*.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment



of this application.

CONCLUSION

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

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

This assessment has found that the proposed development is consistent with both the industrial context and constraints of the site being that the subject site adjoins a residential zone. The resultant development will allow for safe access to and from the site, and will not result in any unreasonable impacts upon the character of the locality or the amenity of adjoining properties.

Conditions of consent have been included in the recommendation to minimise the impact of the on-going operation of the development.

Overall, the proposal has been found to be consistent with the relevant provisions of the WLEP 2011 and the Warringah Development Control Plan and has been recommended for approval.

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

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



RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/0264 for Use of industrial building as a warehouse facility for storage and distribution of warehouse products. on land at Lot 2 DP 530175, 57 Myoora Road, TERREY HILLS, 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
Dwg No. 13B	1 October 2020	Peter Formoso
Page 1 of 6/ Racking Plan	December 2019	Joanne Macgregor
Page 3 of 6/ Site Plan	December 2019	Joanne Macgregor
Page 4 of 6/ Landscape Plan	December 2019	Joanne Macgregor
Page 5 of 6/ Signage Proposed	December 2019	Joanne Macgregor
Page 6 of 6/ Swept Path	December 2019	Joanne Macgregor

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Traffic Report	July 2020	Transport and Traffic Planning Associates
Acoustic Report	14 July 2020	Pulse Acoustic Consultancy
Plan of Management	13 July 2020	Vaughan Milligan

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a *warehouse or distribution centre*.

A **warehouse or distribution centre** is defined as:

“**warehouse or distribution centre** means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made, and includes local distribution premises.”

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. **Retail Sales**

No approval is granted under this Development Consent for any retail sales on this property.

Reason: To ensure compliance with the relevant Local Environmental Plan.

5. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the



work relates (not being the Council) has given the Council written notice of the following information:

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

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

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

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

Reason: Legislative requirement.

6. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether



the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

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

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall



- notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
 - (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

7. Security Bond

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

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

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



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

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

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

8. **Boundary Identification Survey**

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

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

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

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

9. **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.

10. **External Finishes to Roof**

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

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

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

11. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.



Or telephone 13 000 TAP IN (1300 082 746).

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

12. **Pedestrian sight distance at property boundary**

All fencing and/or vegetation along the frontage road(s) shall not impede pedestrian or driver visibility. A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas.

Reason: To maintain pedestrian safety.

13. **Waste Management Plan**

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

Details demonstrating compliance must be provided to the 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

14. **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.

15. **Survey Certificate**

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

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

16. **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.

17. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 7 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N 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 kerb, footpath and 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.

18. **Compliance with the operational plan of management**

The requirements of the operational plan of management required by this consent is to be fully implemented in perpetuity from the issue of any interim/final occupation certificate.

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.

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

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

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

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

20. **Stormwater Disposal**

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

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

21. **Building Upgrade and Fire Safety Compliance**

The building is to be upgraded where required so as to comply with Part D (Means of Egress),



and Part E (Essential Services) within the Building Code of Australia (BCA Volume 1). All required works are to be independently certified by a suitably qualified Accredited Certifier or Fire Engineer as compliant upon completion.

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

Reason: To ensure that the building complies with relevant legislation and is fit for purpose for building occupant safety.

22. **Change of Use**

A person must not commence occupation or use (or change of use where an existing building) of the whole or any part of a building (within the meaning of section 109H (4) of the Act) unless an Interim Occupation Certificate or Final Occupation Certificate has been issued in relation to the building or part.

The Principal Certifying Authority is required to be satisfied, amongst other things, that the building complies (or will, when completed, comply) with such of the Category 1 fire safety provisions as are applicable to the building's proposed use.

Note: The obligation to comply with the category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in relation to the relevant development consent.

Reason: Statutory requirement under S109N of the Environmental Planning & Assessment Act 1979.

23. **Outdoor light**

Prior to the issue of an Occupation Certificate, the Certifying Authority must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent dwellings and that the outdoor lighting complies with the relevant provisions of and *Australian Standard 4282:1997 Control of the obtrusive effects of outdoor lighting*.

Reason: To protect public health and amenity.

24. **Trade waste**

The applicant must contact Sydney Water to determine whether a Trade Waste Permit is required before discharging any waste waters to the sewerage system.

Reason: To comply with legislation.

25. **Development of an operational plan of management**

An operational plan management plan shall be developed and submitted to the Environmental Health Department at Northern Beaches Council for their review and a recommendation of approval or refusal.



The operational plan of management must address;

- Noise control measures referenced in the acoustic report developed by Pulse Acoustic consultancy "Building Supplies Warehouse – 57-59 Myoora Road, Terrey Hills - DA Acoustic Assessment" referenced as 20110 – 57-59 Myoora Road, Terrey Hills – DA Acoustic Report – Revision 2 and dated 14 July 2020,
- Hazardous chemicals - storage, transport, disposal, spill management etc.
- Waste oil from the servicing of vehicles and equipment - storage, disposal, spill management etc.
- Wash-down facilities for vehicles and equipment – stormwater protection.
- Dust from the cutting or processing of any materials.
- Light pollution.

The operational plan of management and the recommendation response from Environmental Health is then to be submitted to Principle certifying authority and be to their satisfaction prior to the issuing of any occupation certificate.

Reason: To ensure the site is managed in a manner that does not disturb the amenity of surrounding residence.

26. **Fire Safety Matters**

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

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

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

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

27. **Operational Management Plan**

An Operational Management Plan (OMP) is required to be prepared and submitted to Council detailing the operation of the development. The OMP shall include, but not be limited to the following

- . Vehicle access and egress.
- . Through-site circulation of vehicle movements.
- . Management of car parking areas.
- . The location and content of directional signage.
- . Complaints management.
- . Noise management.
- . Truck delivery times and methods of control to manage the sequencing of the loading docks.



. Waste management.

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

Reason: To ensure that the development operates with minimum disruption to the surrounding area.

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

28. Hours of operation

Hours of operation must only occur during the following hours:

- Monday to Friday – 6:00am – 6:00pm
- Saturday – 7:00am – 4:00pm
- Sunday and public holidays - Closed

No public access to the premise is permitted during the following hours:

- Monday to Friday - 6:00am - 7:00am
- Monday to Friday - 5:00pm - 6:00pm

Reason: To minimise disruption to neighboring properties. (DACHPGOG5)

29. Acoustic conditions

The following acoustic requirements shall be complied with for the life of the development, including:

- No truck movements between 6:00am and 7:00am. Trucks parked inside the warehouse may be packed between 6:00am and 7:00am.;
- No onsite customer parking before 7:00am;
- No more than 10 passenger vehicles < 4.5T Gross Vehicle Mass (GVM), in any 15-minute interval for 57 Myoora Road between;
- No more than 1 Rigid Flat Tray Truck in any 15-minute interval for 57 Myoora Road;
- Reversing alarms for all trucks associated with the business must include a “quacker” type reversing alarm;
- A site management plan must include all noise related conditions;
- All staff operating the forklifts must be trained and made aware of the sensitive noise conditions;
- The owner/operator of the site shall make arrangements with delivery providers to ensure that delivery vehicles do not queue on Myoora Road prior to 7:00am Monday to Friday.
- No waste collection or deliveries are to occur between the hours of 6:00pm and 7:00am Monday to Saturday and no deliveries or waste collection on Sunday.
- The use of amplified sound equipment and public address systems is not permitted, unless located entirely within the shop and used in such a manner that the noise cannot be heard in



any habitable room of any residential premises.

Reason: To protect the amenity of surrounding residents (DACHPGOG5)

30. **Loading and Unloading**

All loading and unloading of vehicles and the delivery of goods must be carried out wholly within the site.

Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity. (DACPLG20)

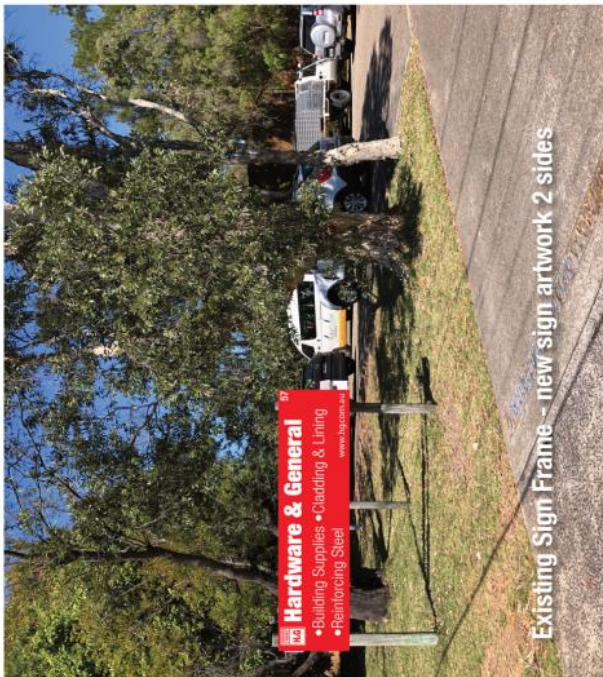
31. **Enter and exit in forward direction**

All vehicles accessing the site are to enter and exit the site in forward direction.

Reason: To ensure road safety and compliance with the DCP requirements (DACTRGOG1)



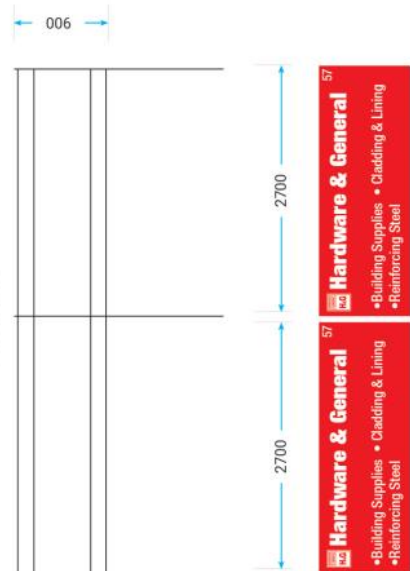
Building Sign approx 14x1.2mtrs



Existing Sign Frame - new sign artwork 2 sides

Street Sign approx 2.4x0.9mtrs

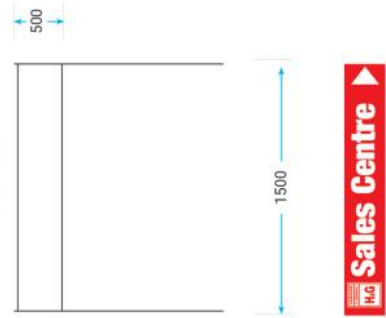
ELEVATION



New Garden Frame with new building signage

Direction Sign approx 1.4x0.5mtrs

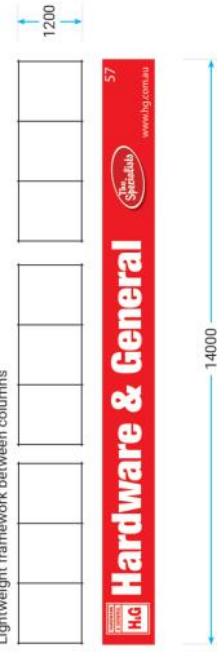
ELEVATION



Colours

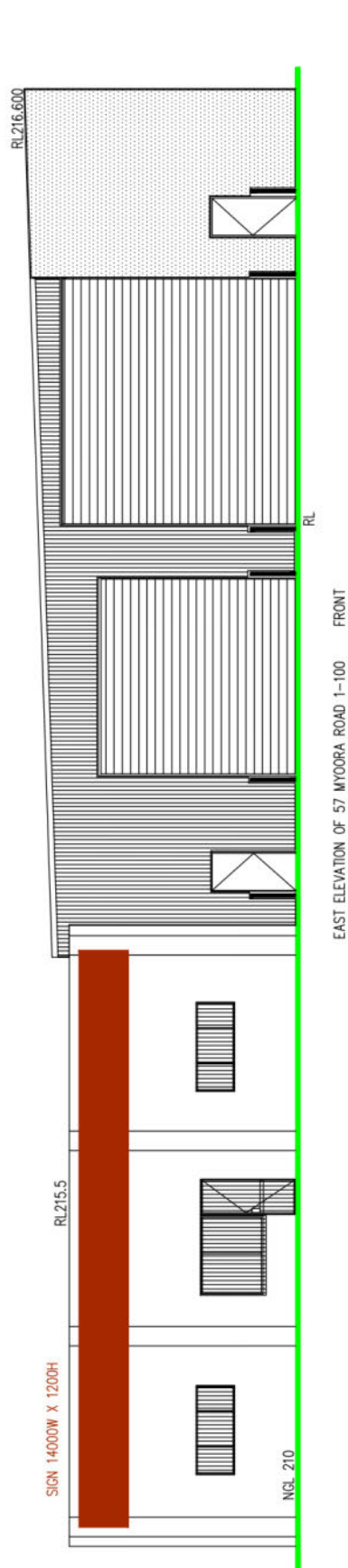
Building Colour: Dulux Teahouse Grey
Signs: Hardware & General Red on Alupanel, white lettering

Lightweight framework between columns

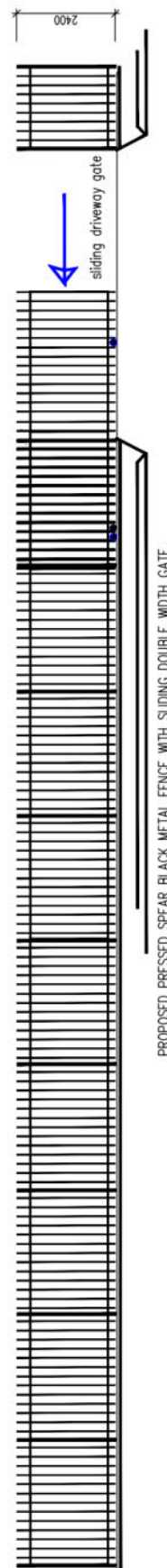


Hardware & General Supplies Limited
Drawn By: Joanne Macgregor 02 6456-1188
Email: joanne.macgregor@hg.com.au
57 MYOORA ROAD, TERREY HILLS
CHANGE OF USE
DATE: DECEMBER 2019
SCALE @ A2: 1:100
PAGE: 5 OF 6
TITLE: SIGNAGE PROPOSED

Sheet 1

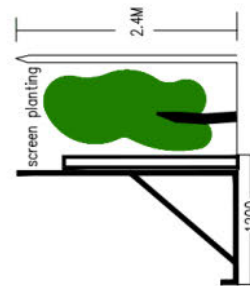


SALES CENTRE SIGN in front garden 1500w x 500h



PROPOSED PRESSED SPEAR BLACK METAL FENCE WITH SLIDING DOUBLE WIDTH GATE

Indicates location and dimensions of signs



TYPICAL SECTION THROUGH RACKING 1-50
Racking designed by a Structural Engineer



PREMISES 57 MYOORA ROAD TERREY HILLS
EXISTING BUILDING ELEVATION DWG No 13B
Details prepared by Peter Formosa 0410403442 28/9/2020
Amended 30th Sept 2020 -Proposed front fence
Amended 1/10/2020 - Racking section

ITEM 3.3	DA2020/0263 - 59 MYOORA ROAD, TERREY HILLS - USE OF BUILDING FOR HARDWARE AND BUILDING SUPPLIES
AUTHORISING MANAGER	ANNA WILLIAMS
TRIM FILE REF	2020/624102
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan, Signage and Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/0263 for use of building for hardware and building supplies at Lot 4 DP 547022, 59 Myoora Road, Terrey Hills subject to the conditions and for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0263
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 4 DP 547022, 59 Myoora Road TERREY HILLS NSW 2084
Proposed Development:	Use of building for hardware and building supplies
Zoning:	Warringah LEP2011 - Land zoned IN2 Light Industrial
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Hardware & General Properties Pty Ltd
Applicant:	Hardware & General Properties Pty Ltd
Application Lodged:	16/03/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Industrial
Notified:	03/08/2020 to 17/08/2020
Advertised:	Not Advertised
Submissions Received:	29
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 15,000.00

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application No. DA2020/0263 for use of the existing industrial building for hardware and building supplies.

The subject site is zoned IN2 Light Industrial under the provisions of the Warringah Local Environmental Plan 2011 (WLEP 2011), and the proposed development is permissible with consent.

Amendment have been made to the proposal during the assessment and additional information has been received in relation to traffic and noise. The application (that this report is based on) was notified from 3 August 2020 to 17 August 2020.

The public exhibition period generated a total of 29 individual submissions. The submission raised concerns regarding traffic, safety, parking, noise and permissibility of use. These concerns have been

DA2020/0263



addressed within the report, and overall, there were no matters raised that would warrant the refusal of the application.

The application has been referred to the Northern Beaches Local Planning Panel due to having more than 10 unique submissions.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the use of the existing building for hardware and building supplies pursuant to Warringah LEP 2011.

Specifically, the proposed development consists of:

- Use of the existing building as hardware and building supplies;
- Internal fit out including sales area, office space, storage facilities;
- Signage;
- Hours of Operation: 6:00am - 6:00pm Monday to Friday. 7:00am - 4:00pm Saturday (No operation Sunday and Public Holidays);
- 4 staff;
- 6 Parking Spaces;
- Front and side fencing;
- Racking.

AMENDMENTS TO THE SUBJECT APPLICATION

Following a preliminary assessment of the application Council wrote to the applicant outlining a number of issues that would not allow for Council to support the application in its current form on 1 June 2020. The issues included permissibility of use, traffic and noise. Following receipt of the letter the applicant advised that they intended to amend the development application. Council agreed to accept amendments to the application.

The amended proposal included a change to the proposed use from Warehouse and Distribution Centre to Hardware and Building Supplies. Additionally, the applicant provided a traffic and acoustic report to address concern raised by Council referral bodies.

The applicant subsequently provided additional information and amended plans to address the concern raised on 24 July 2020. The application was re-notified from 3 August 2020 to 17 August 2020 to neighbouring properties and objecting parties.

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 Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - C9 Waste Management
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D3 Noise
 Warringah Development Control Plan - D15 Side and Rear Fences
 Warringah Development Control Plan - D23 Signs
 Warringah Development Control Plan - E7 Development on land adjoining public open space

SITE DESCRIPTION

Property Description:	Lot 4 DP 547022 , 59 Myoora Road TERREY HILLS NSW 2084
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Myoora Road.</p> <p>The site is regular in shape with a frontage of 30.48m along Myoora Road and a depth of 38.1m. The site has a surveyed area of 1161.3m².</p> <p>The site is located within the IN2 Light Industrial zone and accommodates an existing industrial building.</p> <p>The site experiences a fall of 0.5m from the upper rear boundary down towards the street.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by industrial development to the south and west of the subject site and residential development to the north and east.</p>

Map:



SITE HISTORY

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

DA2013/0106 - Tree Application (Approved 5 February 2013).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for industrial purposes for an extended period of time. The proposed development retains industrial use of the site, and 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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

DA2020/0263

Section 4.15 Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to traffic, noise and permissibility of land use.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance	See discussion on “Notification & Submissions Received” in this report.



