

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 18 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

Paul Vergotis	Chair
Marcus Sainsbury	Environmental Expert
Graham Brown	Town Planner
Lloyd Graham	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 18 November 2020

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2.0	MINUTES OF PREVIOUS MEETING	
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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. There applications do not satisfy that criterion.	
4.1	DA2020/0817 - 14 Gladstone Street NEWPORT - Subdivision of an approved dual occupancy development	275

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 11 NOVEMBER 2020

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 11 November 2020 were adopted by the Chairperson and have been posted on Council's website.

3.0 PUBLIC MEETING ITEMS

ITEM 3.1	DA2020/0147 - 14 & 16 ELLEN STREET CURL CURL AND 2 WYADRA AVENUE FRESHWATER - CONSOLIDATION OF 3 LOTS INTO ONE LOT AND RESUBDIVISION INTO 3 TORRENS TITLE LOTS
AUTHORISING MANAGER	Anna Williams
TRIM FILE REF	2020/699462
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. DA2020/0147 for consolidation of 3 lots into one lot and resubdivision into 3 Torrens Title lots at Lot 101 & Lot 102 DP 1224100 and Lot 10 DP 14040 14 & 16 Ellen Street, Curl Curl and 2 Wyadra Avenue, Freshwater subject to the conditions and for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0147
Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 10 DP 14040, 14 Ellen Street CURL CURL NSW 2096 Lot 101 DP 1224100, 16 Ellen Street CURL CURL NSW 2096 Lot 102 DP 1224100, 2 Wyadra Avenue FRESHWATER NSW 2096
Proposed Development:	Consolidation of 3 lots into one lot and resubdivision into 3 Torrens Title lots
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Terence William Jones Lynne Ellen Jones Mark Robert Aubrey Megan Aubrey
Applicant:	Mark Robert Aubrey
Application Lodged:	19/02/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	26/10/2020 to 09/11/2020
Advertised:	Not Advertised
Submissions Received:	16
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 20,000.00

EXECUTIVE SUMMARY

DA2020/0147



Northern Beaches Council is in receipt of development application DA2020/0147 for the consolidation of three (3) existing allotments 14 Ellen Street, 16 Ellen Street and 2 Wyadra Avenue and the re subdivision and boundary adjustment to create three (3) lots. The boundary adjustment includes the removal of a strip of land along the southern boundary of No. 16 Ellen Street to be included in lot 3 at No. 2 Wyadra Avenue. All three (3) amended lots comply with the minimum 450sqm lot size and subject to standard Council conditions relating to drainage and servicing generally comply with all subdivisions controls.

An amended concept building envelope has been submitted following mediation between the primary objector and applicant which includes a 1.5m height reduction of the indicative dwelling and a reduction in the footprint to the east. The amended envelope generally complies with all built form controls including building height, wall height, front and side setback and landscape open space requirements. The indicative envelope confirms that a dwelling can be accommodated on the site without causing unreasonable environmental impacts or impacts on neighbouring amenity, with particular reference to view sharing. The Panel are advised that DA2015/1123 granted consent for a two / three storey dwelling on the northern part of lot 3 known as 2 Wyadra Avenue and this consent has been activated with the construction of the driveway. It is noted that the indicative height of the proposed dwelling sits up to 3.2m lower than the approved dwelling.

The assessment of the detailed design of the dwelling including consideration of impacts on residential amenity and the natural environment will be subject to a separate development application.

The application is being referred to the NBLPP as a total of eleven (11) unique submissions were received in relation to the original application. The issues raised in the submission are largely addressed with the amended envelope and through consideration of any development application for the detailed design for the dwelling at No. 2 Wyadra Avenue. The amended plans were re-notified and one submission was received requesting the applicant to agree to a positive covenant to restrict the building envelope as agreed through mediation. It is Council's view that a planning condition requiring a positive covenant to limit the envelope is not reasonable or relevant as the envelope plans will form part of the approval should the Panel decide to approve the subject subdivision application.

In summary, the Panel can be satisfied that the proposal meets the aims and objectives and outcomes of the relevant policies and controls as detailed in the body of this report. On balance, the proposal is recommended for approval having considered the relevant issues as part of the assessment of the plans submitted.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the consolidation of the three (3) existing allotments 14 Ellen Street, 16 Ellen Street and 2 Wyadra Avenue and re-subdivision to create three (3) lots, retaining the existing two (2) dwelling houses and an indicative building envelope for a new two (2) storey dwelling. In detail the proposal includes:

Subdivision

- 14 Ellen Street - A boundary adjustment to the rear of 14 Ellen Street to add part of the garden of 2 Wyadra Avenue. A 1140mm right of way (ROW) is proposed along the southern boundary to provide pedestrian access to and from 2 Wyadra Avenue to Ellen Street. The proposed adjusted lot measures 450sqm (excluding the 45sqm ROW);
- 16 Ellen Street - A boundary adjustment between 14 Ellen Street and 16 Ellen Street to remove 1340mm strip of land along the southern boundary of 16 Ellen Street. Existing services to 16



Ellen Street are to be relocated north within the new boundary. A further boundary adjustment is proposed along the western boundary to include a strip of land from the existing approved lot 3 (2 Wyadra Avenue). The proposed adjusted lot remains to be 493sqm, and

- 2 Wyadra Avenue - A boundary adjustment to add the rear of 14 Ellen Street to the south of 2 Wyadra Avenue and. A further boundary adjustment to include a strip of land from lot 3, (2 Wyadra Avenue) into 16 Ellen Street. The proposed adjusted lot measures 587sqm (excluding the 99sqm access handle).

Indicative building envelope

Amended plans have been submitted which provide details of the envelope of a future two storey dwelling at 2 Wyadra Avenue. The detailed design of the dwelling will be subject to a separate DA. The indicative plans show that the existing detached structure currently located to the rear of 14 Ellen Street will be demolished and the footprint of the future new dwelling will sit over the footprint of the existing structure extending further to the east and north. The indicative plans show a car port located to the north of the dwelling accessed via a proposed parking platform off the existing driveway. A traffic report provide details of two options, option 1 a level parking platform and turntable and option 2 a ramp leading to internal parking.

The footprint and height of the indicative building envelope has been amended to include the following:

- A reduction in the height of the envelope by 1500mm;
- Additional excavation to a depth of 2977m to allow the future dwelling to sit lower into the site, The indicative roof height of the dwelling sits at RL41.840;
- A relocation of the footprint of the dwelling with the dwelling relocated 3000m to the south;
- A reduction in the footprint of the dwelling to increase the setback 1.2m to the east;
- A change in the parking with the introduction of car port to the north of the dwelling which will be accessed via a parking platform. The roof of the car port sits at RL44.400.

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 - 6.2 Earthworks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C1 Subdivision
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - E2 Prescribed Vegetation
Warringah Development Control Plan - E5 Native Vegetation
Warringah Development Control Plan - E6 Retaining unique environmental features
Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	<p>Lot 10 DP 14040 , 14 Ellen Street CURL CURL NSW 2096 Lot 101 DP 1224100 , 16 Ellen Street CURL CURL NSW 2096 Lot 102 DP 1224100 , 2 Wyadra Avenue FRESHWATER NSW 2096</p>
Detailed Site Description:	<p>The subject site consists of three (3) lots, namely:</p> <p>Lot 10, Deposited Plan No. 14040, 14 Ellen Street Curl Curl; Lot 101, Deposited Plan No. 1224100, 16 Ellen Street, Curl Curl; Lot 102, Deposited Plan No. 1224100, 2 Wyadra Avenue, Freshwater.</p> <p>The Ellen Street lots are located near the north end of Ellen Street on the high western side of the street. Wyadra Avenue is a battle axe shaped allotment high above and behind the Ellen Street lots. It was created by a subdivision of 16 Ellen Street (DA2015/1123).</p> <p>14 Ellen Street has a site width of 12.575m and an area of 633sqm and is developed with a three storey dwelling house with an integrated double garage at the front. It has a single storey structure to the rear of the site above and behind the house on top of the cliff and accessed by a set of stairs along the south side of the house. 14 Ellen Street has a total site area of 633sqm.</p> <p>16 Ellen Street has a site width of 18.67m and an area of 493sqm and is developed with a three storey dwelling house with an integrated double garage at the front. 16 Ellen Street has a total site area of 493sqm.</p> <p>The battle axe lot at 2 Wyadra Avenue was a result of a recent subdivision of 16 Ellen Street (DA2015/1123). 2 Wyadra Avenue is a vacant battle axe shaped allotment with</p>

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a narrow access handle with a new concrete driveway from Wyadra Avenue. There is a set of timber stairs for access from the driveway to the the north-western corner of the site. The site has a total area of 549sqm.

The site is located within the R2 Low Density Residential zone from the WLEP 2011.

A large rock shelf sits near the centre of the site that in effect, cuts the site in half in terms of usable land and creates a platform on the western side that can accommodate a dwelling. There is no significant vegetation on the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwellings which are primarily two and three storeys in height. Stewart House, a local heritage item, is located to the immediate north. Curl Curl Beach is located to the east.

Map:



SITE HISTORY

A search of Council records revealed the following relevant history:

14 Ellen Street

DA1998/10778 for alterations and additions to an existing cottage at 14 Ellen Street was approved on 9 February 1999. The approval included a single storey enclosed structure in the rear (western) section of the site with a deck annotated to reference a "gazebo". A walkway and stairs leading from the rear

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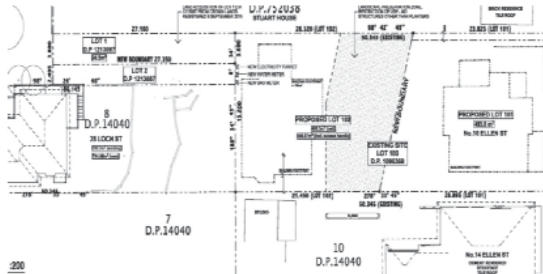
lower garden to the structure were also approved.

16 Ellen Street

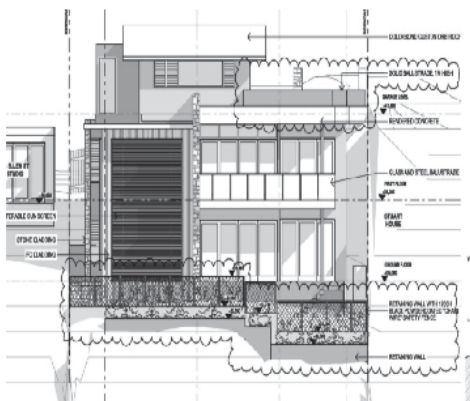
DA2005/0741 for site consolidation and two lot subdivision was refused on 8 June 2006 for the following reasons:

1. Pursuant to Clause 8F of the Environmental Planning and Assessment Regulation 2000, the application does not provide valid owner's consent for utilising a Crown Road Reserve for access purposes.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and the FS Curl Curl Locality Statement of Warringah Local Environmental Plan 2000, the proposal is inconsistent with the Desired Future Character of the FS Locality.
3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and the Built Form Control of the FS Curl Curl Locality Statement of Warringah Local Environmental Plan 2000, the proposal does not comply with the Housing Density provisions of the FS Locality Statement.
4. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and the Built Form Control of the FS Curl Curl Locality Statement of Warringah Local Environmental Plan 2000, the proposal will result in a numerical shortfall of Landscaped Open Space provision in proposed Lot 1 following subdivision, and a qualitative shortfall in relation to Lot 2.
5. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and Clause 38 Glare and Reflection of Warringah Local Environmental Plan 2000, the proposal will result in glare or light overspill that adversely impacts on the adjoining residence.
6. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and Clause 43 Noise of Warringah Local Environmental Plan 2000, the proposal will result in noise emission that adversely impacts on the adjoining residence.
7. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and Clause 56 Retaining Unique Environmental Features on Site of Warringah Local Environmental Plan 2000, the proposal is incompatible with the natural landscape feature on the site.
8. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and Schedule 7 - Matters for Consideration in a Subdivision of Land under Warringah Local Environmental Plan 2000, the proposal does not comply with the allotment dimensions provisions of Schedule 7.

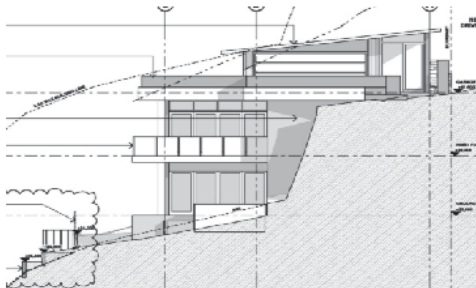
DA2015/1123 for the construction of a part two / three storey dwelling house double garage and driveway and subdivision of 1 lot into 2 lots was approved on 9 June 2016. The approval relates to the northern portion of the new lot to 2 Wyadra Avenue, refer to plans below. It is noted that the consent has been activated with the construction of the driveway.



Approved subdivision lot and footprint of new dwelling



Approved east elevation



Approved north elevation

History of subject DA

On 23 September 2020 amended plans were submitted detailing a revised indicative building envelope following mediation with the owners of No. 23 and 25 Loch Street. In detail, the modifications include:

- The roof of the dwelling has been lowered 1500mm amended roof RL41.840;
- The footprint of the dwelling has been reduced with the indicative ground floor bedroom and bathroom deleted;
- Ground floor lowered by 480mm as a result of an increasing excavation to a depth of 2977mm;
- The dwelling footprint has been relocated 3000mm closer to the southern boundary;
- The dwelling footprint has been setback a further 1.2m from the eastern boundary;
- A carport has been introduced to be located north of the dwelling accessed via the proposed parking platform. The indicative dimensions are 4170mm x 9150mm x 3060mm in height;
- Bin store shifted north;
- East eaves reduced 600mm;

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- North eaves reduced 1100mm;
- Inclusion of full height privacy screens to west and south face of carport, and
- Skylight deleted.

The amended traffic report described two options for parking:

Option 1 - flat parking platform as per the amended envelope which depicts a parking platform and car port located within the northern section of the site.

Option 2 - Ramped portion to internal parking as per the original envelope.

Height poles have been installed to reflect the approved dwelling pursuant to DA2015/1123 (blue poles) and both the original proposed envelope (red poles) and the amended envelope (green poles).

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. 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</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND



The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/10/2020 to 09/11/2020 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 16 submission/s from:

Name:	Address:
Mr Stephan Nicholas David	4 / 28 Loch Street FRESHWATER NSW 2096
Mr Crispin Marcel Swan	17 Loch Street FRESHWATER NSW 2096
Trustees Of Stewart House	44 Carrington Parade CURL CURL NSW 2096
Jamie Cockerill	5 Batho Street FRESHWATER NSW 2096
Dr Raymond Harvey Owen	8 Loch Street FRESHWATER NSW 2096
Mr Scott Marshall Nowell	5 Loch Street FRESHWATER NSW 2096
Mr Andrew Robin Smith	25 Loch Street FRESHWATER NSW 2096
Mrs Jenny Thompson	15 Loch Street FRESHWATER NSW 2096
Dominica Andersen	2 / 28 Loch Street FRESHWATER NSW 2096
Mr Darren Andrew Holland	23 Loch Street FRESHWATER NSW 2096
Ms Tania Brenda Holland	23 Loch Street FRESHWATER NSW 2096
Willowtree Planning	Suite 4, L7, 100 Walker Street NORTH SYDNEY NSW 2060
Mr Mark Andrew Casazza	21 Loch Street FRESHWATER NSW 2096
Withheld	REDFERN NSW 2016
Mrs Tania Holland Mr Darren Holland	23 Loch Street FRESHWATER NSW 2096
Holding Redlich Lawyers	Level 65 MLC Centre 19 Martin Place SYDNEY NSW 2000

A total of fourteen (14) submissions are registered as been received following notification of the original DA. Three (3) submissions were received from the owners of No 23 and No 25 Loch Street. In addition, three submissions were received from two separate Planning consultants and a lawyer in respect of concerns from the same owner of No 23 and No 25 Loch Street. The total number of relevant submissions is therefore calculated to be eleven (11).

Following mediation with the primary objectors the application was amended on the 23 September 2020. The amended application was re-notified and at the time of writing this report two (2) additional submission were received. One from a person that lodged a submission to the original proposal reiterating issues with the loss of public land and one from a lawyer on behalf of the owners of No. 23 and No 25 Loch Street stating that the amended scheme is supported subject to a number of conditions. The requested conditions include a request for the registration of a restrictive covenant limiting the building height, no structures (plant, machinery, discs or antennae) to exceed the approved building height, solar panels to be a non reflective material, an acoustic consultant be engaged to ensure noise from the car port will not exceed 5bB(A) to No 23 and No 25 Loch Street, materials of the roof to be non-reflective and ancillary structures not to exceed the maximum height. A response to the requested conditions and other issues is provided below along with a response to the primary issues raised through the pubic consultation process.



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

- View loss;
- Irregular lot which is too small;
- Privacy issues;
- Overdevelopment of the site;
- Insufficient open space;
- Visual impact from Curl Curl Beach;
- Impacts on solar access;
- Loss of bushland and impacts on wildlife;
- Impacts of rock outcrop;
- Construction impacts;
- Precedent;
- Unlawful secondary dwelling at No. 14 Ellen Street;
- Loss of public land, and
- Conditions are required to address amenity issues.

The matters raised within the submissions are addressed as follows:

- **View loss to Curl Curl beach and the ocean. The increase in the size of the allotment to 2 Wyadra Avenue and the height and scale of the indicative dwelling and parking platform will impact on ocean views from the neighbouring dwellings. The proposal will also impact on ocean views from the dwellings as approved to be modified. The proposed house should be re-located to minimise view loss.**

Comment:

The DA seeks consent for subdivision, no work is proposed as part of this application. The indicative plans which provide details on the envelope of a future dwelling at 2 Wyadra Avenue have however been assessed and to determine the extent of view loss from the proposal, Council has applied the four principles outlined within the Land and Environment Court case *Tenacity Consulting v Warringah Council*. This is discussed in detail under section Clause D7 of this report.

In summary, the nature of the view (principle 1) are ocean views and views of the land interface with Curl Curl Beach. Principle 2 view from neighboring properties to the west and south-west can be observed from living rooms, kitchens, bedrooms and decks across the rear and side boundaries of the subject site. Principle 3 the extent of the impact has been reduced with the amended design which reduced the height of the envelope by 1500mm and modify the building footprint. Principle 4, the amended plans indicate that the envelope generally complies with the built form controls and has been assessed as reasonable with moderate to minor view loss.

- ***The subdivision pattern is irregular and not in consistent with the existing pattern of development in terms of its configuration and size and is inconsistent with the objectives of the R2 Low Density Residential zone and the clause 4.1 in regards to minimum lot size;***

Comment:

It is agreed that the subdivision pattern is irregular and different to the majority of traditional rectangular shaped subdivision lots in the surrounding area. It is however noted that Stewart House, which adjoins the subject site to the immediate north, is the exception to the traditional



pattern with a large building occupying a parcel of land extending from Carrington Parade to Batho Street.

Furthermore, DA2015/1123 approved the battle axe lot known as 2 Wyadra Avenue and the construction of the driveway to this new lot activated the 2015 consent. As such, the former consent has established the pattern of development. The subject DA seeks to reconfigure the boundaries of the lot to include a portion of the existing land at No 14 Ellen Street. The increase in the size of the lot ensure that there is sufficient space to sit the future dwelling on the lot while minimising impacts on the landform and neighbouring properties. All three lots comply with the minimum lot size. The issue on sub-division is discussed in further detail under Clause 2.3 of the WLEP 2011 and Clause C1 of the WDCP.

- ***Loss of privacy to rear yards of Ellen Street and Loch Street;***

Comment:

The DA seeks consent for subdivision and the detail design of the future dwelling at No 2 Wyadra Avenue including the location of windows and private open space will be considered as part of the merit assessment of any future DA for the dwelling.

Despite this the concept plans demonstrate a future dwelling can be accommodated on the site without creating unreasonable impacts on neighbours in terms of loss of privacy. The indicative details demonstrate that there are no windows on the rear (west elevation) of the future dwelling and a privacy screen will be installed along the western and southern edge of the car port.

Refer to further discussion under Clause D8 Privacy.

- ***The proposal represents over development of the site in terms of the the increase in the lot size to 2 Wyadra Avenue and the height, bulk and scale of the indicative new dwelling;***

Comment:

The proposal is compliant with the lot size and the envelope of the dwelling sits 1.5m below the maximum 8.5m height limit. With the exception of the minor breach in rear setback is generally compliant with all other the built form controls. The proposal has been amended to reduce the footprint and height of the indicative envelope. The amended concept plans demonstrate that a dwelling can be accommodated on the site. A condition will require compliance with the amended concept plan which will ensure that the density, bulk, height and scale of the future dwelling remains complaint with the built form controls.

It is noted that the owner of No 23 and No 25 Loch Street has requested the a planning condition be imposed requiring a positive covenant to limit the maximum height. It is not considered necessary to impose a requirement by way of a planning condition for a positive covenant relating to the building envelope to allow the subdivision to be permitted. Reference is made by the objector to case law (Parrot v Kiama (2004) NSWLEC 77) where the Courts held that such conditions are appropriate in certain circumstances. The positive covenant, in this case, related to a drainage easement and it is agreed a covenant would be the appropriate and established mechanism to protect downstream properties. The circumstances and need for the positive covenant by way of a planning condition were therefore quite different.

In regards to the subject sub-division, a condition will be included in any approval requiring compliance with the amended indicative envelope plans which specifies RL's for the dwelling and car port. This condition is considered to be reasonable, relevant, precise and enforceable. Should the applicant decide to include a restrictive covenant on the land relating to a maximum RL (height) this can also be achieved independently of the Council approval.



- **It is unclear whether a sufficient amount of impermeable landscape open space is provided to the new lot;**

Comment:

A detailed assessment of landscape open space is discussed under Clause D1 of this report. In summary, it is confirmed that the lot known as 2 Wyadra Avenue provides a compliant 40% site area of landscape open space.

- **Visual impact from Curl Curl Beach;**

Comment:

The topography of the land rises to the west and the existing dwellings, located to the rear at No. 23 and No. 25 Loch Street, will continue to sit at a higher level than the future dwelling at No. 2 Wyadra Avenue. As such, there will be limited visual impact of the future dwelling when looking west from Curl Curl Beach. This issue of visual impact of the dwelling from Curl Curl Beach will be assessed in greater detail as part of the future DA for the construction of the dwelling.

- **Impacts from construction noise and vibration from rock drilling should be managed to protect the amenity of the children in residence at Stewart House. In addition, any damage caused during construction should be rectified and reimbursed by the applicant;**

Comment:

The proposal is for subdivision including the re-alignment of lot boundaries, no work is proposed as part of this application. Any future DA for the dwelling will be required to be supported with a geotechnical report which will make recommendations for managing construction noise and vibration. Standard conditions on the future DA for the construction of the dwelling will also restrict demolition and excavation and require pre and post dilapidation reports to ensure that any damage to neighbouring properties during construction is rectified by the applicant.

- **Impact on solar access to neighbouring properties;**

Comment:

The proposal is for subdivision including the re-alignment of lot boundaries. Any future DA for the construction of the dwelling shall include shadow diagrams to demonstrate compliance with the solar access requirements of the WDCP. Despite this it is noted that the concept plans demonstrate that the envelope for the future dwelling is generally compliant with the built form control that are designed to protect solar access to neighbouring properties.

- **Loss of bushland and Impacts to wildlife.**

Comment:

The proposal is for subdivision including the re-alignment of lot boundaries. It is considered that compliance with the applicable provisions relating to wildlife and bushland will be assessed at the stage of any further development applications, and/or has been assessed through the previous assessment processes for the existing consent. It is also noted that the site has been altered with the construction of the detached structure to the rear of No. 14 Ellen Street and a site visit confirmed that there is limited significant bushland on the remaining part of the site.



- **The site is constrained in terms of the rock platform and steeply sloping site the proposal will impact to the natural landform / the rock outcrop;**

Comment:

It is agreed that the site is constrained with the significant slope and the rock outcrop. The subject application is for subdivision including the re-alignment of lot boundaries, it does not seek consent for any building or structural works. Compliance with the applicable provisions relating to sloping land, earthwork and retaining of unique environmental features will be assessed at the stage of any further development applications. It is noted that the amended envelope increased the setback of the future dwelling from the edge of escarpment in order to protect this unique feature of the site.

Furthermore, issues relating to impacts on the rock outcrop were considered under the assessment of DA2015/1123 for the approval of a dwelling (including excavation) which were assessed as acceptable. The assessment of DA2015/1123 included consideration of a geotechnical report which made recommendations for the design and construction of the dwelling. It is noted that this consent has been activated with the construction of the access road.

- **The proposal will create a precedent for other similar developments;**

Comment:

Given the unique circumstances of this site it is not considered that approval will set a precedent for other similar developments.

- **The secondary dwelling in the rear of No. 14 Ellen Street is unlawful.**

Comment:

A search of Council records confirm that the structure referred to as a "secondary dwelling" in the applicants documentation was approved as a "gazebo" in the rear western end of garden to No. 14 Ellen Street under DA1998/10778.

- ***The DA should not allow the loss of public land for private gain.***

Comment:

The driveway leading from Batho Street to No. 2 Wyadra Avenue was approved under DA2015/1123 and has since been constructed. A 95sqm portion of land was acquired from Crown Lands to facilitate the access and (Lot 1 DP 1213087) was registered on 8 September 2015. The issue relating to the loss of public land is therefore not relevant to the subject DA.

