

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 11 NOVEMBER 2020

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



Peter Robinson
Executive Manager Development Assessment

Panel Members

Lesley Finn	Chair
Robert Hussey	Town Planner
Annelise Tuor	Town Planner
Peter Cotton	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 11 November 2020

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	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. These applications do not satisfy that criterion.	
4.1	DA2020/0854 - 27 Corkery Crescent Allambie Heights - Alterations and additions to a dwelling house including swimming pool.....	300

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 4 NOVEMBER 2020

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 4 November 2020 were adopted by the Chairperson and have been posted on Council's website.

3.0 PUBLIC MEETING ITEMS

ITEM 3.1 DA2020/0298 - 25 KEVIN AVENUE AVALON BEACH -
SUBDIVISION OF ONE LOT INTO TWO LOTS

AUTHORISING MANAGER TONY COLLIER

TRIM FILE REF 2020/683507

ATTACHMENTS
1 [↓ Assessment Report](#)
2 [↓ Subdivision Plan](#)
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

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/0298 for subdivision of one lot into two lots at Lot 10 DP 12435, 25 Kevin Avenue, Avalon Beach for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0298
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Responsible Officer:	David Auster
Land to be developed (Address):	Lot 10 DP 12435, 25 Kevin Avenue AVALON BEACH NSW 2107
Proposed Development:	Subdivision of one lot into two lots
Zoning:	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:	Sixjay Holdings Pty Limited
Applicant:	Sixjay Developments Pty Ltd

Application Lodged:	23/03/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	01/05/2020 to 15/05/2020
Advertised:	Not Advertised
Submissions Received:	10
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 16.8%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 96,200.00
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The proposal is for subdivision of the site into two new lots, in a battle axe type configuration, with a driveway running along the south eastern side boundary.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is not suitable and appropriate development for the subject site.

The proposal will not comply with the minimum subdivision lot size, and is not considered to be consistent with the predominant size, pattern and configuration of subdivision in the area. Further, it will create various other impacts in terms of tree removal, non-compliance with front building line controls, streetscape impacts, and will be inconsistent with the desired character of the Avalon Beach Locality. Approval of the application would set a precedent for non-compliance with the minimum lot size in the surrounding lots which are of a highly consistent size, pattern and configuration, which would in turn make it difficult for Council to uphold the minimum subdivision lot size development standard in the



surrounding vicinity.

Council received a number of submissions, which focused mainly on issues such as undersized lots, loss of trees and fauna, parking and traffic impacts, non-compliance with relevant planning controls, visual impacts and drainage. The concerns raised in the submissions are generally supported, to the extent discussed within the Submissions section of this report.

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 refused for the reasons attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves Torrens title subdivision of one existing lot into two new lots. The proposed subdivision is in a battle axe type configuration, with the existing dwelling to remain on the proposed new rear Lot 2, and existing structures at the front of the property (that would fall within proposed Lot 1) to be demolished.

Proposed Lot 1 (front lot) has an area of 582.1sqm, a width of 18.29m, and a depth of 38.26m.

Proposed Lot 2 (rear lot) has an area of 693.9sqm, width of 18.29m, and depth of 37.94m.

Tree removal is also proposed, including two existing street trees, and a further four trees on the site to accommodate the proposed right of way and easement for services.

Storm water is proposed to drain by gravity directly to Kevin Street.

ASSESSMENT INTRODUCTION

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

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



SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
 Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality
 Pittwater 21 Development Control Plan - B2.2 Subdivision - Low Density Residential Areas
 Pittwater 21 Development Control Plan - B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land
 Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve
 Pittwater 21 Development Control Plan - B6.2 Internal Driveways
 Pittwater 21 Development Control Plan - C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities
 Pittwater 21 Development Control Plan - C4.7 Subdivision - Amenity and Design
 Pittwater 21 Development Control Plan - D1.1 Character as viewed from a public place
 Pittwater 21 Development Control Plan - D1.4 Scenic protection - General
 Pittwater 21 Development Control Plan - D1.8 Front building line

SITE DESCRIPTION

Property Description:	Lot 10 DP 12435 , 25 Kevin Avenue AVALON BEACH NSW 2107
Detailed Site Description:	<p>The site is located on the higher, south western side of Kevin Avenue. It is rectangular in shape, has a width of 18.29m, a depth of 76.25m, and area of 1394sqm. The topography slopes down from rear to front, with a fall of approximately 9.5m across the length of the site. There are a number of mature trees on site and in the road reserve in front of the site.</p> <p>There is an existing dwelling on the site, located towards the rear, with a swimming pool, garage and shed located more centrally in front of the dwelling. There is also a secondary dwelling located near the front of the property. The existing driveway access is from the northern corner of the site.</p> <p>Surrounding development consists generally of detached dwellings.</p>

Map:



SITE HISTORY

The site has a history of residential use. The most recent approval was for a secondary dwelling towards the front of the property, but given that demolition is proposed for the structures that would fall within proposed Lot 1 at the front of the site, there is no recent or relevant history to the current application.

More relevantly to the current application, Council refused a very similar application on the adjoining neighbour to the north west (27 Kevin Avenue) - DA2018/1066 for Subdivision of one lot into two lots, demolition works and construction of a driveway. This application was refused by the Northern Beaches Local Planning Panel on 21 November 2018. This application is currently under appeal at the Land and Environment Court, with a hearing date set for 4 December 2020.

Current Application

During the assessment process of the current application, Council requested that the applicant withdraw the application for reasons including non-compliance with the minimum subdivision lot size of the PLEP, and inconsistency with the requirements and objectives of clauses B4.22 – Preservation of Trees and Bushland Vegetation, B4.5 – Landscape and Flora and Fauna Enhancement Category 3 Land, B4.7 – Pittwater Spotted Gum Forest – Endangered Ecological Community (PWSGF-EEC), C4.2 – Subdivision – Access Driveways and Off-Street Parking Facilities, C4.7 – Subdivision – Amenity and Design, and D1.4 – Scenic Protection - General of the PDCP. Council's Development Engineer's concerns (as included in the Referrals section of this report) were also included in the letter requesting withdrawal.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental	See discussion under the PLEP 2014 cl. 4.1 Minimum subdivision lot size section of the report.

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Section 79C 'Matters for Consideration'	Comments
planning instrument	<p>In summary, the proposed subdivision is not supported as it does not demonstrate an acceptable impact on the natural environment and will result in two (2) undersized lots that are not consistent with the desired character of the locality and the pattern, size and configuration of existing lots in the locality.</p> <p>As detailed in this report, assessment has found that the proposal does not satisfy several PLEP 2014 Clauses, including:</p> <ul style="list-style-type: none"> • Clause 1.2 - Aims of The plan; • Clause 4.1 - Minimum subdivision lot size; • Clause 4.6 - Exceptions to development standards;
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	<p>Pittwater 21 Development Control Plan (P21DCP) applies to this proposal.</p> <p>As detailed in this report, assessment has found that the proposal does not satisfy several P21DCP Clauses, including:</p> <ul style="list-style-type: none"> • A4.1 Avalon Beach Locality; • B2.2 Subdivision - Low Density Residential Areas; • B4.6 Wildlife Corridors; • B4.22 Preservation of Trees and Bushland Vegetation; • B6.1 Access driveways and Works on the Public Road Reserve; • B6.2 Internal Driveways; • C1.1 Landscaping; • C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities; • C4.7 Subdivision - Amenity and Design; and • D1.8 Front building line.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (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 can be 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>

Section 79C 'Matters for Consideration'	Comments
	<p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. These matters 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 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 can be 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 79C (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) <u>Environmental Impact</u> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report.</p> <p>(ii) <u>Social Impact</u> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <u>Economic Impact</u> 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 79C (1) (c) – the suitability of the site for the development	<p>The site is considered unsuitable for the proposed development.</p> <p>In summary, the proposal is not supported as it does not demonstrate an acceptable impact on the natural environment and will result in two (2) undersized lots that are not consistent with the desired character of the locality and the pattern, size and configuration of existing lots in the locality.</p>
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	<p>In summary a total of ten (10) submissions were received from the notification of the application.</p> <p>The submissions raised concerns in relation to the subdivision pattern, under sized lots, loss of trees, established front building line non-compliance and the unsuitability of the site for the proposed subdivision. These concerns are generally concurred with and form reasons for refusal of the application. See discussion under Submissions section of this report.</p>



Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (e) – the public interest	As detailed throughout this report, the assessment has found the proposal to be contrary to the relevant requirements of PLEP 2014 and P21DCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

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 01/05/2020 to 15/05/2020 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 10 submission/s from:

Name:	Address:
Mr Matthew James Telfer	34 Kevin Avenue AVALON BEACH NSW 2107
Graeme Douglas Bell Louise Nicole Bell	29 Kevin Avenue AVALON BEACH NSW 2107
Mrs Louise Christina Telfer	34 Kevin Avenue AVALON BEACH NSW 2107
Ms Keelie Jane Silvester	52 Kevin Avenue AVALON BEACH NSW 2107
Mr Ryan Heath Georgeson Mrs Belinda Jane Georgeson	28 Kevin Avenue AVALON BEACH NSW 2107
Mrs Rebekah Chandler	18 Park Avenue AVALON BEACH NSW 2107
Mrs Jennifer Anne Reddan	22 Kevin Avenue AVALON BEACH NSW 2107
Mr John Albert Reid Mrs Christine Reid	18 Kevin Avenue AVALON BEACH NSW 2107
Mr Matthew Robert Chandler	46 Kevin Avenue AVALON BEACH NSW 2107
Mrs Rosalyn Mary Short Barry Short	16 B Kevin Avenue AVALON BEACH NSW 2107

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

- Undersized lots and inconsistent subdivision configuration and pattern
- Loss of trees and fauna
- Parking and traffic impacts



- Non-compliance with planning controls
- Timing of application
- Notification of application
- Visual impact of driveway
- Privacy
- Drainage
- Waste management plan inadequate

The matters raised within the submissions are addressed as follows:

- **Undersized lots and inconsistent subdivision configuration and pattern**

Concerns were raised with regard to the proposed non-compliance with the minimum lot size requirement and inconsistency with the objectives of clause 4.1 of the LEP, and the justifications provided in the application with respect to other undersized lots in the area.

Comment:

This issue is discussed in detail under the *clause 4.6 Exceptions to development standards* section of this report. In summary, the proposed subdivision is not supported for reasons including that it will result in two (2) undersized lots that are inconsistent with the desired character of the locality, and inconsistent with the pattern, size and configuration of existing lots in the locality, and will result in unacceptable impacts to the existing natural environment.

Further, an assessment of the applicant's written request to vary the development standard has found that it has not adequately justified that the proposal achieves the objectives of *clause 4.1 Minimum subdivision lot size*, and therefore has failed to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case.

Therefore, the concerns are supported, and refusal of the application is recommended.

- **Loss of trees and fauna habitat**

Concerns were raised with regard to the proposed tree removal, both as a result of the proposed subdivision, and further tree removal later on as a result of the ultimate development of the new lot.

Comment:

Council's Landscape, and Bushland and Biodiversity departments have assessed the proposal, and are generally satisfied that the proposal is consistent with the relevant controls with regard to tree removal and preservation of trees in the Pittwater 21 Development Control Plan, including clauses *B4.22 Preservation of Trees and Bushland Vegetation*, *C4.7 Subdivision - Amenity and Design*, *D1 Avalon Beach Locality* (see Referrals section of this report).

However, an assessment against the objectives of *clause 4.1 Minimum subdivision lot size* has found that the proposed removal of trees for the new right of way and driveway is unacceptable, and an indicator that the site is not suitable for the proposed development.

Therefore, the submissions are generally supported in this regard, and this issue is included as a recommended reason for refusal.

- **Parking and traffic impacts**

Concerns were raised with regard to lack of on-street parking available in the area, and extra



traffic being generated.

Comment:

Any future development of the proposed new lots (if approved) would be required to comply with the minimum on-site parking requirements (two spaces per dwelling). The applicant has provided a concept plan indicating compliance with this requirement would be possible. However, Council's Development Engineers have assessed the proposal, and are not satisfied that adequate concept access to parking has been demonstrated (see Referrals section of this report). As such, this is considered a reason to refuse the development.

The submissions are not therefore generally supported in this regard.

- **Non-compliance with planning controls**

Concerns were raised with regard to future development of proposed Lot 1 and future non-compliance with relevant requirements such as front building setbacks, landscaped area and building height.

Comment:

The future residential development of each lot would be the subject of separate development applications.

Clause D1.8 Front building line requires a minimum front setback of whichever is greater of the established building line, or 6.5m. *D1.13 Landscaped Area - General* requires a minimum landscaped area of 50%. The maximum building height applicable to the site under *clause 4.3 Height of buildings* is 8.5m. During the assessment process the applicant provided a concept plan indicating proposed lot 1 would in theory be capable of being developed with a dwelling which is compliant with the height and minimum landscaped area requirements, but that would not comply with the established front building line (see detailed discussion under clause D1.8 in this report).

As such, the submissions are partially supported in this regard, and the inability of the proposed lot 1 to accommodate a new dwelling that could comply with the front building line control is a recommended reason for refusal.

- **Timing of application**

Concerns were raised with the timing of the application during a pandemic.

Comment:

This is not a matter for consideration under the Environmental Planning and Assessment Act. The proposal has been lodged and notified in accordance with the relevant requirements in terms of documentation provided, and neighbours have had ample opportunity to lodge submissions in regard to the application. The timing of the application in relation to the pandemic is not a matter that is considered to be relevant in the assessment of the proposal.

- **Notification of application**

Concerns were raised with regard to the notification sign not being displayed.

Comment:

During the assessment process, the proposal was re-notified due to failure to display the notification sign. The applicants subsequently provided photographic evidence of the sign being displayed, and the submissions are considered to be satisfied in this regard.



- **Visual impact of driveway**

Concerns were raised regarding the visual impacts of the driveway, and impacts from headlights from cars using the driveway.

Comment:

The proposed driveway would be a minimum of 40m in length once constructed, and would present a significant streetscape impact for pedestrians given the length, and the consequence that it would result in the removal of existing established trees both on the site and within the road reserve. The concerns are generally supported in this regard.

- **Privacy**

Concerns were raised regarding the raised level of any eventual dwelling on proposed Lot 1 and subsequent privacy impacts.

Comments:

This would be an issue for assessment at the time of a development application for a dwelling, should the subdivision application be approved. This issue is not considered to warrant refusal of the subdivision application, as dwelling plans are concept only at this stage. The proposed subdivision is not considered to create any obvious impossibilities in protecting privacy to a reasonable degree in the future.

The submissions are not supported in this regard.

- **Drainage**

Concerns were raised regarding drainage and existing flooding issues in Kevin Street.

Comment:

The site is not identified as being in a flood prone area. Council's Development Engineers have assessed the proposal, and while they have raised concerns with the proposed vehicular access, they have not raised concerns with the drainage. Any future development of the site would drain to the street in accordance with Council policy.

The submissions are not supported in this regard.

- **Waste management plan inadequate**

Concerns were raised that the waste management report submitted was inadequate in describing the amount of material that would be required to be removed as a result of the development if approved.

Comment:

The waste management report provided has been filled out generally in accordance with the requirements. If the application were to be approved, this issue could be dealt with by condition of consent to dispose of waste appropriately.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application proposes the Torrens Title Subdivision of 1 allotment to create 2 allotments.</p> <p>Council's Landscape Referral staff have assessed the proposal</p>

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Internal Referral Body	Comments
	<p>against the following Pittwater 21 DCP Controls: B4.22 Preservation of Trees and Bushland Vegetation C4.7 Subdivision - Amenity and Design D1 Avalon Beach Locality</p> <p>The proposed Lot 1 supports numerous existing indigenous and native trees whilst the proposed Lot 2 in the majority supports exotic plantings with the exception of two Cabbage Tree Palms and a Lillypilly.</p> <p>An arboricultural assessment prepared by Jacksons Nature Works is provided with the application, nominating 5 indigenous trees to be removed for the right of way and easement for services, including T4 Cheese Tree (road verge), T5 Cheese Tree (road verge), T7 Red Bloodwood, T10 Cheese Tree, and T11 Spotted Gum.</p> <p>The following 11 existing trees are assessed as being able to be retained within the site on Lot 1: T8 Scribbly Gum, T9 Spotted Gum, T12 Spotted Gum, T13 Red Bloodwood, T14 Red Bloodwood, and group T15-20 Turpentine.</p> <p>The following 8 existing trees/palms are assessed as being able to be retained within the site on Lot 2: T21 Alexander Palm, T22 Alexander Palm, T23 Alexander Palm, T26 Lillypilly, T28 Jacaranda, T29 Cabbage Tree Palm, T30 Cabbage Tree Palm and T31 Bottlebrush.</p> <p>The following road reserve trees are proposed for retention: T2 Scribbly Gum, T3 Cheese Tree, and T1 Angophora fronting No. 27 Kevin Avenue,</p> <p>All existing trees within adjoining property are proposed for protection, including: T25, T27, T32, T33, T34, T35 and T36.</p> <p>The arboricultural assessment is based on Subdivision of land information only, and has not been updated to assess the impact upon existing trees from the subsequent issue of the Site Plan and Subdivision Concept that provides an Indicative Building Layout prepared by Gartner Trovato Architects.</p> <p>On review of the Site Plan and Subdivision Concept, all 11 existing trees within the proposed Lot 1 are proposed for retention, and this is supported by the design concept to suspend any future dwelling on pier/pole footings. The Indicative Building Layout generally has manageable intrusions into the tree protection zone and avoids the structural root zones structural protection zones of existing trees on Lot 1.</p> <p>Based solely on the landscape outcomes of B4.22 Preservation of Trees and Bushland Vegetation, development of a new dwelling on Lot 2 does not impact upon the existing natural environment, subject to additional canopy tree planting within the front setback (x 1) and within the rear setback (x 1) of Lot 1. The landscape outcomes of the</p>

Internal Referral Body	Comments
	retained dwelling on the proposed Lot 2 does not impact the existing landscape amenity of the site.
NECC (Bushland and Biodiversity)	<p>Council's Bushland and Biodiversity section considers the Development Application to be consistent with the following Pittwater 21 DCP 2014 Controls:</p> <p>B4.22 Preservation of Trees and Bushland Vegetation Outcomes: To protect and enhance the urban forest of the Northern Beaches. To effectively manage the risks that come with an established urban forest through professional management of trees. To minimise soil erosion and to improve air quality, water quality, carbon sequestration, storm water retention, energy conservation and noise reduction. To protect, enhance bushland that provides habitat for locally native plant and animal species, threatened species populations and endangered ecological communities. To promote the retention and planting of trees which will help enable plant and animal communities to survive in the long-term. To protect and enhance the scenic value and character that trees and/or bushland vegetation provide. Tree protection and tree replacement conditions have been recommended in the Landscape referral. The development application complies with this control.</p>
NECC (Development Engineering)	<p>The nature strip within the road reserve is steep and has trees which may be significant. An additional access driveway is proposed which is not supported since the street frontage is less than 30m (Clause 4.2 Pittwater 21 DCP 2014). There is no car parking provision for the existing dwelling which is proposed to be retained. There is insufficient information with regards to provision for a suitable access to both lots. In this regards a common driveway (right of carriageway) is recommended to be located adjacent to northern boundary where the current vehicular crossing is located. This will negate the need to clear the current vegetation within the public road and reduce changes to the streetscape. The subdivision lacks the following information:</p> <ul style="list-style-type: none"> • A concept driveway plan showing a 3.0 metres wide driveway serving both lots. • Provision of two car spaces for the existing dwelling with a turning area to ensure vehicles can exit in a forward direction. • The front lot shall have access to the common driveway. No additional access is permitted. • Submission of a revised inter-allotment drainage plan with a single connection to the kerb servicing both lots. It is to be noted that the front lot will require provision of OSD when the dwelling is proposed in the future. <p>DATED 14/07/2020</p> <p>The submitted concept driveway and turning area lacks details (Trim 2020/284121) and is not satisfactory. The driveway plans has not provided details of existing and proposed finished surface levels. The</p>

Internal Referral Body	Comments
	<p>vehicular turning area proposed for the existing dwelling does not appear to comply with AS/NZS 2890.1:2004.</p> <p>A detail longitudinal sectional plan taken from center of Kevin road to the proposed garages design in accordance with AS/NZS 2890.1:2004 and Council standard crossing profile within the roadway showing existing and proposed levels have not been provided. A vehicular turning swept path for the proposed garages have also not been provided. As result the concept driveway plan does not demonstrate compliance with B6 of Pittwater 21 DCP.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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 44 - Koala Habitat Protection

The SEPP applies to land within Local Government Areas (LGAs) listed under Schedule 1 of the Policy. In addition, Part 2 of the Policy outlines the process to assess the likelihood of the land in question being potential or core koala habitat. Part 2 applies to land which has an area of greater than 1 hectare or has, together with any adjoining land in the same ownership, an area of more than 1 hectare.

The subject site is less than 1 hectare in area, and clause 9 of the SEPP does not therefore comply.

Clause 10 states that a council is not prevented from granting consent to a development application for consent to carry out development on land if—

- (a) the land does not have an approved koala plan of management applying to the land, or
- (b) the council is satisfied that the land is not core koala habitat.

It is noted that two of the trees proposed for removal (Tree 7 *Corymbia gummifera* - Red Bloodwood, and Tree 11 *Corymbia maculata* - Spotted Gum) are listed as Koala use tree species. However, the area is not in a koala management area, there is no approved koala plan of management for the land, and Council has no evidence that the land is core Koala habitat. Council's Bushland and Biodiversity



team has also not raised any concerns in this regard.

Accordingly, the requirements of the SEPP are met.

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses.

In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Permitted	Proposed	% Variation	Complies
4.1 - Minimum subdivision lot size	700m ²	<u>Lot 1</u> Effective Lot: 582.1m ² Access Handle: 117.9m ² * <u>Lot 2</u>	16.8% (117.9m ²) N/A	No N/A



		Effective Lot: 693.9m ²	0.9% (6.1m ²)	No
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* Clause 4.1(3A) excludes the area of an access handle from the calculation of the lot size in a battle-axe subdivision.

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	No
4.6 Exceptions to development standards	No
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance

Requirement:	700m ²
Proposed:	Lot 1: 582.1m ² (excluding ROW) Lot 2: 693.9m
Is the planning control in question a development standard?	Yes
If numerical enter a % variation to requirement	Lot 1: 16.8% (117.9m ²) Lot 2: 0.9% (6.1m ²)

Assessment of request to vary a development standard

The following assessment of the variation to Clause 4.1 - Minimum Subdivision Lot Size development standard has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

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 4.1 - Minimum subdivision lot size 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.

cl. 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 has addressed the matters required by cl 4.6 (3)(a) by way of providing justification which seeks to demonstrate that the objectives of the development standard have been met, notwithstanding the non-compliance with the development standard.

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

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

Comment

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has not 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 applicant's written request has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The applicant's written request submits that the development and resultant lots will achieve the objectives of clause 4.1 Minimum Lot Size.

In doing so, the applicant's written request submits that the proposed development is an orderly and economic use and development of the land and that the building is of a good design and will protect the amenity of the surrounding built environment therefore satisfying cl 1.3(c)(g) of the EPA Act.

As discussed below, the assessment of this application has found that the proposal is inconsistent with the relevant objectives. Therefore, Council is not satisfied that the applicant's written request has addressed the matters required to be demonstrated by cl 4.6(3).

cl 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 Minimum Subdivision Lot Size development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of the development standard



The underlying objectives of cl 4.1 Minimum Subdivision Lot Size development standard are:

(a) to protect residential character and amenity by providing for subdivision where all resulting lots are consistent with the desired character of the locality, and the pattern, size and configuration of existing lots in the locality.

Comment

In addressing this objective, the author of the request states:

"The proposed lot size and pattern are consistent with the existing development along Kevin Avenue. There are several examples of existing lots that are below the minimum lot size prescribed in the LEP, as demonstrated in the table over page. We note that these lot sizes were also confirmed in the SoEE prepared by Vaughan Milligan Development Consulting in support a development application proposing a similar subdivision at No. 27 Kevin Avenue (DA2018/1066)."

Address	Lot Size
16A Kevin Street	477.0m ²
16B Kevin Street	449.9m ²
19A Kevin Street	424.6m ²
19B Kevin Street	502.6m ²
43 Kevin Street	556.2m ²
45 Kevin Street	561.6m ²
47 Kevin Street	561.6m ²
49 Kevin Street	556.1m ²
50 Kevin Street	464.1m ²
51 Kevin Street	556.2m ²
52 Kevin Street	464.2m ²
53 Kevin Street	556.2m ²
55 Kevin Street	556.3m ²
57 Kevin Street	556.3m ²
58 Kevin Street	556.3m ²
59 Kevin Street	556.4m ²
60 Kevin Street	474.7m ²
61 Kevin Street	556.5m ²
62 Kevin Street	474.2m ²
63 Kevin Street	612.6m ²
64 Kevin Street	473.7m ²
66 Kevin Street	473.2m ²
68 Kevin Street	470.6m ²
72 Kevin Street	465.8m ²
76 Kevin Street	465.5m ²
78 Kevin Street	465.0m ²
80 Kevin Street	449.9m ²



With the lot sizes shown above, the proposed subdivision would not be seen as inconsistent with the existing size, pattern and configuration in the Avalon locality."

It is considered that the written request does not provide enough justification with respect to the numerical non-compliance in addition to the pattern and configuration of the subdivision. This is examined further below.

With exception of 16A & 16B, the smaller and under sized lots listed in the written request are located much further to the north along Kevin Avenue and within steeper topography as evident by localised embankments and subject to a previous land subdivision and different deposit plan.

The proposed lots are substantially smaller in area than that of adjoining and nearby properties to the subject site. The following lot size examples are of sites located closer to the subject site; within the flat to gentle sloping topography of the street and close to the start of Kevin Avenue off Barrenjoey Road;

- Nos. 19 - 35 Kevin Avenue: vary from 1,391m² to 1,397m²; and
- Nos. 18 - 48 Kevin Avenue: vary from 740m² to 929m².

Having regard to the above, the proposed battleaxe subdivision will result in two lots which are inconsistent with the subdivision pattern of Kevin Avenue. The location of the smaller, undersized lots adjacent to the larger size adjoining lots will diminish the landscaped residential and streetscape character of this section of Kevin Avenue. As detailed under the P21DCP cl. A4.1 Avalon Beach Locality section of the report, the development will provide smaller irregular shaped lots which will necessitate the removal of significant trees which is inconsistent with the established neighbourhood character.

For the reasons above, the written request does not demonstrate that the resulting lots will be consistent with the desired character of the locality, and the pattern, size and configuration of existing lots in the locality.

Therefore, the development does not satisfy this Objective and is recommended for refusal on this basis.

(b) to provide for subdivision where all resulting lots are capable of providing for the construction of a building that is safe from hazards.

Comment

In addressing this objective, the author of the request states:

"No known hazards are identified on the site".

The proposed subdivision and resultant lots are capable of providing for the construction of building/s that would be safe from hazards.

The development satisfies this Objective.

(c) to provide for subdivision where all resulting lots are capable of providing for buildings that will not unacceptably impact on the natural environment or the amenity of neighbouring properties.

Comment

In addressing this objective, the author of the request states:



"The proposal will maintain the existing dwelling at the rear of the site and will be part of lot 2. The front lot will be able to house a dwelling that can be compatible with the relevant planning controls and set within a landscaped setting.

Some trees are proposed to be removed with the majority to be retained. 2 trees will be replanted on the road reserve. The impact to the natural environment will be minimal".

The driveway will result in the removal of a significant tree located at the head of the access leg. In this respect, the application fails to demonstrate the appropriateness of the development with respect to the retention and enhancement of trees and wildlife corridors, biodiversity values and providing flora and fauna habitats.

In this regard, the written request does not demonstrate that the resulting lots will provide for buildings that will have an acceptable impact on the natural environment or the amenity of neighbouring properties.

Therefore, the development does not satisfy this Objective and is recommended for refusal on this basis.

(d) to provide for subdivision that does not adversely affect the heritage significance of any heritage item or heritage conservation area.

Comment

The subject site does not contain a heritage item and is not located within a heritage conservation area.

(e) to provide for subdivision where all resulting lots can be provided with adequate and safe access and services.

Comment

In addressing this objective, the author of the request states:

"The proposed carriageway will be adequate and safe access to each lot with essential services proposed being located under the carriageway".

The proposed subdivision could provide for a subdivision where all resulting lots can be provided with adequate and safe access and services. However, as detailed in this report, Council's Development Engineers are not satisfied that adequate access will be provided to the site. Further, provision of access to the site as proposed will result in the removal of established trees, both on the site and within the road reserve.

Therefore, the development does not satisfy this objective.

(f) to maintain the existing function and character of rural areas and minimise fragmentation of rural land.

Comment

The subject site is not located within a rural area and therefore this objective is not applicable to this assessment of the application.

(g) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.



Comment

In addressing this objective, the author of the request states:

"The existing dwelling will be maintained to lot 2. Lot 1 will be able to accommodate a dwelling that is of high amenity consistent with the planning controls as they reasonably apply".

As detailed in this report, the proposal fails to satisfy the following P21DCP development controls;

*cl. A4.1 Avalon Beach Locality;
cl. B2.2 Subdivision - Low Density Residential Areas;
cl. B4.6 Wildlife Corridors;
cl. B4.22 Preservation of Trees and Bushland Vegetation;
cl. B6.1 Access driveways and Works on the Public Road Reserve;
cl. B6.2 Internal Driveways;
cl. C1.1 Landscaping;
cl. C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities;
cl. C4.7 Subdivision - Amenity and Design; and
cl. D1.8 Front building line.*

For the reasons above, the written request does not demonstrate that the resultant lot sizes and dimensions are able to accommodate development consistent with relevant development controls.

The development does not satisfy this Objective and is recommended for refusal on this basis.

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 subdivision (1 lot into 2) would provide for the housing needs of the community within the existing low density residential environment.

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

The proposed development would not prohibit or restrict the establishment of facilities or services elsewhere within the zone that would meet the day to day needs of residents.

It is considered that the development satisfies this objective.

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

Comment

The proposed subdivision would create an additional lot that would have the ability to cater for a limited range of land uses of a low intensity and scale, compatible with surrounding land uses.



It is considered that the development satisfies this objective.

Conclusion

As detailed above and notwithstanding the applicant's written request, the assessment of this application has found the proposal to be inconsistent with the underlying objectives of the Minimum subdivision lot size development standard and therefore Council is not satisfied that the proposed development would be in the public interest. On this basis the request to vary the development standard is not supported as it fails to satisfy the requirements of cl 4.6 and this matter is included as a reason for refusal.

cl 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 Minimum subdivision lot size development standard is assumed by the Local Planning Panel.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed (building footprint)	% Variation*	Complies
Front building line	6.5m or established building line, whichever is the greatest 27.5m approx established building line for dwellings	Lot 1: 6.5m (concept) Lot 2: Capable of complying	76% N/A	No Yes
Rear building line	6.5m	Lot 1: Capable of complying Lot 2: 8m (existing)	N/A N/A	Yes No change
Side building line	2.5m	Lot 1 <u>North-East</u> Capable of complying <u>South-West</u> Capable of complying Lot 2 <u>North-East</u> (existing) <u>South-West</u> (existing)	N/A N/A N/A N/A	Yes Yes No change No change
Building envelope	3.5m	Lot 1: Capable of complying Lot 2: Inside	N/A N/A	Yes Yes

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		envelope		
Landscaped area	50% of site area Lot 1: 291m ² Lot 2: 246.5m ²	Lot 1: Capable of complying Lot 2: 340m ²	N/A N/A	Yes Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.1 Avalon Beach Locality	No	No
B2.2 Subdivision - Low Density Residential Areas	No	No
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	No	No
B6.1 Access driveways and Works on the Public Road Reserve	No	No
B6.2 Internal Driveways	No	No
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C4.1 Subdivision - Protection from Hazards	Yes	Yes
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities	No	No
C4.3 Subdivision - Transport and Traffic Management	Yes	Yes
C4.4 Subdivision - Public Roads, Footpath and Streetscape	Yes	Yes
C4.5 Subdivision - Utility Services	Yes	Yes
C4.6 Service and delivery vehicle access in subdivisions	Yes	Yes
C4.7 Subdivision - Amenity and Design	No	No
D1.1 Character as viewed from a public place	No	No
D1.4 Scenic protection - General	Yes	Yes
D1.8 Front building line	No	No
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	Yes	Yes
D1.13 Landscaped Area - General	Yes	Yes

Detailed Assessment

A4.1 Avalon Beach Locality

The desired future character of the Avalon locality envisages "*houses amongst the trees and not trees amongst the houses*" and requires an "*acceptable balance between maintaining the landforms,*



landscapes and other features of the natural environment, and the development of land".

This control provides both the context and the desired future character statement for the locality. The established subdivision pattern has traditionally been characterised by rectangular allotments with well established dense landscape settings.

The proposed subdivision will result in an irregularly shaped battleaxe lot which is not consistent with larger and more regularly shaped rectangular lots which characterise the Kevin Avenue. Further, the future development necessitates the construction of a driveway to service the rear lot which would require the removal of existing canopy trees which will diminish the landscaped residential and streetscape character of the street.

Therefore, the development is inconsistent with the established neighbourhood character and the desired future character of the locality and is recommended for refusal on this basis.

B2.2 Subdivision - Low Density Residential Areas

The development complies with the following minimum numerical requirements of the control:

Lot 1

- Minimum 27m depth requirement: Provided depth: 38.31m
- Minimum 15m width requirement: Provided width: 15.28m
- Minimum 175m building footprint required: Provided 175m building footprint.

Lot 2

- Minimum 27m depth requirement: Provided depth: 37.94m
- Minimum 15m width requirement: Provided width: 18.29m
- Minimum 175m building footprint required: Provided 175m building footprint.

However, the development necessitates the construction of a driveway to service the rear lot which would require the removal of existing canopy trees which will diminish the landscaped residential and streetscape character of the street. In this respect, the development unreasonably impacts on the natural environment and is considered to be inconsistent with the control which requires:

"Any lot (or lots) are to be capable of providing for the construction of a building which is safe from hazards, does not unreasonably impact on the natural environment, does not adversely affect heritage, and can be provided with adequate and safe access and services".

B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land

The development necessitates the construction of a driveway to service the rear lot which would require the removal of existing canopy trees which will diminish the landscaped residential and streetscape character of the street. In this respect, the development unreasonably impacts on the natural environment and is considered to be inconsistent with the outcome which seeks to retain the *"long-term viability and enhancement of locally native flora and fauna and their habitats"* and the control which requires that *"development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees"*.

B6.1 Access driveways and Works on the Public Road Reserve



Council's Development Engineers are not satisfied with the location or detail provided for the proposed driveway. See Referrals section of this report.

B6.2 Internal Driveways

Council's Development Engineers are not satisfied with the location or detail provided for the proposed driveway. See Referrals section of this report.

C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities

The application has failed to demonstrate that the proposed driveway and parking access are acceptable. Refer to Development Engineer comments in Referrals section of this report.

C4.7 Subdivision - Amenity and Design

The development necessitates the construction of a driveway to service the rear lot which would require the removal of existing canopy trees which will diminish the landscaped residential and streetscape character of the street.

In this respect the development is considered to be inconsistent with the following outcomes:

- Desired character of the locality.
- Protection of the natural environment.

Furthermore, the development is considered to not comply with the following controls:

- All properties, both existing and proposed, achieve/retain a level of amenity commensurate with the locality and the desired character of the area;
- The impact on the environment of the completed development (including buildings to be constructed on the proposed lots) has an acceptable impact on the environment.

D1.1 Character as viewed from a public place

The development necessitates the construction of a driveway to service the rear lot which would require the removal of existing canopy trees which will diminish the landscaped residential and streetscape character of the street.

In this respect the development is considered to be inconsistent with the following outcomes:

- To achieve the desired future character of the Locality.
- To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment.
- To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.
- The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation.
- To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.



Furthermore, the development is considered to not comply with the following control:

- Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.

D1.4 Scenic protection - General

The development necessitates the construction of a driveway to service the rear lot which would require the removal of existing canopy trees which will diminish the landscaped residential and streetscape character of the street.

In this respect the development is considered to be inconsistent with the following outcomes:

- Achieve the desired future character of the Locality.
- Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment.

Furthermore, the development is considered to not comply with the following control:

- Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

D1.8 Front building line

The control requires a 6.5m front setback or the established building line, whichever is the greatest. The established building line is varied, but is generally much greater than 6.5m for dwelling houses. Taking a line from the dwellings on the immediately adjoining neighbours, the established front building line is approximately 27.5m.

The application proposes a 6.5m concept front building line for proposed Lot 1, which would not comply with the established building line. Approval of the proposed subdivision would result in a new front lot that could not reasonably be expected to comply with the front building line control upon development.

Further, the development is assessed as not being consistent with the following underlying Outcomes of the control:

- To achieve the desired future character of the Locality

Comment:

As discussed under clause A4.1 Avalon Beach Locality in this report, the development fails to achieve the desired character of the Avalon locality. Therefore, the development does not achieve this outcome.

- Vegetation is retained and enhanced to visually reduce the built form



Comment:

As discussed throughout this report, the proposal involves the removal of existing established trees on the site and the road reserve, and does not demonstrate that the new lots would be consistent with the desired character in terms of providing for *"houses amongst the trees and not trees amongst the houses"*. Specific built form impacts would need to be assessed at the time of development of the new lot if the subdivision were to be approved. However, it is not considered that the application for subdivision has demonstrated that it could achieve this outcome.

- Vehicle manoeuvring in a forward direction is facilitated

Comment:

Council's Development Engineers have assessed the application and are not satisfied that adequate parking access has been demonstrated on the concept plans. This issue would be assessed at DA stage for development of a new lot if approved. However, at this stage the application is not considered to have demonstrated that it would meet this objective.

- To encourage attractive street frontages and improve pedestrian amenity

Comment:

The proposal would result in a driveway of approximately 40m in length, in place of existing canopy trees. In this regard, the proposal would not encourage attractive street frontages and improve pedestrian amenity.

- To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment

Comment:

As discussed under clause 4.6 Exceptions to development standards in this report, the proposed subdivision and resulting lots will not be consistent with the pattern, size and configuration of existing lots in the locality. As such, the proposal does not achieve this outcome.

Having regard to the above, the development fails to achieve the outcomes of the relevant control detailed above and is recommended for refusal on this basis.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

DA2020/0298



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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is not 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 4.1 Minimum Subdivision Lot Size has not 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 does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.



RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2020/0298 for the Subdivision of one lot into two lots on land at Lot 10 DP 12435,25 Kevin Avenue, AVALON BEACH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 4.6 Exceptions to development standards of Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause A4.1 Avalon Beach Locality of Pittwater 21 Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B2.2 Subdivision - Low Density Residential Areas of the Pittwater 21 Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land of the Pittwater 21 Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B6.1 Access driveways and Works on the Public Road Reserve of the Pittwater 21 Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B6.2 Internal Driveways of the Pittwater 21 Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities of the Pittwater 21 Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4.7 Subdivision - Amenity and Design of the Pittwater 21 Development Control Plan.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.4 Scenic protection - General of the Pittwater 21 Development Control Plan.
12. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.8 Front building line of

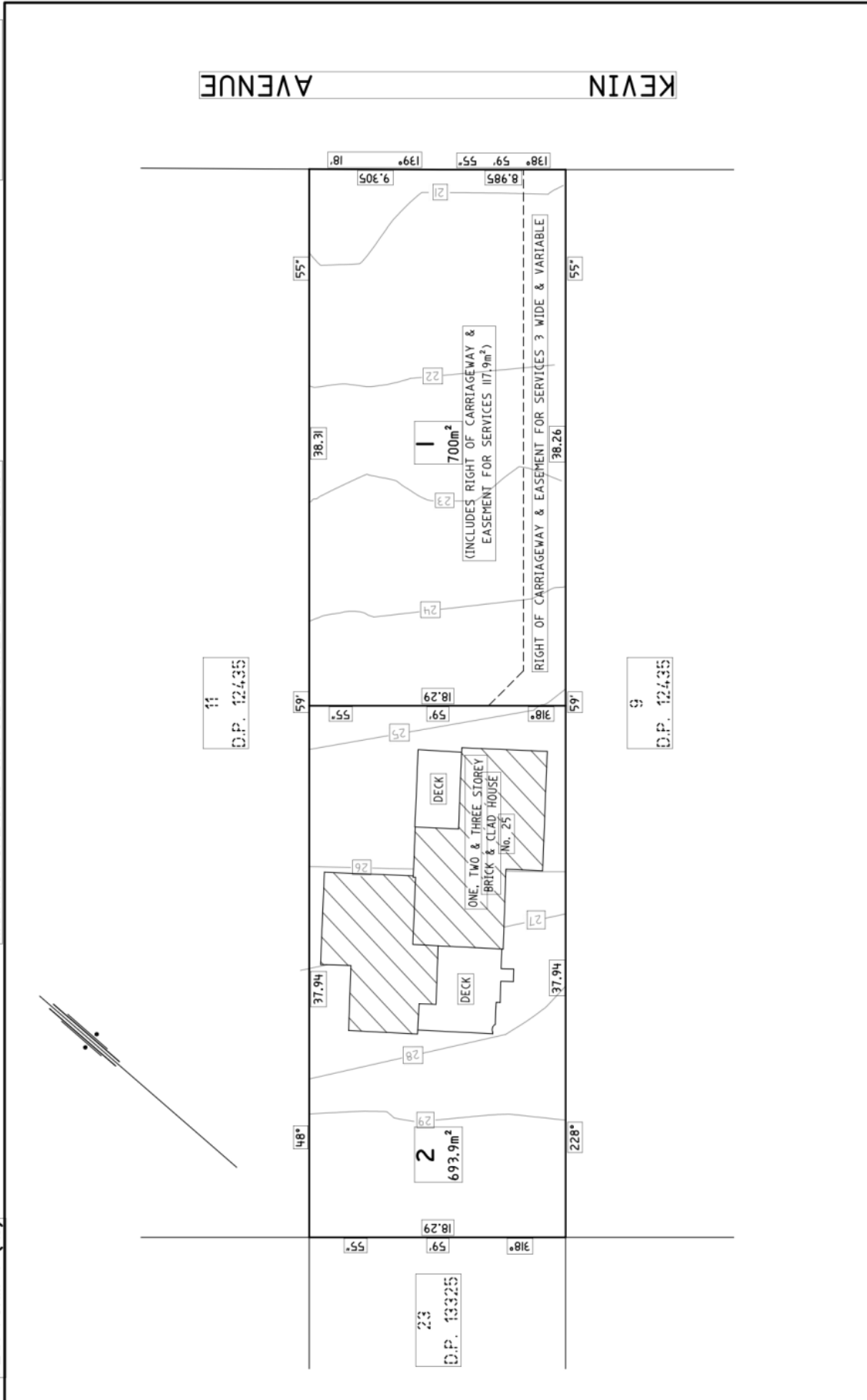


the Pittwater 21 Development Control Plan.

SHEET 1 OF 1 SHEETS

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

PLAN FORM 1 (A3)

	<p>DRAFT</p> <p>REGISTERED</p> <p>L.G.A: NORTHERN BEACHES Locality: AVALON BEACH Reduction Ratio: 1:250 Lengths are in metres</p> <p>PLAN OF SUBDIVISION OF LOT 10 IN D.P. 12435</p> <p>SURVEYOR Name: COPLAND C. LETHBRIDGE Date: FEBRUARY 2020 Reference: 21372 DP</p>
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Annexure 1. Clause 4.6 Request To Vary Minimum Lot Size Development Standard

1. Introduction

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

2. Pittwater Local Environmental Plan 2014

2.1. Clause 4.1: Minimum Lot Size

Pursuant to Clause 4.1 of the LEP the minimum lot size is identified as 700m². The objectives of this clause are:

- a) to protect residential character and amenity by providing for subdivision where all resulting lots are consistent with the desired character of the locality, and the pattern, size and configuration of existing lots in the locality,*
- b) to provide for subdivision where all resulting lots are capable of providing for the construction of a building that is safe from hazards,*
- c) to provide for subdivision where all resulting lots are capable of providing for buildings that will not unacceptably impact on the natural environment or the amenity of neighbouring properties,*
- d) to provide for subdivision that does not adversely affect the heritage significance of any heritage item or heritage conservation area,*
- e) to provide for subdivision where all resulting lots can be provided with adequate and safe access and services,*
- f) to maintain the existing function and character of rural areas and minimise fragmentation of rural land,*
- g) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

The proposed lot sizes are as follows:

Lot 1: 582.1m² (117.9m² or 16.8% variation)

Lot 2: 693.9m² (6.1m² or 0.8% variation)

2.2. Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of LEP 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.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“*Initial Action*”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

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

This Clause applies to the Clause 4.1 Minimum Lot Size Development Standard.

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

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

The proposed development does not comply with the Minimum Lot Size provision at 4.1 of LEP which specifies a minimum lot size however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) 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.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b).

The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) 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.*

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and states:

Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

This application relates to land zoned R2 low density residential.

Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.1 of LEP from the operation of clause 4.6.

3. Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*

18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47]. Australian Company Number 121 577 768 Alterations and Additions 10 Aiken Avenue, Queenscliff | Page 40*

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard*

for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.1 of PLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.1 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3A of the LEP?

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

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

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

4. Request for variation

4.1. Is clause 4.1 of PLEP a development standard?

We have formed the considered opinion that the clause 4.1 PLEP minimum lot size standard is a development standard to which clause 4.6 PLEP applies.

4.2. Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council [2007] NSWLEC 827*.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Minimum Lot Size Standard and Objectives

Pursuant to Clause 4.1 LEP the minimum subdivision lot size is 700m². The objectives of this clause are:

- a) *to protect residential character and amenity by providing for subdivision where all resulting lots are consistent with the desired character of the locality, and the pattern, size and configuration of existing lots in the locality,*

Comment: The proposed lot size and pattern are consistent with the existing development along Kevin Avenue. There are several examples of existing lots that are below the minimum lot size prescribed in the LEP, as demonstrated in the table over page. We note that these lot sizes were also confirmed in the SoEE prepared by Vaughan Milligan Development Consulting in support a development application proposing a similar subdivision at No. 27 Kevin Avenue (DA2018/1066).

Address	Lot size
16A Kevin Avenue	477.0m ²
16B Kevin Avenue	449.9m ²
19A Kevin Avenue	424.6m ²
19B Kevin Avenue	502.6m ²
43 Kevin Avenue	556.2m ²
45 Kevin Avenue	561.6m ²
47 Kevin Avenue	561.6m ²
49 Kevin Avenue	556.1m ²
50 Kevin Avenue	464.1m ²
51 Kevin Avenue	556.2m ²
52 Kevin Avenue	464.2m ²
53 Kevin Avenue	556.2m ²
55 Kevin Avenue	556.3m ²
55 Kevin Avenue	556.3m ²
57 Kevin Avenue	556.3m ²
58 Kevin Avenue	514.4m ²
59 Kevin Avenue	556.4m ²
60 Kevin Avenue	474.7m ²
61 Kevin Avenue	556.5m ²
62 Kevin Avenue	474.2m ²
63 Kevin Avenue	612.6m ²
64 Kevin Avenue	473.7m ²
66 Kevin Avenue	473.2m ²
68 Kevin Avenue	470.6m ²
72 Kevin Avenue	465.8m ²
76 Kevin Avenue	465.5m ²
78 Kevin Avenue	465.0m ²
80 Kevin Avenue	449.9m ²

With the lot sizes shown above, the proposed subdivision would not be seen as inconsistent with the existing size, pattern and configuration in the Avalon locality.

- b) to provide for subdivision where all resulting lots are capable of providing for the construction of a building that is safe from hazards,*

Comment: No known hazards are identified on the site.

- c) to provide for subdivision where all resulting lots are capable of providing for buildings that will not unacceptably impact on the natural environment or the amenity of neighbouring properties,*

Comment: The proposal will maintain the existing dwelling at the rear of the site and will be part of lot 2. The front lot will be able to house a dwelling that can be compatible with the relevant planning controls and set within a landscaped setting

Some trees are proposed to be removed with the majority to be retained. 2 trees will be replanted on the road reserve. The impact to the natural environment will be minimal.

- d) *to provide for subdivision that does not adversely affect the heritage significance of any heritage item or heritage conservation area,*

Comment: N/A

- e) *to provide for subdivision where all resulting lots can be provided with adequate and safe access and services,*

Comment: The proposed carriageway will be adequate and safe access to each lot with essential services proposed being located under the carriageway.

- f) *to maintain the existing function and character of rural areas and minimise fragmentation of rural land,*

Comment: N/A

- g) *to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.*

Comment: The existing dwelling will be maintained to lot 2. Lot 1 will be able to accommodate a dwelling that is of high amenity consistent with the planning controls as they reasonably apply.

Having regard to the above, the non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with Zone Objectives

The site is zoned R2 Low Density Residential pursuant to the provisions of the Pittwater LEP. The objectives of the clause are as follows:

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

Comment: The development will maintain the existing dwelling on the site and provide additional housing stock within a low density residential setting.

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

Comment: N/A

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

Comment: The residential land use will be maintained.

The proposed works are permissible and consistent with the stated objectives of the zone. The non-compliant component of the development, as it relates to minimum lot size, demonstrates consistency with objectives of the R2 Low Density Residential zone and the minimum lot size standard objectives. Adopting the first option in *Wehbe* strict compliance with the Minimum Lot Size standard has been demonstrated to be unreasonable and unnecessary.

4.3. Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

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

24. The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the

development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds exist to justify the Minimum Lot Size variation namely the existing size and pattern of subdivision within the local area.

In this regard, I consider the proposal to be of suitable merit and consistent with the low density R2 zone and the desired future character of the Avalon locality.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).

It is noted that in Initial Action, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

There are sufficient environmental planning grounds to justify contravening the development standard.

4.4. Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.1 PLEP and the objectives of the R2 Low Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.5. Secretary’s concurrence

By Planning Circular dated 21st February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings.
- Variations exceeding 10%; and
- Variations to non-numerical development standards. The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determinations are subject to, compared with decisions made under

delegation by Council staff. Concurrence of the Secretary can therefore be assumed in this case.

The proposed variation is greater than 10% and will require the LPP to be the consent authority to have concurrence assumed.

5. Conclusion

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

- a) that the contextually responsive development is consistent with the zone objectives, and
- b) that the contextually responsive development is consistent with the objectives of the Minimum Subdivision Lot Size standard, and
- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- d) that having regard to (a), (b) and (c) above that compliance with the building minimum subdivision lot size standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the developments ability to comply with the zone and Minimum Lot Size standard objectives that approval would not be antipathetic to the public interest, and
- f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and
- g) Concurrence of the Secretary can be assumed in this case.

Pursuant to clause 4.6(4)(a), the consent authority can be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

Boston Blyth Fleming - Town Planners

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As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a Minimum Subdivision Lot Size variation in this instance.



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

ITEM 3.2	DA2020/0744 - 635 WARRINGAH ROAD FORESTVILLE - DEMOLITION WORKS AND CONSTRUCTION OF A BOARDING HOUSE WITH NEW SHARED ACCESSWAY
AUTHORISING MANAGER	STEVE FINDLAY
TRIM FILE REF	2020/683546
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan 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, **refuses** Application No. DA2020/0744 for demolition works and construction of a Boarding House with new shared accessway at Lot 1 DP 28219, 635 Warringah Road, Forestville for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0744
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Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 1 DP 28219, 635 Warringah Road FORESTVILLE NSW 2087
Proposed Development:	Demolition works and construction of a Boarding House with new shared accessway
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under SEPP (Affordable Rental Housing) 2009
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Ramin Rohani
Applicant:	Rohani Investments Pty Ltd

Application Lodged:	06/07/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	17/07/2020 to 07/08/2020
Advertised:	17/07/2020
Submissions Received:	10
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 1,436,000.00
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Executive Summary

Northern Beaches Council is in receipt of a Development application (DA2020/0744) for Demolition works and the construction of a new boarding house consisting of 12 Boarding Rooms, one (1) managers room and a new shared access driveway with 633 Warringah Road, Forestville.

Of relevance to the assessment of this application is the development application DA2020/0745 which has concurrently been submitted at the adjoining site 633 Warringah Road, Forestville for the construction of a new boarding house consisting of 12 boarding rooms, one (1) managers room and shared access driveway which services both developments.

Clause 30AA of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP

DA2020/0744



ARH) requires Council to be satisfied that the boarding house has no more than 12 boarding rooms when located within the R2 Low Density Residential Zone. Given that the two (2) boarding house developments rely upon a common access driveway which is to be partly constructed under each development application, Council's position is that the two (2) boarding house developments are in effect one (1) boarding house development consisting of 24 boarding rooms. The two proposed buildings rely on one shared car parking area that spans the two lots. Such reliance on shared parking indicates that the proposed development is an overdevelopment of the lots, being that one cannot be developed for 12 boarding rooms, without reliance on the other for compliant parking. This reliance on the shared parking makes the two buildings one development, comprising of a 24-room boarding house in the R2 zone. Any boarding house resulting more than 12 boarding rooms in the R2 Low Density Zone is prohibited development.

Visually, the development presents as one (1) boarding house development consisting of 24 Boarding Rooms as there is no significant opportunity for landscape planting between the developments by virtue of the common access driveway. Therefore, Council's recommendation to the Local Planning Panel as the determining authority is that development consent cannot be granted as the proposal will not result in a boarding house development that does not consist of more than 12 boarding rooms, as required by the SEPP (ARH) 2009.

Clause 30A of the State Environmental Planning Policy (SEPP ARH) requires the consent authority to take into consideration whether the design of the development is compatible with the character of the local area. However, the SEPP does not provide specific controls for assessing whether a proposal is compatible with an existing area. Therefore, this assessment has taken into consideration permissible forms of development within the R2 – Low Density Residential zone and the Planning Principle of the Land and Environment Court (LEC) to determine the compatibility of the development. The character assessment revealed that the development, as proposed, is incompatible and inconsistent with the surrounding character of detached dwellings. The proposal does not respond well to the local planning controls in terms of its impacts on adjoining development

The application is required to be determined by the Local Planning Panel as the application has received ten (10) objections during the public exhibition of the proposed development. The objections are in regards to adverse amenity impacts, local traffic and parking impacts, bulk/scale of the development and compatibility of the development with the character of the local area.

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 refused based on the reasons outlined within this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of demolition of the existing building on the site and construction of a boarding house. Specifically, the proposal consists of:

- Demolition of the existing building on the site and in-ground swimming pool;
- Construction of a Boarding House consisting of 12 rooms, consisting of:

Ground Floor

At grade parking for seven (7) vehicles and three (3) motorcycles

Two (2) accessible boarding house rooms



One managers room
One communal room
Waste storage area
Laundry

First Floor

Ten (10) boarding house rooms
One (1) communal room
External access staircase
Juliette balconies

- A portion of the access driveway to service both the proposed boarding house and the boarding house proposed on the adjoining site 633 Warringah Road.
- Tree removal to facilitate the development.

Figure 1 below is provided to assist in the identification of the proposed buildings within the site and the adjoining development at 633 Warringah Road.