Section 4.15 Matters for Consideration'	Comments
with the EPA Act or EPA Regs	
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 03/08/2020 to 17/08/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 29 submission/s from:

Name:	Address:
Roger James Andrews	18 Currong Circuit TERREY HILLS NSW 2084
Withheld	TERREY HILLS NSW 2084
Withheld	TERREY HILLS NSW 2084
Withheld	TERREY HILLS NSW 2084
Claude Caccamo	61 Myoora Road TERREY HILLS NSW 2084
Elizabeth Barraclough	Address Unknown
Mrs Kay Worrell	20 Nerang Avenue TERREY HILLS NSW 2084
Mr Dennis John Casper	307 / 0 Coonawarra Road TERREY HILLS NSW 2084
Mr Stephen Squires	C/- Northern Beaches Property Concierge PO Box 643 TERREY HILLS NSW 2084
Ms Lesley Dawn Nalbandian	47 / 0 Tooronga Road TERREY HILLS NSW 2084
Terrey Hills Progress Association	22 Myoora Road TERREY HILLS NSW 2084
Robert William Bale Lynda Rosemary Bale	16 Bindook Crescent TERREY HILLS NSW 2084
Withheld	WARRIEWOOD NSW 2102
Mrs Georgina Sylvia Spinks	14 Bindook Crescent TERREY HILLS NSW 2084
Mr Alan David Brinkworth Mrs Rosemary Ann Brinkworth	22 Booralie Road TERREY HILLS NSW 2084
Joseph Caccamo	61 Myoora Road TERREY HILLS NSW 2084
Mrs Elizabeth Ann Barraclough	64 Myoora Road TERREY HILLS NSW 2084
Ms Susan Phillips	18 Terrigal Road TERREY HILLS NSW 2084



Name:	Address:
John Anthony Harper	35 Booralie Road TERREY HILLS NSW 2084
Ms Sally C White	207 Tooronga Road TERREY HILLS NSW 2084
Mr Peter Geoffrey Addison	2 Wanari Road TERREY HILLS NSW 2084
Withheld	TERREY HILLS NSW 2084
Mr Benjamin Andrew Campbell	71 Booralie Road TERREY HILLS NSW 2084
Mr Craig Anthony Glascock	94 Myoora Road TERREY HILLS NSW 2084
Mr Troy David Simpson	21 Booralie Road TERREY HILLS NSW 2084
Mr Peter Russell Storey	13 A Myoora Road TERREY HILLS NSW 2084
Paul Davenport	2 Carramar Grove TERREY HILLS NSW 2084
Withheld	TERREY HILLS NSW 2084
Duffys Forest Residents Association	PO Box 567 TERREY HILLS NSW 2084

The following issues were raised in the submissions and each have been addressed below:

- **Permissibility**
- **Noise**
- **Traffic and Safety.**
- **Chemical use**
- **Pollution**
- **Biodiversity**
- **Built form non-compliance**

The matters raised within the submissions are addressed as follows:

- **Permissibility**

Comment:

Concern is raised in regards to the permissibility of the proposed use of the existing premise. The application originally proposed to use the premise as a 'Warehouse or distribution centre' which is permitted with consent within the IN2 Light industrial zone, pursuant to the Warringah LEP 2011. However, it was noted that the applicant was proposing retail sales as part of the operation of the building. This use prohibits retail sales, and as such could not be supported by Council in this form.

The applicant chose to amend the proposal to use the building for 'hardware and building supplies', which allows for retail sales. This proposal fits the definition of hardware and building supplies premises, and as such is supported. The application was re-notified to neighbouring properties noting this change.

- **Noise**

Comment:

Concern is raised in regards to the noise impact that would result from use of the warehouse. While it is accepted there may be a noise impact associated with the off-street parking in terms of vehicles entering and exiting the site, the resulting impact is acceptable in this industrial context and not unreasonable in a IN2 Light Industrial Zone, this is further addressed under *Part*



D3 Noise of this report. The application was referred off to Council's Environmental Investigations (Industrial) Officer for review and comment in regard to the hours of operation and overall suitability of the proposal having regards to the nearby residential zone. Conditions of consent have been imposed as part of this recommendation to mitigate noise impacts and allow for respite for neighbouring properties in the adjoining residential zone.

- **Traffic and Safety**

Comment:

Concern is raised in regards traffic and potential dangers in regards to pedestrian safety as a result of the proposed use of the subject site. A traffic report was lodged as part of this application and reviewed by Council Traffic and Development Engineers. In summary, the proposed development is consistent with the underlying objectives of Part C2 Traffic, Access and Safety as well as C3 Parking Facilities of the Warringah DCP, subject to recommended conditions of consent, which have been included as part of this recommendation.

- **Chemical use**

Comment:

Concern is raised in regards to the potential use of chemicals on site. In relation to the proposed use of chemicals, a condition of consent has been imposed by Council's Environmental (Industrial) Health Officer to ensure a trade waste permit is obtained if any contaminated wastewater is being discharged.

- **Pollution**

Comment:

Concern is raised in regards to pollution impacts as a result of the increased traffic on neighbouring residential properties. While it is acknowledged that an increase in general traffic will lead to increased pollution levels, the increase is not unreasonable in this industrial setting.

- **Biodiversity**

Comment:

An objection raised the potential impact of the proposed development on natural wildlife. The subject site is not located in a noted area of biodiversity and is not expected to have any adverse or detrimental impact on natural habitat of natural wildlife or vegetation. No significant natural vegetation is proposed for removal.

- **Built form non-compliance**

Comment:

This matter is addressed in detail elsewhere within this report (refer Part B of Warringah DCP 2011 section of this report). In summary, the siting of the racking on the site, proposed building setbacks and resultant bulk and scale are considered to be appropriate in this industrial context and satisfies the requirements and objectives of Part B of the Warringah DCP 2011.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.

Internal Referral Body	Comments
	<p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p>The applicant proposes to use an existing industrial building for the storage, distribution and sale of building and hardware supplies.</p> <p>Environmental Health has reviewed the updated development application for 59 Myoora Road TERREY HILLS, which now includes an acoustic assessment of both 57 and 59 Myoora Road.</p> <p>Approval with conditions is recommended, provided that Council approves the construction of an acoustic wall on the northern boundary of the property (as per the report by Pulse Acoustic Consultancy dated 14 July 2020).</p> <p>In addition, Environmental Health recommends that the 'Operational Management Plan' be extended to include the identification of environmental risks and associated control measures to be implemented and maintained for the life of the development in order to prevent water, air, land and noise pollution. The relevant environmental issues include, but are not limited to:</p> <ul style="list-style-type: none"> • Hazardous chemicals - storage, transport, disposal, spill management etc. • Waste oil from the servicing of vehicles and equipment - storage, disposal, spill management etc. • Wash-down facilities for vehicles and equipment. • Dust from the cutting or processing of materials. • Vapour/odour from the storage, handling or use of any substances or materials. • Light pollution. • Noise pollution from the use of power tools on the site. <p>The updated 'Operational Management Plan' is to be submitted to Environmental Health for approval prior to the issue of an occupation certificate. Confirmation of this approval will be forwarded to the nominated Principle Certifier.</p>
NECC (Development Engineering)	<p><u>Comments 2/09/2020</u></p> <p>The internal circulation aisles and proposed car parking areas require reconstruction to a permanent pavement in some sections that only consist of loose grave and broken up asphalt. Accordingly the northern vehicle crossing is required to be reconstructed as it is proposed to be widened, also the southern vehicle crossing requires reconstruction as it is in poor condition. No objections to the development subject to conditions.</p>
Parks, reserves, beaches,	The plans indicate that no works are proposed on the adjoining Council

Internal Referral Body	Comments
foreshore	Reserve. No objections are raised to approval subject to conditions protecting Council's public assets.
Traffic Engineer	<p><u>Traffic comments in review of amended plans:</u></p> <p>The following comments are provided on the revised plans and information provided by the applicant.</p> <p>Traffic Generation:</p> <p>The projected traffic generation estimated in the applicant's traffic report (based on the daily customer and staff visitation data at the Brookvale store) is as follow:</p> <ul style="list-style-type: none"> - Supplier trucks – up to 1 vehicle per day - Hardware & General vehicles – up to 4 trucks and 2 utes per day - Call in Customers: up to 4 vehicles per day - Potential new customers: up to 8 vehicles per day - Staff: up to 4 vehicles per day <p>The traffic generated by the development during the morning and afternoon peak periods is expected to be predominantly related to patron arrivals and departures, therefore the traffic report assumed that the following traffic movements will arrive and depart during the peak periods:</p> <ul style="list-style-type: none"> - 30% of patron - 25% of truck/ute <p>Based on the above, the following weekday peak hour traffic generation is projected:</p> <ul style="list-style-type: none"> - 4 customer vehicles: 8 vehicle trips per hour - 2 trucks/utes: 4 vehicle trips per hour <p>Given the location of the site within light industrial zone, the projected total traffic generation of 12 vehicle trips per peak hour is not considered to have adverse impact on the surrounding road network.</p> <p>Parking Provision:</p>

Internal Referral Body	Comments								
	<p>The traffic report provided by the applicant has provided the following information in regards to the proposed parking provision:</p> <p><i>"Council's (Warringah) DCP specifies the following parking criteria in relation to the proposed development elements:</i></p> <table border="0"> <tr> <td><i>Shop 1 space per</i></td><td><i>16.4 m2 GLFA</i></td></tr> <tr> <td><i>Distribution Centre</i></td><td><i>1.3 spaces per 100 m2 GFA</i></td></tr> </table> <p><i>Application of these criteria to the proposed development would indicate the following:</i></p> <table border="0"> <tr> <td><i>Customer/Sales area 77.3 m2</i></td><td><i>4.7 spaces</i></td></tr> <tr> <td><i>Storage/office 165.9 m2</i></td><td><i>2.2 spaces</i></td></tr> </table> <p><i>Total: 6.9 (7) spaces</i></p> <p><i>The development proposes a total of 6 parking spaces. Given the nature of the business, 2 of these spaces can accommodate one small rigid vehicle and one 10.7m rigid vehicle. 1 space will be designated for the proposed development will be suitable for disabled driver in accordance with BCA requirements.</i></p> <p><i>While the proposed car parking space of 6 spaces is slightly short of Council's DCP requirement of 7 spaces, the remaining car parking demand of 1 space (for staff) can be accommodated within the carpark of 57 Myoora Road site."</i></p> <p>Given the above, no objection is raised on the proposed parking provision..</p> <p>Access:</p> <p>The largest vehicle proposed to access the site is 10.7m rigid flat tray delivery trucks. The existing 4.3m-wide driveway is proposed to be widened to 5.5m to accommodate the turning path of a 10.7m truck entering and exiting the site.</p> <p>All vehicles are proposed to enter and exit the site in a forward direction. The truck will reverse into the truck parking space via the on-grade car parking aisle and depart from the site in a forward direction.</p> <p>The traffic report indicates that the open style fencing and gate designs allow a relatively unobstructed view for exiting drivers to pedestrians on the footpath along the western side of Myoora Road and entering vehicles. There is no detailed information provided on the material of the proposed 2.4m high fencing. The proposed new fencing can be supported subject to provision of adequate clear sight</p>	<i>Shop 1 space per</i>	<i>16.4 m2 GLFA</i>	<i>Distribution Centre</i>	<i>1.3 spaces per 100 m2 GFA</i>	<i>Customer/Sales area 77.3 m2</i>	<i>4.7 spaces</i>	<i>Storage/office 165.9 m2</i>	<i>2.2 spaces</i>
<i>Shop 1 space per</i>	<i>16.4 m2 GLFA</i>								
<i>Distribution Centre</i>	<i>1.3 spaces per 100 m2 GFA</i>								
<i>Customer/Sales area 77.3 m2</i>	<i>4.7 spaces</i>								
<i>Storage/office 165.9 m2</i>	<i>2.2 spaces</i>								



Internal Referral Body	Comments
	<p>line to the pedestrian for at the exit driveway.</p> <p>Conclusion: In view of the above, the proposal can be supported subject to conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The signage is for identification of the proposed business and is compatible with the area in which it is proposed. Generally the industrial zone within Terrey hills is proliferated by signage by multiple businesses and therefore the proposal is consistent existing and desired future character of the area.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The signage is consistent with the surrounding outdoor advertising.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	Given the scale of the signage proposed and the character of the surrounding area, it is considered that the impacts upon the natural environment and residential areas will be negligible.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The proposed signage is attached to the walls and awning of the existing building and will not impact upon views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage will not dominate the skyline or protrude higher than the roofline of the existing building.	YES
Does the proposal respect the viewing rights of other advertisers?	The signage will not unreasonably impact the viewing rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion and form of the signage is appropriate for its location within the streetscape of Myoora Road, the industrial setting and landscape.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The signage contributes to the visual interest of the Myoora Road streetscape.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposal increases the amount of signage in the area. However the amount of signage is not considered excessive.	YES
Does the proposal screen unsightliness?	The proposed signage will contribute the positive redevelopment of the site.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signage does not protrude above the building.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or	The proposed signage is consistent with the scale and proportion of the existing building facades.	YES

both, on which the proposed signage is to be located?		
Does the proposal respect important features of the site or building, or both?	There are no significant features of the site impacted by the signage.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage is attached to the existing building, minimising external works and interruption of the existing streetscape.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	There are no safety devices, platforms or lighting devices contained as an integral part of the signage or structure.	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	No illumination proposed	YES
Can the intensity of the illumination be adjusted, if necessary?	Not applicable	YES
Is the illumination subject to a curfew?	Not applicable	YES
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposed signage is affixed to the existing building and proposed fence and will not impact on the safety of pedestrians, bicyclists or anyone travelling on a public road.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage is affixed to the existing building and does not obscure sightlines from public areas, ensuring that it does not reduce the safety of pedestrians, particularly children.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

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 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.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.50m	6.50m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	5.95m (Top of Signage) 3.5m (Acoustic wall)	-	Yes
B3 Side Boundary Envelope	4m	Within envelope	-	Yes
	4m	Within envelope	-	Yes
B5 Side Boundary Setbacks	0.9m	0m (racking)	100%	No
	0.9m	0m (racking)	100%	No
B7 Front Boundary Setbacks	6.5m	0.9m (racking)	86%	No
B9 Rear Boundary Setbacks	6m	7.4m	-	Yes
D1 Landscaped Open Space (LOS) and	40%	4.4% (51.3m ²)	89%	No

DA2020/0263



Bushland Setting	(464.52m ²)		
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***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	No
D1 Landscaped Open Space and Bushland Setting	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	No	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
D23 Signs	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	No	Yes



Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The proposed racking is located with a nil setback to the northern and southern boundary. This represents a 100% variation to the numeric control.

Merit consideration

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

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

Comment:

As above, the proposed development does not require the removal of deep soil. In turn, the built form will remain significantly screened from the existing provision of vegetation, subject to conditions.

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

Comment:

The proposed racking is proposed to a height of 2.4m above ground level and will therefore not be a visually dominant feature. It is noted that the racking is screened around the north, south and eastern sides of the site to minimise the built form of the proposal.

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

Comment:

While the proposed works are within the required side boundary setback their function is to accommodate on-site storage. The racking will not be of unreasonable bulk and scale when viewed from the street and having regard to the industrial context.

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

Comment:

Amenity considerations including visual and acoustic will be maintained as part of this development.

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

Comment:

The proposal is considered to preserve the available views and vistas to and/or from public and



private places.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

Clause B7 of the WDCP 2011 stipulates that development is to be setback at least 6.5m from the front boundary. The proposed racking would be setback 0.9m from the eastern front boundary, non-complaint with the numeric control. This represents a 86% variation to the numeric control.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The variation sought to the front setback requirement is not found to detract from a sense of openness. The proposed racking is located behind the proposed front fence and screen planting and will not be readily visible from the Myoora road, ensure that the existing sense of openness is maintained.

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

Comment:

The existing pattern of buildings and landscaped elements is not consistent due to a range of buildings and industries that operate in them. However, it is considered that the proposal demonstrates consistency with the objectives of the zone, and built form of the immediate area.

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

Comment:

The non-compliant racking is considered to be a minimal structure and will not detract from the quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment:

The proposed racking will not compromise views to and from private and public properties.



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

C2 Traffic, Access and Safety

Merit consideration

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

- *To minimise traffic hazards.*

Comment:

The proposal seeks to retain two vehicle crossings for the property. The existing (exit) crossing is proposed to be extended to improve access to the site. The use of two crossings will allow for greater access to premise will allow for greater safety for pedestrians.

- *To minimise vehicles queuing on public roads.*

Comment:

Suitable access is able to be provided to ensure no need for queuing on public roads that may hinder access to other properties or the convenient passing of traffic.

- *To minimise the number of vehicle crossings in a street.*

Comment:

No additional vehicle crossings are proposed.

- *To minimise traffic, pedestrian and cyclist conflict.*

Comment:

The development allows for sightline for vehicles exiting the driveway and which facilitates sufficient sightlines to pedestrians and cyclists approaching the driveway along the footpath.

- *To minimise interference with public transport facilities.*

Comment:

The proposed dwelling and parking area does not have an adverse effect on the requirements of State Transit's 'Bus Infrastructure Guide'.

- *To minimise the loss of "on street" kerbside parking.*

Comment:

The proposal has been designed to ensure no unreasonable impact or demand on kerbside



parking within the vicinity of the site. In order to ensure compliance with this, a condition is imposed to ensure a operational management plan is prepared to manage both on-street and off-street parking area for visitors and staff.

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

C3 Parking Facilities

Merit consideration

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

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Hardware and building supplies	1 space per 16.4 m ² GLFA 1.3 spaces per 100 m ² GFA	7 spaces	6 spaces	-1
Total			6 spaces	-1 space

Traffic Engineering have assessed the proposal against the DCP and traffic analysis for the storage and distribution Centre, subject to conditions, as recommended. (See Traffic Engineering Referral Response.)

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

No change is proposed to the parking area and therefore the proposal will not alter the visual appearance of the parking facilities

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

No change is proposed to the visual appearance of the existing carpark.



Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C9 Waste Management

A detailed waste management plan has not been submitted with the application. To ensure proper disposal of demolition and builders' wastes, a condition has been included in the consent requiring details prior to the issue of a construction certificate.

D1 Landscaped Open Space and Bushland Setting

The existing development has a total of 51.3sqm or 4.4% of the site as landscaped open space, non-compliant with the numeric control of 40% under the Warringah DCP 2011. The proposed works are over existing built upon areas and as such does not alter the existing landscaped open space on site. Therefore the level of landscaping is supported in this circumstance.

D3 Noise

Merit consideration

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

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

Comment:

Submissions have been received in relation to the noise impact generated as a result of the proposal, in particular the impact of customers accessing the site and loading hardware and building supplies.

An acoustic assessment has been prepared by the applicant in response to Council's original Environmental (industrial) Health Referral. The assessment considers the impact between the proposed use on site and the surrounding residential/commercial development. The hours of operation and acoustic wall to the northern end of the site recommended within the Acoustic Assessment have been endorsed by Council's Environmental Health Officer, and as such are conditioned to be imposed if this application is approved.

The conditioned hours of operation are as follows:

Monday – Friday: 6:00am-6:00pm

Saturday: 7:00am - 4:00pm

Sundays and Public Holidays: Closed

No public access to the premise is permitted during the following hours:

Monday to Friday - 6:00am - 7:00am

Monday to Friday - 5:00pm - 6:00pm

- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*



Comment:

The hours of operation and acoustic measures conditioned are suitable and appropriate for the subject site given the fact that it is surrounded by an R2 - Low Density Residential zoning.

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

D15 Side and Rear Fences

Merit consideration

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

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

Comment:

The proposal includes the construction of a acoustic wall with a height ranging between 3.5m, located along the northern side of the site, directly adjoining the public reserve which separates the industrial zone and residential zone. While it is acknowledged that the wall is proposed for acoustic purposes, the height will be inconsistent with the side and rear fencing found in the surrounding properties, and will have a unreasonable visual impact when viewed from the reserve. As such, a condition will be imposed requiring the acoustic wall to be setback 2m from the northern boundary and for landscaping to be proposed between the wall and the northern boundary to offset the visual impact when viewed from the reserve and residential properties to the north. This matter is further addressed within the report under *Part E7- Development on land adjoining public reserves* of the Warringah DCP.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D23 Signs

Description of non-compliance and/or inconsistency

The application proposes five (5) pieces of signage consisting of the following:

Sign	Requirement	Width	Height	M ²	Complies
Freestanding signs (not being a sign elsewhere listed in this table, and includes a bulletin board, tenancy board, and the like)	Shall not exceed 2 metres in height above the existing natural ground level;	1.2m	0.4m	0.48m ²	Yes
	Shall not have an area greater than 4sqm; Shall not project beyond the	1.2m	0.4m	0.48m ²	

	boundary of the premises; and Shall not be illuminated.				
Awning fascia sign (attached to the fascia or return end of an awning)	Shall not project above, below or beyond the fascia or return end of the awning to which it is attached.	3.6m 3.6m	0.4m 0.4m	1.44m ² 1.44m ²	Yes
Wall sign (painted onto a wall of a building or attached to the wall of a building, not being a sign elsewhere listed in this table)	Shall not extend within 200mm of the top and sides of the wall. Shall not cover any window or architectural projections; Must be of a size and shape that relates to the architectural design of the building to which it is attached; Where illuminated, shall not be less than 2.7 metres above the existing natural ground level ground; and Shall not project more than 300mm from the wall.	15m	1.2m	18m ²	Yes

An assessment of the application has also found the development to be consistent with the requirements of *State Environmental Planning Policy No. 64 - Advertising and Signage*.