- ***Conditions to be imposed on the consent relating to roof top plant, roof colour and materials and the need for acoustic verification in respect of the use of the car port.***

Comment:

The DA is for sub-division only. Matters relating to roof colour and materials, roof top plant and potential acoustic impacts from the use of the car port will be considered as part of the



assessment of any DA for the future house.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal is noted to be for subdivision only.</p> <p>From a landscape perspective, the sites contain significant rock outcrops which form part of an escarpment running along the rear of the properties.</p> <p>Any future development would need to protect the escarpment and rock outcrops. It's difficult to assess actual impacts as only indicative building outlines are provided. Providing that the escarpment can be retained, no objections are raised with regard to landscape issues.</p>
NECC (Bushland and Biodiversity)	<p>The following biodiversity-related provisions apply to the subject site:</p> <ul style="list-style-type: none"> - Warringah DCP Clause E2 Prescribed Vegetation - Warringah DCP Clause E5 Native Vegetation - Warringah DCP Clause E6 Retaining unique environmental features <p>The proposal is for subdivision lot boundary amendments. It is considered that compliance with the applicable provisions will be assessed at the stage of any further development applications, and/or has been assessed through the previous assessment processes for the existing consent.</p>
NECC (Coast and Catchments)	<p>The proposal is supported without condition. The site is not impacted by coastal processes or covered by the Coastal Management Act or State Environmental Planning Policy.</p>
NECC (Development Engineering)	<p>Comments 2/11/2020 The TTW Traffic report dated 4 September 2020 detailing the provision of a vehicle turntable is supported subject to Council's Traffic Engineers concurrence. Conditions to be provided.</p> <p>Comments 2/7/20 The previous development engineering comments have not been addressed therefore the application is not supported.</p> <p>Comments 2/4/2020 The 3 Lot resubdivision is not acceptable for the following reasons:</p> <ol style="list-style-type: none"> 1) No details have been provided of the proposed parking platform, These would include typical cross sections with existing and finished surface levels, retaining wall locations etc. An engineering plan drawn at a suitable scale prepared by a suitably qualified engineer. 2) The proposed parking platform is to demonstrate compliance with AS2890.1 2004- Off Street Carparking such that the turning templates detail the ability of a typical service vehicle to exit the site in a forward

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Internal Referral Body	Comments		
	<p>direction.</p> <p>3) A stormwater management report/calculations are to be provided to demonstrate the existing stormwater easement/stormwater line has adequate capacity to handle the additional flow in a 1 in 100 AEP event for the increased lot size (No 2 Wyadra Avenue).</p> <p>4) Details are to be provided of the lot(s) that benefit from the ROW easement denoted A (DP1213087)</p>		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	<p>This application has been referred as it is in the vicinity of a listed heritage item, being Item 1128 - Building known as "Stewart House", Carrington Parade, South Curl Curl, listed in Schedule 5 of Warringah Local Environmental Plan 2011.</p> <p>The subject site is located adjacent to the upper southern boundary of the Stewart House site, approximately 40 metres from the original Stewart House building which is the subject of the heritage listing.</p>		
	Details of heritage items affected		
	<p>Details of the heritage item in the vicinity, as included in the Warringah Heritage Inventory are:</p> <p>Item 1128 - Building known as "Stewart House", Carrington Parade, South Curl Curl</p> <p><u>Statement of Significance</u></p> <p>A representative example of the institutional buildings which were erected in the area to provide health & welfare services associated with the sea. Socially important due to the role that it has played in public health & child welfare since 1930.</p> <p><u>Physical Description</u></p> <p>Elevated face brick building of symmetrical design & central entrance. Tiled hipped roof with stepped parapet centrally located above entrance pavillion. Projecting bays at either end. Flat roofed (enclosed) verandahs with terracotta shingle skirts. Circular driveway at front. Central stairway to entrance. Flagpole.</p>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
RAIA Register of 20th	No		

Internal Referral Body	Comments
	Century Buildings of Significance
	Other
	No
	Consideration of Application
	<p>This application proposes the consolidation and re-subdivision of three existing allotments, being 14 and 16 Ellen Street and 2 Wyadra Ave. While an indicative dwelling is shown on 2 Wyadra Ave, this application only involves subdivision and no construction is proposed. The 2 dwellings on 14 and 16 Ellen Street are remaining.</p> <p>Given the distance of the site from the original Stewart House building fronting Carrington Parade and the fact that this application is only for consolidation and re-subdivision, there will be no impact upon the heritage significance of the heritage item which is "Stewart House".</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of WLEP 2011</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A</p>
Traffic Engineer	No objections subject to conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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



contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	450sqm	Lot 1 - 14 Ellen Street 450sqm (excluding the ROW) Lot 2 - 16 Ellen Street 493sqm Lot 3 - 2 Wyadra Avenue 587sqm (excluding access handle)	N/A N/A N/A	Yes Yes Yes
Height of Indicative Buildings / Envelope:	8.5m	6.8m envelope of future dwelling 6m envelope of car port	N/A N/A	Yes Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

6.2 Earthworks

The subject application is for subdivision, it does not seek consent for any building or structural works. The indicative building envelope for the future dwelling includes a concept for excavation to a depth of 2.9m. It is noted that development consent DA2015/1123 approved excavation up to a depth of 3.7m to facilitate the construction of a new two / three storey house. A geotechnical report was submitted with DA2015/1123 and the earthworks were assessed as acceptable.

Council's Engineer has no objections to the sub-division application, subject to conditions, who confirms that any future DA for the dwelling house will be required to be supported with a geotechnical report to assess the impacts of future earthworks on existing drainage patterns and soil stability in the locality and provide recommendations to ensure compliance with the provision of Clause 6.2 3 (a) and Clause 6.4 (Development on sloping sites) of the WLEP 2011.

Warringah Development Control Plan

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Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.2m	N/A	Yes
B2 Number of storeys	2 /3	2	N/A	Yes
B3 Side Boundary Envelope	5m	5m (west)	N/A	Yes
	5m	5m (south)	N/A	Yes
B5 Side Boundary Setbacks	0.9m	0.9m (west)	N/A	Yes
	0.9m	1.7m (south)	N/A	Yes
B7 Front Boundary Setbacks	6.5m (To Batho Street)	28m	N/A	Yes
B9 Rear Boundary Setbacks	6m (To the western boundary with No 23 and No 25 Loch Street)	0.9m	N/A	No
	6m (to the eastern boundary)	4m -5.5m to 14 Ellen Street 12.8m to 16 Ellen Street	33.4% N/A	No Yes
	6m (to the eastern boundary)	12.8m to 16 Ellen Street	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	2 Wyadra Ave - 40% (234sqm)	261sqm (44%)	N/A	Yes
	16 Ellen Street 40% (197sqm)	241sqm (52.9%)	N/A	Yes
	14 Ellen Street 40% (180sqm)	129.6sqm (28.8%) 143.6sqm (including deck and paved areas) (31.9%)	11.2% 9.1%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C1 Subdivision	No	Yes
C2 Traffic, Access and Safety	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

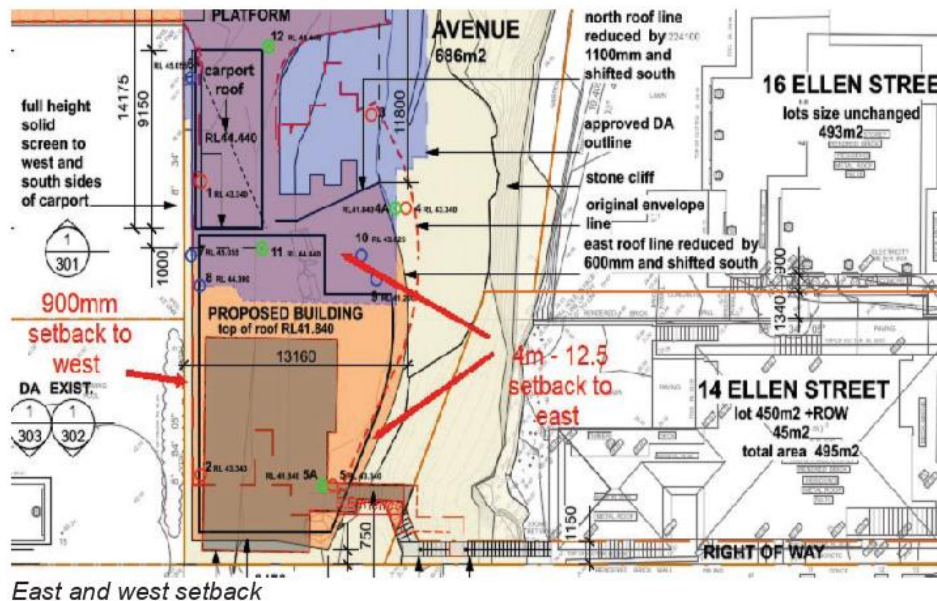
B9 Rear Boundary Setbacks

Clause B9 requires:

- development is to maintain a minimum setback to rear boundaries.
- The rear setback area is to be landscaped and free of any above or below ground structures.
- On land zoned R3 Medium Density where there is a 6m rear boundary setback, above and below ground structures and private open space, including basement carparking, vehicle access ramps, balconies, terraces, and the like shall not encroach the rear building setback.

Comment:

As mentioned in the Built Form Control table section above, the proposal is located a minimum of 900mm from the western boundary shared with No. 23 and No 25 Loch Street. Due to this site being a battle axe lot, the western boundary to No. 23 and 25 Loch Street is an internal boundary, however, in this particular case it is reasonable to use the objectives listed below to assess this aspect of the indicative building envelope.



Merit consideration:

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

- To ensure opportunities for deep soil landscape areas are maintained.

Comment:

The site will contain 44% landscaped open space for future landscaping and will protect the l

- To create a sense of openness in rear yards.

Comment:

The 900mm setback to the western boundary will not facilitate the creation of a sense of openness between the subject dwelling and the western boundary. However, the need to locate the dwelling away from the rock shelf means that a 6.0m setback to the boundary with No. 23 and 25 Loch Street is impractical. Furthermore the siting to the western boundary is similar to the part 2/3 dwelling approved under DA2015/1123.

The western elevation of the dwelling has been reduced to sit at a maximum height of approximately 4m. This is 4.5m below the 8.5m maximum height limit and 2.3m lower than the approved dwelling. Landscaping is proposed within the setback area to screen the western elevation which has also been designed to be reasonably articulated.

Given the unique circumstances of the site, the need to preserve the rock shelf, the compliance with the minimum lot size the increase setbacks to the south and east and the reduced height the indicative envelope has been assessed as providing a reasonable sense of openness in compliance with objective 2.

- To preserve the amenity of adjacent land, particularly relating to privacy between buildings.



Comment:

The amended envelope addresses issues in respect of visual and acoustic privacy between the future dwelling and neighbouring dwelling. The indicative envelope suggests that no windows will be located along the western boundary and it is likely that the windows will take advantage of ocean view to the east. It is also noted that the amended envelope includes a full height solid screen to the west and south side of the carport which has been included to protect the privacy of the neighbouring properties No. 23 and No. 25 Loch Street. The detailed design of the dwelling will be subject to a future DA where a full assessment of issues relating to privacy will be considered.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The proposal will add a new dwelling in a location that has not previously contained a dwelling. The dwelling will, in part, replace the existing single storey studio located to the rear of No. 14 Ellen Street and occupy, in part, the footprint of the 2/3 storey dwelling approved under DA2015/1123.

It is also noted that the indicative siting of the dwelling is consistent with the alignment of Stewart House, a large multi unit building, located to the north. The indicative envelope will preserve the large rock shelf on the site, which is the main unique feature of landscape. The proposal will meet the minimum lot size control, and will reasonably maintain the pattern of buildings, rear gardens and landscape elements.

- To provide opportunities to maintain privacy between dwellings.

Comment:

As discussed above, the indicative envelope demonstrates that a dwelling can be accommodated on the site which will ensure that opportunities to maintain privacy between dwellings is maintained.

2 Wyadra Avenue is a battle axe site with the frontage taken to be Batho Street. As such, it could be argued that the rear boundary is to the east and the setback of the dwelling to the rear (eastern boundary) is between 4m to 12.8m with a building separation of 12.9m to the rear of No. 14 Ellen Street and approximately 24m to the rear of No.16 Ellen Street. Given the topography of the site any the spatial separation the proposal can be designed to provide opportunities to maintain privacy between dwellings. Issues relating to privacy will be assessed in detail with the future application for the detailed design of the dwelling.

In summary, having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011, WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot	R2 Low Density Residential zone	Lots 1 and 2 both comply with the	(a) Min Width

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requirements	<p>requirements:</p> <p>Proposed new allotments:</p> <p>a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m²</p>	<p>minimum width, depth and building area.</p> <p>Lot 3 (2 Wyadra Ave) has a dimension of wide 30.7m x depth 23.4m to the north and 12.1m to the south.</p>	<p>- Yes (b) Min Depth - No - to lot 3 (c) Min building area - Yes</p>
Access	<p>Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.</p> <p>Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.</p> <p>Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.</p> <p>Driveways in excess of 200 metres will not be allowed for residential development.</p> <p>Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.</p> <p>Passing bays should have regard to sight conditions and minimise vehicular conflict.</p> <p>Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.</p>	<p>It is noted that the accessway to 2 Wyadra Avenue approved under DA2015/1123 has been constructed which has activated this consent.</p>	<p>Yes</p>

	<p>Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.</p> <p>Width of accessways are to be as follows:</p> <table><tr><th>Number of lots to be serviced</th><th>Width of clear constructed accessway (m)</th></tr><tr><td>1 - 5</td><td>3.5</td></tr><tr><td>6 - 10</td><td>5.0</td></tr><tr><td>in excess of 10</td><td>Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)</td></tr></table> <p>Provision of services in rights of carriageway are as follows:</p> <table><tr><th>Number of lots to be serviced</th><th>Additional width to be provided in Right of Carriageway (m)</th></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>	Number of lots to be serviced	Width of clear constructed accessway (m)	1 - 5	3.5	6 - 10	5.0	in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)	Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	Up to 3 lots	0.5	4 or more lots	1.0		
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6 - 10	5.0																
in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)																
Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)																
Up to 3 lots	0.5																
4 or more lots	1.0																
Design and construction	All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban	Subject to conditions the design of the proposed parking platform can comply with the required design and construction standards. The details design and assessment of the platform will be subject to a future DA.	Yes														

	<p>Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards.</p> <p>Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>		
Drainage	<p>Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.</p>	<p>The proposal was referred to Council's Development Engineers who raised no objections, subject to conditions.</p>	Yes
Restrictions	<p>Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.</p>	<p>The applicant is required to create an easement for services and drainage. However, it is not considered necessary to require by a positive covenant relating to the building envelope by way of a planning condition, refer to discussion on this issue elsewhere in this report.</p>	Yes
Environmentally constrained land	<p>In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment.</p> <p>Where possible, lot boundaries should utilise natural land</p>	<p>The lot boundary and siting of the dwelling has taken into account the topography of the site, in particular, the large rock shelf. The footprint of the new dwelling is indicated to be sited away from the escarpment of the rock shelf</p>	Yes



	features such as creeks, escarpments and rock outcrops.		
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	The site is not mapped as being at risk from bushfire	N/A

Description of non-compliance

The proposal complies with all aspects of the control with the exception of the minimum lot depth to lot 3. As discussed elsewhere in this report the battle axe lot was approved under DA2015/1123, the subject DA seeks to increase the size of the lot, refer to plan below.

Merit consideration

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

- *To regulate the density of development.*

Comment:

The proposal will result in a boundary realignment where all three (3) lots comply with the minimum lot size. Despite the variation in the minimum depth the lot 3, (2 Wyadra Avenue), the lot has a width which is in excess of the DCP requirements and it is considered that the dimensions and size of the lot are appropriate to regulate the density of the future dwelling. The concept plans demonstrate that a dwelling can be accommodated on the site that generally complies with the built form controls, provides suitable access and drainage while addressing the environmental constraints of the site.

- *To limit the impact of new development and to protect the natural landscape and topography.*

Comment:

The proposed subdivision is designed to limit the impact on the natural area, the rock crop and escarpment, at the front (eastern portion) of 2 Wyadra Avenue. The concept plans demonstrate that the dwelling will be located on the upper, flatter part of the site, helping to minimise impacts on the natural landscape and topography.

- *To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.*

Comment:

Lot 2 Wyadra Avenue allows for sufficient landscaping and private open space and subject to conditions the lot can provide suitable drainage, utility service and vehicular access. The breach with the minimum lot depth will not unreasonably impact on the ability of the development meeting objective 3 of the control.



- *To maximise and protect solar access for each dwelling.*

Comment:

The indicative envelope generally complies with the built form controls relating to height, setbacks and envelope and the siting and massing of the envelope will maximise solar access to the future new dwelling while minimising impacts on solar access to existing dwellings. The impact of shadowing will be assessed in detail when the DA is lodged for the new dwelling at No. 2 Wyadra Avenue.

- *To maximise the use of existing infrastructure.*

Comment:

The access road to No. 2 Wyadra Avenue has already been constructed and condition will ensure that the required infrastructure will be provided for the new lot.

- *To protect the amenity of adjoining properties.*

Comment:

The proposed sub-division itself does not result in any unreasonable impacts to neighbours. Amenity impacts can only be fully assessed in detail when the application for the future dwelling is submitted. The future DA for the detailed design of the dwelling will be required to demonstrate compliance with the relevant amenity controls in the DCP. Notwithstanding this, sufficient information has been provided in support of the subject DA for subdivision, including an amended envelope, that demonstrates that the amenity of adjoining properties will not be unreasonably compromised. Issues relating to the protection of residential amenity will be subject to further considered as part of the assessment of any future development application for the detailed design of the dwelling.

In response to the request for conditions to be imposed relating to the materials and colour of the roof, roof top plant and an acoustic assessment of the use of the car port these issues will be considered under the future DA and it is not reasonable or necessary to include conditions relating to these factors in the determination of the subject DA for sub-division.

- *To minimise the risk from potential hazards including bushfires, land slip and flooding.*

Comment:

The site is mapped as being within a landslip area. A geotechnical report will be required to be submitted with any future DA for a new dwelling at 2 Wyadra Avenue.

In summary, the performances of the the proposal against the controls has demonstrates that the sub-division and re-alignment of boundaries is suitable. The non-compliance with the minimum depth to 2 Wyadra Avenue will not result in in related non-compliances with the other provisions or objectives of the control and will not result in unreasonable impacts to neighbouring properties. Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011, WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal demonstrates that the subdivision is suitable and is supported, in this particular circumstance.



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

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposal provides a compliant amount of open space to No 2 Wyadra Avenue and 16 Ellen Street. The boundary adjustment will reduce the size of 14 Ellen Street to 495sqm including the right of way (450sqm excluding the ROW) as such a total landscape area of 180sqm is required. The site provides for a 129.6sqm (28.8%) 143.6sqm (31.9%) including the deck and paved areas.

Merit consideration

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

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

Comment:

There will be no loss to the existing planting along the street frontage of No. 14 Ellen Street. The boundary adjustment relates to the rear of the site.

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

Comment:

The boundary adjustment and breach of landscape open space to No. 14 Ellen Street will not result in any unreasonable impacts on indigenous vegetation, topographical features or habitat for wildlife.

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

Comment:

The boundary adjustment will not change existing areas of planting. The area of landscape open space that will be lost as a result of the boundary adjustment relates to the escarpment of the rock outcrop which has presents limited opportunities for planting

- *To enhance privacy between buildings.*

Comment:

The boundary adjustment to No. 14 Ellen Street will not impact on privacy between buildings. Due to the land form the future dwelling at No. 2 Wyadra Avenue will overlook the roofs of the properties to the east.



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

Comment:

The boundary adjustment will not change existing areas of planting. The area of landscape open space that will be lost as a result of the boundary adjustment relates to the escarpment of the rock outcrop which has presents limited opportunities for recreational use.

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

Comment:

Adequate space will be retained to No. 14 Ellen Street for service functions including clothes drying.

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

Comment:

The boundary adjustment will not unreasonably impact on water management to No. 14 Ellen Street.

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

D7 Views

Merit consideration

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

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

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

View will be affected from the following properties:



- 25 Loch Street,
- 23 Loch Street and
- 19 Loch Street.

No 23 and 25 Loch Street

Views of the ocean, Curl Curl Beach and the land water interface and South Curl Curl rock pool will be affected by the proposal.

19 Loch Street

View of the ocean, Curl Curl Beach, Curl Curl Surf Life Savers Club (LSC) and the land water interface will be affected by the proposal.

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

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

Comment to Principle 2:

The views are obtained from from both a standing and siting position from the rear of No 19, No. 23 and No. 25 Loch Street looking to the east. The greatest impact is from the lower ground floor deck of No 23 Loch Street from a sitting position. Refer to discussion on each property below.

No. 25 Loch Street

Expansive views of the ocean, Curl Curl Beach, the land and water interface and Curl Curl rock pool are obtained over the rear boundary of the subject site. The views are obtained from a standing and seated position from the lower ground level rear yard and from a small landing / deck adjacent to the rear of the dwelling. Views are also obtained from the the rear facing living room and kitchen windows primarily from a standing position.

No. 23 Loch Street

The views of the ocean, Curl Curl Beach, the land and water interface and Curl Curl rock pool are obtained over the rear boundary. The primary views are obtained from both a standing and siting position on the upper level deck and the open plan kitchen, living and dining room. Views are also obtained from a standing and siting position from the rear lower level deck which adjoins an (east) facing bedroom and the rear yard / pool area and cabana. It is noted that the view of the land (sand) water interface is limited from the rear lower level deck and bedroom.

No 19 Loch Street

The view of the ocean, Curl Curl Beach, the land and water interface and Curl Curl rock pool are obtained over the rear boundary. The primary are those directly to the east observed from both a standing and siting position on the upper level deck and the open plan kitchen, living and dining room and the lower deck and pool area. Secondary views across the side boundary of



the subject site are also of the ocean, Curl Curl Beach and the Surf Life Club.

3. Extent of impact

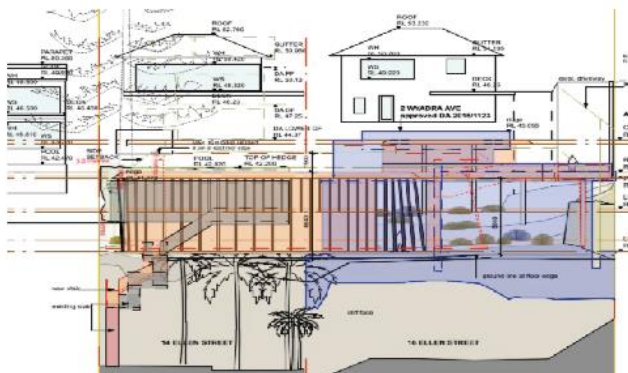
"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people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

Comment to Principle 3:

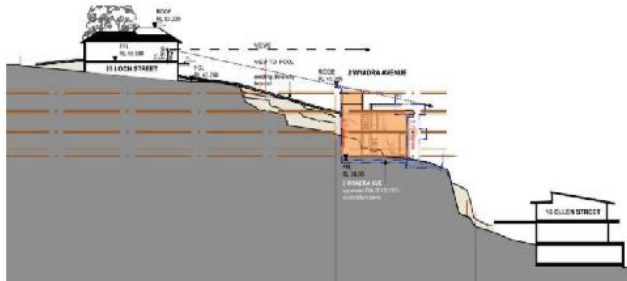
No 25 Loch Street

The amended envelope increases in height of the indicative envelope by between 0.5m - 1.1m to accommodate a car port RL 41.40 (located on the northern portion of the site). It is noted that the DA2015/1123 approved a two storey dwelling on the northern portion of the subject site which was had an approved height 0.7m higher than the indicative envelope on the northern portion of the site which relates to the car port. Furthermore, the footprint and depth of the car port is substantially smaller compared to the footprint / depth of the approved house. This reduction in the projection of the envelope to the east will reduce the view impact to No. 25 Loch Street from the dwelling already approved to which the consent has been activated with the construction of the driveway. The detailed design of the car port will be subject to a future DA for the dwelling

In summary there will be some moderate view loss from the the rear deck and garden of the land (sand) water interface of Curl Curl Beach, however, with the reduction in the depth of the envelope the view to the south curl curl ocean pool and the ocean beyond will still be visible and given the history of the site the view loss from the amended envelope is not considered to be unreasonable. Refer to the elevation and photos below.



Elevation showing the proposed envelope relative to the location of windows to No. 23 and 25 Loch Street.



Section showing the car port envelope and the view line from the windows of No 25 Loch Street



View from rear deck and garden

The proposal will result in a minor loss of view from the living room window from a sitting position, however, there will be limited impacts on the view observed from both the living room and kitchen from a standing position.



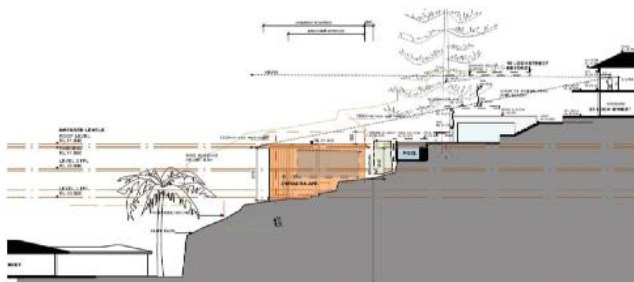
View from Kitchen



View from living room

No 23 Loch Street

The amended envelope reduces the height of the indicative dwelling, located within the southern portion of the site by 1.5m (RL41.8). As a result, it is considered that there will be no view loss of the interface between the land (sand) and ocean of Curl Curl Beach from the upper floor deck and the upper floor open plan living, kitchen and dining room, refer to section and photos below.



Section showing the view line from the deck and windows of No 23 Loch Street.



View from upper floor deck looking east over the subject site.



View from open plan living, dining and kitchen looking east

There will be some loss of view from the rear lower deck which adjoins a bedroom. However, the extent of this view loss has been reduced with the amended proposal and the view of the Curl Curl ocean pool and the ocean beyond will be retained.



View from lower deck

No 19 Loch Street

Lower level deck, pool and living room

The proposal will impact of the north facing view (both standing and sitting) looking across the side of the subject site from the lower level deck . The view lost will include the view of the Curl Curl Surf Life Club and part of the beach. There will be some loss of the same view but to a lesser extent standing within the living area (play room / gym / bar) close to the bi-fold doors. Although the amended envelope is relocated the dwelling closer to the southern boundary, on balance, the 1.5m reduction in the height of the envelope and the reduction in the projecting of the footprint to the east will reduce the extent of the view loss from the lower level deck. On balance the view loss to No. 19 Loch Street has been assessed as minor.



View from lower level deck which adjoins the pool area.

There will be minimal impact on view loss from the upper floor living area and deck. The view of the proposed envelope would replace the view of the roof of the existing gazebo structure to the rear of No. 14 Ellen Street.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The subject application is for subdivision and an adjustment of lot boundaries to include the creation of an amended larger lot (lot 3) to accommodate a future two storey dwelling. The application is supported with an indicative building envelope which demonstrates that the proposal generally complies with the built form controls including height, wall height, envelope and front and side setbacks. The minor non-compliance with the rear setback will not in itself result in any issues with respect to view sharing.

The envelope has been agreed to through mediation and has been assessed as acceptable in terms of compliance with the relevant planning controls to ensure that there is no unreasonable environmental impacts or impacts on neighbouring amenity in particular view sharing. The detailed design of the dwelling will be considered under a future application for the dwelling

Assessment against the objectives of Clause D7 Views

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

Comment:

The building envelope will not result in unreasonable impacts in terms of view sharing. The detailed design of the dwelling will be subject to a separate application.

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



Comment:

Canopy trees, including the mature Norfolk Pine tree to the west of the subject site will be retained and will be observed from Curl Curl beach and neighbouring properties in the context of the future dwelling.

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

D8 Privacy

The DA seeks consent for subdivision and the detail design of the future dwelling at No 2 Wyadra Avenue including the location of windows and private open space will be considered as part of the merit assessment of any future DA for the dwelling.

Despite this the concept plans demonstrate a future dwelling can be accommodated on the site without creating unreasonable impacts on neighbours in terms of loss of privacy. The indicative details demonstrate that there are no windows on the rear (west elevation) of the future dwelling and a privacy screen will be installed along the western and southern edge of the car port.

The amended envelope relocates the future dwelling closer to the southern boundary. Issues relating to the detailed design of the southern elevation such as high level windows or windows with external fixed privacy screens attached will be considered as part of the assessment of any DA for the dwelling. It is noted that the footprint of the dwelling sits forward of the pool and deck area to No 19 Loch Street to prevent direct overlooking. The dwelling sits adjacent to the rear garden of No. 12 Ellen Street and the south-eastern corner of the future dwelling is positioned 24m from the deck adjoining the rear of No. 12 Ellen Street, as such it is unlikely that there will be any loss of privacy to this property.