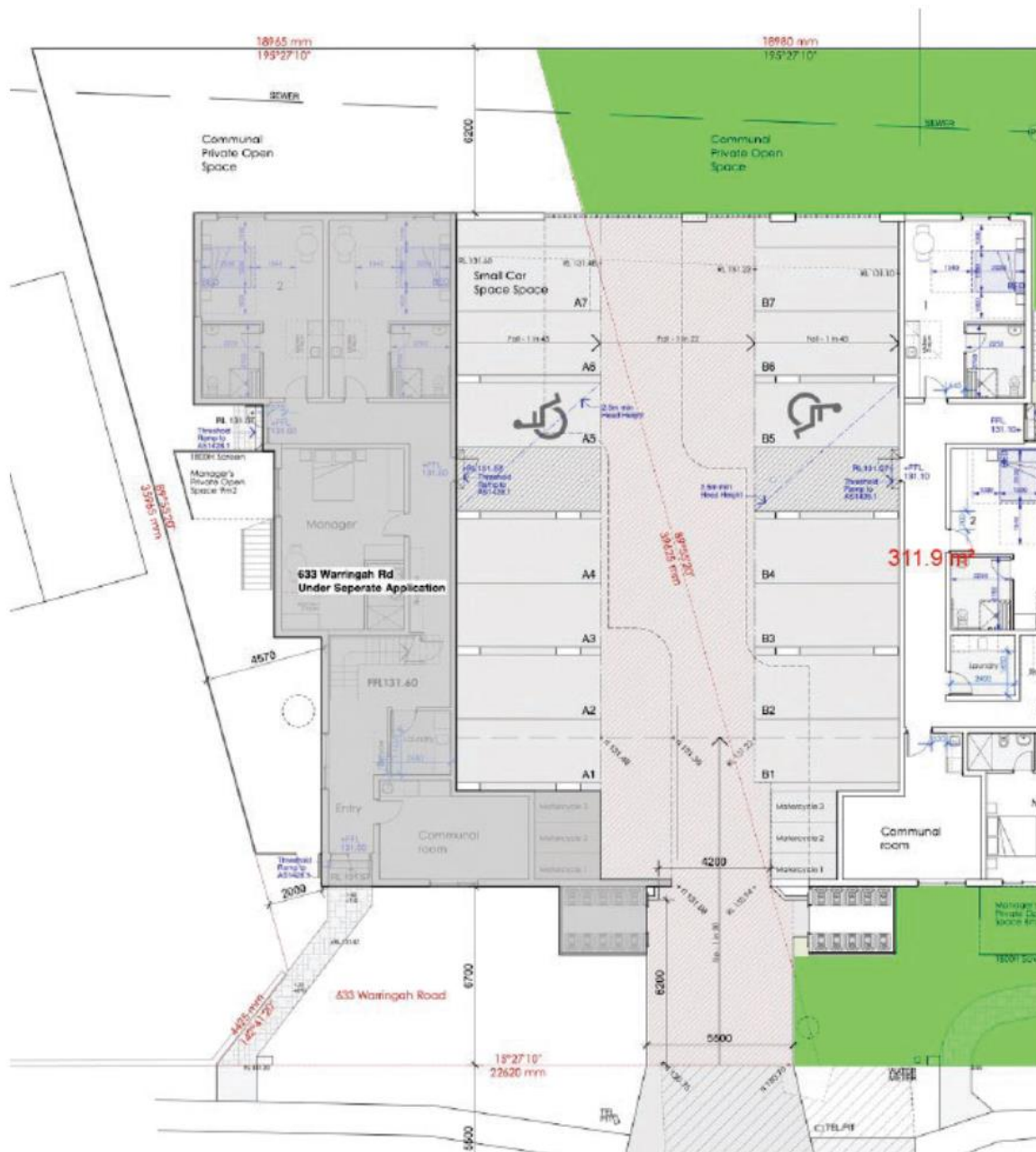


Figure 1 – Proposed building arrangement. (Source: Adapted by the author from A:1003, dated 13 May 2020 and prepared by Macphall & Sproul Architects)

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:

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - C4 Stormwater
 Warringah Development Control Plan - C9 Waste Management
 Warringah Development Control Plan - D3 Noise
 Warringah Development Control Plan - D9 Building Bulk
 Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation

SITE DESCRIPTION

Property Description:	Lot 1 DP 28219 , 635 Warringah Road FORESTVILLE NSW 2087
Detailed Site Description:	<p>The subject site for this development application consists of one (1) allotment located on the eastern side of Warringah Road.</p> <p>The site is irregular in shape with a frontage of 18.98m along Warringah Road and a depth of 39.625m. The site has a surveyed area of 720.8m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a part one and part two storey house which spans across two (2) allotments and has been historically used as a veterinary hospital.</p> <p>The site is relatively level with a slight fall from the rear boundary towards the street.</p> <p>The site has a mixture of medium and tall canopy trees within the site, some of which locally native and some listed as 'exempt' species. There are three trees of 15m-16m in height in the front setback area.</p>

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Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwelling houses of one and two stories. Immediately to the south is a single storey dwelling. Immediately to the north is the remainder of the building which forms the veterinary clinic. Further north of the adjoining site is a two storey dwelling. To the rear of the site (west) are a mixture of single storey and double storey dwellings. Across the road to the east is a single storey and double storey dwelling.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant history:

- DA2014/0963 - Use as the premises as a Veterinary Hospital approved by Warringah Council on 19/12/2014.

Pre-Lodgement Meeting (PLM)

A pre-lodgement meeting was held with the applicant on 31 March 2020 to discuss a proposal for redevelopment of the site and the adjoining development.

DEVELOPMENT APPLICATION HISTORY

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The application was lodged with Council on 6 July 2020. The assessment of the proposal found that the application was deficient and unsupportable for a number of reasons as detailed within this report.

An opportunity was presented to the applicant to withdraw the application by letter dated 15 September 2020 with a view to addressing the specific concerns and preparing the required information and resubmitting a new DA at a later date. The applicant was advised that failure to withdraw the application would result in Council reporting the application based upon the information provided at lodgement.

The applicant advised Council that the application would not be withdrawn.

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	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 Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. As the application is recommended for refusal, no conditions are provided.</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. Council wrote to the applicant advising of the issues relating to the application, however due to the extent of issues relating to permissibility of the development, Council</p>

Section 4.15 Matters for Consideration'	Comments
	<p>did not seek the applicant to provide additional information and the application is to be determined based on the originally submitted documentation.</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 could be dealt with via conditions, however the application is recommended for refusal.</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 could be addressed via a condition of consent, however the application is recommended for refusal.</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). The proposal is capable of complying with the BCA.</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 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 unsuitable for the proposed development. This is discussed in detail later within this report.
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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the State Environmental Planning Policy



Section 4.15 Matters for Consideration'	Comments
	(Affordable Rental Housing) 2009 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

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 17/07/2020 to 07/08/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 10 submission/s from:

Name:	Address:
Mr Grant Geoffrey Gordon	10 Woodside Grove FORESTVILLE NSW 2087
Mr Tom Griffiths	3 Deakin Street FORESTVILLE NSW 2087
Mrs Melissa Sarah Sheather	8 Emperor Place FORESTVILLE NSW 2087
Miss Lisa Nicole Pattison	10 Emperor Place FORESTVILLE NSW 2087
Mrs Sandra Suarez	5 Emperor Place FORESTVILLE NSW 2087
John James McNeill	6 Emperor Place FORESTVILLE NSW 2087
Mr Peter David Sprott	12 Mavor Crescent FRENCHS FOREST NSW 2086
Mrs Sally Jane Clegg	3 Undula Place BELROSE NSW 2085
Hugh Devaux	11 Mavor Crescent FRENCHS FOREST NSW 2086
Ms Michelle Sowter Douglas John Alchin	637 Warringah Road FORESTVILLE NSW 2087

The matters raised within the submissions are addressed as follows:

- The proposal represents over development of the site and is out of character with the surrounding neighbourhood and R2 Low Density Residential Zone.*
Comment:
Council's assessment of the application has found that the proposals reliance on the shared access driveway and parking arrangement of the adjoining proposed 12 room boarding house on 633 Warringah Road results in a total boarding house development consisting of 24 Rooms and is therefore an over development of the site and does not satisfy Clause 30(AA) SEPP (ARH) 2009. As discussed in detail later within this report, the proposal fails to achieve consistency with Clause 30A SEPP (ARH) 2009 - Character of the Area and is therefore not



considered to integrate into the existing landscaped character of the neighbourhood. For this reason, the proposal is considered to be overdevelopment of the site and is recommended for refusal in this regard.

- *The proposal represents excessive bulk and scale, with the facade large and unbroken.*
Comment:
The bulk and scale of the building is not considered to be compatible with the local neighbourhood as discussed under Clause 30A SEPP (ARH) 2009, Clause B9 Building Bulk WDCP 2011 and within the Urban Design Referral Response later in this report. The excessive bulk and scale of the building forms a reason for refusal of the application.
- *There is inadequate transport to service the development.*
Comment:
There are bus stop within 400m of the subject site which provides a regular bus service heading west bound and east boundary along Warringah Road for the boarding house residents. This is compliant with the requirements of the SEPP (ARH) 2009.
- *There is inadequate parking for the proposed development for residents and visitors.*
Comment:
The proposal consists of a compliant number of car parking spaces in accordance with the SEPP (ARH) 2009 and Council cannot use the number of car parking spaces provided as a reason for refusal when the development is compliant with the rate specified within the SEPP (ARH) 2009.
- *There is inadequate kerbside room for rubbish collection.*
Comment:
Council's waste team have reviewed the application and do not have a fundamental issue with the waste collection arrangements for the development including space for kerbside collection. The site has a frontage of 18.9m which is adequate for waste bin presentation to the kerb.
- *Safety concerns regarding the increase of traffic on Emperor Place, the surrounding road network and use of on-street parking at Emperor Place.*
Comment:
Council's Traffic Engineers have reviewed the proposal and submitted traffic report and are satisfied the development would not have an unacceptable impact on the traffic network. As stated above, the proposal consists of a compliant number of car parking spaces in accordance with the SEPP (ARH) 2009.
- *Oversupply and too many boarding houses in Forestville.*
Comment:
There is no provision in the SEPP (ARH) 2009 which limits the supply of boarding houses within a geographical area. This is therefore not considered a reason to refuse the application.
- *Privacy concern regarding balconies and windows on eastern elevation overlooking rear boundary.*
Comment:
The development proposes full height doors leading onto Juliette balconies on the rear (western) elevation. The Juliette balconies are 1m deep by 1.8m wide, a size which would not



facilitate the gathering of multiple people or entertaining and therefore are considered a reasonable attempt to afford additional amenity for the lodgers. Should consent be granted to the development, it is recommended a condition of consent be included that requires all balustrades of the balconies to be solid or obscure glazing to limit direct downward views from inside of the boarding rooms.

- *Privacy concern for upper floor windows of southern elevation overlooking adjoining property. Request screening of windows and staircase.*

Comment:

Should consent be granted to the boarding house, it is recommended that 1.7m height privacy screening be incorporated for the length of the staircase and landing on the southern elevation. The windows proposed for the boarding rooms on the southern elevation are considered reasonable and afford light and ventilation into the boarding rooms. There are no upper floor communal rooms which directly overlook the adjoining properties.

- *Noise impact from proposed development.*

Comment:

The application is accompanied by an acoustic report which addresses noise from mechanical plant and noise from residents of the boarding house. Council's Environmental Health Officer has reviewed the acoustic report and is satisfied that subject to the implementation of the recommendations of the report, the development would not have an unreasonable noise impact. Should consent be granted to the development it is recommended that the requirements of the acoustic report be incorporated in the consent conditions.

- *Unreasonable overshadowing impacts.*

Comment:

The application has demonstrated that the adjoining properties will retain a minimum of 3 hours solar access to 50% of the Private Open Space on 21 June, which is compliant with the Warringah DCP requirements.

- *Security and management concerns. No details of boarding house manager (condition requested).*

Comment:

The application is accompanied by a plan of management and accommodation for a boarding house manager is provided within the development. Should consent be granted to the application, it is recommended that conditions be imposed with regards to the boarding house management as per the submitted plan of management.

- *Request fencing be implemented in accordance with acoustic report recommendations at 2.1m.*

Comment:

Whilst the construction of the acoustic fencing will address the objectors concern, Council is concerned that any fencing above 1.8m will have adverse impacts on the adjoining properties. The applicant has not provided any details in relation to this acoustic fencing, and therefore Council is unable to provide detail assessment in this regard.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objections to proposal, subject to conditions to ensure orderly development and compliance with the National Construction code.
Environmental Health (Industrial)	Environmental Health have considered noise and reviewed the acoustic report and find the recommendations within the report sufficient for noise control.
Landscape Officer	<p>The Arborist's Report and Landscape Plan submitted with the application are noted.</p> <p>The Arborist's Report indicates that eight trees on site are to be removed and one tree on site is to be retained.</p> <p>The tree to be retained Tree 5 located on the Warringah Rd frontage of the site, is rated as Low landscape significance. Tree 5 is an exempt species under WDCP C.9.</p> <p>The landscape plan provided does not incorporate any canopy trees to replace the lost canopy, incorporating only small trees and shrubs. The inclusion of the exempt tree species along the frontage is supported, however, as tree does not require council consent to remove, additional tree planting should be provided across the site frontage.</p> <p>It is noted that the Stormwater plans provided incorporate an above ground detention tank, bounded on four sides by retaining walls. The OSD tank and retaining walls are not indicated on the landscape or architectural plans. Plant selection will need to address elevated water levels and any engineering requirements necessary to enable function of the stormwater system.</p> <p>The landscape plan prepared is not considered adequate to provide for sufficient planting to ameliorate the building bulk and scale, provide privacy to adjoining properties and maintain the streetscape character or provide for amenity of the future residents. An amended landscape plan is required to demonstrate that the proposal will provide dense landscaping to the Warringah Rd frontage and provide for screening to adjoining residents. Canopy trees are to be incorporated into the front and rear yards. Screen planting is to be provided around the bin bays. Any proposed facilities to be provided in the front setback adjacent to the Communal Room, within the Managers Private Open space or rear Communal Open Space such as seats, pergolas, paved areas or barbeques should also be included on the plans.</p> <p>At this stage the proposal is not supported with regard to landscape issues. If amended plans are provided addressing the above, further assessment can be undertaken.</p> <p><u>Comment:</u></p> <p>The issues raised in this referral comments has been included as a reason for refusal.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p>The proposed Stormwater Concept Plan is unsatisfactory. The provision of any Onsite Stormwater Detention (OSD) system shall be in accordance with Council's Warringah OSD Technical Specification. In particular, the following matters are raised with regard to this Specification:</p> <ul style="list-style-type: none"> • <i>Section 4.2. Where the development is other than a single residential dwelling and where the whole site cannot be collected by the OSD system, the full computational method shall be used in the design of the OSD system</i> • <i>Section 4.3, the permissible site discharge shall be restricted to the "state of nature" (0% impervious) condition for all storm durations for the 5-year, 20-year and 100-year ARI storm event.</i> <p><i>The DRAINS model, and plans, elevations and sections of any OSD system are to be submitted with the DA.</i></p> <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> • <i>Stormwater drainage for the development in accordance with clause C4 Stormwater.</i> <p><u>Comment:</u> The issues raised in this referral comments has been included as a reason for refusal.</p>
Strategic and Place Planning (Urban Design)	<p>The proposal was subject to a pre-lodgement which advised of concerns regarding the character, bulk and scale as viewed from a public place and several amenity concerns, all raised in the meeting and provided in the pre-lodgement notes back to the applicant. The proposal at 635 (and by virtue of seeking to take the benefit of a consolidated parking arrangement with the adjacent lot 633) and 633 Warringah Road Forestville is assessed as a development across both sites, given there is no boundary fences between the ground level circulation to both applications, nor setback that would indicate the developments are separate.</p> <p>The legal matter of the consolidation of the parking across both sites for the purposes of optimising parking arrangements to offset the constraints of the two sites' setback requirements will be dealt with by the planners. Additionally the legal matter with regards limit of boarding room numbers will be dealt with by the planners.</p> <p>Of significant concern is compliance with Cl.30A Character of local area of SEPP ARH2009. The development demonstrates no consideration of local character in bulk, scale, form or sense of design intent to fit with the local character and is seen as an overdevelopment of the site(s).</p> <p>The proposed development application(s) are substantially the same as (if not identical to) the proposed development tabled at the pre-lodgement meeting 31 March 2020, with the exception of small</p>

Internal Referral Body	Comments
	<p>outdoor private balconies to the units on the north. As such, for the purposes of brevity the comments remain unchanged. The proposed development cannot be supported.</p> <p>Pre-lodgement Advice-Urban Design Commentary</p> <p><i>The proposed development seeks to utilise the consolidation of lots 633 and 635 Warringah Road Forestville to minimise parking, through the provision of access and car parking for both lots from the one access driveway, each containing 12 boarding rooms.</i></p> <p><i>Urban Design comments focus on the built form, plan arrangement, bulk and scale, amenity, environmental conditions and street interface.</i></p> <p>4.3 Height of Buildings</p> <p><i>The proposed development meets the Height of Buildings control, being 8.5m.</i></p> <p>R2 Low Density Residential</p> <p><i>The proposed development suggests two buildings of 12 boarding rooms each staggered across the two sites, which have a rhomboid shape. By virtue of the geometries of the block(s) the staggering in plan of the built form toward the back of the site has the effect of a perceived mass and built form stretching across the whole site frontage.</i></p> <p><i>The perception of the built form, bulk and scale to the frontage could be further broken down by demonstrating clear breaks in the built form between the two buildings.</i></p> <p><i>It could be suggested if the alternative intent to present the development as two separate titles with 12 boarding rooms on each there would be significant constraints in terms of required setbacks and articulation, building separation and the associated amenity issues with neighbouring buildings, along with parking requirements, landscape open space requirements and private open space, which suggests the intensity of the development would be significantly reduced on each site to a maximum of 6 rooms if on grade parking was to remain on grade.</i></p> <p><i>Similarly, the perceived bulk and scale from the neighbouring side boundaries in the current scheme presents as a long residential flat building. Potential to break this down further by way of deletion of the two (x2) upper level units adjacent the common rooms would also allow for possible indoor-outdoor areas. Breaking down of the form into pavilion style built form on the long axis of each building would address issues of mass, bulk and scale, privacy and better amenity for residents.</i></p> <p><i>The difficulty in addressing this scheme is that we have a scheme proposing consolidation, through common driveway and car parking access, whilst looking to maximise each lot to the maximum limit of 12 boarding rooms thus resulting in 24 boarding rooms.</i></p> <p><i>Further testing of options looking to address some of the bulk and scale issues as a massing exercise in the first instance, and detailed</i></p>

Internal Referral Body	Comments
	<p><i>articulation of the design outcomes will need to address the required controls, whether a consolidated lot or on separate titles.</i></p> <p><u>Comment:</u> The issues raised in this referral comments has been included as a reason for refusal.</p>
Traffic Engineer	<p>The proposed development is for construction of a 12 room Boarding House. The proposed development is relying on a combined vehicle access and car parking area with the proposed Boarding House on the adjacent property at 633 Warringah Road. The parking provision is proposed to be provided in accordance with the SEPP requirements for each boarding house.</p> <p>Traffic Impact: The proposed traffic generation is not considered to have significant adverse impact on the road network and is acceptable.</p> <p>Parking provision: The proposed provision of 7 car parking and 3 motorbike parking spaces satisfies the SEPP requirements. The proposal will require the provision of 3 bicycle spaces.</p> <p>Car parking and driveway design: The proposed combined ingress/egress driveway and integrated car parking area with the adjacent site is subject to the planning consideration and approval. Should the combined arrangement as proposed is acceptable on planning grounds, the following traffic comments will be relevant:</p> <ul style="list-style-type: none"> • The establishment of an appropriate easement on each lot at 633 and 635 Warringah Road through the provision of section 88E instrument in satisfaction of the development engineering / planning requirements. • A swept path analysis is to be provided demonstrating that an egressing vehicles will be able to manoeuvre out of the car park while the passing area is occupied by another vehicle. <p>Conclusion: The proposal can be supported on traffic grounds subject to conditions.</p>
Waste Officer	<p>This proposal does not meet all Council design requirements for waste storage facilities. Specifically:</p> <ul style="list-style-type: none"> • Access to the bin room for service staff is via the vehicular driveway - <i>Unacceptable.</i> • <i>A separate access pathway must be provided.</i> <p><i>It is suggested that the bin room be moved further back from the driveway to allow for the inclusion of a pathway running beside the driveway.</i></p>



Internal Referral Body	Comments
	<p><u>Comment:</u></p> <p>The issues raised in this referral comments has been included as a reason for refusal.</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.
Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 100 Development on proposed classified road)	<p>The proposal was referred to Transport for NSW (TfNSW) as concurrence would be required for the proposed modification of existing kerb and gutter and vehicle crossing along Warringah Road in accordance with Section 138 of the Roads Act, 1993.</p> <p>TfNSW has reviewed the application and provided a response advising that concurrence could be granted under S138 of the Roads Act, 1993, subject to the requirements listed in their response letter.</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 was used as a veterinary clinic since 1968 as a home occupation, and then formally as a veterinary clinic as approved under DA2014/0963. In this regard it is considered that the site poses low risk with regards to contamination, and Council is satisfied the site would be suitable for the proposed residential land use. In the event that the application is recommended for approval, a condition of consent could be included to address any unexpected finds during the construction of the development.

SEPP (Affordable Rental Housing) 2009



State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 3: Boarding houses

Principle Issue with regard to Permissibly - Clause 30AA - Boarding Houses is R2 Low Density Residential

Clause 30AA stipulates that:

A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Council is currently also in receipt of a development application for a 12 room boarding house on the adjoining site 633 Warringah Road. The proposed development across the two sites 633 and 635 Warringah Road appears as one large boarding house, rather than two individual, wholly separate developments. The two proposed buildings rely on one shared car parking area that spans the two lots. Such reliance on shared parking indicates that the proposed development is an overdevelopment of the lots, being that one cannot be developed for 12 boarding rooms, without reliance on the other for compliant parking. This reliance on the shared parking makes the two buildings one development, comprising of a 24-room boarding house in the R2 zone. Any boarding house resulting more than 12 boarding rooms in the R2 Low Density Zone is prohibited development.

Therefore, the proposed development is recommended for refusal due to the above issue regarding to permissibly in the R2 Low Density Residential Zone.

Notwithstanding Council's position that the development is prohibited, the application is assessed against the remaining provisions of the SEPP (ARH) 2009 below.

Clause 25: Definition

For the purposes of this Division, the Standard Instrument defines a 'boarding house' as a building that:

*"(a) is wholly or partly let in lodgings, and
(b) provides lodgers with a principal place of residence for 3 months or more, and
(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".

In this Division 'communal living room' means "a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room".

Clause 26: Land to which this Division applies

Requirement	Comment
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This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	<p>Consistent</p> <p>The site is located within the R2 Low Density Residential Zone and, as such, a Boarding House is permissible with consent under WLEP 2011.</p> <p>See clause 30(AA) with regards to the number of boarding house rooms in the R2 Low Density Residential Zone.</p>

Clause 27: Development to which this Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Comment
(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area. Note: Accessible area means land that is within: (c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.	<p>Consistent</p> <p>The site is located within the R2 Low Density Residential zone and is situated not more than 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</p>
(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.	<p>Not applicable.</p> <p>The site is located within the Sydney region.</p>

Clause 28: Development may be carried out with consent

Requirement	Comment
Development to which this Division applies may be carried out with consent.	The development constitutes the construction of a boarding house, as defined by the Standard Instrument. Therefore, the development may be considered under this Division of the SEPP as development which may be carried out with consent.

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed	Compliant/Comment
(1) Density and scale A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP	Not applicable
	(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP	Not applicable
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus: (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.	A residential flat building is not permissible on the land and therefore this provision does not apply.	Not applicable
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) building height	if the building height of all proposed buildings is	The proposed building does not exceed the	Yes

	not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	maximum 8.5m height limit under the WLEP.	
(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	<p>The proposed landscape treatment of the front setback area is inconsistent with the Warringah Road streetscape which is characterised by large landscaped setbacks.</p> <p>In addition to the above, the overall provision of landscaping proposed is considered to be unsatisfactory and does not provide a suitable landscape setting for the site (refer to Landscape comments below).</p>	No
(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	Two communal rooms are provided. The ground floor communal room has a north-west facing window which will receive three hours between 9am and 3pm.	Yes
(d) private open space	<p>if at least the following private open space areas are provided (other than the front setback area):</p> <p>(i) one area of at least 20m² with a minimum dimension of 3.0m is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m² with a minimum dimension of</p>	<p>There is 120sqm of private open space for the use of the lodgers in the rear setback area achieving 3m dimension.</p> <p>An area of 8sqm achieving 2.5m dimension is provided for the boarding house manager, however this is located in the front setback and inconsistent with the control.</p>	<p>Yes - For lodgers</p> <p>No - For boarding house manager</p>

	2.5m is provided adjacent to that accommodation,		
(e) parking	<p>if:</p> <p>(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p>	<p>Based on 12 rooms, 6 spaces are to be provided.</p> <p>One (1) room for managers accommodation is provided and one (1) space is provided.</p>	Yes
(f) accommodation size	<p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding</p>	<p>All rooms achieve the minimum floor space requirements based excluding those areas used for a private kitchen and bathroom.</p>	Yes

	room intended to be used by a single lodger, or (ii) 16 square metres in any other case.		
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	All rooms have private kitchen and bathroom facilities.	Yes
	(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	The application is generally compliant with the standards in subclause (1) and (2). However, the application is recommended for refusal for other reasons set out within this report.	Yes

Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	Two communal living rooms are provided	Compliant
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m ² ,	Maximum room size proposed is unit 2 at 23.5sqm	Compliant
(c) no boarding room will be occupied by more than 2 adult lodgers,	The rooms proposed are suitable for 2 adult lodgers.	Compliant
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Each room has private kitchen and bathroom facilities	Compliant
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house	The rooms are capable of providing accommodation for 21 lodgers (three single rooms, 9 double rooms). A boarding room is provided for a boarding house	Compliant



manager,	manager on the ground floor.	
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	Not applicable, residential zone.	Not applicable
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	Three bicycle spaces and three motorcycle spaces are required. Three motorcycle spaces are proposed, however no bicycle parking shown on plans.	Motorcycle compliant Bicycle not compliant (however capable of complying)
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	The requirements of subclause (1) apply in this case.	Compliant and applicable

Clause 30AA: Boarding houses in Zone R2 Low Density Residential

A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Comment:

Council is currently also in receipt of a development application for a 12 room boarding house on the adjoining site 633 Warringah Road. The proposed development across the two sites 633 and 635 Warringah Road appears as one large boarding house, rather than two individual, wholly separate developments. The two proposed buildings rely on one shared car parking area that spans the two lots. Such reliance on shared parking indicates that the proposed development is an overdevelopment of the lots, being that one cannot be developed for 12 boarding rooms, without reliance on the other for compliant parking. This reliance on the shared parking makes the two buildings one development, comprising of a 24-room boarding house in the R2 zone. Any boarding house resulting more than 12 boarding rooms in the R2 Low Density Zone is prohibited development.

Therefore, the proposed development is recommended for refusal due to the above issue regarding to permissibility in the R2 Low Density Residential Zone.

Clause 30A: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 Senior Commissioner Roseth developed the following Planning Principles:



- *The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.*

Comment:

The immediate context consists of a two storey dwelling to the north and a single storey dwelling south of the subject site. Therefore, two storey development is not inconsistent with the surrounding development in the vicinity of the site. However, the two storey dwellings in the vicinity of the site have a generous landscaped setback to Warringah Road and are of noticeably lesser bulk and scale when compared to the proposed development. The proposed development consists of a entirely two storey building across the site, maximizing the area available within the allowable front and rear building setbacks under the DCP. The expanse of built form across the site is not reflective of the bulk and scale of the detached residential dwellings in the immediate vicinity of the site.

In addition, detailed comments are provided by Council's Urban Design officer who has raised concern with the building bulk, mass and scale which are relevant to the assessment against the first principle.

In this regard, it is considered that the scale of the development is incompatible with the streetscape and inconsistent with the first principle.

- *The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

Comment:

As noted previously in this assessment report, there is a separate application for a boarding house on the immediately adjoining site 633 Warringah Road which shares a common driveway and parking arrangements with the proposed development. Although the two buildings upon 633 and 635 Warringah Road are detached, there is no opportunity for landscape planting between the two buildings to separate the built form and soften the development both from the street, the rear and internally due to the shared common driveway and parking arrangement. The inability to provide landscape planting between the buildings results in the proposal reading as one medium density development which is inconsistent with other developments within the immediate vicinity of the site which consist of detached dwellings with generous landscaped buffers between each building.

In this regard, the development is considered to be incompatible with the scale of surrounding development and inconsistent with the second principle.

- *The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*

Comment:

The site is relatively level and does not have any significant topographical or geological features which



should be retained to assist in reducing the visual dominance of the development. However, the immediate area is characterised by generous landscaped setbacks which provide opportunity for meaningful planting, including medium and tall canopy trees, to soften the built form as viewed from the street, the rear and between buildings. As the proposed development includes a central driveway to be shared with the boarding house on the adjoining land, there is not opportunity for landscape planting between the two buildings to reflect the predominant landscaped characteristics of the area.

In this regard, it is not considered that effective methods have been employed in the design of the development to reduce its visual dominance and is inconsistent with the third principle.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

Comment:

The predominant materials used for the surrounding dwellings is a mixture of brick and timber cladding, with tiled and colourbond roofs. There is no particular distinct materials in the immediate vicinity which must be reflected or replicated in this scenario. The proposal provides a fairly conservative scheme with regards to colours and materiality, with face brickwork and colourbond roofing, along with some timber highlights and metal cladding highlights.

The lack of variation in building materials particularly along the southern elevation attributes to excessive visual bulk and scale of the building. Although the materials and colours used are generally consistent with the surrounding dwellings, the proposal lacks visual interest by use of varied building materials throughout to mitigate bulk and scale.

In this regard, the development is considered to be generally consistent with the fourth principle with regards to materials, however this material choice does not assist in mitigating visual bulk and scale.

The above principles were further developed in *Project Venture Developments v Pittwater Council* (2005) NSWLEC 191 to include the following:

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

Comment:

The physical impacts of the development on surrounding properties are assessed as consisting of constraints on the development potential of surrounding sites, privacy, overshadowing and noise.

Constraints on the development potential of surrounding sites

The proposal does not have any significant impact upon the development potential of surrounding sites.

However, the development is reliant upon a shared common driveway with the adjoining site for which another boarding house is proposed. The reliance upon the shared driveway arrangement provides certain benefits to the proposed development that would not otherwise be achieved should the site be developed without a shared access way.

Privacy



The proposal is not considered to have an unreasonable impact with regards to visual privacy.

Overshadowing

The application has demonstrated the adjoining residential properties will retain solar access in accordance with the Warringah DCP provisions.

Noise

The application is accompanied by an acoustic report which addresses noise from mechanical plant and noise generating activities from the lodgers. Based on the recommendations of the acoustic report Council is satisfied there will not be unreasonable noise impacts.

Conclusion to character assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is incompatible with the character of the local area and surrounding wider locality.

This matter warrants the refusal of the Development Application.

Conclusion

The proposed development is recommended for refusal as Council is not satisfied in accordance with Clause 30 (AA) SEPP (ARH) 2009 that the development, in conjunction with the proposed boarding house on the adjoining site, constitutes a boarding house consisting of 12 boarding rooms due to the reliance upon shared access arrangements and the two proposals reading as one boarding house development across two sites. The proposal is also recommended for refusal as Council is not satisfied that the development is compatible with the character of the local area as required by Clause 30A of SEPP (ARH) 2009.

SEPP (Building Sustainability Index: BASIX) 2004

The proposal, being a boarding house is not subject to SEPP BASIX, but is required to conform to Section J of the Building Code of Australia to demonstrate energy efficiency. A Section J BCA Report application demonstrating compliance.

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.

Clause 102 - Residential Development Adjacent to a road corridor

Clause 102 of SEPP (Infrastructure) 2007 requires the consent authority to not grant development consent for the purpose of Residential Accommodation unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time

The application is accompanied by an acoustic report (prepared by Blackett Acoustics, dated May 2020) which makes recommendations to ensure the above noise levels are achieved.

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

Clause 106 - Traffic generating development

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

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

The development consists of 24 boarding rooms and proposes a new crossover onto the access to Warringah Road, a classified road (Arterial Road).

The application was referred to the Transport for NSW (TfNSW) for comment. The TfNSW has provided their response which raises no objection to the proposed development, subject to conditions.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes

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zone objectives of the LEP?	No
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Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.6m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

6.4 Development on sloping land

The land is identified within the Landslip Area A under the WLEP 2011. Based on the limited extent of excavation the applicant is not required to submit a preliminary site assessment. The proposal is compliant with this clause.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.1m (South)	N/A	Yes
B3 Side Boundary Envelope	4m	Within	N/A	Yes
	4m	Within	N/A	Yes
B5 Side Boundary Setbacks	0.9m	2m (South)	N/A	Yes
	0.9m	1.5m - Building (North) 0m - Driveway	N/A 100%	Yes No
B7 Front Boundary Setbacks	6.5m	6.7m	N/A	Yes
B9 Rear Boundary Setbacks	6m	6.2m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (Min 2m dimensions)	43% (312sqm)	N/A	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

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Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	No
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	No	No
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	No
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	No	No
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The building is proposed to be setback a minimum 1.5m to the northern boundary, however the access

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driveway sits at a zero setback to the northern boundary and will continue to form part of the proposed access driveway on the adjoining site 633 Warringah Road. The driveway forms part of the footprint of the development and is therefore considered to be non-compliant with the side boundary setback.

The control also requires that side setbacks are increased progressively as the wall height increases. The building along the southern boundary, although compliant with the numerical control, does not step in the wall height of the building to provide an appropriate response with regards to bulk and scale. This is important given the scale of the building and extent of the wall facing the southern boundary.

Merit consideration

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

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

Comment:

There is no opportunity for deep soil planting along the northern side of the building. The proposal does not achieve this objective.

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

Comment:

There is no opportunity for deep soil planting along the northern boundary which would assist in reducing the visual dominance of the development as viewed from the street and surrounding properties. The walls of the development are not progressively stepped (as required by the control) as the wall height increases to reduce the visual dominance of the development. The proposal does not achieve this objective.

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

Comment:

Similar to above, there is no opportunity for deep soil planting along the northern boundary which would assist in reducing the visual dominance of the development as viewed from the street and surrounding properties. The walls of the development are not progressively stepped (as required by the control) as the wall height increases to reduce the visual dominance of the development. The proposed development and the adjoining proposed boarding house development on 633 Warringah Road will read as one medium density development with a continuous development footprint across the site. The proposal does not achieve this objective.

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

Comment:

The proposed development is capable of achieving a reasonable outcome with regards to visual privacy, solar access and amenity. The proposal is capable of achieving this objective, however is recommended for refusal for other reasons as outlined in this report.



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

Comment:

There will be no unreasonable view impact as a result of the development. Consistent with objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C4 Stormwater

Council's Development Engineers have reviewed the submitted stormwater concept plan and notes there is insufficient detail on the plan to address Clause C4 Stormwater WDCP 2011. The detailed comments are provided earlier within this report. The applicant has indicated that this issue is capable of being address by way of amended plans, however, due to the fundamental issues with non-compliance with the SEPP(ARH) 2009, Council has not requested the applicant provide updated plans regarding stormwater management to address the issue.

C9 Waste Management

Council's Waste officer has reviewed the application and raised issue with the waste storage arrangement for the site. The waste storage area requires a separate pathway to the street frontage and the driveway is not to be used for the movement of waste bins between the waste storage area and the street.

This issue could be resolved subject to amended plans, however, is included in a reason for refusal as the current proposal does not comply with Council's policy. See detailed comments from Council's Waste officer earlier in this report.

D3 Noise

An acoustic report has been submitted with the application which addresses noise from mechanical plant (air conditioning units) and noise emissions of the boarding house outdoor areas to surrounding dwellings.

Council's environmental health officers have reviewed the context of the acoustic report and have raised no concern regarding noise impacts based on the recommendations of the acoustic report.

D9 Building Bulk

Clause D9 requires side and rear boundary setbacks of new developments to be progressively increased as wall height increases. As detailed above, the design of the development contains little articulation or stepping of facades and inadequate building separation.

In addition to there being no increase in setbacks as the wall height increases, the building provides little variation in regards to materiality, particularly as viewed from the southern elevation. The large continuous sections wall consisting of only face brickwork results in visual bulk and scale that is not consistent with the surrounding development.



This issue relates to Clause 30A of SEPPARH in that the design of the development results in unreasonable bulk and scale, which is inconsistent with the character of the local area.

E1 Preservation of Trees or Bushland Vegetation

Council's Landscape Officer has undertaken a review of the proposed tree removal and replacement planting scheme for the site. Detailed comments from Council's landscape officer are earlier within this report.

The landscape plan presented with the application is unsatisfactory with regard to the replacement of canopy trees to compensate for the proposed tree removal on the site. The applicant has noted this can be addressed by way of an amended plan, however given the fundamental issues with non-compliance with the SEPP (ARH) 2009 Council has not requested an amended plan be provided.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

The application has been lodged pursuant to the State Policy for affordable housing (SEPP (ARH) 2009). The assessment against the requirements of the SEPP has concluded that the proposed development fails to comply with Clause 30AA in terms of number of rooms. The character and built



form of the combined development (being the subject site and the adjoining development at No. 633 Warringah Road) does not provide an appropriate contextual fit to the surrounding low density residential character. The proposal is significantly at odds with the established local pattern, and presents as a medium density development resembling a residential flat building. This combined with inadequate building articulation, inadequate physical separation between the proposed buildings, inadequate side setbacks and insufficient landscape treatment to offset the bulk and scale of the building renders the proposal unsatisfactory in its setting and at odds with the prevailing character.

Accordingly, the design of the proposed development is not considered to satisfy the requirement of Clause 30A.

The assessment of the proposed development against the provisions of the WDCP 2011 has found that the proposal is not consistent with number of sections which translate to adverse amenity, character and visual/streetscape impacts.

The development attracted 10 individual submissions. The majority of the submissions raised concerns with regards to the density and scale, impact on the amenity of adjoining properties in terms of overshadowing, visual/acoustic privacy and visual impact. The issues raised in the submissions are generally concurred with and have been addressed in the "Public Notification Section" of this report.

Based on the assessment contained in this report, it is recommended that the Northern Beaches Local Planning Panel (LPP) refuse the application for the reasons detailed within the recommendation attached to this report.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.



RECOMMENDATION

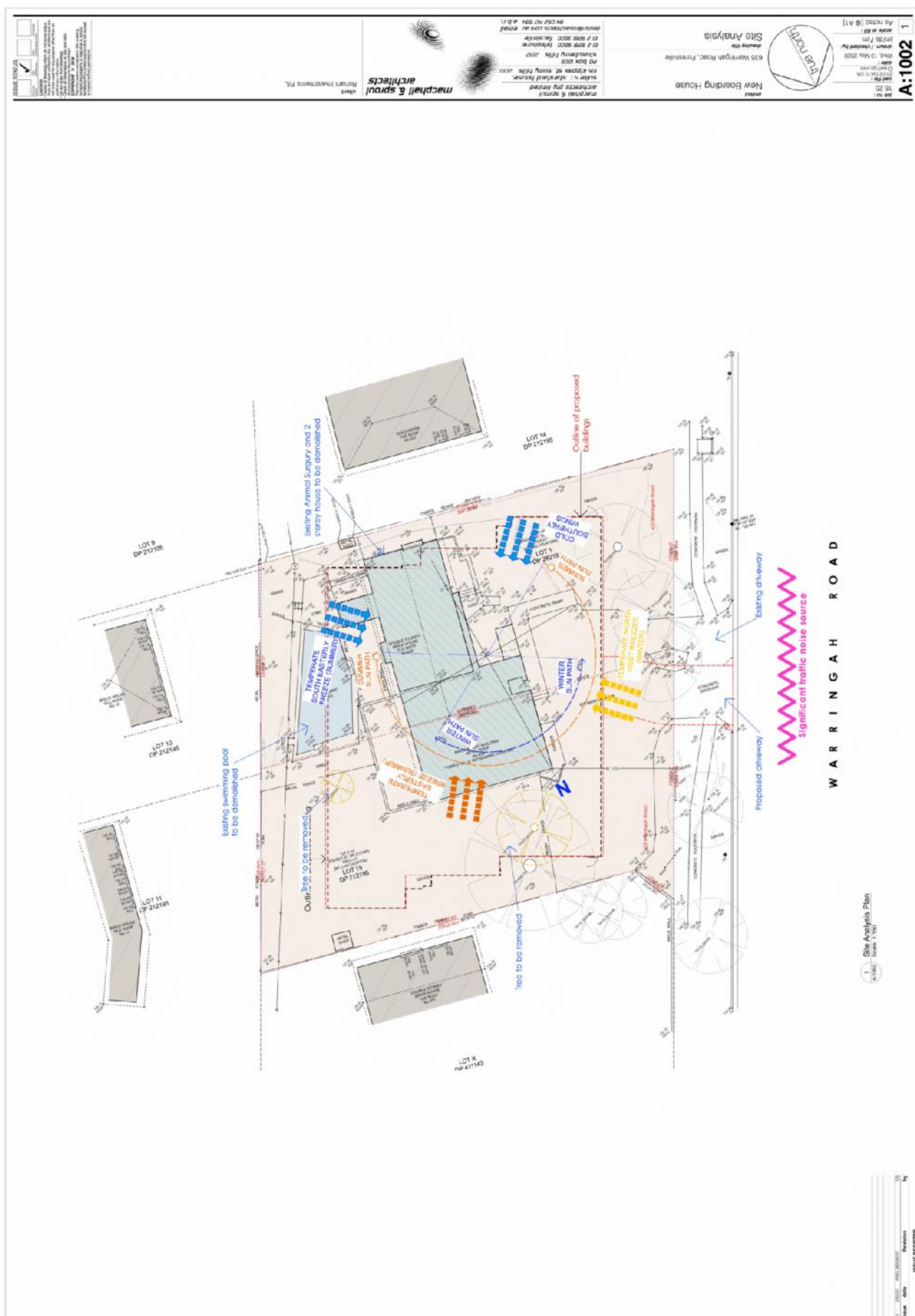
THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/0744 for the Demolition works and construction of a Boarding House with new shared accessway on land at Lot 1 DP 28219,635 Warringah Road, FORESTVILLE, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009. Specifically, Council is not satisfied that the proposal will result in a boarding house development consisting of not more than 12 rooms as required by Clause 30AA by virtue of the shared common access driveway with the adjoining proposed boarding house development.

Council is not satisfied that the development is compatible with the character of the local area as required by Clause 30A due to the excessive building bulk and lack of landscaping around the development footprint.

Council is not satisfied that the landscape treatment of the front setback area is compatible with the surrounding streetscape along Warringah Road as required to be considered under Clause 29(2).

2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5 Side Boundary Setbacks of the Warringah Development Control Plan.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4 Stormwater of the Warringah Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C9 Waste Management of the Warringah Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause E1 Private Property Tree Management of the Warringah Development Control Plan.
7. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.





ITEM 3.3	DA2020/0745 - 633 WARRINGAH ROAD FORESTVILLE - DEMOLITION WORKS AND CONSTRUCTION OF A BOARDING HOUSE WITH NEW SHARED ACCESSWAY
AUTHORISING MANAGER	STEVE FINDLAY
TRIM FILE REF	2020/683557
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan 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, **refuses** Application No. DA2020/0745 for demolition works and construction of a Boarding House with new shared accessway at Lot 15 DP 212195, 633 Warringah Road, Forestville for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0745
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Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 15 DP 212195, 633 Warringah Road FORESTVILLE NSW 2087
Proposed Development:	Demolition works and construction of a Boarding House with new shared accessway
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under SEPP (Affordable Rental Housing) 2009
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Ramin Rohani
Applicant:	Rohani Investments Pty Ltd

Application Lodged:	07/07/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	17/07/2020 to 07/08/2020
Advertised:	17/07/2020
Submissions Received:	12
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 1,436,000.00
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Executive Summary

Northern Beaches Council is in receipt of a Development application (DA2020/0745) for Demolition works and the construction of a new boarding house consisting of 12 Boarding Rooms, one (1) managers room and a new shared access driveway at 633 Warringah Road, Forestville.

Of relevance to the assessment of this application is the development application DA2020/0744 which has concurrently been submitted to Northern Beaches Council at the adjoining site 635 Warringah Road, Forestville for the construction of a new boarding house consisting of 12 boarding rooms, one (1) managers room and the remainder of the shared access driveway which services both developments.

DA2020/0745



Clause 30AA of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) requires Council to be satisfied that the boarding house has no more than 12 boarding rooms when located within the R2 Low Density Residential Zone. Given that the two (2) boarding house developments rely upon a common access driveway which is to be partly constructed under each development application, Council's position is that the two (2) boarding house developments are in effect one (1) boarding house development consisting of 24 Boarding Rooms. Visually, the development is considered to present as one (1) boarding house development consisting of 24 Boarding Rooms as there is no opportunity for landscape planting between the developments by virtue of the common access driveway. Clause 30AA of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) requires Council to be satisfied that the boarding house has no more than 12 boarding rooms when located within the R2 Low Density Residential Zone. Given that the two (2) boarding house developments rely upon a common access driveway which is to be partly constructed under each development application, Council's position is that the two (2) boarding house developments are in effect one (1) boarding house development consisting of 24 Boarding Rooms. Therefore, Council's recommendation to the Local Planning Panel as the determining authority is that development consent cannot be granted as the proposal will not result in a boarding house development that does not consist of more than 12 boarding rooms, as required by the SEPP (ARH) 2009.

The two proposed buildings rely on one shared car parking area that spans the two lots. Such reliance on shared parking indicates that the proposed development is an overdevelopment of the lots, being that one cannot be developed for 12 boarding rooms, without reliance on the other for compliant parking. This reliance on the shared parking makes the two buildings one development, comprising of a 24-room boarding house in the R2 zone. Any boarding house resulting more than 12 boarding rooms in the R2 Low Density Zone is prohibited development.

This report undertakes an assessment of the proposed development against the Character of the Local Area as required by Clause 30A of SEPP (ARH) 2009. Council's assessment has found that the development will present as a medium density development, with limited opportunity for central landscape planting and a bulk and scale that is at odds with the local character of the area. Therefore, Council's recommendation to the Local Planning Panel as the determining authority is that consent shall not be granted to the proposed development as the design is not compatible with the character of the local area.

The application is required to be determined by the Local Planning Panel as the application has received twelve (12) objections during the public exhibition of the proposed development. The objections are in regards to adverse amenity impacts, local traffic and parking impacts, bulk/scale of the development and compatibility of the development with the character of the local area.

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 refused based on the reasons outlined within this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of demolition of the existing building on the site and construction of a boarding house. Specifically, the proposal consists of:

- Demolition of the existing building on the site.



- Construction of a Boarding House consisting of 12 rooms, consisting of:

Ground Floor

At grade parking for seven (7) vehicles and three (3) motorcycles

Two (2) accessible boarding house rooms

One managers room

One communal room

Waste storage area

Laundry

First Floor

Ten (10) boarding house rooms

One (1) communal room

External access staircase

Juliette balconies

- A portion of the access driveway to service both the proposed boarding house and the boarding house proposed on the adjoining site 635 Warringah Road.
- Tree removal to facilitate the development.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land

Warringah Development Control Plan - B5 Side Boundary Setbacks

Warringah Development Control Plan - C4 Stormwater

Warringah Development Control Plan - C9 Waste Management

Warringah Development Control Plan - D3 Noise

Warringah Development Control Plan - D9 Building Bulk

Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation



SITE DESCRIPTION

Property Description:	Lot 15 DP 212195 , 633 Warringah Road FORESTVILLE NSW 2087
Detailed Site Description:	<p>The subject site for this development application consists of one (1) allotment located on the eastern side of Warringah Road.</p> <p>The site is irregular in shape with a frontage of 22.8m along Warringah Road and a depth of 39.625m. The site has a surveyed area of 727.2m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a part one and part two storey house which spans across two (2) allotments and has been historically used as a veterinary hospital.</p> <p>The site is relatively level with a slight fall from the rear boundary towards the street.</p> <p>The site has a mixture of medium and tall canopy trees within the site, some of which locally native and some listed as 'exempt' species. There are two trees of 7m and 17m in height in the front setback area. A tree existing on the Council road reserve at the site frontage 6m in height.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwelling houses of one and two stories. Immediately to the north is a two storey dwelling. Immediately to the south is the remainder of the building which forms the veterinary clinic. To the rear of the site (west) are a mixture of single storey and double storey dwellings. Across the road to the east is a single storey and double storey dwelling.</p>

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant history:

- DA2014/0963 - Use as the premises as a Veterinary Hospital approved by Warringah Council on 19/12/2014.

Pre-Lodgement Meeting (PLM)

A pre-lodgement meeting was held with the applicant on 31 March 2020 to discuss a proposal for redevelopment of the site and the adjoining development.

DEVELOPMENT APPLICATION HISTORY

The application was lodged with Council on 6 July 2020. The assessment of the proposal found that the application was deficient and unsupportable for a number of reasons as detailed within this report.

An opportunity was presented to the applicant to withdraw the application by letter dated 15 September 2020 with a view to addressing the specific concerns and preparing the required information and resubmitting a new DA at a later date. The applicant was advised that failure to withdraw the application would result in Council reporting the application based upon the information provided at lodgement.

The applicant advised Council that the application would not be withdrawn.

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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	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 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. As the application is recommended for refusal, no conditions are provided.</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. Council wrote to the applicant advising of the issues relating to the application, however due to the extent of issues regarding permissibility of the development, Council did not seek the applicant to provide additional information and the applicant is to be determined based on the originally submitted documentation.</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 could be dealt with via a condition, however the application is recommended for refusal.</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>

Section 4.15 Matters for Consideration'	Comments
	<p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter could be dealt with via a condition, however the application is recommended for refusal.</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). The proposal is capable of complying with the Building Code of Australia.</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 Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will 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 unsuitable for the proposed development. This is discussed in further detail later within this report.
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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

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 17/07/2020 to 07/08/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 12 submission/s from:

Name:	Address:
Mr Tom Griffiths	3 Deakin Street FORESTVILLE NSW 2087
Dorota McNeill	6 Emperor Place FORESTVILLE NSW 2087
Mrs Melissa Sarah Sheather	8 Emperor Place FORESTVILLE NSW 2087
Miss Lisa Nicole Pattison	10 Emperor Place FORESTVILLE NSW 2087
Mrs Sandra Suarez	5 Emperor Place FORESTVILLE NSW 2087
Mr R Ananth Asirvadam	631 Warringah Road FORESTVILLE NSW 2087
Mr Martin Rogers	4 Emperor Place FORESTVILLE NSW 2087
Ruth Lesley Rogers	4 Emperor Place FORESTVILLE NSW 2087
John James McNeill	6 Emperor Place FORESTVILLE NSW 2087
Mrs Sally Jane Clegg	3 Undula Place BELROSE NSW 2085
Mr Andrew Roderick Larcombe Heap	1 Emperor Place FORESTVILLE NSW 2087
Hugh Devaux	11 Mavor Crescent FRENCHS FOREST NSW 2086

The matters raised within the submissions are addressed as follows:

- The proposal represents over development of the site and is out of character with the surrounding neighbourhood and R2 Low Density Residential Zone.*

Comment:
Council's assessment of the application has found that the proposal reliance on the shared access driveway and parking arrangement of the adjoining proposed 12 room boarding house on 633 Warringah Road results in a total boarding house development consisting of 24 Rooms and is therefore an over development of the site and does not satisfy Clause 30(AA) SEPP (ARH) 2009. As discussed in detail later within this report, the proposal fails to achieve Clause 30A SEPP (ARH) 2009 - Character of the Area is therefore not considered to integrate into the existing landscaped character of the neighbourhood. For this reason, the proposal is considered to be overdevelopment of the site and is recommended for refusal in this regard.
- The proposal represents excessive bulk and scale, with the facade large and unbroken.*

Comment:
The bulk and scale of the building is not considered to be compatible with the local neighbourhood as discussed under Clause 30A SEPP (ARH) 2009, Clause B9 Building Bulk WDCP 2011 and within the Urban Design Referral Response later in this report. The excessive bulk and scale of the building forms a reason for refusal of the application.
- There is inadequate transport to service the development.*

Comment:



There are bus stop within 400m of the subject site which provides a regular bus service heading west bound and east boundary along Warringah Road for the boarding house residents. This is compliant with the requirements of the SEPP (ARH) 2009.

- *There is inadequate parking for the proposed development for residents and visitors.*
Comment:
The proposal consists of a compliant number of car parking spaces in accordance with the SEPP (ARH) 2009 and Council cannot use the number of car parking spaces provided as a reason for refusal when the development is compliant with the rate specified within the SEPP (ARH) 2009.
- *There is inadequate kerbside room for rubbish collection.*
Comment:
Council's waste team have reviewed the application and do not have a fundamental issue with the waste collection arrangements for the development including space for kerbside collection. The site has a frontage of 18.9m which is adequate for waste bin presentation to the kerb.
- *Safety concerns regarding the increase of traffic on Emperor Place, the surrounding road network and use of on-street parking at Emperor Place.*
Comment:
Council's traffic engineers have reviewed the proposal and submitted traffic report and are satisfied the development would not have an unacceptable impact on the traffic network. As stated above, the proposal consists of a compliant number of car parking spaces in accordance with the SEPP (ARH) 2009.
- *Oversupply and too many boarding houses in Forrestville.*
Comment:
There is no provision in the SEPP (ARH) 2009 which limits the supply of boarding houses within a geographical area. This is therefore not considered a reason to refuse the application.
- *Privacy concern regarding balconies and windows on eastern elevation overlooking rear boundary.*
Comment:
The development proposes full height doors leading onto a Juliette balcony on the rear (western) elevation. The Juliette balconies at 1m deep by 1.8m wide, a size which would not facilitate the gathering of multiple people or entertaining and therefore are considered a reasonable attempt to afford additional amenity for the lodgers. Should consent be granted to the development, it is recommended a condition of consent be included the requires all balustrades of the balconies to be solid to limit direct downward views from inside of the boarding rooms.
- *Privacy concern for upper floor windows of northern elevation overlooking adjoining property. Request screening of windows and staircase.*
Comment:
Should consent be granted to the boarding house, it is recommended that 1.7m height privacy screening be incorporated for the length of the staircase and landing on the northern elevation. The windows proposed for the boarding rooms on the northern elevation are considered reasonable and afford light and ventilation into the boarding rooms. There are no upper floor



communal rooms which directly overlook the adjoining properties.