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

E7 Development on land adjoining public open space

Merit consideration:

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

- *To protect and preserve bushland adjoining parks, bushland reserves and other public open spaces.*

Comment:

The proposed works does not require the removal of any vegetation within the adjacent reserve. Suitable conditions are recommended to ensure no trees or other native vegetation are cleared within the reserve.

- *To ensure that development responds to its adjacent surroundings to preserve and enhance the natural qualities of the environment.*



Comment:

The proposed development is considered to not respond well to the adjacent surroundings nor does it preserve or enhance the natural qualities of the environment.

- *Development on land adjoining open space is to complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces.*

Comment:

The proposed boundary wall is inconsistent with the public open space landscape character. The height and siting of the wall will be detrimental to the enjoyment of the open space and will negatively alter the visual aesthetic of the public reserve. A condition of consent has been imposed as part of the recommendation to setback the 3.5m acoustic wall 2m from the northern boundary and for screen planting to be proposed between the boundary wall and the northern boundary.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

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

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

This assessment has found that the proposed development is consistent with both the the industrial context and constraints of the site being that the subject site adjoins a residential zone. The resultant development will allow for safe access to and from the site, and will not result in any unreasonable impacts upon the character of the locality or the amenity of adjoining properties.

As detailed within the report Council cannot support the acoustic wall along the northern side of the subject site, which adjoins the public reserve. Conditions of consent have been imposed to mitigate the impact of the wall including providing a 2m setback between the wall and the northern boundary and introducing screen planting between the wall and the public reserve.

Conditions of consent have been included in the recommendation to minimise the impact of the on-going operation of the development.

Overall, the proposal has been found to be consistent with the relevant provisions of the WLEP 2011 and the Warringah Development Control Plan and has been 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/0263 for Use of building for hardware and building supplies on land at Lot 4 DP 547022, 59 Myoora Road, TERREY HILLS, 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
Page 2 of 6/ Site Plan	December 2019	Joanne Macgregor
Page 3 of 6/ Floor Plan	December 2019	Joanne Macgregor
Page 9 of 6/ Racking Plan	December 2019	Joanne Macgregor
Page 5 of 6/ Vehicle Movements	December 2019	Joanne Macgregor
Page 6 of 6/ Signage Plan	December 2019	Joanne Macgregor
Dwg No. 14A	28 September 2020	Peter Formosa
Dwg. No. 14B	1 October 2020	Peter Formosa

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Traffic Report/ Issue E	July 2020	Transport and Traffic Planning Consultants
Acoustic Assessment	14 July 2020	Pulse Acoustic Consulting

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

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

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	N/A

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

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

3. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of *hardware and building supplies*.

Hardware and building supplies is defined as:

"hardware and building supplies means a building or place the principal purpose of which is the sale or hire of goods or materials, such as household fixtures, timber, tools, paint, wallpaper, plumbing supplies and the like, that are used in the construction and maintenance of buildings and adjacent outdoor areas."

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. Prescribed Conditions

- (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) 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

6. Security Bond

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

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

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



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

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

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

The applicant is to lodge a Bond of \$10000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

8. **Stormwater Disposal**

The applicant is to submit Stormwater Drainage Plans for the development, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the Myoora Road kerb and gutter. Additionally 300mm wide grated trench drains are to be constructed at the boundary behind the vehicle crossing.

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

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

9. **Amendments to the approved plans**

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

- The 3.5m acoustic wall proposed along the northern boundary is to be setback 2m from northern boundary.

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

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

10. **Boundary Identification Survey**

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

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



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

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

11. Change of Use/ Fire Safety - Egress and Essential Services Upgrade

The existing levels of essential fire safety measures and egress provisions are to be upgraded to achieve an adequate level of fire safety in accordance with the provisions of clause 94 of the Environmental Planning and Assessment Regulation 2000 and Parts C,D and E of Volume 1 of the Building Code of Australia.

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

Reason: To ensure adequate provision is made for Access, Fire safety and for building occupant safety
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12. Vehicle Crossings Application

The Applicant is to submit an application for driveway levels with Council for the widening and reconstruction of the northern vehicle crossing and reconstruction of the existing southern vehicle crossing 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.

13. Internal driveway reconstruction works.

The applicant is to provide internal driveway circulation and car parking plans including line marking and signage. The plans are also to detail the reconstruction of the existing damaged driveway and parking areas sections that currently consist of road base. . Details are to include specifications prepared by a Civil engineer demonstrating the new pavement is suitable for the service vehicle design loads. The new replacement pavement shall be a flexible (asphalt) or concrete pavement design in accordance with Councils Auspec One specification.

.Engineering plans are to be submitted to the Accredited Certifier for approval prior to the issue of the Construction Certificate.

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

14. Compliance with Standards

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

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

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

15. Sydney Water "Tap In"



The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

16. **Screen Planting**

Screen planting is to be provided between the acoustic wall and the northern property boundary.

The selected planting is to comprise of native species capable of attaining a minimum height of 3.5 metres at maturity

Reason: Local amenity.

17. **Subject site**

All works are to be contained wholly within the subject site.

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

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

18. **Pedestrian sight distance at property boundary**

A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas.

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

Reason: To maintain pedestrian safety.

19. **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 THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT****20. No Access Through Adjoining Park/Reserves**

Access to the site through an adjoining park/reserve is prohibited without the written approval of the Council.

Reason: To ensure protection of council parks/reserves.

21. Installation and Maintenance of Sediment and Erosion Control

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area, in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

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

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

22. 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.

23. 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, physical assets such as crossovers, driveways, footpaths, utilities, furniture, play equipment, trees, gardens, lawn areas, 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 these assets during the works must be replaced like for like to the satisfaction of the Certifying Authority, and shall be subject to acceptance by Council.

The applicant may be held liable to any damage to public infrastructures in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition. In



this regard, where required, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.

Reason: protection of Council's assets.

24. Works on Land owned or managed by Council.

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

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity, telecommunications etc.), and landscaping works on Land owned or managed by Council.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

25. 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.

26. Removing, Handling and Disposing of Asbestos

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

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

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

27. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the



intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

28. **Survey Certificate**

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

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

29. **Vehicle Crossings**

The Applicant is to reconstruct the northern vehicle crossing to 5.5 metres wide and the southern vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/**Normal** and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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.

30. **Protection of trees within Land owned or managed by Council.**

Unless identified by the development consent, existing trees shall be protected in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk disturbance.

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

Reason: tree protection and management

31. **No Access through Land owned or managed by Council.**

a) Site access is not approved for delivery of materials nor construction of the development through adjacent Land owned or managed by Council.



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

c) Any damage to Council's public assets shall be made good by the applicant and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Reason: public safety and environmental protection

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

32. **Stormwater Disposal**

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

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

33. **Removal of All Temporary Structures/Materials and Construction Rubbish**

a) 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.

b) 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.

34. **Development of an Operational Plan of Management**

An 'Operational Management Plan' shall be developed and submitted to the Environmental Health Department at Northern Beaches Council for their review and recommendation of approval or refusal.

The 'Operational Management Plan' must address:

- Noise control measures referenced in the acoustic report developed by Pulse Acoustic Consultancy "Building Supplies Warehouse – 57-59 Myoora Road, Terrey Hills - DA Acoustic Assessment" referenced as 20110 – 57-59 Myoora Road, Terrey Hills – DA Acoustic Report – Revision 2 and dated 14 July 2020,
- Hazardous chemicals - storage, transport, disposal, spill management etc.
- Waste oil from the servicing of vehicles and equipment - storage, disposal, spill management etc.
- Wash-down facilities for vehicles and equipment – stormwater protection.
- Dust from the cutting or processing of any materials.
- Light pollution.

The operational plan of management and the recommendation response from Environmental Health is then to be submitted to the Principle Certifying Authority and be to their satisfaction prior to the issuing of any occupation certificate.

Reason: To ensure the site is managed in a manner that does not disturb the amenity of



surrounding residential properties.

35. **Compliance with the Operational Plan of Management**

The requirements of the operational plan of management required by this consent is to be fully implemented in perpetuity from the issue of any interim / final occupation certificate.

Reason: Compliance with the Operational Plan of Management.

36. **Trade Waste Requirements**

The applicant must contact Sydney Water to determine whether a Trade Waste Permit is required before discharging any waste waters to the sewerage system.

Reason: To comply with legislation.

37. **Outdoor Light Pollution**

Prior to the issue of an Occupation Certificate, the Certifying Authority must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent dwellings and that the outdoor lighting complies with the relevant provisions of and Australian Standard 4282:2019 Control of the obtrusive effects of outdoor lighting Control of the obtrusive effects of outdoor lighting Control of the obtrusive effects of outdoor lighting.

Reason: To protect public health and amenity.

38. **Operational Management Plan**

An Operational Management Plan (OMP) is required to be prepared and submitted to Council detailing the operation of the development. The OMP shall include, but not be limited to the following:

- Vehicle access and egress.
- Through-site circulation of vehicle movements.
- Management of car parking areas.
- The location and content of directional signage.
- Complaints management.
- Noise management.
- Truck delivery times and methods of control to manage the sequencing of the loading areas.
- Waste management.



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

Reason: To ensure that the development operates with minimum disruption to the surrounding area (DACTRFPOC1)

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

39. **Acoustic Conditions**

The following acoustic requirements shall be complied with for the life of the development:

- No truck movements between 6:00am and 7:00am. Trucks parked inside the warehouse may be packed between 6:00am and 7:00am.;
- No onsite customer parking before 7:00am;
- No more than 10 passenger vehicles < 4.5T Gross Vehicle Mass (GVM), in any 15-minute interval for 57 Myoora Road between;
- No more than 1 Rigid Flat Tray Truck in any 15-minute interval for 57 Myoora Road;
- Reversing alarms for all trucks and forklifts associated with the business must emit a "quacker" type alarm rather than a tonal one;
- A site management plan must include all noise related conditions;
- All staff operating the forklifts must be trained and made aware of the sensitive noise conditions;
- The owner/operator of the site shall make arrangements with delivery providers to ensure that delivery vehicles do not queue on Myoora Road prior to 7:00am Monday to Friday.
- No waste collection (including trade waste) or deliveries are to occur between the hours of 6:00pm and 7:00am Monday to Saturday. No waste collection (including trade waste) or deliveries are to occur on Sundays or Public Holidays.
- The use of amplified sound equipment and public address systems is not permitted, unless located entirely within the shop/warehouse and used in such a manner that the noise cannot be heard from any habitable room of any residential premises.

Reason: To protect the amenity of surrounding residents.

40. **Hours of Operation**

Hours of operation must only occur during the following hours:

- Monday to Friday – 6:00am – 6:00pm
- Saturday – 7:00am – 4:00pm
- Sunday and public holidays - Closed

No public access to the premise is permitted during the following hours:

- Monday to Friday - 6:00am - 7:00am
- Monday to Friday - 5:00pm - 6:00pm

Reason: To minimise disruption to neighbouring properties.

41. **Loading and Unloading**

All loading and unloading of vehicles and the delivery of goods must be carried out wholly within the site.

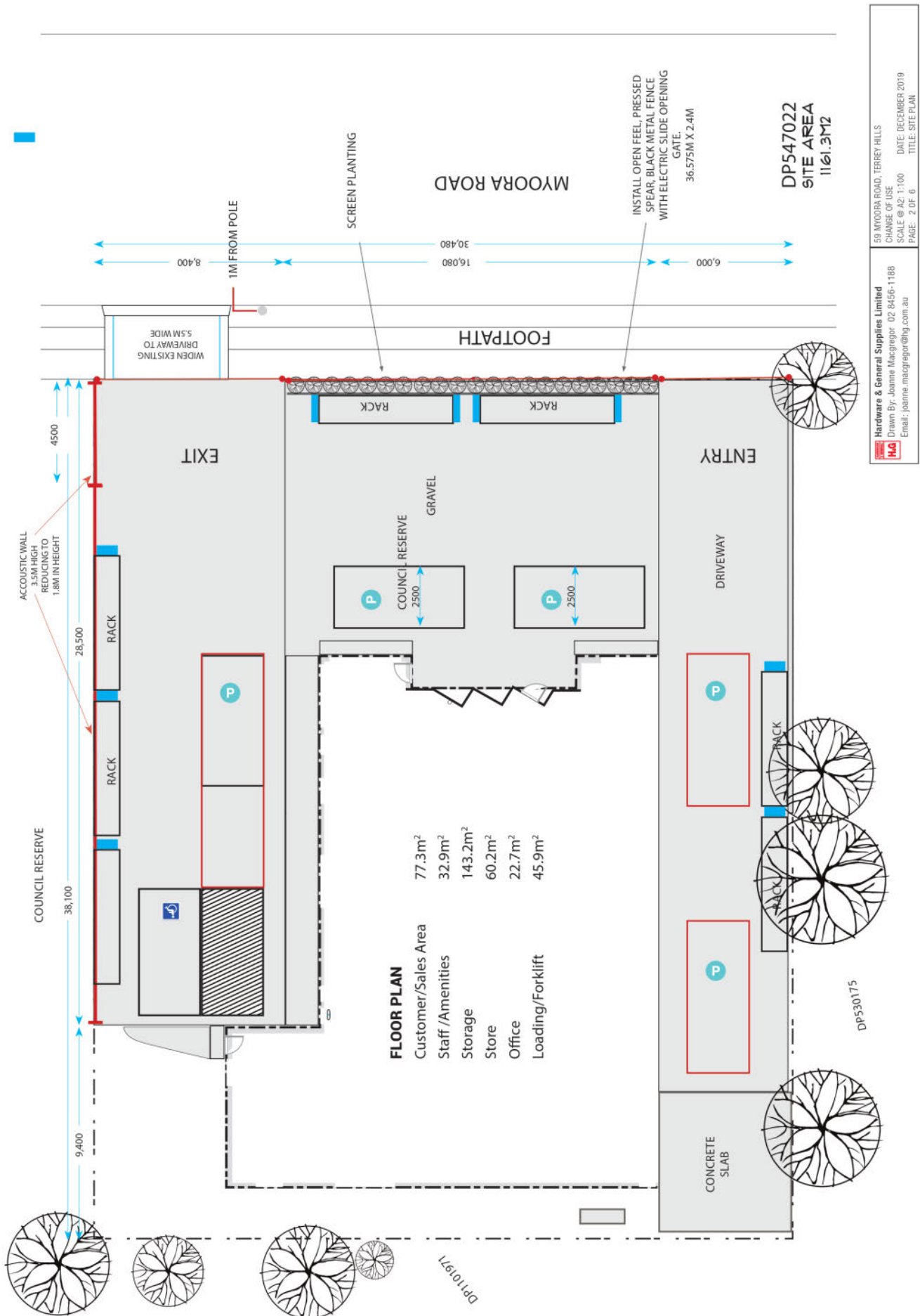
Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity. (DACPLG20)



42. **Enter and Exit in Forward Direction**


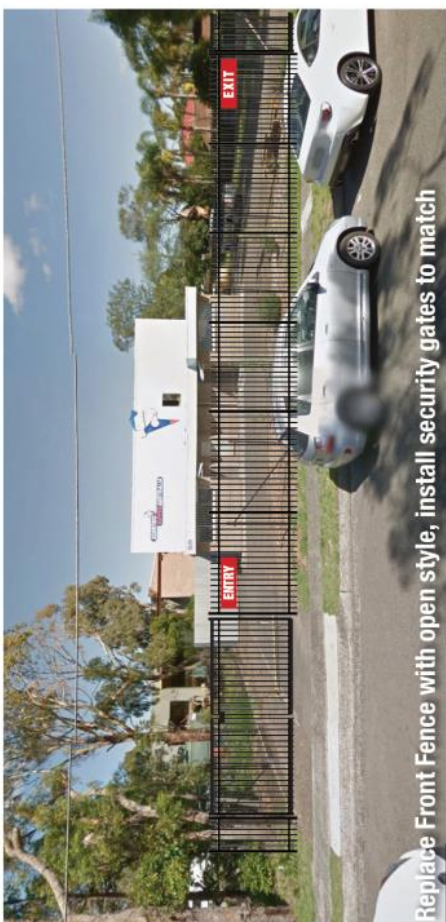
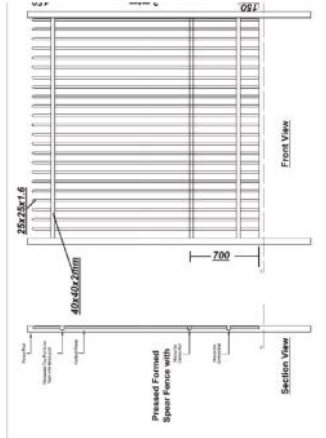
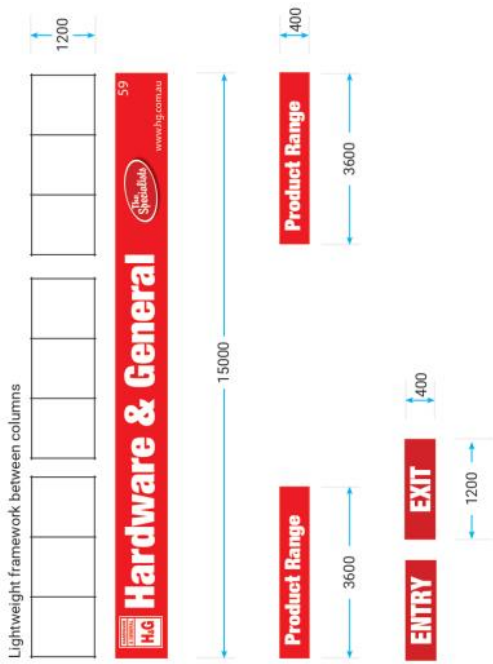
All vehicles shall enter and exit the site in forward direction.