The proposed new dwelling is sited primarily to the rear of No. 14 Ellen Street and has a 4m - 5.5m setback from the proposed boundary. Due to the level difference between the existing dwelling at No. 14 Ellen Street and the proposed dwelling it is unlikely that there will be any loss of privacy as the east facing windows will overlook the roof of No. 14 Ellen Street.

E2 Prescribed Vegetation

The DA seeks consent for subdivision and will not therefore include any proposal to remove vegetation. Issues relating to the removal of vegetation will be assessed as part of any future DA for a new dwelling.

It is also noted that the site has been altered with the construction of the existing gazebo and deck to the rear of No. 14 Ellen Street. Issues relating to the removal of vegetation to allow for the approval of the house on the northern part of 2 Wyadra Avenue were also considered under DA2015/1123.

E5 Native Vegetation

The site is mapped as having native vegetation value. Clause E5 requires:

1. For modification of native vegetation where the area of land supporting the vegetation to be modified is greater than 100m² or the land supporting the vegetation to be modified forms part of an allotment where vegetation has been modified in the last five years:



- i. The applicant must demonstrate that the objectives have been achieved through a Flora and Fauna Assessment prepared in accordance with Council guidelines; and*
- ii. The applicant must demonstrate that the objectives have been achieved through a Biodiversity Management Plan prepared in accordance with Council guidelines that will protect native vegetation on the subject property.*

2. For modification of native vegetation in all other cases, the applicant must demonstrate that the objectives have been achieved.

Comment

The subject application is for subdivision and lot boundary adjustment. No work is proposed under the subject DA, however, it is noted that the indicative footprint of the future dwelling is similar to the footprint of the dwelling approved under DA2015/1123 combined with the existing detached structure to the rear of No. 14 Ellen Street. Any future DA for the construction of the dwelling will require the submission of a Flora and Fauna Assessment and a Biodiversity Management Plan to address Clause E5 of the WDCP.

E6 Retaining unique environmental features

Clause E6 requires

- 1. Development is to be designed to address any distinctive environmental features of the site and on adjoining nearby land.*
- 2. Development should respond to these features through location of structures, outlook, design and materials.*

Comment

The revised envelop relocates the footprint of the future dwelling away from the escarpment of the rock outcrop in order to minimise the impact on the unique environmental feature of the site. Any DA of for the construction of the dwelling will be required to provide additional information to address clause E6.

E10 Landslip Risk

The site is mapped as being of landslip risk B and C. It is noted that the amended envelope includes excavation to a depth of 2.9m which is 0.7m less than the excavation approved under DA2015/1123. No work is being proposed as part of the subject subdivision DA and a geotechnical report and a hydrological assessment of stormwater discharge and subsurface flow conditions will be required to be submitted with any future DA for the dwelling at 2 Wyadra Avenue.

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

DA2020/0147



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

CONCLUSION

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

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

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

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

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

The proposal complies with the minimum lot size and conditions are recommended to ensure compliance with sub-division controls relating to services, drainage and parking.

The building envelope has been amended following mediation and demonstrates that a dwelling can be accommodated on the site without resulting in unreasonable impacts on neighboring residential amenity, in particular view sharing. The amended envelope reduced the height of the dwelling by 1.5m to sit up to 3.2m lower than the height of the approved dwelling. The indicative envelope generally complies with the built form controls including height, wall height, front and side setbacks, side envelope and landscape open space. The minor breach in the lot depth and rear set back will not result in unreasonable amenity impacts. The breach in the open space requirement to No. 16 Ellen Street has been assessed as acceptable given that it will not compromise the amenity of the dwelling or result in unreasonable impacts to other properties or the streetscape.

The detailed design of the dwelling will be subject to a separate application which will make a full assessment of amenity impacts and potential impacts on the natural environment including the significant rock outcrop.

The issues raised in the submissions have been address with the amended plans and will be fully considered as part of any development application for the detailed design of the dwelling at No. 2 Wyadra Avenue.



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



RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/0147 for Consolidation of 3 lots into one lot and resubdivision into 3 Torrens Title lots on land at Lot 10 DP 14040, 14 Ellen Street, CURL CURL, Lot 101 DP 1224100, 16 Ellen Street, CURL CURL, Lot 102 DP 1224100, 2 Wyadra Avenue, FRESHWATER, 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
DA1 Amend 1 Drawing 01 Issue 4 Survey Future Boundaries	22 September 2020	Peter Stutchbury Architecture
DA1 Amend 1 Drawing 200 Issue 4 East / West Elevation	22 September 2020	Peter Stutchbury Architecture
DA1 Amend 1 Drawing 300 Issue 2 Section 1 Driveway	22 September 2020	Peter Stutchbury Architecture
DA1 Amend 1 Drawing 301 Issue 4 Section 2 Mid cross	22 September 2020	Peter Stutchbury Architecture
DA1 Amend 1 Drawing 302 Issue 3 Section 3 - South Cross	22 September 2020	Peter Stutchbury Architecture
DA1 Amend 1 Drawing 303 Issue 3 Section 3 - South Cross	22 September 2020	Peter Stutchbury Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
TTW Driveway Traffic Assessment Ref 201459 TAAA	4 September 2020	Taylor Thomson Whitting (TTW)

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

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

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



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

2. Prescribed Conditions

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

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

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

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.



- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.



- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) 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

4. Security Bond

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

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

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

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

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

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE SUBDIVISION WORKS CERTIFICATE

8. Subdivision Works Certificate

A Subdivision Works Certificate is to be approved by Certifying Authority for the provision of engineering works.

Engineering plans for the subdivision works within this development consent are to be submitted to the Certifying Authority for approval under Section 6.13 of the Environmental Planning and Assessment Act 1979.

Civil Engineering plans for the subdivision works are to be designed in accordance with the Council's specification for engineering works – AUS-SPEC #1. The plans shall be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering. The design must include the following information:

1. Structural details of the elevated turning facility featuring a turntable as detailed in the TTW dated 4th September 2020.
2. Stormwater drainage plans detailing the provision of all stormwater from proposed all proposed future lots in accordance with Councils water management policy.



The Subdivision Works Certificate must be supported by engineering plans, calculations, specification or any certification relied upon.

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

9. **Utilities Services**

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

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

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

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

10. **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 Subdivision Works Certificate and the commencement of any works including demolition.

Reason: Protection of Council's Infrastructure during construction.

11. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Subdivision Works 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.

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

5. **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.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.



The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Specify that, due to the proximity of the site to Harbord Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays)
- 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.

6. Vehicle Mechanical Turntable

The applicant is to submit information on the proposed vehicular turntable, operation details, and instructions to visitors on using the device, maintenance plan, and contingency plan during a malfunction to the Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure the turntable is as per the approval and operates in accordance with the intent of the approval.

7. Elevated Parking Platform Barrier System.

The applicant is to submit an engineering report to the Certifying Authority demonstrating that the Elevated Parking Platform has a suitably engineered, compliant barrier system to contain the largest vehicle that will use the structure. This is to meet the relevant structure requirements of AS/NZS 1170.1 and allow the driver of a vehicle to see the barrier clearly from the reversing vehicle.

Reason: To ensure the safety of the public, drivers and adjoining property occupants

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. 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.

13. Traffic Control During Road Works

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

Reason: Public Safety.

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

14. Section 88E instrument relating to turntable



The applicant is to include a Section 88E instrument on the title permitting Council to provide direction as to the repair/maintenance of the approved turntable.

Reason: To ensure the mechanical services are maintained in a serviceable state at all times.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

15. Provision of Services for Subdivision

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

16. Easement for Drainage

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

17. Easement for Services

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

18. Release of Subdivision Certificate

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

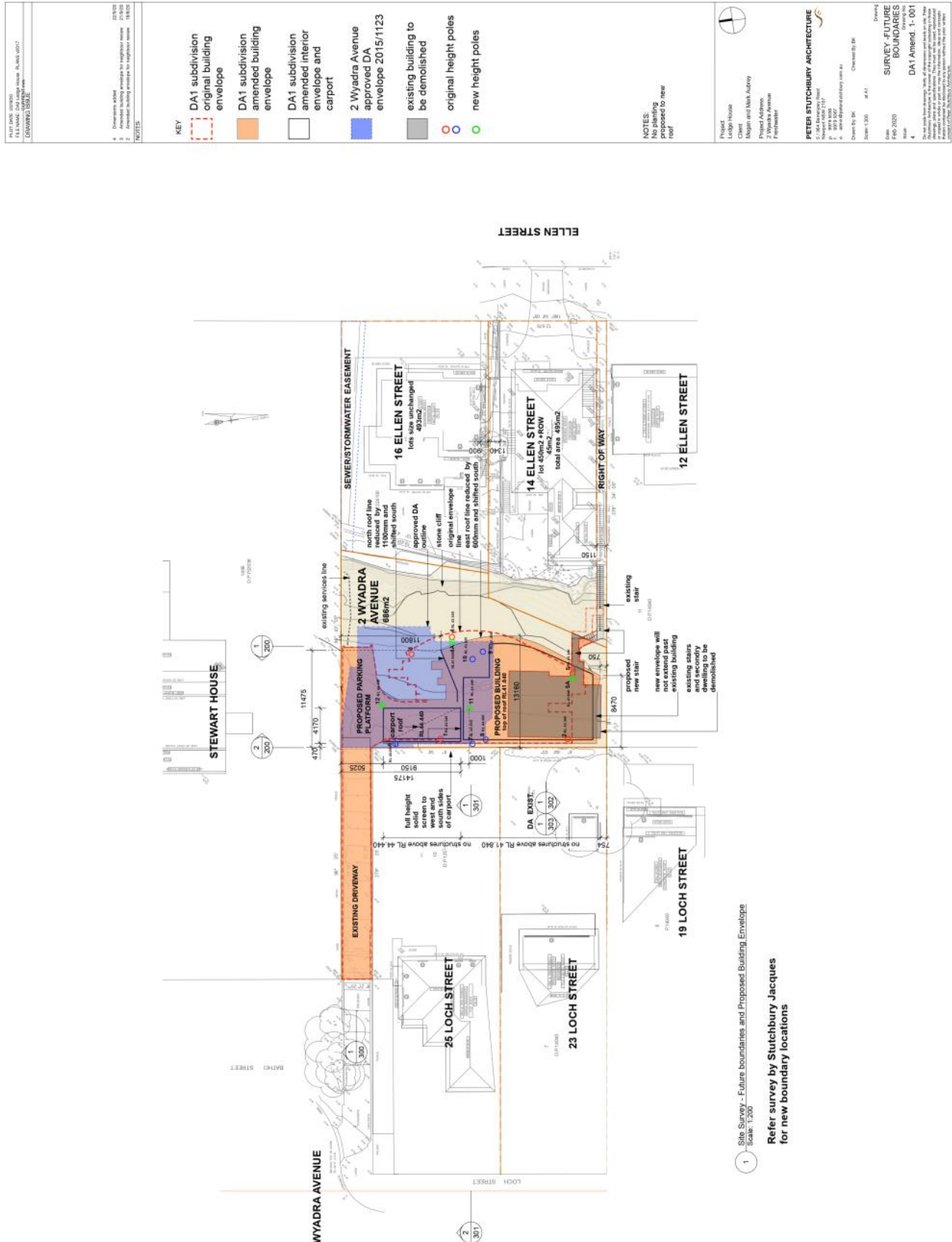
19. Subdivision Certificate Application

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be



submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.





ITEM 3.2

**DA2020/0431 - 1129-1131 PITTWATER ROAD, COLLAROY -
DEMOLITION WORKS AND CONSTRUCTION OF A MIXED USE
DEVELOPMENT COMPRISING COMMERCIAL UNITS AND A
BOARDING HOUSE**

AUTHORISING MANAGER Lashta Haidari

TRIM FILE REF 2020/699505

ATTACHMENTS

- 1 [↓](#) **Assessment Report**
- 2 [↓](#) **Site Plan and Elevations**
- 3 [↓](#) **Clause 4.6**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/0431 for demolition works and construction of a Mixed Use Development comprising commercial units and a Boarding House at Lot 4 DP 7445 and Lot 1 DP 859613, 1129-1131 Pittwater Road, Collaroy subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0431
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 1 DP 859613, 1131 Pittwater Road COLLAROY NSW 2097 Lot 4 DP 7445, 1129 Pittwater Road COLLAROY NSW 2097
Proposed Development:	Demolition works and construction of a Mixed Use Development comprising commercial units and a Boarding House
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Pidaro Pty Ltd United Equity Group Pty Ltd
Applicant:	Boston Blyth Fleming Pty Ltd
Application Lodged:	04/05/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	30/10/2020 to 13/11/2020
Advertised:	30/10/2020
Submissions Received:	45
Clause 4.6 Variation:	4.3 Height of buildings: 20%
Recommendation:	Approval
Estimated Cost of Works:	\$ 4,995,964.00

EXECUTIVE SUMMARY

The application seeks approval for a mixed use development which consists of commercial premises at the ground floor level, two levels of boarding house rooms and a top level accommodating the boarding house manager's residence.

The application is referred to the NBLPP due to the number of submissions (45) received in response to the public notification.



Submissions raised issues including; traffic (and the use of a rear access right of way), the suitability of a boarding house in the area, the amenity impacts of the proposal and the character of the development.

The proposal involves variations to the development standard under the Warringah Local Environmental Plan 2011 for building height and the built form control for number of storeys under the Warringah Development Control Plan 2011.

Given significant compliant setbacks, the visual quality of the building, the existing character of the Collaroy Local Centre and a lack of any significant amenity impacts, the variations can be supported.

The request to vary the building height development standard under Clause 4.6 of the WLEP is supported as the applicant has demonstrated that strict adherence to the height standard is unnecessary in the circumstances, that they have demonstrated that there are sufficient environmental planning grounds and that there is no public interest matter that would render the departure unacceptable.

The proposal has been assessed in accordance with the View Loss Planning Principle established by the Land and Environment Court, and it has been determined that it would result in a minor to moderate impact on views. Given the corridors provided for views through the side setback areas, the fact that certain views are highly vulnerable as they are over side boundaries, the non-compliant height does not feature in view loss and that the existing building is very low scale, the view sharing outcome is supported.

In relation to the constraints on access to this site and its reliance upon a height and width limited right of way over an adjoining site, it is recommended that a deferred commencement condition can provide an acceptable outcome for traffic by restricting the commercial premises on the ground floor level to "offices" only, thus limiting the intensity of traffic (including the size, height and number of vehicles needing to service the site).

The assessment concludes that conditions can be imposed to control amenity impacts to a reasonable level, and that the design is appropriate given the context and character of other shop top housing development in this B2 zone.

Therefore, it is recommended that the Clause 4.6 variation be supported and the application be approved, subject to a deferred commencement condition and other special and standard conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for a mixed use development, including 2 commercial units and a 23 room boarding house with a caretakers apartment. In detail, the proposal includes:

Basement Parking

- 20 vehicle spaces (13 allocated for boarding house)
- 6 bicycle storage spaces
- 3 motorcycle spaces
- Access from right of carriageway to the rear of the property



- Storage areas for boarding house
- Stair and lift access

Ground Floor

- Two commercial tenancies facing Pittwater Road
- Entrance foyer for Boarding house
- Bathroom facilities
- Waste storage areas
- Disabled car space
- Service vehicle bay
- Driveway access to basement

Boarding House

- 12 Boarding rooms on first floor level including 1 accessible room
- 11 boarding rooms on second floor level including 1 accessible room
- Balconies with privacy blades
- Common room with balcony

Caretakers Apartment

- Three bedrooms
- Open plan kitchen area
- living area
- Dining area
- Balcony

Amended plans

The applicant lodged amended plans on 20/10/2020 to address issues raised by Council. These plans involved the following changes:

- Reduction in the footprint of the caretakers dwelling (including increased southern setbacks)
- Redesign of stairwell located to south to provide a larger light well
- A break provided in the southern wall plane
- Separate office and boarding house waste storage areas, including a bulky waste room
- Bollards along the northern edge of right of footway (to prevent pedestrian vehicle conflict)
- Vertical fire rated windows to Units 7 and 18 and the common room
- Consistency in privacy screen detailing for eastern and western balconies
- Reconfiguration of metal pergola for caretakers flat (including reduction at northern boundary)

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the



- development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Development Control Plan - B2 Number of Storeys
 Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - F1 Local and Neighbourhood Centres

SITE DESCRIPTION

Property Description:	Lot 1 DP 859613 , 1131 Pittwater Road COLLAROY NSW 2097 Lot 4 DP 7445 , 1129 Pittwater Road COLLAROY NSW 2097
Detailed Site Description:	<p>The subject site consists of an allotment located on the western side of Pittwater Road.</p> <p>The site is irregular in shape with a frontage of 13.5m along Pittwater Road and a depth of 34.4m-40.96m. The site has a surveyed area of 814.6m².</p> <p>The site is located within the B2 Local Centre zone and accommodates ground floor commercial premises.</p> <p>The site is located on Pittwater Road within close proximity to a number of services and shops. The site is also in very close proximity to the Collaroy B-line bus station.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a variety of commercial uses and large residential buildings.</p>

Map:



SITE HISTORY

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

- CDC2018/0814 for change of use from existing restaurant to café along with associated fitout works approved on 6 September 2018

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><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 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>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>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 30/10/2020 to 13/11/2020 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 45 submission/s from:

Name:	Address:
John William Tansley	19 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Kim Hildebrand	42 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Miss Michelle Jane Haskard	100 Prahran Avenue DAVIDSON NSW 2085
Fiona Foster	6 / 1187 Pittwater Road COLLAROY NSW 2097
Ms Margaret Jean Stanley	11 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Mr Terence Victor Brady	106 Narrabeen Park Parade MONA VALE NSW 2103
Withheld Mrs Dorothea Ann Young	COLLARROY NSW 2097
Withheld Mrs Dorothea Ann Young	44 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Mr Chris Woodward	9 / 1125 - 1127 Pittwater Road COLLAROY NSW 2097
Mr Peter Gordon Jenkins	1 / 1135 - 1137 Pittwater Road COLLAROY NSW 2097
Mrs Judith Lynette Roberts	40 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Mrs Louise Clare Woolford	9 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Turnbull Planning International Pty Ltd	2301 / 4 Daydream Street WARRIEWOOD NSW 2102
Mr Stephen Lydiate	11 / 1125 - 1127 Pittwater Road COLLAROY NSW 2097
Miss Debra Marie Sellars	41 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Mrs Irene Nassibian	14 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Mrs Julia Skye Olivares	10 / 8 Fielding Street COLLAROY NSW 2097
Mr Robert Colin Cunneen	19 / 1135 - 1137 Pittwater Road COLLAROY NSW 2097
Mrs Pamela Joy Rodgers Cunneen	24 Bimbadeen Crescent FRENCHS FOREST NSW 2086
Stephan Pawelczyk	13 / 1135 - 1137 Pittwater Road COLLAROY NSW 2097
Benjamin Gillings	Address Unknown
Julie Robyn Donald	7 / 1125 - 1127 Pittwater Road COLLAROY NSW 2097
Ms Stephanie Lianos	16 Douglas Haig Street OATLEY NSW 2223
Robert Joseph Jurd	3 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Sheelyn Ann Ross	13 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Mr Glenn Allan Keith Carter	15 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Byron Joseph McDonald	38 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Miss Kelsey Jane Hunter	7 A Hillpine Place TERREY HILLS NSW 2084
Maxine Anne Armstrong	1 Tamworth Place ALLAMBIE HEIGHTS NSW 2100
Ingham Planning Pty Ltd	19/303 Pacific Highway LINDFIELD NSW 2070
Margaret Agnes Newport	1 Tiarri Avenue TERREY HILLS NSW 2084
Joanne La Torraca	Address Unknown
Nicholas Murdocca	C/- LJ Hooker Collaroy Shop 5 1030-1034 Pittwater Road COLLAROY NSW 2097
Mrs Maureen Wannell	12 / 1125 - 1127 Pittwater Road COLLAROY NSW 2097
James Steven Haslam	16 Undercliff Road FRESHWATER NSW 2096



Name:	Address:
Mr Peter Sardelic	34 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Nicholas Lianos	43 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Jennifer Stephanie Mitchell	1135 - 1137 Pittwater Road COLLAROY NSW 2097
Ms Renee Eleanor Jackman	45 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Arthur Aguiar	37 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Ms Karyn Riches	20 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Christopher John Nicola	1 Parkwood Place NORTH ROCKS NSW 2151
Diana Finniss	Address Unknown
Erika Dellaretti Guimaraes	Address Unknown
Ms Karen Anne Alexanderson	67 Cowells Lane ERMINGTON NSW 2115
Ms Judith Lynette Roberts	40 / 1 - 5 Collaroy Street COLLAROY NSW 2097

The matters raised within the submissions are addressed as follows:

- **Increase in traffic and associated traffic impacts as well as pedestrian safety and Right of Way easement is inadequate for the proposed use**

Comment:

A deferred commencement condition (as recommended by Council's Traffic Officer) has been provided in order to restrict the use of the ground floor units as office premises. This restriction will ensure that there is a sufficient limitation on the size and number of vehicles that are required to access the ground floor uses. This limitation will assist in reducing overall traffic impacts and providing suitable pedestrian safety.

Council's Traffic Officer has also imposed a number of conditions to reduce and/or manage the impact of traffic. This includes requirements for waste and service vehicle access, and a basement garage traffic signal system. Subject to these conditions and the restriction on the title to limit the ground floor occupancies to office premises, use of the right of way will be adequately controlled and the overall traffic impact is acceptable.

- **Impact on surrounding property values**

Comment:

Property value is not a relevant consideration under the provisions of Section 4.15 of the EP&A Act 1979.

- **Site suitability (including potential contamination) and inappropriate location for a boarding house**

Comment:

The site is located in an area that is close to a range of shops, transport options and other necessary services and the site is suitable for residential use.

- **Boarding houses and residents occupying boarding houses including 'transient' nature of residents**

Comment:

A variety of persons are likely to reside in the boarding house. Further, controls are not placed on the 'type' of person who can reside in a boarding house as this would be discriminatory and unlawful.



In addition, the boarding house would be run in accordance with a Plan of Management. This would ensure appropriate control of boarding house residents for maintaining the amenity and safety of the local area.

In the event residents behaviour disturbs the local amenity or raises any safety concerns, the Boarding House Manager will be responsible for policing the occupants in line with the Plan of Management and their lease agreements. Should this not happen, it would then be appropriate for the Police to be notified, the same as with any similar problems for any other type of development.

Boarding houses are designed for minimum three (3) months stays and are not used as backpacker or bed and breakfast accommodation. A boarding house is therefore not designed for short-term occupancy.

- **Noise impacts, anti-social behaviour, proximity to licensed premises and bottle shops, lack of appropriate quiet times (including lack of consistency with surrounding quiet times) and amenity impacts from outdoor area including manager courtyard. Insufficient management plan and lack of opportunity for complaints outside business hours**

Comment:

Noise is discussed in detail under Part D8 Privacy, below in this report. In summary, the boarding rooms will be occupied by one or two people. The rooms include small outdoor open areas, however, these are not of sufficient size to hold a large gathering.

The common rooms and common outdoor areas are located to the north of the site in a location that is well separated from neighbouring occupancies. This will provide an appropriate buffer to minimise amenity impacts.

Given boarding houses are permitted in the zone under the WLEP 2011 and for this reason are envisaged to be located in such commercial centres, the close proximity of the boarding houses to licensed premises is not a valid reason for refusal

The Boarding House Management Plan includes a complaints process should any nearby resident(s) be impacted by noise. The managing agent can be contacted between 9.00am and 6.00pm and any issues out of this time needs to be dealt with by management within 24 hours. Given the relatively small outside areas for the boarding rooms, this is a suitable control. Furthermore, any issues that are more urgent than this can be directed to the Police.

The Managers residence is to be permanently occupied by a Boarding House Manager. As with any other unit nearby, noise issues with the manager residence can be reported to the Police. Given the relatively small open space areas, a "quiet time" of 10:30pm-7am is a reasonable control for the use and site.

Overall, the siting and design of the proposal, along with the imposition of conditions of consent, will provide a suitable level of acoustic privacy for occupants and neighbours.

- **Inconsistency with requirements under the Warringah LEP, including building height development standard and application to vary the standard under Clause 4.6**

Comment:

The non-compliance with the building height development standard is discussed in detail below. This discussion has found that the proposed non-compliance is acceptable due to the significant stepping back of the upper level from the street, the substantial side setbacks, and



the lack of unreasonable amenity impacts and the compatibility of the height with adjoining and nearby development in the B2 zone within the Collaroy Commercial Centre.

- **Inconsistency with the built form controls under the Warringah DCP, including the number of storeys control**

Comment:

The built form controls table (see below in this report) shows that the only non-compliance with the built form controls is in relation to the number of storeys. The numerical requirement is 3 storeys.

The non-compliance, it being a 4 storey building, has been discussed in detail and it has been found that it does not result in any unreasonable impacts to any surrounding properties, does not result in any unreasonable visual impact and is compatible with other 4 storey development in the vicinity.

The assessment has also found under a merit assessment that the side and rear setbacks are suitable for the site given the context of the area, including similar neighbouring building setbacks.

- **Loss of views and request for height poles**

Comment:

Height poles were requested and were erected onsite to demonstrate the outline of the proposed upper level. Amendments were also provided in order to provide a greater corridor for views through the southern setback of the subject site.

An assessment in accordance with the Land and Environment Court Planning Principle in relation to View Sharing has found that the view impacts are minor to moderate, and that the proposal provides an appropriate outcome for view sharing.

- **Loss of access to light and overshadowing**

Comment:

The orientation of the site and the setbacks of the proposal will mean that all neighbouring properties private open space will retain more than three hours of sunlight between 9.00am and 3.00pm in mid winter.

Amendments to the proposal were also made to provide an additional break in the wall at the southern elevation, and to provide a light well to improve amenity for the southern neighbour.

- **Loss of Privacy**

Comment:

Privacy is discussed in detail under Part D8 Privacy, below in this report. In summary, the proposal does not result in any unreasonable privacy impacts to surrounding properties as a result of substantial physical separation, buffers (including landscaping), and the suitable location for communal space.

Conditions are also provided to minimise acoustic privacy impacts and a Boarding House Management Plan will assist in providing an appropriate outcome for acoustic privacy.



- **Inadequate justification of shortfall to 12.0sqm boarding house room size requirement**

Comment:

The WLEP 2011 does not have minimum requirements for room sizes. The SEPP ARH does have these standards, however, it does not apply to this proposal. Notwithstanding, all proposed rooms are between 16.4sqm and 24.6sqm and can therefore cater for two lodgers each. The SEPP requires a minimum of 16sqm for double rooms and 12sqm for single rooms. The proposal meets these standards.