- Noise impact from proposed development.*
Comment:
 The application is accompanied by an acoustic report which addresses noise from mechanical plant and noise from residents of the boarding house. Council's environmental health officer has reviewed the acoustic report and is satisfied that subject to the implementation of the recommendations of the report, the development would not have an unreasonable noise impact. Should consent be granted to the development it is recommended that the requirements of the acoustic report be incorporated in the consent conditions.
- Unreasonable overshadowing impacts.*
Comment:
 The application has demonstrated that the adjoining properties will retain a minimum of 3 hours solar access to 50% of the Private Open Space on 21 June, which is compliant with the Warringah DCP requirements.
- Security and management concerns. No details of boarding house manager (condition requested).*
Comment:
 The application is accompanied by a plan of management and accommodation for a boarding house manager is provided within the development. Should consent be granted to the application, it is recommended that conditions be imposed with regards to the boarding house management as per the submitted plan of management.
- Request fencing be implemented in accordance with acoustic report recommendations at 2.1m.*
Comment:
 Whilst the construction of the acoustic fencing will address the objectors concern, Council is concerned that any fencing above 1.8m will have adverse impacts on the adjoining properties. The applicant has not provided any details in relation to this acoustic fencing, and therefore Council is unable to provide detail assessment in this regard.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objections subject to conditions.
Environmental Health (Industrial)	<p>General Comments</p> <p>Environmental Health have reviewed the Acoustic Report prepared by Blackett Acoustics for the proposed development and find recommendations sufficient for noise control</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>

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Internal Referral Body	Comments
Landscape Officer	<p>The Arborist's Report and Landscape Plan submitted with the application are noted.</p> <p>The Arborist's Report indicates that three trees on site are to be removed and two trees on site are to be retained.</p> <p>Of the trees to be retained, one, Tree 2, is rated as Low landscape significance on the other, Tree 3, is rated Medium landscape significance. Tree 2 is an exempt species under WDCP C.9. Both are located on the Warringah Rd frontage of the site.</p> <p>The landscape plan provided does not incorporate any canopy trees to replace the lost canopy, incorporating only small trees and shrubs. The inclusion of the exempt tree species along the frontage is supported, however, as tree does not require council consent to remove, additional tree planting should be provided across the site frontage.</p> <p>Neither Tree 2 nor Tree 3 are indicated on the Landscape Plan.</p> <p>The landscape plan prepared is not considered adequate to provide for sufficient planting to ameliorate the building bulk and scale, provide privacy to adjoining properties and maintain the streetscape character or provide for amenity of the future residents. An amended landscape plan is required to demonstrate that the proposal will provide dense landscaping to the Warringah Rd frontage and provide for screening to adjoining residents. Canopy trees are to be incorporated into the front and rear yards. Screen planting is to be provided to the bin bay. Any proposed facilities to be provided in the front setback adjacent to the Communal Room or rear Communal Open Space such as seats, pergolas, paved areas or barbeques should also be included on the plans.</p> <p>At this stage the proposal is not supported with regard to landscape issues. If amended plans are provided addressing the above, further assessment can be undertaken.</p> <p><u>Comment:</u> The issues raised in this referral comments has been included as a reason for refusal.</p>
NECC (Development Engineering)	<p>The proposed Stormwater Concept Plan is unsatisfactory. The provision of any Onsite Stormwater Detention (OSD) system shall be in accordance with Council's Warringah OSD Technical Specification. In particular, the following matters are raised with regard to this Specification:</p> <ul style="list-style-type: none"> Section 4.2. Where the development is other than a single residential dwelling and where the whole site cannot be collected by the OSD system, the full computational method shall be used in the design of the OSD system

Internal Referral Body	Comments
	<ul style="list-style-type: none"> Section 4.3, the permissible site discharge shall be restricted to the "state of nature" (0% impervious) condition for all storm durations for the 5-year, 20-year and 100-year ARI storm event. <p><i>The DRAINS model, and plans, elevations and sections of any OSD system are to be submitted with the DA.</i></p> <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> Stormwater drainage for the development in accordance with clause C4 Stormwater. <p><u>Comment:</u> The issues raised in this referral comments has been included as a reason for refusal.</p>
Strategic and Place Planning (Urban Design)	<p>The proposal was subject to a pre-lodgement which advised of concerns regarding the character, bulk and scale as viewed from a public place and several amenity concerns, all raised in the meeting and provided in the pre-lodgement notes back to the applicant.</p> <p>The proposal at 633 (and by virtue of seeking to take the benefit of a consolidated parking arrangement with the adjacent lot 635) and 635 Warringah Road Forestville is assessed as a development across both sites, given there is no boundary fences between the ground level circulation to both applications, nor setback that would indicate the developments are separate.</p> <p>The legal matter of the consolidation of the parking across both sites for the purposes of optimising parking arrangements to offset the constraints of the two sites' setback requirements will be dealt with by the planners. Additionally the legal matter with regards limit of boarding room numbers will be dealt with by the planners.</p> <p>Of significant concern is compliance with Cl.30A Character of local area of SEPP ARH2009. The development demonstrates no consideration of local character in bulk, scale, form or sense of design intent to fit with the local character and is seen as an overdevelopment of the site(s).</p> <p>The proposed development application(s) are substantially the same as (if not identical to) the proposed development tabled at the pre-lodgement meeting 31 March 2020, with the exception of small outdoor private balconies to the units on the north.</p> <p>As such, for the purposes of brevity the comments remain unchanged. The proposed development cannot be supported.</p> <p><i>Pre-lodgement Advice-Urban Design Commentary</i></p> <p><i>The proposed development seeks to utilise the consolidation of lots 633 and 635 Warringah Road Forestville to minimise parking, through the provision of access and car parking for both lots from the one access driveway, each containing 12 boarding rooms.</i></p> <p><i>Urban Design comments focus on the built form, plan arrangement,</i></p>

Internal Referral Body	Comments
	<p><i>bulk and scale, amenity, environmental conditions and street interface.</i></p> <p>4.3 Height of Buildings <i>The proposed development meets the Height of Buildings control, being 8.5m.</i></p> <p>R2 Low Density Residential <i>The proposed development suggests two buildings of 12 boarding rooms each staggered across the two sites, which have a rhomboid shape. By virtue of the geometries of the block(s) the staggering in plan of the built form toward the back of the site has the effect of a perceived mass and built form stretching across the whole site frontage.</i> <i>The perception of the built form, bulk and scale to the frontage could be further broken down by demonstrating clear breaks in the built form between the two buildings.</i> <i>It could be suggested if the alternative intent to present the development as two separate titles with 12 boarding rooms on each there would be significant constraints in terms of required setbacks and articulation, building separation and the associated amenity issues with neighbouring buildings, along with parking requirements, landscape open space requirements and private open space, which suggests the intensity of the development would be significantly reduced on each site to a maximum of 6 rooms if on grade parking was to remain on grade.</i> <i>Similarly, the perceived bulk and scale from the neighbouring side boundaries in the current scheme presents as a long residential flat building. Potential to break this down further by way of deletion of the two (x2) upper level units adjacent the common rooms would also allow for possible indoor-outdoor areas. Breaking down of the form into pavilion style built form on the long axis of each building would address issues of mass, bulk and scale, privacy and better amenity for residents.</i> <i>The difficulty in addressing this scheme is that we have a scheme proposing consolidation, through common driveway and car parking access, whilst looking to maximise each lot to the maximum limit of 12 boarding rooms thus resulting in 24 boarding rooms.</i> <i>Further testing of options looking to address some of the bulk and scale issues as a massing exercise in the first instance, and detailed articulation of the design outcomes will need to address the required controls, whether a consolidated lot or on separate titles.</i></p> <p><u>Comment:</u> <i>The issues raised in this referral comments has been included as a reason for refusal.</i></p>
Traffic Engineer	<p>The proposed development is for construction of a 12 room Boarding House. The proposed development is relying on a combined vehicle access and car parking area with the proposed Boarding House on</p>

Internal Referral Body	Comments
	<p>the adjacent property at 635 Warringah Road. The parking provision is proposed to be provided in accordance with the SEPP requirements for each boarding house.</p> <p>Traffic Impact: The proposed traffic generation is not considered to have significant adverse impact on the road network and is acceptable.</p> <p>Parking provision: The proposed provision of 7 car parking and 3 motorbike parking spaces satisfies the SEPP requirements. The proposal will require the provision of 3 bicycle spaces.</p> <p>Car parking and driveway design: The proposed combined ingress/egress driveway and integrated car parking area with the adjacent site is subject to the planning consideration and approval. Should the combined arrangement as proposed is acceptable on planning grounds, the following traffic comments will be relevant:</p> <ul style="list-style-type: none"> - The establishment of an appropriate easement on each of the lots at 633 and 635 Warringah Road through the provision of section 88E instrument in satisfaction of the development engineering / planning requirements. - A swept path analysis is to be provided demonstrating that an egressing vehicles will be able to manoeuvre out of the car park while the passing area is occupied by another vehicle. <p>Conclusion: The proposal can be supported on traffic grounds subject to conditions.</p>
Waste Officer	<p>Waste Management Assessment Recommendation - Unacceptable.</p> <p>This proposal does not meet all Council design requirements for waste storage facilities. Specifically: Access to the bin room for service staff is via the vehicular driveway - <i>Unacceptable.</i> <i>A separate access pathway must be provided.</i> <i>It is suggested that the bin room be moved further back from the driveway to allow for the inclusion of a pathway running beside the driveway.</i></p> <p><u>Comment:</u> The issues raised in this referral comments has been included as a reason for refusal.</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</p>



External Referral Body	Comments
	Practice. These recommendations will be included as a condition of consent.
Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 100 Development on proposed classified road)	<p>The proposal was referred to Transport for NSW (TfNSW) as concurrence would be required for the proposed modification of existing kerb and gutter and vehicle crossing along Warringah Road in accordance with Section 138 of the Roads Act, 1993.</p> <p>TfNSW has reviewed the application and provided a response advising that concurrence could be granted under S138 of the Roads Act, 1993, subject to the requirements listed in their response letter.</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 was used as a veterinary clinic since 1968 as a home occupation, and then formally as a veterinary clinic as approved under DA2014/0963. In this regard it is considered that the site poses low risk with regards to contamination, and Council is satisfied the site would be suitable for the proposed residential land use. In the event that the application is recommended for approval, a condition of consent could be included to address any unexpected finds during the construction of the development.

SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 3: Boarding houses

Principle Issue with regard to Permissibly - Clause 30AA - Boarding Houses is R2 Low Density Residential



Clause 30AA stipulates that:

A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Council is currently also in receipt of a development application for a 12 room boarding house on the adjoining site 635 Warringah Road. The proposed development across the two sites 633 and 635 Warringah Road appears as one large boarding house, rather than two individual, wholly separate developments. The two proposed buildings rely on one shared car parking area that spans the two lots. Such reliance on shared parking indicates that the proposed development is an overdevelopment of the lots, being that one cannot be developed for 12 boarding rooms, without reliance on the other for compliant parking. This reliance on the shared parking makes the two buildings one development, comprising of a 24-room boarding house in the R2 zone. Any boarding house resulting more than 12 boarding rooms in the R2 Low Density Zone is prohibited development.

Therefore, the proposed development is recommended for refusal due to the above issue regarding to permissibility in the R2 Low Density Residential Zone.

Notwithstanding Council's position that the development is prohibited, the application is assessed against the remaining provisions of the SEPP (ARH) 2009 below.

Clause 25: Definition

For the purposes of this Division, the Standard Instrument defines a 'boarding house' as a building that:

- "(a) is wholly or partly let in lodgings, and*
- (b) provides lodgers with a principal place of residence for 3 months or more, and*
- (c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".

In this Division 'communal living room' means "a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room".

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	Consistent The site is located within the such, a Boarding House is permitted in 2011. See clause 30(AA) with regard to boarding rooms in the R2 Low Density

Clause 27: Development to which this Division applies

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(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Comment
<p>(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.</p> <p>Note: <i>Accessible area</i> means land that is within:</p> <p>(c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</p>	<p>Consistent</p> <p>The site is located within the situated not more than 400m regular bus service (within the Act 1990) that has at least one between 06.00 and 21.00 each day (inclusive) and between 08.00 and 18.00 on each Sunday.</p>
<p>(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.</p>	<p>Not applicable.</p> <p>The site is located within the</p>

Clause 28: Development may be carried out with consent

Requirement	Comment
Development to which this Division applies may be carried out with consent.	The development constitutes the construction of a boarding house. Therefore, the development may be considered unopposed development which may be carried out with consent.

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed
<p>(1) Density and scale</p> <p>A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:</p>	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP
	(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State	A residential flat building is not permissible on the land and therefore this provision does not apply.

	Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus: (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.	
(2) A consent authority must not refuse consent to development to which this Division applies on any of		
(a) building height	if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	The proposed building cannot exceed the maximum 8.5m height limit under WLEP.
(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	The proposed landscape treatment of the front setback area is inconsistent with the Warringah Road streetscape which is characterised by large landscaped setbacks. In addition to the above overall provision of landscaping proposed is considered to be unsatisfactory and does not provide a suitable landscape setting for the site (refer to Landscape comments below).
(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	Two communal rooms are provided. The ground floor communal room has a north-west facing window which will receive three hours between 9am and 3pm.
(d) private open space	if at least the following private open space areas are provided (other than the front setback area): (i) one area of at least 20m ² with a minimum dimension of 3.0m is provided for the use of the lodgers,	There is 120sqm of private open space for the use of the lodgers in the rear setback area achieving dimension. An area of 8sqm achieving 2.5m dimension is provided

	(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m ² with a minimum dimension of 2.5m is provided adjacent to that accommodation,	for the boarding house manager.
(e) parking	<p>if:</p> <p>(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p>	<p>Based on 12 rooms, 6 spaces are to be provided</p> <p>One (1) room for manager accommodation is provided and one (1) space is provided.</p>
(f) accommodation size	<p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	All rooms achieve the minimum floor space requirements based excluding those areas used for a private kitchen and bathroom.
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	All rooms have private kitchen and bathroom facilities.
	(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	The application is generally compliant with the standards in subclause (1) and (2). However, the application is recommended for refusal for other reasons set out within this report.



Clause 30: Standards for boarding houses

Standard requirement	Proposed
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied	
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	Two communal living rooms are provided
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m ² ,	Maximum room size proposed is unit 2
(c) no boarding room will be occupied by more than 2 adult lodgers,	The rooms proposed are suitable for 2 lodgers.
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Each room has private kitchen and bathroom facilities
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The rooms are capable of providing accommodation for 21 lodgers (three single rooms, 9 double rooms). A boarding room is provided for a boarding house manager on ground floor.
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	Not applicable, residential zone.
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	Three bicycle spaces and three motorcycle spaces are required. Three motorcycle spaces are proposed. No bicycle parking shown on plans.
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	The requirements of subclause (1) apply in this case.

Clause 30AA: Boarding houses in Zone R2 Low Density Residential

A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Comment:

Council is currently also in receipt of a development application for a 12 room boarding house on the adjoining site 635 Warringah Road. The proposed development across the two sites 633 and 635 Warringah Road appears as one large boarding house, rather than two individual, wholly separate developments. The two proposed buildings rely on one shared car parking area that spans the two lots. Such reliance on shared parking indicates that the proposed development is an overdevelopment of the lots, being that one cannot be developed for 12 boarding rooms, without reliance on the other for compliant parking. This reliance on the shared parking makes the two buildings one development, comprising of a 24-room boarding house in the R2 zone. Any boarding house resulting more than 12 boarding rooms in the R2 Low Density Zone is prohibited development.



Therefore, the proposed development is recommended for refusal due to the above issue regarding to permissibly in the R2 Low Density Residential Zone.

Clause 30A: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 Senior Commissioner Roseth developed the following Planning Principles:

- *The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.*

Comment:

The immediate context consists of a two storey dwelling to the north and a single storey dwelling south of the subject site. Therefore, two storey development is not inconsistent with the surrounding development in the vicinity of the site. However, the two storey dwellings in the vicinity of the site have a generous landscaped setback to Warringah Road and are of noticeably lesser bulk and scale when compared to the proposed development. The proposed development consists of a entirely two storey building across the site, maximizing the area available within the allowable front and rear building setbacks under the DCP. The expanse of built form across the site is not reflective of the bulk and scale of the detached residential dwellings in the immediate vicinity of the site.

In addition, detailed comments are provided by Council's Urban Design officer who has raised concern with the building bulk, mass and scale which are relevant to the assessment against the first principle.

In this regard, it is considered that the scale of the development is incompatible with the streetscape and inconsistent with the first principle.

- *The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

Comment:

As noted previously in this assessment report, there is a separate application for a boarding house on the immediately adjoining site 635 Warringah Road which shares a common driveway and parking arrangements with the proposed development. Although the two buildings upon 633 and 635 Warringah Road are detached, there is no opportunity for landscape planting between the two buildings to separate the built form and soften the development both from the street, the rear and internally due to the shared common driveway and parking arrangement. The inability to provide landscape planting between the buildings results in the proposal reading as one medium density development which is



inconsistent with other developments within the immediate vicinity of the site which consist of detached dwellings with generous landscaped buffers between each building.

In this regard, the development is considered to be incompatible with the scale of surrounding development and inconsistent with the second principle.

- *The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*

Comment:

The site is relatively level and does not have any significant topographical or geological features which should be retained to assist in reducing the visual dominance of the development. However, the immediate area is characterised by generous landscaped setbacks which provide opportunity for meaningful planting, including medium and tall canopy trees, to soften the built form as viewed from the street, the rear and between buildings. As the proposed development includes a central driveway to be shared with the boarding house on the adjoining land, there is not opportunity for landscape planting between the two buildings to reflect the predominant landscaped characteristics of the area.

In this regard, it is not considered that effective methods have been employed in the design of the development to reduce its visual dominance and is inconsistent with the third principle.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

Comment:

The predominant materials used for the surrounding dwellings is a mixture of brick and timber cladding, with tiled and colourbond roofs. There is no particular distinct materials in the immediate vicinity which must be reflected or replicated in this scenario. The proposal provides a fairly conservative scheme with regards to colours and materiality, with face brickwork and colourbond roofing, along with some timber highlights and metal cladding highlights.

The lack of variation in building materials particularly along the southern elevation attributes to excessive visual bulk and scale of the building. Although the materials and colours used are generally consistent with the surrounding dwellings, the proposal lacks visual interest by use of varied building materials throughout to mitigate bulk and scale.

In this regard, the development is considered to be generally consistent with the fourth principle with regards to materials, however this material choice does not assist in mitigating visual bulk and scale.

The above principles were further developed in *Project Venture Developments v Pittwater Council* (2005) NSWLEC 191 to include the following:

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

Comment:

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The physical impacts of the development on surrounding properties are assessed as consisting of constraints on the development potential of surrounding sites, privacy, overshadowing and noise.

Constraints on the development potential of surrounding sites

The proposal does not have any significant impact upon the development potential of surrounding sites.

However, the development is reliant upon a shared common driveway with the adjoining site for which another boarding house is proposed. The reliance upon the shared driveway arrangement provides certain benefits to the proposed development that would not otherwise be achieved should the site be developed without a shared access way.

Privacy

The proposal is not considered to have an unreasonable impact with regards to visual privacy.

Overshadowing

The application has demonstrated the adjoining residential properties will retain solar access in accordance with the Warringah DCP provisions.

Noise

The application is accompanied by an acoustic report which addresses noise from mechanical plant and noise generating activities from the lodgers. Based on the recommendations of the acoustic report Council is satisfied there will not be unreasonable noise impacts.

Conclusion to character assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is incompatible with the character of the local area and surrounding wider locality.

This matter warrants the refusal of the Development Application.

Conclusion

The proposed development is recommended for refusal as Council is not satisfied in accordance with Clause 30 (AA) SEPP (ARH) 2009 that the development, in conjunction with the proposed boarding house on the adjoining site, constitutes a boarding house consisting of 12 boarding rooms due to the reliance upon shared access arrangements and the two proposals reading as one boarding house development across two sites. The proposal is also recommended for refusal as Council is not satisfied that the development is compatible with the character of the local area as required by Clause 30A of SEPP (ARH) 2009.

SEPP (Building Sustainability Index: BASIX) 2004

The proposal, being a boarding house is not subject to SEPP BASIX, but is required to conform to Section J of the Building Code of Australia to demonstrate energy efficiency. A Section J BCA Report application demonstrating compliance.

**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.

Clause 102 - Residential Development Adjacent to a road corridor

Clause 102 of SEPP (Infrastructure) 2007 requires the consent authority to not grant development consent for the purpose of Residential Accommodation unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time

The application is accompanied by an acoustic report (prepared by Blackett Acoustics, dated May 2020) which makes recommendations to ensure the above noise levels are achieved.

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

Clause 106 - Traffic generating development

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

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



The development consists of 24 boarding rooms and proposes a new crossover onto the access to Warringah Road, a classified road (Arterial Road).

The application was referred to the Transport for NSW (TfNSW) for comment. The TfNSW has provided their response which raises no objection to the proposed development, subject to conditions.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.7m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

6.4 Development on sloping land

The land is identified within the Landslip Area A under the WLEP 2011. Based on the limited extent of excavation the applicant is not required to submit a preliminary site assessment. The proposal is compliant with this clause.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	5.7m (North)	N/A	Yes
B3 Side Boundary Envelope	4m	Within (North)	N/A	Yes
	4m	Within (South)	N/A	Yes
B5 Side Boundary Setbacks	0.9m	2m (North)	N/A	Yes
	0.9m	1.4m - Building	N/A	Yes

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		(South) 0m - Driveway	100%	No
B7 Front Boundary Setbacks	6.5m	6.7m (Building Facade)	N/A	Yes
B9 Rear Boundary Setbacks	6m	6.2m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (min 2m dimensions)	40% (290sqm)	N/A	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	No	No
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	No
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	No	No
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	No	No
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The building is proposed to be setback a minimum 1.4m to the southern boundary, however the access driveway sits at a zero setback to the southern boundary and will continue to form part of the proposed access driveway on the adjoining site 635 Warringah Road. The driveway forms part of the footprint of the development and is therefore considered to be non-compliant with the side boundary setback.

The control also requires that side setbacks are increased progressively as the wall height increases. The building along the northern boundary, although compliant with the numerical control, does not step in the wall height of the building to provide an appropriate response with regards to bulk and scale. This is important given the scale of the building and extent of the wall facing the southern boundary.

Merit consideration

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

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

Comment:

There is no opportunity for deep soil planting along the northern side of the building. The proposal does not achieve this objective.

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

Comment:

There is no opportunity for deep soil planting along the northern boundary which would assist in reducing the visual dominance of the development as viewed from the street and surrounding properties. The walls of the development are not progressively stepped (as required by the control) as the wall height increases to reduce the visual dominance of the development. The proposal does not achieve this objective.

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



Comment:

Similar to above, there is no opportunity for deep soil planting along the northern boundary which would assist in reducing the visual dominance of the development as viewed from the street and surrounding properties. The walls of the development are not progressively stepped (as required by the control) as the wall height increases to reduce the visual dominance of the development. The proposed development and the adjoining proposed boarding house development on 633 Warringah Road will read as one medium density development with a continuous development footprint across the site. The proposal does not achieve this objective.

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

Comment:

The proposed development is capable of achieving a reasonable outcome with regards to visual privacy, solar access and amenity. The proposal is capable of achieving this objective, however is recommended for refusal for other reasons as outlined in this report.

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

Comment:

There will be no unreasonable view impact as a result of the development. Consistent with objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C4 Stormwater

Council's development engineers have reviewed the submitted stormwater concept plan and notes there is insufficient detail on the plan to address Clause C4 Stormwater WDCP 2011. The detailed comments are provided earlier within this report. The applicant has indicated that this issue is capable of being address by way of amended plans, however, due to the fundamental issues with non-compliance with the SEPP(ARH) 2009, Council has not requested the applicant provide updated plans regarding stormwater management to address the issue.

C9 Waste Management

Council's Waste officer has reviewed the application and raised issue with the waste storage arrangement for the site. The waste storage area requires a separate pathway to the street frontage and the driveway is not to be used for the movement of waste bins between the waste storage area and the street.

This issue could be resolved subject to amended plans, however, is included in a reason for refusal as the current proposal does not comply with Council's policy. See detailed comments from Council's Waste officer earlier in this report.

D3 Noise

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An acoustic report has been submitted with the application which addresses noise from mechanical plant (air conditioning units) and noise emissions of the boarding house outdoor areas to surrounding dwellings.

Council's environmental health officers have reviewed the context of the acoustic report and have raised no concern regarding noise impacts based on the recommendations of the acoustic report.

D9 Building Bulk

Clause D9 requires side and rear boundary setbacks of new developments to be progressively increased as wall height increases. As detailed above, the design of the development contains little articulation or stepping of facades and inadequate building separation.

In addition to there being no increase in setbacks as the wall height increases, the building provides little variation in regards to materiality, particularly as viewed from the southern elevation. The large continuous sections wall consisting of only face brickwork results in visual bulk and scale that is not consistent with the surrounding development.

This issue relates to Clause 30A of SEPPARH in that the design of the development results in unreasonable bulk and scale, which is inconsistent with the character of the local area.

E1 Preservation of Trees or Bushland Vegetation

Council's landscape officer has undertaken a review of the proposed tree removal and replacement planting scheme for the site. Detailed comments from Council's landscape officer are earlier within this report.

The landscape plan presented with the application is unsatisfactory with regard to the replacement of canopy trees to compensate for the proposed tree removal on the site. The applicant has noted this can be addressed by way of an amended plan, however given the fundamental issues with non-compliance with the SEPP (ARH) 2009 Council has not requested an amended plan be provided.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

The application has been lodged pursuant to the State Policy for affordable housing (SEPP (ARH) 2009). The assessment against the requirements of the SEPP has concluded that the proposed development fails to comply with Clause 30A in terms of number of rooms. The character and built form of the combined development (being the subject site and the adjoining development) does not provide an appropriate contextual fit to the surrounding low density residential character. The proposal is significantly at odds with the established local pattern, does not provide for a suitable and appropriate response to the existing size, scale, setbacks, street level treatment and streetscape of the surrounding area, and does not allow for adequate separation between the proposed buildings internally and with adjacent dwellings.

In order to achieve a proposal that “*responds and contributes to its context*”, the proposal needs to be entirely re-examined and redesigned and separated from the adjoining development at 635 Warringah Road . Accordingly, the current proposal is recommended for refusal.

The assessment of the proposed development against the provisions of the WDCP 2011 has found that the proposal is not consistent with number of sections which translate to adverse amenity, character and visual/streetscape impacts.

The development attracted 12 individual submissions. The majority of the submissions raised concerns with regards to the density and scale, impact on the amenity of adjoining properties in terms of overshadowing, visual/acoustic privacy and visual impact. The issues raised in the submissions are generally concurred with and have been addressed in the “Public Notification Section” of this report.

Based on the assessment contained in this report, it is recommended that the Northern Beaches Local Planning Panel (LPP) refuse the application for the reasons detailed within the recommendation attached to this report.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.



RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/0745 for the Demolition works and construction of a Boarding House with new shared accessway on land at Lot 15 DP 212195,633 Warringah Road, FORESTVILLE, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009. Specifically, Council is not satisfied that the proposal will result in a boarding house development consisting of not more than 12 rooms as required by Clause 30AA by virtue of the shared common access driveway with the adjoining proposed boarding house development.

Council is not satisfied that the development is compatible with the character of the local area as required by Clause 30A due to the excessive building bulk and lack of landscaping around the development footprint.

Council is not satisfied that the landscape treatment of the front setback area is compatible with the surrounding streetscape along Warringah Road as required to be considered under Clause 29(2).

2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5 Side Boundary Setbacks of the Warringah Development Control Plan.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4 Stormwater of the Warringah Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C9 Waste Management of the Warringah Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause E1 Private Property Tree Management of the Warringah Development Control Plan.
7. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.





ITEM 3.4 **DA2020/0665 - 85-89 FOAMCREST AVENUE NEWPORT -
DEMOLITION WORKS, CONSOLIDATION OF THREE LOTS
INTO ONE LOT, AND THE CONSTRUCTION OF A
RESIDENTIAL FLAT BUILDING**

AUTHORISING MANAGER **TONY COLLIER**
TRIM FILE REF **2020/683574**
ATTACHMENTS 1 [↓](#) **Assessment Report**
 2 [↓](#) **Site Plan 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. DA2020/0665 for demolition works, consolidation of three lots into one lot, and the construction of a residential flat building at Lots 40, 41 and 42 DP 6248, 85-89 Foamcrest Avenue, Newport subject to the conditions and for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0665
Responsible Officer:	David Auster
Land to be developed (Address):	Lot 41 DP 6248, 87 Foamcrest Avenue NEWPORT NSW 2106 Lot 42 DP 6248, 89 Foamcrest Avenue NEWPORT NSW 2106 Lot 40 DP 6248, 85 Foamcrest Avenue NEWPORT NSW 2106
Proposed Development:	Demolition works, consolidation of three lots into one lot, and the construction of a residential flat building
Zoning:	R3 Medium Density Residential R3 Medium Density Residential R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Ann Gwendolyn Martin
Applicant:	Trio Industries Pty Ltd
Application Lodged:	19/06/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	20/07/2020 to 03/08/2020
Advertised:	Not Advertised
Submissions Received:	12
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 4,983,000.00

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks approval for the consolidation of the existing three lots into a single allotment, together with the demolition of the existing structures on site, followed by the construction of a residential flat building. The development is proposed to comprise a two-storey building erected over a single level of basement carparking. The residential flat building will be comprised of 8 x 3 bedroom

DA2020/0665



units.

Vehicular access to the property is to be proposed at the south western corner of the site. Pedestrian entry to the site is to be via a new entry location located centrally within the front western boundary of the site which then connects with a graded pathway connecting to the main entry foyer which is located centrally within the front western elevation of the development.

A total of 19 car spaces are proposed to be provided within the basement car park. The proposed carparking comprises of 16 resident spaces (2 spaces per unit located in separate garages) and 3 visitor spaces. The basement also includes the provision of bicycle parking, storage areas and stair and lift access to the ground and first floor levels. The basement has been designed and configured so as to allow for all vehicles to enter and leave the site in a forward direction.

The proposal also involves removal of 7 trees requiring approval, and a further 21 trees which are on Council's exempt list of species and which could be removed without approval. The application also includes landscaping of the site including replacement planting of the trees to be removed.

Stormwater is proposed to be drained via an easement through the downstream property at 413 Barrenjoey Road to the existing RMS drainage system in Barrenjoey Road.

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 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)

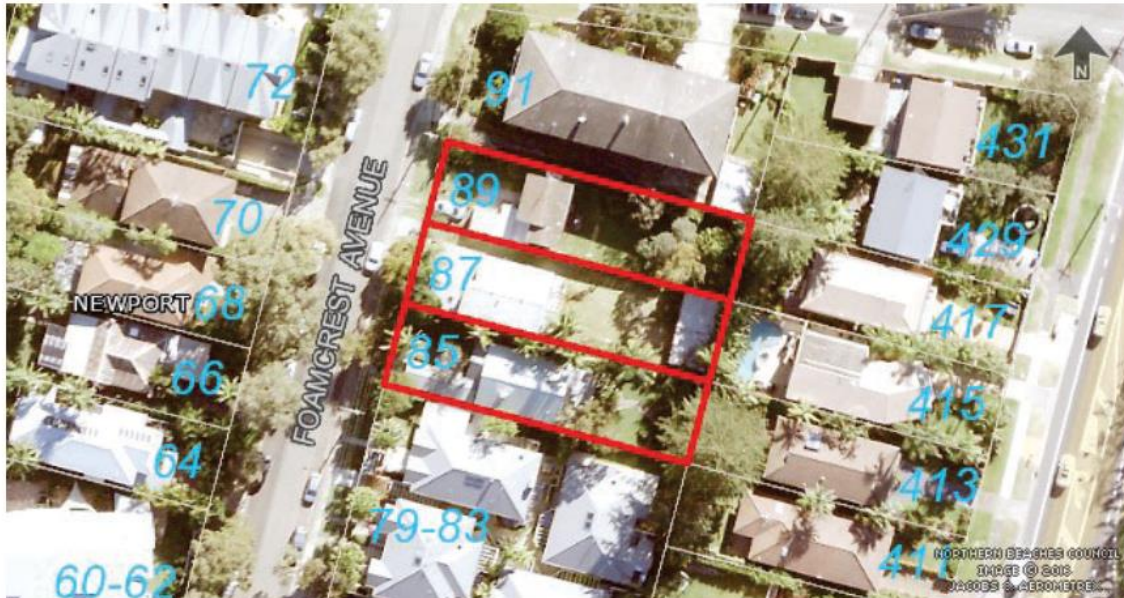
SITE DESCRIPTION

DA2020/0665



Property Description:	<p>Lot 41 DP 6248 , 87 Foamcrest Avenue NEWPORT NSW 2106</p> <p>Lot 42 DP 6248 , 89 Foamcrest Avenue NEWPORT NSW 2106</p> <p>Lot 40 DP 6248 , 85 Foamcrest Avenue NEWPORT NSW 2106</p>
Detailed Site Description:	<p>The site is located on the eastern side of Foamcrest Avenue. It is comprised of three separate lots (lots 40, 41 and 42, Sec 5 DP6248) known as 85, 87 and 89 Foamcrest Avenue respectively. Each of these lots is currently developed with detached dwellings and garages.</p> <p>The combined site area of the consolidated lots is 1,672.25m² with a frontage of 36.57m to Foamcrest Avenue and a depth of 45.72m. The topography slopes gently down from front to rear (west to east), and there are a number of trees scattered across the site.</p> <p>Surrounding development is varied. There is a residential flat building adjacent to the north at 91 Foamcrest Avenue. Adjacent to the south is 79-93 Foamcrest Avenue, which has been developed as multi dwelling housing. To the rear (east) the neighbouring dwellings along Barrenjoey Road are generally detached dwellings. There are also generally detached dwellings directly across the Foamcrest Avenue to the west. Number 72 is developed with attached dwellings.</p> <p>The site and surrounding properties all fall within the R3 Medium Density Residential zone. The north western corner of the site falls within the buffer area on the Bushfire Prone Land map, and the Acid Sulfate Soils map cuts across approximately the south eastern half of the site. The site also falls within the coastal use area under the Coastal Management SEPP.</p>

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site, given demolition of all existing buildings on site is proposed.

The land has been used for residential purposes for an extended period of time. Investigations with regard to heritage at number 85 Foamcrest Avenue as a result of submissions (see Submissions section of this report) revealed the following:

85 Foamcrest Avenue, Newport - was not nominated during the preparation of the Pittwater Community Based Heritage Study that was completed in 2015. As a community based study, it relied upon nominations from the public for properties that they sought to be considered and assessed for their heritage value.

As part of the assessment of the current application, an investigation into the property and its history was undertaken. This investigation determined a likely construction period between 1923 and 1935. A land title records search indicated no links to significant people. Advice was also sought of Council's external heritage consultant (Bob Moore) who advised that while the building has some heritage value, it is not enough to warrant an Interim Heritage Order. A photographic archival recording of 85 Foamcrest Avenue is recommended to be undertaken prior to demolition.

Current Application

As a result of the initial assessment, the applicant was asked to provide additional information and amendments to the plans, including with regard to the height of the roof windows, storm water and water management issues, waste management, and traffic. The applicants responded by providing further sections to demonstrate that the overall height was compliant, new storm water design including an on-site detention tank and proposed easement for drainage to the rear, a new bin room near the north western corner of the property, and provided further information and amendments in relation to the driveway/traffic issues.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)



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

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



Section 4.15 Matters for Consideration'	Comments
	clause is not relevant to this application.
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 Building Code and Bushfire Hazard Solutions, dated 30 March 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 20/07/2020 to 03/08/2020 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 12 submission/s from:

Name:	Address:
Mr Jeffrey Mouldsdaie	22 Central Avenue MANLY NSW 2095
Ms Jane Elizabeth Stevens	64 Foamcrest Avenue NEWPORT NSW 2106

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Name:	Address:
Ms Sue Erica Comrie-Thomson	1/2 Peel Street KIRRIBILLI NSW 2061
Ms Merryl Rhonda Ireland	Address Unknown
David Gerard Penny Nicole Elizabeth Penny	4 / 79 - 83 Foamcrest Avenue NEWPORT NSW 2106
Mr Brian John Cook	3 / 79 - 83 Foamcrest Avenue NEWPORT NSW 2106
Mr Neil Andrew Warren	417 Barrenjoey Road NEWPORT NSW 2106
Mrs Lynne Margaret Moulsdale	415 Barrenjoey Road NEWPORT NSW 2106
JK Geotechnics	PO Box 976 NORTH RYDE NSW 2113
Strata One Pty Ltd	11 Richard Road NARRABEEN NSW 2101
Ms Elizabeth Belinda Dettmann	64 Foamcrest Avenue NEWPORT NSW 2106
Mr Lawrence Carson Edey Mrs Jill Anne Edey	413 Barrenjoey Road NEWPORT NSW 2106

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

- Overdevelopment
- Rear setback
- Privacy
- Solar access
- Tree removal request
- Heritage
- Disruption to neighbours including noise/dust during construction
- Protection of trees
- Stormwater drainage
- Geotechnical concerns

The matters raised within the submissions are addressed as follows:

- **Overdevelopment**

Concerns were raised that the proposal represents an overdevelopment of the site.

Comment:

The proposal is generally compliant with the applicable built form controls, with minor non-compliances to the setback controls as discussed in this report. These non-compliances are generally caused by elements that provide articulation and visual interest to the building at first floor level, or functional elements at ground level which will not create any significant or unreasonable external impacts. Overall in terms of height, landscaped area, general setbacks of the majority of the building, and in terms of density, the proposal is largely consistent with the planning controls, and therefore considered to be generally within expectations for development of the site in the medium density zone.

The submissions are not supported in this regard.



- **Rear setback**

Concerns were raised with regard to the proposed rear setback. One of the submissions made reference to the requirements of SEPP 65.

Comment:

The proposal is generally compliant with the rear setback requirements (noting that SEPP 65 does not apply to the development and has therefore not been taken into consideration). The exception to compliance is the proposed planter boxes at first floor level. However, these planter boxes are considered to provide positive benefits in terms of increasing privacy between neighbours and helping to provide depth and articulation to the building. Overall, the proposal is assessed to achieve the objectives of the rear setback control (see discussion in this report), and as such is considered acceptable in the circumstances.

- **Privacy**

Concerns were raised with the rear facing upper level balconies and the privacy impacts on the rear of number 415 Barrenjoey Road. Concerns were also raised regarding the impacts of balconies and bedroom windows from the southern side of the development towards 79-83 Foamcrest Avenue. Concerns were also raised that landscaping provided along the southern boundary (palms) will be inadequate to work as a privacy screen, but reduce solar access. A request was also made that the developer be required to construct boundary fencing to a height sufficient to protect privacy along the southern side boundary, and to the rear boundary adjacent to number 417 Barrenjoey Road.

Comment:

Privacy is discussed in detail under clause C1.5 Visual Privacy in this report. In summary, the proposal is considered to maintain a reasonable level of privacy. With regard to the palm trees in the southern side setback area, while these may not provide a high level of privacy screening, they will allow greater solar access, and it must be noted that the first floor south facing windows will be largely screened by the proposed planter boxes at that level, or where they are not, they are bedroom windows with an increased setback.

Boundary fencing has not been proposed, and this is considered a matter for neighbours to agree under the Dividing Fences Act.

- **Solar access**

Concerns were raised with respect to overshadowing of the private open space of 415 and 417 Barrenjoey Road to the rear. Concerns were also raised from the southern neighbours at 79-83 Foamcrest Avenue.

Comment:

This issue is discussed in detail under clause C1.4 Solar Access in this report. In summary, the proposal is considered acceptable with respect to solar access. The neighbours to the east receive the required amount of sunlight stipulated by the control, while the neighbours to the south are considered highly vulnerable to overshadowing by development of their northern neighbour given the location of their private open space adjacent to their northern boundary. As discussed under clause C1.4, the proposal is not considered to unreasonably restrict solar access to neighbours.

- **Tree removal request**

Concerns were raised with an existing Norfolk Pine at 413 Barrenjoey Road, and its potential to damage the proposed development. A request was made that the applicants be required by



condition to remove this tree.

Comment: The request to have the developer remove the tree on a neighbouring property is not a reasonable request. This tree is assessed in the arborist report provided with the application as being in 'good' health and condition, and any impacts on the tree can be managed during construction. Council's Landscape Officer has assessed the proposal, including the arborist report, and is satisfied subject to conditions of consent (see Referrals section of this report). The submission is not supported in this regard.

- **Heritage**

Concerns were raised with respect to demolition of the existing dwelling at number 85 Foamcrest Avenue (the southern most lot of the three included in this application), due to the heritage value of the dwelling. An interim heritage order was requested.

Comment:

85 Foamcrest Avenue is not a listed heritage item. As a result of the submissions, the application was referred to Council's Heritage Officer for assessment (see Referrals section of this report). The outcome of this assessment was that an interim heritage order was not considered appropriate. A condition is recommended requiring a photographic survey of the dwelling to be carried out prior to demolition.

The request by the submissions to deny demolition of the dwelling at number 85 (and therefore effectively refuse the application) based on this issue is not therefore supported.

- **Disruption to neighbours including noise/dust**

Concerns were raised with regard to the development minimising noise/dust to neighbours, construction hours, asbestos removal.

Comment:

Standard conditions of consent are recommended regarding construction, including with respect to noise and dust, hours of construction, location of construction materials, skip bins etc., cleanliness and tidiness of the construction site and other measures to reduce impacts to neighbours as much as is reasonably possible with a development of this size. Standard conditions with regard to removal of any asbestos will also be imposed. It is inevitable that there will be some disruption to neighbours, but these impacts are to an extent unavoidable. However, subject to conditions of consent to reasonably limit these impacts, they are not considered to be unreasonable.

- **Protection of trees**

Concerns were raised regarding removal of trees near the southern boundary.

Comment:

The application includes an arborist report, which identifies likely impacts of the development on existing trees, and makes recommendations for removal. Council's Landscape Officer has assessed this report, and is generally satisfied with the proposed tree removal, subject to condition requiring replacement planting.

- **Stormwater drainage**

Concerns were raised with respect to stormwater runoff to the rear at 417 Barrenjoey Road.



Comment:

The amendments to the stormwater design have proposed an easement to drain water through number 413 Barrenjoey Road to the rear. No evidence of permission being granted for this easement has been provided by the applicants. Council's Development Engineers have provided a deferred commencement condition of consent in this regard. However, if an easement cannot be gained then a modification application may need to be lodged to alter the storm water design. Subject to conditions, the proposal will comply with Council's storm water policy.

- **Geotechnical concerns**

Concerns were raised by the strata owners at number 91 Foamcrest regarding geotechnical concerns with the proposal. The objectors submitted a geotechnical opinion (prepared by JK Geotechnics, dated 23 July 2020) which identified a number of concerns with the geotechnical report submitted with the application (prepared by Crozier Geotechnical dated 6 May 2020).

Comment:

The opinion provided raises a number of concerns with the Geotechnical report provided. The issues identified focus on the possible impacts on the property at number 91. A condition is recommended to require dilapidation surveys to be carried out in relation surrounding neighbours, including number 91. The other concerns raised are generally around the technical requirements for shoring and excavation, but are not stating that the issues cannot be surmounted as long as the excavation is carried out properly. As such, a deferred commencement condition is recommended to have the geotechnical report updated to address the concerns raised in the opinion provided by JK Geotechnics. Subject to these conditions, the proposal is considered generally acceptable.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p>General Comments</p> <p>Prior to the issue of a construction certificate, an Acid Sulfate Soils Management Plan is</p> <p>The Current geotechnical report prepared by Crozier Geotechnical Consultants does not</p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p>The development application is for the consolidation of three lots into one lot, demolition</p> <p>The application is assessed by Landscape Referral against Pittwater Local Environment</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D10 Newport Locality, including D10.12 Landscaped Area <p>The landscape character of the existing sites is of a suburban gardens with predominate</p> <p>A Landscape Plan is issued with the application including landscape proposals to satisfy</p>

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i></p> <p>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore Coas</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the C</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>As the subject site has been identified as being within the coastal zone and therefore SE</p> <p>The subject land has been included on the 'Coastal Use Area' maps but not been include</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental E</p> <p>As such, it is considered that the application does comply with the requirements of the S</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the α</p>
NECC (Development Engineering)	<p>Planner's Comment</p> <p>Council's development engineer does not support the proposal as discussed below, due has requested that this issue be dealt with by Deferred commencement conditions of cor</p> <p>Comments 28/10/2020</p> <p>The drainage plans detail the discharge of site stormwater from an On Site Detention tar</p> <p>The applicant has not provided evidence that an inter allotment drainage easement has l</p> <p>Non compliance with Pittwater DCP21 Clause 5.1 Water Management Plan and Clause :</p> <p>Comments 22/10/2020</p> <p>The application cannot be supported for the following reasons:</p> <p>1) The location of the on site stormwater detention tank is proposed to be constructed o</p> <p>2) The applicant has not provided evidence that an inter allotment drainage easement ha</p>

Internal Referral Body	Comments
	<p>Previous comments</p> <p>The proposed apartment redevelopment is not supported for the following reasons.</p> <p>1) The concept drainage plan shows that stormwater discharge to Foamcrest avenue via properties in this catchment.</p> <p>2) The development is to drain to the existing catchment and this will require the creator</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>This property is not flood affected</p>
NECC (Water Management)	<p>Comments 28 October 2020 - Satisfactory subject to conditions</p> <p>In an email to the planner from ITM Design dated 26 October 2020, the applicant confirm</p> <p>Comments 22 October 2020 - Refused</p> <p>The applicant has stormwater draining to planter boxes around the perimeter of the build</p> <p>The Reactive Filter Media Pillow performance from a number of articles available online</p> <ul style="list-style-type: none"> • ability of the device to remove fine particle sediments • typical use of the device is for the removal of hydrocarbons, not for residential de • increased complexity of maintenance, given the proposed device is not widely kn • installation, removal and replacement is difficult • they are not generally well regarded for removing nitrogen, which is critical. <p>For this reason we require that an alternative is installed.</p> <p>As the development is achieving evaporation through the use of planter boxes, and the c Filtrerra (these are closed systems) to complete the treatment train.</p> <p>Please note that Council's Water Management for Development Policy requires devices</p> <p>Referral comments 14 July 2020 - Refused.</p> <p>The application has not provided stormwater quality treatment as required under Pittwater</p> <p>The applicant must incorporate stormwater treatment that includes a vegetated stormwa</p> <p>1. The treatment train must comply with the objectives of Water Sensitive Urban Design, 2. The treatment targets to use are set out in the exhibited draft Northern Beaches Cou</p> <p>3. Stormwater treatment measures must be included in the Water Management Plan, wit</p>

Internal Referral Body	Comments		
	<p>4. A MUSIC model file must be provided with the DA to allow Council to review the model</p> <p>5. A restriction as to user and positive covenant will be placed over the asset(s) and the</p> <p>6. Filtration cartridges will not be accepted as they do not remove dissolved pollutants, a</p>		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to Heritage as a submitter raised the potential heritage dwelling at 85 Foamcrest Avenue. It is not listed as a heritage item.		
	Details of heritage items affected		
	As the property is not listed as a heritage item, there is no inventory sheet. However existing dwelling is comprised of sheet and batten walls with a vinyl weatherboard cladding skirt constructed on brick piers with a course of sandstone under the front porch and north end of the dwelling. The front deck has timber floors and timber columns supporting a small roof. The columns rest upon sandstone piers. Windows are a mixture of double hung and multi-casement style windows. The roof is clad in metal with gable ends to the east and west. There are windows on the gable ends that have been inserted between the battens and rafters and under the roof on the southern and northern edges. Internally there are multi-panelled ceiling frame work and picture rails. To the rear is a timber deck with a translucent metal roof. The property is in good condition externally and internally.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
RAIA Register of 20th Century Buildings of Significance	No		
Other	N/A		
Consideration of Application			
The proposal was referred to Heritage as the existing dwelling on 85 Foamcrest Avenue is of potential heritage value. Heritage investigated the property and considers it an example of the early suburban development that occurred in Newport following the Ocean Estate subdivision of 1911. The dwelling is believed to have been constructed in the mid 1920s and shows the simple and modest dwellings that were constructed at the time compared to the much larger dwellings of today that cater for modern requirements. Heritage considers the property is of such a value that a full photographic archival recording of the property should be undertaken including all internal rooms, external elevations, landscaping, features and details. This will ensure that a photographic record of the dwelling and its existence can be retained for archival and research purposes.			

Internal Referral Body	Comments
	<p>Therefore Heritage requires one condition.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>
Strategic and Place Planning (Urban Design)	<p>The proposal is a low-key two storey apartment building with a single level basement car proposed on the upper floor balconies for visual privacy. As such, the proposal will sit we</p> <p>Given the upper level balconies (Unit 6 & 7) rear setback proposed is about 3.92(planter</p>
Traffic Engineer	<p>the DA seeks consent for the demolition of all existing structures and construction of a 2-</p> <ul style="list-style-type: none"> • 8 residential apartments; • Basement level parking with a total of 19 car spaces; • A 3.6 metre wide combined entry / exit driveway onto Foamcrest Avenue. <p>Traffic: The anticipated traffic generation of the site is approximately 4 vehicle movements in the The existing developments currently generate approximately 3 movements in the peak h This equates to a net increase of 1 vehicle and hence is deemed to have minimal impact</p> <p>Parking: The applicant has supplied a total of 19 car spaces and 6 bicycle spaces. This is complia</p> <p>Car parking: The car park layout is generally acceptable. However the driveway ramp is a single width The applicant should therefore include a waiting bay at the top of the ramp and the use c</p> <p>Servicing: Due to the scale of the development, the proposed servicing on-street is deemed accept</p> <p>Conclusion: Traffic raise no objection to the development, provided a waiting bay and traffic signals a</p>
Waste Officer	<p>Waste Management Assessment - Amended Plans 15/10/20. Recommendation - Approval, subject to conditions.</p> <p>The proposal now complies with Council waste management design guidelines. Ray Creer</p> <p>Waste Management Assessment Recommendation - Refusal. This proposal does not comply with Council's design requirements for waste storage faci The bin room is located in the basement car park which is unacceptable. Specifically:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> Access to the bin room is further than 6.5 metres walking distance from front property. <i>Unacceptable. Maximum permitted walking distance is 6.5 metres.</i> Access to the bin storage room is via the vehicular driveway. <i>Unacceptable. Access to bin storage rooms cannot be via the vehicular driveway.</i> Access to the bin storage room is obstructed by a security door at the entrance to the bin storage room. <i>Unacceptable. Access to bin storage rooms must remain unimpeded for collection.</i> The bin storage room door opens inwards. <i>Unacceptable. Bin storage room doors must always open outwards.</i> <p>A bin storage facility is to be designed to comply with Council requirements. This facility needs to be located at street level and within 6.5 metres walking distance from the front property.</p> <p>Planner Please direct the applicant to Councils' website to obtain a copy of Waste Management Plan 2017-2022. Please have the applicant review their responses in the submitted Waste Management Plan 2017-2022. I am available to consult with or provide advice to the architect. Ray Creer</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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

DA2020/0665



Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses.

In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A Multi-Dwelling BASIX certificate has been submitted with the application (see Certificate No. 1056180M dated 20 April 2020). The BASIX Certificate is supported by an NatHERS Certificate (see Certificate No. 0004771160 dated 20 April 2020) which confirms the development will achieve a 5.5 average star rating.

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	45	46

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment

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

Pittwater Local Environmental Plan 2014

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

DA2020/0665



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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
4.3 - Height of Buildings	8.5m	7.1m to 8.5m	N/A	Yes
4.5A - Density Controls for Certain Residential Accommodation	1 dwelling/200m ² site area	1/209m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.5A Density controls for certain residential accommodation	Yes
4.6 Exceptions to development standards	N/A
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Basement: 8.6m Ground Floor: 6.5m to 9.2m First Floor: 6.5m to 9.2m Bin room: 1.1m	N/A N/A N/A 83%	Yes Yes Yes No
Rear building line	Upper: 4.27m (ave) (formula)	Basement: 5.7m Ground Floor Wall: 5.4m to 6.2m First Floor Wall: 5.4m to 7.6m First Floor Balcony: 4.9m First floor planter box: 3.92m	N/A N/A N/A N/A 8.2%	Yes Yes Yes Yes No
Side building line	North: 4.27m (ave) South: 4.1m (ave) (formula)	North Basement: 1.9m to 3.4m Ground Floor: 3.4m to 6.9m First floor: 6.2m to 6.9m First floor balcony planter box: 3.37m South	56.2% (2.4m) to 20.3% (0.87m) 20.3% (0.87m) N/A 21%	No No Yes No No



		Basement: 0.6m to 2.7m Ground Floor: 3.1m to 6.7m First Floor: 5.5m to 6.7m First floor balcony planter box: 3.17m	86.6% (3.7m) to 37.4% (1.6m) 28.1% (1.2m) N/A 22.6%	No Yes No
Building envelope	3.5m x 45°	North: Within envelope South: Within envelope	N/A N/A	Yes Yes
Landscaped area	50% (836.1m ²)	50% (837m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.10 Newport Locality	Yes	Yes
B2.5 Dwelling Density and Subdivision - Medium Density Residential	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.12 Landscaped Area - General	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

C1.4 Solar Access

Description of non-compliance:

The proposal will overshadow the private open spaces and some of the windows of the north facing neighbours to the south, and will not achieve the requirements of the control to allow for at least 3 hours of sunlight between 9am and 3pm on June 21st. Submissions were received from the southern neighbours in this regard. Submissions were also received from the eastern neighbours. However, the shadow diagrams indicate that the development will comply in full with solar access requirements in relation to maintaining adequate solar access to the rear neighbours. The merit assessment below therefore focuses on the southern neighbours.

Merit Consideration:

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

- **Residential development is sited and designed to maximise solar access during mid-winter.**

The proposal itself will receive adequate solar access, and includes 'roof windows' to allow light into the centre of the building.

The proposal achieves this objective.



- **A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development.**

The proposal will impact on the neighbours directly to the south. These neighbours have their main private open spaces facing to the north, and located adjacent to the northern boundary shared with the subject site. The proposal is compliant with the relevant built form controls including height, side boundary envelope, and side setbacks, with exceptions to the side setback requirements occurring only at basement and ground floor level, and the planter boxes surrounding the first floor balconies, which will not impact on overshadowing. The first floor southern walls are setback generally at 5.8m from the southern side boundary, which is considered to be a substantial side boundary setback given the minimum requirement is 4.1m. The roof eaves are setback 4.4m from the southern boundary.

Given these considerations, the location of the neighbouring private open space is considered to be highly vulnerable to overshadowing from any reasonably compliant development of the subject site. In this case, as mentioned above, the development complies in full with all built form controls impacting upon overshadowing of the neighbours. The elevational shadow diagrams provided indicate that at 12 noon on June 21, the shadows created by the development are close to ground where the neighbouring dwellings walls meet their private open space, and has generally receded from the walls by 3pm. This would indicate in turn, that for the majority of the year the neighbouring southern windows and private open space will achieve the amount of solar access required by the control, albeit not on the shortest day of the year, June 21st, when the sun is lowest in the sky.

Given the high vulnerability of the southern neighbours to overshadowing, and the full compliance of the development with the built form controls with regard to all elements that create the overshadowing, the proposal is not considered to be unreasonable in the circumstances. The proposal is considered to generally achieve the objective, by maintaining a reasonable level of solar access in the circumstances.

- **Reduce usage and/dependence for artificial lighting.**

The proposal will not unreasonably increase usage or dependence on artificial lighting, for either the subject site or the adjoining neighbours.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of the P21DCP 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.

C1.5 Visual Privacy

Detailed Description of Non-compliance

This control stipulates that private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation. Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary, and should be located at the rear of the building. Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

The proposal includes first floor living areas which face towards the rear boundary, set back 5.3m to 7.5m from the boundary. There are also balconies proposed off these living areas, 4.9m from the rear boundary. The balconies include planter boxes, located 3.92m from the rear boundary.



The Landscape Plan (prepared by Jane Britt Design, dated May 2020) indicates screen planting along the side and rear boundaries, including planting to various levels and including canopy trees. Council's Landscape Officer has reviewed this application and raised no issue with the Landscape Plan. Further, the development provides planter boxes to the sides and rear of the upper level balconies and windows, which will help to provide screening between neighbours.

Merit Consideration

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

On the first floor, the main living areas are generally orientated towards the front and rear of the building, with windows towards the side boundaries comprised mainly of bedrooms and media rooms. Planter boxes are proposed along the side and rear elevations of the first floor which will help to restrict overlooking opportunities. A condition is recommended to ensure these planter boxes are used for screen planting, generally in accordance with the planting identified on the landscape plan, which includes planting of significant heights. These planter boxes will also present a solid balustrade, which will help to minimise and prevent any downwards casual viewing from the interior of the new units towards the neighbours due to the angle of view.

Given these considerations, the proposal is considered to generally achieve the objective.

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

The proposal will generally maintain the sense of territory and safety currently obtained by the occupants of the subject site and those of adjoining properties. The proposed planter boxes will generally minimise or prevent casual downwards views from the proposed first floor, and combined with the screen planting proposed at ground level around the perimeter of the site will largely maintain privacy to a reasonable level.

Notwithstanding the elevated element of the proposal, it is considered to achieve the abovementioned objectives of this control, and is appropriate within the locality. The proposal can be supported on merit.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent / consistent with the relevant objectives of PLEP 2014 / P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported / is not supported, in this particular circumstance.

D10.7 Front building line (excluding Newport Commercial Centre)

Description of inconsistency

The proposed bin room will be 1.1m from the front boundary. The development otherwise complies with the control.

Merit consideration

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

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- **Achieve the desired future character of the Locality.**

The proposed bin room in the front setback area is not unusual for residential flat building development, and will not cause the overall development to become inconsistent with the desired future character.

The proposal achieves this objective.

- **Equitable preservation of views and vistas to and/or from public/private places.**

No views or vistas will be unreasonably impacted upon by the bin room.

The proposal achieves this objective.

- **The amenity of residential development adjoining a main road is maintained.**

The site is not located on a main road.

The proposal achieves this objective.

- **Vegetation is retained and enhanced to visually reduce the built form.**

The application includes a landscape plan which will provide adequate planting to visually reduce the built form.

The proposal achieves this objective.

- **Vehicle manoeuvring in a forward direction is facilitated.**

The proposed bin room will not affect the driveway or manoeuvring.

The proposal achieves this objective.

- **To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.**

The proposed bin room is a relatively minor structure in the context of the overall development. It will screen the unsightliness of bins, and will thereby help to create a positive impact on the streetscape.

The proposal achieves this objective.

- **To encourage attractive street frontages and improve pedestrian amenity.**

The bin room will hide the unsightliness and smell of bins, thereby helping to encourage an attractive street frontage, and improving pedestrian amenity.



The proposal achieves this objective.

- **To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.**

The proposed bin room is a relatively minor structure in the context of the whole development and the site, and will not create any significant impacts that would be considered inconsistent with the pattern of development in the area.

The proposal achieves this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21 DCP 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.

D10.8 Side and rear building line (excluding Newport Commercial Centre)

Description of inconsistency

The development does not comply with the side setback requirement at the basement level and first floor levels.

The non-compliances are identified as:

- the driveway entry at the southern side and the car park at the northern side of the basement; and
- the screen walls to the outdoor terraces of Units 2 and 3.
- The planter boxes surrounding the first floor units to the sides and rear.

Merit consideration:

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

- **To achieve the desired future character of the Locality.**

The non-compliant elements are in the basement and at the ground floor level (which are sited at the rear of the development) and are therefore not visible from the street or neighbouring property. The planter boxes are comply with the minimum side setback requirements at the front of the building, with the non-compliance occurring towards the rear of the site. In this respect, the non-compliant elements do not have any unreasonable impact upon the desired future character of the locality.