Reason: To minimise adverse impact on footpath and street at the site frontage (DACTRGOG1)

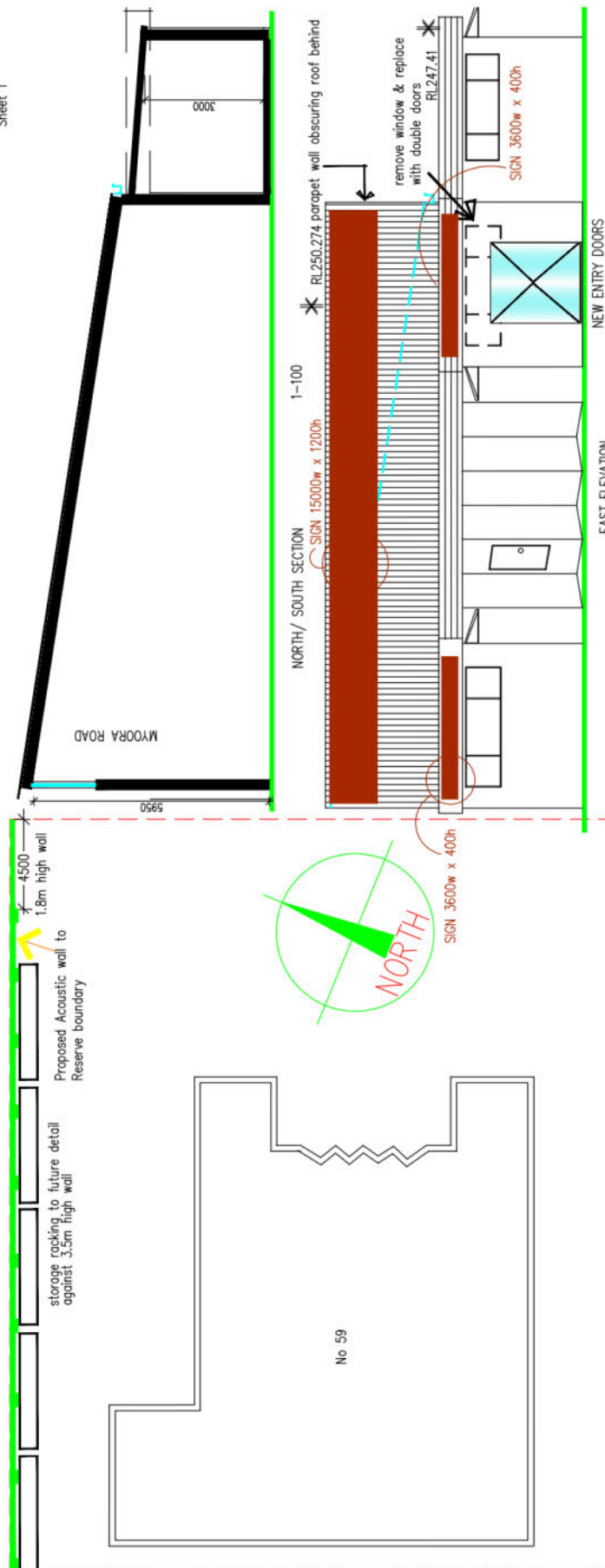


59 MYOORA ROAD, TERREY HILLS
CHANGE OF USE
Drawn By: Joanne Macgregor 02 8456-1188
SCALE @ A2: 1:100
DATE: DECEMBER 2019
PAGE: 2 OF 6
TITLE: SITE PLAN

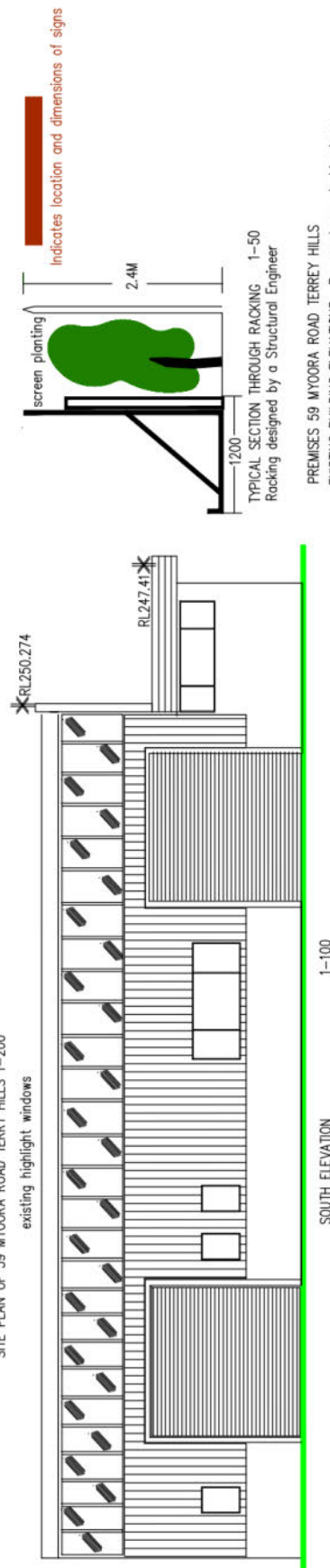
Hardware & General Supplies Limited
Email: joanne.macgregor@hg.com.au

 <p>Building Sign approx. 15x1.2mtrs</p> <p>Repaint Building, Install Signage to Awning</p>	 <p>Replace Front Fence with open style, install security gates to match</p> <p>2400</p>	<p>Fencing Profile: Gates:</p> <p>30m, including gates to 6m Black Pressed Form Spear Internal Slide -electric</p> 	<p>Colours</p> <p>Building Colour: Dulux Teahouse Grey</p> <p>Signs: Hardware & General Red on Alupanel, white lettering</p> 	<p>59 MYODRA ROAD, TERREY HILLS CHANGE OF USE Drawn By: Joanne Macgregor 02 8456-1188 SCALE @ A2: 1:100 DATE: DECEMBER 2019 PAGE: 6 OF 6 TITLE: SIGNAGE PLAN</p> <p>Hardware & General Supplies Limited Email: joanne.macgregor@hg.com.au</p>
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Sheet 1



SITE PLAN OF 59 MYOORA ROAD TERRY HILLS 1-200
existing highlight windows



PREMISES 59 MYOORA ROAD TERRY HILLS
EXISTING BUILDING ELEVATIONS - Proposed new double doors
TO FRONT ELEVATION OF BUILDING DWG No 14B
Details prepared by Peter Formosa 0410403442 28/9/2020
Amended 1/10/2020 - Racking section

ITEM 3.4	PLANNING PROPOSAL - 4 BELLARA AVENUE, NORTH NARRABEEN (PEX2020/0007)
AUTHORISING MANAGER	ANNE-MAREE NEWBERY
TRIM FILE REF	2020/602830
ATTACHMENTS	1 Planning Proposal - 4 Bellara Ave NORTH NARRABEEN

PURPOSE

To report to the Northern Beaches Local Planning Panel a Planning Proposal for 4 Bellara Avenue, North Narrabeen to amend Pittwater Local Environmental Plan (LEP) and recommend that the Panel advises Council to progress the Planning Proposal to a Gateway Determination.

BACKGROUND

A Planning Proposal (PEX2020/0007) has been submitted to Council on behalf of Sydney Water in relation their property at 4 Bellara Avenue, North Narrabeen (Lot 26 DP 236548) (the subject site) to seek amendments to the Pittwater Local Environmental Plan 2014 (Pittwater LEP 2014). The amendments sought include a change to the zone of the subject site from SP2 Infrastructure (Water Supply System) to R2 Low Density Residential and to apply a 550sqm minimum lot size.

The site has an area of 562sqm and is surrounded by residential development zoned R2 Low Density Residential to the east, south and west, and E4 Environmental Living to the north (see Figure 1 & 2 below).

The site has no surface improvements and has been deemed surplus to Sydney Water's requirements. However, it is noted that the site is traversed by two sewer lines and includes a large concrete chamber with manholes. The subject site also contains sixteen (16) existing trees. The Proposal is supported by a concept architectural design and arborist report that identifies a compliant dwelling can be located on the site that avoids the existing sewer lines and concrete chamber and retains all but two (2) trees.

The Planning Proposal is also accompanied by a Flood Risk Management Report, Geotechnical Report and Survey Plan.

SITE DESCRIPTION

The subject site is undeveloped and contains sixteen (16) established and mature trees. The property is identified in the outlined area at Figure 1.

The subject site has an area of approximately 562m² with a frontage of approximately 16.7m to Bellara Avenue. The subject site adjoins land developed for residential purposes to the north, east and west. The properties to the north are zoned E4 Environmental Living. The properties to the east, west and on the opposite side of Bellara Avenue are zoned R2 Low Density Residential.

The subject site is currently only fenced on the common boundary with 5 Tatiara Crescent with a small partial fence existing in the rear portion of the site adjoining 6 Bellara Avenue. A low timber retaining wall appears to form the northern boundary of the site. The site has a moderate North-South slope down to Bellara Avenue of approximately 6m. A small drainage system appears to have been constructed along the boundary with 5 Tatiara Crescent.



Figure 1 – Aerial Photo

CURRENT ZONING

The site is zoned SP2 Infrastructure (Water Supply System) under Pittwater LEP 2014. Properties adjoining the site consist of a range of zonings, including zone E4 Environmental Living to the north and zone R2 Low Density Residential to the east, west and on the opposite side of Bellara Avenue.

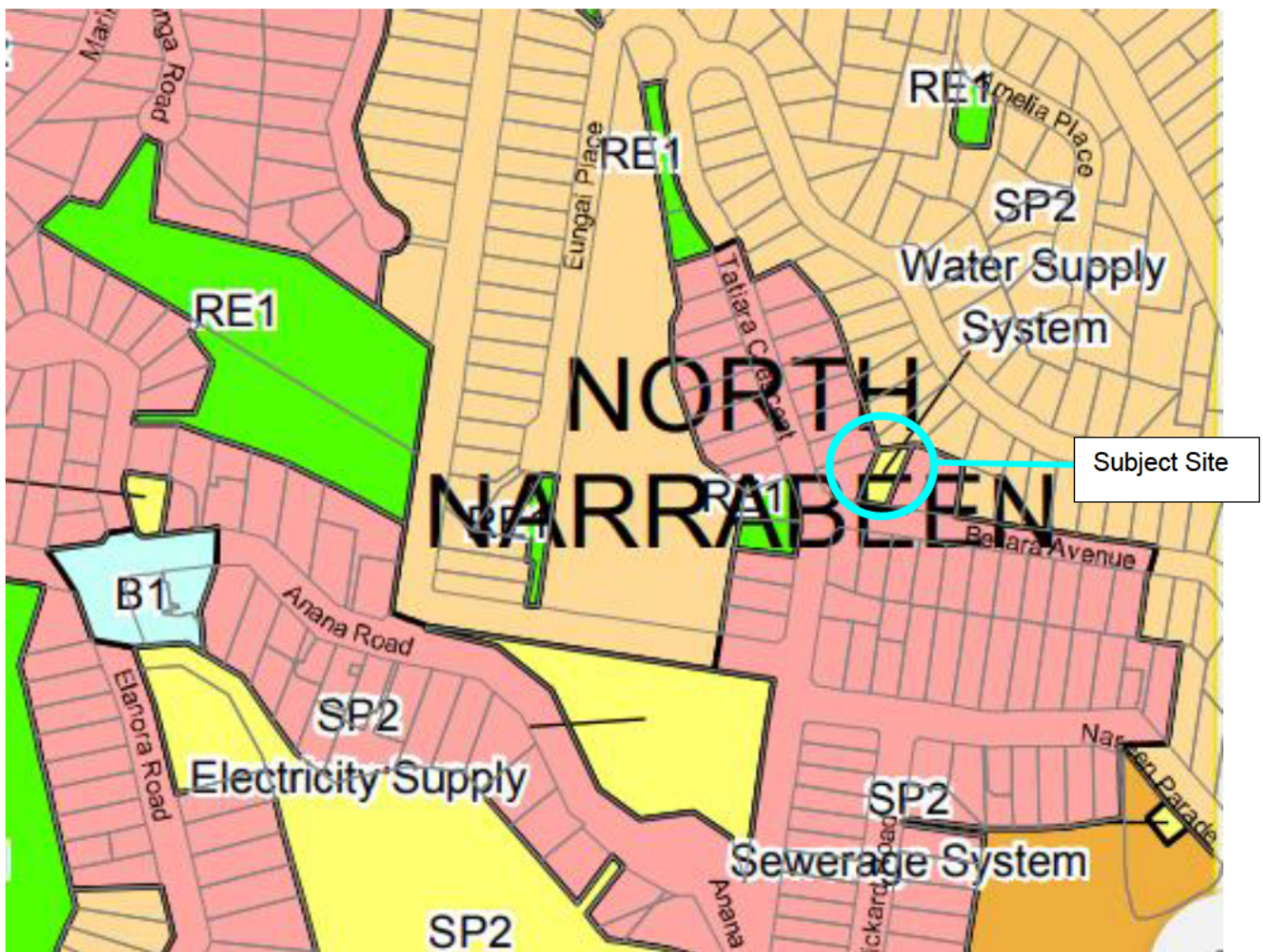


Figure 2 – Existing Zoning Map

The objectives of the SP2 Infrastructure zone are:

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

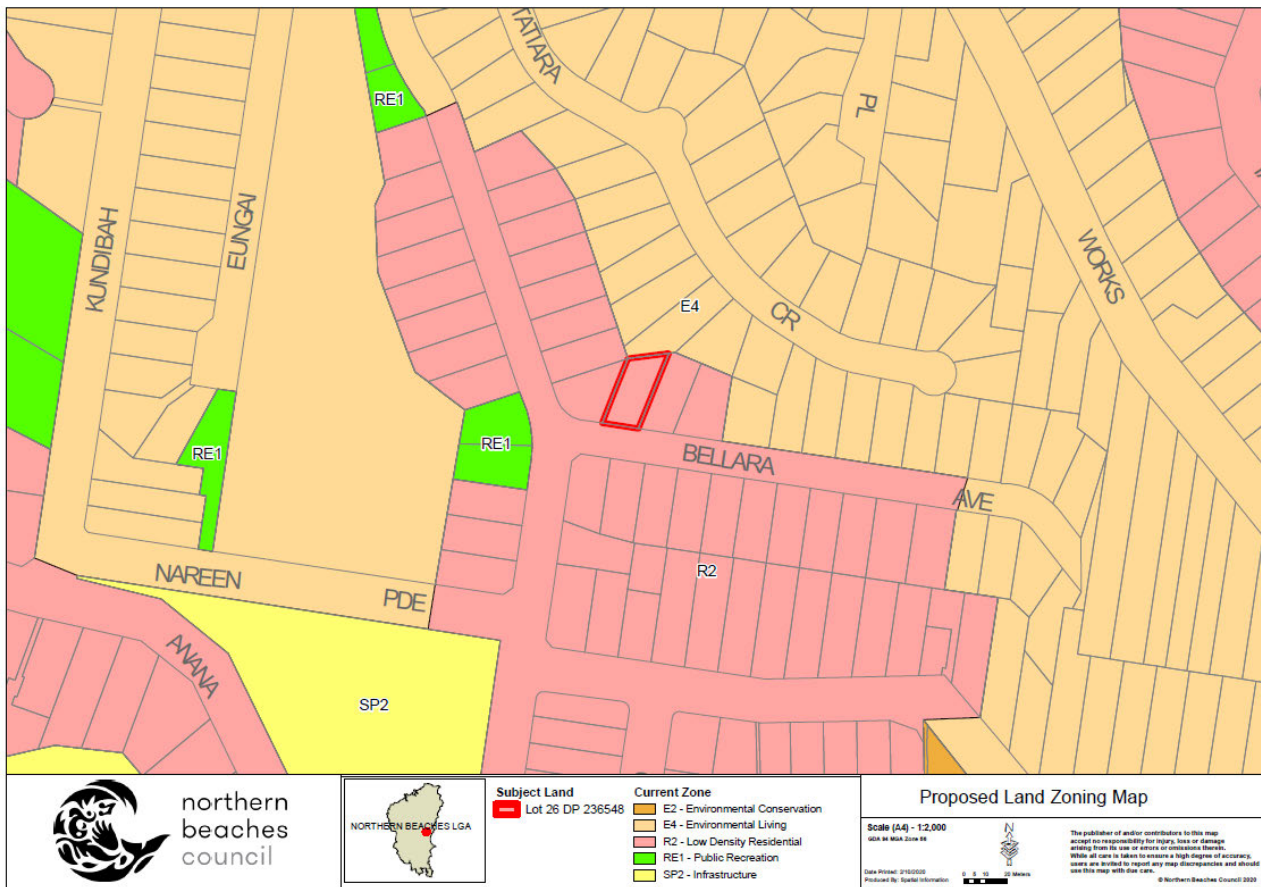


Figure 3 – Proposed Zoning Map

The Proposal

The Planning Proposal seeks to amend the planning controls within Pittwater LEP 2014 to rezone the site to enable development of this land for residential land uses. Specifically, the Planning Proposal seeks to:

- Change the zoning of the site from SP2 Infrastructure to R2 Low Density Residential.
- Apply a 550sqm minimum lot size to the site.

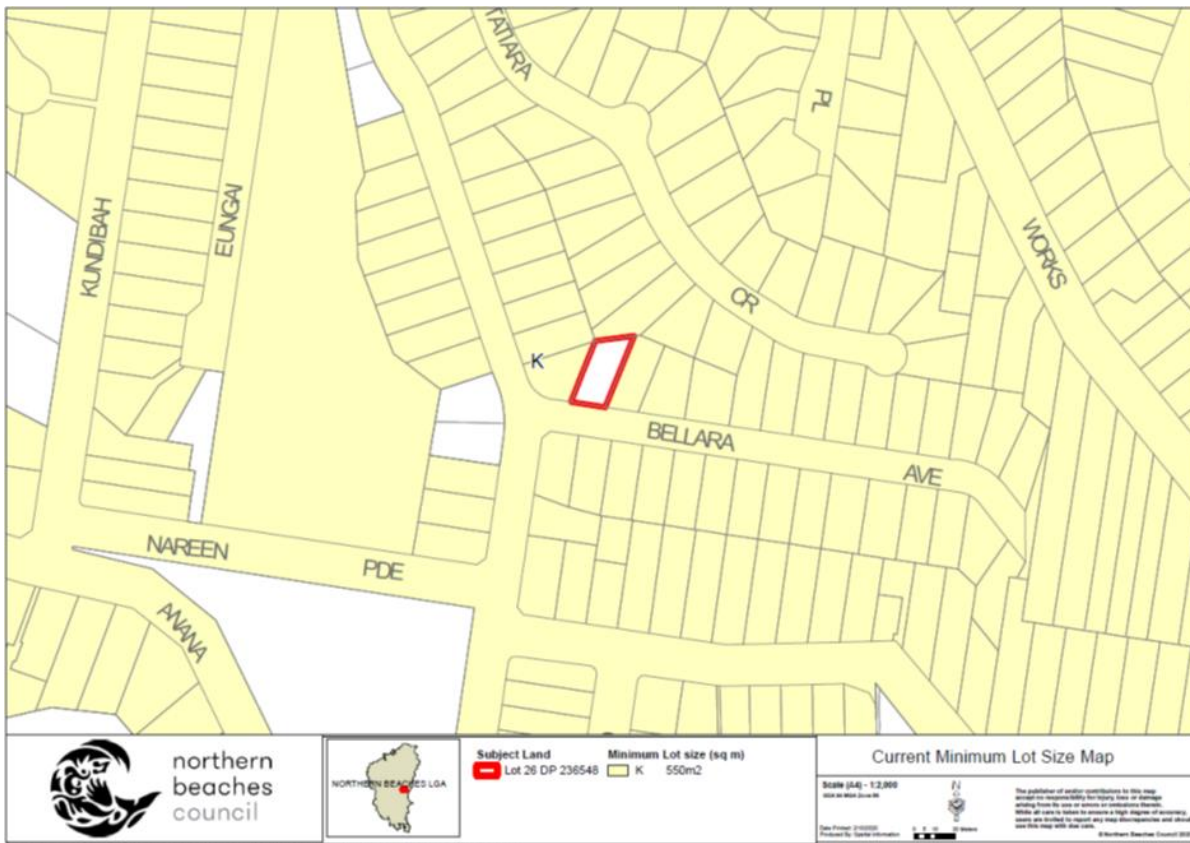


Figure 4 - Current Minimum Lot Size Map

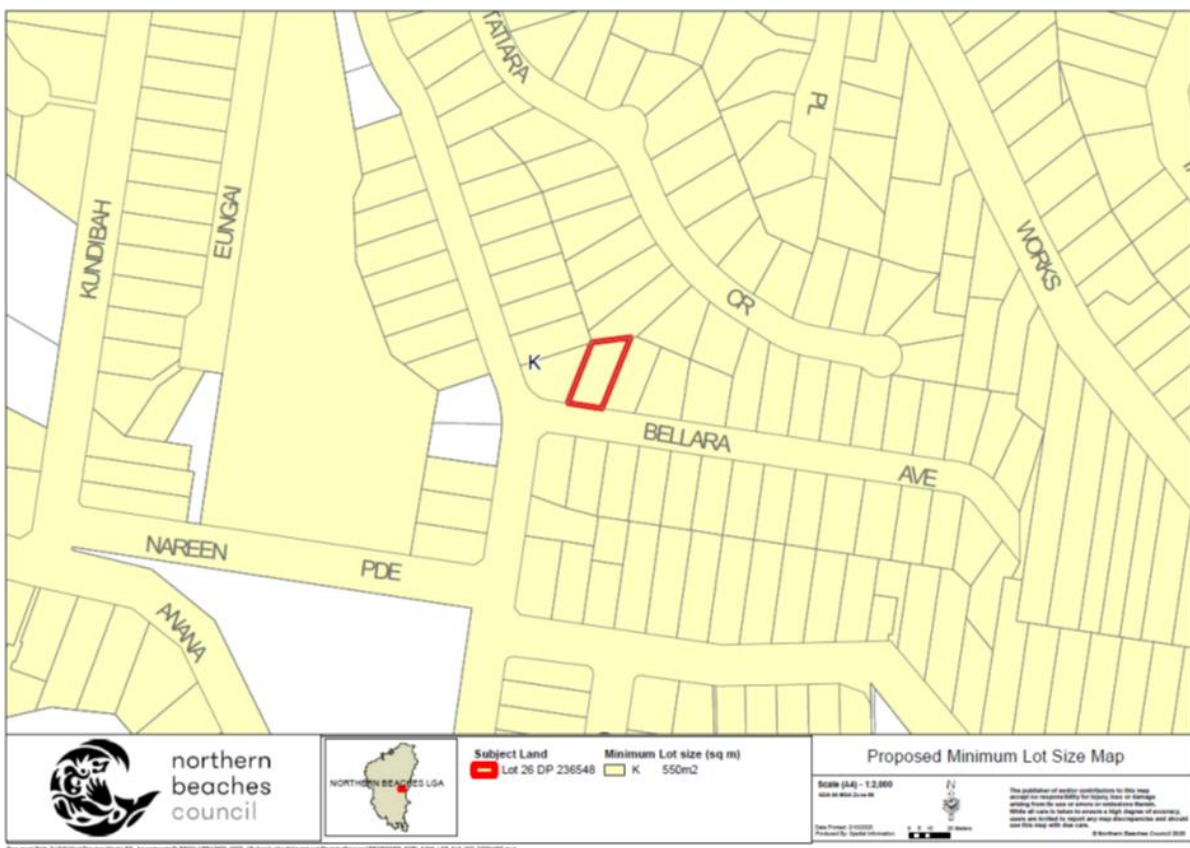


Figure 5 – Proposed Minimum Lot Size Map

ASSESSMENT OF PLANNING PROPOSAL

The following assessment is undertaken in accordance with the NSW Department of Planning, Industry and Environment's '*Planning Proposals: A Guide to Preparing Planning Proposals*'.