- **Increase to density of site and number of people in the area**

Comment:

There is no density control (such as a FSR) for a boarding house and boarding houses are permitted in the zone. In lieu of such a control, other development controls are applicable (such as height, setbacks, carparking, size of rooms, caretakers residence) and conditions are imposed to mitigate amenity impacts associated with density,

- **Overbearing bulk, lack of a break in southern setback, smaller footprint and one less storey**

Comment:

The upper level is well setback from all boundaries so as to sufficiently minimise the presentation of building bulk. Landscaping is also integrated into the built form to provide relief in the presentation of building bulk. Amended plans provided, involve a break in the southern setback and this provides an outcome which allows for a satisfactory presentation of building bulk at the southern boundary interface.

- **Inappropriate planting on terrace (Lilly Pilly and Cordyline)**

Comment:

A condition is imposed to require all planting on the terrace to be native species which have a mature height of no more than 3.0m. This will reduce amenity impacts such as loss of views.

- **Impacts during construction, hours of construction during COVID, potential for asbestos, potential for damage during construction**

Comment:

A condition is provided to require a Construction Management Plans. A condition is imposed to require a dilapidation report. A condition has been imposed to ensure appropriate protocol is adhered to if any asbestos is found. Hours of construction imposed on the consent are Council's standard hours, however, extended hours are allowed due to COVID for a limited period, which is mandated by the State Government.

- **Geotechnical concerns and structural integrity of adjoining buildings**

Comment:

A geotechnical report has been provided with the application and the recommendations are imposed as a condition of consent. Further requirements regarding structural integrity are addressed at the Construction Certificate stage and during the construction of the building.

- **Lack of landscaping**

Comment:

The DCP does not contain a control for landscaping in this zone. However, landscaping and



planter boxes have been incorporated into the design and provide an appropriate relief of the built form.

- **Inappropriate caretaker dwelling including being too large and not fit for purpose**
Comment:
The proposed caretakers dwelling is suitable for a manager. It is noted that this manager is required under the ARH SEPP and that this manager is available to manage and regulate issues associated with boarder conduct such as noise generation.
- **Waste Management and Waste Collection**
Comment:
Council's Waste and Traffic officers have provided suitable conditions to ensure waste management and collection is appropriate for the development.
- **Acoustic report accuracy**
Comment:
An assessment of the acoustic report provided with the application has been reviewed by Council's Environmental Health Officer. the acoustic report is sufficient to assess the suitability of the use and its design and recommend control measures for implementation to reduce impacts on the surrounding residential properties.
- **Objection to building over Liquorland walkway**
Comment:
The building over the walkway is at a low level of the development and would not cause any unreasonable amenity impact.
- **Lack of parking, lack of visitor parking and inappropriate tandem style parking**
Comment:
The number of car spaces complies with the requirements of Part C3 Parking Facilities of the WDCP. In summary, the proposal includes 23 boarding rooms and one managers room. The WDCP requires a comparison to be made with similar developments to determine a reasonable parking rate. This comparison has found that 0.2 spaces per room is reasonable. The development is therefore required to provide 6 on-site parking spaces (i.e. five for the boarding rooms and one for the manager). The development includes the provision of 13 on-site parking spaces and therefore complies. The parking layout and access arrangements are suitable for the uses and site.

The development is also required to provide 0.5 spaces per 40m² for the ground floor office spaces. In this regard, the requirement is 6 spaces. Seven (7) spaces are provided, including 2 which are in tandem. The 2 tandem parking spaces are appropriate for an office use, given the immediate proximity to the regular bus services provided by the B-Line.
- **Character and overdevelopment**
Comment:
Character has been discussed in detail under the SEPP ARH section, below in this report. In summary, the character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is compatible with the character of the local area and the



surrounding wider locality.

Whether the proposal is of a density that is excessive for the site and the area can be determined by how it performs against the relevant planning and related controls. The performance of the development against the controls applies will determine if the proposal is an 'overdevelopment' of the site, and based on the assessment in this report, the proposal is not considered to be an overdevelopment.

In terms of how the proposal will fit within the character of the area, it must be noted that boarding houses are a permitted use with consent in the B2 Local Centre zone.

All non-compliances are discussed in detail below, along with amenity concerns and impacts. Overall, this assessment has found that the proposal performs well against the specific controls, meets the objectives of the controls, and has no unreasonable amenity impacts on surrounding and nearby properties.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application proposes demolition of existing site buildings and construction of a mixed use development with 2 ground floor commercial tenancies and a 23 room boarding house with caretakers apartment above. There will also be car parking for 21 vehicles.</p> <p>The application does not comply with the DTS provisions of the NCC and a fire engineered solution relating to CP9, EP1.3, EP1.4, EP1.6, EP2.2 and EP3.2 (et al), will need to be determined after consultation with the NSW Fire Brigade as part of the Construction Certificate process. Building Certification and approvals raises no objections subject to conditions as the Fire Engineering solution may be possible to achieve without recourse to Consent Modification</p>
Environmental Health (Acid Sulphate)	<p>General Comments</p> <p>Geotechnical, Hydrogeological and Acid Sulfate Soil Assessment Report dated March 2020 ref number P1907336JR04V01 states:</p> <p>Laboratory analytical results indicate that none of the tested soil samples exceed the action criteria for the acid trail and sulfur trail. Therefore, the fill and marine deposits are not considered ASS and preparation of an ASSMP is not required.</p> <p>Recommendation</p> <p>APPROVAL - no conditions</p>
Environmental Health (Contaminated Lands)	<p>A Preliminary Site Investigation report has been prepared by Martens Consulting Engineers (saved in Trim as record number 2020/257390). The report advises that during the excavation works the premises will</p>

Internal Referral Body	Comments
	<p>be rendered fit for the intended use in accordance with the development proposal.</p> <p>An area of existing fill on the site potentially contains asbestos. Other materials suspected to include contaminants have also been identified. The excavated materials (included any potentially contaminated materials) are to be classified, removed and disposed of to suitably licensed waste disposal facilities. The report advises that a dry-cleaning shop is currently operating up gradient of the premises and there is a low risk of contamination however, groundwater screening is to be considered for appropriate Contaminants of Potential Concern (COPC).</p> <p>The report advises that the status of any Areas of Environmental Concern (AOEC) and Contaminants of Potential Concern (COPC) are to be considered further with groundwater screening and also where any fill material is encountered below the final bulk excavation level.</p> <p>An Acid Sulphate Soils (ASS) assessment has been carried out in a separate internal Environmental Health Referral.</p> <p>No objection is raised to the proposal. Conditions of consent have been incorporated into this referral.</p>
Environmental Health (Industrial)	<p>General Comments</p> <p>The development proposes a boarding house therefore registration requirements as well as public health requirements apply through the Boarding Houses Act 2012 (NSW).</p> <p>An assessment of the acoustic report provided with the proposal has been reviewed and discussed with the acoustic consultant. Control measures have been provided for implementation to reduce impacts on the residential tenants. Conditions apply.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Environmental Health (Food Premises, Skin Pen.)	<p>General Comments</p> <p>There is no mention in the application documents of the proposed occupancy of the two commercial premises on the ground level therefore a separate approval application will be required for these before occupancy can occur.</p> <p>No conditions are required for use of individual kitchenettes in rooms or common room as this is not food for sale.</p> <p>Recommendation</p>

Internal Referral Body	Comments
	APPROVAL - no conditions
Landscape Officer	<p>No landscape features are on the site at present. The landscape plan provided indicates tree and shrub and groundcover in planters across the front and in an area at the rear of the site.</p> <p>No objections are raised to the proposed landscape works subject to conditions.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Use Area' map but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clauses 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Warringah LEP 2011 and Warringah DCP 2011</p> <p>No coastal related issues identified.</p>

Internal Referral Body	Comments
	As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.
NECC (Development Engineering)	<p>Comments 30/10/20</p> <p>All previous stormwater drainage concerns have now been addressed, no objections to the development subject to conditions.</p> <p>The proposal has been assessed by Development Engineering and the following information/amendments are required:</p> <p>1) Stormwater drainage and flood mitigation.</p> <p>a) The stormwater concept plans detailing the provision are generally acceptable however in accordance with Councils On site stormwater detention technical specification the DRAINS model is to be submitted to Council for review to verify the outputs as presented in the report by Martens Consulting Engineers.</p> <p>b) The Flood Mitigation tank is supported however as currently designed the tank will be impacted by the back flow of stormwater from the adjoining box culvert. The design is to address this issue.</p> <p>2) The right of footway and right of way (vehicular access)</p> <p>a) The terms of the right of footway running along the northern boundary are to be provided to Council to establish there are no height controls that will conflict with the building envelope.</p> <p>b) Also the right of way for vehicle access that runs within SP58961 has specific height planes. The applicant is to provide evidence that the proposed building does not conflict with the height planes.</p> <p>c) The right of way width adjacent to the western site boundary is only 4.35m wide. In this location the ROW is to be widened to 5.5m to allow for the passage of two vehicles . Also a turning template is to demonstrate that two vehicles can pass safely at the corner of the existing ROW,</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	Please see Development Engineering referral in relation to any management of overland flows and local stormwater.
Strategic and Place Planning (Urban Design)	<p>Issues identified in the previous scheme have been satisfactorily addressed in the revised scheme including;</p> <ol style="list-style-type: none"> 1. Separation of pedestrian and vehicular access 2. Addition of windows to the northern blank facade to improve solar access to Units 7 and 18 3. Addition of windows to the northern blank facade of Common Room on Level 1 4. Redesign of verandah parti walls to reflect better the whole scheme and provide a cohesive design outcome 5. Pergola structure profile reduced/tapered to better reflect a less imposing awning structure to the upper level verandah

Internal Referral Body	Comments
	<p>6. Reduction in floor area by the setback increase to the southern boundary reflecting recommendations in the ADG for building separation whilst also increasing view aspects from properties to the west.</p> <p>The proposed amendments demonstrate the scheme can be supported.</p>
Traffic Engineer	<p>The proposal seeks to introduce a mixed use development comprising:</p> <ul style="list-style-type: none"> - 23 boarding rooms - 2 commercial tenancies - 21 parking spaces - 6 bicycle spaces <p>Traffic: The site is a 4 storey development with 1 storey of commercial tenancies and the remaining 3 storeys as boarding rooms. The site would therefore act as a 'Medium Density Unit' in accordance with the RMS Guide to Traffic Generating Developments.</p> <p>Based on the above;</p> <ul style="list-style-type: none"> - Boarding Rooms: $24 \times 0.5 = 12$ vehicles in the peak hour - Commercial: $228.2 \times (2/100) = 4.56 \sim 5$ vehicles in the peak hour <p>With the convenient access to public transport, a reduction of 20% is permissible in the calculations.</p> <p>Therefore the total vehicle generation from the site would be considered as: $17 \times 0.8 = 14$ vehicles in the peak hour.</p> <p>Whilst the report indicates 10 vehicles, the additional 4 expected vehicles in not considered to impact the network negatively. However the report will need to be amended to reflect actual numbers.</p> <p>Parking: The following breakdown of parking is required:</p> <ul style="list-style-type: none"> - boarding rooms: $(23 \times 0.5) + 1 = 12.5 \sim 13$ Spaces - Commercial: $228.2 \times (1/40) = 5.7 \sim 6$ Spaces <p>Total: 19 spaces.</p> <p>The applicant has provided 21 spaces in accordance with their report which is deemed acceptable.</p> <p>Noting that 2 of the commercial spaces are in tandem, these spaces should be allocated to staff from only of the commercial units.</p> <p>Car park: The location of the waiting bay at the ground level is deemed unsuitable. A driver waiting in the proposed location would then have</p>

Internal Referral Body	Comments
	<p>to reverse back into the aisle before continuing down the ramp. Visibility is poor in this location, not to mention the safety concerns with reversing given the poor visibility.</p> <p>The applicant should provide a more suitable layout for this process to occur at ground level. Noting that there is a surplus of parking, the applicant could consider removing the accessible parking space at ground level to better accommodate a more appropriate waiting bay.</p> <p>Waste Servicing / Loading: More detail is required as to where Council's Waste Vehicle is to service the site for the residential related waste bins. Council's Waste Services Team are required to comment.</p> <p>The commercial component is to be serviced by a commercial contractor. The applicant shall ensure the contractor is aware of the dimension restrictions of the site.</p> <p>Pedestrian Access: Pedestrian movements within the basement and external to the site are deemed adequate. The applicant will be required to upgrade the footpath on the frontage of the site along Pittwater Road.</p> <p>Conclusion: Based on the Car Park concerns raised above, the application cannot be supported in its current form. Amendments will be necessary to accommodate a more appropriate waiting bay and signal interface between the ground floor and basement level.</p> <p>UPDATED COMMENTS TO BE PROVIDED BASED ON MEETING HELD ON 16 SEPTEMBER</p> <p>The Traffic concerns were discussed on the 16 September and the following issues raised:</p> <ul style="list-style-type: none"> • Delivery access to the development site needs to be managed without the use of the Pittwater Road site frontage. • The commercial tenancy component needs to be fixed as to prevent it being converted into another use in the future. • As the development is a commercial development the property is to contract a suitably sized waste collection vehicle service provider. • The waiting bay configuration is less than ideal, however a suitably conditioned access signal design and operational management plan. <p>These issues can be partially addressed as follows:</p> <ul style="list-style-type: none"> • The Commercial Tenancy component restriction is to be

Internal Referral Body	Comments
	<p>added to the property title through an 88E instrument drafted to the effect that Council is the party that can approve the release or variation.</p> <ul style="list-style-type: none"> The operational plan for the waiting bay management will require an additional signal installed at the head of the bay on the ground floor and priority/waiting signal will be vehicles entering from 1-5 Collaroy Street access, with the ongoing operational performance guaranteed through an 88B instrument. <p>However, the outstanding issue to address by the applicant is the service vehicle access and deliveries to the property, which can be managed through a potential right of way across an adjoining property (1125 Pittwater Road) to allow service vehicle access only. Despite assurances that the site will only be serviced by vehicles that can use the existing right of way, concerns based on the commercial reality of logistics services require Council to be satisfied that the development will not adversely impact the existing amenity of the area.</p> <p>As such the development is currently not supported until this outstanding issue has been addressed to the satisfaction of the Transport Team.</p> <p>Third Referral Response The applicant has addressed all issues raised or agreed to put measures in place to address Transport concerns. Supported subject to conditions provided.</p> <p><u>Assessing officer comment</u></p> <p>A deferred commencement condition has been drafted to resolve all previous traffic concerns. This condition requires a restriction to be placed on the title so that only offices can be provided to the ground floor. This ensures that the traffic intensity (including size and number of vehicles) is reduced to an acceptable level. The condition is also drafted in a way that allows future opportunity for changes to this restriction if an updated traffic arrangement can be provided by way of a further application.</p>
Waste Officer	<p>Waste Services Updated Referral (Proposed plans received 19/10/2020 through Tom Prosser)</p> <p>Proposal is approved with conditions.</p> <p>The ROW pathway and access between the Waste Storage Area and Collection Point must be hazard free to ensure ongoing clear access for collection staff to wheel and empty the bins.</p> <p>Any doors fitted to the Waste Storage Area must be able to be latched</p>

Internal Referral Body	Comments
	<p>in the open position and unobstructed by any locks and security devices to ensure ongoing clear access to empty the bins.</p> <p>The Bulky Goods room cannot be accessed via the Waste Storage Area. The Bulky Goods room and Waste Storage Area must be separate rooms with their own separate access.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
NSW Roads and Maritime Services (Traffic Generating Development)	<p>Transport for NSW provided a letter with a list of requirements to be included in the development consent. This letter is added as a reference document to the conditions of consent.</p> <p>The following comments are also provided for Council's consideration in the determination of the application:</p> <p><i>1. The proposed development will generate higher vehicle trips than the existing land uses, which results in the increased possibility of vehicle movement conflict at the Right of Way area, which not allow 2 vehicles passing simultaneously. The applicant should demonstrate how this conflict to be managed.</i></p> <p><u>Comment:</u> A deferred commencement condition is recommended to restrict the use of the commercial premises to be office premises. this will provide a greater alignment with the existing use so that the conflict can be appropriately managed. Furthermore, the conflict is managed with a condition requiring a traffic signal system for the basement.</p> <p><i>2. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004, AS2890.6-2009 and AS 2890.2 – 2002 for heavy vehicle usage. Parking Restrictions may be required to maintain the required sight distances at the driveway.</i></p> <p><u>Comment:</u> Conditions have been imposed by Council's Traffic officer to ensure these standards are met.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and



LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses that would have been likely to result in contamination, apart from some asbestos. 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/commercial land use.

SEPP 70 - Affordable Housing (Revised Schemes)

The applicant has not nominated to include the provisions of SEPP 70 as part of the application for "Affordable Housing". Generally this SEPP addresses financial rental mechanisms that may be implemented to limit rents applying to a building / dwelling to create affordable housing. Therefore, no further assessment pursuant to SEPP 70 is required. The proposal remains subject to SEPP (Affordable Rental Housing) 2009 which addresses the *building design* as one of a number of *cheaper styles or forms* of more affordable *building construction* for housing.

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

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 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.	Consistent The site is located within the B2 Local Centre zone and, as such, the proposed use is permissible with consent under WLEP 2011.

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.	Consistent The site is located within the B2 Local Centre 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.
(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.	Not applicable. The site is located within the Sydney region.

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.
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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 the WLEP 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 the WLEP 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:	The B2 Local Centre zone does not permit "residential flat buildings" and no FSR applies to the land.	Not applicable.
	(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 the following grounds:			
(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 height (13.2m) does not comply with the development standard (11.0m).	An assessment of this non-compliance is made under the Warringah LEP section of this report.
(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	The proposal is in a Local Centre zone in which the character is formed by shop fronts at the street frontage. As such landscaping in this area is not appropriate. However, suitable landscaping is provided to the upper levels to provide relief in the presentation of building bulk and enhance residential amenity.	Consistent
(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,	The common room will receive more than 3 hours direct sunlight between 9.00am and 3.00pm in mid-winter.	Consistent
(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, (ii) if accommodation is provided on site for a boarding house manager—one area of	The boarding house includes a common room with a private open space area of 20.1m ² . Each boarding room is also provided with a private open space area. A private open space area of 114m ² is provided for the Managers residence.	Compliant

	at least 8.0m ² with a minimum dimension of 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>The site is opposite the B-line bus stops and is on a flat section of Pittwater Road. This is a location that is a highly accessible area.</p> <p>The proposal involves 13 car parking spaces allocated to the boarding house component and this complies with the requirement.</p>	Compliant
(f) accommodation size	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:	Each room has an area of at least 12 square metres (excluding any area used for the purposes of private kitchen or bathroom facilities).	Compliant

	(i) 12 square metres in the case of a boarding 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.	Each room is provided with kitchen and bathroom facilities.	Consistent
	(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 proposal complies with all requirements above with the exception of building height.	Supported Despite the non-compliance with the building height, support is given to the proposal due to the appropriate visual nature of the proposal, complementary nature with surrounding character, and lack of unreasonable amenity impact (subject to conditions).

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 rooms have been 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 ,	The largest room is 24.6m ² .	Compliant
(c) no boarding room will be occupied by more than 2 adult lodgers,	A condition of consent is recommended to ensure this.	Compliant
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the	Bathroom and kitchen facilities are provided to each room.	Consistent



use of each lodger,		
(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,	A manager dwelling is provided to the third floor level.	Consistent
(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,	The proposal is for a mixed use development in which the ground floor is for commercial purposes only.	Consistent
(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.	The proposal provides 6 bicycle places and space for 5 motorcycles.	Compliant
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	The proposal is for a new boarding house.	Not 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:

Comment: Not applicable

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 subject site is located at a section of Pittwater Road in which there is a variable character in terms of the number of storeys. This includes a mix of buildings that are generally 2-4 storeys in height. The proposed development will be compatible with this varied character by providing stepping of the upper levels so that the development appears as 3 storey building with a recessive and stepped-in 4th storey. This ensures that the presentation will not be visually dominant in relation to nearby development.

In this regard, it is considered that the scale of the development is compatible with the streetscape and consistent 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:

The proposal provides significant setbacks to the uppermost level (4th storey). In additions to this, landscaping is provided on the decks and terraces within the setbacks so as to assist in breaking up the bulk of the building. This breakdown ensures that the development will not involve large continuous planar walls, so as to be compatible with the character of newer mixed developments in the area.

In this regard, the development is considered to be compatible with the scale of surrounding development and consistent 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 proposal provides significant stepping back to the upper floors (front setback to 3rd floor and front/side/rear to 4th floor) to be consistent with the character exemplified in the streetscape. This maintains a presentation for the site that is not visually dominant.

In this regard, it is considered that effective methods have been employed in the design of the development to reduce its visual dominance and is consistent 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 proposal provides a materials palette including muted tones that will complement the existing character of the area. Furthermore, the proposal provides visual interest by minimising continuous built



planes and instead providing a mix of materials, colours and textures. In this regard, the development is considered to be consistent with the fourth principle.

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 have been assessed and are satisfactory.

Constraints on the development potential of surrounding sites

The proposed development is set back from all boundaries to varying degrees, particularly at the front and rear for the main portion of the building and on all sides to the upper level. The proposal will therefore not constrain surrounding sites from developing in the future.

Privacy

Privacy is discussed in detail under Part D8 Privacy in this report. In summary, the proposal does not result in any unreasonable privacy impacts to surrounding properties as a result of substantial physical separation, buffers including landscaping, and suitable location for communal space.

Conditions are also provided to minimise acoustic privacy impacts and a Boarding House Management Plan will also assist in providing an appropriate outcome for acoustic privacy.

Overshadowing

The orientation of the site and the setbacks of the proposal will mean that the private open space of all neighbouring properties will retain more than three hours of sunlight between 9.00am and 3.00pm in mid winter.

Amendments to the plans were also made to provide a break in the wall at the southern elevation, and to provide a light well to improve amenity for the southern neighbour.

Noise

Noise is discussed in detail under Part D8 Privacy in this report. In summary, the boarding rooms will be occupied by one or two people. The rooms include small outdoor open areas, however, these are not large enough to hold a large gathering.

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 compatible with the character of the local area and surrounding wider locality.

This matter does not warrant the refusal of the Development Application.

The above assessment has found that the proposal is compliant with the requirements and standards



within the SEPP ARH (subject to conditions).

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1088157M).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	35	43

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

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Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	11.0m	13.2m	20%	No (see comments)

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development Standard	Height of Buildings
Requirement	11m
Proposed	13.2m
Percentage variation to requirement	20%

Assessment of Request to Vary a Development Standard

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

Clause 4.6 Exceptions to Development Standards

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

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

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



Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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



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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act

The objects of this Act are as follows:

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

The applicants written request argues, in part:

The proposed development for mixed use (with a shop top housing style) provides a greater consistency and compatibility with nearby shop top housing developments along Pittwater Road. It is also stated that a localised depression exists at the rear of the site which contributes to the height breach.

It is agreed that the 4 storey building would provide a greater level of compatibility with the character of the area given the predominant height and scale of nearby shop top housing developments along the Collaroy strip. It is further agreed that a minor depression in the site contributes to the height breach at the rear of the site.

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

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

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

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



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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B2 Local Centre zone. An assessment against these objectives is provided below.

Objectives of the Building Height Development Standard

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

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

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

Comment:

The proposal involves a four storey shop top housing/boarding house style development that is consistent in built form with nearby shop-top housing developments. Further, the proposed building is compatible with the varied form of buildings in the area due to the substantial setbacks of upper levels to reduce the presentation of bulk and scale.

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

Comment:

As discussed in this report, the proposed upper level is substantially setback from the lower floors and all boundaries. This separation provides a situation in which there are substantial open corridors through the top portion of the development to allow for minimisation of view loss, separation for privacy and spacing to allow access for sunlight.

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

Comment:

The significant setbacks of the upper level along with landscaping to surround this level, provides an outcome in which the developments visual impact is minimised. This minimises the presentation of building bulk so as to ensure there is not unreasonable impact on the scenic quality of the area.

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



Comment:

The proposed development will appear as a two to three storey building from many public spaces, and this minimises the presentation of the development. The modulation, articulation, and provision of landscaping also assists in providing a presentation in which the built form is adequately broken in to sections so as to minimise visual impact.

Objectives of the B2 Local Centre Zone

The underlying objectives of the B2 Local Centre zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment:

The proposal includes both commercial premises and residential occupancies and provides opportunities for both housing and employment in the area.

- *To encourage employment opportunities in accessible locations.*

Comment:

The proposed commercial premises ("office premises" only by way of condition) are opposite the Collaroy B-line bus stops. These are future employment opportunities in an accessible location.

- *To maximise public transport patronage and encourage walking and cycling.*

Comment:

The site is within close proximity to bus stops and is located in a relatively flat area so that walking and cycling are possible. The development also provides for a bicycle storage area to encourage cycling.

- *To provide an environment for pedestrians that is safe, comfortable and interesting.*

Comment:

The restriction of the commercial premises to be an "office premises" will reduce vehicular traffic so as to provide an appropriate situation for pedestrians.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

The substantial setbacks of the upper levels and the landscaping on the terrace areas provides a situation in which the presentation of the development will integrate appropriately with the surrounding natural environment.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*



Comment:

The setback of the upper levels and break in the southern elevation ensures that the amenity of surrounding residential uses is well protected.

Conclusions on Consistency with the Objectives of the Zone

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone.

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

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

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	3	4	33.33%	No (see comments)
B5 Side Boundary Setbacks	Merit assessment	0m-6.335m	N/A	Yes (see comments)
B7 Front Boundary Setbacks	Ground and 1st Floor: Maintain streetfront	Streetfront setback maintained	N/A	Yes
B7 Front Boundary Setbacks	2nd floor and up:5m	5m-8m	N/A	Yes
B9 Rear Boundary Setbacks	Merit assessment	7.3m	N/A	Yes (see comments)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	No	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
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
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
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

Detailed Assessment

B2 Number of Storeys

Description of non-compliance

The control permits a building that is a maximum of three (3) storeys in height. The proposed development is four (4) storeys in height.

Merit consideration:



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

To ensure development does not visually dominate its surrounds.

Comment:

The fourth storey of the building is not easily visible from the street by virtue of its substantial setback from the front boundary and from the floors below. The fourth storey has also been designed to provide substantial setbacks to the northern and southern sides of the building, which provides appropriate visual relief and interest when viewed from surrounding properties.

Further, the proposal is located next to buildings that have similar heights and also within the proximity of other examples of four storey shop top housing development.

In this regard, the development does not visually dominate its surrounds.

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

Comment:

The proposed development will appear as a three storey building from many vantage points, including public spaces, which will minimise the visual impact of the development. The modulation, articulation and provision of landscaping will also assist in providing a visual presentation that is adequately broken down to minimise visual impact.

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

Comment:

The development provides a reasonable and equitable sharing of views to and from public and private properties. The fourth storey element provides substantial setbacks from the northern and southern boundaries to ensure view corridors are maintained for the adjacent building and for residential properties to the rear of the site.