The development satisfies this objective.

- **The bulk and scale of the built form is minimised.**

The non-compliances occur within the basement and at the ground floor level, and towards the rear of



the site at first floor level. In this respect they do not add to the bulk and scale of the development as seen from the street. Where the planter boxes at first floor level are non-compliant, they help to increase privacy between buildings, and provide a greater sense of depth to the building than if they were removed. For this reason they are considered to provide a net benefit, and do not unreasonably impact on bulk and scale.

The development satisfies this objective.

- **Equitable preservation of views and vistas to and/or from public/private places.**

The non-compliant elements do not impact upon available views and vistas to and/or from public or private places.

The development satisfies this objective.

- **To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.**

The non-compliant elements do not adversely impact upon view sharing.

The development satisfies this objective.

- **To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.**

Given their location on the site, the non-compliant elements do not impact upon the privacy, amenity and solar access is provided within the development site and maintained to residential properties. The planter boxes at the first floor level will work to increase privacy between neighbours by providing screen planting, and minimising overlooking opportunities. They will not have any significant impact on solar access given the roof above will create shading to the south.

The development satisfies this objective.

- **Substantial landscaping, a mature tree canopy and an attractive streetscape.**

The development provides an acceptable level of planting throughout the site. The non-compliant elements do not impact upon the existing tree canopy or streetscape character.

The development satisfies this objective.

- **Flexibility in the siting of buildings and access.**

The development has been sited central to the property to optimize the provision of a landscaped perimeter and the provision of vehicular access.

The development satisfies this objective.

- **Vegetation is retained and enhanced to visually reduce the built form.**



The development includes a landscape plans which provides a substantial level of planting throughout the site. The proposed planting will compliment the built form and assist in reducing the overall scale of the building. The non-compliant elements do not adversely impact upon this provision, and the addition of the planter boxes, while non-compliant with the rear and side setback requirements, will help to break up the built form by increasing depth to the building, and providing planting to help screen the building.

The development satisfies this objective.

- **To ensure a landscaped buffer between commercial and residential zones is established.**

This objective is not relevant as the site does not abut any commercial zone.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent / consistent with the relevant objectives of PLEP 2014 / P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported / is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$49,830 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,983,000.

CONCLUSION

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

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

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



conditions contained within the recommendation.

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

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

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



RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/0665 for Demolition works, consolidation of three lots into one lot, and the construction of a residential flat building on land at Lot 41 DP 6248, 87 Foamcrest Avenue, NEWPORT, Lot 42 DP 6248, 89 Foamcrest Avenue, NEWPORT, Lot 40 DP 6248, 85 Foamcrest Avenue, NEWPORT, subject to the conditions printed below:

DEFERRED COMMENCEMENT CONDITIONS

1. **Deferred Commencement**

Evidence required to satisfy these conditions must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000.

2. **Stormwater Drainage Easement**

As the natural fall of the land is towards the rear of the site the disposal of stormwater drainage is to be generally in accordance with the drainage plan submitted by ITM Design Drw Nos H-Da 02 "C", H-DA 04 "C" dated 2/10/20. An interallotment drainage easement is to be created under Sections 88B and/or 88K of the Conveyancing Act 1919 through the downstream property(ies) for connection of the the site stormwater to TransportNSW drainage system in Barrenjoey Road. The applicant must provide Council with evidence of the created easement on title in order to activate the consent.

Stormwater drainage plans are to be submitted to Council for written approval detailing disposal of stormwater from the site in accordance with Council's Water Management Policy. Any design changes to the setback of the on-site detention tank are to maintain a minimum 1m setback from any boundary to enable planting to be maintained along the perimeter of the site.

Additionally, evidence of approval from Transport for NSW for the connection to the drainage system in Barrenjoey Road is to be provided.

Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner that protects adjoining properties.

3. **Updated Geotechnical Report**

The geotechnical report (Project No.: 2019-171.1 prepared by Crozier Geotechnical Consultants dated 6 May 2020) is to be updated to address the issues raised by the Geotechnical opinion (Ref: 33366LMlet, prepared by JK Geotechnics dated 23 July 2020). The updated report (or addendum) must be provided to Council prior to the consent being activated.

Reason: To ensure excavation does not result in any unreasonable impacts.

4. **Car Park Layout**

The applicant is to amend the drawings to demonstrate provision of a waiting bay at the top of the ramp and traffic signals to assist drivers attempting to ingress/egress the site.

The waiting bay shall be designed at 5.5m wide for the first 6.0m within the property boundary as per Australian Standards. A one (1) metre side setback landscaped setback is to be maintained between the driveway and southern side boundary.



The plans are to be submitted to and approved by Council's Manager Transport and Network prior to the consent becoming active.

Reason: To ensure safe ingress/egress for the residents of the development.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

5. 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
0562-DA102 Revision 02	2/10/2020	PopovBass
0562-DA104 Revision 02	2/10/2020	PopovBass
0562-DA105 Revision 02	2/10/2020	PopovBass
0562-DA106 Revision 02	2/10/2020	PopovBass
0562-DA107 Revision 02	2/10/2020	PopovBass
0562-DA108 Revision 02	2/10/2020	PopovBass
0562-DA109 Revision 02	2/10/2020	PopovBass
0562-DA110 Revision 02	2/10/2020	PopovBass
0562-DA111 Revision 02	2/10/2020	PopovBass
0562-DA112 Revision 02	2/10/2020	PopovBass
0562-DA113 Revision 02	2/10/2020	PopovBass

Engineering Plans		
Drawing No.	Dated	Prepared By
H-DA 02 "C",	2/10/20	ITM Design
H-DA 04 "C"	2/10/20	ITM Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report Project No.: 2019-171.1	6 May 2020	Crozier Geotechnical Consultants
Arboricultural Report Ref No. RTC-5920	2.4.2020	RainTree Consulting



Accessibility Review Report version 9306_ADR_DA_v1.2	24 April 2020	ABE Consulting
Building Code of Australia Report ref: P200099	6 May 2020	Anthony Protas Consulting
Bushfire Assessment Report Ref. no. 201189	30 March 2020	Building Code & Bushfire Hazard Solutions

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DAL01B	13/05/2020	JaneBrittDesign
DAL02B	13/05/2020	JaneBrittDesign
DAL03B	13/05/2020	JaneBrittDesign
DAL04B	13/05/2020	JaneBrittDesign

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Council waste management plan	13/05/2020	Trio Industries

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.

6. 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.

7. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.



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

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

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



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

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

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

8. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$49,830.00 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 \$4,983,000.00.

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



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

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

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

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

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

9. **Security Bond**

A bond (determined from cost of works) of \$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.

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

The applicant is to lodge a Bond of \$15000 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.

11. **Construction, Excavation and Associated Works (Security Bond)**

A bond of \$15000 as security against damage to Council's roads fronting the site caused by the transport and disposal of materials and equipment to and from the site.



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.

12. **Construction, Excavation and Associated Works Bond (Maintenance for civil works)**
The developer/applicant must lodge with Council a maintenance bond of \$5000 for the construction the 1.5m wide footpath. The maintenance bond will only be refunded upon completion of the six month maintenance period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing practical completion.

Reason: To ensure adequate protection of Council infrastructure.

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

13. **On slab landscape works**
Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.
- Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.
- The following soil depths are required to support landscaping as proposed:
- i) 300mm for lawn
 - ii) 600mm for shrubs
- Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).
- Reason: to ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.
14. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical dated May 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.
15. **Traffic Management and Control**
The Applicant is to submit an application for Traffic Management Plan to Council for approval



prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

16. **Detailed Design of Stormwater Treatment Measures**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the updated engineering plans from ITM Design and Council's Water Management for Development Policy. These plans should detail the installation of planter boxes that take stormwater drainage, a filtration basket or equivalent and a filtration cartridge or bio-filter system such as a SPEL Basin or Ocean Protect Filterra. They must not include the RPM Pillow proposed in the draft designs.

The certificate shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment

17. **Photographic Archival Record**

A photographic archival record of the site is to be made of all existing buildings and structures (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by Heritage NSW, Department of Premier and Cabinet. This record must be submitted to Council.

This record must be submitted and approved by the Certifying Authority prior to commencement of any demolition or works on-site.

The photographic record should be made using digital technology, submitted on archival quality CD-R disc, and should include:

- o Location of property, date of survey and author of survey;
- o A site plan at a scale of 1:200 showing all structures and major landscape elements;
- o Floor plans of any buildings at a scale of 1:100;
- o Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Reason: To provide an archival photographic record of the site, including any buildings and landscape elements, prior to any works.

18. **Construction Traffic Management Plan**

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

The CTMP must address following:

- o The proposed phases of construction works on the site, and the expected duration of each construction phase
- o The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken



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

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

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

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.



19. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

20. **Acid Sulfate Management Plan**

Prior to the issue of the construction certificate, an Acid Sulfate Soils Management Plan is to be prepared by a suitably qualified geotechnical engineer in accordance with the Acid Sulfate Soils Manual (ASSMAC, 1998) and submitted to the Council for review.

Reason: Protection of the Environment

21. **Pre-commencement Dilapidation Report**

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

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

Reason: Protection of Council's infrastructure during construction.

22. **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.

23. **Compliance with Standards**

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

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'**
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 - 2009* Design for access and mobility - General requirements for access – New building work**
- (m) AS 1428.2 - 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website [www.hreoc.gov.au/disability rights /buildings/good.htm](http://www.hreoc.gov.au/disability%20rights/buildings/good.htm). <www.hreoc.gov.au/disability%20rights%20/buildings/good.htm>

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

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. (DACPLC02)

24. **Compliance with Standards**

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

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

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

25. **External Finishes to Roof**



The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

26. **Sydney Water "Tap In"**

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

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

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

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

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

27. **Waste and Recycling Requirements**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

28. **Pre-Construction Dilapidation Report**

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

Properties:

- o 91 Foamcrest Avenue
- o 79-83 Foamcrest Avenue
- o 413 Barrenjoey Road
- o 415 Barrenjoey Road
- o 417 Barrenjoey Road



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

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

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

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

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

29. **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.

30. **Tree removal within the property**

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

- trees numbered 3 (Frangipani), 15 (Paperbark), 16 (Dead Paperbark), 33 (Cabbage Tree Palm, 34 (Forest Oak, 35 (Coast Banksia), and 37 (Bottlebrush), all subject to tree replacement within the site in accordance with the Landscape Plan.

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

- tree numbered 2,
- trees numbered 4 to 14 inclusive,
- trees numbered 22 to 30 inclusive,
- tree numbered 36.

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.

31. **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) tree 19 (Paperbark) in Council verge in accordance with section 1.3.1,
- ii) tree 20 (Paperbark) in Council verge in accordance with section 1.3.2,
- iii) all works in the vicinity of neighbouring properties in accordance with section 1.4,
- iv) all works required to retain existing trees under section 2.2,
- v) works as recommended in Appendix A: Tree Removal & Protection Plan.

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:

- i) 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.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: tree protection.

32. **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

33. **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.

34. **Footpath Construction**

The applicant shall a 1.5m wide concrete footpath behind the kerb for the full frontage of the site. the works shall be in accordance with the following:

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

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

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

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

- (a) Prior to pouring the 1.5m wide concrete footpath
- (b) Prior to pouring the vehicle crossing.
- (c) Prior to pouring of kerb and gutter

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

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

36. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.6 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ Normal Low and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

37. **Substitution of Stormwater Treatment Measure**

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must first be approved by the Principal Certifying Authority.

Details must be submitted to the Principal Certifying Authority for approval prior to installation.



Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

38. Protection of existing street trees

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

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

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

Reason: tree protection.

39. Tree and vegetation protection

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

- i) all trees and vegetation located on adjoining properties,
- ii) 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 RainTree Consulting.

The Certifying Authority must ensure that:

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

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

Reason: tree and vegetation protection.

40. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by ITM Design prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

The discharge of sediment-laden waters from the site may result in clean-up orders and/or fines under Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

Reason: Protection of the receiving environment

41. **Dewatering Management (Large sites/basements)**

Council proactively regulates construction sites for sediment management.

Where a one-off instance of dewatering of groundwater or tailwater is required during works, Council's Catchment Team must be notified of your intention to discharge. Discharges should meet the water quality requirements below. Notification must be via the Team's email address - catchment@northernbeaches.nsw.gov.au.

If continuous dewatering or dewatering on multiple events is expected, a dewatering permit is required from Council's Catchment Team at catchment@northernbeaches.nsw.gov.au.

To obtain a permit, the following information must be contained in a dewatering management plan and provided to Council's Catchment Team. The dewatering management plan must be



certified by a suitably qualified civil engineer who has membership of Engineers Australia and appears on the National Engineering Register (NER).

1. Preliminary testing of groundwater/tailwater must be conducted by a NATA accredited laboratory to establish a correlation between NTU and TSS. This will allow the use of grab sampling at short notice prior to planned discharges.
 2. Grab samples must be collected within 1 hour before planned discharge that comply with the parameters in the table below.
 3. The groundwater/tailwater to be discharged must be compliant with the water quality requirements below, the General Terms of Approval/Controlled Activity permit issued by WaterNSW (if applicable), Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.
- Water Quality (<one hour of planned discharge)
- Oil and grease, not visible
- pH, 6.5-8.5
- Total Suspended Solids (TSS), <50mg/L NTU from a meter/grab sample
4. All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.
 5. Tailwater must be discharged to the nearest stormwater pit in accordance with Council's Auspec1 Design Manual and must not spread over any road, footpath and the like. Discharge to the kerb and gutter will not be accepted. Where there is no stormwater pit within 100 metres of the site, Council's Catchment Team must be contacted to discuss alternative arrangements.

On receipt of a satisfactory dewatering management plan, Council's Catchment Team will issue a permit that will allow dewatering for up to one year. This permit should be provided to WaterNSW for their permit. Once a permit has been received from WaterNSW, dewatering may commence.

Reason: Protection of the receiving environment

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

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled [INSERT] and dated [INSERT].

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

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

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

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

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE****44. Landscape completion**

Landscaping is to be implemented in accordance with the Landscape Plan DAL01, DAL02, DAL03, and DAL04, all issue B, prepared by Jane Britt Design, inclusive of the following conditions:

- i) delete *Cupaniopsis anacardioides* from the schedule and replace with a similar tree in form and size that is not self-seeding into natural bushland,
- ii) delete all *Rhaphiolepis* species from the schedule and replace with a similar shrub in form and size that is not self-seeding into natural bushland,
- iii) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- iv) all tree planting shall be located within a 9m² deep soil area and be located a minimum of 3 metres from existing and proposed buildings, and at least 1.5m from common boundaries, and located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.

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

Reason: environmental amenity.

45. Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

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

Reason: tree protection.

46. Post-Construction Road Reserve Dilapidation Report (Major Development)

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

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

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

47. Certification for the Installation of Stormwater Treatment Measures

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the plans prepared by ITM Designs. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.



The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment

48. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

49. **Stormwater Treatment Measures Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:
 - a) Work as executed drawings
 - b) Intent of the stormwater treatment measures including modelled pollutant removal rates
 - c) Site detail showing catchment for each device
 - d) Vegetation species list associated with each type of vegetated stormwater treatment measure
 - e) Impervious area restrictions to maintain the water balance for the site
 - f) Funding arrangements for the maintenance of all stormwater treatment measures
 - g) Identification of maintenance and management responsibilities
 - h) Maintenance and emergency contact information
2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure
 - a) Activity description, and duration and frequency of visits

Additionally for vegetated devices:

 - b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
 - c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure
3. Maintenance schedule and procedure - ongoing
 - a) Activity description, and duration and frequency of visits
 - b) Routine maintenance requirements



- c) Work Health and Safety requirements
- d) Waste management and disposal
- e) Traffic control (if required)
- f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
- g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

50. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment

51. **Post-Construction Dilapidation Report**

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

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

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

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

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

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

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

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



Certificate.

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

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

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

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

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

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

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

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

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

54. **Strata Management Statement**

The Strata Management Statement must specifically list the stormwater treatment measures that will be maintained under strata title. The statement must also include the Stormwater Treatment Measure Operation and Maintenance Plan.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To ensure maintenance of all stormwater management assets and protection of the receiving environment.

55. **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.

56. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the



floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

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

57. Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines
(https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

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

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

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

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

Reason: To ensure consistent numbering for emergency services access.

58. Undergrounding of Telecommunications Services

Arrangements are to be made for the provision of underground telecommunications services to the building.

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

Reason: Provision of telecommunication facilities in a manner that facilitates the future underground provision of cable services. (DACPLF06)

59. Sydney Water

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

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

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



building, driveway or landscape design.

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

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

60. Waste and Recycling Facilities Certificate of Compliance

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

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

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

61. Waste/Recycling Compliance Documentation

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

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

62. Positive Covenant for Waste Services

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

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

63. Authorisation of Legal Documentation Required for Waste Services

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

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

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

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

64. Maintenance of Stormwater Treatment Measures

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.



Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment

65. **Landscape maintenance**

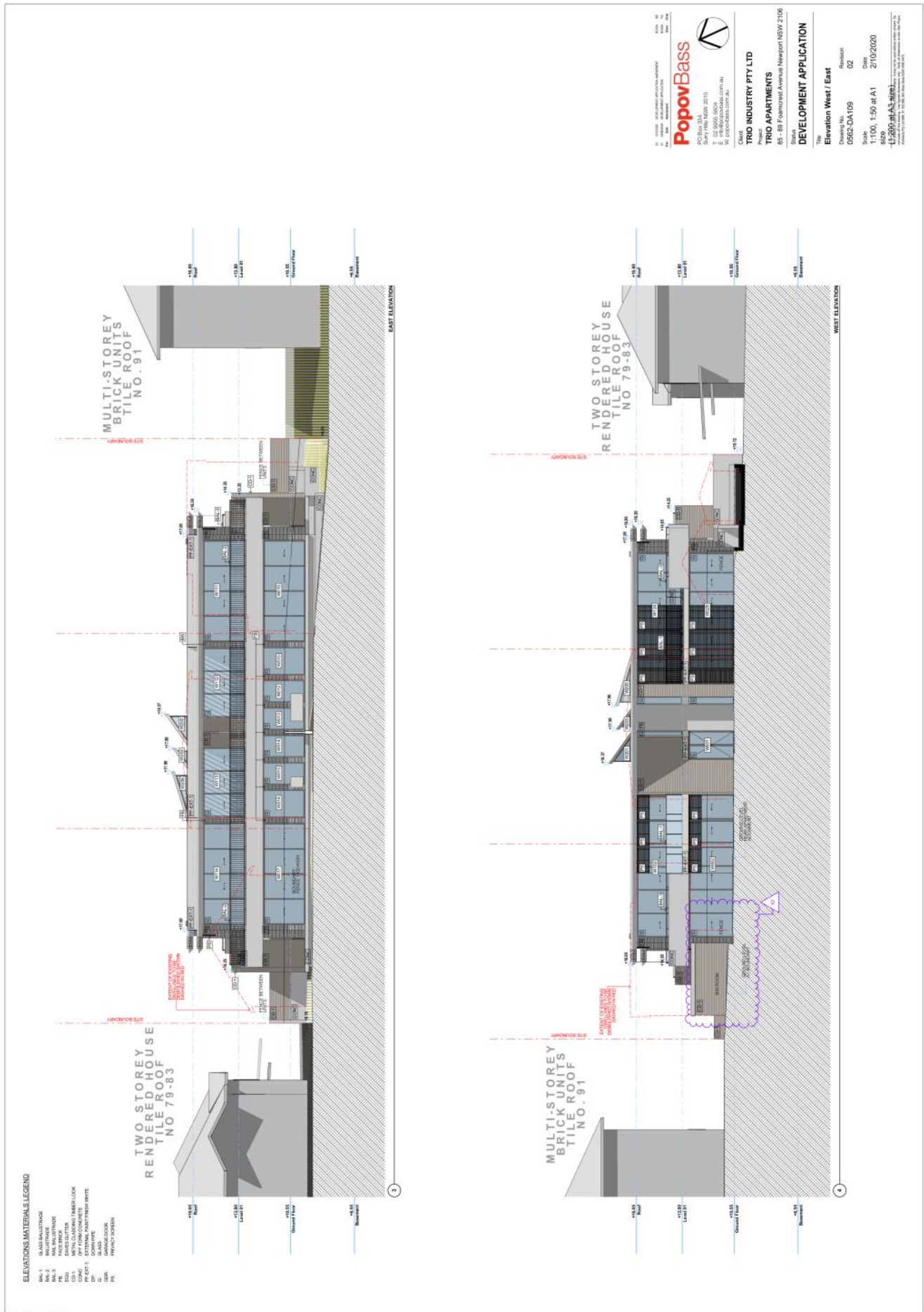
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

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.







ITEM 3.5	PLANNING PROPOSAL (PEX2020/0006) 114-120 OLD PITTWATER RD, BROOKVALE
REPORTING OFFICER	PRINCIPAL PLANNER
TRIM FILE REF	2020/521776
ATTACHMENTS	1 Planning Proposal 2 SGS Report - Primewest Site Planning Advice, April 2020 3 Submissions

PURPOSE

To seek endorsement of the Local Planning Panel for a Planning Proposal to include an additional permitted use of 'office premises' within Schedule 1 of the Warringah Local Environmental Plan 2011 (WLEP 2011) on land at 114-120 Old Pittwater Road, Brookvale and to progress the Planning Proposal to a Gateway Determination.

BACKGROUND

The subject site and surrounding properties fronting Old Pittwater Road are zoned IN1 General Industrial. The subject site is developed with two large existing buildings which were previously home to the national headquarters of Fuji Film and Avon. The existing buildings are currently only partially occupied with extensive vacant office floorspace. It is noted that stand-alone 'office premises' are currently prohibited in the IN1 General Industrial zone.

Having regard for the current zone, the existing vacant office space cannot be separately leased for stand-alone office purposes. Any business wanting to use the existing office space must demonstrate that the office space is ancillary to a use permitted in the IN1 General Industrial zone. Unfortunately, the Proponent has been unsuccessful in their attempts to attract suitable businesses to occupy the existing building. Accordingly, the Proponent now seeks to amend Schedule 1 of the WLEP 2011 to allow 'office premises' as an additional permitted use (APU) limited to a maximum 15,657sqm gross floor area (GFA) within the existing buildings. The proposal does not seek to increase the amount of office space currently on site. This will allow the existing vacant office floor space to be used by any business and does not require a connection with an Industrial use.

It is noted that for a period, between 2000 and 2011, 'office premises' were permissible on the subject site in accordance with the Warringah LEP 2000. The subject site (and the whole Brookvale Industrial Precinct west of Pittwater Rd) was included in Locality G10 – Brookvale Industrial West. In this Locality, office premises were listed as Category Two development, which was permissible subject to consent, provided the consent authority is satisfied that the development is consistent with the desired future character described in the Locality Statement. The Lifestyle Working co-working office building in the IN1 zone near the site was approved in 2004 under these provisions. Prior to 2000, the Warringah LEP 1985 was in place, and offices (under the definition of commercial premises) were prohibited under the site's 4(a) General Industrial Zoning.

The subject site is owned by Primewest Funds Ltd (the proponent) who first approached Council in 2016 to discuss planning mechanisms to facilitate the use of existing buildings on the site for office/business premises. At that time, Council had begun a community engagement process for the Draft Brookvale Structure Plan (draft BSP). It was suggested that the proponent delay requesting a Planning Proposal until the draft BSP had been prepared and presented to Council for endorsement for formal public exhibition.

In April 2018, the proponent made a request to Council to prepare a Planning Proposal to amend Schedule 1 of the Warringah Local Environmental Plan 2011 (WLEP) to add office premises and business premises as additional permitted uses under the site's IN1 General Industrial zoning.

The request was subsequently withdrawn by the proponent, having regard to the status of the draft BSP exhibited late 2017 with over 100 submissions received, planning priorities set out in the State Government's North District Plan (released March 2018) to retain and manage industrial and urban services land, and the need for Council to undertake further analysis of traffic and transport issues in Brookvale-Dee Why and LGA-wide employment and housing studies associated with preparation of a Local Strategic Planning Statement and a review of Council's four Local Environmental Plans.

Prior to withdrawal of the 2018 Planning Proposal, Council officers held discussions with the Greater Sydney Commission (GSC) and were advised that the GSC could not support approval of office or business premises within the industrial areas of Brookvale until further studies had been completed, including an LGA-wide employment study. During these discussions, the GSC emphasised its position on protection of industrial and urban services land, the low supply context of such land in the North District, and a policy of retaining and managing industrial and urban services land set out in the North District Plan. The GSC advised any loss of industrial land to alternative uses would need to be fully justified in terms of net community benefit having regard to the broader economic functions of industrial areas, livability and sustainability outcomes, and a clear planned vision for Brookvale. The GSC also provided feedback to the proponent after withdrawal of the 2018 Planning Proposal to the effect that the GSC would not endorse any planning proposal or structure plan for Brookvale until the Council completes its Local Strategic Planning Statement.

The Northern Beaches Local Strategic Planning Statement was completed and came into effect on 26 March 2020. On 7 August 2020, the proponent made a request to Council and lodged material in support of the Planning Proposal (Attachment 1) that is the subject of this report.

SITE DESCRIPTION

The site has a total area of approximately 4.2ha (see table below) and a combined frontage of 120m to Old Pittwater Road, Brookvale.

Property Description	Area	Owner
Lot 1 DP 868761	2.015ha	Primewest Funds Ltd
Lot 3 DP 868761	2.180ha	Primewest Funds Ltd

The site (see Figure 1) is located in an industrial area which spans either side of Old Pittwater Road between Cross Street and Pittwater Road, behind the Warringah Mall Shopping Centre. Adjoining land to the rear western boundary of the site is a steep bushland reserve that rises to a residential area along Allenby Park Parade at an elevation some 40-50m above that of the site. The site itself slopes upwards from east to west, with the steepest land at the rear being undeveloped bushland.

The site is developed with two large buildings which were previously home to the national headquarters of Fuji Film and Avon. The northern building, set back from the road and accessed via a shared driveway, is three storeys with roof-top car parking, and is currently occupied largely by a Woolworths warehouse and distribution centre (primarily for filling online orders) on the upper level, and a Service NSW centre open to the public, and a printing business and pilates studio on the lower levels. The southern building, situated closer to the road, is two to five storeys with rooftop parking, and appears to be largely vacant, with limited occupation by some warehouse and office-based businesses. There is a shared main entry/exit driveway and a number of at-grade parking areas.

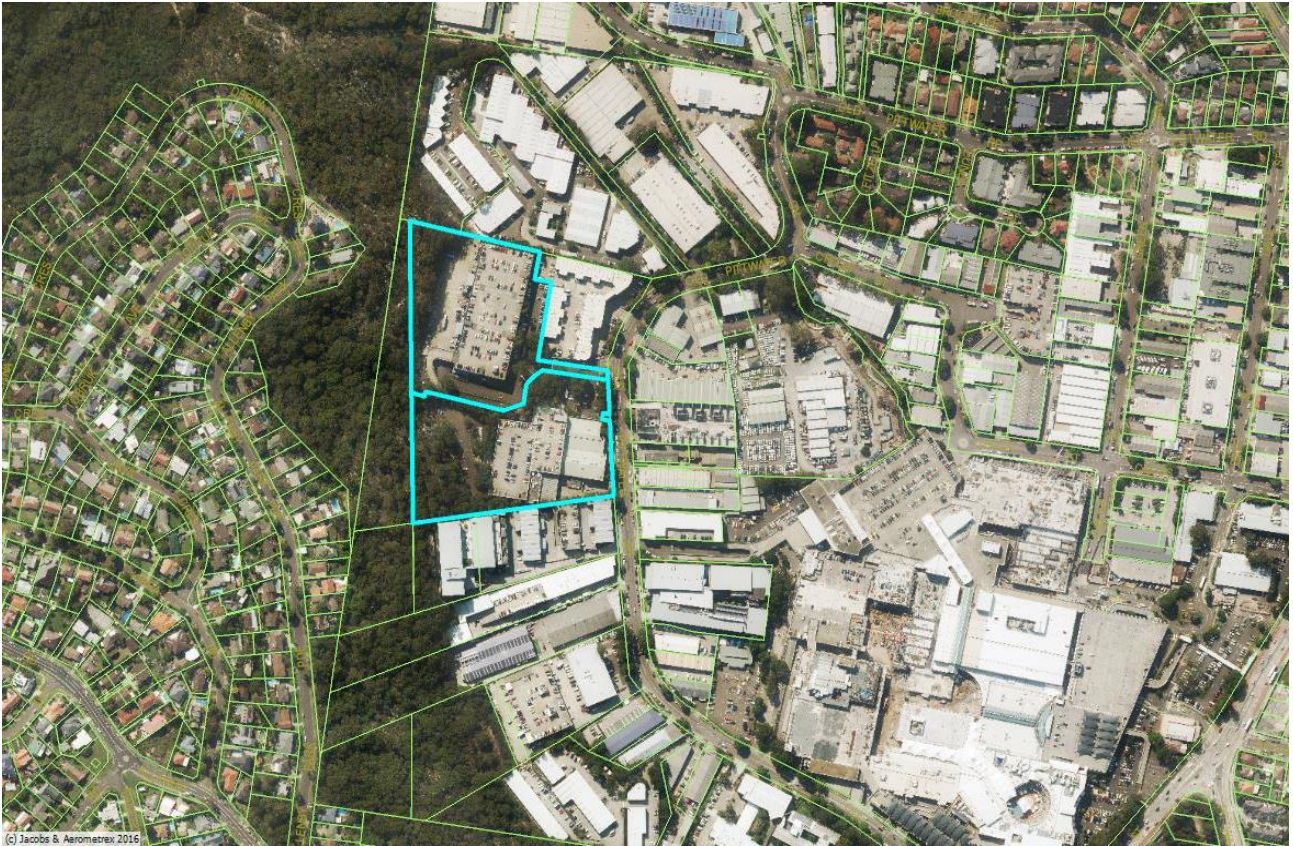
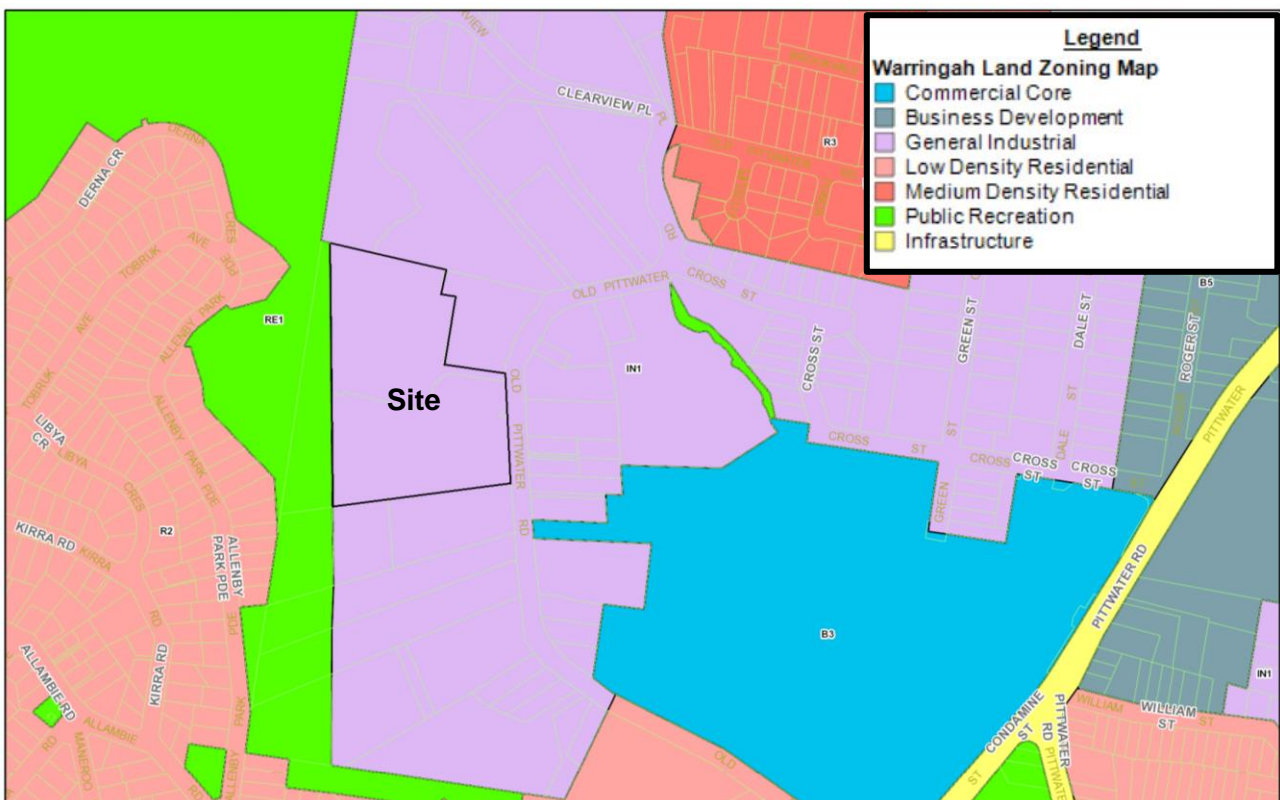


Figure 1 - Subject Site

CURRENT ZONING

The site and surrounding properties fronting Old Pittwater Road are zoned IN1 General Industrial. The adjoining bushland reserve to the west is zoned RE1 Public Recreation. The Warringah Mall



shopping Centre to the south-east is zoned B3 Commercial Core (see Figure 2).

Figure 2 - Zoning

The objectives of the IN1 General Industrial zone include:

- To provide a wide range of industrial and warehouse land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.
- To support and protect industrial land for industrial uses.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To enable a range of compatible community and leisure uses.
- To maintain the industrial character of the land in landscaped settings.

Uses permitted with consent in this zone include:

Boat building and repair facilities; Depots; Freight transport facilities; Garden centres; General industries; Hardware and building supplies; Industrial retail outlets; Industrial training facilities; Light industries; Liquid fuel depots; Neighbourhood shops; Oyster aquaculture; Places of public worship; Roads; Storage premises; Take away food and drink premises; Tank-based aquaculture; Timber yards; Vehicle body repair workshops; Vehicle repair stations; Vehicle sales or hire premises; Warehouse or distribution centres; Any other development not specified in item 2 or 4

Office premises are a prohibited use under the site's IN1 General Industrial zoning.

THE PROPOSAL

The Planning Proposal seeks to amend Schedule 1 of the Warringah Local Environmental Plan 2011 to allow 'office premises' as an additional permitted use (APU) limited to a maximum 15,657sqm gross floor area (GFA) within the existing buildings. The proposal includes a new Area 24 on the APU Map Sheet 008A and a new subclause in Schedule 1 for Area 24 (details provided in Part 2 below).

Office premises is defined as follows:

office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

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 intended outcome of this Planning Proposal is to allow existing floorspace on the site, which was previously ancillary office space, to be used independently of approved warehouse/industrial uses, until such time as the existing buildings on the site are redeveloped.

The intention is to make office premises permissible with consent, but to limit this permissibility to only within the existing buildings and up to a specified maximum gross floor area for each building that aligns to the floor area of the existing buildings. If, and when the buildings are redeveloped in the future, this permissibility is intended to cease.

The proponent's stated objectives for the planning proposal are to:

- Make the most efficient use of existing built form and site infrastructure in the short to medium term,
- Capitalise on the current employment potential of the site and ensure it can operate at its full economic capacity,
- Facilitate the transitioning of the site from traditional (niche manufacturing and wholesale services) to advanced manufacturing and innovative industries, and
- Protect the current manufacturing operations on site as well as the longer term strategic value of the industrial zoned land.

Efficiency and Employment

The proponent contends that the existing buildings on the site incorporate a significant component of ancillary office space owing to the nature of the former businesses that occupied them, namely Fujifilm and Avon, which operated their head office alongside their main warehouse facilities in the buildings. The amount of office space within the building's total 15,657sqm (see Table 1). No plans were provided to delineate the warehouse and ancillary office space within each building.

	114 Old Pittwater Rd	120 Old Pittwater Rd	Total
Warehouse (GFA sqm)	6,214	8,459	14,673
Office (GFA sqm)	11,317	4,340	15,657
Parking	225	309	534

Table 1 – Breakdown of existing floorspace (figures supplied by site's owner - Primewest Funds Ltd)

The proponent states that while there continues to be demand for warehousing and other industrial uses on the site, there is no longer demand for any business to operate both the industrial and office space that exists on site, as is required under the current IN1 General Industrial zone. Due to technological advances, there is now less need for head office operations to co-locate with industrial facilities. Larger scale manufacturing and warehousing have tended to relocate to outer metropolitan areas (cheaper land) and closer to major roads, rail and/or ports. The proponent further states that the ancillary office space has been vacant for several years and a number of businesses have expressed interest in using the space as stand-alone office premises - that is, office activities independent of and not ancillary to any industrial or other activity undertaken on the land.

The proponent has provided details of prospective tenants seeking office floor areas in and around the Northern Beaches. The floorplates sought range in size from 500-3,000sqm (average 1,283sqm). The list includes businesses involved in infrastructure and civil works, IT, cybersecurity, personal products, public administration, and transport research collaboration.

It was also noted that with changes in business behaviour arising from COVID-19, including increased working from home, less use of public transport and a need to reduce costs, there is

increasing demand for well-located metropolitan contemporary facilities close to amenities with good parking.

The proponent highlighted an increasing awareness amongst large corporations for decentralising work forces to minimise risk and disruption, and a movement to create secondary major offices in metropolitan areas (that is, locations outside major CBDs).

It is accepted that the 15,657sqm of ancillary office floorspace is those parts of the existing buildings which are designed, built and fitted-out for office activities and were ancillary to the primary factory/warehousing operations of the businesses which previously occupied the buildings.

This floorspace is particularly suited to office activities and the site's owner has had difficulty finding new tenants as the site's IN1 zoning only allows office activities where ancillary to permissible uses.

Given the owner's unsuccessful efforts to find factory/warehouse tenants who require substantial ancillary office space for their operations, and the likelihood that this floorspace could remain largely vacant and unused (as it has since Fujifilm and Avon left), a mechanism to allow office premises uses independent of any industrial activity would enable efficient use of existing built assets which can generate employment and economic opportunities without construction cost or time factors. This is a preferable outcome to the floorspace remaining vacant into the foreseeable future.

The economic impact of the COVID-19 pandemic increases the imperative for employment and it is possible that the Planning Proposal may satisfy the State Government's criteria for fast-tracked assessment under the Planning System Acceleration Program.

Protection and Transitioning

Limiting the office premises use to a specified maximum GFA for each existing building (equating to the existing ancillary office space) is intended to protect the current industrial activities on the site. The quantum of existing industrial (warehouse) floorspace will not be reduced. The site's single ownership also means any potential land use conflict can more readily be minimised and managed, as it is in the interests of the owner to ensure the activities of tenants are harmonious. While the site comprises two lots which could ultimately be sold to different entities, a maximum GFA for office premises is proposed for each existing building on the two lots and any future owners would be compelled to manage any conflict arising from the activities of different tenants within their buildings.

Existing permissibility for industrial and other uses under the site's IN1 zoning is unchanged by this Planning Proposal. It will therefore still be possible for new industrial activities to be established using any of the existing floorspace, subject to consent, in accordance with the IN1 zone. While the floor space may have been previously designed and fitted-out for administrative or office-type activities, this does not preclude its use or adaptation for use for industrial activities.

While not in itself responding to changes in technology and innovation, the proposal would in effect enable the site to achieve an economically active 'holding pattern', until such time that conversion and/or redevelopment to accommodate high-tech and innovative industries can occur, if and when the interest and capability in the marketplace arises for such industries in this location.

Given the solid construction and substantial investment in the existing buildings, it is accepted that redevelopment may be a long term prospect. In the meantime however, economically viable, employment-generating use of the existing ancillary office space which might otherwise remain vacant is appropriate.

Part 2 – Explanation of Provisions

The following amendments to Warringah Local Environmental Plan 2011 (WLEP) are proposed:

- Insert the following subclause in WLEP Schedule 1 - Additional Permitted Uses:

“24 Use of certain land at 114-120 Old Pittwater Road, Brookvale

 - (1) This clause applies to part of Lots 1 and 3 DP 868761, 114-120 Old Pittwater Road, Brookvale shown as “Area 24” on the Additional Permitted Uses Map.
 - (2) Use of that land for the purpose of office premises is permitted with development consent if the consent authority is satisfied that:
 - (i) there will be no reduction in gross floor area available for industrial activities on any Lot,
 - (ii) the development is carried out in an existing building, and
 - (iii) no more than 11,317 sqm on Lot 1 DP 868761 and 4,340 sqm on Lot 3 DP 868761 of existing gross floor area will be used for office premises.”
- Amend WLEP Additional Permitted Uses Map Sheet APU_008A in accordance with the proposed additional permitted uses map (See Figure 3).

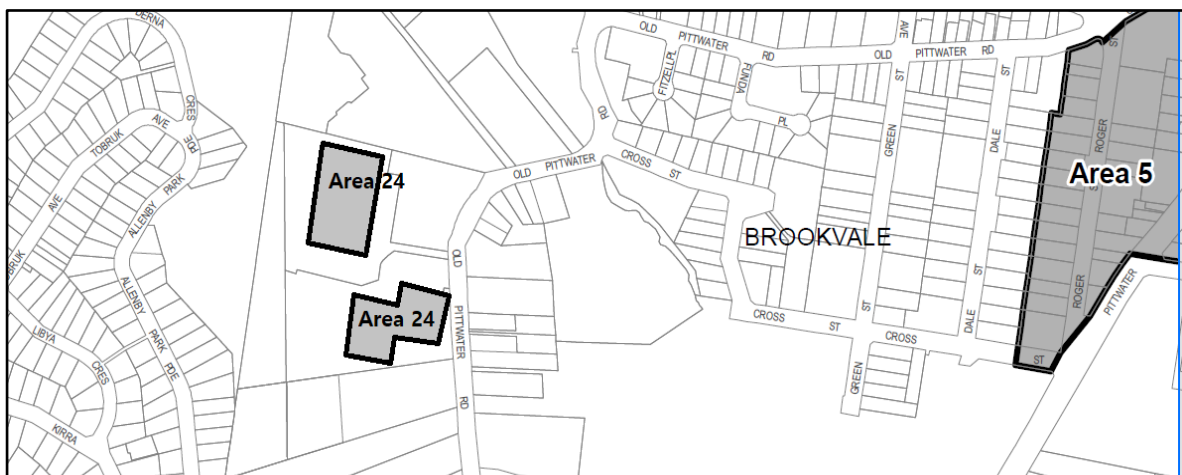


Figure 3 Extract of Proposed LEP Map – Sheet APU_0008A
(Note: Area 24 approximates the footprint of the existing buildings on the site)

Proposed Clause 24

Material submitted by the proponent includes a legal opinion on the drafting of proposed Clause 24, prepared by Holding Redlich. The opinion was prepared in order to confirm that the clause, as drafted, will achieve its intended outcomes. It purports that the drafting of the clause, combined with defining the area of the existing buildings on the APU Map, provides a robust approach which protects the IN1 zone in the long term because:

- (a) the proposed clause makes it clear that the use is limited to only a specific area and within an existing building. As such, the clause could not be relied upon for any proposed new buildings; and
- (b) the clause requires any proponent to satisfy Council (and for Council to be satisfied) that the requirements of the clause have been met before development consent will be granted (and, in fact, can be granted). As is clear from clause (2) of the proposed clause, this includes Council being satisfied that there will be no reduction in GFA

available for industrial uses and that the development is being carried out within an existing building.

Council's Legal Counsel conducted a preliminary review of proposed Clause 24. As the proposed clause is somewhat novel, there is a level of uncertainty as to its workability, particularly subclause (2)(i). Any amount of office premises use could be regarded as a reduction in gross floor area available for industrial activities as all of the existing floorspace could potentially be used for industrial purposes. The intention however is that there be no reduction beyond the 15,657sqm GFA that is regarded as existing ancillary office space.

The proponent supplied examples of similar clauses in other Local Environmental Plans. None of the examples prescribe a maximum GFA for the additional permitted use within an existing building, nor do any include a provision requiring the consent authority to reach a state of satisfaction about the reduction in the primary use of a building before being able to exercise the power to grant development consent. Nevertheless, the Environmental Planning and Assessment Act provides under section 3.14(3A) for an environmental planning instrument to "make provision for any zoning of land or any other provision to have effect only for a specified period or only in specified circumstances."

If the Planning Proposal proceeds through Gateway, it is anticipated that Parliamentary Counsel will in due course review the proposed Clause 24 and advise of any revisions necessary to achieve the intended outcomes.

Precedent

The legal opinion submitted by the proponent also suggests that the Planning Proposal will not create a precedent given the specific circumstances of the site, the proposed restrictions on the additional permitted use, and the justification given to meet strategic and site-specific merits tests and to demonstrate consistency with the relevant regional and district plans and Council's local strategic planning statement.

In 2019, Council engaged SGS Economics & Planning (SGS) to undertake an Employment Study for the Northern Beaches to inform the preparation of Council's Towards 2040 Local Strategic Planning Statement (LSPS) and the comprehensive review of its four Local Environmental Plans.

In April 2020, Council sought SGS's advice specifically in relation to the subject site and the proposal to allow office premises uses (Attachment 2). The advice from SGS acknowledged that the proposal has merit in terms of the opportunity to reuse an existing asset for a more productive function, and that the proposal is broadly consistent with the principles and strategic aims in the Greater Sydney Commission and Council's strategic planning documents including the need to protect and retain existing industrial land. However, SGS expressed a concluding view that, on balance, the proposal is not appropriate for two key reasons: the potential precedent for loss of industrial land uses, and potential to undermine strategic employment objectives for Brookvale and Frenchs Forest.

As commercial office space typically achieves higher rents than industrial floorspace, there is often a financial incentive for owners of industrial properties to want to convert to commercial office uses. It is possible that allowing an office premises as an additional permitted use on the subject site may result in expectations amongst other landholders in the IN1 zoned precinct in Brookvale that Council may allow office premises on other sites in the precinct. Such expectations however would not be realistic. Other sites are unlikely to be able to demonstrate sufficient strategic and site-specific merit.

The subject site has unique characteristics including the size, design and layout of floorspace in the existing buildings, land area and ownership, former and current occupants, and circumstances which have resulted in substantial ancillary office space being largely vacant with limited prospects for economically viable use in the short to medium term under the current planning controls. The

site has a significant latent capacity to support immediate employment and economic activity through use as office premises until such time that the buildings are redeveloped in the future. Given the particular building design and former use, it is arguable that the Planning Proposal represents less of a conversion from industrial to commercial, and more a logical concession in the planning controls to better reflect what exists on the site and the activities historically undertaken there.

The Planning Proposal has sufficient strategic and site-specific merit on balance, having regard to the benefits that can be derived from allowing an efficient, productive, employment-supportive use of existing under-utilised buildings and infrastructure, which outweigh any perceived loss of capacity and utility for industrial and urban services activities. The site's IN1 zoning is retained, thereby protecting its role and function for industrial and urban services in the long term. The permissibility of office premises will cease when the site is redeveloped in the future and Clause 24 no longer applies.

The strategic and site-specific merit tests are discussed in detail in Part 3 Section B of this report.

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?

No. The Planning Proposal is the result of a proponent-led request to Council which began with enquiries in 2016 and an earlier planning proposal request in 2018 that was withdrawn pending completion of the LSPS and progress on Council's Employment Study.

Local Strategic Planning Statement

The 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 local statutory planning for the Northern Beaches LGA.

The LSPS includes a structure plan which designates a Strategic Centre at Brookvale and identifies it as an employment and innovation centre. The relevant planning priorities, principles and actions for Strategic Centres are set out under the Productivity Direction of Jobs and Skills. Under Planning Priority 22 - Jobs that match the skills and needs of the community, the LSPS identifies the North District Plan target of 3,000-6,000 additional jobs for Brookvale-Dee Why by 2036.

Material submitted with the proponent's request includes an Economic Need and Impact Assessment prepared by Location IQ, which estimates the Planning Proposal has the potential to create 1,374 jobs (705 on site and a further 669 created indirectly through multiplier effects in the local economy), thereby assisting in achieving the employment targets and improving the LGA's employment self-sufficiency. In terms of jobs generated by one site, these numbers are significant.

The Location IQ report describes two alternatives to the Planning Proposal: do nothing and the office buildings remain significantly vacant for the foreseeable future, or redevelop the site. These are seen as neither commercially viable nor appropriate from a strategic planning or sustainability perspective.

While there can be no certainty as to when the site may be redeveloped and the permissibility for office premises ceases, enabling in the interim the use of existing vacant ancillary office space would provide immediate opportunities to generate significant employment and economic activity which would benefit the broader community, especially at a time of economic downturn and job losses due to the COVID-19 pandemic.

Employment Study and Site-specific Advice by SGS Economics & Planning

As discussed earlier in relation to the matter of precedent, SGS was engaged by Council for the Northern Beaches Employment Study and to provide specific advice in relation to the subject site and the proposal to allow office premises uses. That advice viewed the proposal as broadly consistent with strategic planning principles including the need to protect and retain existing industrial land. One of the reasons underlying SGS's conclusion that on balance the proposal is not appropriate was the potential to undermine strategic employment objectives for Brookvale and Frenchs Forest.

SGS made reference to the vision outlined in the draft Employment Study to consolidate Brookvale's role as the Northern Beaches' major strategic centre. It envisages development concentrating around a civic space between Pittwater Road and Roger Street, with a mix of commercial, civic and entertainment functions in a multi-function centre that will become the focus of activity.

The intention is to concentrate all new commercial floorspace (offices) in a future commercial core, with a town centre location (still to be determined) on land currently zoned B5 Business Development in close proximity to the B-line bus stop and walkable from Warringah Mall and other existing/future places of activity, creating a civic, community and commercial hub.

SGS notes the proposal to allow office premises on the subject site is not necessarily inconsistent with the vision for Brookvale, however it could have the potential to undermine strategic aims for creating a more discernible core, particularly the ability of key commercial core sites and the new town centre to be developed as envisioned in the Employment Study. SGS makes particular reference to co-working and small office tenancies, and highlights the Lifestyle Working facility as an example of how this type of development is starting to encroach into the IN1 zone. SGS suggests that if the proponent seeks to transform the site into this product type, the risk is that it will draw demand away from the future commercial core where it is best suited to locate in terms of accessibility and proximity.

It is impossible to predict the type of office premises that might be sought for the subject site (tenancy size, business category, and operational arrangements). However, the existing buildings seem better suited to larger independent offices than small business or co-working arrangements. The proponent provided details of prospective tenants seeking larger offices in and around the Northern Beaches. The floorplates sought range in size from 500-3,000sqm (average 1,283sqm). The list includes businesses involved in infrastructure and civil works, IT, cybersecurity, personal products, public administration, and transport research collaboration. Larger floorplate offices may not be in direct competition with the type intended for the commercial core where a finer grained cluster of diverse, high activity, smaller businesses and co-working facilities are envisaged.

Lifestyle Working is a purpose-built co-working facility with contemporary, sustainable architecture incorporating a central atrium, small short-term rentable offices, and shared spaces such as meeting rooms, break-out areas, and a lap pool. It was approved in 2004 under the previous Warringah LEP when offices were permissible by consent in the G10 Brookvale Industrial West Locality. It is a high amenity, modern facility benefitting from close pedestrian connection to Warringah Mall. The existing buildings on the subject site being older and originally designed to house the factory/warehousing and office functions of large organisations, may not offer the same amenity and utility as Lifestyle Working is able to offer which appeals to co-working and smaller creative and innovative businesses.

A further consideration is timing. The future town centre/commercial core envisaged for Brookvale in the draft Employment Study is a medium to long term prospect. The structure planning process is ongoing. A peer review is currently underway to integrate the findings and recommendations of an array of planning projects including the TMAP traffic and transport study for Brookvale-Dee Why and the LGA-wide Employment Study, Housing Strategy, and Social Infrastructure Study. A revised draft Brookvale Structure Plan will need to be endorsed by Council for public exhibition before being finalised and a Planning Proposal prepared to implement any recommended changes

to the LEP. All of this needs to occur before major redevelopment projects can be designed, approved and constructed under the revised planning controls. Realistically it could be 3-5 years before the future town centre/commercial core begins to take shape.

In light of the above, SGS's advice, while not supportive, does not preclude the Planning Proposal.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. The Planning Proposal retains the IN1 zone and the proposed office premises APU would allow efficient, employment-supportive use of existing vacant ancillary office floor space. This permissibility lapses when the site is redeveloped. Proposed Clause 24 can be refined by Parliamentary Counsel.

Section B – Relationship to Strategic Planning Framework

Does the proposal have strategic merit?

3. Will the Planning Proposal give effect to the objectives and actions of the applicable regional plan, or district plan or strategy?