Part 1 – Objectives or Intended Outcomes

The Planning Proposal seeks to amend the Pittwater LEP 2014 to change the zone of the subject site from SP2 Infrastructure to R2 Low Density Residential and to apply a 550sqm minimum lot size.

Part 2 – Explanation of Provisions

The following amendments to Pittwater LEP 2014 are proposed by the applicant:

1. Update Land Zoning Map (Sheet 013) to rezone the site from SP2 Infrastructure (Water Supply System) to R2 Low Density Residential to allow for the future residential development of the site.
2. Update Minimum Lot Size Map (Sheet 013) to apply a minimum lot size of 550sqm to the site

Part 3 – JUSTIFICATION

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of an endorsed Local Strategic Planning Statement, Strategic Study or report?

The Planning proposal is not the result of any endorsed Local Strategic Planning Statement, strategic study or report.

The Planning Proposal responds to a change in circumstances with the property being deemed surplus to demand by Sydney Water. Located within an established residential area, the proposal will give effect to the *North District Plan*, in particular Planning Priority N5 'Providing housing supply, choice and affordability, with access to jobs, services and public transport'.

Local Strategic Planning Statement

Towards 2040 Local Strategic Planning Statement (LSPS) came into effect on 26 March 2020. The LSPS aligns with the North District Plan and Greater Sydney Region Plan and acts as the link between strategic land use planning at the district level and the local statutory planning for the Northern Beaches LGA.

The proposal is consistent with the LSPS, with specific reference to the following priorities:

- Priority 2 – Protected and enhanced bushland and biodiversity.

The site contains existing vegetation which will remain protected under the existing Pittwater 21 DCP (The DCP). The preliminary arborists assessment confirms that future residential development of the site can be achieved with minimal impact on the existing vegetation or biodiversity. Future development of the site will be consistent with that of the adjoining residential development in terms of amenity and appearance.

- Priority 8 – Greater community resilience to natural hazards and climate change.

The site is partially affected by flooding and geotechnical hazards. The proposal has been accompanied by flood and geotechnical assessments which confirm the site is can satisfy all relevant development controls and has sufficient area for the construction of residential development outside the extent of the natural hazards.

- Priority 15 – Housing supply, choice and affordability in the right locations.

The proposal will allow surplus Sydney Water land to be reallocated to infill residential development within an established residential neighbourhood with access to existing infrastructure and community facilities.

- Priority 16 – Access to quality social housing and affordable housing.

Whilst the planning proposal does not directly deliver social or affordable housing stock, it does contribute to the supply of additional residential zoned land which is one factor impacting housing affordability.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. Amending Pittwater LEP 2014 and rezoning the land from SP2 – Infrastructure to R2 - Low Density Residential is considered the best means of achieving the objectives and outcome of the planning proposal. This will facilitate a redevelopment of the site for residential purposes.

Section B - Relationship to Strategic Planning Framework

3. Will the planning proposal give effect to the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategy?).

Greater Sydney Region Plan

The proposal has been reviewed against relevant outcomes of the Greater Sydney Region Plan 'A Metropolis of Three Cities'. The proposal is consistent with the broad Directions of the Plan, specifically the following:

- *Objective 11 – Housing is more diverse and affordable.*
- *Objective 25 – the coast and waterways are protected and healthier.*
- *Objective 27 – Biodiversity is protected, urban bushland and remnant vegetation is enhanced.*
- *Objective 28 – Scenic and cultural landscapes are protected.*
- *Objective 30 – Urban tree canopy cover is increased.*
- *Objective 36 – People and places adapt to climate changes and future shocks and stresses.*
- *Objective 37 – Exposure to natural and urban hazards is reduced.*

North District Plan

The proposal supports the North District Plan and an assessment of the strategic and site specific merit against this plan is outlined below.

- *Planning Priority N5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport.*

The proposal provides additional housing supply however, will have limited impact on addressing housing affordability given the single lot available for future residential development.

- *Planning Priority N17 – protecting and enhancing scenic and cultural landscapes.*

The site is surrounded by residential development. Future redevelopment of the site will be guided by the existing character of the area, relevant zone objectives and Pittwater 21 DCP controls in order to protect and enhance the scenic landscape of the area.

- *Planning Priority N19 – Increasing urban tree canopy cover and delivering Green Grid Connections.*

The Planning Proposal itself will not impact the tree canopy, however future redevelopment of the site for residential purposes may have the potential to impact upon existing trees on site. The applicant has submitted a concept architectural plans and arborist report to demonstrate that the site can be developed with the loss of only two (2) existing trees.

- *Planning Priority N22 – Adapting to the impacts of urban natural hazards and climate change.*

The site is partially affected by flooding during a 1% AEP event. The applicant has submitted a flood report, prepared by Stellen Civil Engineering that confirms the site has sufficient space available for the construction of residential development outside the 1% AEP flood extent meeting all applicable flood related development controls.

b) Does the proposal have site - specific merit, having regard to the following?

<p>The natural environment (including known significant environmental values, resources or hazards).</p>	<p>The site is affected by flooding and geotechnical hazards. The applicant has provided evidence to confirm that future residential development on site can be appropriately sited outside and/or designed to address these hazards in accordance with relevant development controls.</p> <p>The risk of potential site contamination associated with Sydney Water use is considered low. Council will request the Department, as part of the Gateway Determination, require a preliminary contamination report prior to the commencement of the statutory exhibition of the</p>
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	<p>Planning Proposal.</p> <p>The future redevelopment of the site is consistent with the adjoining and nearby residential area and all environmental and natural hazards can be satisfactorily addressed.</p>
The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal.	<p>The proposal is consistent with the existing and likely future development of the adjoining and nearby residential area.</p> <p>The proposed zone and proposed minimum lot size will be consistent with adjoining properties.</p>
The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.	<p>The site is currently vacant and surrounded by existing residential development. All necessary infrastructure and services are existing in the locality.</p>

The proposed R2 Low Density Residential is considered appropriate in its context. The site is affected by two sewer lines and a drainage channel with existing mature trees however, the applicant has demonstrated that an appropriate development outcome can be accommodated on the site within the existing site constraints.

4. Will the planning proposal give effect to a council's local strategy or other local strategic plan?

The planning proposal is consistent with the *Northern Beaches Towards 2040 Local Strategic Planning Statement* (LSPS), in particular Priorities 2, 8, 15 and 16 as outlined earlier in this report.

A review of the proposal against relevant Council policies and plans has been undertaken, including:

Dwelling Targets

Under the North District plan, Council has been assigned a target of 3,400 dwellings to 2021. The proposal will contribute to the overall dwelling target delivery.

Affordable and Appropriate Housing

This proposal is for a single residential allotment and is not considered urban renewal or greenfield development as identified in the policy. Given this, the 10% affordable housing target is not applicable to the proposal.

5. Is this Planning proposal consistent with applicable State Environmental Planning Policies?

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent
SEPP No. 19- Bushland in Urban Areas	N/A	N/A
SEPP No. 21 - Caravan Parks	N/A	N/A

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent
SEPP No. 33 - Hazardous and Offensive Development	N/A	N/A
SEPP No. 36 - Manufactured Home Estates	N/A	N/A
SEPP No. 44 - (Koala Habitat Protection) 2019	N/A	N/A
SEPP No. 47 - Moore Park Showground	N/A	N/A
SEPP No. 50 - Canal Estate Development	N/A	N/A
SEPP No. 55 - Remediation of Land	Yes	Yes
SEPP No.64 - Advertising and Signage	N/A	N/A
SEPP No.65 - Design Quality of Residential Apartment Development	N/A	N/A
SEPP No.70 - Affordable Housing (Revised Schemes)	N/A	N/A
SEPP (Aboriginal Land) 2019	N/A	N/A
SEPP (Activation Precincts) 2020	N/A	N/A
SEPP (Affordable Rental Housing) 2009	Yes	Yes
SEPP (Building Sustainability Index: BASIX) 2004	Yes	Yes
SEPP (Coastal Management) 2018	N/A	N/A
SEPP (Concurrences and Consents) 2018	Yes	Yes
SEPP (Education Establishments and Child Care Facilities) 2017	N/A	N/A
SEPP (Exempt and Complying Development Codes) 2008	Yes	Yes
SEPP (Gosford City Centre) 2018	N/A	N/A
SEPP (Housing for Seniors or People with a Disability) 2004	Yes	Yes
SEPP (Infrastructure) 2007	Yes	Yes
SEPP (Kosciuszko National Park – Alpine Resorts) 2007	N/A	N/A
SEPP (Kurnell Peninsula) 1989	N/A	N/A
SEPP (Major Infrastructure Corridors) 2020		
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	N/A	N/A
SEPP (Miscellaneous Consent Provisions) 2007	N/A	N/A
SEPP (Penrith Lakes Scheme) 1989	N/A	N/A
SEPP (Primary Production and Rural Development) 2019	N/A	N/A
SEPP (State and Regional Development) 2011	N/A	N/A
SEPP (State Significant Precincts) 2005	N/A	N/A
SEPP (Sydney Drinking Water Catchment) 2011	N/A	N/A
SEPP (Sydney Region Growth Centres) 2006	N/A	N/A
SEPP (Three Ports) 2013	N/A	N/A
SEPP (Urban Renewal) 2010	N/A	N/A
SEPP (Vegetation in Non-Rural Areas) 2017	Yes	Yes
SEPP (Western Sydney Employment Area) 2009	N/A	N/A
SEPP (Western Sydney Parklands) 2009	N/A	N/A
SEPP (Western Sydney Aerotropolis) 2020	N/A	N/A

6. Is the Planning Proposal consistent with applicable Ministerial Directions (s9.1 directions)?

The Planning Proposal is consistent with applicable Ministerial Directions, including:

- **Direction 2.6 Remediation of Contaminated Land**

Council will require a preliminary contamination report to be submitted by the proponent after a Gateway Determination has been issued and prior to commencement of the statutory exhibition of the Planning Proposal.

- **Direction 3.1 Residential Zones**

The proposal is consistent with the objectives of Ministerial Direction 3.1 Residential Zones as it will make efficient use of existing infrastructure and services and minimise the impact of residential development on the environment and resource lands.

- **Direction 3.4 Integrating Land Use and Transport**

The site's location within an established residential area with access to public transport and existing infrastructure achieves the objectives of this Direction.

- **Direction 4.3 Flood Prone Land**

The site is in the Low Risk Flood precinct. As the Planning Proposal seeks to achieve residential land use, which is not categorised as 'vulnerable development', the proposal is consistent with this Direction.

- **Direction 6.2 Reserving Land for Public Purposes**

In accordance with Pittwater Local Environmental Plan 2014 the land is not identified for acquisition and the property has been deemed surplus to demand by Sydney Water, therefore the Planning Proposal is consistent with this Direction.

- **Direction 6.3 Site Specific Provisions**

The Planning Proposal does not include any unnecessarily restrictive site specific planning controls and is therefore consistent with this Direction.

- **Direction 7.1 Implementation of A Plan for Growing Sydney**

The Planning Proposal responds to a change in circumstances with the property being deemed surplus to demand by Sydney Water. It is consistent with this Direction by giving effect to the planning principles, directions and priorities of the North District Plan.

COMMUNITY ENGAGEMENT

Council placed the applicant's Planning Proposal on non-statutory public exhibition in accordance with the Northern Beaches Community Participation Plan from 2 September 2020 – 16 September 2020 (2 weeks). Notification included:

- Letters to land owners and occupiers adjoining the subject site;
- Electronic copies of the exhibition material on Council's website; and
- Emails to registered community members who have listed their interest on Council's Community Engagement Register.

One submission was received in response to the public exhibition period. The submission raised only one issue relating to access arrangements to 47 Tatiara Crescent, which contains Sydney Water infrastructure:

Sydney Water assets are installed on our property 47 Tatiara Crescent and adjacent 4 Bellara Ave. These assets include 1 x lamp hole + 1 x maintenance hole + sewer mains approx 8m in one direction + 20m in another at the boundary line. Sydney Water assets are also located on 4 Bellara Ave.

My concern is that development of 4 Bellara Ave. will adversely impact serviceability of Sydney Water assets for these properties. When Sydney Water have serviced these assets in the past, access has been at 4 Bellara and onto 47 Tatiara.

Access arrangements to Sydney Water infrastructure is prescribed under the Sydney Water Act 1994. While access through Sydney Water's property at 4 Bellara Ave, North Narrabeen has historically provided convenient access to service infrastructure on the neighboring property, this is not considered a reason to oppose the Planning Proposal as appropriate access arrangements are already in place.

AGENCY REFERRALS

The Planning Proposal was not referred to any state agencies for comment.

INTERNAL REFERRALS

Referrals were sent to a range of Northern Beaches Council business units requesting advice on the following matters:

- Transport and traffic
- Aboriginal heritage
- Bushland and biodiversity
- Contaminated land
- Flooding and geotechnical hazards

Comments received have been incorporated into the assessment of the Planning Proposal (see attachment).

No internal referrals raised issues or concerns in regard to progressing the Planning Proposal to gateway.

TIMING

It is anticipated that the timeframe for the completion of the Planning Proposal is approximately 10 – 12 months from the date of Council's approval to proceed. Following the issue of a Gateway Determination, Council will be required to formally exhibit the Planning Proposal for 28 days. The matter will be reported back to Council for final consideration following exhibition.

LINK TO COUNCIL STRATEGY

FINANCIAL CONSIDERATIONS

The assessment of the Planning Proposal is funded by the prescribed Planning Proposal fee as set out in Councils Fees and Charges 2020/21 and does not have an adverse impact on Council's budget.

SOCIAL CONSIDERATIONS

The Planning Proposal is not anticipated to have any adverse social impacts given the site is located within an established residential locality, with access to existing infrastructure and facilities.

ENVIRONMENTAL CONSIDERATIONS

The environmental considerations associated with the Planning Proposal relate to retention of significant trees on site, flood affectation and geotechnical hazards. The application has provided a range of reports and information addressing these considerations and demonstrating, in principle, that a development outcome can be achieved without adverse environmental impacts.

CONCLUSION

The Planning Proposal which seeks to amend Pittwater LEP 2014 by rezoning Lot 26 in DP 236548, 4 Bellara Avenue, North Narrabeen from SP2 – Infrastructure to R2 –Low Density Residential and amending the Minimum Lot Size Map (map sheet 13) to apply a minimum lot size of 550sqm is supported to progress to gateway.

The proposal is consistent with the relevant priorities of Northern Beaches LSPS and considered appropriate in its context. The site is partly affected by a range of constraints and hazards, however the applicant has provided supportive information to confirm and demonstrate that applicable development controls can be achieved and an appropriate development outcome can be accommodated on the site within the existing site constraints.

RECOMMENDATION OF MANAGER STRATEGIC PLANNING

That the Panel:

- A. Recommends that Council endorse the Planning Proposal, lodged for 4 Bellara Ave, North Narrabeen, to be submitted to the Department of Planning, Infrastructure and Environment to seek a Gateway Determination.
 - B. Recommends Council request the applicant prepare and provide a preliminary contamination report prior to formal statutory exhibition
-

PLANNING PROPOSAL

Amendments to Pittwater Local Environmental Plan 2014

4 Bellara Avenue, North Narrabeen NSW 2101

October 2020

Contents

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Part 1 – Objectives or Intended Outcomes

The intended outcome of the Planning Proposal is to amend Pittwater Local Environmental Plan 2014 to allow residential development on 4 Bellara Avenue, North Narrabeen NSW 2101 and apply a minimum lot size of 550sqm to the site.



Site Location - 4 Bellara Ave, North Narrabeen

Part 2 – Explanation of Provisions

The proposed outcome will be achieved by amending Pittwater Local Environmental Plan 2014 (Pittwater LEP 2014) to:

1. Update Land Zoning Map (Sheet 013) to rezone the site from SP2 Infrastructure (Water Supply System) to R2 Low Density Residential to allow for the future residential development of the site.
 2. Update Minimum Lot Size Map (Sheet 013) to apply a minimum lot size of 550sqm to the site
- **Amending Pittwater Local Environmental Plan 2014 Land Zoning Map from SP2 Infrastructure to R2 Low Density Residential;**

The subject site (Lot 26 DP 236548) has been deemed surplus to Sydney Water's requirements, making the current SP2 - Infrastructure zoning unnecessary. The site is surrounded by residential development zoned R2 - Low Density Residential to the east, south and west, and E4 - Environmental Living to the north (See Part 4 – Maps). Rezoning the property to R2 - Low Density Residential will allow a residential development that is consistent with the streetscape and character along Bellara Avenue and Tatiara Crescent.

- **Applying a 550sqm minimum lot size to the Pittwater Local Environmental Plan 2014 Lot Size Map; and**

The site has a total site area of approximately 562sqm. Under the current SP2 - Infrastructure zoning the site is not currently included on the Pittwater LEP 2014 Minimum Lot Size Map. It is proposed to apply a 550sqm minimum lot size which is consistent with the surrounding properties.

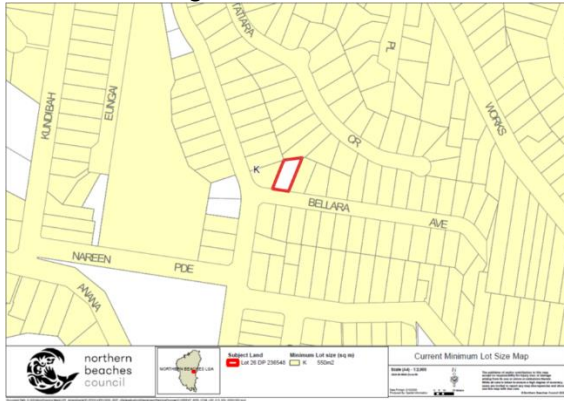
Existing Land Use Zone



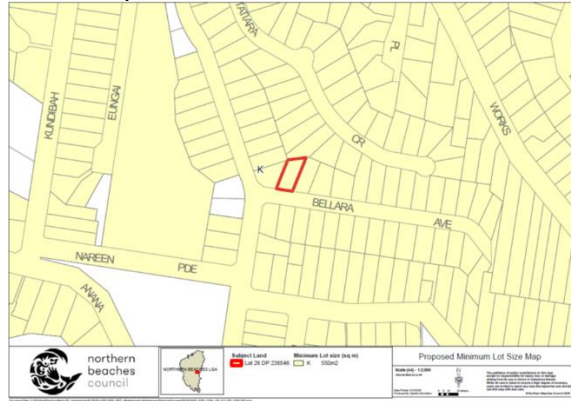
Proposed Land Use Zone



Existing Minimum Lot Size



Proposed Minimum Lot Size



Part 3 – Justification

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of an endorsed Local Strategic Planning Statement, strategic study or report?

The Planning proposal is not the result of any endorsed Local Strategic Planning Statement, strategic study or report.

The Planning Proposal responds to a change in circumstances with the property being deemed surplus to demand by Sydney Water. Located within an established residential area, the proposal will give effect to the North District Plan, in particular Planning Priority N5 Providing housing supply, choice and affordability, with access to jobs, services and public transport.

Local Strategic Planning Statement

Towards 2040 Local Strategic Planning Statement (LSPS) came into effect on 26 March 2020. The LSPS aligns with the North District Plan and Greater Sydney Region Plan and acts as the link between strategic land use planning at the district level and the local statutory planning for the Northern Beaches LGA.