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

Comment:

Despite the non-compliance with this control, the fourth storey does not result in any unreasonable overshadowing of adjoining properties, nor does it result in any unreasonable privacy or view impacts on adjoining or nearby properties.

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

Comment:

The development provides a modern flat roof design that is consistent with that of new medium density residential developments in the area. In this regard, the development provides sufficient scope for innovative roof pitch and variation in roof design.

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

Comment:

The development results in a non-compliance with the the Height of Buildings Development Standard. This non-compliance is for the upper level and is toward the rear of the site, away from the street. The assessment of this application and the variation proposed to the development standard is justified



on the basis that it is well founded and is supported in the circumstances.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of the WLEP2011, the WDCP 2011 and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B6 Merit Assessment of Side Boundary Setbacks

Merit consideration:

To provide ample opportunities for deep soil landscape areas.

Comment:

Given the site is located within the B2 Local Centre zone and within a mixed-use setting and context, it is envisaged that the ground floor areas will be occupied by commercial spaces, carparking and servicing areas. Furthermore, the WDCP does not contain a landscaped area control. Finally, the proposed planter boxes and landscaping throughout the development will provide opportunities for screening and softening planting.

To ensure that development does not become visually dominant.

Comment:

The proposal has adequate articulation and modulation to ensure it does not become visually dominant.

The proposal also provides significant setbacks to the upper levels from the street and lower floors. In additions to this, landscaping is provided on the decks and terraces within these setbacks so as to assist in breaking up the bulk of the building.

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

Comment:

The building is well modulated and steeps back significantly at the upper floor levels. This results in a bulk and scale which is compatible with the varied bulk and scale in the close vicinity of the site.

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

Comment:

The proposed development provides substantial separation between the upper levels and neighbouring properties to the upper level. The development also provides a recess in the southern elevation to allow for light access for the southern neighbour. This separation and breaking up of the built form ensures a reasonable level of amenity is provided the surrounding residential properties.

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

Comment:

The proposal provides substantial view corridors through the north and south of the 4th storey of the development to provide appropriate view sharing for the nearby developments that obtain views of the side boundaries.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent



with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D7 Views

Merit consideration

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

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

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal. This is done for two separate sites, being 1125-1127 Pittwater Road and 1-5 Collaroy Street.

1125-1127 Pittwater Road, Collaroy

1. Nature of the views affected

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

Comment to Principle 1:

The views that will be affected are ocean views toward Collaroy Beach. The views of the water are made somewhat partial by existing trees and the Collaroy Hotel building on the opposite site of the street.



Figure 1: View from Living room of Unit 11, 1125-1127 Pittwater Road



Figure 2: View from rear deck of Unit 11, 1125-1127 Pittwater Road

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

Comment to Principle 2:

The views are obtained from living areas within the unit and also from a deck which wraps around from the front of the unit to the side and rear (Figure 1 shows the view from the rear). These views are obtained from both standing and sitting positions and are over a side boundary.



3. Extent of impact

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

Comment to Principle 3:

Given the setback of the upper levels, there is a retention of a substantial view corridor through the southern setback of the subject site. This corridor can be obtained from the deck area as well as living areas. Given the nature of the view over a side boundary, the overall impact is assessed as being **minor**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposal complies with the controls for side and front setbacks and in this instance these are the controls that provide the greatest benefit to maintaining views. As a result of this and the overall minor view impact, the proposal is reasonable in terms of view sharing, despite the non-compliance with the development standard.

1-5 Collaroy Street, Collaroy

• 1. Nature of the views affected

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

Comment to Principle 1:

The views that will be affected are ocean views towards Collaroy Beach. The views of the ocean are made somewhat partial by the other existing buildings. In particular, the building in front of the site (1125-1127 Pittwater Road) results in a substantial disruption to ocean views.



Figure 3: View from central unit of 1-5 Collaroy Street, Collaroy



Figure 4: View from Northern Unit of 1-5 Collaroy Street



Figure 5: View from southern unit of 1-5 Collaroy Street

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

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

Comment to Principle 2:

The views are generally obtained from decks and living rooms associated with these decks. The views are across a side boundary and diagonally across the subdivision pattern. This diagonal nature of the view corridor results in the views being somewhat vulnerable.



3. Extent of impact

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

Comment to Principle 3:

Given the vulnerable nature of the views and the view corridor through the southern part of the site which is retained from many angles, the overall impact is considered as being **minor-moderate**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposal complies with the controls for side and front setbacks and in this instance these are the controls that provide the greatest benefit to maintaining views. As a result of this and the overall minor-moderate view impacts, the proposal is reasonable in terms of view sharing in this instance, despite the non-compliance with the development standard.

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

Comment:

The proposal provides a design solution that allows for corridors for views to the side and front of the proposed development. Given the vulnerable nature of surrounding views, this is an innovative and acceptable design solution.

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

Comment:

the surrounding canopy trees at the beach front maintain priority over the views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011/WDCP 2011 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.



D8 Privacy

Merit consideration

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

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

Comment:

Visual Privacy

The site does not directly adjoin any residential properties to the north. As such, the location and orientation of the decks and terraces to be generally in this direction provides a design that minimises overlooking between the site and sites toward the north. The properties to the west are also well buffered from the terrace areas at the managers area provides a screen between these areas. Furthermore, the decks are surrounded by planter boxes to provide a further buffer for overlooking between the site and adjacent properties.

Acoustic Privacy

The boarding rooms will be occupied by one or two people. All of the rooms include small terraces or decks, however, these are not large enough to hold a large gathering.

The common room and common outdoor areas are located toward the north of the site in a location that is well separated from the neighbouring residential occupancies.

Given the screen planting, the relatively large distance to the closest neighbouring dwelling, the relatively small size of the outdoor area and that it is very unlikely that the space will be used by any more than a few residents at a time, the common outdoor area will not result in unreasonable acoustic privacy impacts.

Conditions are also imposed to ensure controls are provided so noise is minimised and a plan of management for the site ensures areas prone to noisiness can only be used at appropriate times.

Overall, the siting and design of the proposal, along with the conditions of consent, will provide a satisfactory level of visual and acoustic privacy for occupants and neighbours.

To encourage innovative design solutions to improve the urban environment.

Comment:

The proposed boarding house is well designed with adequate separation and buffers to minimise impacts to neighbours.

To provide personal and property security for occupants and visitors.

Comment:

The proposal includes swipe card accessible entry and exit doors and enclosed living areas. The development will therefore provide suitable personal and property security for occupants and visitors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the



Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, subject to conditions, in this particular circumstance.

F1 Local and Neighbourhood Centres

The following requirement under 14. *Pittwater Road, Collaroy* applies to the site:

"Buildings greater than 2 storeys in height within the centre are to be designed so that the massing is substantially reduced on the top floors thereby reducing the visual bulk of the development and enabling views between buildings."

Comment:

The proposal provides substantial setbacks to the upper level floors from the lower level floors. This provides for an appropriate degree of stepping of the built form so that the building does not become excessive in terms of bulk and scale and negatively impact on streetscape, considering the Collaroy commercial strip is a "Local Centre". Views between the building and adjoining properties are maintained as envisaged by the controls applying to the site.

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 \$49,960 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,995,964.

CONCLUSION

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

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

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



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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

Conclusions on the Assessment of the Application

The assessment of the proposed development against the provisions of WLEP 2011 has found that the proposal does not comply with the 'Height of Buildings' development standard of 11.0m.

In this case, the design provides sufficient setbacks, modulation and articulation to reduce amenity impact and the visual impact is reasonable and acceptable. Furthermore, the applicant has provided sufficient justification for the departure from the development standard, which is considered to be well founded.

In addition, the assessment of the proposed development against the provisions of the Warringah DCP 2011 found that the proposal does not comply with the number of storeys control. Given the character of the area and amenity outcome, assisted by good levels of modulation at the upper levels, some flexibility in applying these controls is required. It is considered that the non-compliances will not have an unreasonable amenity impact on adjoining properties and are consistent with the streetscape character of the locality.

There were 43 submissions made in response to the public notification. A number of conditions have been imposed to alleviate the amenity impacts that were raised in the submissions.

Furthermore, a deferred commencement condition is recommended to limit the usage of the ground floor commercial premises to "offices" to ensure the use of the right of way will have a reasonable intensity of traffic usage and so that it is conducive to the limitations on the size of service vehicles, thus providing a satisfactory outcome in response to the concerns raised by residents and Council's Traffic Section.

In summary, the proposal should be approved as the design is reasonable for the site and locality by virtue of the supportable non-compliances that do not translate into any unreasonable amenity impacts.



The proposed mixed development will integrate with the existing streetscape and is likely to be consistent with future development in the local centre having regard to the predominant height and scale of development fronting Pittwater Road.

Based on the above detailed assessment, the Clause 4.6 variation to the building height is supported.

Therefore, the application is recommended for approval.

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

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



RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/0431 for Demolition works and construction of a Mixed Use Development comprising commercial units and a Boarding House on land at Lot 1 DP 859613, 1131 Pittwater Road, COLLAROY, Lot 4 DP 7445, 1129 Pittwater Road, COLLAROY, subject to the conditions printed below:

DEFERRED COMMENCEMENT CONDITIONS

1. Restriction on Title

The applicant is to submit a Section 88E instrument to be approved by Council prior to being lodged with Property NSW placing a restriction on the title to limit the use of the commercial tenancy to commercial office uses only and explicitly prohibits the conversion of the commercial space to retail uses.

This restriction should be drafted so that Council has authority to vary the restriction.

Reason: To limit the traffic impact of the approval on the surrounding area and to provide opportunity for the restriction to be lifted in the future if a further application or design is provided that addresses traffic concerns to Council's satisfaction. (DACTRAD1)

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

2. 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
A02A- Basement Floor Plan	16/09/2020	Barry Rush and



		Associates Pty Ltd
A03A- Ground Floor Plan	16/09/2020	Barry Rush and Associates Pty Ltd
A04A- First Floor Plan	16/09/2020	Barry Rush and Associates Pty Ltd
A05A- Second Floor Plan	16/09/2020	Barry Rush and Associates Pty Ltd
A06A- Third Floor Plan	16/09/2020	Barry Rush and Associates Pty Ltd
A07- Roof Plan	16/09/2020	Barry Rush and Associates Pty Ltd
A08A- Elevations East and North	16/09/2020	Barry Rush and Associates Pty Ltd
A09A- Elevations West and South	16/09/2020	Barry Rush and Associates Pty Ltd
A10A- Sections A-A & B-B	16/09/2020	Barry Rush and Associates Pty Ltd
A11- Demolition Plan	16/09/2020	Barry Rush and Associates Pty Ltd
A12- External Colour Schedule	16/09/2020	Barry Rush and Associates Pty Ltd

Engineering Plans		
Drawing No.	Dated	Prepared By
A14- Driveway Section	19/03/2020	Barry Rush and Associates Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Boarding House Management management Plan	April 2020	Applicant
Ausgrid Letter	20/05/20	AUSGRID
Geotechnical, hydrogeological and Acid Sulfate Soil Assessment	March 2020	martens consulting engineers
Access Report	20 March 2020	Ergon Consulting
Traffic Impact Assessment	27 March 2020	Urbis
Flood Assessment and Preliminary Flood Emergency Response Plan	April 2020	martens consulting engineers
Road Traffic Noise Assessment and Environmental Noise Impact Assessment	27 March 2020	DK Acoustics

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

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



Landscape Plans		
Drawing No.	Dated	Prepared By
LPDA 20- 155 Landscape Plan	Feb 2020	Barry Rush and Associates Pty Ltd
LPDA 20- 155 Landscape Plan - 3F	Feb 2020	Barry Rush and Associates Pty Ltd
LPDA 20- 155 Specification and Detail	Feb 2020	Barry Rush and Associates Pty Ltd

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Demolition and Construction Management Plan	February 2020	Apex Engineers

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.

3. Prescribed Conditions

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

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



- B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.



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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;



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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$49,959.64 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 \$4,995,964.00.

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.

6. **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.

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

A bond of \$10000 as security against damage to Council's footpath paving 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.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE SUBDIVISION WORKS CERTIFICATE

28. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Subdivision Works 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.

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

8. **On slab landscape planting and associated works**



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

Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system and adequate soil depths for proposed planting

9. **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.

10. **Car Parking Standards**

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

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

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

11. **Vehicular Swept Paths**

Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

This is to include all vehicles entering the subject site and include the demonstration of the vehicle clearances in the right of carriageway in the adjoining property 1-5 Collaroy Street. This is to ensure that two way vehicle traffic can be maintained through the site with impacting on the shared amenity.

Details demonstrating compliance with this condition must be submitted to the Certifying Authority prior to the issue of the construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

12. **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.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

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



- appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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.

13. Waste and Service Vehicle Access

Access to the on-site loading bay area including ramp grades, transitions and height clearance shall be designed for safe forward in and forward out access of a 6.4m SRV Service Vehicle, as a minimum requirement. The height clearance required is 2.5m, measured from the floor level to any overhead structures such as pipes.

Plans showing the ramp grades, transitions and height clearance and swept path diagrams of 6.4m SRV Service Vehicle shall be submitted to and approved by the Certifying Authority prior to the issue of the Construction Certificate. Swept path diagrams must include details of the road including, kerb line, line marking, signs, traffic devices, power poles, other structures and neighbouring driveways.

Reason: To ensure adequate service vehicle access.

14. Amendments to the approved plans- Replacement Landscaping

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

- All trees marked on the landscape plans as having a mature height of over 3m are to be replaced with a native species with a mature height of no greater than 3m.

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

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

15. 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.



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

The Applicant is to submit stormwater drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's **WARRINGAH WATER MANAGEMENT POLICY PL850**, and generally in accordance with the concept drainage plans prepared by Marten and Associates, drawing number PS03-E100 B, E101 A, E200 C. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NER) Civil or RPENG (Civil) Professionals Australia.

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

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

17. **Tanking of Basement Level**

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

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

18. **Contaminated Land Requirements**

Prior to the issue of any Construction Certificate a Contamination Management Plan is to be prepared by an appropriately qualified Environmental Consultant and provided to the satisfaction of the Certifying Authority. The plan shall detail:

- a) How all the requirements and / or recommendations contained within the Preliminary Site Investigation Report numbered P1907336JR01V01 prepared by Martens Consulting Engineers and dated April 2020 are to be implemented;
- b) A Remedial Action Plan (RAP) prepared by a suitably qualified Environmental Consultant in accordance with State Environmental Planning Policy No. 55 - Remediation of Land, and with any contaminated land planning guidelines under the Contaminated Land Management Act 1997;
- c) Stipulate reporting and processes associated with discovery of any new contamination that is revealed during excavation, demolition or development works. This process shall include the ability to contact NSW Fire and Rescue for pollution incidents, have on call (24 hours a day), a suitably qualified Environmental Consultant to undertake immediate investigations and provide recommendations for containment and rectification of contaminants or toxins and a process for notification to Northern Beaches Council and the Principal Certifying Authority.
- d) A requirement to complete ongoing water and soils testing during excavation, demolition and development works as follows:
 - (a) During construction in order to monitor water and soil quality the following is to



be implemented:

- i) Water testing is to be completed in accordance with Section 3 of the NSW RTA's Guideline for Construction Water Quality Monitoring
- ii) Soil Testing in order to detect contaminants is occur weekly with two (2) samples in accordance with the NSW EPA Contaminated Site Sampling Design Guidelines.

(b) The requirements of (i) and (ii) above are to be implemented from the commencement of works as follows:

- i) Fortnightly during excavation works
 - ii) Monthly during building works
- e) To ensure water quality is maintained runoff must be drained to an adequately banded central collection sump and treated, to meet NSW Department of Environment and Climate Change (formerly Environment Protection Authority) discharge criteria.

Note: Other options for the disposal of excavation pump-out water include disposal to sewer with prior approval from Sydney Water, or off-site disposal by a liquid waste transported for treatment/disposal to an appropriate waste treatment/processing facility.

- f) All stockpiles of potentially contaminated soil must be stored in a secure area on the site (no greater than 48 hours) so as not to cause pollution or public health risk until disposed of at a waste facility.

All contaminated soil removed from the site must be disposed of at a waste facility that can lawfully receive that waste and must be done in accordance with all relevant Acts, Regulations and Guidelines. Copies of all test results and disposal dockets must be retained for at least 3 years and be made available to authorised Council officers on request.

Note: The following Acts and Guidelines applied at the time of determination:

- i) Protection of the Environment Operations Act 1997; and
 - ii) Environment Protection Authority's Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes (1999).
- g) Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of Saework NSW and the Environment Protection Authority and the provisions of all relevant Acts, Regulations and Guidelines.
- h) Stipulate protocols for the importation of any landfill material onto the site the protocols shall include:
- o 'Chain of Custody' documentation shall be kept and submitted for the transport of the validated fill material from the any site to the subject premises.
 - o Requirement that any landfill material being brought to the site shall be free of contaminants or toxins and shall suitable for the use on the land.
 - o Any landfill material being brought to the site shall have a validation report prepared to the satisfaction of the Principal Certifying Authority (prepared in accordance with the Department of Environment & Climate Change's guidelines).

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

Reason: Protection of the environment, SEPP 55 compliance.

19. **Prior to construction certificate - Noise from Mechanical Equipment**

An noise assessment is to be undertaken by a suitably qualified person of the mechanical plant including air-conditioning plant associated with the use of the development. This assessment is



to be undertaken to assess noise emission from the mechanical plant and a report is to be submitted to the Principal Certifying Authority prior to Construction Certification.

Reason: Protect noise amenity of the area and public health.(DACHPCPCC6)

20. **Prior to construction certificate - Noise Control Building Specifications**

Within the acoustic report dated 27 March 2020 ref: 200131 prepared by DK Acoustics Pty Ltd, the following noise control measures are to be implemented to provide the required external noise reduction to comply with acceptable noise criteria.

External Walls must comply with recommendations in Section 5.1 of the above report.

Roof/ceiling must comply with recommendations in Section 5.3 of the above report.

Windows and external glazed doors must comply with recommendations in Section 5.4 of the above report.

Reason: To protect the noise amenity of the area and public health (DACHPCPCC6)

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. **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%20/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)

23. **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.

24. **Certification of recommendations in reports prior to CC**

All recommendations that relate to issues prior to construction certificate are to be complied with for the following reports:

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Ausgrid Letter	20/05/20	AUSGRID
Geotechnical, Hydrogeological and Acid Sulfate Soil Assessment	March 2020	martens consulting engineers
Access Report	20 March 2020	Ergon Consulting
Traffic Impact Assessment	27 March 2020	Urbis
Flood Assessment and Preliminary Flood Emergency Response Plan	April 2020	martens consulting engineers
Road Traffic Noise Assessment and Environmental Noise Impact Assessment	27 March 2020	DK Acoustics

Details are to be provided prior to the issue of a Construction Certificate.

Reasons: To ensure compliance with recommendations in expert reports.



25. **DRAINS Model and Flood mitigation**

The following issues are to be resolved prior to the issue of an Construction Certificate:

- A DRAINS model is to be submitted to Council for review to verify the outputs as presented in the report by Martens Consulting Engineers.
- Details and a redesign is to be provided to show the Flood mitigation tank will not be impacted by the back flow of stormwater from the adjoining box culvert.

Reason: To ensure appropriate outcome for Stormwater and Flooding.

26. **Basement Garage Traffic Signal System.**

To prevent conflicting vehicle flows on the internal basement garage ramp and avoid vehicles having to reverse up/ down the ramp, a traffic signal system must be installed at each ramp entry, and be visible from the assigned waiting bays, designed to warn drivers about to enter the road of any conflicting vehicle approaching.

The signal system must;

- be clearly visible from ramp entrances,
- is to clearly indicate to an approaching driver, by way of red light or wording, that an opposing vehicle has entered the ramp,
- Incorporate linemarking to delineate traffic flow and nominate waiting bay locations to allow vehicles to overtake another.

Details of the system, including the system operation, components and placement within the development, must be specified by a practising Traffic Engineer. This engineer is to submit a compliance certificate to the Accredited Certifier that the system has been installed and operating as designed, in accordance with the requirements of this condition, prior to the issue of the Construction Certificate issued for the development.

Reason: To ensure no vehicle conflicts within the basement carpark.(DACTRCPC1)

27. **Waste and Recycling Requirements**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

29. **Pre-Construction Dilapidation Report**



Dilapidation reports, including photographic surveys, of all 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.

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

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

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

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

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

30. **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.

31. **Tree protection**

(a) Existing trees which must be retained

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

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to



commencement of works.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

32. **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.

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

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

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

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

34. **Demolition Works - Asbestos**

If asbestos is found:

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.



35. **Requirement to Notify about New Contamination Evidence**
Any new information revealed during demolition, excavation and construction works that has the potential to alter previous conclusions and recommendations about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment.
36. **Imported Fill**
Prior to the importation of any landfill material onto the site, a validation report prepared in accordance with the Department of Environment & Climate Change's guidelines shall state that any fill material is suitable for the proposed use within the subject premises.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the fill being imported to the site.

Reason: To ensure that imported fill is of an acceptable standard.
37. **Compliance with the Preliminary Site Investigation Report**
The requirements of the Preliminary Site Investigation Report numbered P1907336JR01V01 prepared by Martens Consulting Engineers and dated April 2020 required by this consent are to be fully implemented from commencement of any excavation, demolition or development works until the issue of any interim / final occupation certificate.
Reason: Protection of the environment, SEPP 55 compliance.
38. **Waste Materials**
All waste materials are to be classified prior to removal of any waste materials from the premises. All wastes (including any potentially contaminated wastes) shall only be transported to and disposed of within a licensed waste facility that is suitably authorised to accept the wastes. Evidence of waste disposal shall be retained at the premises for the duration of the development.
Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.
39. **Compliance with the Boarding House Plan of Management**
The requirements of the Boarding House Management Plan dated April 2020 are required by this consent is to be fully implemented in perpetuity from the issue of any interim / final occupation certificate.

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.
(DACHPEDW2)
40. **Contaminants of Potential Concern - Preliminary Site Investigation Report**
Any Areas of Environmental Concern (AOEC) and Contaminants of Potential Concern (COPC) are to be managed in accordance with all of the requirements and recommendations contained within the Preliminary Site Investigation Report numbered P1907336JR01V01 prepared by Martens Consulting Engineers and dated April 2020. This includes the requirement for groundwater screening to be carried out during the excavation works and further contamination assessments where any fill material is encountered below the final bulk excavation level.

Reason: For the protection of human health and environmental health
41. **Installation and Maintenance of Sediment Control**
Measures used for erosion and sediment control on building sites are to be adequately



maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

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

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 dated February 2020.

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 certification**

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

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

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

45. **Stormwater Disposal**

The stormwater drainage works including the flood storage tank shall be certified as compliant with all the approved plans by the design engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

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

46. **Post-Construction Dilapidation Report**

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

- Compare the post-construction report with the pre-construction report,



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

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

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

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

47. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures and Flood storage tank**

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 and the flood storage tank 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 and flood management system is maintained to an appropriate operational standard.

48. **Preliminary Site Investigation Report Certification**

Written certification from a suitably qualified person(s) shall be submitted to the Principal Certifying Authority stating that all the works/methods/procedures/control measures/recommendations approved by Council in the Preliminary Site Investigation Report numbered P1907336JR01V01 prepared by Martens Consulting Engineers and dated April 2020 have been satisfactorily implemented and completed within the premises.

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

Reason: To ensure compliance with standards.

49. **Prior to Occupation Certification - Mechanical Ventilation Certification**

Windows and doors in rooms facing Pittwater Road need to be closed and have acoustic seals fitted to reduce internal noise to an acceptable level therefore mechanical ventilation is to be provided in each room facing Pittwater Road and the ventilation must comply with AS1668.2-2012. Certification is to be provided to a principal certifying authority prior to Occupation certification.



Reason: To ensure that the mechanical ventilation system complies with the design requirements. (DACHPFPOC4)

50. **Prior to Occupation Certificate - Registration of Boarding House**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided to the principal certifying authority identifying the Boarding House has been registered with the appropriate regulatory authority as prescribed under Part 2 of the Boarding Houses Act 2012. This includes any relevant licences required under Division 2 of said Act.

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity. (DACHPFPOC7)

51. **Required Planting**

Trees, shrubs and groundcovers shall be planted in accordance Landscape Plans Dwg Nos. LPDA 20-155 C pages 1 and 2 dated 23.03.20 Prepared by Conzept

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

Reason: To maintain environmental amenity.

52. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management. (DACPLF01)

53. **Garbage and Recycling Facilities**

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

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

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

54. **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.

55. **Fire Safety Matters**

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

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

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

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

56. **Certification of recommendations in reports Prior to OC**

All recommendations that relate to issues prior to Occupation certificate are to be complied with for the following reports:

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Ausgrid Letter	20/05/20	AUSGRID
Geotechnical, Hydrogeological and Acid Sulfate Soil Assessment	March 2020	martens consulting engineers
Access Report	20 March 2020	Ergon Consulting
Traffic Impact Assessment	27 March 2020	Urbis
Flood Assessment and Preliminary Flood Emergency Response Plan	April 2020	martens consulting engineers
Road Traffic Noise Assessment and Environmental Noise Impact Assessment	27 March 2020	DK Acoustics

Details are to be provided prior to the issue of a Occupation Certificate.

Reasons: To ensure compliance with recommendations in expert reports.

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



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

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

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

58. **Waste/Recycling Compliance Documentation**

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

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

59. **Positive Covenant for Waste Services**

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

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

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

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

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

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

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

61. **On going - Boarding Houses Act**

Compliance with the relevant sections of the Boarding Houses Act NSW in perpetuity from the issue of any interim/final occupation certificate.

Reason: Compliance with the Boarding House Act NSW (DACHPGOG5)

62. **Landscape maintenance**

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



Reason: To maintain local environmental amenity.

63. **Boarding house Requirements**

The following are on going requirements for the boarding house:

- There are to be no more than 23 boarding rooms (without further consent).
- The boarding rooms are to have no more than 2 boarders per room.
- Car parking is to be allocated as follows: 1 space for the boarding house manager, 13 spaces for the boarding house occupants and 6 spaces for the office premises.

Reason: To ensure compliance with the requirements of SEPP ARH and provide other appropriate controls for the boarding house.

64. **Boarding house units**

The boarding house units are to be used only for the purpose of a boarding house.

Reason: To ensure compliance with this consent for a boarding house.