Greater Sydney Region Plan

Yes. The Planning Proposal gives effect to the following objectives of the Region Plan:

Direction & Objective	Assessment
Productivity - Jobs and skills for the city	
Objective 22 Investment in business activity in centres	<p>The Region Plan recognises the important role centres play in providing access to jobs, goods and services, and seeks to manage a hierarchy of centres to grow jobs and improve access to goods and services. Within this hierarchy, the Region Plan identifies 34 Strategic Centres, including one at Brookvale-Dee Why. The stated expectations for Strategic Centres include high levels of amenity and walkability, and areas being identified for commercial uses and where appropriate, commercial cores.</p> <p>The subject site's existing vacant, older ancillary office space seems less suited to the smaller, more vibrant, diverse, and public-facing businesses that should be clustered in the commercial core in Brookvale to achieve high levels of amenity and walkability, and to improve access to goods and services. The proponent's list of prospective tenants bears this out. Furthermore, structure planning for Brookvale is ongoing, with the exact location of a future town centre and commercial core still to be determined. Development of Brookvale's commercial core is a medium-long term prospect.</p> <p>Allowing office premises on the subject site would enable efficient utilisation of existing vacant floorspace and site infrastructure and create the opportunity to generate jobs immediately in the context of an economic downturn. New business activity and employees in Brookvale, could in fact gather momentum in the marketplace to increase demand and support development of the future commercial core. On balance, the potential community benefit of this is greater than any risk to the long term vision for the strategic centre.</p>

Direction & Objective	Assessment
<p>Objective 23 Industrial and urban services land is planned, retained and managed</p>	<p>The Region Plan requires a “retain and manage” approach for all existing industrial and urban services land in the Eastern Harbour City. A strong rationale underlies this approach and the growing shortage of industrial and urban services land in North District is recognised. Speculation in terms of rezoning potential impacting on the property economics of industrial land is highlighted as an issue. The Region Plan emphasises the need for a consistent policy position to keep downward pressure on land values.</p> <p>As discussed earlier, advice received from SGS recognises that the proposal is broadly consistent with the strategic aims to protect and retain existing industrial land.</p> <p>The intention of the Planning Proposal is to allow existing floorspace which was previously ancillary office space, to be used independently of approved warehouse/industrial uses, until such time that the existing buildings on the site are redeveloped. The Planning Proposal limits the proposed office premises use to a specified maximum GFA within each existing building on the site. The site’s IN1 General Industrial zoning is unchanged by this Planning Proposal. It will still be possible for new industrial activities to be established, subject to consent, using any of the existing floorspace on the site. The proposed APU clause is intended to lapse when the site is redeveloped in the future in accordance with the IN1 zone.</p> <p>The Planning Proposal responds to the unique characteristics of the site and existing buildings which have significant latent capacity to support immediate employment and beneficial economic activity through use as office premises until such time that the buildings are redeveloped.</p> <p>The Planning Proposal is unlikely to set a precedent or raise reasonable speculation for rezoning elsewhere as other sites are unlikely to be able to demonstrate sufficient strategic and site-specific merit in the same way as the subject site.</p>

North District Plan

Yes. The Planning Proposal gives effect to the following objectives of the North District Plan:

Direction & Planning Priority	Assessment
Productivity – Jobs and skills for the city	
<p>Planning Priority N10 Growing investment, business opportunities and jobs in strategic centres</p>	<p>The North District Plan reiterates the Region Plan’s stated expectations for Strategic Centres including high levels of amenity and walkability, and areas being identified for commercial uses, and where appropriate commercial cores.</p> <p>As discussed earlier in section 3.1, the Planning Proposal would enable efficient utilisation of existing vacant floorspace and create the opportunity to generate jobs immediately in the context of an economic downturn. New business activity and employees on the site, could foster momentum in the marketplace to increase demand and support the longer term</p>

Direction & Planning Priority	Assessment
	<p>development of the future commercial core of Brookvale's strategic centre.</p> <p>As the site's IN1 zoning is retained and the office premises permissibility will lapse when the buildings are redeveloped, the Planning Proposal does not represent an extension of the strategic centre onto industrial and urban services land.</p>
<p>Planning Priority N11</p> <p>Retaining and managing industrial and urban services land</p>	<p>The North District Plan highlights the importance of urban services for local communities and businesses and the need to safe-guard and efficiently manage the scarce supply of industrial and urban services land in the district.</p> <p>As discussed earlier in section 3.1, the Planning Proposal is broadly consistent with retaining and managing industrial and urban services land. The site's IN1 zoning will remain. The Planning Proposal will allow efficient, employment-supportive use of existing vacant floorspace, until such time that the site is redeveloped. Existing industrial/warehousing activities on the site will not be reduced, and the site's single ownership is conducive to minimisation and management of any land use conflict. No subdivision is proposed.</p> <p>The Planning Proposal is unlikely to set a precedent or raise reasonable speculation for conversion of industrial zoned land elsewhere in the precinct as other sites are unlikely to be able to demonstrate sufficient strategic and site-specific merit in the same way as the subject site.</p>

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 gives effect to the following planning priorities of the LSPS:

Direction for Productivity – Jobs and skills	
Planning Priority and Action	Comment
<p>Planning Priority 22</p> <p>Jobs that match the skills and needs of the community</p> <p>Action 22.1 Complete the LEP employment study and develop LEP and DCP controls to grow job opportunities...</p>	<p>The LSPS structure plan designates a Strategic Centre at Brookvale and identifies it as an employment and innovation centre. Planning Priority 22 identifies a target of 3,000-6,000 additional jobs for Brookvale-Dee Why by 2036, by far the highest growth in the LGA.</p> <p>The proponent's Economic Need and Impact Assessment prepared by Location IQ estimates the Planning Proposal has the potential to create 1,374 jobs (705 on site and a further 669 created indirectly through multiplier effects in the local economy). These are significant job numbers for one site and if realised would assist in achieving the job targets and improving the LGA's employment self-sufficiency, the benefits of which are heightened in an economic downturn.</p> <p>The LSPS identifies for Brookvale the opportunity to grow high-skilled employment and innovation-led change. The proponent's list of prospective tenants aligns well with high</p>

	<p>skilled jobs and innovative business (although, there can be no guarantee as to the future tenants). The Planning Proposal affords a significant opportunity to generate high skilled jobs and support innovative business utilising existing vacant floorspace while retaining the IN1 zone.</p> <p>The Employment Study, LEP review and local structure planning for Brookvale are ongoing. The location of the future commercial core / town centre close to the B-line stop are yet to be identified and its development is a medium-long term prospect. The Planning Proposal is a mechanism to grow jobs in the interim without construction costs and delays, and potentially also foster momentum and interest in the market for new offices to be developed in Brookvale.</p>
<p>Planning Priority 24 Brookvale as an employment and innovation centre Action 24.3 Respond to the findings of the LEP studies, review the draft Brookvale Structure Plan and develop LEP and DCP controls to optimise growth of Brookvale as a transit supportive employment centre, the centre of focus for the LGA</p>	<p>Two relevant principles under Planning Priority 24 are:</p> <ul style="list-style-type: none"> • Support Brookvale as an employment-based centre • Preserve the industrial integrity of industrially-zoned land <p>The Planning Proposal affords a significant opportunity to generate high skilled jobs and support innovative business utilising existing vacant floorspace while retaining the IN1 zone. It is unlikely to undermine the growth of Brookvale as a transport-supportive employment centre as it involves existing floorspace that is not an obvious competitor in the property market for the smaller, more vibrant, diverse, and public-facing businesses that are ultimately intended to cluster in the future commercial core in Brookvale.</p>
<p>Planning Priority 28 Safeguarded employment lands Action 28.1 Complete the strategic review of industrial and urban services land (part of the LEP employment study) and develop LEP and DCP controls to protect the integrity of employment land; address land use interfaces; and facilitate innovative built form Action 28.3 Review and update the draft Brookvale Structure Plan to respond to the findings of the employment study and determine the right mix of industrial and urban services for the centre</p>	<p>The LSPS notes the scarcity of industrial land in the North District and that future planning must balance local needs, a transitioning economy and high value industries.</p> <p>A relevant principle is:</p> <ul style="list-style-type: none"> • Support efficient use of land and built form that responds to changes in technology and innovation. <p>The Draft Brookvale Structure Plan exhibited in late 2017 included possible amendments to the western IN1 area (which includes the subject site) to allow office premises and business premises as additional permitted uses. Those changes are now under review having regard to the clear policy to retain and manage urban and industrial land expressed in the Region Plan and North District Plan when they came into effect in early 2018.</p> <p>The Council's ongoing work on the Employment Study and the draft Brookvale Structure Plan will determine the appropriate mix of land uses broadly across the IN1 zoned land. The site will be subject to any applicable LEP changes required to implement the final Structure Plan.</p> <p>In the meantime, the Planning Proposal represents an efficient use of existing built form and a flexible response to the unique characteristics and circumstances of the site. It will enable job creation and economic activity at a</p>

	time when the community needs it and will give effect to important employment objectives in the LSPS.
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Does the proposal have site-specific merit, having regard to the following?

The natural environment (including known significant environmental values, resources or hazards)	The natural environment will not be affected. The proposal relates to use of existing buildings and no alternations or additions are proposed.
The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal.	Council's Transport Network has advised that the proposal is acceptable as it is using existing buildings stock.
The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for provision.	Council's Transport Network has advised that the proposal is acceptable as it is using existing buildings stock. No road upgrades or other infrastructure requirements have been identified.

5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

Yes. The Planning Proposal is consistent with applicable State Environmental Planning Policies.

6. Is the Planning Proposal consistent with applicable Ministerial Directions?

Yes. The Planning Proposal is consistent with applicable Ministerial Directions.

Ministerial Direction 1.1 Business and Industrial Zones

This direction issued on 1 May 2017 specifies objectives and requirements for planning proposals that will affect land within an existing or proposed business or industrial zone. The objectives are:

- (a) encourage employment growth in suitable locations,
- (b) protect employment land in business and industrial zones, and
- (c) support the viability of identified centres

Relevant requirements are:

- (a) give effect to the objectives of the direction
- (b) retain the areas and locations of existing business and industrial zones
- (d) not reduce the total potential floor space area for industrial uses in industrial zones

The Planning Proposal is consistent with Direction 1.1 as it retains the site's existing IN1 zoning, only enables office premises use of existing ancillary office floorspace, will not reduce the existing floorspace currently used for industrial/warehousing activities, and ensures that if and when the site is redeveloped in the future the proposed APU clause will lapse.

It is reasonable to argue that there will be a reduction in the floor space area for industrial uses as it provides for non-industrial use of this floorspace. However, the floor space in question is designed, built and fitted-out for office activities and was historically used for office activities, albeit ancillary to the primary factory/warehousing activities of the organisations which occupied the buildings. Given changes in technology and business, this floorspace could remain largely vacant under the current planning controls. The Planning Proposal would enable efficient, viable use of existing built assets, providing immediate opportunities to generate significant employment and

economic activity which would be especially beneficial for the broader community at a time of economic downturn. This is preferable to the floorspace remaining vacant into the foreseeable future.

Ministerial Direction 6.3 Site Specific Provisions

This direction applies to planning proposals that will amend an LEP to allow a particular development to be carried out. The objective is to discourage unnecessarily restrictive site specific planning controls. The Planning Proposal is introducing site specific controls. However, the controls are necessary to comply with strategic objectives and only apply to the existing buildings for the life of those buildings. They will not affect any redevelopment and are therefore minor and not restrictive.

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 Planning Proposal involves use of existing buildings, and no additional building or site works are proposed.

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 Planning Proposal involves use of existing buildings, and no additional building or site works are proposed. Traffic impact on the local road network is deemed acceptable as the proposal is using existing buildings.

Gateway Determination can require referral to Transport for NSW for consideration of the likely impact of the Planning Proposal on state and regional roads.

Council's Transport Network Referral Response

The response from Council's Transport Network unit raised concerns regarding public transport access (the site is about 1200m walking distance to the bus interchange and B-line stop on Pittwater Road), impacts on the road network, and inadequate parking provision. The response concluded that as the proposal is for an additional permitted use using existing building stock, without any major reconstruction, it is deemed acceptable and detailed transport requirements such as access points, internal roads, parking, and bicycle facilities can be addressed at development application stage.

9. Has the Planning Proposal adequately addressed any social and economic effects?

Yes. On balance, the potential social and economic effects are positive.

Council's Economic Referral Response

Council's Economic Development & Tourism Unit has advised that the Planning Proposal is supported and concluded that, in view of temporary nature of the proposal to allow stand-alone office at the subject site (i.e. until the building is ready for redevelopment), the impact on the longer-term integrity of the Brookvale industrial precinct is less significant. The intent to convert the site back to industrial land uses (such as Life Science or high-technology), in the future would contribute to establishment of Brookvale as an advanced manufacturing hub. In the interim, the take-up of the existing office space would contribute towards addressing skills mismatch on the Northern Beaches and attracting knowledge-based jobs.

The referral comments from Council's Economic Development & Tourism Unit can be summarised as follows:

- The Brookvale IN1 zone represents the largest industrial precinct in the North District, which has been identified as having the lowest ratio of industrial zoned land per capita across all of the metropolitan region, and a clear State Government directive to 'retain and manage'. It is the manufacturing hub for the region, and has a rich manufacturing history. Today, Brookvale houses around 2,200 manufacturing jobs and 180 registered manufacturing businesses.
- The proposal to allow the existing ancillary office space to be used as stand-alone office not related to any warehouse/manufacturing, could represent a 'potential' loss of industrial floorspace capacity, as this would prevent the site from being re-purposed for industrial uses. However, it is noted that the proponent intends to revert the site back to industrial uses in the future and are proposing only a temporary use of the existing structure for office space. It is envisaged in the future that the site would be used for Life Sciences that support manufacturing, R&D and office.
- The IN1 zone does permit uses that would support Life Sciences (namely high technology industry), which is permitted under the IN1 zone (sub-categories 'Light industry'). There is an existing cluster of technology-based businesses within the Brookvale precinct (film production and software design). Interest in an advanced manufacturing hub in Brookvale's industrial lands could be explored under existing planning provisions.
- There continues to be demand for flexible industrial land which can accommodate integration of manufacturing, warehouse and ancillary office uses. Council recently commissioned a Northern Beaches wide Employment Study. This found that whilst jobs in 'Manufacturing' are projected to decline locally over the next 20 years (-30%), increased floorspace required per worker (i.e. automation), higher office component and demand for wholesale trade and logistics (e-commerce), is estimated to result in continued additional demand for industrial floorspace on the Northern Beaches, with an additional 51,652 sqm required by 2036 across key industrial precincts (9% of existing 636,714 sqm).
- The continued demand for industrial land is acknowledged in the Economic Need and Impact Assessment, as is the recognition that a transition to advanced manufacturing is underway in Brookvale. Maintaining the IN1 zone that permits high-technology, would enable this transition when market conditions are right.
- If the site was to continue to provide office space over the longer-term, this could impact on recommendations of the draft Employment Study for a new commercial core/civic precinct within the wider Brookvale precinct, by absorbing demand for office space. This commercial precinct is proposed to be located along the more accessible Pittwater Road, in close proximity to the B-line to support connections to economic activity in the City and encourage use of public transport, and create a town centre "heart" for Brookvale area. However, as this is only proposed as a temporary permitted use, the proposed site could be a test for demand for office space in the Brookvale area in planning for a new commercial precinct.

In consideration of the comments from Council's Economic Development & Tourism unit it can be concluded that the Planning Proposal enables efficient, employment-supportive use of existing ancillary office space without the cost or delay of building construction. It is estimated to have the potential to create up 1,374 local jobs, which if achieved would be of significant benefit to the community at a time of economic downturn. The proponent's list of prospective tenants aligns well with high skilled jobs, and supports the view that the existing buildings are more likely to attract

larger, independent tenants than the smaller, more vibrant, diverse, and public-facing businesses that are ultimately intended to cluster in the future commercial core in Brookvale.

The location of the future commercial core / town centre in close proximity to the B-line stop is still to be determined and its development is a medium to long term prospect. The Planning Proposal is a mechanism to grow jobs in the interim and could potentially foster momentum and interest in the market for new offices to be developed in Brookvale.

The fact that there are significant stocks of vacant office space on the Northern Beaches, in particular the larger floorplates in the Frenchs Forest business park, is not sufficient reason to refuse to allow use of existing vacant ancillary office space on the site. The subject site offers a different amenity and accessibility to Frenchs Forest, particularly given its location close to a regional shopping centre. Frenchs Forest business park may not have the same appeal.

The Planning Proposal will not reduce the existing warehouse floorspace in the buildings. This space will remain available for continued industrial and urban services activities that support the community.

On balance, the potential social and economic benefits of allowing office premises as an APU, within the specified GFA limits and only for the life of the existing buildings, outweigh any potential negative impacts.

Section D - State and Commonwealth interests

10. Is there adequate public infrastructure for the Planning Proposal?

Yes. The Planning Proposal involves use of existing buildings, and no additional building or site works are proposed. Council's Transport Network has advised that the proposal is acceptable as it is using existing building stock. Without traffic modelling, it is difficult to predict whether the traffic generated by the proposed office premises will require upgrades to the adjoining regional and state road network, particularly Pittwater Road and Condamine Street. Referral to Transport for NSW can be a requirement of the Gateway determination for the Planning Proposal.

11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway Determination?

Not applicable at this stage as the Planning Proposal has not progressed to Gateway determination.

COMMUNITY CONSULTATION

Preliminary (non-statutory) public notification of the Planning Proposal was undertaken between 17 and 31 August 2020. Three submissions (Attachment 3) were received. The main concerns raised are:

- potential noise from construction, machinery and roof-top air-conditioning and refrigeration units impacting on residential properties in Allenby Park Parade, and
- lack of parking and increased traffic congestion as a result of the 1,300 additional employees in the proposed offices

These concerns are noted, however they are not sufficient grounds on which to not proceed with the Planning Proposal. Noise impacts can be addressed at the development consent stage. The reference to 1,300 additional employees in the proposed offices is incorrect. The Economic Impact Assessment submitted by the proponent estimates 705 net additional jobs on site, plus a further 669 additional jobs created elsewhere through multiplier effects in the economy.

If the State Government issues a Gateway determination that the Planning Proposal should proceed, formal statutory public exhibition of the Planning Proposal will take place for a minimum of 28 days or as otherwise directed by the Determination.

AGENCY REFERRALS

At this stage, the Planning Proposal has not referred to any state agencies for comment. Referral to state agencies such as Transport for NSW can be a requirement of the Gateway determination.

INTERNAL REFERRALS

Referrals were sent to the following Northern Beaches Council business units for comment:

- Transport Network, and
- Economic Development & Tourism.

The responses from these two units are discussed in sections 8 and 9 of this report.

TIMING

It is anticipated that the timing for completion of this Planning Proposal would be 6-8 months from the date of Council's approval to proceed. Following the issue of a Gateway Determination. The matter will be reported back to Council for final consideration following the statutory public exhibition.

If the Council has notified the proponent that it does not support the request to prepare a planning proposal or has failed to indicate its support within 90 days of the proponent submitting their request (90 days in this case is 6 November 2020), the proponent can ask for a Rezoning Review. This date will have passed by the time the Panel considers the Planning Proposal. The proponent has indicated it will wait for the Local Planning Panel to consider the Planning Proposal before seeking a Rezoning Review.

LINK TO COUNCIL STRATEGY

The Planning Proposal aligns with the following goals of the Shape 2028 Northern Beaches Community Strategic Plan:

- Goal 13 Our businesses are well-connected and thrive in an environment that supports innovation and economic growth
- Goal 14 Our economy provides opportunities that match the skills and needs of the population

FINANCIAL CONSIDERATIONS

The proponent paid the scheduled application fees of \$66,400 for a major planning proposal. These fees become part of the Strategic and Place Planning budget and are used to cover all the necessary work and expenses involved in preparing and progressing the Planning Proposal.

SOCIAL CONSIDERATIONS

The Planning Proposal will enable efficient, employment-supportive use of existing buildings without the cost or delay of construction. It is estimated to have the potential to create up 1,374 local jobs, which if achieved would be of significant benefit to the community at a time of economic downturn.

The Planning Proposal will not reduce the existing warehouse floorspace in the buildings. This floor space will remain available for continued industrial and urban services activities that support the community. The site will remain in the IN1 zone, and when redeveloped in the future the APU will lapse and the whole site will be available to support industrial and urban services activities.

ENVIRONMENTAL CONSIDERATIONS

The proposal involves use of existing buildings. No additional building or site works are proposed.

GOVERNANCE AND RISK CONSIDERATIONS

The Planning Proposal is unlikely to generate significant risk or governance issues.

CONCLUSION

The Planning Proposal will enable efficient, viable use of existing built assets, providing immediate opportunities to generate significant employment and economic activity which would be especially beneficial for the broader community given the need to recover from an economic downturn.

The permissibility for office premises is limited to a specified maximum GFA within each existing building, which represents only those parts designed, fitted-out and previously used for office activities, albeit ancillary to the factory/warehousing operations of the businesses that previously occupied the buildings.

The Planning Proposal retains the site's IN1 zoning and will not reduce the floorspace currently used for industrial/warehousing activities. The proposed APU clause is intended to lapse if and when the site is redeveloped in the future. The Planning Proposal responds to the unique site characteristics and circumstances and is unlikely to set a precedent.

RECOMMENDATION OF MANAGER STRATEGIC PLANNING

That the Panel:

- A. Recommends that Council endorse the Planning Proposal for 114-120 Old Pittwater Road, Brookvale, and forward it to the NSW Department of Planning, Industry and Environment to seek a Gateway Determination.
-

PLANNING PROPOSAL

Amendments to Warringah Local Environmental Plan 2011

Additional Permitted Uses – Office Premises 114-120 Old Pittwater Rd, Brookvale

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Introductory Details

Site Description

The site has a total area of approximately 4.2ha (see table below) and a combined frontage of 120m to Old Pittwater Road.

Property Description	Area	Owner
Lot 1 DP 868761	2.015ha	Primewest Funds Ltd
Lot 3 DP 868761	2.180ha	Primewest Funds Ltd

The site (see Figure 1) is located in an industrial area which spans either side of Old Pittwater Road between Cross Street and Pittwater Road, behind the Warringah Mall Shopping Centre. Adjoining land to the rear western boundary of the site is a steep bushland reserve that rises to a residential area along Allenby Park Parade at an elevation some 40-50m above that of the site. The site itself slopes upwards from east to west, with the steepest land at the rear being undeveloped bushland.

The site is developed with two large industrial buildings which were previously home to the national headquarters of Fuji Film and Avon. The northern building, set back from the road and accessed via a shared driveway, is three storeys with roof-top car parking, and is currently occupied largely by a Woolworths warehouse and distribution centre (primarily for filling online orders) on the upper level, and a Service NSW centre open to the public, and a printing business and pilates studio on the lower levels. The southern building, situated closer to the road, is two to five storeys with rooftop parking, and appears to be largely vacant, with limited occupation by some warehouse and office-based businesses. There is a shared main entry/exit driveway and a number of at-grade parking areas.

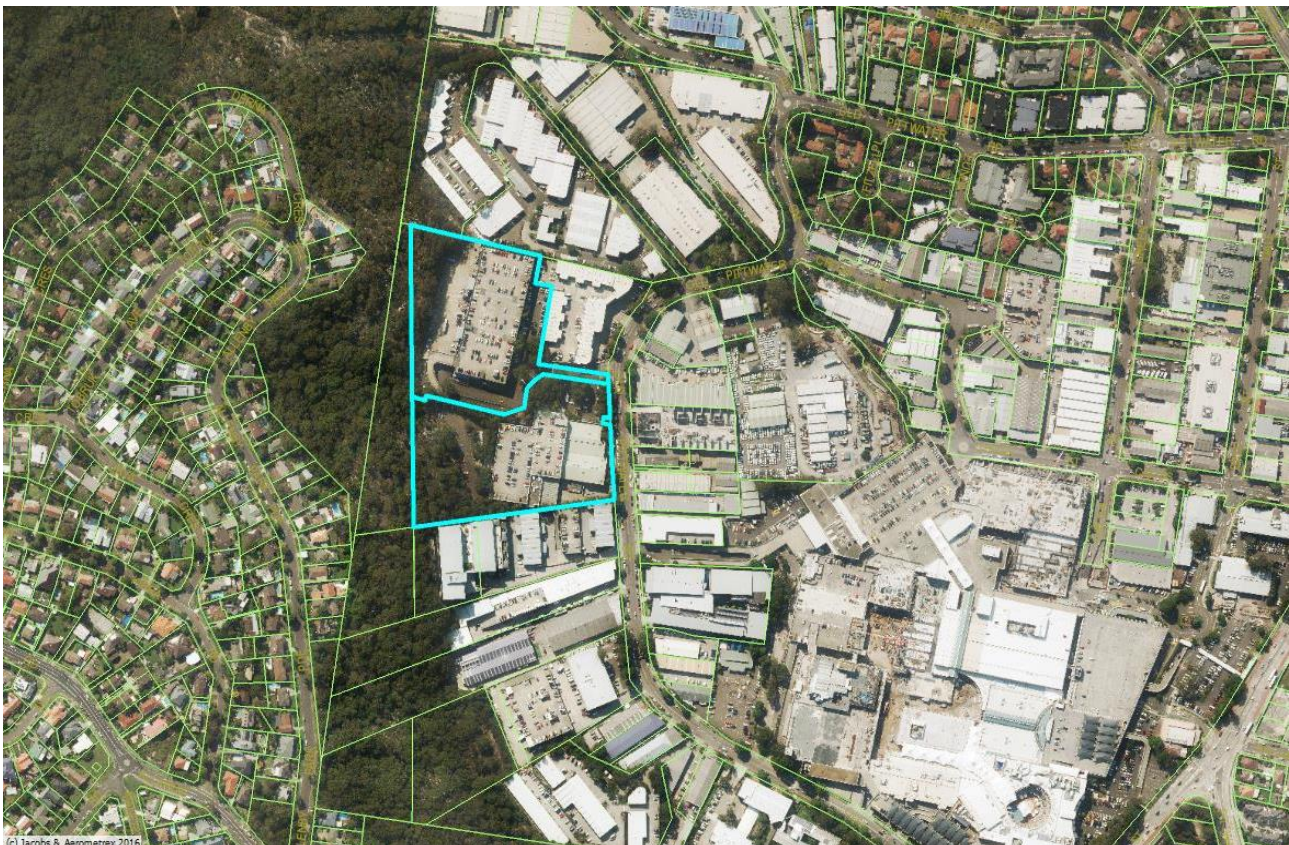


Figure 1 - Subject Site

Zoning

The site and surrounding properties fronting Old Pittwater Road are zoned IN1 General Industrial. The adjoining bushland reserve to the west is zoned RE1 Public Recreation. The Warringah Mall

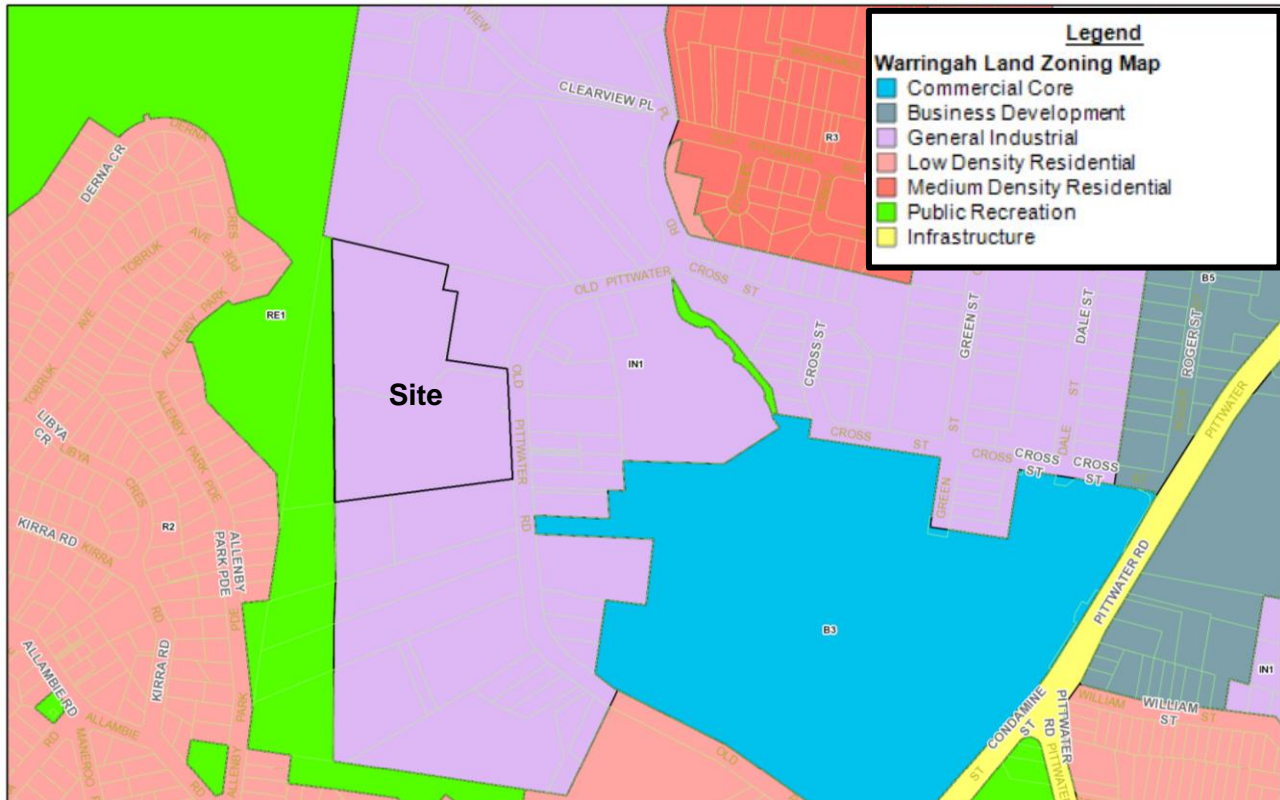


Figure 2 - Zoning
shopping Centre to the south-east is zoned B3 Commercial Core (see Figure 2).

The objectives of the IN1 General Industrial zone include:

- To provide a wide range of industrial and warehouse land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.
- To support and protect industrial land for industrial uses.

Office premises are a prohibited use under the site's IN1 General Industrial zoning.

History

The site's owner Primewest Funds Ltd (the proponent) first approached Council in 2016 to discuss planning mechanisms to facilitate use of existing buildings on the site for office/business premises which are prohibited uses under the site's IN1 General Industrial zoning. At that time, Council had begun a community engagement process for the Draft Brookvale Structure Plan (draft BSP) and encouraged the proponent to delay requesting a Planning Proposal until the draft BSP had been prepared and presented to Council for endorsement for formal public exhibition.

In April 2018, the proponent made a request to Council to prepare a Planning Proposal to amend Schedule 1 of Warringah Local Environmental Plan 2011 (WLEP) to add office premises and business premises as additional permitted uses under the site's IN1 General Industrial zoning.

The request was subsequently withdrawn by the proponent on the advice of Council, having regard to the status of the Draft Brookvale Structure Plan (draft BSP) (exhibited late 2017 with over 100 submissions received), planning priorities set out in the State Government's North District Plan (released March 2018) to retain and manage industrial and urban services land, and the need for Council to undertake further analysis of traffic and transport in Brookvale-Dee Why and LGA-wide employment and housing studies associated with preparation of a Local Strategic Planning Statement and a review of Council's four Local Environmental Plans.

Prior to withdrawal of the 2018 Planning Proposal, Council officers held discussions with the Greater Sydney Commission (GSC) and were advised that the GSC could not support approval of office or business premises within the industrial areas of Brookvale until further studies had been completed, including an LGA-wide employment study. During these discussions, the GSC emphasised its strongly held position on protection of industrial and urban services land, the low supply context of such land in North District, and a clear policy of retaining and managing industrial and urban services land set out in the North District Plan. The GSC advised any loss of industrial land to alternative uses would need to be fully justified in terms of net community benefit having regard to the broader economic functions of industrial areas, livability and sustainability outcomes, and a clear planned vision for Brookvale. The GSC also provided feedback to the proponent after withdrawal of the 2018 proposal to the effect that the GSC would not endorse any planning proposal or structure plan for Brookvale until the Council completes its Local Strategic Planning Statement.

The Northern Beaches Local Strategic Planning Statement was completed and came into effect on 26 March 2020. On 7 August 2020, the proponent made a request to Council and lodged material in support of the Planning Proposal that is the subject of this report.

Planning Proposal

The Planning Proposal seeks to amend Schedule 1 of the Warringah Local Environmental Plan 2011 to allow office premises as an additional permitted use (APU) limited to a maximum 15,657sqm gross floor area (GFA) within the existing buildings. The proposal includes a new Area 24 on APU Map Sheet 008A and a new subclause in Schedule 1 for Area 24 (details provided in Part 2 below).

It differs from the 2018 proposal in as much as it no longer involves business premises and seeks to limit the office premises use to specified maximum floor areas within the existing buildings only.

Part 1 – Intended Outcomes

The intended outcome of this Planning Proposal is to allow existing floorspace on the site which was previously ancillary office space, to be used independently of approved warehouse/industrial uses, until such time that the existing buildings on the site are redeveloped.

The intention is to make office premises permissible by consent, but to limit this permissibility to only within the existing buildings and up to a specified maximum gross floor area for each building. If and when the buildings are redeveloped in the future, this permissibility is intended to cease.

The objectives for the planning proposal are to:

- Make the most efficient use of existing built form and site infrastructure in the short to medium term,
- Capitalise on the current employment potential of the site and ensure it can operate at its full economic capacity,
- Facilitate the transitioning of the site from traditional (niche manufacturing and wholesale services) to advanced manufacturing and innovative industries, and
- Protect the current manufacturing operations on site as well as the longer term strategic value of the industrial zoned land.

Discussion

Efficiency and Employment

The proponent contends that the existing buildings on the site incorporate a significant component of ancillary office space owing to the nature of the former businesses that occupied them, namely Fujifilm and Avon, which operated their head office alongside their main warehouse facilities in the buildings. The amount of ancillary office space within the buildings totals 15,657sqm (see Table 1). No plans were provided to delineate the warehouse and ancillary office space within each building.

	114 Old Pittwater Rd	120 Old Pittwater Rd	Total
Warehouse (GFA sqm)	6,214	8,459	14,673
Ancillary Office (GFA sqm)	11,317	4,340	15,657
Parking	225	309	534

Table 1 – Breakdown of existing floorspace (figures supplied by site's owner - Primewest Funds Ltd)

The proponent states that while there continues to be demand for warehousing and other industrial uses on the site, there is no longer demand for the quantum of ancillary office space that exists on the site. Due to technological advances, there is now less need for head office operations to co-locate with industrial facilities. Larger scale manufacturing and warehousing have tended to relocate to outer metropolitan areas (cheaper land) and closer to major roads, rail and/or ports. The proponent further states that the ancillary office space has been vacant for several years and a number of businesses have expressed interest in using the space as office premises - that is, office activities independent of and not ancillary to any industrial or other activity undertaken on the land.

The proponent has provided details of prospective tenants seeking office floor areas in and around the Northern Beaches. The floorplates sought range in size from 500-3,000sqm (average 1,283sqm). The list includes businesses involved in infrastructure and civil works, IT, cybersecurity, personal products, public administration, and transport research collaboration.

It was also noted that with changes in business behaviours arising from COVID-19, including working from home more, less use of public transport and a need to reduce costs, there is

increasing demand for well-located metropolitan contemporary facilities close to amenities with good parking.

The proponent highlighted an increasing awareness amongst large corporations for decentralising work forces to minimise risk and disruption, and a movement to create secondary major offices in metropolitan areas (that is, locations outside major CBDs).

It is accepted that the 15,657sqm of ancillary office floorspace is those parts of the existing buildings which are designed, built and fitted-out for office activities and were ancillary to the primary factory/warehousing operations of the businesses which previously occupied the buildings.

This floorspace is particularly suited to office activities and the site's owner has had difficulty finding new tenants as the site's IN1 zoning only allows office activities where ancillary to permissible uses.

Given the owner's unsuccessful efforts to find factory/warehouse tenants who require substantial ancillary office space for their operations, and the likelihood that this floorspace could remain largely vacant and unused (as it has since Fujifilm and Avon left), a mechanism to allow office premises uses independent of any industrial activity would enable efficient use of existing built assets which can generate employment and economic opportunities without construction cost or time factors. This is preferable to the floorspace remaining vacant into the foreseeable future.

The economic impact of the COVID-19 pandemic increases the imperative for employment and it is possible that the Planning Proposal may satisfy the State Government's criteria for fast-tracked assessment under the Planning System Acceleration Program.

Protection and Transitioning

Limiting the office premises use to a specified maximum GFA for each existing building (equating to the existing ancillary office space) is intended to protect the current industrial activities on the site. The quantum of existing industrial (warehouse) floorspace will not reduce. The site's single ownership also means any potential land use conflict can more readily be minimised and managed, as it is in the interests of the owner to ensure the activities of tenants are harmonious. While the site comprises two lots which could ultimately be sold to different entities, a maximum gfa for office premises is proposed for each existing building on the two lots and any future owners would be compelled to manage any conflict arising from the activities of different tenants within their buildings.

As subdivision is not proposed, there is no risk of fragmentation of the site which could undermine its capacity, utility and viability for industrial and urban services in the long term.

Existing permissibility for industrial and other uses under the site's IN1 zoning is unchanged by this Planning Proposal. It will therefore still be possible for new industrial activities to be established using any of the existing floorspace, subject to consent, in accordance with the IN1 zone. While the floor space may have been previously designed and fitted-out for administrative or office-type activities, this does not preclude its use or adaptation for use for industrial activities.

While not in itself responding to changes in technology and innovation, the proposal would in effect enable the site to achieve an economically active 'holding pattern', until such time that conversion and/or redevelopment to accommodate high-tech and innovative industries can occur, if and when the interest and capability in the marketplace arises for such industries in this location.

Given the solid construction and substantial investment in the existing buildings, it is accepted that redevelopment may be a long term prospect. In the meantime however, economically viable, employment-generating use of the existing ancillary office space which might otherwise remain vacant is appropriate.

Part 2 – Explanation of Provisions

The following amendments to Warringah Local Environmental Plan 2011 (WLEP) are proposed:

- Insert the following subclause in WLEP Schedule 1 - Additional Permitted Uses:
 - 24 Use of certain land at 114-120 Old Pittwater Road, Brookvale
 - (1) This clause applies to part of Lots 1 and 3 DP 868761, 114-120 Old Pittwater Road, Brookvale shown as “Area 24” on the Additional Permitted Uses Map.
 - (2) Use of that land for the purpose of office premises is permitted with development consent if the consent authority is satisfied that:
 - (i) there will be no reduction in gross floor area available for industrial activities on any Lot,
 - (ii) the development is carried out in an existing building, and
 - (iii) no more than 11,317 sqm on Lot 1 DP 868761 and 4,340 sqm on Lot 3 DP 868761 of existing gross floor area will be used for office premises.
- Amend WLEP Additional Permitted Uses Map Sheet APU_008A to delineate Area 24 which approximates the footprint of the two existing buildings on the site (see Figure 3).

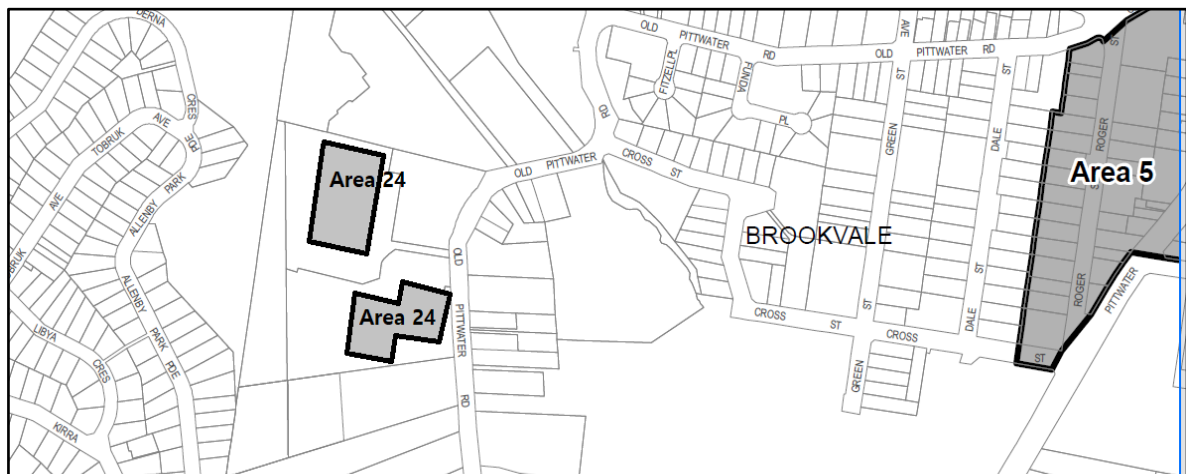


Figure 3 Extract of Proposed LEP Map – Sheet APU_0008A

Discussion

Proposed Clause 24

Material submitted by the proponent includes a legal opinion on the drafting of proposed Clause 24, prepared by Holding Redlich. The opinion was prepared in order to confirm that the clause, as drafted, will achieve its intended outcomes. It purports that the drafting of the clause, combined with defining the area of the existing buildings on the APU Map, provides a robust approach which protects the IN1 zone in the long term because:

- (a) *the Proposed Clause makes it clear that the use is limited to only a specific area and within an existing building. As such, the clause could not be relied upon for any proposed new buildings; and*
- (b) *the clause requires any proponent to satisfy Council (and for Council to be satisfied) that the requirements of the clause have been met before development consent will be granted (and, in fact, can be granted). As is clear from clause (2) of the Proposed Clause, this includes Council being satisfied that there will be no reduction in GFA*

available for industrial uses and that the development is being carried out within an existing building.

Council's Legal Counsel conducted a preliminary review of proposed Clause 24. As the proposed clause is somewhat novel, there is a level of uncertainty as to its workability, particularly subclause (2)(i). Any amount of office premises use could be regarded as a reduction in gross floor area available for industrial activities as all of the existing floorspace could potentially be used for industrial purposes. The intention however is that there be no reduction beyond the 15,657sqm GFA that is regarded as existing ancillary office space.

The proponent supplied examples of similar clauses in other Local Environmental Plans. None of the examples prescribe a maximum GFA for the additional permitted use within an existing building, nor do any include a provision requiring the consent authority to reach a state of satisfaction about the reduction in the primary use of a building before being able to exercise the power to grant development consent. Nevertheless, Environmental Planning and Assessment Act provides under section 3.14(3A) for an environmental planning instrument to "*make provision for any zoning of land or any other provision to have effect only for a specified period or only in specified circumstances.*"

If the Planning Proposal proceeds through Gateway, it is anticipated that Parliamentary Counsel will in due course review the proposed Clause 24 and advise of any revisions necessary to achieve the intended outcomes.

Precedent

The legal opinion submitted by the proponent also suggests that the Planning Proposal will not create a precedent given the specific circumstances of the site, the proposed restrictions on the additional permitted use, and the justification given to meet strategic and site-specific merits tests and to demonstrate consistency with the relevant regional and district plans and Council's local strategic planning statement.

In 2019, Council engaged SGS Economics & Planning (SGS) to undertake an Employment Study for the Northern Beaches to inform the preparation of Council's Towards 2040 Local Strategic Planning Statement (LSPS) and the comprehensive review of its four Local Environmental Plans.

In April 2020, Council sought SGS's advice specifically in relation to the subject site and the proposal to allow office premises uses (see Attachment 3). The advice from SGS recognised that the proposal has merit in terms of the opportunity to reuse an existing asset for a more productive function, and that the proposal is broadly consistent with the principles and strategic aims in the Greater Sydney Commission and Council's strategic planning documents including the need to protect and retain existing industrial land. However, SGS expressed a concluding view that, on balance, the proposal is not appropriate for two key reasons: the potential precedent for loss of industrial land uses, and potential to undermine strategic employment objectives for Brookvale and Frenchs Forest.

As commercial office space typically achieves higher rents than industrial floorspace, there is often a financial incentive for owners of industrial properties to want to convert to commercial office uses. It is possible that allowing an office premises as an additional permitted use on the subject site may result in expectations amongst other landholders in the IN1 zoned precinct in Brookvale that Council may allow office premises on other sites in the precinct. Such expectations however would not be realistic. Other sites are unlikely to be able to demonstrate sufficient strategic and site-specific merit.

The subject site has unique characteristics including the size, design and layout of floorspace in the existing buildings, land area and ownership, former and current occupants, and circumstances which have resulted in substantial ancillary office space being largely vacant with limited prospects for economically viable use in the short to medium term under the current planning controls. The site has a significant latent capacity to support immediate employment and economic activity

through use as office premises until such time that the buildings are redeveloped in the future. Given the particular building design and former use, it is arguable that the Planning Proposal represents less of a conversion from industrial to commercial, and more a logical concession in the planning controls to better reflect what exists on the site and the activities historically undertaken there.

The Planning Proposal has sufficient strategic and site-specific merit on balance, having regard to the benefits that can be derived from allowing an efficient, productive, employment-supportive use of existing underutilised buildings and infrastructure, which outweigh any perceived loss of capacity and utility for industrial and urban services activities. The site's IN1 zoning is retained, thereby protecting its role and function for industrial and urban services in the long term. The permissibility of office premises will cease when the site is redeveloped in the future and Clause 24 no longer applies.

The strategic and site-specific merit tests are discussed in detail in Part 3 Section B of this report.

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?

No. The Planning Proposal is the result of a proponent-led request to Council which began with enquiries in 2016 and an earlier planning proposal request in 2018 that was withdrawn pending completion of the LSPS and progress on Council's Employment Study.

Local Strategic Planning Statement

The 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 local statutory planning for the Northern Beaches LGA.

The LSPS includes a structure plan which designates a Strategic Centre at Brookvale and identifies it as an employment and innovation centre. The relevant planning priorities, principles and actions for Strategic Centres are set out under the Productivity Direction of Jobs and Skills. Under Planning Priority 22 - Jobs that match the skills and needs of the community, the LSPS identifies the North District Plan target of 3,000-6,000 additional jobs for Brookvale-Dee Why by 2036.

Material submitted with the proponent's request includes an Economic Need and Impact Assessment prepared by Location IQ, which estimates the Planning Proposal has the potential to create 1,374 jobs (705 on site and a further 669 created indirectly through multiplier effects in the local economy), thereby assisting in achieving the employment targets and improving the LGA's employment self-sufficiency. In terms of jobs generated by one site, these numbers are significant.

The Location IQ report describes two alternatives to the Planning Proposal: do nothing and the office buildings remain significantly vacant for the foreseeable future, or redevelop the site. These are seen as neither commercially viable nor appropriate from a strategic planning or sustainability perspective.

While there can be no certainty as to when the site may be redeveloped and the permissibility for office premises ceases, enabling in the interim the use of existing vacant ancillary office space would provide immediate opportunities to generate significant employment and economic activity which would benefit the broader community, especially at a time of economic downturn and job losses due to the COVID-19 pandemic.

Employment Study and Site-specific Advice by SGS Economics & Planning

As discussed earlier in relation to the matter of precedent, SGS was engaged by Council for the Northern Beaches Employment Study and to provide specific advice in relation to the subject site and the proposal to allow office premises uses. That advice viewed the proposal as broadly consistent with strategic planning principles including the need to protect and retain existing industrial land. One of the reasons underlying SGS's conclusion that on balance the proposal is not appropriate was the potential to undermine strategic employment objectives for Brookvale and Frenchs Forest.

SGS made reference to the vision outlined in the draft Employment Study to consolidate Brookvale's role as the Northern Beaches' major strategic centre. It envisages development concentrating around a civic space between Pittwater Road and Roger Street, with a mix of commercial, civic and entertainment functions in a multi-function centre that will become the focus of activity.

The intention is to concentrate all new commercial floorspace (offices) in a future commercial core, with a town centre location (still to be determined) on land currently zoned B5 Business Development in close proximity to the B-line bus stop and walkable from Warringah Mall and other existing/future places of activity, creating a civic, community and commercial hub.

SGS notes the proposal to allow office premises on the subject site is not necessarily inconsistent with the vision for Brookvale, however it could have the potential to undermine strategic aims for creating a more discernible core, particularly the ability of key commercial core sites and the new town centre to be developed as envisioned in the Employment Study. SGS makes particular reference to co-working and small office tenancies, and highlights the Lifestyle Working facility as an example of how this type of development is starting to encroach into the IN1 zone. SGS suggests that if the proponent seeks to transform the site into this product type, the risk is that it will draw demand away from the future commercial core where it is best suited to locate in terms of accessibility and proximity.

It is impossible to predict the type of office premises that might be sought for the subject site (tenancy size, business category, and operational arrangements). However, the existing buildings seem better suited to larger independent offices than small business or co-working arrangements. The proponent provided details of prospective tenants seeking larger offices in and around the Northern Beaches. The floorplates sought range in size from 500-3,000sqm (average 1,283sqm). The list includes businesses involved in infrastructure and civil works, IT, cybersecurity, personal products, public administration, and transport research collaboration. Larger floorplate offices may not be in direct competition with the type intended for the commercial core where a finer grained cluster of diverse, high activity, smaller businesses and co-working facilities are envisaged.

Lifestyle Working is a purpose-built co-working facility with contemporary, sustainable architecture incorporating a central atrium, small short-term rentable offices, and shared spaces such as meeting rooms, break-out areas, and a lap pool. It was approved in 2004 under the previous Warringah LEP when offices were permissible by consent in the G10 Brookvale Industrial West Locality. It is a high amenity, modern facility benefitting from close pedestrian connection to Warringah Mall. The existing buildings on the subject site being older and originally designed to house the factory/warehousing and office functions of large organisations, may not offer the same amenity and utility as Lifestyle Working is able to offer which appeals to co-working and smaller creative and innovative businesses.

A further consideration is timing. The future town centre/commercial core envisaged for Brookvale in the draft Employment Study is a medium to long term prospect. The structure planning process is ongoing. A peer review is currently underway to integrate the findings and recommendations of an array of planning projects including the TMAP traffic and transport study for Brookvale-Dee Why and the LGA-wide Employment Study, Housing Strategy, and Social Infrastructure Study. A revised draft Brookvale Structure Plan will need to be endorsed by Council for public exhibition before being finalised and a Planning Proposal prepared to implement any recommended changes

to the LEP. All of this needs to occur before major redevelopment projects can be designed, approved and constructed under the revised planning controls. Realistically it could be 3-5 years before the future town centre/commercial core begins to take shape.

In light of the above, SGS's advice, while not supportive, does not preclude the Planning Proposal.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. The Planning Proposal retains the IN1 zone and the proposed office premises APU would allow efficient, employment-supportive use of existing vacant ancillary office floor space. This permissibility lapses when the site is redeveloped. Proposed Clause 24 can be refined by Parliamentary Counsel.

Section B – Relationship to Strategic Planning Framework

Does the proposal have strategic merit?

3. Will the Planning Proposal give effect to the objectives and actions of the applicable regional plan, or district plan or strategy?

Greater Sydney Region Plan

The Planning Proposal gives effect to the following objectives of the Region Plan:

Direction & Objective	Assessment
Productivity - Jobs and skills for the city	
Objective 22 Investment in business activity in centres	<p>The Region Plan recognises the important role centres play in providing access to jobs, goods and services, and seeks to manage a hierarchy of centres to grow jobs and improve access to goods and services. Within this hierarchy, the Region Plan identifies 34 Strategic Centres, including one at Brookvale-Dee Why. The stated expectations for Strategic Centres include high levels of amenity and walkability, and areas being identified for commercial uses and where appropriate, commercial cores.</p> <p>The subject site's existing vacant, older ancillary office space seems less suited to the smaller, more vibrant, diverse, and public-facing businesses that should be clustered in the commercial core in Brookvale to achieve high levels of amenity and walkability, and to improve access to goods and services. The proponent's list of prospective tenants bears this out. Furthermore, structure planning for Brookvale is ongoing, with the exact location of a future town centre and commercial core still to be determined. Development of Brookvale's commercial core is a medium-long term prospect.</p> <p>Allowing office premises on the subject site would enable efficient utilisation of existing vacant floorspace and site infrastructure and create the opportunity to generate jobs immediately in the context of an economic downturn. New business activity and employees in Brookvale, could in fact gather momentum in the marketplace to increase demand and support development of the future commercial core. On balance, the potential community benefit of this is greater than any risk to the long term vision for the strategic centre.</p>

Direction & Objective	Assessment
<p>Objective 23</p> <p>Industrial and urban services land is planned, retained and managed</p>	<p>The Region Plan requires a “retain and manage” approach for all existing industrial and urban services land in the Eastern Harbour City. A strong rationale underlies this approach and the growing shortage of industrial and urban services land in North District is recognised. Speculation in terms of rezoning potential impacting on the property economics of industrial land is highlighted as an issue. The Region Plan emphasises the need for a consistent policy position to keep downward pressure on land values.</p> <p>As discussed earlier, advice received from SGS recognises that the proposal is broadly consistent with the strategic aims to protect and retain existing industrial land.</p> <p>The intention of the Planning Proposal is to allow existing floorspace which was previously ancillary office space, to be used independently of approved warehouse/industrial uses, until such time that the existing buildings on the site are redeveloped. The Planning Proposal limits the proposed office premises use to a specified maximum GFA within each existing building on the site. The site’s IN1 General Industrial zoning is unchanged by this Planning Proposal. It will still be possible for new industrial activities to be established, subject to consent, using any of the existing floorspace on the site. The proposed APU clause is intended to lapse when the site is redeveloped in the future in accordance with the IN1 zone.</p> <p>The Planning Proposal responds to the unique characteristics of the site and existing buildings which have significant latent capacity to support immediate employment and beneficial economic activity through use as office premises until such time that the buildings are redeveloped.</p> <p>The Planning Proposal is unlikely to set a precedent or raise reasonable speculation for rezoning elsewhere as other sites are unlikely to be able to demonstrate sufficient strategic and site-specific merit in the same way as the subject site.</p>

North District Plan

The Planning Proposal gives effect to the following objectives of the North District Plan:

Direction & Planning Priority	Assessment
Productivity – Jobs and skills for the city	
<p>Planning Priority N10</p> <p>Growing investment, business opportunities and jobs in strategic centres</p>	<p>The North District Plan reiterates the Region Plan’s stated expectations for Strategic Centres including high levels of amenity and walkability, and areas being identified for commercial uses, and where appropriate commercial cores.</p> <p>As discussed earlier, the Planning Proposal would enable efficient utilisation of existing vacant floorspace and create the opportunity to generate jobs immediately in the context of an economic downturn. New business activity and employees on the site, could foster momentum in the marketplace to increase demand and support the longer term development of</p>

Direction & Planning Priority	Assessment
	<p>the future commercial core of Brookvale's strategic centre.</p> <p>As the site's IN1 zoning is retained and the office premises permissibility will lapse when the buildings are redeveloped, the Planning Proposal does not represent an extension of the strategic centre onto industrial and urban services land.</p>
<p>Planning Priority N11</p> <p>Retaining and managing industrial and urban services land</p>	<p>The North District Plan highlights the importance of urban services for local communities and businesses and the need to safe-guard and efficiently manage the scarce supply of industrial and urban services land in the district.</p> <p>The Planning Proposal is broadly consistent with retaining and managing industrial and urban services land. The site's IN1 zoning will remain. The Planning Proposal will enable efficient, employment-supportive use of existing vacant floorspace, until such time that the site is redeveloped. Existing industrial/warehousing activities on the site will not be reduced, and the site's single ownership is conducive to management of land use conflict. No subdivision is proposed.</p> <p>The Planning Proposal is unlikely to set a precedent or raise reasonable speculation for conversion of industrial zoned land elsewhere in the precinct as other sites are unlikely to be able to demonstrate sufficient strategic and site-specific merit in the same way as the subject site.</p>

4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

Local Strategic Planning Statement

Yes. The Planning Proposal gives effect to the following planning priorities of the LSPS:

Direction for Productivity – Jobs and skills	
Planning Priority and Action	Comment
<p>Planning Priority 22</p> <p>Jobs that match the skills and needs of the community</p> <p>Action 22.1 Complete the LEP employment study and develop LEP and DCP controls to grow job opportunities...</p>	<p>The LSPS structure plan designates a Strategic Centre at Brookvale and identifies it as an employment and innovation centre. Planning Priority 22 identifies a target of 3,000-6,000 additional jobs for Brookvale-Dee Why by 2036, by far the highest growth in the LGA.</p> <p>The proponent's Economic Need and Impact Assessment prepared by Location IQ estimates the Planning Proposal has the potential to create 1,374 jobs (705 on site and a further 669 created indirectly through multiplier effects in the local economy). These are significant job numbers for one site and if realised would assist in achieving the job targets and improving the LGA's employment self-sufficiency, the benefits of which are heightened in an economic downturn.</p> <p>The LSPS identifies for Brookvale the opportunity to grow high-skilled employment and innovation-led change. The proponent's list of prospective tenants aligns well with high skilled jobs and innovative business (although, there can be no guarantee as to the future tenants). The Planning</p>

	<p>Proposal affords a significant opportunity to generate high skilled jobs and support innovative business utilising existing vacant floorspace while retaining the IN1 zone.</p> <p>The Employment Study, LEP review and local structure planning for Brookvale are ongoing. The location of the future commercial core / town centre close to the B-line stop are yet to be identified and its development is a medium-long term prospect. The Planning Proposal is a mechanism to grow jobs in the interim without construction costs and delays, and potentially also foster momentum and interest in the market for new offices to be developed in Brookvale.</p>
<p>Planning Priority 24 Brookvale as an employment and innovation centre Action 24.3 Respond to the findings of the LEP studies, review the draft Brookvale Structure Plan and develop LEP and DCP controls to optimise growth of Brookvale as a transit supportive employment centre, the centre of focus for the LGA</p>	<p>Two relevant principles under Planning Priority 24 are:</p> <ul style="list-style-type: none"> • Support Brookvale as an employment-based centre • Preserve the industrial integrity of industrially-zoned land <p>The Planning Proposal affords a significant opportunity to generate high skilled jobs and support innovative business utilising existing vacant floorspace while retaining the IN1 zone. It is unlikely to undermine the growth of Brookvale as a transport-supportive employment centre as it involves existing floorspace that is not an obvious competitor in the property market for the smaller, more vibrant, diverse, and public-facing businesses that are ultimately intended to cluster in the future commercial core in Brookvale.</p>
<p>Planning Priority 28 Safeguarded employment lands Action 28.1 Complete the strategic review of industrial and urban services land (part of the LEP employment study) and develop LEP and DCP controls to protect the integrity of employment land; address land use interfaces; and facilitate innovative built form Action 28.3 Review and update the draft Brookvale Structure Plan to respond to the findings of the employment study and determine the right mix of industrial and urban services for the centre</p>	<p>The LSPS notes the scarcity of industrial land North District and that future planning must balance local needs, a transitioning economy and high value industries.</p> <p>A relevant principle is:</p> <ul style="list-style-type: none"> • Support efficient use of land and built form that responds to changes in technology and innovation. <p>The Draft Brookvale Structure Plan exhibited in late 2017 included possible amendments to the western IN1 area (which includes the subject site) to allow office premises and business premises as additional permitted uses. Those changes are now under review having regard to the clear policy to retain and manage urban and industrial land expressed in the Region Plan and North District Plan when they came into effect in early 2018.</p> <p>The Council's ongoing work on the Employment Study and the draft Brookvale Structure Plan will determine the appropriate mix of land uses broadly across the IN1 zoned land. The site will be subject to any applicable LEP changes required to implement the final Structure Plan.</p> <p>In the meantime, the Planning Proposal represents an efficient use of existing built form and a flexible response to the unique characteristics and circumstances of the site. It will enable job creation and economic activity at a time when the community needs it and will give effect to important employment objectives in the LSPS.</p>

Does the proposal have site-specific merit, having regard to the following?

The natural environment (including known significant environmental values, resources or hazards)	The natural environment will not be affected. The proposal relates to use of existing buildings and no alternations or additions are proposed.
The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal.	Traffic generated as a result of the proposed office premises use may increase congestion on the road network, particularly Old Pittwater Rd which could affect access to and from existing, approved and likely future uses of land elsewhere along Old Pittwater Road. Council's Transport Network has advised that the proposal is acceptable as it is using existing buildings stock.
The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for provision.	Council's Transport Network has advised that the proposal is acceptable as it is using existing buildings stock. No road upgrades or other infrastructure requirements have been identified.