The proposal is consistent with the LSPS, with specific reference to the following priorities:

- Priority 2 – Protected and enhanced bushland and biodiversity.

The site contains existing vegetation which will remain protected under the existing Pittwater 21 DCP (The DCP). The preliminary arborists assessment confirms that future residential development of the site can be achieved with minimal impact on the existing vegetation or biodiversity. Future development of the site will be consistent with that of the adjoining residential development in terms of amenity and appearance.

- Priority 8 – Greater community resilience to natural hazards and climate change.

The site is partially affected by flooding and geotechnical hazards. The proposal has been accompanied by flood and geotechnical assessments which confirm the site is can satisfy all relevant development controls and has sufficient area for the construction of residential development outside the extent of the natural hazards.

- Priority 15 – Housing supply, choice and affordability in the right locations.

The proposal will allow surplus Sydney Water land to be reallocated to infill residential development within an established residential neighbourhood with access to existing infrastructure and community facilities.

- Priority 16 – Access to quality social housing and affordable housing.

Whilst the planning proposal does not directly deliver social or affordable housing stock, it does contribute to the supply of additional residential zoned land which is one factor impacting housing affordability.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. Amending Pittwater LEP 2014 and rezoning the land from SP2 – Infrastructure to R2 - Low Density Residential is considered the best means of achieving the objectives and outcome of the planning proposal. This will facilitate a redevelopment of the site for residential purposes.

Section B – Relationship to Strategic Planning Framework

3. Will the Planning Proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

Greater Sydney Region Plan

The proposal has been reviewed against relevant outcomes of the Greater Sydney Region Plan 'A Metropolis of Three Cities'. The proposal is consistent with the broad Directions of the Plan, specifically the following:

- Objective 11 – Housing is more diverse and affordable.
- Objective 25 – the coast and waterways are protected and healthier.
- Objective 27 – Biodiversity is protected, urban bushland and remnant vegetation is enhanced.
- Objective 28 – Scenic and cultural landscapes are protected.
- Objective 30 – Urban tree canopy cover is increased.
- Objective 36 – People and places adapt to climate changes and future shocks and stresses.
- Objective 37 – Exposure to natural and urban hazards is reduced.

North District Plan

The proposal supports the North District Plan and an assessment of the strategic and site specific merit against this plan is outlined below.

- Planning Priority N5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport.

The proposal provides additional housing supply, however will have limited impact on addressing housing affordability given the single lot available for future residential development.

- Planning Priority N17 – protecting and enhancing scenic and cultural landscapes.

The site is surrounded by residential development. Future redevelopment of the site will be guided by the existing character of the area, relevant zone objectives and Pittwater 21 DCP controls in order to protect and enhance the scenic landscape of the area.

- Planning Priority N19 – Increasing urban tree canopy cover and delivering Green Grid Connections.

The proposal will not impact the tree canopy, however future redevelopment of the site for residential purposes will have the potential to impact upon existing trees on site. The applicant has submitted a concept architectural plans and arborist report to demonstrate that the site can be developed with minimal impact on existing trees.

- Planning Priority N22 – Adapting to the impacts of urban natural hazards and climate change.

The site is partially affected by flooding during a 1% AEP event. The applicant has submitted a flood report, prepared by Stellen Civil Engineering that confirms the site has sufficient space available for the construction of residential development outside the 1% AEP flood extent meeting all applicable flood related development controls.

a) Does the proposal have strategic merit?

Yes. The Planning Proposal responds to a change in circumstances with the property being deemed surplus to demand by Sydney Water. The site is located within an established residential area, the proposal will give effect to the *North District Plan*, in particular Planning Priority N5 Providing housing supply, choice and affordability, with access to jobs, services and public transport.

b) Does the proposal have site-specific merit?

Yes. The proposed R2 Low Density Residential is considered appropriate in its context. The site is affected by two sewer lines and a drainage channel with existing mature trees, however the proponent has demonstrated that an appropriate development outcome can be accommodated on the site within the existing constraints outlined above.

The natural environment (including known significant environmental values, resources or hazards).	<p>The site is affected by flooding and geotechnical hazards. The applicant has provided evidence to confirm that future residential development on site can be appropriately sited outside and designed to address these hazards in accordance with relevant development controls.</p> <p>The risk of potential site contamination associated with Sydney Water use is considered low. Council will request the Department, as part of the Gateway Determination, require a preliminary contamination report prior to the commencement of the statutory exhibition of the Planning Proposal.</p> <p>The future redevelopment of the site is considered is consistent with the adjoining and nearby residential area and all environmental and natural hazards can be satisfactorily addressed.</p>
The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal.	The proposal is consistent with the existing and likely future development of the adjoining and nearby residential area.
The services and infrastructure that are or will be available to meet the	The site is currently vacant and surrounded by existing residential development. All necessary infrastructure and

demands arising from the proposal and any proposed financial arrangements for infrastructure provision.	services are existing in the locality.
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4. Will the Planning Proposal give effect to a Council's endorsed Local Strategic Planning Statement, or another endorsed local strategy or strategic plan?

Yes. The planning proposal is consistent with the *Northern Beaches Towards 2040 Local Strategic Planning Statement* (LSPS), in particular Priorities 2, 8, 15 and 16. .

A review of the proposal against relevant Council policies and plans has been undertaken, including:

Dwelling Targets

Under the North District Plan, Council has been assigned a target of 3,400 dwellings to 2021. The proposal will contribute to the overall dwelling target delivery.

Affordable and Appropriate Housing

Council's adopted affordable housing policy commits Council to a 10% affordable housing target for all rezoning's proposing new dwellings. This proposal is for a single residential allotment and is not considered urban renewal or greenfield development as identified in the policy. Given this the 10% affordable housing target is not applicable to the proposal.

5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is considered consistent with applicable State Environmental Planning Policies (as shown in Table 1), namely:

- **SEPP 55 Remediation of Land**

Given the relatively low risk of site contamination associated with Sydney Water use, Council will request the Department of Planning, Industry and Environment to place a condition on the Gateway Determination requiring a preliminary contamination report is prepared prior to formal statutory exhibition.

- **SEPP No 70 – Affordable Rental Housing (Revised Schemes)**

Northern Beaches Council's Affordable Housing Policy is applicable to all Planning Proposals proposing new residential development. This proposal is for a single residential allotment and is not considered urban renewal or greenfield development as identified in the policy. Given this the 10% affordable housing target is not applicable to the proposal.

- **SEPP (Affordable Rental Housing) 2009**

The SEPP (Affordable Rental Housing) 2009 applies to all land across the state, however the Planning Proposal does not seek to develop affordable rental housing.

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

The requirements of SEPP (Building Sustainability Index: BASIX) 2004 do not affect this Planning Proposal, however will be applied during any future development application process.

- **SEPP (Concurrences and Consents) 2018**

The SEPP (Concurrences and Consents) 2018 applies to all land across the state, however does not affect this Planning Proposal.

- **SEPP (Exempt and Complying Development Codes) 2008**

The SEPP (Exempt and Complying Development Codes) 2008 will apply to the R2 Low Density Residential zone and specify which development is either exempt or complying.

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

The SEPP (Housing for Seniors or People with a Disability) 2004 will apply to the R2 Low Density Residential zone, however does not affect this Planning Proposal.

- **SEPP (Infrastructure) 2007**

The SEPP (Infrastructure) 2007 applies to land across the state, however does not affect this Planning Proposal.

- **SEPP (Vegetation in Non-Rural Areas) 2017**

The subject site is not currently mapped as part of any wildlife corridor or native vegetation type and is not mapped on the Pittwater Local Environment Plan 2014 biodiversity map.

The concept building footprint seeks to minimise impact on existing trees on the site.

Future development of this site should seek to retain significant trees on the site, as noted in the arborist report submitted with the Planning Proposal.

Table 1: Compliance with State Environmental Planning Policies (SEPPs)

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent
SEPP No. 19- Bushland in Urban Areas	N/A	N/A
SEPP No. 21 - Caravan Parks	N/A	N/A
SEPP No. 33 - Hazardous and Offensive Development	N/A	N/A
SEPP No. 36 - Manufactured Home Estates	N/A	N/A
SEPP No. 44 - (Koala Habitat Protection) 2019	N/A	N/A
SEPP No. 47 - Moore Park Showground	N/A	N/A
SEPP No. 50 - Canal Estate Development	N/A	N/A
SEPP No. 55 - Remediation of Land	Yes	Yes
SEPP No.64 - Advertising and Signage	N/A	N/A
SEPP No.65 - Design Quality of Residential Apartment Development	N/A	N/A
SEPP No.70 - Affordable Housing (Revised Schemes)	Yes	Yes
SEPP (Aboriginal Land) 2019	N/A	N/A
SEPP (Activation Precincts) 2020	N/A	N/A
SEPP (Affordable Rental Housing) 2009	Yes	Yes
SEPP (Building Sustainability Index: BASIX) 2004	Yes	Yes
SEPP (Coastal Management) 2018	N/A	N/A
SEPP (Concurrences and Consents) 2018	Yes	Yes
SEPP (Education Establishments and Child Care Facilities) 2017	N/A	N/A

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent
SEPP (Exempt and Complying Development Codes) 2008	Yes	Yes
SEPP (Gosford City Centre) 2018	N/A	N/A
SEPP (Housing for Seniors or People with a Disability) 2004	Yes	Yes
SEPP (Infrastructure) 2007	Yes	Yes
SEPP (Kosciuszko National Park – Alpine Resorts) 2007	N/A	N/A
SEPP (Kurnell Peninsula) 1989	N/A	N/A
SEPP (Major Infrastructure Corridors) 2020		
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	N/A	N/A
SEPP (Miscellaneous Consent Provisions) 2007	N/A	N/A
SEPP (Penrith Lakes Scheme) 1989	N/A	N/A
SEPP (Primary Production and Rural Development) 2019	N/A	N/A
SEPP (State and Regional Development) 2011	N/A	N/A
SEPP (State Significant Precincts) 2005	N/A	N/A
SEPP (Sydney Drinking Water Catchment) 2011	N/A	N/A
SEPP (Sydney Region Growth Centres) 2006	N/A	N/A
SEPP (Three Ports) 2013	N/A	N/A
SEPP (Urban Renewal) 2010	N/A	N/A
SEPP (Vegetation in Non-Rural Areas) 2017	Yes	Yes
SEPP (Western Sydney Employment Area) 2009	N/A	N/A
SEPP (Western Sydney Parklands) 2009	N/A	N/A
SEPP (Western Sydney Aerotropolis) 2020	N/A	N/A

6. Is the Planning Proposal consistent with applicable Ministerial Directions (s9.1 directions)?

The Planning Proposal is consistent with applicable Ministerial Directions (as shown in Table 2) including:

- Direction 2.6 Remediation of Contaminated Land**

This direction applies as the Planning Proposal is on land that is currently zoned for infrastructure purposes and is seeking to amend to a residential land use.

Under clause 2.6 (1) of the Direction, the objectives of the Direction are:

- (1) to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.

Under clause 2.6 (4) & (5) of the Direction, the Planning Proposal must:

- (4) A planning proposal authority must not include in a particular zone (within the meaning of the local environmental plan) any land specified in paragraph (2) if the inclusion of the land in that zone would permit a change of use of the land, unless:

- (a) the planning proposal authority has considered whether the land is contaminated, and

(b) if the land is contaminated, the planning proposal authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and

(c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning proposal authority is satisfied that the land will be so remediated before the land is used for that purpose.
In order to satisfy itself as to paragraph

(4)(c), the planning proposal authority may need to include certain provisions in the local environmental plan.

(5) Before including any land specified in paragraph (2) in a particular zone, the planning proposal authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.

The Planning Proposal is land identified in paragraph (2)(b) and (c)(i)(ii), being:

(2)

(a) land that is within an investigation area within the meaning of the Contaminated Land Management Act 1997,

(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,

(c) the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital – land:

(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and

(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

Given the incomplete knowledge regarding the use of the site Council will require a preliminary contamination report to be submitted by the proponent after a Gateway Determination has been issued and prior to commencement of the statutory exhibition of the Planning Proposal.

- **Direction 3.1 Residential Zones**

This Direction applies to the Planning Proposal as the proposal seeks to amend the current zoning to a residential zone.

Under Clause 3.1 (1) of the Direction, the objectives of this direction are:

(a) to encourage a variety and choice of housing types to provide for existing and future housing needs,

(b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and

(c) to minimise the impact of residential development on the environment and resource lands.

The proposal is consistent with the objectives of Ministerial Direction 3.1 Residential Zones as it will make efficient use of existing infrastructure and services and minimise the impact of residential development on the environment and resource lands.

- **Direction 3.4 Integrating Land Use and Transport**

This direction applies as the Planning Proposal seeks to amend a zone relating to urban land.

Under Clause 3.4 (1) of the Direction, the objectives of this direction are:

(1) to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:

- (a) improving access to housing, jobs and services by walking, cycling and public transport, and
- (b) increasing the choice of available transport and reducing dependence on cars, and
- (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and
- (d) supporting the efficient and viable operation of public transport services, and
- (e) providing for the efficient movement of freight.

The site's location within an established residential area with access to public transport and existing infrastructure achieves the objectives of this Direction.

- **Direction 4.3 Flood Prone Land**

This direction applies as the Planning Proposal seeks to amend a zone that affects flood prone land.

Under Clause 4.3 (1) of the Direction, the objectives of this direction are:

- (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and
- (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard

The site is in the Low Risk Flood precinct. As the Planning Proposal seeks to achieve residential land use, which is not categorised as 'vulnerable development', the proposal is consistent with this Direction.

- **Direction 6.2 Reserving Land for Public Purposes**

This direction applies to all relevant planning authorities.

Under Clause 6.2 (1) of the Direction, the objectives of this direction are:

(a) to facilitate the provision of public services and facilities by reserving land for public purposes, and

(b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

In accordance with Pittwater Local Environmental Plan 2014 the land is not identified for acquisition and the property has been deemed surplus to demand by Sydney Water, therefore the Planning Proposal is consistent with this Direction.

• **Direction 6.3 Site Specific Provisions**

This direction applies to Planning Proposals that will allow a particular development to be carried out.

Under Clause 6.3 (1) of the Direction, the objective of this direction is:

(1) to discourage unnecessarily restrictive site specific planning controls.

The Planning Proposal does not include any unnecessarily restrictive site specific planning controls and is therefore consistent with this Direction.

• **Direction 7.1 Implementation of A Plan for Growing Sydney**

This direction applies when a Relevant Planning Authority prepares a planning proposal

Under Clause 7.1 (1) of the Direction, the objective of this direction is:

(1) The objective of this direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.

The Planning Proposal responds to a change in circumstances with the property being deemed surplus to demand by Sydney Water. It is consistent with this Direction by giving effect to the planning principles, directions and priorities of the North District Plan.

Table 2: Compliance with Ministerial Directions

Directions (as at October 2020)		Applicable	Consistent
1	Employment and Resources		
1.1	Business and Industrial Zones	N/A	N/A
1.2	Rural Zones	N/A	N/A
1.3	Mining, Petroleum Production and Extractive Industries	N/A	N/A
1.4	Oyster Aquaculture	N/A	N/A
1.5	Rural Lands	N/A	N/A
2	Environment and Heritage		
2.1	Environment Protection Zones	N/A	N/A
2.2	Coastal Protection	N/A	N/A
2.3	Heritage Conservation	N/A	N/A
2.4	Recreation Vehicle Areas	N/A	N/A
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEP's	N/A	N/A
2.6	Remediation of Contaminated Land	Yes	Yes
3	Housing, Infrastructure and Urban Development		
3.1	Residential Zones	Yes	Yes
3.2	Caravan Parks and Manufactured Home Estates	N/A	N/A
3.3	Home Occupations	N/A	N/A

Directions (as at October 2020)		Applicable	Consistent
3.4	Integrating Land Use and Transport	Yes	Yes
3.5	Development Near Licensed Aerodromes	N/A	N/A
3.6	Shooting Ranges	N/A	N/A
3.7	Reduction in non-hosted short term rental accommodation period	N/A	N/A
4	Hazard and Risk		
4.1	Acid Sulfate Soils	N/A	N/A
4.2	Mine Subsidence and Unstable Land	N/A	N/A
4.3	Flood Prone Land	Yes	Yes
4.4	Planning for Bushfire Protection	N/A	N/A
5	Regional Planning		
5.1	Implementation of Regional Strategies	N/A	N/A
5.2	Sydney Drinking Water Catchments	N/A	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	N/A	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	N/A	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	N/A	N/A
5.6	Sydney to Canberra Corridor (Revoked 10 July 2008 See amended Direction 5.1)	N/A	N/A
5.7	Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	N/A	N/A
5.8	Second Sydney Airport: Badgerys Creek (Revoked 20 August 2018)	N/A	N/A
5.9	North West Rail Link Corridor Strategy	N/A	N/A
5.10	Implementation of Regional Plans	N/A	N/A
5.11	Development of Aboriginal Land Council land	N/A	N/A
6	Local Plan Making		
6.1	Approval and Referral Requirements	N/A	N/A
6.2	Reserving Land for Public Purposes	Yes	Yes
6.3	Site Specific Provisions	Yes	Yes
7	Metropolitan Planning		
7.1	Implementation of A Plan for Growing Sydney	Yes	Yes
7.2	Implementation of Greater Macarthur Land Release Investigation	N/A	N/A
7.3	Parramatta Road Corridor Urban Transformation Strategy	N/A	N/A
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	N/A	N/A
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	N/A
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	N/A
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	N/A	N/A
7.8	Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	N/A	N/A
7.9	Implementation of Bayside West Precincts 2036 Plan	N/A	N/A
7.10	Implementation of Planning Principles for the Cooks Cove Precinct	N/A	N/A

Section C – Environmental, Social and Economic Impact

- 7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

No. The subject site is not part of any wildlife corridor and is not mapped on the Pittwater Local Environment Plan 2014 biodiversity map.

- 8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?**

No. The concept building footprint seeks to minimise impact on existing trees on the site. Future development of this site should seek to retain significant trees on the site, as noted in the arborist report submitted with the Planning Proposal.

- 9. Has the Planning Proposal adequately addressed any social and economic effects?**

Yes. The scale of the proposed residential development, located within an already established residential area, is not considered to have adverse social or economic effects.

No Aboriginal or European heritage sites are recorded in the vicinity of the site and the area has been subject to previous disturbance, reducing the likelihood of surviving, unrecorded Aboriginal sites.