1129-1131 PITTWATER ROAD COLLAROY

LIST OF DRAWINGS

- | | |
|------|----------------------------|
| A01A | LOCATION DIAGRAM |
| A02A | BASEMENT FLOOR PLAN |
| A03A | GROUND FLOOR PLAN |
| A04A | FIRST FLOOR PLAN |
| A05A | SECOND FLOOR PLAN |
| A06A | THIRD FLOOR PLAN |
| A07A | ROOF PLAN |
| A08A | ELEVATIONS EAST & NORTH |
| A09A | ELEVATIONS WEST & SOUTH |
| A10A | SECTIONS A-A & B-B |
| A11 | DEMOLITION PLAN |
| A12 | EXTERNAL COLOUR SCHEDULE |
| A13 | SITE ANALYSIS PLAN |
| A14 | DRIVEWAY RAMP SECTION |
| A15 | SHADOW DIAGRAMS MID WINTER |

SURVEY

3120 SHEET 1 DP SURVEYING 23 MAY 2018
3120 SHEET 2 DP SURVEYING 23 MAY 2018



LOCATION DIAGRAM

LEGEND

SLIP	DATE	REVISIONS TO ADDRESS COUNCIL GASB'S LETTER (18Sept2020)



Barry Rush & Associates Pty Ltd
 Suite 25A, 2 Nudgee Street, Balmain,
 NSW, Australia, 2041
 Phone: (612) 9555 8026 Fax: (612) 9810 0761
 e-mail: info@barryrush.com.au
 www.barryrush.com.au

Month

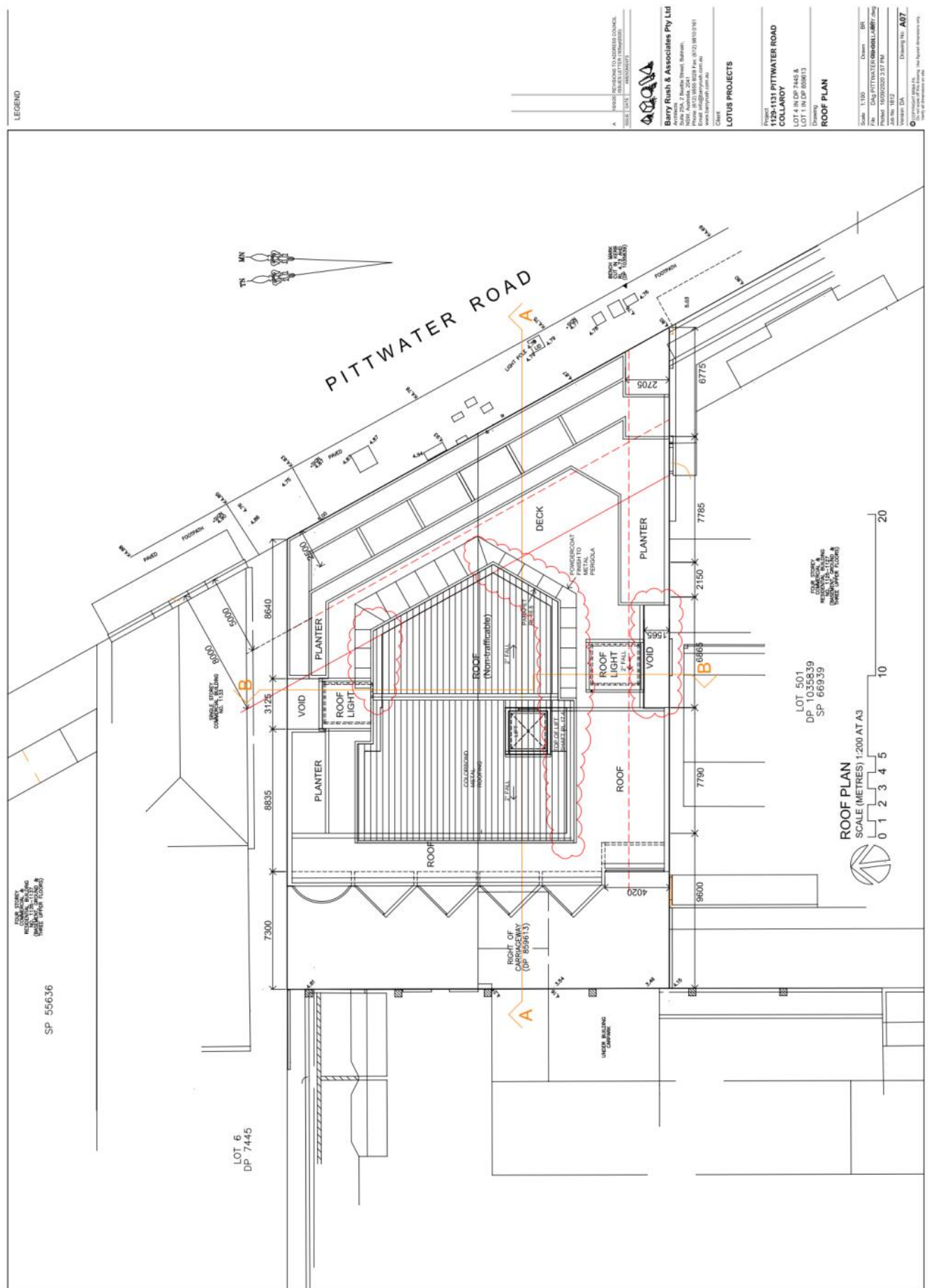
OTUS PROJECTS

129-1131 PITTWATER ROAD
COLLAROY
LOT 4 IN DP 7445 &
LOT 1 IN DP 830153

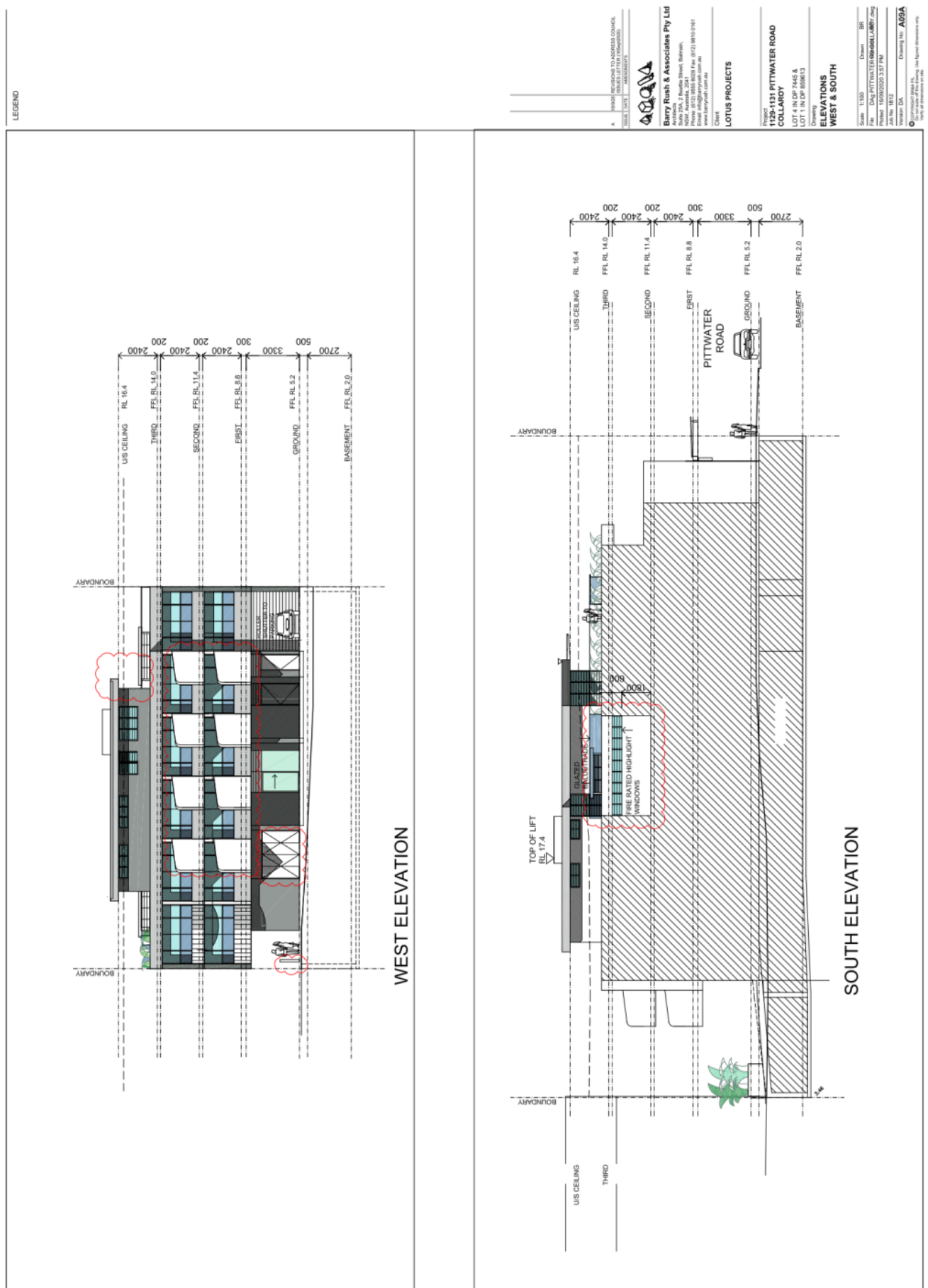
LOCATION DIAGRAM

Scale	1:100	Drawn	BR
File	C:\G\PITTWATER\000-00011-000.dwg		
Printed	16/09/2020 3:57 PM		
Job No	1812		

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Clause 4.6 variation request – Height of buildings
Proposed mixed use development
1129 – 1131 Pittwater Road Collaroy

Pursuant to the height of buildings map, the site has a maximum building height limit of 11 metres.

The objectives of this control are as follows:

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

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

It has been determined that the proposed development has a maximum building height along its eastern roof parapet of 12 metres with height increasing to a maximum of 13 metres where the site has a localised depression in its south western corner. This represents a building roof parapet non-compliance of between 1 and 2 metres or between 9 and 18%. The lift overrun has a maximum height of 13.2 metres above ground level representing a non-compliance of 2.2 metres or 20%. The extent of non-compliance is depicted in the following images.

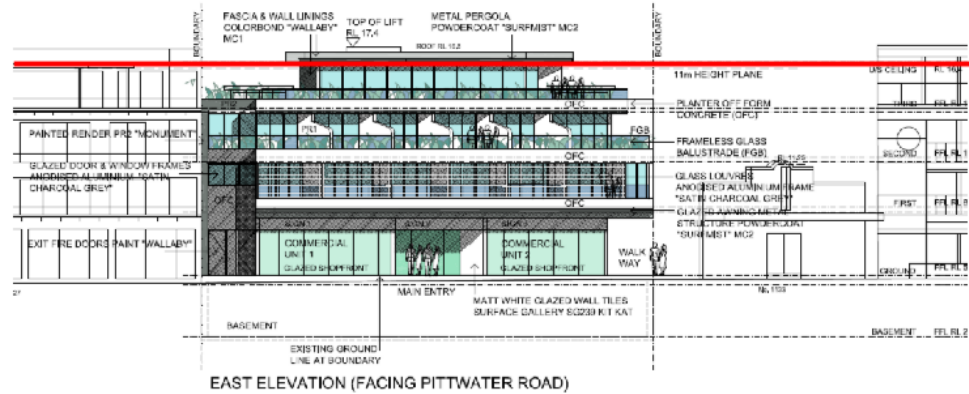


Figure 1 - Plan (east elevation) extract showing extent of 11 metre building height breach

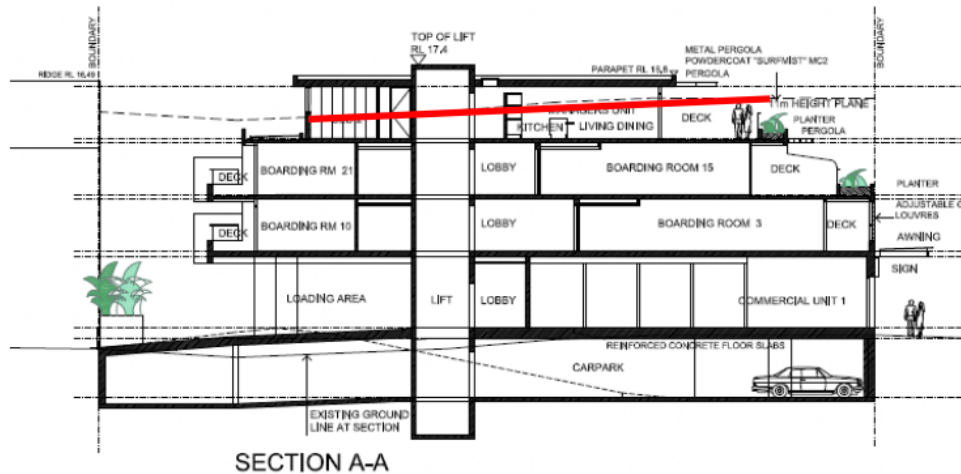


Figure 2 - Plan (section A-A) extract showing extent of 11 metre building height breach

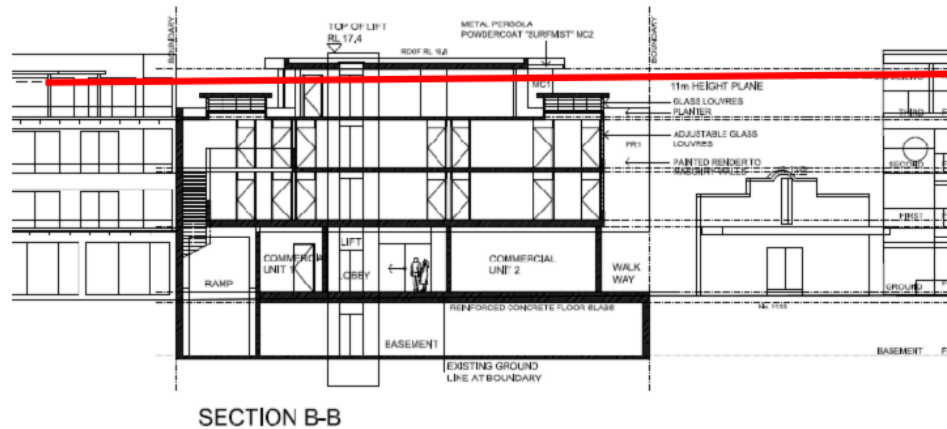


Figure 3 - Plan (section B-B) extract showing extent of 11 metre building height breach

Clause 4.6 of WLEP 2011 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.

This Clause applies to the Clause 4.3 Height of Buildings 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.*

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

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

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

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

Clause 4.6 Claim for Variation

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 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Zone and Zone Objectives

The Warringah Local Environmental Plan (LEP) 2011 applies to the subject site and this development proposal. The subject site is located within the B2 Local Centre zone. Shop top housing is permissible in the zone with consent. The stated objectives of the B2 zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area;*

Response: The proposed development achieves this objectives in that it incorporates commercial tenancies that will facilitate uses that are able to serve the needs of people who live in, work in and/ or visit the local area.

- *To encourage employment opportunities in accessible locations;*

Response: The subject property is ideally suited to increased residential densities given its immediate proximity to the Collaroy Beach B-Line bus stop. The proposal achieves this objective.

- *To provide an environment for pedestrians that is safe, comfortable and interesting;*

Response: The the building design and streetscape enhancement works providing an environment for pedestrians that is safe, comfortable and interesting. The proposal achieves this objective.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment;*

Response: The urban form relates favourably in scale and in architectural and landscape treatments to that established on neighbouring properties. The proposal achieves this objective.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Response: The proposal, by virtue of its design and siting, will maintain reasonable residential amenity to the adjoining properties in particular the apartments located to the south and west of the site. The proposal achieves this objective.

The consent authority can be satisfied that the proposal is consistent with the zone objectives as outlined. Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

Building Height Objectives

Having regard to the objectives of the height standard as previously identified strict compliance has been found to be both unreasonable and unnecessary for the following reasons:

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

Comment: Development within the site's visual catchment, and within the 11 metre height precinct, is eclectic in nature and currently in transition with a number of older one and two storey commercial and mixed use buildings being replaced with more contemporary 4 level stepped shop top housing building forms. A predominant 4 storey building presentation has been established by recently approved and constructed shop top housing development along Pittwater Road and within this particular street block.

We note that the 3rd and 4th Level building element maintains an appropriate setback to Pittwater Road such that they will be recessive in a streetscape context consistent with that of other recently approved and constructed 4 storey shop top housing development to the north and south of the site as depicted in Figures 4 and 5 below.

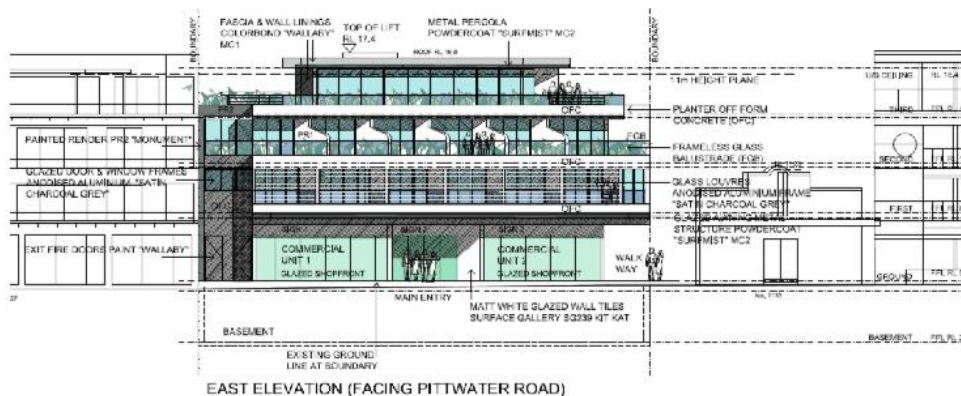


Figure 4 - Plan (east elevation) extract showing extent of 11 metre building height breach



Figure 5 – Photographic montage of proposed development and its immediate context.

In this regard, we have formed the considered opinion that the height, bulk and scale of the development including its 4 storey stepped form are entirely consistent with the height and scale of surrounding and nearby development.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably concluded that the development is compatible with surrounding and nearby development and accordingly the proposal achieves this objective.

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

Comment: Having undertaken a detailed site and context analysis and identified available view lines over the site we have formed the considered opinion that the height of the development, and in particular the non-compliant height components, will not give rise to any visual, view, privacy or solar access impacts with appropriate spatial separation maintained to adjoining properties.

The proposal achieves this objective.

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

Comment: The non-compliant building height elements will not be readily discernible as viewed from the street or coastal foreshore area. The proposal achieves this objective.

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

Comment: The non-compliant building height will not be visually prominent as viewed from the street or any public area as depicted in Figure 5. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context.

We have also formed the considered opinion that the proposal will maintain appropriate amenity in terms of solar access and privacy and will not give rise to any adverse public or private view affectation. In this regard, the development satisfies the objectives of the height of buildings standard and accordingly, pursuant to the first test in Whebe, strict compliance is unreasonable and unnecessary under the circumstances. It can also be argued that the 11 metre height standard has been effectively abandoned along this particular section of Pittwater Road in favour of a consistent and cohesive streetscape and urban design outcome.

Environmental Planning Grounds

In my opinion, there are sufficient environmental planning grounds to justify the variation it being noted that the building heights proposed provide for the contextually appropriate and cohesive streetscape. A better urban design and streetscape outcome is achieved.

The additional height proposed will ensure that the development maintains a complimentary and compatible streetscape height and form consistent with the heights and form of recently approved and constructed shop top housing development along this section of Pittwater Road. We note that all floor levels are nearly identical to those established by the shop top housing developments to the north and south of the site. A localised depression towards the rear of the site appears to have been artificially created contributing to the building height breach in this location. It can also be argued that the 11 metre height standard has been effectively abandoned along this particular section of Pittwater Road in favour of a consistent and cohesive streetscape and urban design outcome.

The building is of exception design quality and represents the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

In accordance with Clause 4.6(5) the contravention of the development standard does not raise any matter of significance for State or Regional environmental planning with the public benefit maintained by Council's adoption of an application specific merit based assessment as it relates to building height within the 11 metre height precinct in which the site is located.

Conclusions

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

- a) that the site specific and contextually responsive development is consistent with the zone objectives, and

- b) that the site specific and contextually responsive development is consistent with the objectives of the building height 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 height development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the design quality of the development, and the developments ability to comply with the zone and building height 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.

As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Please not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

Boston Blyth Fleming



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

ITEM 3.3 **DA2019/1475 - 22 VICTORIA PARADE MANLY - DEMOLITION OF BUILDING AND CONSTRUCTION OF A NEW HOTEL****AUTHORISING MANAGER** Lashta Haidari**TRIM FILE REF** 2020/699785**ATTACHMENTS**
1 [↓](#) **Assessment Report**
2 [↓](#) **Site Plan and Elevations**
3 [↓](#) **Clause 4.6 - Height of Building**
4 [↓](#) **Clause 4.6 - Floor Space Ratio****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. DA2019/1475 for demolition of building and construction of a new hotel at Lot 3 DP 86034, 22 Victoria Parade, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1475
----------------------------	-------------

Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot 3 DP 86034, 22 Victoria Parade MANLY NSW 2095
Proposed Development:	Demolition of building and construction of a new hotel
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Yin Feng Pty Ltd
Applicant:	Morson Group Architects

Application Lodged:	18/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Tourist
Notified:	11/09/2020 to 25/09/2020
Advertised:	11/09/2020
Submissions Received:	62
Clause 4.6 Variation:	4.3 Height of buildings: 14% 4.4 Floor space ratio: 100.2%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 5,240,785.00
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EXECUTIVE SUMMARY

Development Application DA2019/1475 has been submitted by Morson Group Architects for demolition works and construction of a four (4) storey hotel containing forty-one (41) rooms, a cafe/ restaurant, separate retail space and basement parking for twenty-two (22) vehicles.

The application was amended following the public exhibition of the proposal which in total has resulted in sixty-two (62) submissions objecting to the proposal and raising concerns relating to amenity (noise, privacy, views, overshadowing), traffic and parking and non-compliance with the building height and floor space ratio requirements of Manly Local Environmental Plan 2013 (MLEP 2013).

The site is zoned R3 Medium Density Residential and development for the purpose of 'tourist and visitor

DA2019/1475



accommodation' is permissible with consent.

Assessment of the application has found that the proposal in its current form cannot be supported as it fails to satisfy the requirements of MLEP 2013 and Manly Development Control Plan (MDCP) including wall height, number of storeys, front setback, side setback, landscaped area and earthworks.

In addition, the proposed variations to the 'Height of Buildings' and 'Floor Space Ratio' Development Standards under MLEP 2013 at 14% and 100.2% respectively are considered excessive in the context of this site and not in the public interest. There are insufficient environmental planning grounds provided by the applicant to justify contravening these development standards to the extent proposed.

Accordingly, the application is referred to the NBLPP with a recommendation for refusal for the reasons detailed within the 'Recommendation' section of this report.

PROPOSED DEVELOPMENT IN DETAIL

The development application as submitted seeks the demolition of the existing structures on site and construction of a new part four/part five storey hotel accommodation comprising 49 rooms, communal rooftop area including spa, ground floor café/restaurant, basement car parking with 22 car spaces and associated site and landscape works.

The application was subsequently amended to reduce the number of storeys from 5 to 4 and reduce the number of rooms to 41. This amended application is the subject of this assessment.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R3 Medium Density Residential
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.12 Essential services

DA2019/1475



Manly Local Environmental Plan 2013 - 6.15 Tourist and visitor accommodation
 Manly Local Environmental Plan 2013 - 6.21 Noise impacts—licensed premises
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 3.9 Mechanical Plant Equipment
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 3 DP 86034 , 22 Victoria Parade MANLY NSW 2095
Detailed Site Description:	The subject site is known as No. 22 Victoria Parade, Manly and is legally identified as Lot

DA2019/1475



Photograph 1 - The subject site viewed from Victoria Parade

The site is a regular shaped allotment with a 20.29m frontage to Victoria Parade, northern 28 Victoria Parade of 47.69m and a southern boundary adjoining No 18-20 Victoria Parade. The site area is 966m².

The site is generally flat with less than 25mm in fall from back to front.

Surrounding development consists of a range of medium density residential development Victoria Parade and to the rear south-west of the site, Manly Village Public School opposite low density detached dwellings adjoining the site to the south-east fronting Ashburner Street.

The immediately adjacent properties consist of a 1920's residential flat building to the north access either side of the building accessing at grade parking to the rear (No.28 Victoria Parade) and a residential flat building to the south (No. 18-20 Victoria Parade).

Map:



SITE HISTORY

Development Application DA0167/2015

DA0167/2015 was lodged with the former Manly Council on 20 July 2015 for demolition works and construction of a three (3) storey hotel containing thirty six (36) rooms, basement parking for twenty two (22) vehicles and landscaping. The application was approved by the Manly Independent Assessment Panel (MIAP) on 17 March 2016 subject to conditions.

Development Application DA2019/1475

DA2019/1475 for demolition works and construction of a part four, part five storey hotel containing forty nine (49) rooms, a communal rooftop terrace with spa, ground floor cafe/ restaurant and basement parking for twenty two (22) vehicles and landscaping was lodged with Northern Beaches Council on 18 December 2019.

A request to withdraw the application was sent to the applicant which identified the following issues with the application:

- Building Height breach of 44% (4.92m)
- Floor Space Ratio (FSR) of 1.73:1 which represents a 950m² breach of the 0.75:1 control.
- Urban Design issues
- Privacy and view loss
- Heritage retention of facade
- Inadequate detail in relation to on-site stormwater design
- Driveway crossing
- Insufficient parking

On 22 July 2020 the applicant submitted amended plans to address the some of the issues raised above. The amendments include:

- Reduced FSR from 1.73:1 to 1.50: 1
- Reduced height from 15.92m (4-5 storeys) to 12.54m (4 storeys)

DA2019/1475



- Reduced front setback at ground level from 4.9m to 3.5m.

These plans were renotified from 9-25 September 2020. This second notification resulting in 23 submissions.