5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

Yes. The Planning Proposal is consistent with applicable State Environmental Planning Policies as summarised in the table below.

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent
SEPP No 1 – Development Standards	YES	YES
SEPP No 19 – Bushland in Urban Areas	YES	YES
SEPP No 21 – Caravan Parks	YES	YES
SEPP No 33 – Hazardous and Offensive Development	YES	YES
SEPP No 36 – Manufactured Home Estates	NO	N/A
SEPP No 44 – Koala Habitat Protection	YES	YES
SEPP No 47 – Moore Park Showground	NO	N/A
SEPP No 50 – Canal Estate Development	YES	YES
SEPP No 55 – Remediation of Land	YES	YES
SEPP No 64 – Advertising and Signage	YES	YES
SEPP No 65 – Design Quality of Residential Flat Development	NO	N/A
SEPP No 70 – Affordable Housing (Revised Schemes)	YES	YES
SEPP (Aboriginal Land) 2019	NO	N/A
SEPP (Activation Precincts) 2020	NO	N/A
SEPP (Affordable Rental Housing) 2009	YES	YES
SEPP (Building Sustainability Index: BASIX) 2004	YES	YES
SEPP (Coastal Management) 2018	YES	YES
SEPP (Concurrences and Consents) 2018	NO	N/A
SEPP (Educational Establishments and Child Care Facilities (2017)	NO	N/A
SEPP (Exempt and Complying Development Codes) 2008	YES	YES

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent
SEPP (Housing for Seniors or People with a Disability) 2004	NO	N/A
SEPP (Infrastructure) 2007	YES	YES
SEPP (Integration and Repeals) 2016	YES	YES
SEPP (Kosciuszko National Park—Alpine Resorts) 2007	NO	N/A
SEPP (Kurnell Peninsula) 1989	NO	N/A
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	NO	N/A
SEPP (Miscellaneous Consent Provisions) 2007	NO	N/A
SEPP (Penrith Lakes Scheme) 1989	NO	N/A
SEPP (Primary Production and Rural Development) 2019	NO	N/A
SEPP (State and Regional Development) 2011	NO	N/A
SEPP (State Significant Precincts) 2005	NO	N/A
SEPP (Sydney Drinking Water Catchment) 2011	NO	N/A
SEPP (Sydney Region Growth Centres) 2006	NO	N/A
SEPP (Three Ports) 2013	NO	N/A
SEPP (Urban Renewal) 2010	NO	N/A
SEPP (Vegetation in Non-Rural Areas) 2017	YES	YES
SEPP (Western Sydney Aerotropolis) 2020	NO	N/A
SEPP (Western Sydney Employment Area) 2009	NO	N/A
SEPP (Western Sydney Parklands) 2009	NO	N/A

6. Is the Planning Proposal consistent with applicable Ministerial Directions?

Yes. The Planning Proposal is consistent with applicable Ministerial Directions. Directions 1.1 and 6.3 are of particular relevance.

Ministerial Direction 1.1 Business and Industrial Zones

This direction issued on 1 May 2017 specifies objectives and requirements for planning proposals that will affect land within an existing or proposed business or industrial zone. The objectives are:

- (a) *encourage employment growth in suitable locations,*
- (b) *protect employment land in business and industrial zones, and*
- (c) *support the viability of identified centres*

Relevant requirements are:

- (a) *give effect to the objectives of the direction*
- (b) *retain the areas and locations of existing business and industrial zones...*
- (d) *not reduce the total potential floor space area for industrial uses in industrial zones*

The Planning Proposal is consistent with Direction 1.1 as it retains the site's existing IN1 zoning, only enables office premises use of existing ancillary office floorspace, will not reduce the existing floorspace currently used for industrial/warehousing activities, and ensures that if and when the site is redeveloped in the future the proposed APU clause will lapse.

It is reasonable to argue that there will be a reduction in the floor space area for industrial uses as it provides for non-industrial use of this floorspace. However, the floor space in question is

designed, built and fitted-out for office activities and was historically used for office activities, albeit ancillary to the primary factory/warehousing activities of the organisations which occupied the buildings. Given changes in technology and business, this floorspace could remain largely vacant under the current planning controls. The Planning Proposal would enable efficient, viable use of existing built assets, providing immediate opportunities to generate significant employment and economic activity which would be especially beneficial for the broader community at a time of economic downturn. This is preferable to the floorspace remaining vacant into the foreseeable future.

Ministerial Direction 6.3 Site Specific Provisions

This direction applies to planning proposals that will amend an LEP to allow a particular development to be carried out. The objective is to discourage unnecessarily restrictive site specific planning controls. The Planning Proposal is introducing site specific controls. However the controls are necessary to comply with strategic objectives and only apply to the existing buildings for the life of those buildings. They will not affect any redevelopment and are therefore minor and not restrictive.

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 Planning Proposal involves use of existing buildings, and no additional building or site works are proposed.

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 Planning Proposal involves use of existing buildings, and no additional building or site works are proposed. Traffic impact on the local road network is deemed acceptable as the proposal is using existing buildings. Access and parking can be resolved at development application stage when any necessary on-site parking calculations can assess the likely increase in parking demand.

Gateway Determination can require referral to Transport for NSW for consideration of the likely impact of the Planning Proposal on state and regional roads.

Council's Transport Network Referral Response

The response from Council's Transport Network unit raised concerns regarding public transport access (the site is about 1200m walking distance to the bus interchange and B-line stop on Pittwater Road), impacts on the road network, and inadequate parking provision. The response concluded that as the proposal is for an additional permitted use using existing building stock, without any major reconstruction, it is deemed acceptable and detailed transport requirements such as access points, internal roads, parking, and bicycle facilities can be addressed at development application stage.

9. Has the Planning Proposal adequately addressed any social and economic effects?

Yes. On balance, the potential social and economic effects are positive.

Council's Economic Referral Response

Council's Economic Development & Tourism unit has advised the planning proposal is not supported for reasons primarily related to "*preserving the integrity of limited industrial land and impact on existing or potential commercial centres*". Particular concerns raised in the referral response include:

- impact on the integrity of the industrial precinct, in a context of scarcity of industrial zoned land in North District and a clear State Government directive to 'retain and manage';
- loss of industrial floor space capacity, preventing re-purposing for future industrial uses;
- existing floor space could accommodate high technology industry / advanced manufacturing;
- failure to recognise significant stocks of vacant office space in the Northern Beaches, including an over-supply of larger floorplate office space;
- undermining the potential for a new commercial core/town centre with a high-amenity cluster of activities in close proximity to the B-Line, supporting growth in local high-skilled employment, as recommended by the Council's draft Employment Study.

The points raised in this response are valid. However, assessment of impact must take into account the characteristics and circumstances specific to the site and weigh up potential negative and positive impacts. The Planning Proposal enables efficient, employment-supportive use of existing ancillary office space without the cost or delay of building construction. It is estimated to have the potential to create up 1,374 local jobs, which if achieved would be of significant benefit to the community at a time of economic downturn. The proponent's list of prospective tenants aligns well with high skilled jobs, and supports the view that the existing buildings are more likely to attract larger, independent tenants than the smaller, more vibrant, diverse, and public-facing businesses that are ultimately intended to cluster in the future commercial core in Brookvale.

The location of the future commercial core / town centre in close proximity to the B-line stop is still to be determined and its development is a medium to long term prospect. The Planning Proposal is a mechanism to grow jobs in the interim and could potentially foster momentum and interest in the market for new offices to be developed in Brookvale.

The fact that there are significant stocks of vacant office space on the Northern Beaches, in particular the larger floorplates in the Frenchs Forest business park, is not sufficient reason to refuse to allow use of existing vacant ancillary office space on the site. The subject site offers a different amenity and accessibility to Frenchs Forest, particularly given its location close to a regional shopping centre. Frenchs Forest business park may not have the same appeal.

The Planning Proposal will not reduce the existing warehouse floorspace in the buildings. This space will remain available for continued industrial and urban services activities that support the community.

On balance, the potential social and economic benefits of allowing office premises as an APU, within the specified GFA limits and only for the life of the existing buildings, outweigh potential negative impacts.

Section D - State and Commonwealth interests

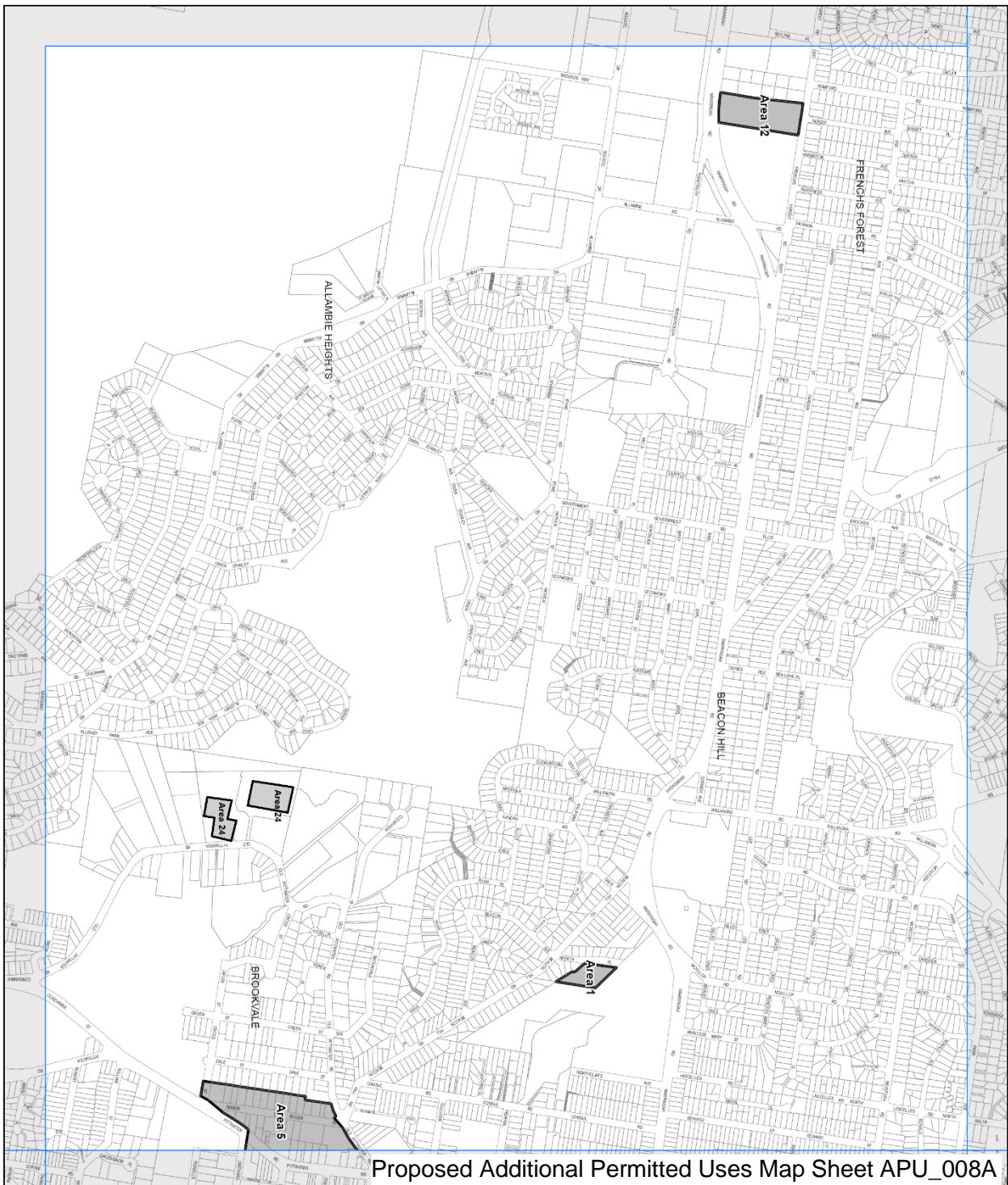
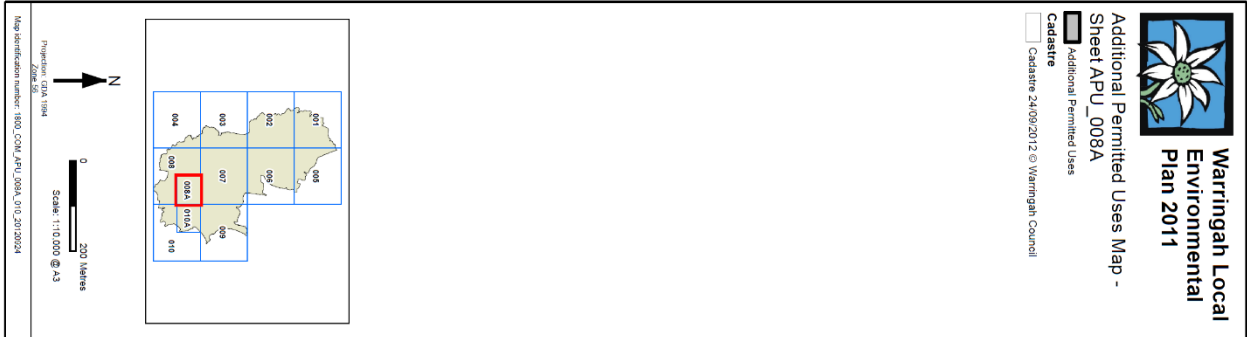
10. Is there adequate public infrastructure for the Planning Proposal?

Yes. The Planning Proposal involves use of existing buildings, and no additional building or site works are proposed. Council's Transport Network has advised that the proposal is acceptable as it is using existing building stock. Without traffic modelling, it is difficult to predict whether the traffic generated by the proposed office premises will require upgrades to the adjoining regional and state road network, particularly Pittwater Road and Condamine Street. Referral to Transport for NSW can be a requirement of the Gateway determination for the Planning Proposal.

11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway Determination?

Not applicable at this stage as the Planning Proposal has not progressed to Gateway determination. Statutory consultation will occur in accordance with the requirements of a Gateway Determination.

Part 4 – Maps



Part 5 – Community Consultation

Preliminary (non-statutory) public notification of the Planning Proposal was undertaken between 17 and 31 August 2020. Three (3) submissions were received. The main concerns raised are:

- potential noise from construction, machinery and roof-top air-conditioning and refrigeration units impacting on residential properties in Allenby Park Parade, and
- lack of parking and increased traffic congestion as a result of the 1,300 additional employees in the proposed offices

These concerns are noted, however they are not sufficient grounds on which to not proceed with the Planning Proposal. Noise impacts can be addressed at the development consent stage. The reference to 1,300 additional employees in the proposed offices is incorrect. The Economic Impact Assessment submitted by the proponent estimates 705 net additional jobs on site, plus a further 669 additional jobs created elsewhere through multiplier effects in the economy.

If Council receives a Gateway determination that the Planning Proposal should proceed, formal statutory public exhibition of the Planning Proposal will take place for a minimum of 28 days or as otherwise directed by the Determination.

Part 6 – Project Timeline

Task	Anticipated timeframe
Submission to DPIE for Gateway Determination	December 2020
Gateway Determination	March 2020
Government agency consultation (if required)	April 2020
Commencement of public exhibition	May 2020
Completion of public exhibition	June 2020
Consideration of submissions	June 2020
Consideration of proposal post-exhibition	July 2020
Date of submission to the Department to finalise the LEP	August 2020
Forwarding of the plan to the PCO for publication	September 2020
Gazettal of LEP Amendment	October 2020

SGS
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PRIMEWEST SITE PLANNING ADVICE

APRIL 2020

Prepared for
Northern Beaches Council

Independent
insight.



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SITE SPECIFIC ADVICE FOR 114-120 OLD PITTWATER ROAD

Introduction

Context

SGS has been engaged by Northern Beaches Council to provide advice regarding a planning proposal for 114-120 Old Pittwater Road in Brookvale (known as the Primewest site). The site is zoned as IN1 General Industrial, and includes 12,000 square metres of office space, 19,000 square metres of warehousing, and over 600 car parks. The office space has been largely vacant for around three years.

Existing controls prohibit the use of the existing office space on the site for uses other than those that are ancillary to industrial uses. The site's owner is seeking to change this to allow for office uses which are independent of the industrial function of the site. The proponent has also requested that Priority 28 in the Northern Beaches Local Strategic Planning Statement (LSPS) be amended to include that:

"Any changes to the planning controls for employment land must not reduce its employment capacity."

Purpose of this report

Council is seeking advice as to whether to allow the site's owners to let existing office space independently of the industrial uses, with reference to:

- Recommendations from recent Northern Beaches Employment Study
- Local Strategic Planning Statements – Towards 2040 – particularly Priority 24 and 28.
- North District Plan priority N11 – Retain and Manage industrial land, including that the number of jobs should not be the primary objective – rather a mix of economic outcomes that support the city and population.
- The applicant's submission and the particular circumstances of the case
- Potential precedent affect.

SGS has considered the above in preparing this short report. The next section considers the strategic planning context relating to the site, followed by site-specific considerations of the proposal. The final section outlines SGS's conclusions as to the merit of the proposal given these factors.

Strategic context

Greater Sydney Commission strategic planning

The Greater Sydney Commission's (GSC) North District Plan, consistent with the Greater Sydney Regional Plan (GSRP), includes specific directions around the retention of industrial and urban services land.

Specifically, this includes **Priority N11 – retaining and managing industrial and urban services land**, and **Objective 23 – Industrial and urban services land is planned, retained and managed**. The need to protect the role and function of existing industrial precincts has been identified in response to the importance they have to the functioning of cities and economies, and increasing encroachment pressures being seen from residential uses in particular. The

Northern Beaches LGA has been designated as a 'Retain and Manage' area, which means that all existing industrial and urban services land should be safe-guarded from competing pressures, especially residential and mixed use zones.

SGS COMMENT

The Primewest proposal is broadly consistent with these aims, as it is proposed that the existing industrial zoning be retained while 'office' is added as a permissible use. Allowing for separate office uses does not introduce the possibility of the site being used for residential or mixed uses, which can undermine the role and function of industrial and urban services areas.

However, the way in which 'office' is added as a permissible use will be important, as it could present the opportunity for other proponents to convert or redevelop their sites for office uses. This could set a precedent and over time detract from the precinct's industrial role, resulting in the incremental loss of industrial and urban services land.

To guard against this, additional permitted use provisions could be introduced for this particular site, or to stipulate that stand-alone office uses only be permitted in existing structures.

Northern Beaches LSPS

The Northern Beaches LSPS includes a number of priorities across a range of areas. Under the theme of Jobs and Skills, Priority 24 and Priority 28 are of particular relevance.

Priority 24 – Brookvale as an employment and innovation centre

Priority 24 acknowledges Brookvale as the LGA's largest employment hub, and the most accessible of its centres. Among the Principles for Priority 24 are to:

- Support Brookvale as an employment based centre
- Ensure appropriate interfaces between land uses, and
- Preserve the industrial integrity of the industrially zoned land.

SGS COMMENT

Similar to the above regarding the GSC's principles for industrial and urban services land, the proposal is broadly consistent with the aim of preserving industrial land, as the industrial zoning will be retained. However, there remains the potential for the functioning of the precinct as industrial and urban services land to be undermined if the office uses that are introduced are not compatible.

The proposal is consistent with the other relevant principles – in supporting employment in the centre, and ensuring an appropriate interface between uses. Allowing for office uses may encourage more employment than there is now (i.e. none, as the buildings are not being used), and the proponent is not suggesting the introduction of alternative uses like residential which would conflict with the industrial role of the area.

Priority 28 – Safeguarded employment lands

Principle 28 recognises that there is an existing undersupply of industrial land in the North District, and that it is consequently important for lands to be retained. Brookvale accounts for around 46 per cent of the LGA's industrial land, and is the largest such precinct in the North District.

Principles under Priority 28 include to:

- Safeguard employment land from non-compatible uses, particularly residential and mixed use development
- Restrict subdivision and strata titling of industrial lots to prevent further fragmentation
- Focus on economic outcomes that support the population rather than job numbers

- Support industrial and urban services by managing the interface with adjoining land uses and ensuring residential development does not sterilise industrial or urban services uses, and
- Support efficient use of land and built form that responds to changes in technology and innovation.

SGS COMMENT

The proposal is likely to be consistent with most of these principles. As noted by the proponent, there are no plans to subdivide the site, and allowing for office would likely be a more efficient use of the land compared to its current state without a tenant. Offices uses are unlikely to be incompatible with the surrounding industrial functions, as the space is already there, and the site has previously functioned with such uses.

However, as above, there is a risk that if office uses are allowed on the site in question, that it could set a precedent for other land-owners in the precinct to attempt to do the same, and over time this could impact on the precinct's industrial role and function.

Northern Beaches Employment Strategy

Vision for Brookvale

The vision for Brookvale as a centre under the Employment Strategy is that:

"Brookvale will consolidate its role as the Northern Beaches' major strategic centre. Development will concentrate around a civic space between Pittwater Road and Roger Street, with a mix of commercial, civic and entertainment functions in a multi-function centre. The centre will become the focus of activity and the convergence point for Brookvale's multiple functions and leverage the emerging yet informal food and dining scene coming from Brookvale's breweries. Walkable from the eastern industrial precinct and Warringah Mall, Brookvale Oval, Brookvale Public school, Community Health Centre and potential future development at the Sydney Buses depot site, the centre will also be highly accessible to the rest of the LGA and beyond through the B-Line. This range of interacting uses will provide activation day and night, on weekend and weekdays, creating a civic and community hub for the LGA as well as a commercial one."

The approach to planning for Brookvale relies on establishing a new town centre close to the existing B-line and economic activity. The bus depot site is being considered for a new hub to support office and creative uses to complement Brookvale's role as a centre.

SGS COMMENT

The proposal is not necessarily inconsistent with the vision for Brookvale, however, it could have the potential to undermine its strategic aims for creating a more discernible core. The bus depot has been identified as a good location for new office space in Brookvale, potentially in the form of co-working or through small office tenancies that can suit different tenants including the creative sector.

As noted in the Employment Strategy, this type of development is already starting to encroach into the IN1 zone to the west of the Mall, an example being the Lifestyle Working facility. While this particular facility has been successful, it has potentially raised expectations around opportunities for the conversion of industrial land to these uses.

If allowing office uses on the site means that the proponent will seek to transform the site into this type of product too, this risks undermining the ability of the bus depot site (or other site/s identified) and the new town centre to be developed in the way that is envisioned in the Employment Strategy. It risks drawing demand away from the core of the centre where it is best suited in terms of accessibility and proximity.

Planning principles for Brookvale

Supporting the vision for Brookvale are several principles, which include to:

- Concentrate commercial floorspace in the new commercial centre
- Leverage the emerging manufacturing scene in IN1 zone
- Not permit residential in the commercial core
- Not support commercial conversion in industrial zones
- Retain a buffer to industrial uses, and
- Understand the risk of increasing floorspace supply, in the context of demand, supply and the future role of centres across the whole LGA.

SGS COMMENT

The proposal is potentially inconsistent with some of these principles – including not supporting commercial conversions in industrial zones, and the need to concentrate commercial floorspace in the new commercial centre. However, it is debatable as to whether the proposal constitutes a ‘conversion’ of industrial land given that the office buildings are already on site. Similarly, the types of office users who might be attracted to the site may be different to those who would be looking for space in the commercial core, and as such it would not draw tenants away from there.

Perhaps the most pertinent principle in relation to Primewest site is the need to consider the risk of introducing more office floorspace which could detract from other parts of the LGA. Frenchs Forest has seen significant NSW Government investment as a Planned Precinct, and has an established business park, which is currently underperforming. The Employment Strategy has identified a vision for Frenchs Forest which identifies that the Frenchs Forest business park will:

“... attract certain health-related businesses that benefit from proximity to the hospital but may require full building floorplates or the inclusion of warehousing, space for manufacturing or other non-commercial floorspace use. These include pharma and other med-tech companies such as Pharmaxis, Conmed and Kirsch Pharma that are currently in the precinct. It will also be home to parts, distribution and storage-related functions that do not require the visibility of Brookvale but benefit from the locational accessibility. Frenchs Forest will also soak up some of the businesses displaced from Brookvale either through changing land uses or price points.”

Allowing for office uses on the site has the potential to detract from this vision, by undermining the competitive advantage Frenchs Forest has over Brookvale – that of providing large floorplate commercial premises. The vision for Frenchs Forest sees commercial office based uses would be concentrated in the business park and support the development of the wider Frenchs Forest precinct.

Existing vacancies and demand

It is also noted in the Employment Strategy that Brookvale’s commercial market is in a state of transition. While it has the third highest rents behind Manly and Balgowlah, it also has a number of commercial and industrial vacancies, including many vacant units on Pittwater Road. This is likely to be linked to the age and relative attractiveness of the existing stock, with over 60 per cent of vacant industrial floorspace in Brookvale being old and un-refurbished.

SGS COMMENT

As discussed in the Employment Strategy, the larger number of vacancies in Brookvale suggests that rather than there being a lack of supply of office space, the type of spaces on offer are not meeting the needs of potential tenants looking in the area, particularly those who are looking for high-quality floorspace. This may also be the case for the Primewest site, which has older buildings and may not necessarily be able to attract tenants without further upgrades.

Site-specific considerations

Location and proximity to centre

As noted by the proponent and in Council's correspondence, the site itself is around a one kilometre walking distance from the Brookvale B-line stop. It is also in close proximity to the Warringah Mall and associated retail and other services that can be accessed there.

SGS COMMENT

The relative proximity of the site to Brookvale's core commercial area would likely be an attractor to potential tenants. Proximity to the B-line could also potentially contribute to broader Council objectives outlined in the LSPS, such as reducing car use and increasing public transport use, although it is noted that direct access to the main transport hub is convoluted as it requires circumnavigating Warringah Mall.

Reuse of existing asset

As argued by the proponent, allowing for office uses on the site would see the reuse of an existing asset for a new purpose, without the need to redevelop and create additional waste.

SGS COMMENT

As the buildings on site are already set up as office space, there may be limited need for additional building works to accommodate a new office tenant. This would potentially reduce the creation of waste and emissions associated with construction, compared to if the site was to be redeveloped for another industrial use, or if office space was developed on another site somewhere else. This broadly aligns with the LSPS's sustainability objectives.

Other potential uses under existing zoning

The existing IN1 zone under the Warringah LEP 2011 allows for a range of different uses which could be considered for use on the site. These are summarised in the table in the Appendix.

SGS COMMENT

Consistent with the industrial zoning, many of the permitted uses require large land areas, outdoor space, and other features which mean that they would not be suitable to be accommodated in the existing office space. However, some of the permitted uses could potentially be accommodated in office-type accommodation, and could be considered as an alternative to introducing straight office uses, such as:

- Community facilities
- High technology industry (includes IT, pharmaceuticals, and media), and
- Public administration building.

It may be that there is not sufficient demand for these types of services in Brookvale to make the prospect viable for the proponents. Modifications to the buildings might also be required to accommodate some of these uses which could also be unfeasible.

Conclusions

SGS has reviewed the proposal to allow for office uses on the Primewest site in light of the strategic planning context and the context surrounding the site itself.

It is noted that this position outlined below assumes that Council intends to implement the vision outlined in the Employment Study – particularly that of creating a future town centre in Brookvale.

It is also important to recognise that the planning system (and Council by extension) cannot control every aspect of development that occurs on employment lands. A wide range of trends and factors will influence how sites are operated or developed, including feasibility and shifts in the types of uses that businesses are looking for.

SGS recognises that the proposal has merit in terms of the opportunity to reuse an existing asset for a more productive function than its current state. The site is in reasonable proximity to Brookvale's core and the B-line. The proposal has also been found to be broadly consistent with principles and strategic aims in the GSC and Council's strategic planning documents, such as the need to protect and retain existing industrial land.

However, on balance, SGS's view is that the proposal is not appropriate for this site, for two key reasons.

Potential precedent for loss of industrial land uses

One of the two key risks in allowing for office uses on the site is the potential precedent that it sets for other land owners in the west Brookvale industrial precinct.

Under the current zoning, only 'ancillary' office uses are permitted on the site. That is, any office uses must relate to the industrial function of the site. If the proponent were to be allowed to sub-let the office component of the site separately, this would be contrary to the current controls, and would require a change to the permitted uses in the zone. This in turn sets a precedent for other land owners in the area who may wish to do the same on their industrially-zoned sites, which over time, would see the industrial function of the precinct diminished.

As noted above, there has already been some encroachment of commercial office uses into the industrial area (though this was undertaken prior to the release of the GSC's strategic plans and directions regarding industrial and urban services land). With commercial office floorspace typically generating higher rents than industrial floorspace, there is often a financial incentive for land owners to want to convert to commercial office uses, which over time may inhibit the industrial function of the area.

The establishment of this precedent is directly linked to the second reason for refusal.

Potential to undermine strategic employment objectives

The other key risk from the proposal is that it could undermine the broader strategic employment objectives for both Brookvale and Frenchs Forest as outlined in the Employment and Centres Study.

The Employment Strategy includes a focus on establishing a true centre core in Brookvale along Pittwater Road, and supporting commercial uses in the existing Frenchs Forest precinct. Not allowing for office uses on the Primewest site is consistent with these objectives. Allowing for the conversion of industrial land to office uses in this location is likely to not only undermine the industrial precinct's function but also detract from the potential development of Brookvale's commercial centre, as well as draw away potential tenants from locating in Frenchs Forest.

In the short term, additional office space of this sort in this location may not actually be needed, due to the availability of floorspace at Frenchs Forest nearby. The Employment Strategy has also identified that there will continue to be demand for industrial floorspace in Brookvale to 2036. In addition, the current IN1 zoning under the Warringah LEP 2011 allows for other uses on the site which could be considered to utilise the existing space, without the need for changes to planning controls.

While denying the proposal risks the site continuing to be underutilised, the potential precedent that it sets, and the risk it creates in undermining Council's wider strategic objectives, means that it is not appropriate for the Primewest site.

APPENDIX

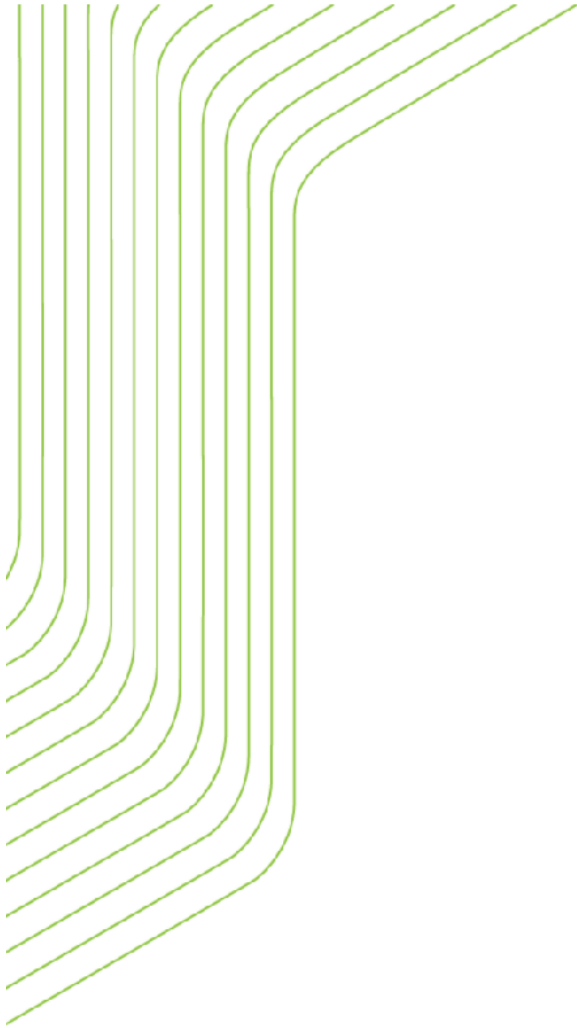
Permitted uses under IN1 General Industrial zone

TABLE 1: PERMITTED USES UNDER IN1 INDUSTRIAL ZONE, WARRINGAH LEP 2011

Category	Sub-categories	Permission conditions
Agriculture	Oyster aquaculture	Permitted with consent
	Tank-based aquaculture	Permitted with consent
Air transport facility	Heliport	Permitted under Infrastructure SEPP
	Airstrip	Permitted with consent
Boat building and repair facility	-	Permitted with consent
Boat launching ramp	-	Permitted with consent
Car park	-	Permitted with consent
Commercial premises	Retail premises – food and drink premises – take away food and drink premises	Permitted with consent
	Retail premises – garden centre	Permitted with consent
	Retail premises – hardware and building supplies	Permitted with consent
	Retail premises – shop: ▪ neighbourhood shop ▪ timber yard ▪ vehicle sales or hire premises	Permitted with consent
Community facility	-	Permitted with consent
Depot	-	Permitted with consent
Early childhood education and care facility	Centre-based child care facility	Permitted with consent
	School-based child care	Permitted with consent
Electricity generating works	-	Permitted with consent
Emergency services facility	-	Permitted with consent
Environmental protection works	-	Permitted with consent
Farm building	-	Permitted with consent
Flood mitigation work	-	Permitted with consent
Freight transport facility	-	Permitted with consent
Heavy industrial storage establishment	Liquid fuel depot	Permitted with consent
Helipad	-	Permitted with consent
Industrial retail outlet	-	Permitted with consent
Industrial training facility	-	Permitted with consent
Industry	General industry	Permitted with consent
	Light industry: ▪ artisan and food drink industry ▪ high technology industry ▪ home industry	Permitted with consent

Jetty	-	Permitted with consent
Mortuary	-	Permitted with consent
Place of public worship	-	Permitted with consent
Public administration building	-	Permitted with consent
Recreation area	-	Permitted with consent
Recreation facility (indoor)	-	Permitted with consent
Respite day care centre	-	Permitted with consent
Roads	-	Permitted with consent
Service station	-	Permitted with consent
Sewerage system	<ul style="list-style-type: none"> ▪ biosolids treatment facility ▪ sewage reticulation system ▪ sewage treatment plant ▪ water recycling facility 	Permitted with consent
Sex services premises	-	Permitted with consent
Signage	<ul style="list-style-type: none"> ▪ building identification sign ▪ business identification sign 	Permitted with consent
Storage premises	Self-storage units	Permitted with consent
Transport depot	-	Permitted with consent
Truck depot	-	Permitted with consent
Vehicle body repair workshop	-	Permitted with consent
Vehicle repair station	-	Permitted with consent
Warehouse or distribution centre	Local distributional premises	Permitted with consent
Waste or resource management facility	<ul style="list-style-type: none"> ▪ resource recovery facility ▪ waste disposal facility ▪ waste or resource transfer station 	Permitted with consent
Water supply system	<ul style="list-style-type: none"> ▪ water reticulation system ▪ water storage facility ▪ water treatment facility 	Permitted with consent
Wholesale supplies	-	Permitted with consent

Source: Provided by Northern Beaches Council, 2020.



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From: DYPXCPWEB@northernbeaches.nsw.gov.au
To: [DA Submission Mailbox](#)
Subject: Online Submission
Date: Friday, 21 August 2020 5:13:44 PM

21/08/2020



RE: PEX2020/0006 - 3 / 0 Old Pittwater Road BROOKVALE NSW 2100

Hello, please advise if there are any plans to include noisy air conditioning / machinery / construction. Our community wants assurances that it will not be heard on our streets above.



From: DYPXCPWEB@northernbeaches.nsw.gov.au
To: [DA Submission Mailbox](#)
Subject: Online Submission
Date: Thursday, 27 August 2020 9:12:43 PM

27/08/2020



RE: PEX2020/0006 - 3 / 0 Old Pittwater Road BROOKVALE NSW 2100

One of the proposals was for offices creating 1300 od new employment positions. I'm not sure if council has been to Services NSW lately but during the day parking in the complex is non existent. The parking on Old Pittwater Rd is already taken up by employees in the area & not so much now by employees from the Mall. Adding to this there are long term parked vehicles belonging to mechanics in he area. Parking will be an issue. Second is traffic flow of an afternoon around Xmas is grid locked now & you are considering 1300 people that not all will if any use public transport. Please think of the other businesses in the area trying to work with the issues already in place.




From: DYPXCPWEB@northernbeaches.nsw.gov.au
To: [DA Submission Mailbox](#)
Subject: Online Submission
Date: Friday, 28 August 2020 10:48:08 AM

28/08/2020



RE: PEX2020/0006 - 3 / 0 Old Pittwater Road BROOKVALE NSW 2100

Dear Paula,

Do to the issues we have had in the past with noise pollution from aircon and refrigeration units added to the roof tops of this site, I would like to be made assured that NO additional noise pollution comes from these premises. Give the natural features of the landscape of this site please give serious consideration to any potential aircon unit or noise polluters as noise is amplified up to all surrounding properties. Regards, 

ITEM 3.6	PLANNING PROPOSAL - REAR OF 88 BOWER ST, MANLY (PEX2020/0008)
REPORTING OFFICER	PLANNER
TRIM FILE REF	2020/663914
ATTACHMENTS	1 ↓Referral comments and public submissions 2 ↓Planning Proposal

PURPOSE

To seek endorsement of the Panel for a Planning Proposal to re-zone land under Manly Local Environmental Plan 2013 (MLEP) at the rear of 88 Bower St, Manly, from RE1 Public Recreation to E4 Environmental Living and to progress the Planning Proposal to a Gateway Determination.

BACKGROUND

A Planning Proposal (PEX 2020/0008) for land at the rear of 88 Bower St, Manly (the site) was lodged with Council on 18 August 2020 by Robinson Urban Planning Pty Ltd on behalf of the Trustees of the Roman Catholic Church for the Archdiocese of Sydney (the proponent). The proposal is to amend the Manly Local Environmental Plan 2013 (MLEP 2013) to rezone the site from RE1 Public Recreation to E4 Environmental Living and apply associated map amendments.

The subject site has been leased for private purposes in conjunction with the residential use of 88 Bower Street since 1964, despite its current zoning, and was sold by the Department of Industry to the Archdiocese of Sydney in 2018. The proponent purchased the property from the former Department of Industry - Lands (DoI – Lands) on 28 August 2018.

SITE DESCRIPTION

The site is legally described as Lot 1, DP 1244511 and is approximately 56.8m² with a frontage of approximately 4.49m to Marine Parade. The site is bound by Marine Parade to the north, 92 Bower St to the west which contains a three storey residential flat building, 88 Bower St to the south and 86 Bower St to the west which contains a three storey residential dwelling.

The site is used as private open space for the two/three storey house at 88 Bower St and contains a lawn, pathway and rockery.



Figure 1. Aerial Photo of site and adjoining residential property 88 Bower St

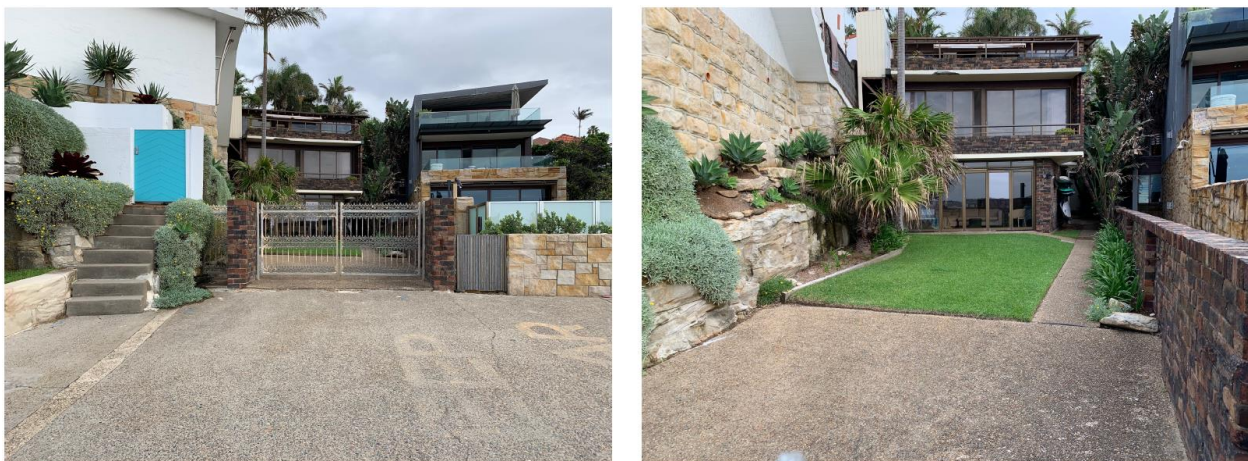


Figure 2. The subject site from Marine Parade (left) and the subject site and North façade of house at 88 Bower St, Manly (right).

SITE HISTORY AND OWNERSHIP

The site is currently owned by the proponent who purchased the site from DoI – Lands on 28 August 2018. The proponent also owns the adjoining property at 88 Bower St.

The proponent currently leases the site to the occupants of 88 Bower St. Prior to the disposal of the site, the Crown leased the site to various occupants of 88 Bower St under a Permissive Occupancy Licence for the purpose of lawn area, footpath, rockery and beautification since 1964. The site, along with the adjoining land, is reclaimed foreshore land and was originally below the mean high water mark before associated works on surrounding residential development and public foreshore improvements.

In 2011, the Archdiocese Trustees approached the Department of Industries – Land (DoI – Lands) to purchase the site with the intention to consolidate the subject site with 88 Bower St, Manly. DoI – Lands agreed to investigate a potential direct private sale.

DoI - Lands wrote to Manly Council in January 2016 to seek Council's view to establish 'whether Council may have any interests and/or objections to the sale of the subject area'. No objection to the sale was received by DoI – Lands from Manly Council and the DoI – Lands agreed to the direct sale of the site and waived the need for a land assessment. Key reasons for the disposal by Crown Lands were:

- No objections were received from Manly Council regarding the sale.
- The site is surplus to public and government requirements.
- The site being small in size and relatively enclosed by adjoining private uses, did not offer much public amenity or value and the continued use of the site as private open space for 88 Bower St would not impact on the public use of adjoining Crown Land and reserves.
- The site as a standalone lot is severely constrained due to its small size and location and is only considered of value to the landowner of the adjoining property at 88 Bower St.

The subject site previously formed parts of two larger lots (Lot 7338 DP 1154560 and Lot 7336 DP 1153371) and two land reservations (Shelley Beach Reserve and Manly Freshwater National Surfing Reserve). A new lot was registered to reflect the boundaries of the site on 13 July 2018 and the land reservations were revoked after the sale of the site was approved on 29 June 2018.

PROPOSED AMENDMENTS TO MLEP 2013

The following amendments to MLEP 2013 are proposed:

- rezone the site from RE1 Public Recreation to E4 Environmental Living (see Figure 2)
- introduce a 500m² minimum lot size for the site (no minimum lot size control currently applies to the site) (see Figure 3)
- introduce a maximum building height of 8.5m (no maximum building height control currently applies to the site) (see Figure 4)
- introduce a maximum floor space ratio of 0.45:1 (no maximum floor space ratio control currently applies to the site) (see Figure 5)

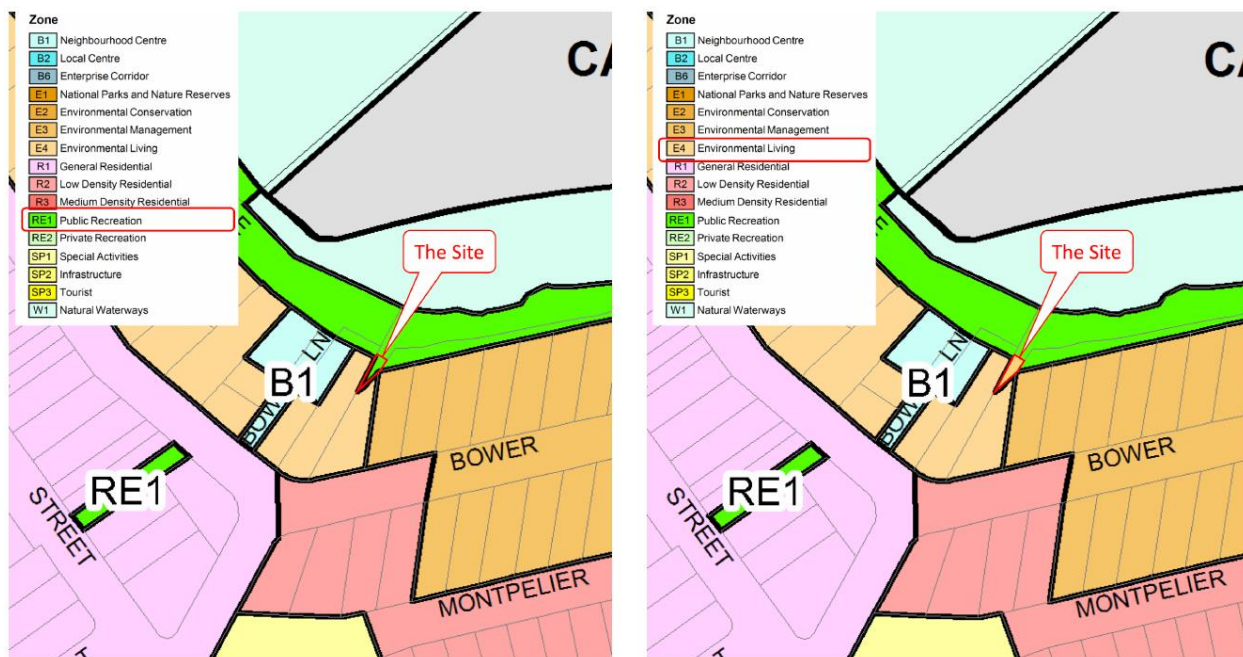


Figure 3. Existing site zoning (left) and proposed zoning (right)

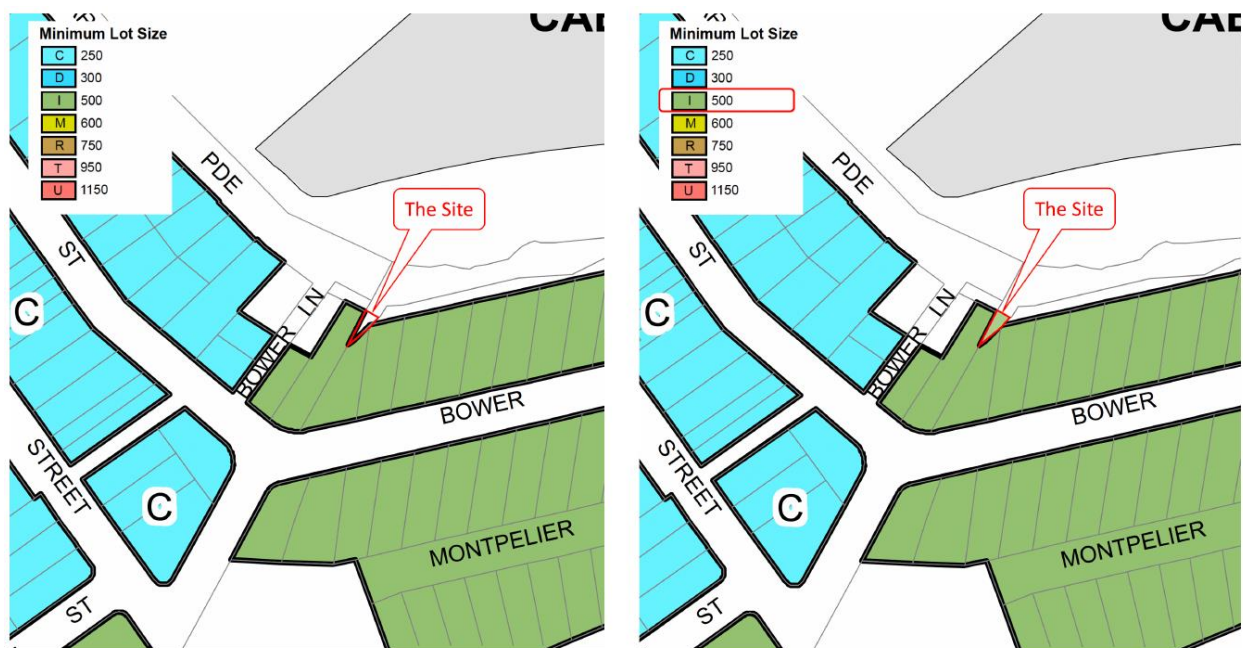


Figure 4. Existing minimum lot size (left) and proposed minimum lot size (right)

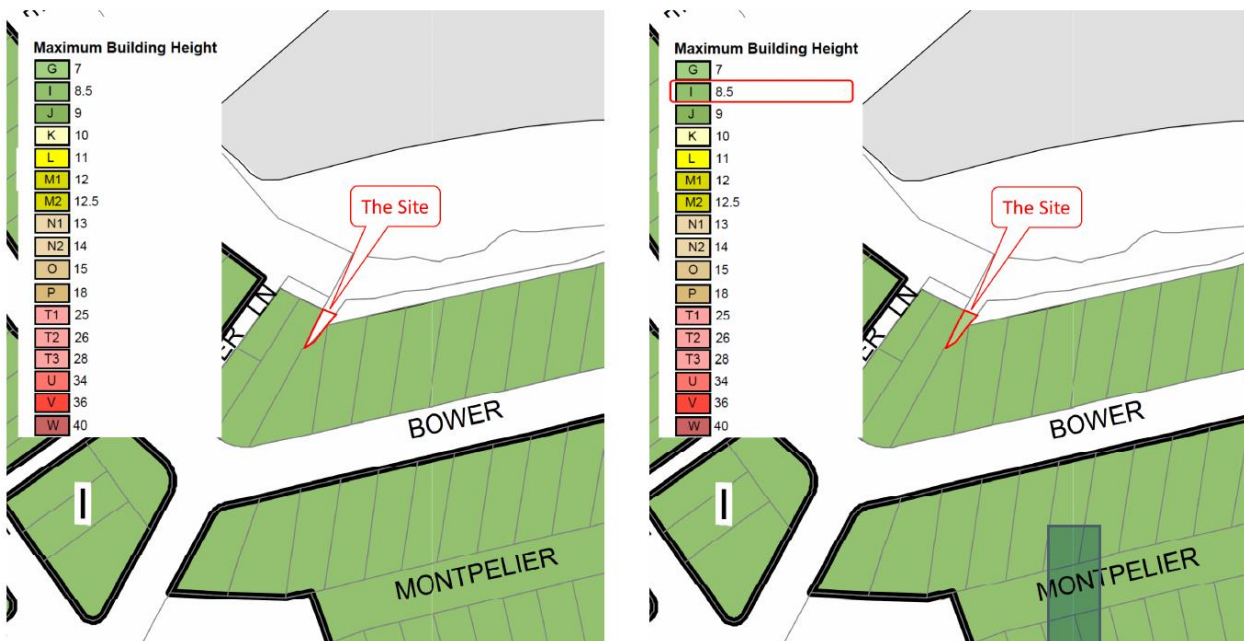


Figure 5. Existing maximum building height (left) and proposed maximum building height (right)

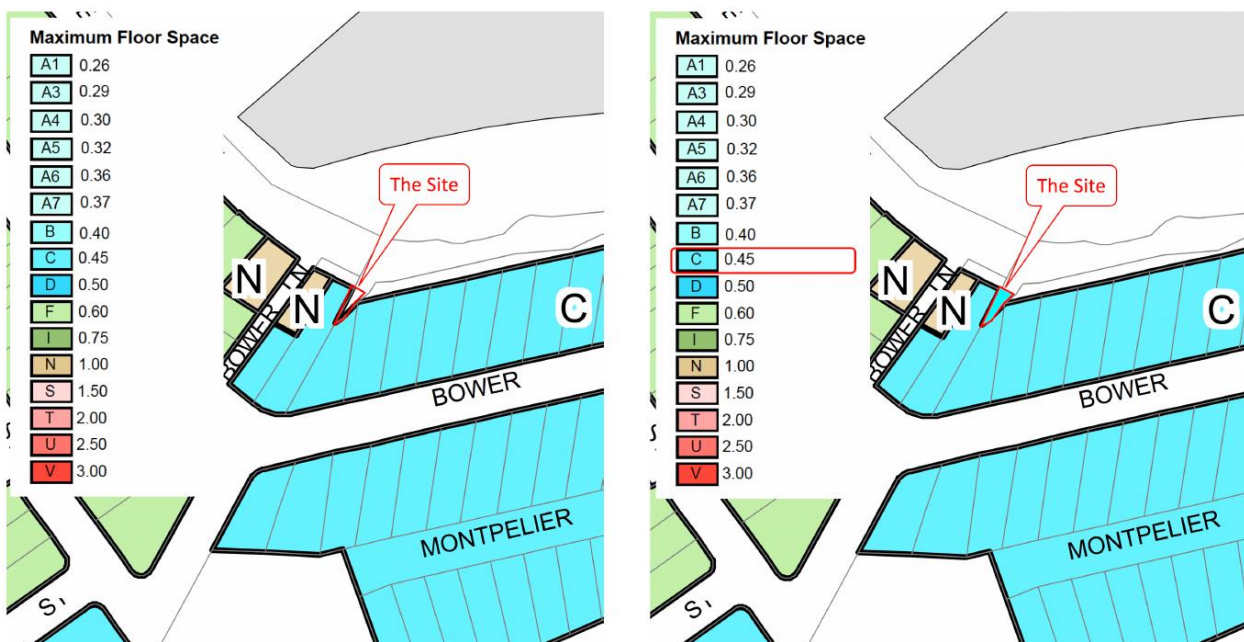


Figure 6. Existing maximum floor space ratio (left) and proposed maximum floor space ratio (right)

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 Manly Local Environmental Plan 2013 to enable the orderly and economic use of the site for residential purposes, consistent with the site's private ownership and adjoining uses.

Part 2 – Explanation of Provisions

The proposed outcome will be achieved by:

- amending the Manly Local Environmental Plan 2013 land zoning map (LZN_006) from RE1 Public Recreation to E4 Environmental Living
- amending the Manly Local Environmental Plan 2013 lot size map (LSZ_006) to apply a minimum lot size of 500m² in accordance with the proposed lot size map shown in Figure 2 below
- amending the Manly Local Environmental Plan 2013 height of buildings map (HOB_006) to apply a maximum height of 8.5m in accordance with the proposed height of buildings map shown in Figure 3
- amending the floor space ratio map (FSR_006) to apply a maximum floor space ratio of 0.45:1 in accordance with the proposed floor space ratio map shown in Figure 3 below.

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:

- the disposal of the site into private ownership in 2018
- the landowner's intention to consolidate the site and align the site's zoning with the adjoining property at 88 Bower St
- its status as surplus to government and public needs.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal will allow the orderly and economic use and development of the land in conjunction with the adjoining principal residential property (88 Bower St, Manly) and is the most appropriate recourse for achieving the objectives of the proposal.

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?)

a) Does the proposal have strategic merit?

Greater Sydney Region Plan – A Metropolis of Three Cities

The proposal supports the following objectives outlined in the *Greater Sydney Region Plan*:

Table 1. Consistency with relevant priorities in the *Greater Sydney Region Plan*:

Relevant Planning Priorities	Consistency
<i>Objective 10 – Greater housing supply</i>	The proposal will support residential uses on the site.
<i>Objective 11 – Housing is more diverse and affordable</i>	The proposal will support residential uses on the site.
<i>Objective 14 – Integrated land use and transport creates walkable and 30-minute cities</i>	The proposal will support residential uses on a site close to public transport, jobs, public services and open space.
<i>Objective 31 – Public open space is accessible, protected and enhanced</i>	The proposed amendments would not impact access to surrounding open space and reserves.

North District Plan

The proposal supports the following priorities outlined in the *North District Plan*:

Table 2. Consistency with relevant priorities in the *North District Plan*:

Relevant Planning Priorities	Consistency
<i>Planning Priority N1 – Planning for a city supported by infrastructure (a 30-minute city)</i>	The proposal would provide for residential accommodation in an accessible and well-serviced location to support a 30-minute city
<i>Planning Priority N5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport</i>	The proposal would provide for residential accommodation close to jobs, services and public transport.

b) Does the proposal have site-specific merit, having regard to the following?

Table 3. Commentary on site-specific merit

<i>The natural environment (including known significant environmental values, resources or hazards).</i>	The site has been identified as generally affected by potential coastal inundation. The planning proposal is supported by coastal engineering advice which found that potential impacts of coastal inundation could be managed through various mitigation measures e.g. elevated floor levels, setbacks and/or wave rump trip barriers and that future development at the site could be designed to have an acceptably low risk of damage by coastal processes and hazards over an acceptably long life.
--	--

	The site will be used as open space for the dwelling house.
<i>The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal.</i>	The proposed amendments will enable the site to continue to be used as private open space and support and align with surrounding residential uses.
<i>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.</i>	The site is already supported by adequate services and infrastructure serving the surrounding area.