Section D – State and Commonwealth Interests

- 10. Is there adequate public infrastructure for the planning proposal?**

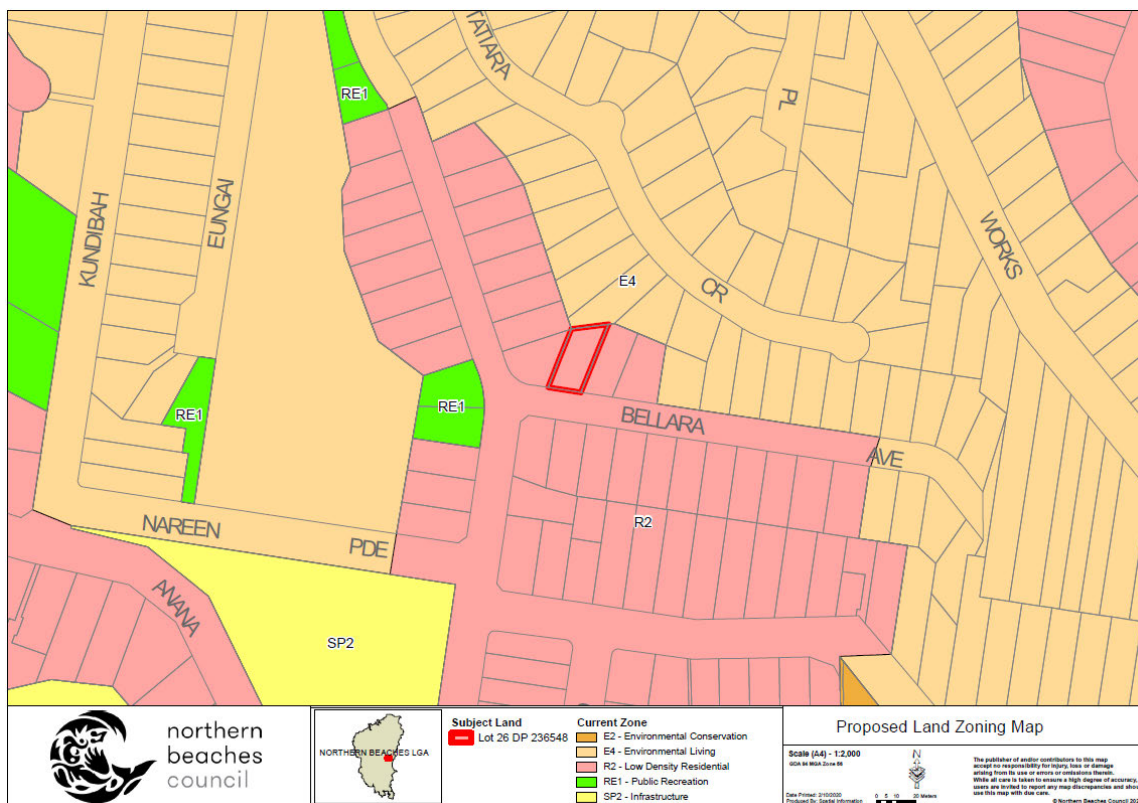
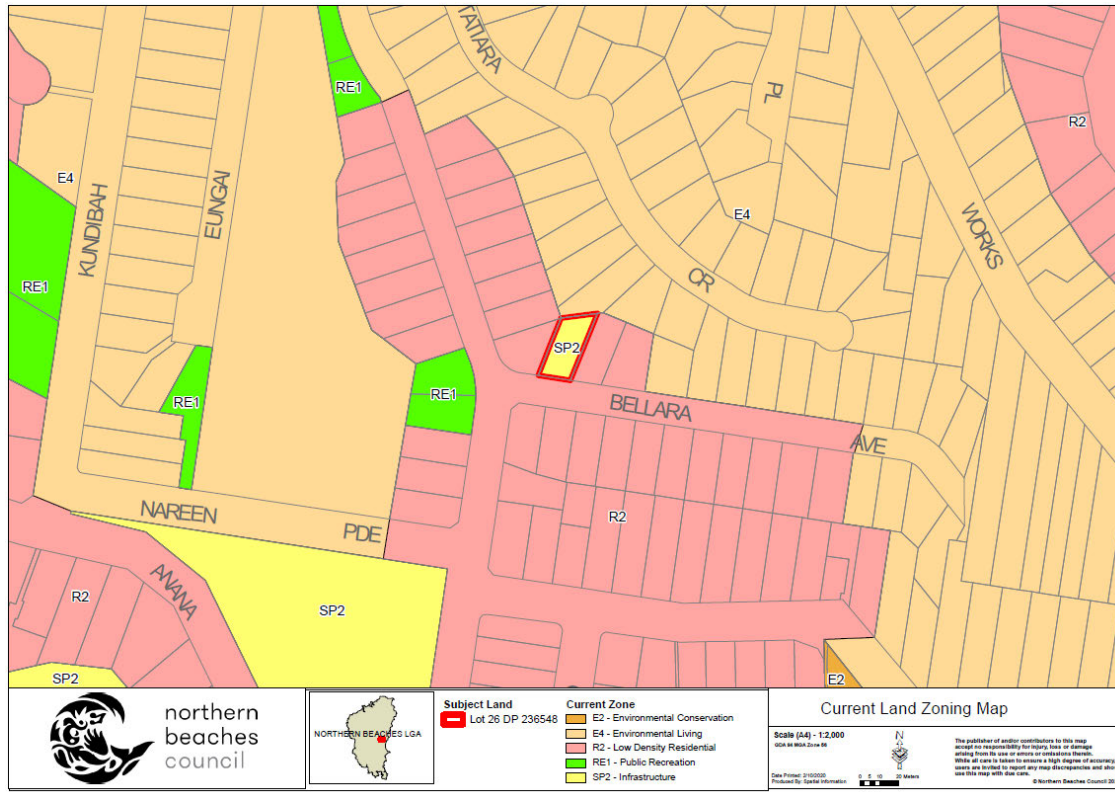
Yes. The site is located within an established residential area with access to existing public infrastructure and services. Standard residential requirements will be conditioned as part of any future development application process.

- 11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?**

The Planning Proposal is being prepared in accordance with consultation guidelines and provisions prepared by the Department of Planning, Industry and Environment and all statutory consultation will occur in accordance with the requirements of any future Gateway Determination, including any State or Commonwealth authorities.

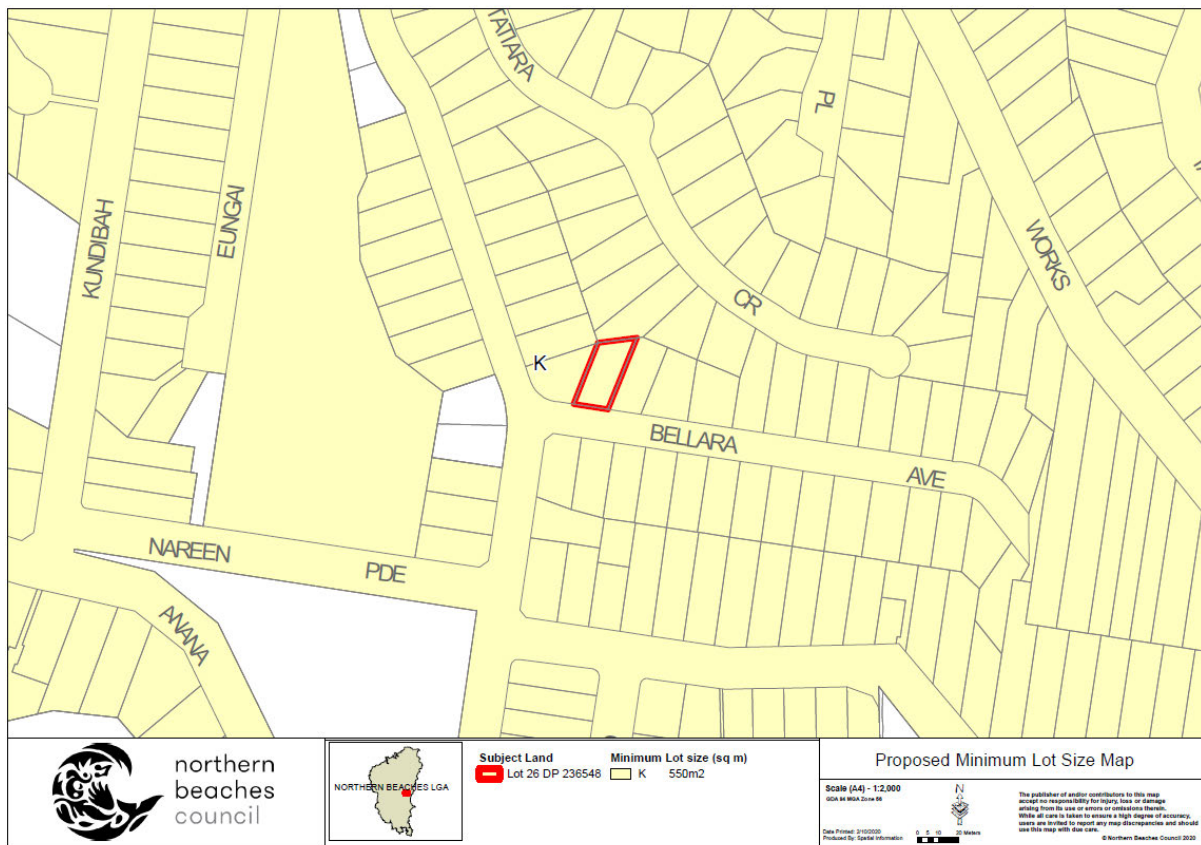
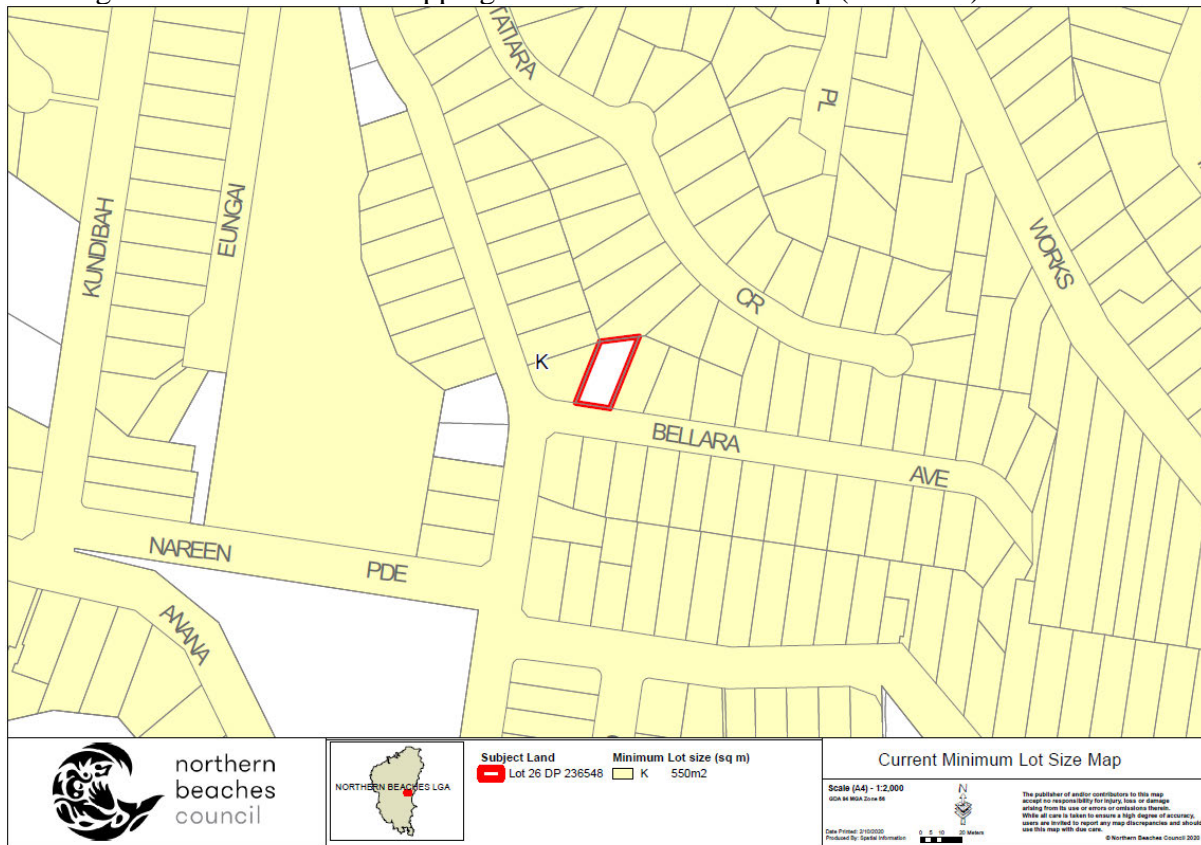
Part 4 – Maps

Existing Pittwater LEP 2014 Mapping – Land Zoning Map (sheet 013)



Proposed Pittwater LEP 2014 Mapping – Land Zoning Map (sheet 013)

Existing Pittwater LEP 2014 Mapping –Minimum Lot Size Map (sheet 013)



Pittwater LEP 2014 Mapping –Minimum Lot Size Map (sheet 013)

Part 5 – Community Consultation

Council placed the applicant's Planning Proposal on non-statutory public exhibition in accordance with the Northern Beaches Community Participation Plan from 2 September 2020 – 16 September 2020 (2 weeks). Notification included:

- Letters to land owners and occupiers adjoining the subject site;
- Electronic copies of the exhibition material on Council's website; and
- Emails to registered community members who have listed their interest on Council's Community Engagement Register.

One submission was received in response to the public exhibition period. Council's response to the submission is contained within the attached Council report of 24 November 2020. The submission raised only one issue relating to access arrangements to a neighbouring property which contains Sydney Water infrastructure.

There have been no matters raised of such significance that should prevent the proposal proceeding to Gateway Determination.

The Gateway Determination will confirm the public consultation that must be undertaken.

Part 6 – Project Timeline

Task	Anticipated timeframe
Anticipated commencement date (Gateway Determination)	February 2021
Anticipated timeframe for the completion of required technical information	March 2021
Timeframe for government agency consultation (pre and post exhibition as required by Gateway Determination)	April 2021
Commencement and completion dates for public exhibition period	May 2021
Dates for public hearing (if required)	May 2021
Timeframe for consideration of submissions	June 2021
Timeframe for the consideration of a proposal post exhibition	July 2021
Date of submission to the Department to finalise the LEP	July 2021
Anticipated date the local plan-making authority will make the plan (if authorised)	September 2021
Anticipated date the local plan-making authority will forward to the PCO for publication	October 2021

4.0 NON PUBLIC MEETING ITEMS

ITEM 4.1	DA2020/0793 - 119 RICHARD ROAD, SCOTLAND ISLAND - CONSTRUCTION OF A BOAT SHED AND ASSOCIATED WORKS
AUTHORISING MANAGER	TONY COLLIER
TRIM FILE REF	2020/616176
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 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. DA2020/0793 for construction of a boat shed and associated works at Lot 156 DP 12749, 119 Richard Road, Scotland Island subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0793
Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot 156 DP 12749, 119 Richard Road SCOTLAND ISLAND NSW 2105
Proposed Development:	Construction of a boat shed and associated works
Zoning:	E3 Environmental Management
Development Permissible:	Yes - Zone E3 Environmental Management Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Heather Jean Greenaway Department of Planning, Industry Mevote Pty Ltd & Environment - Crown Lands
Applicant:	Stephen Crosby & Associates
Application Lodged:	16/07/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/08/2020 to 18/08/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 25.75%
Recommendation:	Approval
Estimated Cost of Works:	\$ 30,110.00

EXECUTIVE SUMMARY

The proposal is for the construction of a boat shed and involves a variation to the Height of Buildings development standard of the Pittwater Local Environmental Plan 2014 (PLEP 2014) of 25.75%. Despite the non-compliance, the proposal is not considered to result in unreasonable bulk, scale or amenity impacts as viewed from the adjoining Pittwater Waterway or adjoining properties.

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

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

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

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

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the construction of a boat shed and associated works:

In particular, the works include:

- Construction of a boat shed;
- Raising the existing seawall with 100mm high stone capping; and
- Stone steps linking with the existing path from the upper portion of the site.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation
Pittwater 21 Development Control Plan - D8.3 Building colours and materials

Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 156 DP 12749 , 119 Richard Road SCOTLAND ISLAND NSW 2105
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Richard Road. The site is known as 119 Richard Road, Scotland Island and is legally referred to as Lot 156 DP 12749. The rear of site below Mean High Water Mark (MHWM) fronting Pittwater is associated with Crown License LIC 560 034.</p> <p>The site is regular in shape with a frontage of 15.24m along Richard Road and a depth of 60.655m to the MHWM. The site has a surveyed area of 790.4m².</p> <p>The site is located within the E3 Environmental Management and currently accomodates an existing fibro boat shed with access stairs leading to the clearing to the centre of the site. Pedestrian access is gained via the Richard Road frontage, with water access available via the existing jetty to Pittwater.</p> <p>Land held under license below MHWM is zoned W1 Natural Waterways under the provisions of the Pittwater Local Environmental Plan 2014.</p> <p>The site falls 26m (41%) from the Richard Road frontage to the MHWM.</p> <p>The site contains predominantly native vegetation with a number of established native canopy trees throughout the property.</p> <p>The site is mapped within the Pittwater Spotted Gum Forest Endangered Ecological Community, the Northern Beaches Bush Fire Prone Map 2020 and the Pittwater Geotechnical Hazard Map.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential dwellings within bushland/landscaped settings. Of those properties fronting Pittwater, most contain waterfront facilities including boat sheds and jetties.</p>

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant history:

2 December 2014

Building Certificate No. BC0093/14 for a fibro boatshed with a metal roof, stone sea wall, timber jetty, ramp and pontoon was issued by Council.

APPLICATION HISTORY

16 July 2020

Subject development application was lodged with Council.

31 July 2020

Photo confirmation provided of the notification sign in place on site.

3 September 2020

Site inspection undertaken by the assessing officer. No property owners were present.

7 September 2020

Request for withdrawal letter sent to the applicant identifying issues relating to impact by estuarine hazard, external finishes of the boat shed and insufficient details of the works to the sea wall.

9 September 2020

The applicant submits additional information addressing estuarine hazard concerns, as well as amended plans and a revised finishes schedule. This additional information was accepted by

Council. The amended plans were not renotified, as in accordance with the *Northern Beaches Council Community Participation Plan*, the "changes result in a lesser or reduction of environmental impacts".

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition</p>

Section 4.15 Matters for Consideration'	Comments
	<p>of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and 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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Ronald Coffey of Planning for Bushfire Protection, dated 16 May 2020) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/08/2020 to 18/08/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (unsewered lands)	<p>General Comments</p> <p>DA2020/0793 relates to the development of the boat shed at 119 Richard Road, Scotland Island. The Development Application only relates to the boat shed and should have no impact on the onsite waste water system at this address as long as the boat shed is not converted into a habitable room.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p>The development application proposal is for the reconstruction of the existing boat shed within the same footprint.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E3 Environmental Management, and in particular the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D8 Lower Western Foreshores and Scotland Island Locality <p>The site is located in the E3 Environmental Management zone, requiring a low density development designed to achieve a scale integrated with the landform and landscape, including the retention of existing landscape features and trees. The site contains predominantly native vegetation with small, medium and large native trees endemic to the area. The proposal does not impact upon existing trees and maintains the landscape intent of clause E3 of Pittwater LEP.</p> <p>No landscape issues are raised with the proposal subject to the preservation of existing trees within the site and conditions of consent shall be imposed.</p>
NECC (Bushland and Biodiversity)	<p>The proposal has been assessed against the following biodiversity-related provisions:</p> <ul style="list-style-type: none"> - SEPP (Coastal Management) - Coastal Environment Area - Pittwater LEP Clause 7.6 (Biodiversity Protection) - Pittwater DCP Clause B4.7 (Pittwater Spotted Gum Forest Endangered Ecological Community) - Pittwater DCP Clause B4.17 (Littoral Rainforest Endangered Ecological Community)

Internal Referral Body	Comments
	<p>It is assumed that controls related to marine vegetation preservation (e.g. seagrass which occur within close proximity of the existing jetty and construction access) is to be considered by the appropriate referral body.</p> <p>Subject to protection of existing native trees adjoining the development footprint, it is considered that the proposal complies with the controls.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>Further, the applicant has proposed construction/modification of a seawall. Hence the proposed development has been assessed also against the requirements of the Section 27 of the <i>Coastal Management Act 2016</i>. As required, the impact & risk associated with the construction/modification of the seawall has been assessed in an Coastal Risk Management Report (Revised) prepared by Cardno (NSW/ACT) Pty. Ltd. dated 9 September 2020.</p> <p>Based on the impact and risk identified, Council applies maintenance condition as per Section 27(b)(ii) in approving this DA</p> <p>State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p>

Internal Referral Body	Comments
	<p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stephen Crosby & Associates Pty. Ltd. dated 10 July 2020, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.73m AHD would apply at the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.07m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m.</p> <p>The Estuarine Planning Level does not apply to Jetties, Bridging Ramps or Pontoons located on the seaward side of the foreshore edge.</p> <p>However, an Coastal Risk Management Report (Revised) prepared by Cardno (NSW/ACT) Pty. Ltd. dated 9 September 2020 has assessed the risk of a designed boatshed with FFL at 1.7m AHD, considering the design life of the boatshed as 30 years and SLR of 0.4m at 2050. The report also recommended advice to follow..</p> <p>On internal assessment and as assessed in the submitted Coastal Risk Management Report (Revised) prepared by Cardno (NSW/ACT) Pty. Ltd. dated 9 September 2020, the ground floor level for the proposed boatshed is below the derived EPL for the site.</p>

Internal Referral Body	Comments
	<p>The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p>Development on Foreshore Area</p> <p>A large section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The DA proposes construction of a boatshed, modification of seawall and jetty. All these proposed works are consistent with Clause 7.8(2) (b).</p> <p>On internal assessment, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014</p> <p>Planner Comment 28/09/20:</p> <p>The recommended condition for the development to comply with Clause 15.15 of the P21 DCP is not to be enforced on this consent. This is due to the planning assessment having already deemed the proposed development satisfies the relevant outcomes of this clause and recommending that the application be supported on merit.</p>
NECC (Development Engineering)	Council's Development Engineering section raises no objection to the proposed development, subject to conditions.
NECC (Riparian Lands and Creeks)	<p>This application, for the reconstruction of a boat shed, has been assessed against relevant legislation for the protection of waterways. There is no increase to impervious surfaces therefore a water quality improvement device is not required to be installed. The applicant must install standard sediment and erosion controls prior to construction to prevent the potential migration of sediment offsite.</p> <p>With the installation of sediment and erosion controls it is considered unlikely that the application will have an adverse impact to the integrity and resilience of the biophysical, hydrological and ecological environment. It is therefore recommended for approval subject to conditions.</p>

External Referral Body	Comments
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of</p>

External Referral Body	Comments
	<p>surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

As the proposal was not seen to trigger the above considerations under Clause 45, a referral to Ausgrid was not made.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

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

Comment:

The proposed development is unlikely to cause an adverse impact to the integrity and resilience of the biophysical, hydrological (surface and ground water) and ecological environment, coastal environmental values and natural coastal process, the water quality of the marine estate, or to marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms. The proposed development does not restrict on any existing public open space or safe access along the foreshore for members of the public, including persons with a disability. The subject site has not been identified to contain any Aboriginal cultural heritage, practices of places, however, a recommended condition will be placed with the consent to ensure that if any Aboriginal engravings or relics are unearthed as par of the proposed development, works will cease immediately and the relevant authorities are notified. The proposed development is not likely to cause an adverse impact to 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.