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 the purpose of 'tourist accommodation' for an extended period of time. The proposed development retains the 'tourist accommodation' use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>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 may 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>

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 clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. The proposed development is considered to adversely impact the visual and acoustic privacy of the adjoining properties. In addition, the lack of parking and appropriate vehicular access is considered to create an unacceptable impact on the parking and safety of vehicles and pedestrians within Victoria Parade.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal for tourist and visitor accommodation.</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.
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 Building Height, Floor Space Ratio , landscaped open space and parking 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 11/09/2020 to 25/09/2020 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 62 submission/s from:

Name:	Address:
Mr Clive Owen Gestern Williams	3 / 29 Victoria Parade MANLY NSW 2095
Mr Mitchell Peter Waters	11 Darley Road MANLY NSW 2095
Mrs Natalie Louise Waters	11 Darley Road MANLY NSW 2095
Mr John Christopher Coffey	49 Robert Street FRESHWATER NSW 2096
Ms Kate Leah Jewell Lorimer	17 / 28 Victoria Parade MANLY NSW 2095
Mr Ricardo Agustin Aravena	3 / 28 Victoria Parade MANLY NSW 2095
Mr Daniel Coleman	3 / 43 Ashburner Street MANLY NSW 2095
Angy Ertel	8 / 25 Ashburner Street MANLY NSW 2095
Mr Mark Joseph Wall	24 / 25 - 27 Victoria Parade MANLY NSW 2095
Adam Paton	25 Vista Street GREENWICH NSW 2065
Cristina Maldonado	2 / 28 Greycliffe Street QUEENSCLIFF NSW 2096
Mr David Lawrence	21 Ashburner Street MANLY NSW 2095
Mr Nicholas David Arneaud	1 / 8 Moore Road FRESHWATER NSW 2096
Mr Trevor George Hodges	15 Darley Road MANLY NSW 2095
James Macdonald	7 / 25 Ashburner Street MANLY NSW 2095
Ms Sybil Mercia Walsh	6 Hoover Place CROMER NSW 2099
Mrs Robyn Patricia Waters	7 / 129 Bower Street MANLY NSW 2095
Mr Mr English	2 / 28 Victoria Parade MANLY NSW 2095
Kristian Bach Kolding	7 / 28 Victoria Parade MANLY NSW 2095
Mr Kenneth Herriot Crawford	C/- Archisol Architects Suite 3, 23 Belgrave Street MANLY NSW 2095
Mrs Pheik Kiang Tang	123 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Joseph Anthony Alagich Mrs Olga Maria Alagich	6 / 34 - 38 Victoria Parade MANLY NSW 2095
Mr Barry William Cross Mrs Robyn Neilae Cross	4 / 34 - 38 Victoria Parade MANLY NSW 2095
Kit Middleton	PO Box 178 TURRAMURRA NSW 2074
Ms Mary Brownhill Pattinson	309 / 15 Wentworth Street MANLY NSW 2095
Mr Niels Pantenburg	2 / 18 Victoria Parade MANLY NSW 2095
Mr John Barry Kay Barry	1 / 34 - 38 Victoria Parade MANLY NSW 2095

Name:	Address:
Mrs Antoinette Therese Bruecher	C/- Red Property Shop 1 5-7 Raglan Street MANLY NSW 2095
Mr Gregg Peter Melrose Ms Deborah Joan Melrose	9 / 34 - 38 Victoria Parade MANLY NSW 2095
Ms Amber Mae Glenister	12 / 25 - 27 Victoria Parade MANLY NSW 2095
Mr Ronald John Challenor	Lot 55 Rosetta Crescent KELLYVILLE NSW 2155
Mr John Graham McDermott	1 / 40 Victoria Parade MANLY NSW 2095
Mr Frederick Journeaux	3/120 Wyong Road KILLARNEY VALE NSW 2261
Mrs Petra Michaela Jirku	7 / 25 Ashburner Street MANLY NSW 2095
Mr Roger Herbert Springer	17 Ashburner Street MANLY NSW 2095
Mr Roger Springer	17 Ashburner Street MANLY NSW 2095
Mr Graham John Butson	5 / 42 Victoria Parade MANLY NSW 2095
Mr Josh Jackson	301 / 25 - 27 South Steyne MANLY NSW 2095
Ruth Jackson	3 / 29 Victoria Parade MANLY NSW 2095
Sara Williams	3 / 29 Victoria Parade MANLY NSW 2095
Rupert Williams	3 / 29 Victoria Parade MANLY NSW 2095
Mr Michael John Harvey	4 / 25 - 27 Victoria Parade MANLY NSW 2095
Ms Jane Ellen Hughes	4 / 25 - 27 Victoria Parade MANLY NSW 2095
Colco Consulting Pty Ltd	29 A Amiens Road CLONTARF NSW 2093
Proprietors of Strata Plan 4911	18 Victoria Parade MANLY NSW 2095
Mr Scott Murray Freeman	3/14-16 Victoria Parade MANLY NSW 2095
Nevine Isabelle Dinie Te West	3 / 18 Victoria Parade MANLY NSW 2095
Mr Michael William Grundy	16 Carey Street MANLY NSW 2095
Nolan Planning Consultants	75 Oliver Street FRESHWATER NSW 2096
Catherine Tauro	Address Unknown
Mr Martin Nielson Schmidt	4 / 42 Victoria Parade MANLY NSW 2095
Emily Hunter	Address Unknown
Mr Edward Robert McPherson Hunter	11 / 28 Victoria Parade MANLY NSW 2095
Miss Silvana Zappia	8/14-16 Victoria Parade MANLY NSW 2095
Ms Anna Kondritz	15 / 84 A Darley Road MANLY NSW 2095
Alexandre Nollis	5 / 14 Victoria Parade MANLY NSW 2095
Ms Alexandra Louise Kulmar	1 / 28 Victoria Parade MANLY NSW 2095
Mrs Hazel Bambrick	31 Lovett Street MANLY VALE NSW 2093
Mrs Margaret Jennifer McDermott	1 / 40 Victoria Parade MANLY NSW 2095
Mr William Frank Mason	35 Narroy Road NORTH NARRABEEN NSW 2101
Joshua Thomas Jackson	6 / 13 Victoria Parade MANLY NSW 2095
Mr Pierre Lord	5 / 18 Victoria Parade MANLY NSW 2095



The matters raised within the submissions are addressed as follows:

- **Non-compliance with Height and Floor Space Ratio (FSR)**

Comment:

The proposed redevelopment seeks a 14% non-compliance with the building height control and a 100.2% non-compliance with the FSR. The supporting documentation submitted with the original application included a Clause 4.6 variation for the building height, however while it was referenced in contents of the SEE, was not provided. Following amendments to the proposal that changed the developments height and FSR, there was no update to these documents submitted. An assessment of these non-compliances has been provided within this report and are not supported.

- **View Loss**

Comment:

Concerns relating to view loss were received from the adjoining property to the north. The front apartment on the top floor currently has a sight line from their kitchen and living/dining room windows across the front of the subject site toward Manly Cove and Esplanade Park through the Norfolk Pines. The proposed development which has pushed building bulk within the front setback and provides minimal stepping of the facade at the upper levels will result in the loss of this view line. While a full view assessment is provided within this assessment, it is considered that it isn't unreasonable for this view to be retained and given the excessive additional floor space proposed a better more closely compliant scheme could achieve this.

- **Visual and Acoustic Privacy**

Proposal includes numerous openable windows within 1.8m of the common boundary with No. 28 Victoria Parade

Lack of landscaping along common boundary

Acoustic Report relies on data from 2015 (dated 29/6/15)

Comment:

The setbacks to the northern property boundary are considered inadequate. Due to the wall height on the northern facade, the setback to this boundary should be 4.2m. While the use of eyelid windows which seek to direct sight lines toward Victoria Parade and not directly into the neighbouring property are an effective design choice, the proximity of the building given its commercial nature is considered insufficient.

As identified in this submission, the site planning provides for no landscaping at all along the full length of the boundary adjoining the adjacent building. The site layout includes locating mechanical plant along the north-eastern side of the building adjacent to the driveway. While the design includes 'acoustic louvres', the acoustic report is not considered convincing in its support of this ameliorative measure. The location of mechanical plant in this location adjacent to numerous bedrooms and sensitive noise receptors is not a good design response. This infrastructure should be located within the basement.

- **Roof Top Terrace**

Comment:

This element of the proposal has been deleted along with the entire fifth level and is no longer an issue.



- **Amenity**

Loss of sunlight and enclosure of apartments on the south-west elevation

Comment:

The proposed building form results in additional overshadowing of the north-eastern apartments within No. 18-20 Victoria Parade. The apartments affected are the ground and first floor apartments. The ground floor apartment closest to Victoria Parade is impacted for the entire morning period with solar access reaching the east facing windows between 1pm and 2pm before the building casts afternoon shadow across itself.

The first floor apartments are in shadow in the morning until 11am and retain solar access to most windows and balcony areas until approximately 1pm - 2pm.

In terms of the sense of enclosure of these apartments, the development provides a setback to the south which is close to compliant at 3.0m. The inadequate front setback however does result in a sense of overbearing bulk particularly for the front north facing apartments.

- **Traffic and parking**

Proposal requires 52 spaces and has a 30 space shortfall

Comment:

The amended proposal has reduced the number of rooms to 41. Accordingly the number of parking spaces required has also reduced to 45 spaces. The number of spaces proposed remains at 22, a 23 space shortfall. This issue is considered unresolved and forms a reason for refusal of the application.

-

- **Over-development of the site**

Loss of sunlight and enclosure of apartments on the south-west elevation

Comment:

The proposed development includes a substantial 100.2% non-compliance with the FSR requirement of 0.5:1. The extent of non-compliance is a clear indication the proposal is an over development of the site.

- **Out of Character**

Proposal is located in a residential area.

Comment:

While the site is located with the R3 medium density residential zone, the proposed land use for 'tourist accommodation' is a permissible land use. This issue does warrant refusal of the application.

- **Substantially the same development**

The amended proposal is heavily modified from the original application and should constitute a new development application.

Comment:

The application as originally submitted was for a five storey hotel accommodation with 49 rooms, communal roof top terrace with spa, ground floor cafe/restaurant and basement car park for 22 vehicles. The application as amended is for a four (4) storey hotel with 41 rooms, ground floor cafe./restaurant and basement car park for 22 vehicles. While the quantum of the proposal



has been reduced in scale, the overall proposal in its nature and use are considered to remain substantially the same.

- **Inadequate parking and driveway access**
Inadequate provision for service vehicles

Comment:

An assessment in relation to parking provision and driveway access has been undertaken by Council's Traffic Engineer and has been found to be inadequate and unacceptable. Parking and access form reasons for refusal of this application.

- **Loss of morning sunlight access**

Impact on the occupants of No.18-20 Victoria Parade

Comment:

The application provides a shadow analysis which compares the proposed development with the development approved by DA0167/2015. While this is interesting, it would have been useful for the shadow diagrams to show the pre and post development shadow impacts as the current application has no reliance on the application approved under DA0167/2015.

What is established by the shadow diagrams is that the rear, north-eastern facing lower ground unit is impacted by shadow from the development until 11am mid winter. From 1pm the building is cast in shadow from itself.

The front ground and first floor apartments are entirely in shadow in the morning until 11am when the first floor apartment will gain some daylight access to the two southern windows.

The ground floor apartment closest to the development will be impacted by shadows on eastern facing windows until 1pm and will be in full shadow from itself from 3pm.

Were the development to provide a compliant 6m setback for at least the ground and first floor levels with greater setbacks to Level 2 and 3, it is anticipated that the windows along the north-eastern facade of the building would benefit from increased sunlight access particularly in the morning during mid winter.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>SUPPORTED</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>

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Internal Referral Body	Comments
Environmental Health (Industrial)	<p>SUPPORTED</p> <p><u>Acid Sulfate Class 4</u></p> <p>Consultant EIS recommends " excavated soils for footing and shoring systems should be sampled and analysed for SPOCAS to confirm an ASSMP is not required. As a contingency plan during these works any soils excavated for footings and services the material should be stockpiled and separated by a bund wall or a sediment control fence prior to testing for ASS. Alternatively this material could be placed into skip bins prior to testing." Accepted - a suitable condition will be added.</p> <p><u>Noise</u></p> <p>Noise assessment conclusion by TTM Consulting 24.10.2019: "Following a noise assessment conducted by TTM for Morson Group specifically for the proposed Manly Lodge mixed-use development at 22 Victoria Parade, Manly, TTM concludes the following:</p> <ul style="list-style-type: none"> • The noise emissions of individual mechanical plant, including corrections for tonal and impulsive noise characteristics, must not exceed 66 dB(A) measured at one metre from the source. • A detailed noise assessment of the mechanical plant during the detailed design stage is recommended. The noise assessment should include noise source levels of plant, location, adjustments for plant noise characteristics, the cumulative noise effect of all plant noise, and practical effective noise control where required to verify compliance with the criteria. • The effectiveness and performance of the acoustic louvres should be reviewed and investigated to ensure compliance with the relevant noise criteria as part of the detailed mechanical plant noise assessment. • The rooftop communal area is to be suitable for recreational use by the guests, with the implementation a noise management plan. • The noise management plan is recommended to be reviewed on a regular basis. • Noise from additional road traffic generated from the development is predicted to be insignificant. <p>The assessment and recommendations contained in this report demonstrate the development is feasible and reasonable, whilst keeping an appropriate acoustic amenity and controlled noise impact to the local community."</p> <p>The applicant is also in the application proposing to :</p> <ul style="list-style-type: none"> • Restrict use of terrace to the day-time and evening assessment periods only, which is from 7am to 10pm, Monday to Saturday or 8am to 10pm on Sundays and public holidays. • Display signs to ensure noise is kept to a minimum of the

Internal Referral Body	Comments
	<p>adjacent properties.</p> <ul style="list-style-type: none"> • Position outdoor speakers away from any window of the adjacent properties. • <p>The roof top spa and lounge area, are of concern due to potential noise to residential receivers surrounding the site. Signage does not ensure noise is minimised. Use by groups has the potential for offensive noise and complaints to Council. To enable approval conditions can be added.</p> <p>Likewise water quality/management/registration of the spa will require conditions.</p> <p><u>Amended Plans Reviewed 25.9.2020</u> APPROVAL - subject to conditions</p>
Environmental Health (Food Premises, Skin Pen.)	<p>SUPPORTED</p> <p>No objections to the internal Restaurant operation , spa will be dealt with in industrial referral.</p> <p>Therefore conditions relating to the food business are provided.</p> <p>APPROVAL - subject to conditions</p> <p><u>Amended Plans Reviewed 25.9.2020</u> No objections to the internal Restaurant operation. Conditions relating to the food business are provided.</p>
Landscape Officer	<p>SUPPORTED</p> <p>The development application proposes the demolition of the existing structures and the construction of a new part four/part five storey hotel accommodation comprising 49 rooms, rooftop terrace, ground floor café/restaurant and associated site and landscape works.</p> <p>The landscape proposal to the upper-most level of the rooftop level consists of a spa and open pergola structure over the spa, with climbers proposed over the pergola frame to provide shade and weather protection to the occupants of the roof level of the building.</p> <p>Landscape Referral have considered this application against the relevant statutory requirements under Manly Local Environmental Plan, and Manly Development Control Plan, including Part 3 General Principles of Development; and Part 4 Development Controls and Development Types, and specifically 3.2.1.1 Consideration of Heritage Significance, and 3.5.5 Landscaping.</p> <p>In accordance with DA Lodgement Requirements, both a Landscape Plan and an Arboricultural Impact Assessment is provided with the development application.</p> <p>The Norfolk Island Pine located within the road carriageway at the</p>

Internal Referral Body	Comments
	<p>frontage of the development site is identified in the Local Environment Plan with heritage value under NSW Heritage Listing Number i238, as part of a significant group of street trees.</p> <p>The existing Norfolk Island Pine shall be protected from construction work impact as recommended in the Arboricultural Impact Assessment report prepared by NSW Tree Services dated 23 June 2015. The Norfolk Island Pine is identified as tree number 1 in the report.</p> <p>At ground level the Landscape Plan proposes boundary planting, planter walling, seating and lawn area. The planting areas consist of deep soil planting to the southern boundary (on slab with 1 metre soil depth); western boundary (part natural ground / part on slab with 1 metre soil depth); and northern boundary (natural ground), with planting of native trees, feature accent planting, and native understorey planting.</p> <p>On level 4, a raised tree planter is proposed, and on level 5 the landscape treatment consists of planting to the pergola, raised planter boxes, timber decking, seating, and lawn areas.</p> <p>No objections are raised in regard to the Landscape Plan and the recommendations of the Arboricultural Impact Assessment, subject to conditions.</p>
NECC (Development Engineering)	<p>NOT SUPPORTED</p> <p><u>2nd Development Engineering referral</u> A new set of plan was submitted on 30/7/2020. The issues raised in previous referral response have not been addressed. As such, Development Engineering cannot support the application due to the section 3.7 and 4.1.1 of Council Manly DCP 2013</p> <p><u>1st Development Engineering referral</u> The applicant proposed to re-develop the existing hotel. Development Engineering has reviewed the submitted plan and provides the following comments:</p> <p>On site stormwater management design The applicant proposed an absorption system to discharge the on site stormwater. However, there is no soil infiltration rate provided in design. Development Engineering cannot undertake further assessment.</p> <p>The proposed kerb outlet pipe will connect to the existing crossing at no.28 Victoria Parade. The location of the kerb outlet shall be relocated.</p> <p>Some tall narrow trees are proposed to be planted on the proposed absorption trench in accordance with submitted landscape plan. This</p>

Internal Referral Body	Comments
	<p>will influence the future functionality of the absorption trench.</p> <p>Driveway crossing The proposed driveway crossing shall be at least 5.5 m wide to prevent any delay of traffic on Victoria Parade. It must also be separated from the crossing at No. 28 Victoria Parade.</p> <p>Development Engineering cannot support the application due to the section 3.7 and 4.1.1 of Council Manly DCP 2013.</p> <p>Furthermore, the applicant has no mention about any loading dock/area to serve the hotel.</p>
Strategic and Place Planning (Heritage Officer)	<p>SUPPORTED</p> <p>The proposal has been referred to Heritage as it is adjacent to the Manly Town Centre Conservation Area and within the vicinity of a number of heritage items listed in the Manly LEP 2013, Schedule 5, being:</p> <p>Item I120 One of a pair of semi-detached cottages - 11 Darley Road</p> <p>Item I238 Street trees - Victoria Parade</p> <p>Item I247 Manly Village Public School - Wentworth Street (corner of Wentworth Street, Darley Road and Victoria Parade)</p> <p>Details of heritage items affected</p> <p>Details of the items as contained within the Manly Heritage inventory are as follows:</p> <p>Item I120 One of a pair of semi-detached cottages <u>Statement of Significance:</u> This item is of local significance for its ability to demonstrate the pattern of development of Manly and in particular the area south of the Corso. The property was within an area set aside as Victoria Park, remaining undeveloped until the late 19th century when the Wentworth Estate was sold and sub-divided as the Bassett-Darley Estate. These simple semi-detached cottages reflect the early development of the area, simple dwellings for local residents/workers, and are now an uncommon example of their kind in the flat area south of the Corso. <u>Physical Description:</u> One of a pair (nos. 11 & 13 Darley Road) of single storey timber semi-detached cottages. The cottages have a corrugated iron roof [sic] with gable feature to each. The gables have weatherboard cladding and a simple</p>

Internal Referral Body	Comments																					
	<p>collar tie and finial. There is a terracotta tiled awning roof over the front verandah running continuously across both cottages. Cast metal filigree brackets to the verandah posts are a later addition. The cottages are clad with lapped weatherboards. The entries are adjacent, to the centre, and have panelled doors with highlight over. There is a group of three double hung windows with very narrow side sashes...The front verandahs appear to have been tiled.</p> <p><i>Item 1238 Street trees</i> <u>Statement of significance:</u> Historical line of HG Simth's intended Victoria Park. Aesthetic. <u>Physical description:</u> Norfolk Island Pines on both sides of road planted in carriageway.</p> <p><i>Item 1247 Manly Village Public School</i> <u>Statement of Significance:</u> Manly Village Public School is of significance for the Manly local area for historical, associative, social and reasons of representativeness, primarily based on its ongoing use in education since 1882. The school is held in high esteem by the local community and it has special associations with a number of widely known local residents, notably A R Cutler the war hero and once Governor of NSW. <u>Physical Description:</u> The School as seen from Victoria Parade consists of two plain, rectangular, dark brown brick structures (one three- and one two-storey) with clay-tiled hipped roofs and timber double-hung windows. The two-storey section is directly opposite the subject site, being separated from it by the notable width of Victoria Parade.</p> <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table> <p>Consideration of Application</p>	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	No	
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Internal Referral Body	Comments
	<p>The application seeks consent for demolition of the existing building (from the Inter-war Period) on the subject site, and the construction of a new hotel accommodation, comprising 49 rooms. A Development Application No. DA167/2015 was approved for the subject site, by MIAP on 17 March 2016 for demolition of the existing structures and construction of three storey hotel comprising 36 rooms.</p> <p>The subject site is located adjacent to the Manly Town Centre Conservation Area and within the vicinity of heritage items. The existing building is not heritage listed but it is from the Inter-war period, built in the first half of the 1900's, and has historic development and association with the community of Manly as a place of recreation and holidays. Its design and fabric are significant to the aesthetic presentation of the urban development in this part of Manly. Therefore, it is recommended to retain the front façade of the existing building to be incorporated into the facade design of the proposal. This will provide consistency with the character of the area and maintain the aesthetics of the streetscape.</p> <p>Therefore, no objections are raised to this application on heritage grounds subject to 2 conditions, requiring a photographic heritage record and design amendments to the front facade.</p> <p>Amended Plans - 21 July 2020</p> <p>Amended plans and the supporting statement have been reviewed. It would had been a better outcome if the existing facade of the building was retained, as it is believed that this facade is a much better character and it relates the heritage, given the historic nature of the building and its association with the community of Manly as a place of recreation and holidays.</p> <p>Given the proposal maintains the demolition of the existing building which is not heritage listed, Heritage would recommend that, an archival recording of the facade be undertaken.</p> <p>In relation to the heritage items in the vicinity, it is considered that the proposed development, being on the opposite side of the road, will have a minimal and acceptable impact upon the identified significance of the listed heritage items.</p> <p>Therefore, Heritage raises no objections to the proposal on heritage grounds subject to two conditions of consent: photographic archival recording and protection of the street trees.</p> <p><u>Consider against the provisions of CL5.10 of MLEP.</u> Is a Conservation Management Plan (CMP) Required? No</p>

Internal Referral Body	Comments
	<p>Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? A HIS was provided with the previous DA, dated July 2015.</p> <p>Plans reviewed: 30 April 2020, Amended 09 October 2020</p>
Strategic and Place Planning (Urban Design)	<p>NOT SUPPORTED</p> <p>The amended proposal (Oct 2020) is to add one new storey to the approved DA167/2015 of 3 storeys. Shadow impact has been reduced but there are still additional shadows cast compared to the approved DA. The built form impact of the additional top storey remains as it breaches the 11m building height by about 2m affecting view corridors from surrounding apartments. The proposed FSR of 1.5:1 is still double what is permissible (0.75:1).</p> <p>Previous Urban Design Comments:</p> <p>The proposal is to add two new storeys to the approved DA167/2015 of 3 storeys.</p> <ol style="list-style-type: none"> 1. The building height control of 11m will be breached by up to 4.9m. The floor space ratio has also been increased to 1.73:1 over the permissible 0.75:1. These will set negative precedents for future developments in the area. 2. The increased building height and bulk will cast additional shadow to the neighbouring residences and open spaces thereby reducing their solar access further. The solar analysis when compared to the current situation with the existing building will show a greater loss of sunlight access. The submitted solar analysis is done in comparison with the approved DA only. 3. The increased building height and bulk will also reduce view corridors of adjacent properties. No view sharing analysis were undertaken with this proposal submission. 4. The proposed roof deck will increase overlooking/ privacy and noise nuisance issues to surrounding properties. The proposed plant truss structure can also potentially be enclosed in the future adding to increased building bulk and overshadowing issues. 5. The 'mechanical equipment to future detail' notation on the roof plan is a concern as future roof plant proposal could be unsightly and add to the height and bulk of the building.
Traffic Engineer	<p>NOT SUPPORTED</p> <p><u>Revised traffic Comments</u></p> <p>The proposed amended architectural plans shows a reduction in number of hotel rooms from 49 to 41 rooms. As a result, the parking requirements in accordance with Manly DCP will be reduced to 45 parking spaces. No changes is proposed on the driveway and car park at the basement level.</p> <p>Given the proposed development is located within close proximity to Manly Town Centre and public transport, the reduced parking rate for the hotel rooms can be considered acceptable. However, it is to be</p>

Internal Referral Body	Comments
	<p>demonstrated on the basement car park plan that the parking spaces allocated to the retail, restaurant, and Hotel staff is in compliance with the DCP. Also, the applicant is to address the service vehicles to be accommodated within the site.</p> <p>The proposed driveway in the current proposed form cannot be supported. The proposed circulating roadway leading from the access driveway to the car parking area is longer than 30m with no provision of sight distance from one end to the other. The location of the vehicular access between the 90 degree parking spaces on Victoria Parade exacerbate the concern and the adverse impact of on the street fronting the proposed site.</p> <p>Therefore, the proposal is considered unsupported on traffic grounds.</p> <p><u>Traffic Comments - Earlier:</u> The proposed development involves the redevelopment of Manly Lodge Boutique Hotel containing 22 rooms to a five story building containing 49 suites/rooms, one retail tenancy and a basement level car park. The development proposal includes the provision of 22 car parking spaces of which 2 are accessible parking spaces, 10 motorcycle parking spaces, and 10 bicycle parking spaces. The proposed access is a 3.6m wide single entry / exit driveway access via Victoria Parade, on the northern side of the subject site.</p> <p>In accordance with Manly DCP requirements, the proposed development requires the provision of 53 car parking spaces(including 49 spaces for guests, 2 spaces for staff and 2 parking spaces for the retail component) as well as 18 bicycle spaces within the site. The location of the premises being in close proximity to public transport (ferries) could be considered in assessment of minor parking shortfall on merit.</p> <p>Based on the parking requirements of 53 car parking spaces, provision of the minimum of 5.5m wide passing bay will be required for at least the first 6m of the driveway from the property boundary as well as the cross over. This is considered necessary to prevent vehicles from queuing / reversing on to Victoria Ave.</p> <p>In the traffic report, in order to assess the traffic generating from the proposed development, trip rate assumptions have been extracted from a traffic study that supported an approved mixed-use and hotel development at Bathurst Street with parking requirements of 1 in 10 rooms. The proposed traffic generation of 5 vehicle trips per peak hour based on the above-mentioned comparison is not considered acceptable. The comparison shall be drawn with an existing operating hotel with similar characteristics and location.</p> <p>In view of the foregoing the proposal is not supported on traffic grounds.</p>



Internal Referral Body	Comments
Waste Officer	<p>SUPPORTED</p> <p>Amended plans remain for a hotel redevelopment application and there are no residential dwellings - only hotel rooms with no kitchens.</p> <p>The Hotel management will be responsible for all waste management to the property which will not receive a Council domestic service.</p> <p>As such the development proposal is acceptable from a council waste services perspective, subject to conditions.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>SUPPORTED</p> <p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes as a hotel (or tourist accommodation) 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 proposed continued (tourist accommodation) commercial 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:

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	12.54m	14%	No
Floor Space Ratio	FSR: 0.75:1 (724.5m ²)	FSR: 1.5:1 (1450.7m ² as amended)	100.2%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	No
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	No
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	No
6.15 Tourist and visitor accommodation	Yes

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Clause	Compliance with Requirements
6.21 Noise impacts—licensed premises	No

Detailed Assessment

Zone R3 Medium Density Residential

The proposed development is considered inconsistent with the following objective:

"To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment."