4. Will the planning proposal give effect to a council's local strategy or other local strategic plan?

The planning proposal will give effect to *Towards 2040*, the Northern Beaches Local Strategic Planning Statement (LSPS) as outlined in the table below.

Table 4. Consistency with the LSPS

Relevant Planning Priorities	Comment
<u>Landscape</u> Priority 1 – Healthy and valued coast and waterways Priority 3 – Protected scenic and cultural landscapes Priority 6 – High quality open space for recreation	<p>Due to the relatively enclosed position of the irregularly shaped site, the proposed amendments will not affect access to surrounding recreation areas, reserves and foreshore. The site has not been used for public access to surrounding open space and recreation areas.</p> <p>The proposed amendments will have minimal impact on the adjacent coastline and waterway, surrounding scenic and cultural landscapes and open space for recreation.</p>
<u>Resilience</u> Priority 8 – Adapted to the impacts of natural and urban hazards and climate change	<p>The proposed amendments are supported by coastal engineering advice which found that any future development on the site as consolidated with the adjoining 88 Bower St could be designed to have an acceptably low risk of damage from impacts of climate change including coastal inundation and sea level rise.</p>
<u>Housing</u> Priority 15 – Housing supply, choice and affordability in the right locations	<p>The planning proposal provides for the provision of additional land for residential purposes. The site is located in a well-served and accessible location.</p>
<u>Great Places</u> Priority 18 – Protected, conserved and celebrated heritage	<p>The proposed amendments will have minimal impact on surrounding heritage items. The site is not listed as a heritage item and is not located within a heritage conservation area. There are also no Aboriginal land claims registered on the site.</p>

5. Is this Planning proposal consistent with applicable State Environmental Planning Policies?

State Environmental Planning Policy No. 55 – Remediation of Land

The site is reclaimed land and has historically been used for landscaping works and open space adjacent to residential properties and is therefore unlikely to be affected by contamination.

State Environmental Planning Policy (Coastal Management) 2018 (SEPP Coastal Management)

The site is located within a “coastal environment area” and “coastal use area” as mapped in SEPP Coastal Management where the consent authority must consider whether a proposed development is likely to cause adverse impacts as outlined in the SEPP. Coastal engineering advice prepared by Horton Coastal Engineering reviewed the Planning Proposal against the provisions in SEPP Coastal Management and found that any future development on the site consolidated with 88 Bower St, under the proposed amendments could be designed and sited to satisfy the requirements of the SEPP.

Table 5: Compliance with State Environmental Planning Policies (SEPPs)

SEPPs (as at October 2020)		Applicable	Consistent
19	Bushland in Urban Areas	No	N/A
21	Caravan Parks	No	N/A
33	Hazardous and Offensive Development	No	N/A
36	Manufactured Home Estates	No	N/A
44	Koala Habitat Protection	No	N/A
47	Moore Park Showground	No	N/A
50	Canal Estate Development	No	N/A
55	Remediation of Land	Yes	Yes
64	Advertising and Signage	No	N/A
65	Design Quality of Residential Apartment Development	No	N/A
70	Affordable Housing (Revised Schemes)	No	N/A
	(Aboriginal Land) 2019	No	N/A
	(Affordable Rental Housing) 2009	No	N/A
	(Building Sustainability Index: BASIX) 2004	No	N/A
	(Coastal Management) 2018	Yes	Yes
	(Concurrences) 2018	No	N/A
	(Education Establishments and Child Care Facilities) 2017	No	N/A
	(Exempt and Complying Development Codes) 2008	No	N/A
	(Gosford City Centre) 2018	No	N/A
	(Housing for Seniors or People with a Disability) 2004	No	N/A
	(Infrastructure) 2007	No	N/A
	(Kosciuszko National Park – Alpine Resorts) 2007	No	N/A
	(Kurnell Peninsula) 1989	No	N/A
	(Mining, Petroleum Production and Extractive Industries) 2007	No	N/A
	(Miscellaneous Consent Provisions) 2007	No	N/A
	(Penrith Lakes Scheme) 1989	No	N/A
	(Primary Production and Rural Development) 2019	No	N/A
	(State and Regional Development) 2011	No	N/A
	(State Significant Precincts) 2005	No	N/A
	(Sydney Drinking Water Catchment) 2011	No	N/A
	(Sydney Region Growth Centres) 2006	No	N/A

SEPPs (as at October 2020)		Applicable	Consistent
	(Three Ports) 2013	No	N/A
	(Urban Renewal) 2010	No	N/A
	(Vegetation in Non-Rural Areas) 2017	No	N/A
	(Western Sydney Employment Area) 2009	No	N/A
	(Western Sydney Parklands) 2009	No	N/A
Sydney Regional Environmental Plans (Deemed SEPPs):			
8	(Central Coast Plateau Areas)	No	N/A
9	Extractive Industry (No 2 -1995)	No	N/A
16	Walsh Bay	No	N/A
20	Hawkesbury – Nepean River (No 2 – 1997)	No	N/A
24	Homebush Bay Area	No	N/A
26	City West	No	N/A
30	St Marys	No	N/A
33	Cooks Cove	No	N/A
	(Sydney Harbour Catchment) 2005	No	N/A

6. Is the Planning Proposal consistent with applicable Ministerial Directions (s9.1 directions)?

Direction 2.1: Environment Protection Zones

The site does not contain any threatened/endangered species populations or ecological communities or their habitats.

Direction 2.2: Coastal Management

The site has been identified as being generally affected by coastal inundation by the *Manly Ocean Beach and Cabbage Tree Bay Coastline Hazard Definition Study 2003*. Therefore the planning proposal is inconsistent with item 5 of Direction 2.2 – Coastal Management which states that a planning proposal must not rezone land which would enable increased development or more intensive land-use on land that has been identified as land affected by current or future coastal hazard in a local environmental plan, development control plan, study or assessment by or on behalf of the relevant planning proposal authority.

Direction 2.2 does allow for planning proposals to be inconsistent with the Direction if it can be satisfied that the provisions of the planning proposal that are inconsistent are of minor significance. The proposed rezoning is considered of minor significance since the site would be subject to planning controls for including setback requirements and foreshore scenic protection area provisions, which would preclude any significant intensification on the site.

Coastal engineering advice prepared by Horton Coastal Engineering reviewed the Planning Proposal against the provisions in SEPP Coastal and found that future development at the site could be designed to have an acceptably low risk of being damaged by coastal processes and hazards, such that the planning proposal should not be precluded from a coastal engineering perspective.

Direction 2.3: Heritage Conservation

The site is not identified as a heritage item and is not located within a heritage conservation area. The proposed amendments would have minimal impact on nearby heritage items, including Heritage Item No. I167 (Fairy Bower Pool) and Landscape Item No. I168 (Ocean Foreshores), as they are not in the immediate vicinity.

Direction 2.4: Recreation Vehicle Areas

The planning proposal does not enable land to be developed for the purpose of a recreation vehicle area.

Direction 3.1: Residential Zones

The proposed amendments support the provision of housing on the site and are consistent with the objectives of Direction 3.1.

Direction 3.2: Caravan Parks and Manufactured Home Estates

The planning proposal does not include provisions for caravan parks and manufactured home estates.

Direction 3.3: Home Occupations

It is proposed that the subject site be rezoned to E4 – Environmental Living under the Manly Local Environmental Plan 2013 which permits home occupation without consent.

Direction 3.4: Integrating Land Use and Transport

The proposed amendments are consistent with Direction 3.4 as they support the provision of residential accommodation in an accessible location within a walkable distance to services, jobs and public transport.

Direction 6.1: Approval and Referral Requirements

The planning proposal does not include any provisions that require unnecessary requirements for concurrence, consultation or referrals.

Direction 6.2: Reserving Land for Public Purposes

As part of the site's disposal into private ownership, the reservations applying to the site were revoked as they were no longer required for acquisition and were considered surplus to government and public requirements.

Direction 6.3: Site Specific Provisions

The proposed amendments are consistent with the adjoining lot at 88 Bower St and do not include any unnecessarily restrictive site specific planning controls.

Direction 7.1: Implementation of A Plan for Growing Sydney

The proposed amendments are consistent with the strategic plans as outlined in Question 3 of this report.

Table 6: Compliance with Ministerial Directions

Directions (as at October 2020)		Applicable	Consistency
1	Employment and Resources		
1.1	Business and Industrial Zones	No	N/A
1.2	Rural Zones	No	N/A
1.3	Mining, Petroleum Production and Extractive Industries	No	N/A
1.4	Oyster Aquaculture	No	N/A
1.5	Rural Lands	No	N/A
2	Environment and Heritage		
2.1	Environment Protection Zones	Yes	N/A
2.2	Coastal Management	Yes	No (acceptable on balance as discussed above)

Directions (as at October 2020)		Applicable	Consistency
2.3	Heritage Conservation	Yes	Yes
2.4	Recreation Vehicle Areas	Yes	Yes
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEP's	No	N/A
2.6	Remediation of Contaminated Land	No	N/A
3 Housing, Infrastructure and Urban Development			
3.1	Residential Zones	Yes	Yes
3.2	Caravan Parks and Manufactured Home Estates	Yes	Yes
3.3	Home Occupations	Yes	Yes
3.4	Integrating Land Use and Transport	Yes	Yes
3.5	Development Near Licensed Aerodromes	No	N/A
3.6	Shooting Ranges	No	N/A
3.7	Reduction in non-hosted short term rental accommodation period	No	N/A
4 Hazard and Risk			
4.1	Acid Sulfate Soils	No	N/A
4.2	Mine Subsidence and Unstable Land	No	N/A
4.3	Flood Prone Land	No	N/A
4.4	Planning for Bushfire Protection	No	N/A
5 Regional Planning			
5.2	Sydney Drinking Water Catchments	No	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	No	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	No	N/A
5.9	North West Rail Link Corridor Strategy	No	N/A
5.10	Implementation of Regional Plans	No	N/A
5.11	Development of Aboriginal Land Council land	No	N/A
6 Local Plan Making			
6.1	Approval and Referral Requirements	Yes	Yes
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	No	N/A
7.3	Parramatta Road Corridor Urban Transformation Strategy	No	N/A
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	No	N/A

Directions (as at October 2020)		Applicable	Consistency
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	No	N/A
7.8	Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.9	Implementation of Bayside West Precincts 2036 Plan	No	N/A
7.10	Implementation of Planning Principles for the Cooks Cove Precinct	No	N/A

COMMUNITY ENGAGEMENT

Council placed the Applicant's Planning Proposal on a non-statutory public exhibition in accordance with the Northern Beaches Community Participation Plan from 31 August 2020 – 14 September 2020] (2 weeks). Notification included:

- Letters to land owners and occupiers within the vicinity of the subject site including:
 - Properties at 7-9 Marine Parade, Manly
 - 3 Bower Lane, Manly
 - 1 Bower Lane, Manly
 - 95 Bower St, Manly
 - Properties at 94 Bower St, Manly
 - 5 Marine Pde, Manly
 - Properties at 92 Bower St, Manly
 - 88 Bower St, Manly
 - 86 Bower St, Manly
 - Properties at 82-84 Bower St, Manly
 - 80 Bower St, Manly
- Electronic copies of the exhibition material on Council's website
- Emails to registered community members who have listed their interest on Council's Community Engagement Register

Submissions

Three submissions were received in response to the public exhibition period objecting to the proposal. Issues raised include:

- loss of scarce public recreation land
- loss of amenity caused by proposed rezoning
- potential for land to be used for public uses in the future
- opposition to historical and potential future use of land for private purposes.

Response

It is accepted that Council should where possible retain, enhance and increase public recreation land at every opportunity. However, the site has been leased for private purposes in conjunction with the residential use of the front section of the land since 1964, despite its current zoning, and was sold by the Department of Industry to the Archdiocese of Sydney in 2018.

Council has no record of objection by the former Manly Council to this sale.

The size and shape of the land restrict its use for recreational purposes and Council's Coast and Catchments team, Property Commercial and Tourist Assets team and Open Space and Recreation team have raised no objection to the Planning Proposal.

Retention of the current zoning of the land could trigger Council acquisition provisions under the LEP.

The proposed rezoning will not result in amenity impacts provided the current use is maintained. However, the rezoning would make a range of additional land uses permitted. For example, a development application could be submitted for a dwelling house on the site. Whilst this may be unlikely, given the very small size of the land, it is appropriate that the site is consolidated with the front half of 88 The Bower to guarantee its continued use in conjunction with that land.

The proposed recommendation addresses this matter.

AGENCY REFERRALS

The Planning Proposal was not referred to any government agencies for comment. This will occur following any Gateway approval.

INTERNAL REFERRALS

Referrals were sent to the following Northern Beaches Council business units requesting specialist feedback on the planning proposal:

- Coast and Catchments
- Property Commercial and Tourist Assets
- Open Space and Recreation

No internal referrals raised issues or concerns in regard to the proposed amendments.

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 proposed amendments will allow for the site to align with surrounding residential uses and will have minimal social impact on surrounding areas.

ENVIRONMENTAL CONSIDERATIONS

The proposed amendments will have minimal environmental impact on surrounding areas. The planning proposal is supported by coastal engineering advice which found that risks and impacts associated with coastal processes can be mitigated to allow for residential uses to continue with an acceptable level of risk.

CONCLUSION

The Planning Proposal which seeks to amend the MLEP 2013 by rezoning the rear of 88 Bower St, Manly from RE1 Public Recreation to E4 Environmental Living and apply a minimum lot size of 500m², a maximum building height of 8.5m and a maximum floor space ratio of 0.45:1 is supported to progress to Gateway.

The proposed amendments are consistent with relevant strategic and statutory planning policies and considered appropriate given its disposal as land surplus to public needs, historical use in conjunction with the adjoining principal residential property and minimal impact on the surrounding environment.

RECOMMENDATION OF PLANNER

-
- A. That the Local Planning Panel endorse the Planning Proposal lodged for the rear of 88 Bower St, Manly, to be submitted to the Department of Planning, Infrastructure and Environment to seek a Gateway Determination.
 - B. That prior to any post-Gateway Planning Proposal being formally exhibited, evidence is provided that the site has been consolidated with the front part of the site fronting 88 Bower Street.

Rebecca Sio

From: Dominic Varde
Sent: Monday, 28 September 2020 12:18 PM
To: Rebecca Sio
Cc: Gina Hay; Paul Gardiner
Subject: RE: TRIMMED: RE: Internal referral - Planning proposal for the rear of 88 Bower St, Manly - PEX2020/0008

Hi Rebecca,

Gina Hay mentioned she had responded on this earlier this month after I had sent it to her. Please let me know if you don't have those comments.

Looks like Council's Land Register layer in SEA needs updating as it shows up as Crown Land managed by Council. Not sure if this was ever correct historically.

Property suggests the following conditions for any rezoning:

1. That the subject land be consolidated with the adjoining allotment at 88 Bower Street Manly (Lot 3 DP 8075).
2. That a Restriction on Use of Land (or similar restriction) be placed on the consolidated lot (mentioned in item 1 above) ensuring no vehicular access to the subject land from the northern frontage (from Shelly Beach Reserve).

Regards
Dom

Dominic Varde
Team Leader, Land Dealings

Property Commercial & Tourist Assets
t 02 8495 6377 m 0407 669 492
dominic.varde@northernbeaches.nsw.gov.au
northernbeaches.nsw.gov.au



From: Rebecca Sio <Rebecca.Sio@northernbeaches.nsw.gov.au>
Sent: Monday, 28 September 2020 10:36 AM
To: Dominic Varde <Dominic.Varde@northernbeaches.nsw.gov.au>
Subject: FW: TRIMMED: RE: Internal referral - Planning proposal for the rear of 88 Bower St, Manly - PEX2020/0008

Hi Dominic,

Just following up on the referral of planning proposal PEX2020/0008 for the rear of 88 Bower St, Manly. We are still seeking comments on this proposal from the property team as there has been some interest from the community on the ownership and leasing history of the site, in particular the disposal of the site from the Crown.

Thanks,
Rebecca

Rebecca Sio
Planner

Strategic & Place Planning
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rebecca.sio@northernbeaches.nsw.gov.au
northernbeaches.nsw.gov.au



From: Rachel Treloar <Rachel.Treloar@northernbeaches.nsw.gov.au>
Sent: Tuesday, 1 September 2020 12:59 PM
To: Rebecca Sio <Rebecca.Sio@northernbeaches.nsw.gov.au>
Subject: TRIMMED: RE: Internal referral - Planning proposal for the rear of 88 Bower St, Manly - PEX2020/0008

Hi Rebecca,

I have referred this on to Dominic Varde, Team Leader of Land Dealings for review and comment.

Rachel Treloar
Executive Assistant to Executive Manager

Property
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rachel.treloar@northernbeaches.nsw.gov.au
northernbeaches.nsw.gov.au



From: Rebecca Sio <Rebecca.Sio@northernbeaches.nsw.gov.au>
Sent: Monday, 31 August 2020 7:28 PM
To: Rachel Treloar <Rachel.Treloar@northernbeaches.nsw.gov.au>
Subject: Internal referral - Planning proposal for the rear of 88 Bower St, Manly - PEX2020/0008

Hi Rachel,

We are seeking specialist advice and general comments from your team in relation to the Planning Proposal (PEX2020/0008) to amend Manly Local Environmental Plan 2013 to rezone the rear of 88 Bower St, Manly from RE1 Public Recreation to E4 Environmental Living and apply other associated map amendments.

Please provide comments by 14 September 2020.

Exhibition documents are available via 'Application Tracking' at northernbeaches.nsw.gov.au

Please contact me if you have any enquiries.

Thank you,
Rebecca

Rebecca Sio
Planner

Strategic & Place Planning
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rebecca.sio@northernbeaches.nsw.gov.au
northernbeaches.nsw.gov.au



Internal Referral Assessment: Coast & Catchment**PEX2020/0008 Planning Proposal Referral
At the rear of 88 Bower St, Manly**

The Planning Proposal relates to Lot 1 in DP 1244511 (the site) which is a small parcel of land with an area of 56.8m². The site is to the immediate north of the residential property at 88 Bower Street, Manly.

The purpose of the Planning Proposal is to regularise the zoning of the site following the recent transfer of the site from the NSW Department of Industry (Lands) (DoI Lands) as Crown Land to the applicant.

The Planning Proposal is to bring about amendments to Manly Local Environmental Plan 2013 to rezone the site from RE1 Public Recreation to E4 Environmental Living and apply other associated mapping amendments. It is understood that the Planning Proposal is not proposing a consolidation of the site with 88 Bower Street, Manly.

The site is an actively used coastal area and located adjacent to Marine Parade. Shelly Beach is approximately 400m to the east of the site. Fairy Bower Beach and Ocean Pool and Cabbage Tree Aquatic Reserve are to the north of the site. The site is subject to impacts from wave overtopping. Property damage occurred in and around that site during the East Coast Low in June 2016.

For assessment, the following documents, among others, have been analysed:

- Planning Proposal to the Northern Beaches Council. Amendments to Manly Local Environment Plan 2013, Lot 1 in DP 1244511 (which adjoins 88 Bower Street, Manly) prepared by Urban Planning dated 13 August 2020
- Coastal Engineering Advice on Planning Proposal to Rezone and Consolidate Lot into 88 Bower Street Manly. Prepared by Horton Coastal Engineering Pty. Ltd. dated 5 March 2020
- Pre-lodgement Report Planning Proposal 88 Bower Street Manly, Notes on Pre-lodgement Meeting dated 21 May 2020 prepared by Northern Beaches Council.

The Planning Proposal has been assessed in consideration of the *Coastal Management Act 2016*, State Environmental Planning Policy (Coastal Management) 2018 and Local Planning Direction 2.2 (on Coastal Management) under Section 9.1(2) of the Environmental Planning Assessment Act 1979. It has also been assessed against requirements of the Manly LEP 2013.

Coastal Management Act 2016

The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development.

The Planning Proposal is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016*.

State Environmental Planning Policy (Coastal Management) 2018

The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for consideration of this Planning Proposal.

Comment:

On internal assessment and as assessed in the submitted Coastal Engineering Advice on Planning Proposal, prepared by Horton Coastal Engineering Pty. Ltd. dated 5 March 2020, the Planning Proposal satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.

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

Local Planning Direction 2.2 (Coastal Management)

Local Planning Direction 2.2 applies at the subject lots. Based on Section 9.1(2) of the *Environmental Planning Assessment Act 1979*, this should be considered as part of the planning proposal..

The subject site is not identified under the 'Coastal Vulnerability Area Map as there exists yet no such map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). However, studies have been completed for Council (eg the *Manly Ocean Beach and Cabbage Tree Bay Coastline Hazard Definition Study* completed in 2003) that have identified that the subject lots are affected by coastal inundation..

As per item 8 of Direction 2.2, which seeks a study or strategy prepared in support of the planning proposal which gives consideration to the objective of this direction. This Planning Proposal is supported with the submission of a Coastal Engineering Advice on Planning Proposal, prepared by Horton Coastal Engineering Pty. Ltd. dated 5 March 2020

Under this Direction 2.2, Items 4 and more specifically Item 5 of Direction 2.2 are relevant and have been analysed and considered in detail in the submitted Coastal Engineering Advice on Planning Proposal, prepared by Horton Coastal Engineering Pty. Ltd. dated 5 March 2020.

As per Item 5, "A planning proposal must not rezone land which would enable increased development or more intensive land-use on land" As the site is small in area, an intensification of land use or increased development is not feasible.

Having said this, Planning Proposal prepared by Urban Planning dated 13 August 2020 provides an 'Indicative Development Concept' as:

"Given the site's small size (being only 56.8m²), development of the site as a standalone block is severely constrained, and it is therefore considered to only be of value to the adjoining land holder

Should the Planning Proposal be supported by Council for endorsement a future separate Development Application (DA) is to be lodged to Council to:

- *Amalgamate the site (Lot 1 in DP 1244511) with the adjoining residential property at 88 Bower Street (Lot 3 DP 8075) to create a consolidated lot with an area of 736.2m² (56.8m² + 679.4m²)*

- *Change its use to residential to enable its continued use as private open space in the form of lawn area, footpath, rockery and fencing to be used in connection with the existing dual occupancy (attached)."*

The statements above also support our assumption that the Planning Proposal to rezone would not enable increased development or more intensive land-use on land

As such, it is considered that the Planning Proposal does comply with the requirements of the **Local Planning Direction 2.2 (Coastal Management)**.

Manly LEP 2013 and Manly DCP

Landslide/ Landslip Hazard Management

The subject site is also shown to be as "Landslide risk" on Council's Landslide Risk Map in Manly LEP 2013. As such, Clause 6.8 (Landslide Risk) of the Manly LEP 2013 and Part 4, section 4.1.8 Development on Sloping Sites of the Manly DCP 2013 will apply to proposed rezoning on the site.

Foreshores Scenic Protection Area Management

The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed rezoning of the site.

Both of these aspects have been assessed in the submitted Planning Proposal prepared by Urban Planning dated 13 August 2020 and Coastal Engineering Advice on Planning Proposal, prepared by Horton Coastal Engineering Pty. Ltd. dated 5 March 2020.

Conclusion

The Planning Proposal to bring about amendments to Manly Local Environmental Plan 2013 to rezone the site from RE1 Public Recreation to E4 Environmental Living is supported.

In addition to any general comments you may have, your comments on the following matters are requested:

☐ **Key issues/concerns**

Scope of future development once rezoning is completed. As per item 5 of the Local Planning Direction 2.2 (Coastal Management) "A planning proposal must not rezone land which would enable increased development or more intensive land-use on land"

☐ **Are the concerns likely to amend the planning proposal in its current form?**

No

☐ **Any statutory considerations**

- Adoption of the 'Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Time frame not known

- Adoption of the consolidated Northern Beaches LEP and DCP.

☐ **Any actions that Council should initiate with assessment of the proposal**

No.

Rebecca Sio

From: Jessica Currie
Sent: Tuesday, 27 October 2020 3:35 PM
To: Rebecca Sio; Damian Ham
Subject: RE: Internal referral - Planning Proposal to amend MLEP 2013 - Rear of 88 Bower St, Manly - PEX2020/0008

Hi Rebecca

I just checked the Crown Land Managers Reserve Portal and snipped the below map. The red is the latest boundary of the Crown Reserve for which Council is Crown Land Manager. They do updates at their end but don't notify us unfortunately. The latest map looks like they have made those boundary changes as per the Gazette notice you provided. I'll be requesting that our GIS team get the latest update of Crown Reserve boundaries.

In terms of the planning proposal, Open Space and Recreation Planning has no objections. The parcel has not been used as public open space. Given that it is now private property it is unlikely that the new owners would allow any public access. The Crown land was sold by the State Government to the applicant for the purpose of integrating it into the adjacent property.

Thanks

Jess



Jessica Currie
Coordinator, Recreation Planning

Open Space & Recreation Planning
t 02 8495 5207 m 0481 912 108
jessica.currie@northernbeaches.nsw.gov.au
northernbeaches.nsw.gov.au



From: Rebecca Sio <Rebecca.Sio@northernbeaches.nsw.gov.au>
Sent: Tuesday, 27 October 2020 12:17 PM
To: Jessica Currie <Jessica.Currie@northernbeaches.nsw.gov.au>; Damian Ham
<Damian.Ham@northernbeaches.nsw.gov.au>
Subject: RE: Internal referral - Planning Proposal to amend MLEP 2013 - Rear of 88 Bower St, Manly - PEX2020/0008

Hi Jess,

I had a look at the GIPA documents for the planning proposal and couldn't find anything to explain that boundary inconsistency. I'm going to take that the land isn't affected by any reserves as these were revoked in 2018? (see <https://resources.reglii.com/NSWGG.2018.6.29.G66.pdf>) But happy to confirm this somehow or investigate this further.

If there are no objections to the proposal can I include some brief advice from your team in my report?

Thanks for your help!
Rebecca

Rebecca Sio
Planner

Strategic & Place Planning
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northernbeaches.nsw.gov.au



From: Jessica Currie <Jessica.Currie@northernbeaches.nsw.gov.au>
Sent: Tuesday, 27 October 2020 10:56 AM
To: Rebecca Sio <Rebecca.Sio@northernbeaches.nsw.gov.au>; Damian Ham
<Damian.Ham@northernbeaches.nsw.gov.au>
Subject: RE: Internal referral - Planning Proposal to amend MLEP 2013 - Rear of 88 Bower St, Manly - PEX2020/0008

11 is good for me

Jessica Currie
Coordinator, Recreation Planning

Open Space & Recreation Planning
t 02 8495 5207 m 0481 912 108
jessica.currie@northernbeaches.nsw.gov.au
northernbeaches.nsw.gov.au



From: Rebecca Sio <Rebecca.Sio@northernbeaches.nsw.gov.au>
Sent: Tuesday, 27 October 2020 9:31 AM
To: Damian Ham <Damian.Ham@northernbeaches.nsw.gov.au>
Cc: Jessica Currie <Jessica.Currie@northernbeaches.nsw.gov.au>
Subject: RE: Internal referral - Planning Proposal to amend MLEP 2013 - Rear of 88 Bower St, Manly - PEX2020/0008

OK sounds good.
I have a meeting 10. Is 11 ok?

Rebecca Sio
Planner

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northernbeaches.nsw.gov.au



From: Damian Ham <Damian.Ham@northernbeaches.nsw.gov.au>
Sent: Tuesday, 27 October 2020 9:28 AM
To: Rebecca Sio <Rebecca.Sio@northernbeaches.nsw.gov.au>
Cc: Jessica Currie <Jessica.Currie@northernbeaches.nsw.gov.au>
Subject: RE: Internal referral - Planning Proposal to amend MLEP 2013 - Rear of 88 Bower St, Manly - PEX2020/0008

Yes lets chat on the phone today how about at 1030am?

Damian Ham
Manager, Open Space & Recreation Planning

Open Space & Recreation Planning
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From: Rebecca Sio <Rebecca.Sio@northernbeaches.nsw.gov.au>
Sent: Tuesday, 27 October 2020 9:20 AM
To: Damian Ham <Damian.Ham@northernbeaches.nsw.gov.au>
Cc: Jessica Currie <Jessica.Currie@northernbeaches.nsw.gov.au>
Subject: RE: Internal referral - Planning Proposal to amend MLEP 2013 - Rear of 88 Bower St, Manly - PEX2020/0008

Hi Damian and Jessica,

I am finishing up my report to the Local Planning Panel today as I need to submit to my manager tomorrow and to my EM on Thursday. Do you have any comments on the planning proposal? Happy to chat over the phone to discuss.

Thank you,

Rebecca

Rebecca Sio
Planner

Strategic & Place Planning
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From: Rebecca Sio
Sent: Thursday, 22 October 2020 1:28 PM
To: Damian Ham <Damian.Ham@northernbeaches.nsw.gov.au>
Subject: RE: Internal referral - Planning Proposal to amend MLEP 2013 - Rear of 88 Bower St, Manly - PEX2020/0008

Thanks Damian 😊

Rebecca Sio
Planner

Strategic & Place Planning
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rebecca.sio@northernbeaches.nsw.gov.au
northernbeaches.nsw.gov.au



From: Damian Ham <Damian.Ham@northernbeaches.nsw.gov.au>
Sent: Thursday, 22 October 2020 1:27 PM
To: Rebecca Sio <Rebecca.Sio@northernbeaches.nsw.gov.au>
Cc: Jessica Currie <Jessica.Currie@northernbeaches.nsw.gov.au>
Subject: RE: Internal referral - Planning Proposal to amend MLEP 2013 - Rear of 88 Bower St, Manly - PEX2020/0008

Hi Rebecca sorry I hadn't replied – yes I'll give some comments on this asap and I'll also talk to Jess in our team thanks d

Damian Ham
Manager, Open Space & Recreation Planning

Open Space & Recreation Planning
t 02 8495 6757 m 0468 557 625
damian.ham@northernbeaches.nsw.gov.au
northernbeaches.nsw.gov.au



From: Rebecca Sio <Rebecca.Sio@northernbeaches.nsw.gov.au>
Sent: Thursday, 22 October 2020 12:30 PM
To: Damian Ham <Damian.Ham@northernbeaches.nsw.gov.au>
Subject: RE: Internal referral - Planning Proposal to amend MLEP 2013 - Rear of 88 Bower St, Manly - PEX2020/0008

Hi Damian,

I just want to follow up on this referral for a planning proposal for land at the rear of 88 Bower St, Manly (PEX2020/0008) ([link to planning proposal documents](#)). I am preparing reports for the Local Planning Panel and for the December Council meeting and would like to include any comments from your team. The planning proposal is to rezone the land from RE1 Public Recreation to E4 Environmental Living. Do you have any comments on this proposal, in particular advice on the impact of this planning proposal on Council's open space and recreation needs.

Happy to discuss over the phone and answer any questions.

Thanks,
Rebecca

Rebecca Sio
Planner

Strategic & Place Planning
t 02 8495 6265 m 0450 642 588
rebecca.sio@northernbeaches.nsw.gov.au
northernbeaches.nsw.gov.au



From: Rebecca Sio

Sent: Tuesday, 29 September 2020 12:05 PM

To: Damian Ham <Damian.Ham@northernbeaches.nsw.gov.au>

Subject: Internal referral - Planning Proposal to amend MLEP 2013 - Rear of 88 Bower St, Manly - PEX2020/0008

Hi Damian,

I am seeking specialist advice and general comments from your team in relation to Planning Proposal (PEX2020/0008). See documents via 'Application Tracking' at northernbeaches.nsw.gov.au. The proposal is to amend Manly Local Environmental Plan 2013 to rezone the rear of 88 Bower St, Manly from RE1 Public Recreation to E4 Environmental Living and apply other associated map amendments.

The proposal was publicly exhibited from 31 August to 14 September 2020, however I am seeking additional feedback from your team as this proposal relates to land currently zoned RE1 Public Recreation and we have received some submissions from the public noting concerns regarding the potential loss open space and land for public recreation.

Please let me know if you have any comments related to the proposal and if you have any questions.

Thank you,
Rebecca

Rebecca Sio
Planner

Strategic & Place Planning
t 02 8495 6265 m 0450 642 588
rebecca.sio@northernbeaches.nsw.gov.au
northernbeaches.nsw.gov.au



Rebecca Sio

From: Sharon Lambert <[REDACTED]>
Sent: Friday, 25 September 2020 11:39 PM
To: Michael Regan; Candy Bingham; Zali.Steggall.MP@aph.gov.au
Cc: Council Mailbox
Subject: Coastal Land Sale Questioned - Marine Parade Manly - NBC Application Number: PEX2020/0008 - Planning Proposal - To amend Manly Local Environmental Plan 2013 to rezone site from RE1 Public Recreation to E4 Environmental Living and apply other associated...

Categories: Adriana

Dear Mayor Regan & Deputy Mayor Bingham (Northern Beaches Council), & Ms Zali Steggall (Federal Member for Warringah),

Planning Proposal - To amend Manly Local Environmental Plan 2013 to rezone site from RE1 Public Recreation to E4 Environmental Living and apply other associated map amendments - 88 Bower Street MANLY NSW 2095 - Application Number: PEX2020/0008
<https://eservices.northernbeaches.nsw.gov.au/ePlanning/live/Public/XC.Track/SearchApplication.aspx?id=1857141>

I have been unable to respond to this proposal earlier due to family commitments but I hope my concerns below will be considered and acted upon by Council as appropriate.

I also request the Federal Member for Warringah, Zali Steggall, look into this proposal as it appears the process of transferring ownership of the coastal land in question, from Federal Government to Catholic Church, may not have been undertaken with the transparency it deserves.

- * The land in question appears to have been unjustly, exclusively (& illegally?) used by the Catholic Church all this time.
- * Future exclusive use (eg. construction of a swimming pool, like the neighbouring property) would compound the injustice.

If Council was given the opportunity to purchase this land it could instead be used for benign but appropriate public use (without limiting access to/from 88 Bower Street). For example:

- * By moving the existing fence (that should not have been erected in the first place) to the true/original boundary of 88 Bower Street, an attractive grassed area could be used by the public for people (eg. picnicking families) who swim at Fairy Bower or walk along Marine Parade.

Additionally, I generally support the comments in the online submission I can see (on NBC website) made by Mr John Mee on 31/8/20.

In response to this submission I would appreciate being kept informed of any investigation of the process which has taken place, and of the possibility of this land finally becoming available for public access.

Yours sincerely,
Sharon Lambert CPA

Rebecca Sio

From: [REDACTED]
Sent: Monday, 31 August 2020 7:25 PM
To: DA Submission Mailbox
Subject: Online Submission

31/08/2020

MR John Mee

[REDACTED]

RE: PEX2020/0008 - 88 Bower Street MANLY NSW 2095

No Way. Tell those greedy buggers to get stuffed. As presented in their own documents the anomaly has come about due to following the course of a natural watercourse. It is a natural feature that they are proposing to make unnatural; nice and square like the others. It is prime beachfront land which is in very very short supply these days! Thousands of people (could) use that chunk of land everyday. What makes them think they can stick up a couple of gates there in the first place?! Now say "hey lets be reasonable, that's ours". Screw them. It looks ideal for a kids playground, an amenities block, a swimmers changing room, a lovely monument and fountain to the Northern Beaches Mayor of 2020, a first-peoples sacred site, bike parking, discreet pool pumping station, rainforest retreat-who, endangered species sanctuary, rowdy BBQ venue... Who can tell what the true potential is!

Don't give it away to those greedy un-australian, un-deserving bastards for a song so they can drink their pinot-gris chablis from a private garden; mooning it over the working men and women who put them there. It belongs to the people. Keep it for the people! Your grandkids will thank you.

Sent: 14/09/2020 4:09:27 PM
Subject: PEX2020/0008

Dear Ma Sio

Thank you for your letter.

I object to the proposal rezoning of Public Recreation land at the rear of 88 Bower Street, Manly.

- Public Recreation land is scarce and every bit of it should be kept.
- To rezone the land would result in a reduction of the amenity of the area.
- This piece of land might provide an accessway in the future.

Please keep it zoned as Public Recreation.

Regards

Catherine Veech

Town Planner



PLANNING PROPOSAL

Amendments to Manly Local Environmental Plan 2013

**Amendments to rezone the Rear of 88 Bower St,
Manly from RE1 Public Recreation to E4
Environmental Living and apply associated map
amendments**

October 2020

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Background

Site Description and Existing Use



Figure 1. Site location

The subject site of this Planning Proposal is located at the rear of 88 Bower St, Manly (the site) and is legally described as Lot 1 in DP 1244511 with an area of 56.8m². It is currently used as private open space and associated landscaping for the two/three storey house at 88 Bower St.

The site has a frontage to Marine Parade to the north and east, and adjoins 92 Bower St to the west which contains a three storey residential flat building. 88 Bower St is located immediately south of the site and contains a two/three storey house. The site is currently used as private open space for the property at 88 Bower St and provides pedestrian access from Marine Parade to 88 Bower St.



Figure 2. The site from Marine Parade (left) and the site and North façade of house at 88 Bower St, Manly (right).

Site History and Ownership

The site is currently owned by the proponent who purchased the site from the Department of Industry - Lands (Dol – Lands) on 28 August 2018. The proponent also owns the adjoining property at 88 Bower St.

The proponent currently leases the site to the occupants of 88 Bower St. Prior to the disposal of the site, the Crown leased the site to various occupants of 88 Bower St under a Permissive Occupancy Licence for the purpose of lawn area, footpath, rockery and beautification since 1964. The site is reclaimed foreshore land and was originally below the mean high water mark before associated works on surrounding residential development and public foreshore improvements.

In 2011, the Archdiocese Trustees approached the Department of Industries – Land (Dol – Lands) to purchase the site with the intention to consolidate the subject site with 88 Bower St, Manly. Dol – Lands agreed to investigate a potential direct private sale.

Dol - Lands wrote to Manly Council in January 2016 to seek Council's view to establish 'whether Council may have any interests and/or objections to the sale of the subject area'. No objection to the sale was received by Dol – Lands from Manly Council and the Dol – Lands agreed to the direct sale of the site and waived the need for a land assessment for the following reasons:

- The site is considered surplus to public and government requirements.
- The site as a standalone lot is severely constrained due to its small size and location and is only considered of value to the landowner of the adjoining property at 88 Bower St.
- The site has no significant public recreation or environmental attributes.
- There are no Aboriginal Land Claims registered
- The sale of the site would not restrict public access to the remainder of the Crown Land contained within Reserve 31732 for Public Recreation and Reserve 1028748 for surfing recreation.
- The site has been used as private open space and fenced in backyard lawn since 1964 and is unlikely to be perceived as public land use.
- Even if ungated the land being a small area mostly enclosed within adjoining private uses, does not offer much public amenity or value.
- The sale of the land would not impact on the public use of adjoining Crown Land and reserves and is not required for access to waterways, recreation scenic protection, re-vegetation or soil conservation purposes.

The subject site previously formed parts of two larger lots (Lot 7338 DP 1154560 and Lot 7336 DP 1153371) and two land reservations (Shelley Beach Reserve and Manly Freshwater National Surfing Reserve). A new lot was registered to reflect the boundaries of the site on 13 July 2018 and the land reservations were revoked after the sale of the site was approved on 29 June 2018.

Part 1 – Objectives or Intended Outcomes

The Planning Proposal seeks to amend the Manly Local Environmental Plan 2013 to enable the orderly use of the site for residential purposes, consistent with the site's private ownership and adjoining uses.

Part 2 – Explanation of Provisions

The proposed outcome will be achieved by:

1. Amending the Manly Local Environmental Plan 2013 land zoning map (LZN_006) from RE1 Public Recreation to E4 Environmental Living in accordance with the proposed land zoning map in Part 4 of this report.
2. Amending the Manly Local Environmental Plan 2013 lot size map (LSZ_006) to apply a minimum lot size of 500m² in accordance with the proposed lot size map in Part 4 of this report.
3. Amending the Manly Local Environmental Plan 2013 height of buildings map (HOB_006) to apply a maximum height of 8.5m in accordance with the proposed height of buildings map in Part 4 of this report.
4. Amending the floor space ratio map (FSR_006) to apply a maximum floor space ratio of 0.45:1 in accordance with the proposed floor space ratio map in Part 4 of this report.

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?

NO

The Planning proposal is not the result of any endorsed Local Strategic Planning Statement, strategic study or report. The planning proposal responds to:

- the disposal of the site into private ownership in 2018
- the landowner's intention to consolidate the site and align the sites zoning with the adjoining property at 88 Bower St
- its status as surplus to government and public needs.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

YES

The planning proposal will allow the orderly and economic use and development of the land in conjunction with the adjoining principal residential property (88 Bower St, Manly) and is the most appropriate recourse for achieving the objectives of the proposal.

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)?

YES

Greater Sydney Region Plan – A Metropolis of Three Cities

The proposal supports the following objectives outlined in the *Greater Sydney Region Plan*:

Table 1. Consistency with relevant priorities in the *Greater Sydney Region Plan*:

Relevant Planning Priorities	Consistency
<i>Objective 10 – Greater housing supply</i>	The proposal will support residential uses on the site.
<i>Objective 11 – Housing is more diverse and affordable</i>	The proposal will support residential uses on the site.
<i>Objective 14 – Integrated land use and transport creates walkable and 30-minute cities</i>	The proposal will support residential uses on a site close to public transport, jobs, public services and open space.

<i>Objective 31 – Public open space is accessible, protected and enhanced</i>	The proposed amendments would not impact access to surrounding open space and reserves.
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North District Plan

The proposal supports the following priorities outlined in the *North District Plan*:

Table 2. Consistency with relevant priorities in the *North District Plan*:

Relevant Planning Priorities	Consistency
<i>Planning Priority N1 – Planning for a city supported by infrastructure (a 30-minute city)</i>	The proposal would provide for residential accommodation in an accessible and well-serviced location to support a 30-minute city
<i>Planning Priority N5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport</i>	The proposal would provide for residential accommodation close to jobs, services and public transport.

a) Does the proposal have site-specific merit, having regard to the following?

Table 3. Commentary on site-specific merit

<i>The natural environment (including known significant environmental values, resources or hazards).</i>	The site has been identified as generally affected by potential coastal inundation. The planning proposal is supported by coastal engineering advice (see Attachment A) which found that potential impacts of coastal inundation could be managed through various mitigation measures e.g. elevated floor levels, setbacks and/or wave rump trip barriers and that future development at the site could be designed to have an acceptably low risk of damage by coastal processes and hazards over an acceptably long life.
<i>The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal.</i>	The proposed amendments will enable the site to continue to be used as private open space and support and align with surrounding residential uses.
<i>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.</i>	The site is already supported by adequate services and infrastructure serving the surrounding area.

4. Will the Planning Proposal give effect to a Council's endorsed Local Strategic Planning Statement, or another endorsed local strategy or strategic plan?

The planning proposal will give effect to *Towards 2040*, the Northern Beaches Local Strategic Planning Statement (LSPS) as outlined in the table below.

Table 4. Consistency with the LSPS

Relevant Planning Priorities	Comment
------------------------------	---------

<u>Landscape</u> <i>Priority 1 – Healthy and valued coast and waterways</i> <i>Priority 3 – Protected scenic and cultural landscapes</i> <i>Priority 6 – High quality open space for recreation</i>	<p>Due to the relatively enclosed position of the irregularly shaped site, the proposed amendments will not affect access to surrounding recreation areas, reserves and foreshore. The site has not been used for public access to surrounding open space and recreation areas.</p> <p>The proposed amendments will have minimal impact on the adjacent coastline and waterway, surrounding scenic and cultural landscapes and open space for recreation.</p>
<u>Resilience</u> <i>Priority 8 – Adapted to the impacts of natural and urban hazards and climate change</i>	<p>The proposed amendments are supported by coastal engineering advice see (Attachment A) which found that future development on the site as consolidated with the adjoining 88 Bower St could be designed to have an acceptably low risk of damage from impacts of climate change including coastal inundation and sea level rise.</p>
<u>Housing</u> <i>Priority 15 – Housing supply, choice and affordability in the right locations</i>	<p>The planning proposal provides for the provision of additional land for residential purposes. The site is located in a well-serviced and accessible location.</p>
<u>Great Places</u> <i>Priority 18 – Protected, conserved and celebrated heritage</i>	<p>The proposed amendments will have minimal impact on surrounding heritage items. The site is not listed as a heritage item and is not located within a heritage conservation area. There are also no Aboriginal land claims registered on the site.</p>

5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

State Environmental Planning Policy No. 55 – Remediation of Land

The site is reclaimed land and has historically been used for landscaping works and open space adjacent to residential properties and is therefore unlikely to be affected by contamination.

State Environmental Planning Policy (Coastal Management) 2018 (SEPP Coastal)

The site is located within a “coastal environment area” and “coastal use area” as mapped in SEPP Coastal where the consent authority must consider whether a proposed development is likely to cause adverse impacts as outlined in the SEPP. Coastal engineering advice (**Attachment A**) prepared by Horton Coastal Engineering reviewed the Planning Proposal against the provisions in SEPP Coastal and found that any future development on the site consolidated with 88 Bower St, under the proposed amendments could be designed and sited to satisfy the requirements of the SEPP.

Table 5: Compliance with State Environmental Planning Policies (SEPPs)

SEPPs (as at October 2020)		Applicable	Consistent
19	Bushland in Urban Areas	No	N/A

SEPPs (as at October 2020)		Applicable	Consistent
21	Caravan Parks	No	N/A
33	Hazardous and Offensive Development	No	N/A
36	Manufactured Home Estates	No	N/A
44	Koala Habitat Protection	No	N/A
47	Moore Park Showground	No	N/A
50	Canal Estate Development	No	N/A
55	Remediation of Land	Yes	Yes
64	Advertising and Signage	No	N/A
65	Design Quality of Residential Apartment Development	No	N/A
70	Affordable Housing (Revised Schemes)	No	N/A
	(Aboriginal Land) 2019	No	N/A
	(Affordable Rental Housing) 2009	No	N/A
	(Building Sustainability Index: BASIX) 2004	No	N/A
	(Coastal Management) 2018	Yes	Yes
	(Concurrences) 2018	No	N/A
	(Education Establishments and Child Care Facilities) 2017	No	N/A
	(Exempt and Complying Development Codes) 2008	No	N/A
	(Gosford City Centre) 2018	No	N/A
	(Housing for Seniors or People with a Disability) 2004	No	N/A
	(Infrastructure) 2007	No	N/A
	(Kosciuszko National Park – Alpine Resorts) 2007	No	N/A
	(Kurnell Peninsula) 1989	No	N/A
	(Mining, Petroleum Production and Extractive Industries) 2007	No	N/A
	(Miscellaneous Consent Provisions) 2007	No	N/A
	(Penrith Lakes Scheme) 1989	No	N/A
	(Primary Production and Rural Development) 2019	No	N/A
	(State and Regional Development) 2011	No	N/A
	(State Significant Precincts) 2005	No	N/A
	(Sydney Drinking Water Catchment) 2011	No	N/A
	(Sydney Region Growth Centres) 2006	No	N/A
	(Three Ports) 2013	No	N/A
	(Urban Renewal) 2010	No	N/A
	(Vegetation in Non-Rural Areas) 2017	No	N/A
	(Western Sydney Employment Area) 2009	No	N/A
	(Western Sydney Parklands) 2009	No	N/A
Sydney Regional Environmental Plans (Deemed SEPPs):			
8	(Central Coast Plateau Areas)	No	N/A
9	Extractive Industry (No 2 -1995)	No	N/A
16	Walsh Bay	No	N/A
20	Hawkesbury – Nepean River (No 2 – 1997)	No	N/A
24	Homebush Bay Area	No	N/A
26	City West	No	N/A
30	St Marys	No	N/A
33	Cooks Cove	No	N/A
	(Sydney Harbour Catchment) 2005	No	N/A

6. Is the Planning Proposal consistent with applicable Ministerial Directions (s9.1 directions)?

Direction 2.1: Environment Protection Zones

The site does not contain any threatened/endangered species populations or ecological communities or their habitats.

Direction 2.2: Coastal Management

The site has been identified as being generally affected by coastal inundation by the *Manly Ocean Beach and Cabbage Tree Bay Coastline Hazard Definition Study 2003*. Therefore the planning proposal is inconsistent with item 5 of Direction 2.2 – Coastal Management which states that a planning proposal must not rezone land which would enable increased development or more intensive land-use on land that has been identified as land affected by current or future coastal hazard in a local environmental plan, development control plan, study or assessment by or on behalf of the relevant planning proposal authority.

Direction 2.2 does allow for planning proposals to be inconsistent with the Direction if it can be satisfied that the provisions of the planning proposal that are inconsistent are of minor significance. The proposed rezoning is considered of minor significance since the site would be subject to planning controls for example, setbacks and foreshore scenic protection area provisions, which would preclude any significant intensification on the site.

Coastal engineering advice (**Attachment A**) prepared by Horton Coastal Engineering reviewed the Planning Proposal against the provisions in SEPP Coastal and found that future development at the site could be designed to have an acceptably low risk of being damaged by coastal processes and hazards, such that the planning proposal should not be precluded from a coastal engineering perspective.

Direction 2.3: Heritage Conservation

The site is not identified as a heritage item and is not located within a heritage conservation area. The proposed amendments would have minimal impact on nearby heritage items of the site including Heritage Item No. I167 (Fairy Bower Pool) and Landscape Item No. I168 (Ocean Foreshores), as they are not in the immediate vicinity.

Direction 2.4: Recreation Vehicle Areas

The planning proposal does not enable land to be developed for the purpose of a recreation vehicle area.

Direction 3.1: Residential Zones

The proposed amendments support the provision of housing on the site and are consistent with the objectives of Direction 3.1.

Direction 3.2: Caravan Parks and Manufactured Home Estates

The planning proposal does not include provisions for caravan parks and manufactured home estates.

Direction 3.3: Home Occupations

It is proposed that the subject site be rezoned to E4 – Environmental Living under the Manly Local Environmental Plan 2013 which permits home occupation without consent.

Direction 3.4: Integrating Land Use and Transport

The proposed amendments are consistent with Direction 3.4 as they support the provision of residential accommodation in an accessible location within a walkable distance to services, jobs and public transport.

Direction 6.1: Approval and Referral Requirements

The planning proposal does not include any provisions that require unnecessary requirements for concurrence, consultation or referrals.

Direction 6.2: Reserving Land for Public Purposes

As part of the site's disposal into private ownership, the reservations applying to the site were revoked as they were no longer required for acquisition and were considered surplus to government and public requirements.

Direction 6.3: Site Specific Provisions

The proposed amendments are consistent with the adjoining lot at 88 Bower St and do not include any unnecessarily restrictive site specific planning controls.

Direction 7.1: Implementation of A Plan for Growing Sydney

The proposed amendments are consistent with the strategic plans as outlined in Question 3 of this report.

Table 6: Compliance with Ministerial Directions

Directions (as at October 2020)	Applicable	Consistency
1 Employment and Resources		
1.1 Business and Industrial Zones	No	N/A
1.2 Rural Zones	No	N/A
1.3 Mining, Petroleum Production and Extractive Industries	No	N/A
1.4 Oyster Aquaculture	No	N/A
1.5 Rural Lands	No	N/A
2 Environment and Heritage		
2.1 Environment Protection Zones	Yes	N/A
2.2 Coastal Management	Yes	No
2.3 Heritage Conservation	Yes	Yes
2.4 Recreation Vehicle Areas	Yes	Yes
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEP's	No	N/A
2.6 Remediation of Contaminated Land	No	N/A
3 Housing, Infrastructure and Urban Development		
3.1 Residential Zones	Yes	Yes
3.2 Caravan Parks and Manufactured Home Estates	Yes	Yes
3.3 Home Occupations	Yes	Yes
3.4 Integrating Land Use and Transport	Yes	Yes
3.5 Development Near Licensed Aerodromes	No	N/A
3.6 Shooting Ranges	No	N/A
3.7 Reduction in non-hosted short term rental accommodation period	No	N/A
4 Hazard and Risk		
4.1 Acid Sulfate Soils	No	N/A
4.2 Mine Subsidence and Unstable Land	No	N/A
4.3 Flood Prone Land	No	N/A
4.4 Planning for Bushfire Protection	No	N/A
5 Regional Planning		
5.2 Sydney Drinking Water Catchments	No	N/A

Directions (as at October 2020)		Applicable	Consistency
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	No	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	No	N/A
5.9	North West Rail Link Corridor Strategy	No	N/A
5.10	Implementation of Regional Plans	No	N/A
5.11	Development of Aboriginal Land Council land	No	N/A
6 Local Plan Making			
6.1	Approval and Referral Requirements	Yes	Yes
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	No	N/A
7.3	Parramatta Road Corridor Urban Transformation Strategy	No	N/A
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	No	N/A
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	No	N/A
7.8	Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.9	Implementation of Bayside West Precincts 2036 Plan	No	N/A
7.10	Implementation of Planning Principles for the Cooks Cove Precinct	No	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 site is urbanised containing a lawn, path, rockery and fencing and is unlikely to contain critical habitats or accommodated threatened species, populations or ecological communities.

8. **Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?**

Risks associated with potential coastal inundation have been explored in coastal engineering advice(**Attachment A**) prepared by Horton Coastal Engineering. The advice finds that these risks can be mitigated through design measures for example floor levels and wave runup trip barriers.

9. **Has the Planning Proposal adequately addressed any social and economic effects?**

YES

The proposed amendments will not have any adverse social or economic effects on the surrounding area. The site is considered to only be of value to the occupants and owner of the adjoining property at 88 Bower St, Manly.

Section D – State and Commonwealth Interests

10. Is there adequate public infrastructure for the planning proposal?

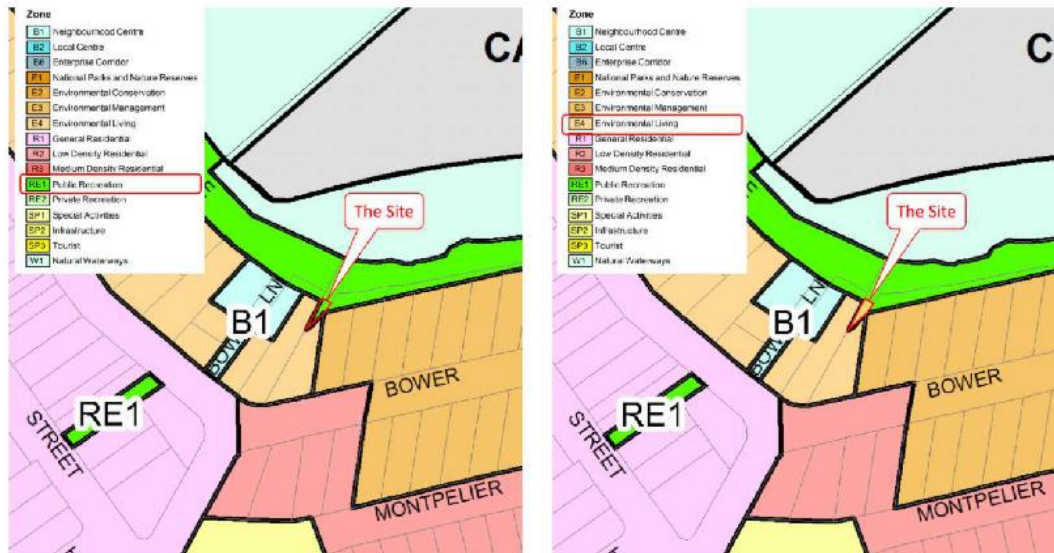
YES

It is unlikely that the proposed amendments will require any new additional services to support the site as it is located within an established residential area with access to existing public infrastructure and services.

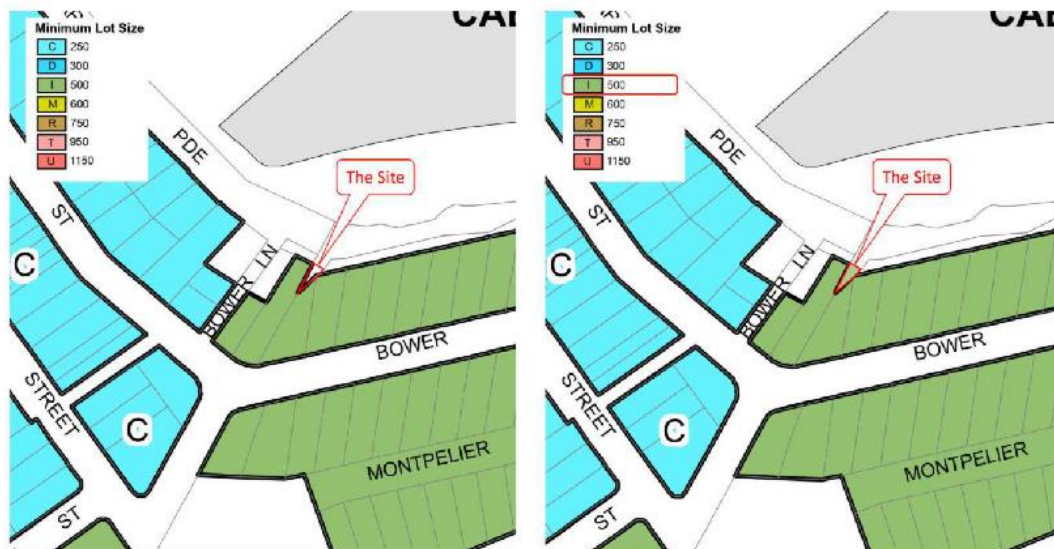
11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

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.