Comment:

The application is also supported with a Coastal Engineering Risk Assessment Report dated 9 September 2020 prepared by Cardno (NSW/ACT) Pty Ltd and no objections raised by Council's Coast & Catchments Team. Furthermore, as detailed above, the proposed development has been designed, sited and will be managed to avoid an adverse impact on the cultural and environmental aspects referred to in Subclause (1).

14 Development on land within the coastal use area

(1)

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

Comment:

The proposed development is not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunneling or loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. As identified above, the site has not been identified to contain any Aboriginal cultural heritage, practices or places. The proposed development will also not have an adverse impact on the cultural and built environment heritage. It is considered that the proposed development has satisfied the requirement to be designed, sited and will be managed to avoid an adverse impact on the above mentioned cultural and environmental aspects. Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the surrounding coastal and built environment, which consists of low-density residential dwellings and waterway structures facing the Pittwater Waterways.

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 application is supported with a Coastal Engineering Risk Assessment Report dated 9 September 2020 prepared by Cardno (NSW/ACT) Pty Ltd and reviewed by Council's Coast & Catchments Team that considered that the proposed development will not likely cause increased risk of coastal hazards on the subject site or other land.

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone E3 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone E3 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	Site Area zoned E3: 8.5m	4.72m	-	Yes
	Site Area zoned W1: 4m	5.03m	25.75% (1.03m)	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	4.0m
Proposed:	5.03m (above 1.17 AHD)*
Percentage variation to requirement:	25.75%

*Note: 1.17 AHD refers to the Highest Astronomical Tide which is assessed as being the most relevant reference point for measuring the height of development below Mean High Water Mark.

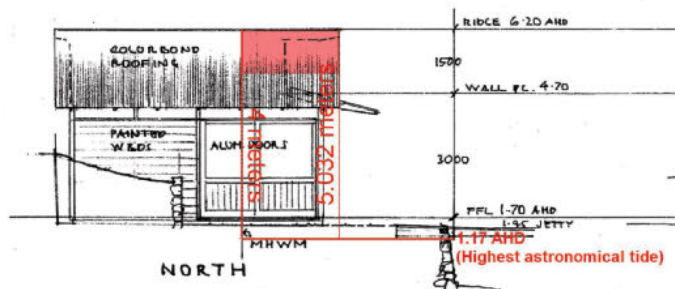


Figure 1: Annotated north elevation of the proposed boat shed demonstrating the extent of the height breach.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The steepness of the land behind the MHWM makes it impracticable to locate a boat shed entirely on freehold land.
- The height of the boat shed is entirely in accordance with Pittwater Council's DCP P21 Section D15.15 Waterfront Development.
- The proposal will not result in any overshadowing of neighbouring properties.
- The proposal does not interrupt or obstruct any significant views to or from the site or Pittwater.
- The proposed renovation has been designed to respond sensitively to the natural topography, which slopes away from a level area just behind the Mean High Water Mark.
- The primary driver of the variation is a result of designing a boat shed fit for purpose with minimal impact on the natural environment. The proposal will have minimal impact on the natural environment. The proposal will have minimal visual impact on the development on neighbouring sites or Pittwater.
- The existing siting and proposed design modifications to the boat shed will not affect public access along the waterfront.
- The proposed development is of good design that will reasonably protect and improve the amenity of the surrounding built environment.
- Boat sheds are a specifically permissible use of the site and consistent with the character of the Scotland Island locality.
- Boat sheds of this proposed form add character to waterways foreshores when viewed by the public using the waterway for recreational purposes.

It is accepted that despite the variation to the building height development standard, that the breach largely results from the siting of the proposed boat shed being partially below the MHWM. Recognition is also given that the height of the boat shed is in accordance with the Pittwater 21 DCP and that its design does not impact on the amenity of neighbouring properties or the surrounding locality in terms of views, solar access, visual bulk and privacy. It is further accepted that the location of the proposed boat shed avoids impact on the natural environment through avoiding excavation into the treed hillside and that public access will be maintained in the foreshore area.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore

satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposal seeks a maximum building height of 5.03m (6.20 AHD), thereby contravening the development standard by 25.75% (1.03m). It should be recognised that the proposed boat shed has demonstrated compliance with the relevant height criteria under Clause D15.15 (Waterfront development) of the Pittwater 21 DCP. Whilst the overall footprint of boat shed is non-compliant with this criteria (being marginally larger in length and width), consideration has been given that it will occupy a similar location as the existing boat shed. This variation has been supported on merit and is discussed in further detail further in this assessment report. The development minimises site disturbance and is not seen to impact upon surrounding native vegetation. Further the architectural design and external finishes ensure that the boat shed will be in harmony with the natural environment of Scotland Island. It is therefore considered that the development achieves consistency with the desired future character of the Lower Western Foreshores and Scotland Island Locality.

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

Comment:

The proposed development is considered compatible in height and scale to surrounding boat sheds in the vicinity of the site and other nearby on Scotland Island. The height departure is substantially attributed to the existing ground levels. Boat sheds on Scotland Island are typically no more than 4m from the platform on which they are built, have a gabled roof form and are of dark and earthy finishes. In this regard, the proposed boat shed is seen to achieve a high degree of consistency with those surrounding. The scale of the boat shed is also compliant with relevant built form controls such as those relating to setbacks and building envelope.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed boat shed provides ample and compliant setbacks from side boundaries and is not of an excessive height that would result in unacceptable overshadowing. This is demonstrated by the compliance of the development with the numerical controls under the Pittwater 21 DCP as they relate to solar access.

d) to allow for the reasonable sharing of views,

Comment:

The proposal allows for the reasonable sharing of views towards the waterways from surrounding and nearby properties. Whilst it is not seen that views will be obstructed, the boat shed has been sited in the same location as the existing boat shed and is compliant height in accordance with the relevant P21 DCP criteria.

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

Comment:

As discussed previously within this report, the proposed boat shed does not require any excavation of the rear steeply sloping and treed hillside. Further, the application has been submitted with a Geotechnical Report, which has been subsequently reviewed by Council's Development Engineer, who is supportive of the proposal in this regard. The proposed development is therefore seen to be 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,

Comment:

The subject site is not located in the vicinity of any heritage conservation areas or heritage items. The utilisation of darker finishes to the boat shed and the retention of native vegetation ensures that adverse visual impacts arising from the proposal are minimised.

Zone objectives

The underlying objectives of the W1 Natural Waterways zone

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

Comment:

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

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

Comment:

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

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

Comment:

As the proposed boat shed is to be located landward of the sea wall, there is no anticipated impact on fish passages or recreational fishing areas.

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

Comment:

The proposal does not require the removal of any established native vegetation and has been supported by Council's Landscape, Biodiversity, Riparian and Coastal Officers. As discussed above, the proposed works are located landward of the sea wall and therefore will not be seen to result in any navigational concerns within the waterways.

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

Comment:

The proposal provides the opportunity for the private storage of boats, while also ensuring that public access to and along the foreshore will be maintained as a result of the development.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the W1 Natural Waterways zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning,

advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

7.8 Limited development on foreshore area

Based on the plans provided, the proposed works are located entirely within the foreshore area. Subclause 7.7(2) permits only the following types of development on land in the foreshore area:

- (2) *Development consent must not be granted for development on land in the foreshore area e*
- (a) *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- (b) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The proposed works fall within the above categories, being limited to a boat shed, minor works to a sea wall and to waterway access stairs.

Based on the above, the development proposed as part of this application is considered permissible within the foreshore.

7.10 Essential services

The consent authority can be satisfied that the services that are essential for the development are available or that adequate arrangements have been made to make them available when required.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	>6.5m	-	Yes
Rear building line	N/A - Foreshore Building Line (FBL) applies	Works wholly in foreshore area (See discussion under Clause 7.8 of the PLEP 2014)	-	N/A
Side building line	2.5m (North)	3.7m (to lot boundary) 6.9m (to lateral limit line)	-	Yes
	1m (South)	3.7m (to lot boundary) 3.4m (to lateral limit line)	-	Yes
Building	3.5m (North)	Within envelope	-	Yes

envelope	3.5m (South)	Within envelope	-	Yes
Landscaped area	72% (569m ²)	87% (689m ²)	-	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.13 Pollution Control	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	Yes	Yes
D8.6 Side and rear building line	Yes	Yes
D8.8 Building envelope	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D8.9 Landscaped Area	Yes	Yes
D8.11 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D8.13 Stormwater overflow	Yes	Yes
D8.14 Parking management	Yes	Yes
D8.15 Site disturbance	Yes	Yes
D8.16 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	No	Yes
D15.18 Seawalls	Yes	Yes
D15.19 Dredging	Yes	Yes

Detailed Assessment

B8.3 Construction and Demolition - Waste Minimisation

Whilst the proposal requires the demolition of an existing boat shed, a Waste Management Plan was not submitted as part of this application. A condition of consent has therefore been imposed to ensure that one is prepared in accordance with the P21 DCP prior to the release of any Construction Certificate.

D8.3 Building colours and materials

The proposed schedule of exterior finishes were amended on 8 September 2020 to reflect a colour scheme that would be consistent with the 'dark and earthy tones' control requirement. The limited use of a white coloured finish to the window and door frames is considered acceptable and consistent with other boat sheds on Scotland Island.

D15.15 Waterfront development

The relevant criteria of this clause stipulate that boat sheds are to be no greater than 4.0m in width and 6.0m in length. Based on the plans submitted, the proposed boat shed is measured at 4.9m in width and 6.2m in length. Despite these non-compliances, it should be noted that the proposed boat shed is to occupy a similar location as the existing boat shed. As such, the construction of the boat shed will not require further excavation or environmental impacts such as tree removal. Consideration has also been given that the external finishes to the boat shed are predominately dark and earthy tones to ensure the development blends into the surrounding natural environment when viewed from the waterway. Furthermore, the proposed boat shed continues to allow public foreshore access and is to be of a sufficient floor level in accordance with relevant estuarine hazard controls applicable to the development.

Based on the above, the proposed boat shed is considered to satisfy the outcomes of this clause and is supported on merit.

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**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

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

RECOMMENDATION

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/0793 for Construction of a boat shed and associated works on land at Lot 156 DP 12749, 119 Richard Road, SCOTLAND ISLAND, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2158-DA 01 Rev. A (Site Plan, Floor Plan, Elevations & Section)	08.09.20	Stephen Crosby & Assoc. Pty Ltd.
Schedule of External Finishes	06.04.20	Stephen Crosby & Assoc. Pty Ltd.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Risk Assessment, Ref. 1382	16 May 2020	Planning for Bushfire Protection
Geotechnical Assessment, Ref. 29472LMrpt Rev2	6 July 2020	JK Geotechnics Pty Ltd
Coastal Engineering Risk Assessment Report: 119 Richard Road, Scotland Island, Ref. AWE200106/L001:PDT	9 September 2020	Cardo (NSW/ACT) 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:

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
Department of Planning, Industry & Environment - Crown Lands	Landowner's Consent for Lodgement of Applications relating to development comprising: Reconstruction and raising: Boatshed to 1.70m AHD. Raising: Seawall and base of jetty by 100mm to 1.55m AHD on Crown land: Part: Lot 156 DP 12749 Parish Narrabeen County Cumberland, Ref. 15/01880#01	15 October 2019

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

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

3. **Prescribed Conditions**

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

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

- A. the name of the owner-builder, and
- B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of

any Authorised Officer.

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

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

cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

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

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

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

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

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

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION

CERTIFICATE**6. Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by JK Geotechnics dated 6 JULY 2020 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

7. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

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

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

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

8. Estuarine Hazard Design Requirements

The following applies to all development:

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

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

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

9. Compliance with Estuarine Risk Management Report

The development is to comply with all recommendations of the approved Coastal Engineering Risk Assessment Report (Revised) prepared by Cardno (NSW/ACT) Pty. Ltd., dated 9 September 2020 and these recommendations are to be incorporated into construction plans.

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

10. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 30years for boatshed and accepted by Council) the development is able to withstand the wave impact forces and loadings identified in the approved Coastal Engineering Risk Assessment Report (Revised) prepared by Cardno (NSW/ACT) Pty. Ltd. dated 9 September 2020.

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

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

11. **Engineers Certification of Plans**

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

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

12. **Compliance with Standards**

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

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

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

13. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Pittwater 21 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 THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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

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

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

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

16. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

17. **Tree and vegetation protection**

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

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees

within 5 metres of development,

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

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

18. **Condition of trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree 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 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,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) 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

19. **Aboriginal Heritage**

Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Aboriginal Heritage Protection.

20. **Building Materials and Sedimentation**

No building materials or other materials are to be placed on or enter areas of bushland, wetland, saltmarsh, seagrass or foreshore vegetation.

Reason: Environmental Protection.

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

21. **Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

22. **External Finishes**

The external finishes of the as-built development are to be consistent with the amended Schedule of External Finishes dated 6th April 2020 referred in Condition 1 of this consent.

Documented evidence of consistency with this requirement is to be provided to the certifying authority prior to the issue of the occupation certificate.

Reason: To ensure that the visual impact of the development is minimised.

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

23. **Use of Boat Shed**

The boat shed is not to be used as a habitable space, as such, no toilets, showers, bathrooms are to be added to the boat shed without further application to Council.

Reason: To ensure no additional loading on the onsite waste water system at this address without assessment of that the capacity of the system is conducted to ensure onsite waste water system does not fail.

24. **Dead or Injured Wildlife**

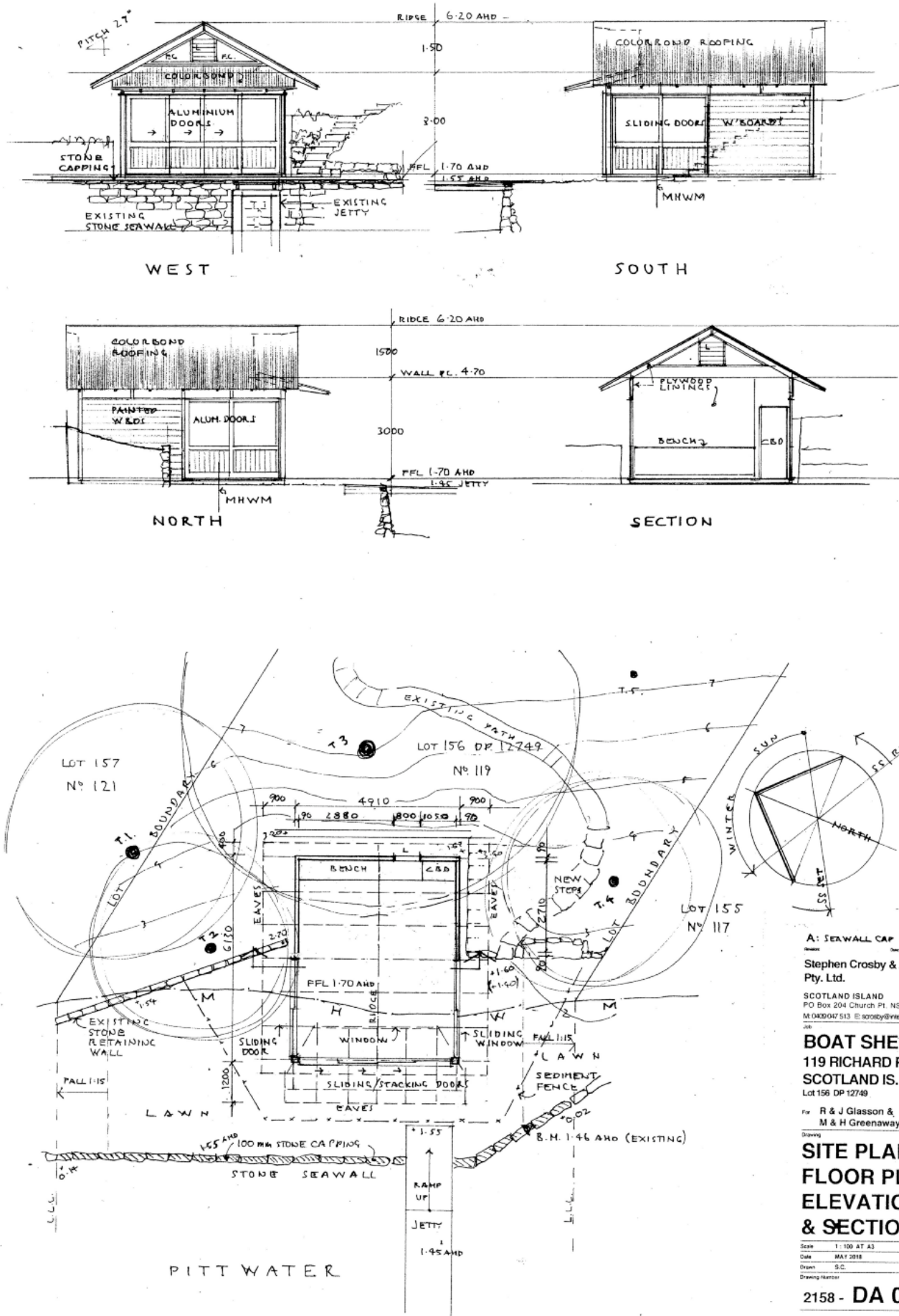
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

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

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

The development is to comply with all recommendations of the approved Coastal Engineering Risk Assessment Report (Revised) prepared by Cardno (NSW/ACT) Pty. Ltd. dated 9 September 2020 and these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment and to ensure compliance with section 27 of Coastal Management Act 2016



Clause 4.6 Variation Request Clause 4.3 Height of Buildings

**119 RICHARD RD. SCOTLAND ISLAND
Lot 156 DP 12749**

Date: 15th May 2020

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

For: R. & J. Glasson and M. & H. Greenaway

Introduction

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

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

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

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

This clause 4.6 variation request demonstrates that the proposed development:

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

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

VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

The finished floor level of the proposed boat shed is nominated at 1.70m AHD and the ridge is 6.20m AHD. From the LEP Heights of buildings map the maximum height of the boat shed should be no more than 4.0m above astronomical height tide (1.17m AHD), giving a total of 5.17m AHD. The proposed boat shed ridge exceeds this height by 1.03m.

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

land behind the MHWL makes it impracticable to locate a boat shed entirely on freehold land.

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

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

JUSTIFICATION FOR CONTRAVENTION OF THE DEVELOPMENT STANDARD

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

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

Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:

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

CLAUSE 4.6(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The building sits lightly on the existing terrain.

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

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

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

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

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

Consistency with the objectives of the development standard.

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

Consistency with the objectives of the zone.

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

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

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

Overall public interest.

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

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

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

CONCLUSION

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

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

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

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

STEPHEN CROSBY