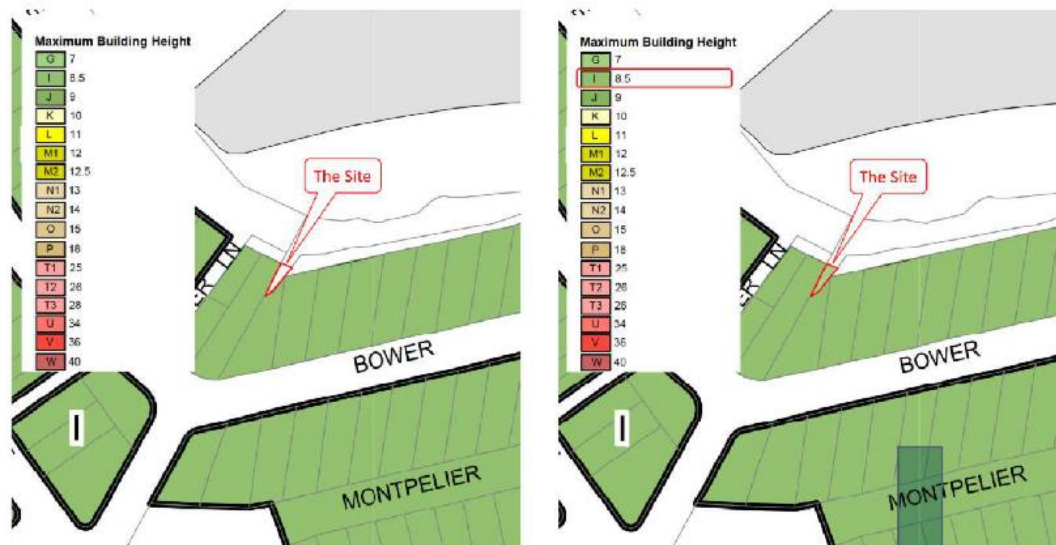
Part 4 – Maps



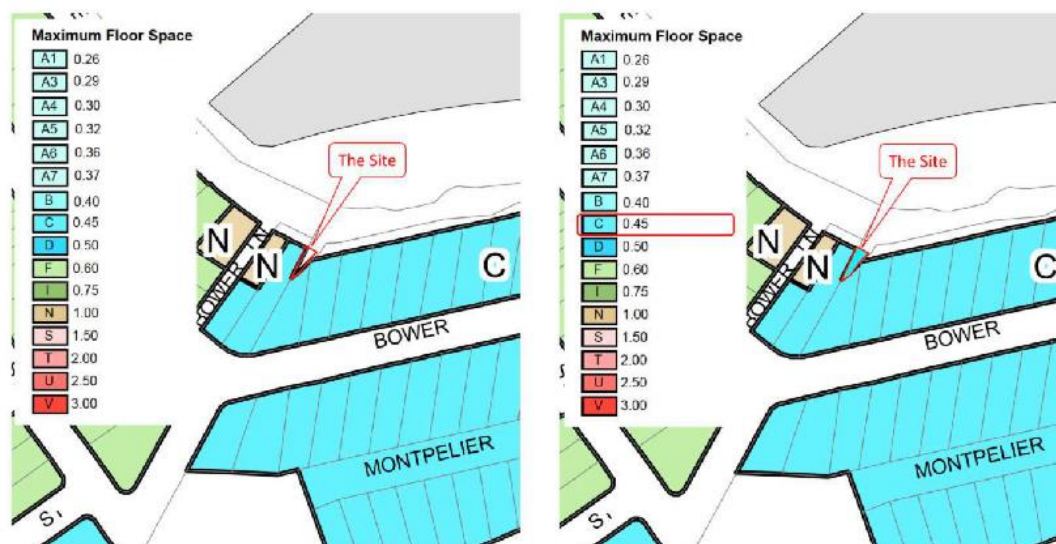
Map 1. Existing site zoning (left) and proposed zoning (right)



Map 2. Existing minimum lot size (left) and proposed minimum lot size (right)



Map 3. Existing maximum building height (left) and proposed maximum building height (right)



Map 4. Existing maximum floor space ratio (left) and proposed maximum floor space ratio (right)

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 31 August 2020 – 14 September 2020] (2 weeks). Notification included:

- Letters to land owners and occupiers within the vicinity of the subject site including:
 - Properties at 7-9 Marine Parade, Manly
 - 3 Bower Lane, Manly
 - 1 Bower Lane, Manly
 - 95 Bower St, Manly
 - Properties at 94 Bower St, Manly
 - 5 Marine Pde, Manly
 - Properties at 92 Bower St, Manly
 - 88 Bower St, Manly
 - 86 Bower St, Manly
 - Properties at 82-84 Bower St, Manly
 - 80 Bower St, Manly
- Electronic copies of the exhibition material on Council's website
- Emails to registered community members who have listed their interest on Council's Community Engagement Register

3 submissions were received in response to the public exhibition period (see **Attachment B**). Key issues raised included:

- scarcity of public recreation land
- loss of amenity caused by proposed rezoning
- potential for land to be used for public uses in the future
- opposition to historical and potential future use of land for private purposes.

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)	March 2021
Anticipated timeframe for the completion of required technical information	N/A
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

Appendix A – Coastal Engineering Advice

Horton Coastal Engineering
Coastal & Water Consulting

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ABN 31 612 198 731
ACN 612 198 731

The Trustees of the Roman Catholic Church for the Archdiocese of Sydney
C/- Makinson d'Apice Lawyers
Attention: Mahi Kazaglis
Level 10, 135 King Street
Sydney NSW 2000
(sent by email only to mkazaglis@makdap.com.au)

5 March 2020

**Coastal Engineering Advice on Planning Proposal to Rezone and Consolidate Lot into
88 Bower Street Manly**

1. INTRODUCTION AND BACKGROUND

It is proposed to rezone Lot 1 in DP1244511 (which is located on the seaward side of 88 Bower Street Manly, and is currently zoned RE1 Public Recreation) for residential purposes (E4 Environmental Living), and to consolidate this into the main 88 Bower Street property (Lot 3 DP8075). A planning proposal for this is being prepared for submission to Northern Beaches Council. This is being prepared to correct an apparent anomaly in the *Manly Local Environmental Plan 2013* maps, and to enable the orderly use of the site for residential purposes, consistent with the site's existing use and surrounding area.

As the property is potentially affected by coastline hazards, in particular ocean inundation, Council requires consideration of coastal engineering issues as part of the planning proposal. Horton Coastal Engineering was engaged to consider these issues, as set out herein.

Manly Local Environmental Plan 2013, *State Environmental Planning Policy (Coastal Management) 2018*, and *Local Planning Direction 2.2 (on Coastal Management)* under Section 9.1(2) of the *Environmental Planning Assessment Act 1979* are specifically considered herein.

The report author, Peter Horton [BE (Hons 1) MEngSc MIEAust CPEng NER], is a professional Coastal Engineer with 28 years of coastal engineering experience. He has postgraduate qualifications in coastal engineering, and is a Member of Engineers Australia (MIEAust) and Chartered Professional Engineer (CPEng) registered on the National Engineering Register (NER). He is also a member of the National Committee on Coastal and Ocean Engineering (NCCOE) and NSW Coastal, Ocean and Port Engineering Panel (COPEP) of Engineers Australia.

Peter has prepared coastal engineering reports on numerous private properties and Council land in the Manly area, and has inspected the area in the vicinity of the subject property on several occasions in the last decade and beyond, including a specific recent inspection on 30 December 2019.

Note that all levels given herein are to Australian Height Datum (AHD). Zero metres AHD is approximately equal to mean sea level at present.

2. EXISTING SITE DESCRIPTION

An aerial view of the subject property is provided in Figure 1, with the subject lots shown. Note that the lot boundaries shown are only approximate.



Figure 1: Aerial view of subject property on 7 April 2018, with subject lots shown

Based on Airborne Laser Scanning data captured in 2018, Marine Parade is at a level of about 2.6m AHD near the seawall and 3.0m AHD adjacent to the property. The crest of the seawall is at about 3.4m AHD. Ground levels increase moving landward to about 3.9m AHD at the dwelling.

The seawall can be overtopped by wave action at times of coastal storms with large waves (particularly coming from directions north of east) and elevated ocean water levels, and wave

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overtopping can enter the property. This does not preclude the proposed lot consolidation, as the impacts of wave overtopping and coastal inundation could be managed through various measures (such as elevated floor levels, setbacks from Marine Parade and/or wave runup 'trip' barriers) in any future redevelopment over the subject lots.

It can be assumed that the subject property is not at significant risk of erosion/recession, as it is expected that the Marine Parade seawall would be maintained by Council, and reinstated if damaged, given the public demand for use of the Marine Parade walkway.

Photographs of and near the property at the time of the site inspection on 30 December 2019 are provided in Figure 2 to Figure 4.



Figure 2: View of subject property (at arrow) to SSW from Marine Parade on 30 December 2019

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Figure 3: View of subject property (at arrow) to west on 30 December 2019



Figure 4: View seaward of subject property to north on 30 December 2019

3. PLANNING PROPOSAL

It is proposed to rezone Lot 1 in DP1244511 (yellow boundary in Figure 1) from RE1 Public Recreation to E4 Environmental Living, and to consolidate this into the main 88 Bower Street property (Lot 3 DP8075, red boundary in Figure 1). The yellow area is already essentially (and practically) part of the one property, being fenced together with the red area as part of 88 Bower Street.

4. MERIT ASSESSMENT

4.1 *Manly Local Environmental Plan 2013*

One of the aims of *Manly Local Environmental Plan 2013* (LEP 2013) is, as per clause 1.2(2)(f)(iv), is “to protect existing landforms and natural drainage systems and minimise the risk to the community in areas subject to environmental hazards, particularly flooding, bush fires, acid sulfate soils, sea level rise, tsunami and landslip”. A future development at the subject lots could be designed to have an acceptably low risk of being damaged by coastal processes and hazards (including tsunami) over an acceptably long life, considering projected sea level rise, such that the proposed lot consolidation does not need to be precluded considering these issues.

The subject lots are within a foreshore scenic protection area, so Clause 6.9 of LEP 2013 would apply to any future development at the site. In Clause 6.9(3)(c) of LEP 2013 it is stated that “development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the suitability of development given its type, location and design and its relationship with and impact on the foreshore”.

Although this is mostly related to visual impacts, it could also be interpreted to apply to physical impacts of future development on the foreshore. Consolidation of the subject lots would not be expected to lead to future development that would impact on the foreshore, with the Marine Parade seawall about 9m seaward of the lots.

The subject lots are not within a foreshore area, so Clause 6.10 of LEP 2013 does not apply to any future development at the site.

4.2 *State Environmental Planning Policy (Coastal Management) 2018*

4.2.1 *Preamble*

Based on *State Environmental Planning Policy (Coastal Management) 2018* (SEPP Coastal) and its associated mapping, the subject lots are within a “coastal environment area” (except for a small portion adjacent to Bower Street) and “coastal use area”.

4.2.2 *Clause 13*

Based on Clause 13(1) of SEPP Coastal, “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".

Consolidation of the subject lots would not be expected to prevent any of the above clauses to be satisfied for a future development at the site.

With regard to clause (a), a future development at the subject lots would be on an already developed residential site and would have stormwater management measures in place such that impact on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment would not be expected.

With regard to clause (b), it is expected that a future development at the subject lots could be designed to not affect coastal environmental values or natural coastal processes any differently to the existing development.

With regard to clause (c), it is expected that a future development at the subject lots (given the residential land use) could be designed to not adversely impact on water quality, as long as appropriate construction environmental controls are applied. No sensitive coastal lakes are located in the vicinity of the subject lots.

With regard to clause (d), it is expected that a future development at the subject lots would not impact on the rock platform or marine vegetation seaward of Marine Parade. There are no undeveloped headlands in proximity to the subject lots. No significant impacts on marine fauna and flora would be expected as a result of a future development at the subject lots, as the development would generally not be expected to interact with subaqueous areas. Assuming that there is no native vegetation or fauna or their habitats of significance at the property, this clause could be satisfied for a future development at the subject lots.

With regard to (e), it can be noted that a future development at the subject lots would be entirely within the private property boundary, and would not alter existing public access arrangements seaward of the property.

With regard to (f), a search of the Office of Environment and Heritage "Aboriginal Heritage Information Management System" (AHIMS) was undertaken on 5 March 2020. It was found that there was one (1) Aboriginal site recorded and zero Aboriginal Places declared within 50m of the subject lots. This would need to be considered as part of a future development at the subject lots, but does not preclude the planning proposal. The Aboriginal site is likely to be outside the subject lots and unaffected by future development at the lots.

With regard to (g), a future development at the subject lots would generally not be expected to interact with the surf zone over its design life.

Based on Clause 13(2) of SEPP Coastal, "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”.

It is expected that a future development at the subject lots could be designed and sited to avoid any potential adverse impacts referred to in Clause 13(1).

4.2.3 Clause 14

Based on Clause 14(1) of SEPP Coastal, “development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

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

With regard to Clause (a)(i), a future development at the subject lots would be entirely on private property and would not affect public foreshore, beach, headland or rock platform access.

Clauses (a)(ii) and a(iii) are not coastal engineering matters so are not definitively considered herein, but it can be noted that it is expected that a future development at the subject lots could be designed to not impact on these matters.

With regard to (a)(iv), as noted in Section 4.2.2, the one (1) Aboriginal site recorded within 50m of the subject lots is likely to be outside the subject lot boundaries and unaffected by future development at the lots.

With regard to (a)(v), the nearest environmental heritage items to the subject lots listed in Schedule 5 of LEP 2013 are:

- the street trees (*Araucaria heterophylla*) in Bower Street (from Cliff Street to College Street);

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- the ocean foreshores, which are mapped as a minimum of about 50m from the subject lots, but in reality are located immediately seaward of the Marine Parade seawall (about 9m from the subject lots);
- Fairy Bower pool, located a minimum of about 40m from the subject lots; and
- stone kerbs in Bower Street, located a minimum of about 60m from the subject lots.

It is expected that a future development at the subject lots could be designed and constructed so as not to impact on these and other heritage items.

With regard to (b), it is expected that a future development at the subject lots could be designed and sited to avoid any potential adverse impacts referred to in Clause 14(1).

Clause (c) is not a coastal engineering matter so is not definitively considered herein, but it can be noted that it is expected that a future development at the subject lots could be designed to take account of these matters.

4.2.4 Clause 15

Based on Clause 15 of SEPP Coastal, "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".

A future development at the subject lots could be designed so as not to increase the risk of coastal hazards on the subject lots nor adjacent properties. There is no reason to preclude the proposed lot consolidation from a coastal hazards perspective.

4.2.5 Clause 16

Based on Clause 16 of SEPP Coastal, "development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land".

No certified coastal management program applies at the subject lots.

4.2.6 Synthesis

It is expected that a future development at the subject lots could be designed to satisfy the requirements of *State Environmental Planning Policy (Coastal Management) 2018* for the matters considered herein.

4.3 Local Planning Direction 2.2 (Coastal Management)

4.3.1 Preamble

Local Planning Direction 2.2 applies at the subject lots. Based on Section 9.1(2) of the *Environmental Planning Assessment Act 1979*, this should be considered as part of the planning proposal. Items 4 and 5 of Direction 2.2 are considered in turn below.

4.3.2 Item 4

Based on item (4) of Direction 2.2, "a planning proposal must include provisions that give effect to and are consistent with:

- (a) the objects of the *Coastal Management Act 2016* and the objectives of the relevant coastal management areas;
- (b) the NSW Coastal Management Manual and associated Toolkit;
- (c) NSW Coastal Design Guidelines 2003; and
- (d) any relevant Coastal Management Program that has been certified by the Minister, or any Coastal Zone Management Plan under the *Coastal Protection Act 1979* that continues to have effect under clause 4 of Schedule 3 to the *Coastal Management Act 2016*, that applies to the land".

With regard to item (a), the objectives of the relevant coastal management areas have been considered in Section 4.2.2 and Section 4.2.3. By doing so, the objects of the *Coastal Management Act 2016* have been considered, as the requirements for the management areas embody these objects.

With regard to item (b), given that a future development could be designed to have an acceptably low risk of being damaged by coastal processes and hazards (including tsunami) over an acceptably long life (considering projected sea level rise), and could also be designed to not impact on coastal processes and hazards, this development could be designed to be consistent with the NSW Coastal Management Manual and associated Toolkit.

With regard to item (c), the NSW Coastal Design Guidelines 2003 could be considered in a future development at the subject lots.

With regard to item (d), no Coastal Management Program nor Coastal Zone Management Plan applies at the subject lots. The *Manly Ocean Beach Coastline Management Plan* was completed in 2008, but only covered Manly Ocean Beach and not the Fairy Bower area incorporating the subject lots. The *Manly Ocean Beach and Cabbage Tree Bay Coastline Hazard Definition Study* was completed in 2003, and there are no issues raised in that study with regard to future development at the subject lots that could not be managed through coastal engineering and geotechnical engineering input into the design.

4.3.3 Item 5

Based on item (5) of Direction 2.2, "a planning proposal must not rezone land which would enable increased development or more intensive land-use on land:

- (a) within a coastal vulnerability area identified by the *State Environmental Planning Policy (Coastal Management) 2018*; or
- (b) that has been identified as land affected by a current or future coastal hazard in a local environmental plan or development control plan, or a study or assessment undertaken:
 - i) by or on behalf of the relevant planning authority and the planning proposal authority, or
 - ii) by or on behalf of a public authority and provided to the relevant planning authority and the planning proposal authority".

With regard to item (a), the subject lots are not within a coastal vulnerability area.

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With regard to item (b), the subject lots are not identified as land affected by a current or future coastal hazard in a local environmental plan or development control plan. However, studies have been completed for Council (eg the *Manly Ocean Beach and Cabbage Tree Bay Coastline Hazard Definition Study* completed in 2003) that have identified that the subject lots are affected by coastal inundation (not specifically, but only in a general sense). That stated, as noted in Section 2, it can be stated that the subject lots are potentially affected by coastal inundation.

Some could then argue that the planning proposal should not proceed as rezoning (that enables increased development or more intensive land-use) is inconsistent with item 5 of Direction 2.2. However:

- it is not necessarily the case that the rezoning will allow increased development, given the potential constraints on developing the seaward lot;
- the fact that both lots are part of the same property means it is anomalous that they do not have the same zoning; and
- a future development at the subject lots could be designed to have an acceptably low risk of being damaged by coastal processes and hazards over an acceptably long life, and could also be designed to not impact on coastal processes and hazards, such that the planning proposal should not be precluded from a coastal engineering perspective.

5. CONCLUSIONS

It is proposed to rezone Lot 1 in DP1244511 (which is located on the seaward side of 88 Bower Street Manly) for residential purposes and to consolidate this into the main 88 Bower Street property (Lot 3 DP8075). A planning proposal for this is being prepared for submission to Northern Beaches Council.

The subject lots are subject to coastal inundation in coastal storms. However, this does not preclude the proposed lot consolidation, as the impacts of coastal inundation could be managed through various measures (such as elevated floor levels, setbacks and/or wave runup 'trip' barriers) in any future redevelopment over the subject lots.

A future development at the subject lots could be designed to have an acceptably low risk of being damaged by coastal processes and hazards over an acceptably long life, considering projected sea level rise, satisfying an aim of *Manly Local Environmental Plan 2013*. Consolidation of the subject lots would not be expected to lead to future development that would impact on the foreshore, with the Marine Parade seawall about 9m seaward of the lots.

It is expected that a future development at the subject lots could be designed to satisfy the requirements of *State Environmental Planning Policy (Coastal Management) 2018* for the matters considered herein.

Future development at the subject lots could be designed to satisfy item 4 of Local Planning Direction 2.2. Although the proposal may rezone land which could enable increased development or more intensive land-use, inconsistent with item 5 of Direction 2.2:

- it is not necessarily the case that the rezoning will allow increased development, given the potential constraints on developing the seaward lot;
- both lots are part of the same property means it is anomalous that they do not have the same zoning; and

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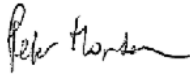
- a future development at the subject lots could be designed to have an acceptably low risk of being damaged by coastal processes and hazards over an acceptably long life, and could also be designed to not impact on coastal processes and hazards, such that the planning proposal should not be precluded from a coastal engineering perspective.

6. SALUTATION

If you have any further queries, please do not hesitate to contact Peter Horton via email at peter@hortoncoastal.com.au or via mobile on +61 407 012 538.

Yours faithfully

HORTON COASTAL ENGINEERING PTY LTD



Peter Horton

Director and Principal Coastal Engineer

This report has been prepared by Horton Coastal Engineering Pty Ltd on behalf of and for the exclusive use of The Trustees of the Roman Catholic Church for the Archdiocese of Sydney (the client), and is subject to and issued in accordance with an agreement between the client and Horton Coastal Engineering Pty Ltd. Horton Coastal Engineering Pty Ltd accepts no liability or responsibility whatsoever for the report in respect of any use of or reliance upon it by any third party. Copying this report without the permission of the client or Horton Coastal Engineering Pty Ltd is not permitted.

Appendix B – Submissions

Sent: 14/09/2020 4:09:27 PM
Subject: PEX2020/0008

Dear Ma Sio

Thank you for your letter.

I object to the proposal rezoning of Public Recreation land at the rear of 88 Bower Street, Manly.

- Public Recreation land is scarce and every bit of it should be kept.
- To rezone the land would result in a reduction of the amenity of the area.
- This piece of land might provide an accessway in the future.

Please keep it zoned as Public Recreation.

Regards

Catherine Veech

Town Planner

Rebecca Sio

From: [REDACTED]
Sent: Monday, 31 August 2020 7:25 PM
To: DA Submission Mailbox
Subject: Online Submission

31/08/2020

MR John Mee

[REDACTED]

RE: PEX2020/0008 - 88 Bower Street MANLY NSW 2095

No Way. Tell those greedy buggers to get stuffed. As presented in their own documents the anomaly has come about due to following the course of a natural watercourse. It is a natural feature that they are proposing to make unnatural; nice and square like the others. It is prime beachfront land which is in very very short supply these days! Thousands of people (could) use that chunk of land everyday. What makes them think they can stick up a couple of gates there in the first place?! Now say "hey lets be reasonable, that's ours". Screw them. It looks ideal for a kids playground, an amenities block, a swimmers changing room, a lovely monument and fountain to the Northern Beaches Mayor of 2020, a first-peoples sacred site, bike parking, discreet pool pumping station, rainforest retreat-who, endangered species sanctuary, rowdy BBQ venue... Who can tell what the true potential is!

Don't give it away to those greedy un-australian, un-deserving bastards for a song so they can drink their pinot-gris chablis from a private garden; mooning it over the working men and women who put them there. It belongs to the people. Keep it for the people! Your grandkids will thank you.

Rebecca Sio

From: Sharon Lambert <[REDACTED]>
Sent: Friday, 25 September 2020 11:39 PM
To: Michael Regan; Candy Bingham; Zali.Steggall.MP@aph.gov.au
Cc: Council Mailbox
Subject: Coastal Land Sale Questioned - Marine Parade Manly - NBC Application Number: PEX2020/0008 - Planning Proposal - To amend Manly Local Environmental Plan 2013 to rezone site from RE1 Public Recreation to E4 Environmental Living and apply other associated...

Categories: Adriana

Dear Mayor Regan & Deputy Mayor Bingham (Northern Beaches Council), & Ms Zali Steggall (Federal Member for Warringah),

Planning Proposal - To amend Manly Local Environmental Plan 2013 to rezone site from RE1 Public Recreation to E4 Environmental Living and apply other associated map amendments - 88 Bower Street MANLY NSW 2095 - Application Number: PEX2020/0008
<https://eservices.northernbeaches.nsw.gov.au/ePlanning/live/Public/XC.Track/SearchApplication.aspx?id=1857141>

I have been unable to respond to this proposal earlier due to family commitments but I hope my concerns below will be considered and acted upon by Council as appropriate.

I also request the Federal Member for Warringah, Zali Steggall, look into this proposal as it appears the process of transferring ownership of the coastal land in question, from Federal Government to Catholic Church, may not have been undertaken with the transparency it deserves.

- * The land in question appears to have been unjustly, exclusively (& illegally?) used by the Catholic Church all this time.
- * Future exclusive use (eg. construction of a swimming pool, like the neighbouring property) would compound the injustice.

If Council was given the opportunity to purchase this land it could instead be used for benign but appropriate public use (without limiting access to/from 88 Bower Street). For example:

- * By moving the existing fence (that should not have been erected in the first place) to the true/original boundary of 88 Bower Street, an attractive grassed area could be used by the public for people (eg. picnicking families) who swim at Fairy Bower or walk along Marine Parade.

Additionally, I generally support the comments in the online submission I can see (on NBC website) made by Mr John Mee on 31/8/20.

In response to this submission I would appreciate being kept informed of any investigation of the process which has taken place, and of the possibility of this land finally becoming available for public access.

Yours sincerely,
Sharon Lambert CPA

4.0 NON PUBLIC MEETING ITEMS

ITEM 4.1	DA2020/0854 - 27 CORKERY CRESCENT ALLAMBIE HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING SWIMMING POOL
AUTHORISING MANAGER	ANNA WILLIAMS
TRIM FILE REF	2020/683602
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is a relative of a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979.

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. DA2020/0854 for Alterations and additions to a dwelling house including swimming pool at Lot 2 Sec 12 DP 758016, 27 Corkery Crescent, Allambie Heights subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0854
Responsible Officer:	Sarah McNeilly (Consultant Planner)
Land to be developed (Address):	Lot 2 Sec.12 DP 758016 27 Corkery Crescent, Allambie Heights
Proposed Development:	Alterations and additions to a dwelling house including swimming pool.
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Joshua Jay Lang and Carly Alice Lang
Applicant:	Joshua Jay Lang
Application Lodged	03/08/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	
Notified:	11/08/2020 to 25/08/2020
Advertised:	No
Submissions Received:	1
Clause 4.6 Variation:	No
Recommendation:	Approval
Estimated Cost of Works:	\$306,100

EXECUTIVE SUMMARY

The proposal seeks Development Consent for alterations and additions to a dwelling house including swimming pool. The works include an addition on the ground floor at the rear and a first floor. Additionally, there is a partly inground pool and a double carport forward of the front building line.

The public notification of the application resulted in 1 letter of concern which raises numerous issues including drainage concerns and sewer location.

The proposal is recommended for approval with specific conditions that will ensure privacy with regard to the swimming pool, and reduction of the carport to a single.

The application has been assessed by an external planning consultant as the applicant is a relative of a Council employee.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks Development Consent for alterations and additions to a dwelling house including swimming pool. The works to be included as part of this application are as follows:

Ground Floor

- Demolition of rear wall and some internal walls at rear of dwelling
- Internal reconfiguration to create a new ground floor layout comprising of an open plan dining/ lounge; rumpus/ office; bathroom; study and entry area.
- Extend dwelling at the rear on the eastern side to provide kitchen, laundry and WC
- Construction of rear timber covered deck with BBQ
- Retain existing garage and extend to meet front elevation of dwelling

First Floor

- A new first floor addition comprising 4 bedrooms (master with ensuite, WIR and covered deck), sitting room and bathroom.

External Alterations/Additions

- Addition of a partly inground pool in the rear yard with decking connecting to the dwelling
- Construction of double carport on the eastern side of the site with a 1.45 metre frontage to Corkery Crescent

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

- Warringah DCP – B3 Building Envelope
- Warringah DCP – B5 Side Boundary
- Warringah DCP – B7 Front Boundary
- Warringah DCP – B9 Rear Boundary
- Warringah DCP – C3 Parking Facilities

SITE DESCRIPTION

Property Description:	Lot 2 Sec 12 DP 758016 27 Corkery Crescent, Allambie Heights
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Detailed Site Description:	<p>The subject allotment comprises a rectangular lot with front and rear boundaries of 20.725 metres and side boundaries of 30.48 metres. The area of the site is 631.7 m². The site is located within the R2 Low Density Residential zone as mapped within the Warringah LEP and is legally identified as Lot 2 Section 12 DP 758016.</p> <p>Currently the site is occupied by a single storey brick residence with a tile roof incorporating a single garage. The site is fairly level but has a gradual fall to the street frontage. The lot sits on the higher side of the street above an existing small rock shelf. The surrounds of the lot are primarily turfed garden area.</p> <p>The site is surrounded by detached one and two storey dwellings within landscaped settings, including a secondary dwelling immediately adjoining to the north east.</p>
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SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant development applications for this site.

The land has been used for residential purposes for an extended period of time.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of one submission:

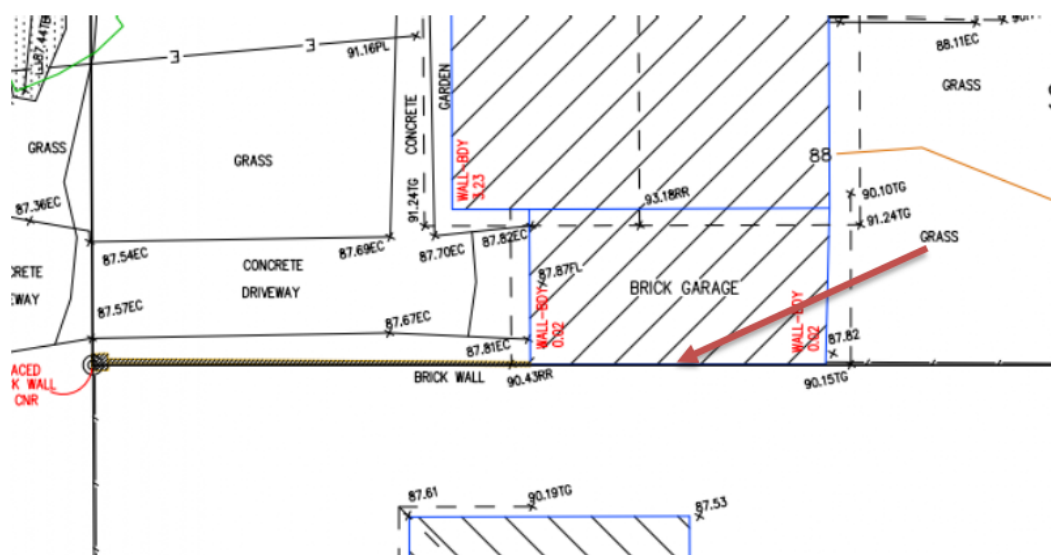
Name:	Address:
Angela Mayne	60 Allambie Road, Allambie Heights

Encroaches Adjoining Property

- Guttering for garage crosses the boundaries of neighbours
- Possible drainage concerns for 60 Allambie Road

Planners Comments:

The survey provided with the application by a registered surveyor shows no encroachments but does locate the existing garage on the boundary. The proposed plans show no encroachments of gutters. However, the ability to site a gutter adjacent the existing structure appears flawed and accordingly, the consent would require a condition to provide details of guttering location and design to confirm it will sit within the boundary of the subject site, prior to issue of the construction certificate.



The application will be subject to a condition of consent requiring stormwater disposal in accordance with Council policy and accordingly, this will require it to be disposed of appropriately. Details of stormwater are to be submitted with the construction certificate.

Sandstone Outcrop Removed

Planners Comments:

There does not appear to be a significant area of rock removed based on the advice provided in the submission. Conditions of consent are included which will require structural engineer's advice to ensure structural adequacy for excavation work associated with the pool to be provided with the Construction Certificate.

Incorrect Survey

- Boundary
- Slope

Planners Comments:

The survey has been provided by a registered surveyor and provides adequate information to allow for assessment of the application.

Pool too close to boundary

- Noise
- Inaccessible to owners to maintain
- Possible damage to neighbouring property

Planners Comments:

The siting of the pool complies with Council requirements. A small area of decking at the rear will be conditioned to be removed to ensure ample landscape planting can be installed on the shared rear boundary. The pool is appropriately located to allow for maintenance and use of the rear yard.

There is no unreasonable risk, through appropriate use of the pool of damage to the neighbouring site.

Pool too close to sewer line

- Concern regarding impacts for pool
- Concern regarding planting impacts on sewer

Planners Comments:

There are no planning grounds which prevent the pool being located adjacent the sewer line, as long as Sydney Water requirements are met. These requirements will be conditioned as a part of any development consent.

The location and excavation for the pool and planting on site will all be subject to compliance with Sydney water Requirements.

House will become uninsurable

Planners Comments:

This is not a matter relevant to planning consideration of the proposal.

Bush fire risk

- Bushfire risk extended to neighbouring sites
- Need for metal gutters

Planners Comments:

The application has been referred to the Rural Fire Service who have imposed specific conditions to ensure compliance.

Confirm distances to 60 Allambie Road– error on plans

Planners Comments:

The applicant has clarified that:

*The rear setback to the deck is 4.55m (with an incorrect setback shown on the Site Plan).
The rear setback is consistent with the adjoining dwellings, noting that the setback of 4.55m is to the deck with a further 3.8m to the kitchen wall. Therefore, to the actual façade of the dwelling, the rear setback is 8.35m.*

REFERRALS

Internal Referral Body	Comments
Landscape	<p>Council's Landscape Officer provided the following comments:</p> <p><i>The proposal is for alterations and additions to an existing dwelling and a new swimming pool.</i></p>

Internal Referral Body	Comments
	<p><i>The landscape character of the existing site is predominantly of a suburban garden with predominately lawn area and scattered gardens. No trees 5 metres or taller exist on the site and no landscape natural features are present. Existing trees are found within adjoining property and within the road verge.</i></p> <p><i>The application is assessed by Landscape Referral against Warringah Development Control Plan 2011, including but not limited to the following clauses:</i></p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation • E6 Retaining unique environmental features <p><i>The proposal reports a minor non-compliance in the landscaped area (37.6% provided instead of 40%), and a Landscape Plan is provided with the proposal. It is considered that the addition of tree planting to the landscape scheme will result in the landscape control of clause D1 being satisfied, and conditions of consent shall be imposed.</i></p> <p><i>Any new landscaping to the site is to comply with the principles of Appendix 4 and section 3.7 of Planning for Bush Fire Protection 2019.</i></p> <p><i>Landscape Referral raise no objection to the development proposal subject to the protection of trees within adjoining properties and within the road verge, and the completion of landscape works.</i></p> <p><i>The proposal is therefore supported.</i></p> <p>Recommendation: Approval – subject to conditions</p>
Engineering	<p>Council's Engineering Officer provided the following comments:</p> <p><i>No objection to approval subject to conditions as recommended.</i></p> <p>Recommendation: Approval – subject to conditions</p>

External Referral Body	Comments
RFS	The application was referred to the RFS who responded in a letter dated 25 August 2020 stating that they had no objections to the proposal subject to the inclusion of conditions of consent.
Ausgrid	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. Also, the 'as constructed' minimum clearances to Ausgrid's infrastructure must not be encroached by the building development. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Not Applicable
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider “Prescribed conditions” of development consent. Should the Development Application be approved, these matters will be addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000: No additional information was requested however an amended Statement of Environmental Effects and Response to Submissions was received from the applicant to address matter raised during the assessment of this development application.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. Should the Development Application be approved, these matters will be addressed via a condition of consent.</p> <p><u>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). Should the Development Application be approved, this matter will be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) 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</p>

	The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

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.

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.

In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A383299 dated 15 July 2020).

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

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

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. 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.

Warringah Local Environmental Plan 2011

Is the development permissible under WLEP 2011?	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	8.5	8.24	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
6.2 Earthworks	Yes
6.4 Development on Sloping Land	N/A

Detailed Assessment

R2 Low Density Residential

The objectives of the R2 zone are considered to be fulfilled as is detailed below.

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

The development is appropriate when considered against the values of the zone and can be supported subject to conditions of consent.

Warringah Development Control Plan 2011

Built Form Controls

Built form Control	Requirement	Proposed	% Variation	Complies
B1 Wall Height	7.2m	SW Elevation -3.56 NE Elevation – 6.83m NW Elevation – 6.68m SE Elevation 3.27 m	-	Yes Yes Yes Yes
B3 Side Boundary Envelope	4m	SW	No encroachment	Yes
	4m	NE	1 m/9.52 m	No
B5 Side Boundary Setbacks	0.9m	SW- ground -nil -1 st floor -3.19m	-	No Yes
	0.9m	NE – ground – 1.09m - 1 st floor – 1.39m		Yes Yes
B7 Front Boundary Setbacks	6.5m	Dwelling – 7.5m Carport – 1.45m		Yes No
B9 Rear Boundary Setbacks	6m	Deck -4.55 Pool – 2.35m Dwelling – 8.35m		No No Yes
D1 Landscaped open space (LOS) and Bushland Setting	40%	40.5%	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	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	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	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
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spas	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

B3 Building envelope

Description of Non-compliance

The DCP requires compliance with a building envelope of 4m/45°. The proposed development exceeds this envelope by 1 metre in eight for the length of the north western wall (9.52 metres).

Merit consideration

The proposed variation is considered reasonable based on the location on the neighbouring site of a secondary dwelling with no windows abutting the non-compliant wall (see photograph below). The development results in compliant solar access, compliant wall and building heights and has a reasonable bulk when viewed from Corkery Crescent and neighbouring sites.



The objectives of the control are addressed below.

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

The height and general scale of the building is consistent with neighbours.

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

Solar access impacts are reasonable and compliant with no significant additional shadow resulting from the small envelope variation.

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

The new first floor sits above the existing dwelling which informs the proposed additions.

B5 Side setback

Description of Non-compliance

Side setbacks of 900mm are required. The existing garage sits with a nil setback. The garage is proposed to be extended in length retaining this nil setback. In addition, a carport is proposed to be sited in front of the garage with a 350mm setback to the posts and a nil setback to the roof.

Merit consideration

The proposed variation for the garage, is reasonable to square off the frontage of the dwelling and retain this line. The carport has no option but to sit in this line, so as to ensure access to the garage is still available.

The objectives of the control are addressed below.

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

Ample area remains on the site and the extension is minimal.

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

The new section being the carport is open and not dominant.

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

The non-compliant setback does not result in an excessively bulky building.

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

Privacy and solar access are not compromised for the site or the neighbour.

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

No views are impacted.

B7 Front setback

Description of Non-compliance

The proposed carport sits with a setback of 1.45metres, which is 5.05 metres short of the required 6.5 metres.

Merit consideration

This is a significant variation, which is partly considered reasonable. Given that the carport proposed is a double, and a single garage also exists on the site, allowing a double in this location is not supported. A condition of consent is proposed which will require the proposed carport to be reduced to a single space. Based on this reduction, and the siting of the dwelling with a greater setback of 7.5 metres, the proposal is supported.

The objectives of the controls are addressed below.

- *To create a sense of openness.*

The carport is an open structure and is conditioned to be reduced to a single space. Ample front yard area is retained and the site will remain open when viewed from the street front.

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

The open single structure is not considered to be out of character.

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

The visual quality of the streetscape is retained.

- *To achieve reasonable view sharing.*

No views are impacted.

B9 Rear Setback

Description of Non-compliance

The dwelling sits with a setback of 8.35 metres which is easily compliant. The open ground level deck proposes a setback of 4.55 metres. This is a variation of 1.45 metres. The swimming pool and decking are permitted in the rear setback and comprise less than 50% of the area as permitted.

Merit consideration

As the remainder of the structure is well within the rear setback, this small variation for the open structure is supported.

The objectives of the control are addressed below.

- *To ensure opportunities for deep soil landscape areas are maintained.*

Ample deep soil planting is retained.

- *To create a sense of openness in rear yards.*

The rear yard remains open, particularly as the deck area is an open structure.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Ample privacy is maintained, and the siting of the deck is appropriate when considered against the location of neighbouring dwellings.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

The small variation does not detract from the visual continuity with neighbours retaining similar setbacks.

- *To provide opportunities to maintain privacy between dwellings.*

Privacy is maintained with the setback as proposed.

C3 Parking Facilities

Description of Non-compliance

The DCP requires 2 parking spaces for a residential dwelling. The proposed development includes one garage and 2 carport spaces, totalling three spaces.

Merit consideration

Given the third car space is located within the street frontage and is not a requirement of Council the double car port is unsupported. A single carport is a reasonable compromise, providing a second covered off street car space.

The objectives of the control are addressed below.

- *To provide adequate off street carparking.*

Adequate off-street parking is provided with the provision of a single garage and a single carport.

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

The open carport has a minimal impact whilst allowing covered parking off street. The frontage is the only location feasible to locate the structure on the site.

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

The streetscape will not be dominated with the carport to be conditioned to be reduced to a single.

Having regard to the installation of the monopole, antennae and associated structures, and the scale of the structure in comparison to the open space surrounds, it is concluded that the proposed development is consistent with the relevant objectives of the WDCP and the objectives specified in Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.12 CONTRIBUTIONS

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019. A monetary contribution of \$3,061 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$306,100.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant Environmental Planning Instruments and draft EPI's;
- Warringah Local Environment Plan 2011;
- Warringah Development Control Plan 2011; and
- Codes and Policies of Council.

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application, and does not result in

any unreasonable impacts 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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/0854 for Alterations and additions to a dwelling house on land at Lot 2 Sec.12 DP 758016, 27 Corkery Crescent, Allambie Heights, 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
1 Site Plan	3 June 2020	B + W
2 Ground Floor Plan	3 June 2020	B + W
3 First Floor Plan	3 June 2020	B + W
4 Elevations - Northwest & Northeast	3 June 2020	B + W
5 Elevations - Southeast & Southwest	3 June 2020	B + W
6 Sections - A-A & Pool	3 June 2020	B + W

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Report	16 July 2020	Bush Fire Planning Services

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan	4 July 2020	B + W

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:
 - 1 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 1 8.00 am to 1.00 pm inclusive on Saturday,
 - 1 No work on Sundays and Public Holidays.



Demolition and excavation works are restricted to:

- 1 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 sewer 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.

4. Construction Standards

New works on the north west and north east elevations shall comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2018 Construction of buildings in bush fire-prone areas or NASH Standard (1.7.14 updated) National Standard Steel Framed Construction in Bushfire Areas – 2014 as appropriate and Section 7.5 of Planning for Bush Fire Protection 2019.

New works on the south east and south west elevations (including the pool decking) shall comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2018 Construction of buildings in bush fire-prone areas or NASH Standard (1.7.14 updated) National Standard Steel Framed Construction in Bushfire Areas – 2014 as appropriate and section 7.5 of Planning for Bush Fire Protection 2019.

Reason: That buildings are designed and constructed to withstand the potential impacts of bush

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fire attack.

5. **Water and Utility Services**

The provision of water, electricity and gas must comply with Table 7.4a of Planning for Bush Fire Protection 2019.

Reason: To provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

6. **Landscaping Assessment**

Landscaping of the site shall comply with following principles:

- i Suitable impervious areas are provided immediately surrounding the buildings such as courtyards, paths and driveways.
- i Grassed areas, mowed lawns or ground cover plantings are provided in close proximity to the building.
- i Planting is limited in the immediate vicinity of the building.
- i Planting does not provide a continuous canopy to the building (i.e. trees or shrubs should be isolated or located in small clusters).
- i Landscape species are chosen in consideration needs of the estimated size of the plant at maturity.
- i Species are avoided that have rough fibrous bark, or which keep/shed bark in long strips or retain dead material in their canopies.
- i Smooth bark species of tree are chosen which generally do not carry a fire up the bark into the crown.
- i Planting of deciduous species is avoided which may increase fuel at surface/ground level (i.e. leaf litter).
- i Climbing species are avoided to walls and pergolas.
- i Combustible materials such as woodchips / mulch and flammable fuel are stored away from the building.
- i Combustible structures such as garden sheds, pergolas and materials such timber garden furniture are located way from the building.
- i Low flammability vegetation species are used.

Reason: To prevent flame impingement on the dwelling and reduce the spread of fire.

7. **Rock Outcrops**

All rock outcrops outside the development footprint on the site and adjoining land are to be retained and protected at all times.

Reason: To ensure retention of natural features.

FEES / CHARGES / CONTRIBUTIONS

8. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$3,061.00 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 \$306,100.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part)



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

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

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

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

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

9. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

10. Stormwater Disposal

The applicant is to 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 WARRINGAH WATER MANAGEMENT POLICY PL850. 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.

**11. 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.

12. 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.

13. 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.

14. Guttering

Revised plans showing details of proposed guttering demonstrating that this all sits within the property boundary, is required prior to issue of the Construction Certificate.

Reason: To ensure development is within the site boundaries.

15. Garage

The double carport is to be reduced to a single carport, located adjacent the western boundary and immediately in front of the existing garage. Revised plans are to be provided with the Construction Certificate.

Reason: To reduce visual impact.

16. Pool Decking

The timber decking on the southern side of the pool is to be removed to allow for enhanced

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landscape planting in this location. Details of revised decking and appropriate landscape planting is to be provided prior to the release of the Construction Certificate.

Reason: To allow appropriate planting.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. 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.

18. 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.

19. 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.

20. Vehicle Crossings

The Applicant is to construct one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1N 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.

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Reason: To facilitate suitable vehicular access to private property.

21. Protection of existing street trees

All existing street trees in the vicinity of the works shall be retained during all construction stages. The existing Brushbox at the frontage of the development site shall be protected by temporary tree protection fencing consisting of a standard 2.4m panel to four sides, and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of the Brushbox.

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

Reason: tree protection.

22. Tree and vegetation protection

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

- i) all trees and vegetation located on adjoining properties,
- ii) 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

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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.

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

23. Landscape completion

Landscaping is to be implemented in accordance with the Landscape Plan 0920 DA2, issue B, prepared by b+w, inclusive of the following conditions:

- i) the nominated hedge planting is to comprise of native species capable of attaining a height of 3.0 metres at maturity, installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- ii) two small native trees shall be provided within the site, capable of attaining a minimum height of 5.0 metres at maturity, installed at a minimum size of 75 litres, and located within a 9m² deep soil area and be located a minimum of 5 metres from existing and proposed buildings, and planted into a prepared planting hole 1m x 1m x 600mm depth, or as otherwise conditioned, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained,
- iii) all landscape works within the site is to comply with the principles of Appendix 4 and section 3.7 of Planning for Bush Fire Protection 2019.

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.

24. 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.

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

25. Landscape maintenance

If any landscape materials/components or planting under this consent fails, they are to be

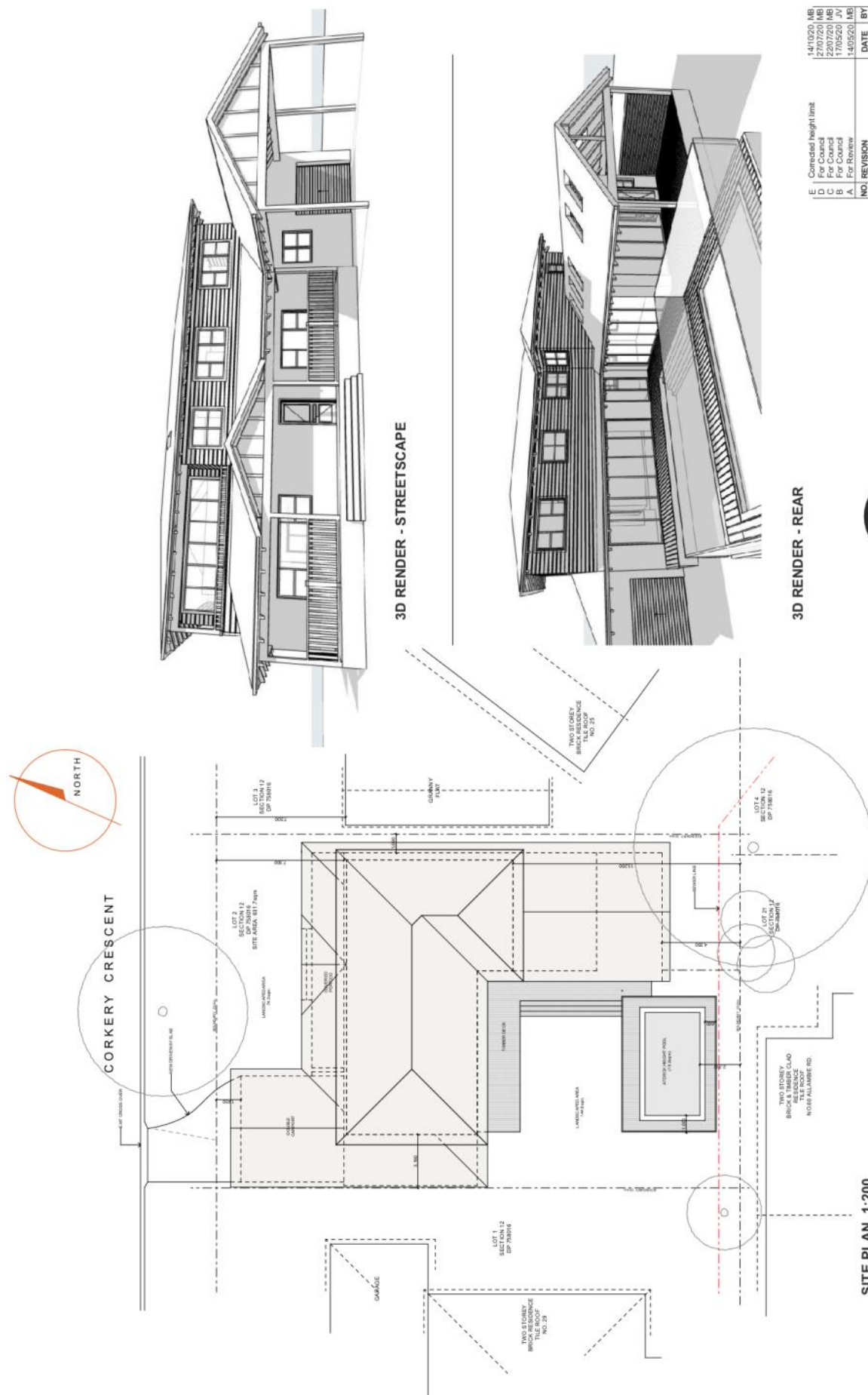
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replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

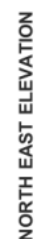
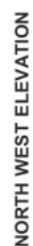
If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: to maintain local environmental amenity.



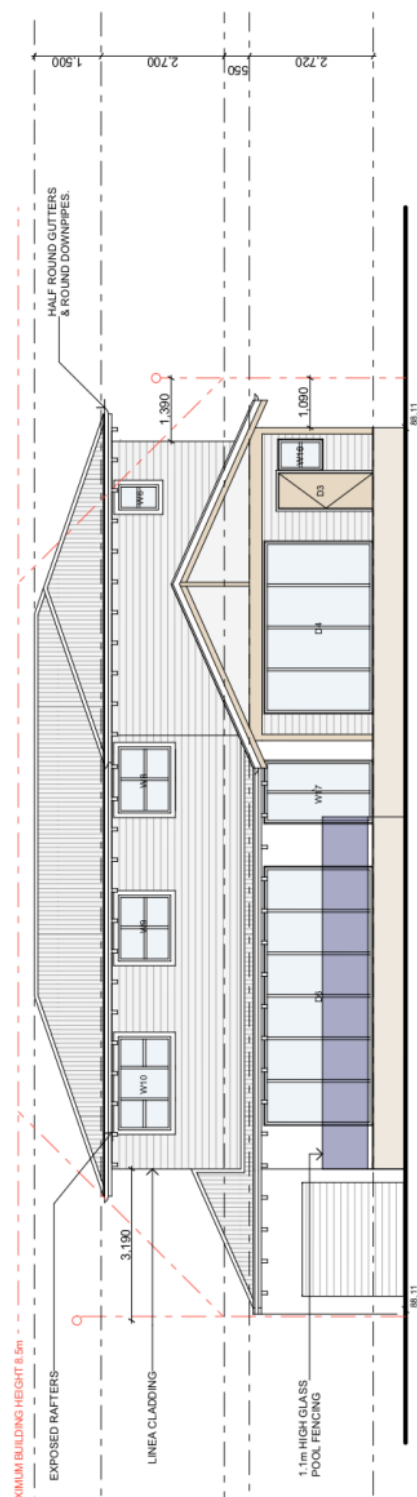
<p>Project.</p> <p>Proposed Alteration and Additions at 27 Corkery Crescent, Alambie Heights</p> <p>MARCUS BETTS CAMERON WHITE</p>		<p>CLIENTS Josh & Cary Lung</p>	
<p>TITLE: DA Plans</p> <p>DRAWING NO. 0500 DA 1 ISSUE E</p> <p>SCALE: 1  DATE: 03.06.2020 DWN BY: JV</p>		<p>NO. REVISION</p>	
<p>E Corrected height limit</p> <p>D For Council</p> <p>C For Council</p> <p>B For Council</p> <p>A For Review</p>		<p>141020 MB</p> <p>220720 MB</p> <p>220720 MB</p> <p>170520 JV</p> <p>140520 MB</p> <p>DATE BY</p>	

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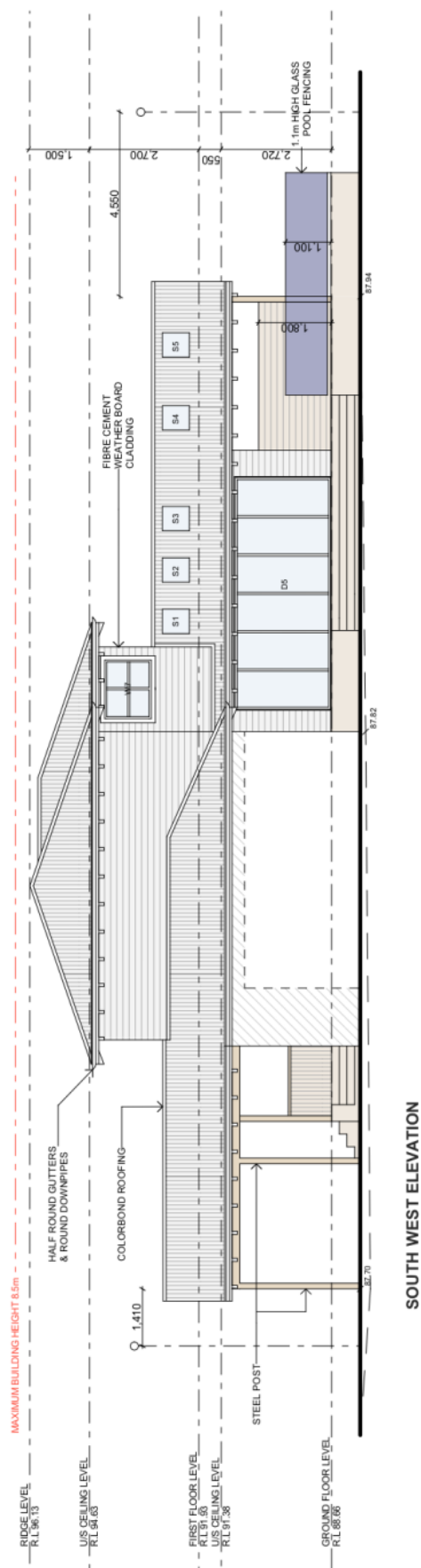


Project. Proposed Alteration and Additions at 27 Corkery Crescent, Allambie Heights

$$b + w$$



SOUTH EAST ELEVATION



SOUTH WEST ELEVATION

<p>Project.</p> <p>Proposed Alteration and Additions at 27 Corkery Crescent, Alambie Heights</p> <p>MARCUS BETTS CAMERON WHITE</p>		<p>CLIENTS Josh & Carly Lung</p> <p>TITLE: DA Plans</p> <p>DRAWING NO. 0500 DA 1</p> <p>SCALE: 1 : 100</p> <p>DRAWN BY: JV</p>	<p>DATE 03.06.2020</p> <p>DWN BY: JV</p>
<p>E Corrected height limit</p> <p>D For Council</p> <p>C For Council</p> <p>B For Council</p> <p>A For Review</p>	<p>141020 MB</p> <p>220720 MB</p> <p>220720 MB</p> <p>170520 JV</p> <p>140520 MB</p>		
<p>NO. REVISION</p>	<p>DATE</p> <p>BY</p>		

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