The scale, height and intensity of the proposed development fails to meet a number of built form and development control requirements and is not considered a suitable redevelopment of this site.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings Floor space ratio
Height Requirement:	11m
FSR Requirement	0.75:1
Proposed Height:	12.54m
Proposed FSR:	1.5:1
Percentage variation to Height requirement:	14%
Percentage variation to FSR requirement:	100.2%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standards are not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix (combined Building Height and Floor Space Ratio)) relates to the application as it was originally lodged and was which not amended to reflect the amended design, has not satisfactorily demonstrated that the objectives of the development standards are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written



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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

Building Height

The applicants written request for a variation to Building Height argues, in part:

- *The exceedance above the maximum height of buildings requirement of MLEP2013 is supportable in that the proposed building height plane will be compatible with the size and scale of existing buildings within the streetscape setting of Victoria Parade. The existing streetscape setting consists of residential flat buildings that range between four to six storeys in height. The proposal is five storeys in height, will sit comfortably within the site and be commensurate with the built form pattern along Victoria Parade.*
- *The proposed part-four/part-five storey scale of the building will be compatible with the number of storeys of the existing residential flat buildings within the urban block. The building does not detract from the existing streetscape setting in that the proposed roof parapet will be similar to the height of the neighbouring buildings within the street.*
- *The proposed part-four/part-five storey scale of the building has been sensitively and skillfully designed to appropriate transition between the five-storey building element to the four-storey scale of the southern neighbour through the provision of an increased side boundary setback and a stepped built form transition along the southern façade of the building. The stepping will ensure that the bay window will remain compatible in height with the gable roof element of the building.*
- *The subject allotment is an infill site and remains as the last undeveloped lot within the street. Due to the existing residential flat buildings along the street being subject to strata subdivision it is unlikely that these buildings will undergo any further redevelopment. Subsequently, while the proposed development will exceed the maximum height of buildings, it is unlikely that the exceedance will contribute to an undesirable planning precedent given the nature of the adjoining buildings.*
- *The proposal will not contribute to any adverse environmental impacts in terms of solar access*



and overshadowing, visual and acoustic privacy, view loss or bulk and scale.

The provided Clause 4.6 justification relies entirely on the proposed development sitting comfortably within the existing streetscape in terms of its relationship with the height of the other buildings within the street. A large number of the existing building forms pre date the current controls. The written request does not provide adequate environmental planning grounds to justify a height breach for new development or any justification to support a 100.2% variation on Floor Space Ratio.

Floor Space Ratio

The applicants written request for a variation to Building Height argues, in part:

- *The non-compliant floor area of the proposed development will not result in a development that is excessive in size and scale within the streetscape. The additional gross floor area above the maximum requirements will be distributed to levels four and five of the building and the additional storeys above the approved development will maintain the predominant building height plane of the neighbouring buildings.*
- *The non-compliant floor area will not contribute to adverse visual bulk and scale impacts from the neighbouring buildings. The proposal includes a significant building separation to the southern neighbour through the provision of a large central void within the building footprint. The oversized void will provide ample building separation and recesses the southern external façade which minimises the length of the continuous wall plane along the southern elevation. The northern and southern (side) elevations have also been appropriately articulated through the provision of bay windows and varying window openings to each respective level of the building.*
- *The exceedance to the maximum floor space ratio will result in a similar building footprint as the existing buildings within the street. The proposal will occupy a similar building footprint relative to the site area as the neighbouring developments including nos. 14, 40, 42 and 46 Victoria Parade.*
- *The allotment is an infill site and remains as the last undeveloped lot within the street. Due to the existing residential flat buildings within the street being subject to strata subdivision, it is unlikely that these buildings will undergo any further redevelopment. Subsequently, while the proposed development will exceed the maximum floor space ratio is unlikely that the exceedance will contribute to an undesirable planning precedent given the nature of the adjoining buildings.*
- *The proposal will not contribute to any adverse environmental impacts in terms of solar access and overshadowing, visual and acoustic privacy, view loss or bulk and scale.*

The provided Clause 4.6 justification relies heavily on the fact that most of the surrounding development which (pre-dates the current planning controls) are unlikely to be redeveloped and that the proposal will occupy a similar footprint to the other residential flat buildings in the street. These statements are not considered to constitute adequate environmental planning grounds to justify a 100.2% floor space ratio breach for new development.

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request does not adequately demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard for height or floor



space ratio as required by cl 4.6 (3)(b).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings and Floor Space Ratio development standards and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

Height of Buildings

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the MLEP 2013 are:

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

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

Comment:

The proposed amended scheme provides a building height which is not inconsistent with the prevailing existing building height which is apparent in Victoria Parade. A large proportion of the existing building stock pre-dates the current planning controls for this location which seek to establish the desired built form character for future development.

b) to control the bulk and scale of buildings,

Comment:

The bulk and scale of the proposal is unacceptable and this is reflected in the numerous non-compliance with the relevant controls for the site.

c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment:

The views from the adjoining property (No. 28 Victoria Parade) across the site to Manly Cove development have been identified as impacted by the positioning of Level 3 relative to the front boundary. It is considered that a better design could provide an increased



setback at Level 3 to retain existing views of Manly Cove from this neighbouring property.

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

Comment:

The orientation of the site north-west to south-east means that the bulk of shadow cast by the proposed development will impact on the north-eastern façade of the existing building at No. 18-20 Victoria Parade, predominantly the ground and first floor levels. The main impact is from 9am to midday for the windows to the ground floor and first floor units.

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

Comment:

The site is located within the R3 medium density residential zone and will not impact on any vegetation or bushland in surrounding locations.

Zone objectives

Floor Space Ratio

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The proposed development is not considered consistent with the desired streetscape character in terms of bulk and scale as it seeks a 100.2% variation to the floor space ratio control.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The proposed floor space ratio for this development is excessively beyond that required for this site and has subsequently resulted in a built form which provides inadequate landscaping, excessive building footprint and non-compliance with numerous controls. The building form will impact on the view lines currently available from the adjoining property to the north of iconic Norfolk Pine Trees along Esplanade Park and water glimpses of Manly Cove. These features are considered important townscape elements within Manly.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

The site directly adjoins the rear landscaped setbacks of three (3) low density residential

dwelling to the south-east. While the façade of the building has been maintained at 8m from the rear boundary, the basement structure extends between 0.6m and 1.3m from the boundary with these properties providing minimal meaningful area for deep soil planting that might provide a suitable level of landscape screening commensurate with the size of the development.



Figure 1 - Relationship of the basement to adjoining properties. Source: Morson Group

Further, the applicant's Clause 4.6 variation claims that the FSR is contained within a footprint which is similar to other properties within the street. It should be noted that most other properties within the street provide a front setback of approximately 6m and do not have basement areas which cover 92% of the site area.



Figure 2 - Relationship of the building footprint to boundaries. Source: Morson Group

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land



and the public domain,

Comment:

The scale of this building has resulted in numerous objections from adjoining property owners in terms of the visual and amenity impacts likely to result from this development. Concerns are raised in terms of the flow on impact which will be created by a significantly deficient rate of on-site parking to service 41 rooms.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The subject site is not located within a local centre or business zone. The excessive floor area of this development incorporates close to 100m² of retail floor area including a restaurant. While an onsite restaurant/café is permissible and an anticipated ancillary use for tourist accommodation, the additional retail space is undefined and therefore considered unnecessary for this site given the potential for amenity impacts on the adjacent occupants.

Zone objectives

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

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

Comment:

The development provides for short term tourist accommodation in hotel style rooms which in itself is a form of short term accommodation suited to this location and there is an identified need for tourist accommodation in this location.

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

Comment:

The proposed short term tourist accommodation generally presents as an apartment style building. Apartment buildings are characteristic in this location.

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

Comment:

The development includes two (2) retail tenancies within the site. While a restaurant/cafe facility is considered a suitable ancillary use, the necessity for a second retail premises within the site is considered excessive and not necessary within the R3 zone to meet the day to day needs of residents. The second tenancy which fronts Victoria Parade is unidentified in terms of the anticipated use, although dual access to a central kitchen between the restaurant and second tenancy could imply a second food premises. The second retail space within this development is not supported.

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



Comment:

Notwithstanding the proposed use of this site is for short term tourist accommodation, the site sits within the R3 medium density residential zone and represents a full redevelopment of the site. As proposed, the site includes insufficient landscaped area at approximately 60m² (6.2%). This inadequate provision of landscaped area reinforces the excessive scale of this development.

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

Comment:

The aesthetics of the architecture proposed is considered unbalanced due to the overhanging bulk of Level 1 and 2 above the recessed street facade. While no objection is raised to the design approach generally, the large floor plates above ground level which result in a significant non-compliance with the floor space ratio are not considered to compliment the presentation of the development to the street and the public domain.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General 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 inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings and Floor Space Ratio Development Standards can not be assumed.

6.1 Acid sulfate soils

The application was accompanied by a Preliminary Acid Sulfate Soil Assessment prepared by Environmental Investigation Services (EIS). The report provides the following conclusions:

The soil samples analysed for this investigation encountered results which indicate potential acid sulfate soils at depths greater than 3 metres. However, these samples have been neutralised by a large quantity of calcium (the source of calcium generally can be associated by the presence of shell fragments). At this stage an ASSMP is not considered necessary for the basement excavation to a depth of 3 metres.

EIS recommend excavated soils for footing and shoring systems should be sampled and analysed for SPOCAS to confirm an ASSMP is not required. As a contingency plan during these works any soils excavated for footings and services the material should be stockpiled and separated by a bund wall or a sediment control fence prior to testing for ASS. Alternatively this material could be placed into skip bins prior to testing.



6.4 Stormwater management

The proposed on-site stormwater management design provides insufficient information detailing soil infiltration rates. Further, the proposed landscaping identifies trees to be planted within the absorption trench which is likely to adversely impact on the functionality of the absorption trench.

6.12 Essential services

The proposed development is inconsistent with the provisions of Clause 6.12 Essential Services of the Manly Local Environmental Plan 2013 as the development has failed to resolve on-site stormwater management requirements and suitable vehicular access.

6.15 Tourist and visitor accommodation

The supporting documentation submitted with the application identifies that the maximum letting period for accommodation on the premises will be for three (3) months. Should the application be considered worthy of approval, an appropriate condition of consent may be imposed in this regard.

6.21 Noise impacts—licensed premises

The Acoustic Assessment prepared by TTM dated 24/10/2019 includes a noise assessment of mechanical plant, rooftop communal area, and road traffic noise generated by the development. The report does not provide any analysis or assessment of the potential noise impacts from two (2) retail spaces accommodating a restaurant and potential cafe.

While a license under the Liquor Act 2007, may be sought in future, at this stage there is no detail in this regard. Concerns would be raised in relation to this issue based on the current impacts created by the existing cafe operation.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 966m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: 1unit/150m ² sqm	1 unit/19.7sqm	N/A	No
4.1.2.1 Wall Height	North: 9m (flat land)	12.6m	N/A	No
	South: 9m (flat land)	9.3m - 12.5m	N/A	No
4.1.2.2 Number of Storeys (Area L on HoB Map)	3	4	N/A	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.2m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0.9m - 3.5m to ground floor facade, not consistent with prevailing setback Nil setback to basement	N/A	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 4.2m (based on wall height)	3.0m - 4.8m 0.5m-2.5m to basement	up to 40%	No
	South: 3.1m - 4.2m (based on wall height)	3.0m to building facade Nil setback to basement	3.3%- 40%	No

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	Windows: 3m	1.8m to eyelid windows at Level 1, 2 and 3	N/A	No
4.1.4.4 Rear Setbacks	8m	0.6m to basement 8m to face building at ground level	92.5%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area (483m ²)	32% (310m ²)	18%	No
	Open space above ground 40% (193.2m ²) of total open space	Nil above ground	N/A	N/A
4.1.5.2 Landscaped Area	Landscaped area 40% of open space 193.2m ²)	6.2% 60m ²	N/A	No
	3 native trees (Area C on Lot size map)	>3 trees	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	At ground level	N/A	Yes
	1m curtilage/1.5m water side/rear setback	1.5m from boundary	N/A	Yes
4.4.5 Earthworks (Excavation and Filling)	0.9m of side and rear boundaries	North - 0.5m to basement South - Nil to basement Rear - 0.6m to basement	44% 100% 33%	No No No
Schedule 3 Parking and Access (Hotel and Motel accommodation outside Manly Town Centre) Commercial Premises (including business, offices and retail premises) Restaurants or cafes and take away food and drink premises	1 space/ room and 1 space/2 employees at peak times Retail - 1 space/ 40m ² Restaurant - 1 space/ 40m ² TOTAL SPACES REQUIRED = 45 spaces	41 spaces (41 rooms) 2 spaces for staff Retail - 49.9m ² / Restaurant - 48.4m ² (2 spaces) PROPOSED SPACES = 22 spaces	51%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	No	No
3.3.1 Landscaping Design	No	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	No	No
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	No	No
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	No	No
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	No	No
4.1.1 Dwelling Density, Dwelling Size and Subdivision	No	No
4.1.1.1 Residential Density and Dwelling Size	No	No
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.3 Floor Space Ratio (FSR)	No	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	No	No
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	No
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 3 - Parking and Access	No	No

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The proposed development is not considered satisfactory in relation to the requirements of Part 3.1.1 which states the following:

Setback Principles in Higher Density Areas

- c) *In higher density areas (including LEP Zones R1 & R3), careful consideration should be given to especially relevant in the design of new residential flat buildings adjacent to smaller developments*

The proposed development provides an excessive scale and site coverage which results in inadequate building separation, landscaped area, privacy and view impacts. The design of the building is not considered to provide a suitable response to the site or the controls which apply.

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

The proposed development is considered unsuccessful in terms of satisfying Objective 1 or addressing



the design criteria for amenity.

Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.

Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.

Designing for Amenity

a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is especially relevant in higher density areas, development adjacent to smaller developments and development types that may potentially impact on neighbour's amenity such as licensed premises.

The proposed development raises concerns in relation to sunlight access, privacy, views and noise. The works will result in a substantial intensification of the current accommodation and cafe uses which currently generate regular complaints from the neighbouring residents. The scale of this development is considered excessive and does not suitably address the impacts on amenity raised in the submissions.

b) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.

The design of this development due to its substantial non-compliance with the floor space ratio requirements is considered to result in a building mass which is unacceptable. The protruding frontage of the building form and insufficient setback particularly from the north-eastern boundary contribute to a building bulk and scale which is not supported.

c) The use of material and finishes is to protect amenity for neighbours in terms of reflectivity. The reflectivity of roofs and glass used on external walls will be minimal in accordance with industry standards.

No objection is raised in relation to the materials palette proposed. While the design includes a two storey glass wall on the south-western facade, this element is not considered to cause concern in terms of reflectivity.

3.4.2 Privacy and Security

The development includes an area for mechanical plant which extends for approximately 12.5m along the north-eastern side of the building adjacent to the driveway. This location provides a separation of around 7m from the bedrooms and internal living spaces of the adjoining apartment building with an 'acoustic louvre' the ameliorating solution. Given this is a major redevelopment on this site, the location of all mechanical plant is considered to be more appropriately located within a basement area and away from sensitive residential receptors.

The proposed development therefore fails to satisfy Objective 1 of the control which seek to achieve the following:

"To minimise loss of privacy to adjacent and nearby development by:



- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;"*

3.4.3 Maintenance of Views

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

- *Objective 1
To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

Comment:

A submission was received in relation to view loss from the property to the north-east.

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

1. Nature of the views affected

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

Comment to Principle 1:



The existing views are of Manly Cove visible through the Norfolk Pines which line Esplanade Park. The view captures glimpses of the Manly Ferry approaching Manly Wharf. The view is a

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partly obscured view due to the foliage on the Norfolk Pines.

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

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

Comment to Principle 2:

While the view line is from the front of the site across the front setback area. These views are available from the only windows within the kitchen and living/dining room within the adjoining apartment building and are available from a standing position.

3. Extent of impact

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

Comment to Principle 3:

Due to the projection of the building toward the street, it is expected that the entire view line will be lost as a result of the proposed development. While this is a partly obscured view, it is the 'only' view available from this apartment. Accordingly, the impact of no view through to water or trees replaced by a 12.6m high facade wall in the context of this apartment is considered severe.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposed development exceeds the overall building height requirement by 1.54m, the FSR by 726m² (100.2%) and the wall height by 3.6m. In addition, the front setback of the dwelling is less than 6m at between 0.9m and 2.2m and at the top level is only 4.3m. Were the development to comply with the 6m setback for Level 1 and 2 and step any additional building bulk back from the front boundary by 9m the existing view line to Manly Cove would be retained. As the site proposes a substantial non-compliance with the FSR requirements, a more skilful



design that provides a much reduced Level 3 is not only achievable but also a very reasonable option.

- **Objective 2**
To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Comment:

As detailed in the view assessment above, no attempt has been made to provide a design which minimises impact on the adjoining properties as the design maximises site coverage to create excessive floor space.

- **Objective 3**
To ensure existing canopy trees have priority over views.

Comment:

The site does not contain any canopy trees which would be impacted by the development.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP 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.

3.9 Mechanical Plant Equipment

The proposed development includes mechanical plant equipment at ground floor level adjacent to the driveway access and directly opposite the dwellings within No.28 Victoria Parade.

No detail is provided in relation to what mechanical plant is to be located in this area. While the Noise Assessment submitted with the application identifies the adjacent residential flat building as a sensitive receiver, the proposal appears to provide only 'acoustic louvres' to address noise in this location. The following conclusion is provided within the report:

"Future mechanical plant may have an adverse effect onto nearby existing noise sensitive receivers and is required to meet the PNTL derived in this report from the NSW Noise Policy for Industry 2017. The most stringent PNTL is during the night-time period for residential premises at 38 dB(A) Leq (Refer Table 4), and is required to be met at the boundary of R1.

Acoustic louvres are also proposed to mitigate the noise impact of future mechanical plant. Acoustic louvres typically provide an additional noise reduction of 10-15dB. The performance of the acoustic louvres is required to be reviewed during detailed design stage by a suitably qualified acoustic consultant once selections are made.

Based on the location of mechanical plant relative to R1 and considering the additional noise reduction from the acoustic louvres, the noise limit of each mechanical plant must achieve 66 dB(A) Leq measured at one metre from the plant to achieve compliance."

The location and proposed mitigation measures are not considered sufficiently adequate given their



proximity of 5m within the boundary. The use of louvres requires an assumption that this treatment will be maintained and reviewed in perpetuity which is not acceptable. This equipment should be designed to be located within the basement area of the development to ensure that future impacts from this plant equipment is not an issue.

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

The proposed development fails to comply with the Wall Height and Number of Storeys requirements. The site is located within Area L on the Height of Building (HoB) map where the maximum height is 11m. The maximum wall height for the site is 9m. The proposed development includes wall heights which are in excess of the maximum at 12.6m on the norther and up to 12.5m on the southern facade. As this is a new development, there is no justification for a variation to the wall height.

Further, the proposed built form seeks consent for four (4) storeys where the requirement is for a maximum of (3) storeys. Clause 4.1.2.2 provides the following conditions where a variation may be considered:

- c) *Variation to the maximum number of storeys may be considered:*
 - i) *where specific physical site constraints warrant an exception to this requirement. In the height controls and development standards; and*
 - ii) *to allow an additional understorey where that storey satisfies the meaning of basement.*

The site does not contain any physical constraints that would justify a variation in this instance.

4.1.3 Floor Space Ratio (FSR)

The specified FSR for the site is 0.75:1. The proposed development seeks a floor space ratio (FSR) of 1.5:1. which represents a 100.2% variation to the control. Manly DCP provides the following objectives for the control:

- Objective 1) To ensure the scale of development does not obscure important landscape features.
- Objective 2) To minimise disruption to views to adjacent and nearby development.
- Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development and adjacent residential development.

Due to the excessive exceedence of the FSR for the site, the overall scale of the development fails to satisfy these objectives. The protruding upper levels effectively block sight lines toward Manly Wharf, Esplanade Park and Manly Cove from the adjacent building at No. 28

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

The proposed development seeks variation to the front and side building setback controls as identified within the compliance table under Built Form Controls. The proposed non-compliances are considered on merit in each instance.

Front Setback

The buildings on the south side of Victoria Parade exhibit a range of setbacks to the street between nil setback up to 8m. The adjacent property at No. 18-20 contains the 8m setback while the subject site



and No. 28 to the north provide a nil setback. The remaining buildings along Victoria Parade provide between 5m and 6m setbacks. As there is no consistent prevailing setback, it is considered acceptable that the site apply the 6m front setback.

The development includes a nil setback to the basement structure, a 3.5m setback at ground level, a 0.9m setback at Level 1, 2.2m setback to Level 2 and up to 4.5m setback at Level 3. The proposed setbacks are considered inconsistent with the objectives as they fail to enhance the spatial proportions and landscape character of the street. Further, the design results in some view loss to the adjoining building impacting on the views and vistas currently available.

Side Setback

As a result of the proposed wall height, the building should provide a 4.2m setback to the north and a 3.1m setback to the south. The basement structure provides a setback of 0.5m-2.5m to the north and nil setback to the south. The levels above ground to the north provide a 3m setback with eyelid window forms protruding up to 1.8m from the boundary. Similar setbacks are provided to the south. The controls provide exceptions for projections into the side setback for *'unenclosed balconies, roof eaves, sun-hoods and the like'*. The applicant has not provided any justification for this new development to vary the side setback requirements. Accordingly, as it appears the only reason for the proposed setbacks is to maximise the floor space, a variation to this requirement is not supported.

Rear Setback

The proposed basement structure includes a setback of between 0.6m and 1.3m. The Landscape Plan indicates five (5) large trees to be planted in this location being 2 x Scribbly Gum, 1 x Chinese Pistachio and 2 x Cheese Trees. The proposed deep soil available within this setback is considered restricted and the longevity and mature range of these trees questionable.

4.1.5 Open Space and Landscaping

The site is located within Area OS2 on Map B, Residential Open Space Areas.

The proposed development is deficient in the amount of Total Open Space and Landscaped Area provided on the site. Deep soil areas on the site are restricted around the perimeter of the basement at 60m² with boundary planting along the south-western boundary contained to a planter above the basement structure approximately 650mm deep. The only area of deep soil planting unrestricted by the basement up to 2.5m in width is along the north-eastern boundary where the proposed absorption trench is to be located. Accordingly, the proposed development fails to satisfy objective 4 of the control which states:

"Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and r:

This issue forms a reason for refusal.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The proposed development fails to provide satisfactory parking within the basement carpark in accordance with the requirements of Schedule 3 of MDCP. The development proffers 22 parking space where there is requirement for 45 spaces. Justification for such a reduced rate of parking relies on a traffic study undertaken for a mixed use and hotel development located in Bathurst Street in Sydney CBD. This comparison does not contain the characteristics or location which could be considered similar to the subject site and has been rejected as a justifying case study.

In addition, the proposed driveway access to the basement requires a 5.5m wide passing bay to be provided within the first 6m of the driveway from the boundary to prevent vehicles queuing or reversing



onto Victoria Parade.

The proposed basement and parking is considered unsatisfactory and inconsistent with the requirements of the control.

4.4.5 Earthworks (Excavation and Filling)

The proposed development includes substantial excavation of the site with 92.2% of the site excavated. Accordingly, the development fails to satisfy the following objective:

"Limiting excavation, "cut and fill" and other earthworks"

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.

NORTHERN BEACHES SECTION 7.12 CONTRIBUTIONS PLAN 2019

Were the application to be approved, the proposal would be subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$52,407.85 would be required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,240,785.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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

DA2019/1475



- 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 Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

This report provides a comprehensive assessment of the application for the redevelopment of the site as a hotel/motel tourist and visitor accommodation containing forty-one (41) rooms.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, SEPP 55, SEPP (Infrastructure), MLEP 2013, the relevant codes and policies of Council, the relevant provisions of the Manly DCP.

Public Exhibition

The public exhibition of the DA resulted in a very significant response from the community of concerned residents. Objections to the proposed development include concerns relating to building height, floor space ratio, noise, parking, vehicular access and over-development of the site.

The issues raised in the submissions have been addressed in the 'Public Exhibition & Submissions' section of this report and are generally concurred with.

The application was referred to a number of internal departments. Fundamental concerns have been raised by Council's Development Engineer, Urban Designer and Traffic Engineer.

The assessment of the application against the provisions of MLEP 2013 and MDCP has identified that the proposal is not satisfactory in relation to a number of areas, particularly the breach of the 'height of buildings' and 'floor space ratio' development standards.

Based on the assessment contained in this report, it is recommended that the Northern Beaches Local Planning Panel refuse the application for the reasons detailed within the recommendation of this assessment, and any amendments to those reasons.

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



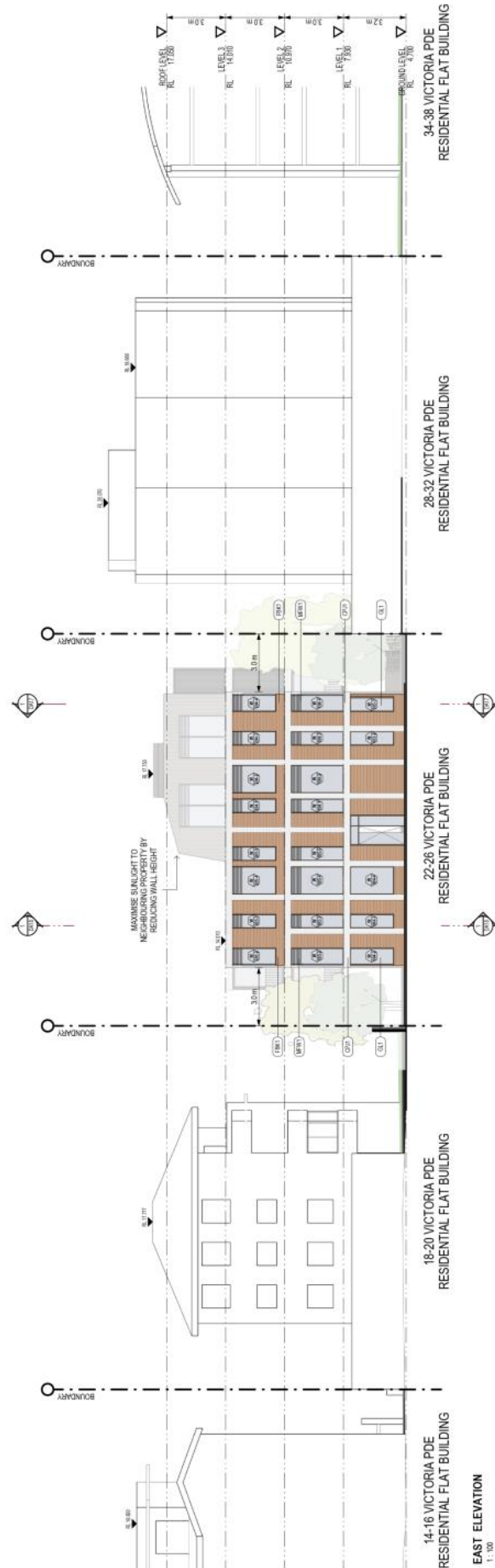
RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/1475 for the Demolition of building and construction of a new hotel on land at Lot 3 DP 86034, 22 Victoria Parade, MANLY, for the reasons outlined as follows:







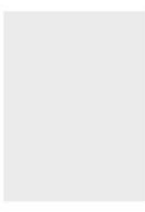

1. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 4.3 and 4.4 of Manly Local Environmental Plan 2013 as the applicant's written requests under Clause 4.6 has failed to adequately address and demonstrate that:
 - a) compliance with the standards is unreasonable or unnecessary in the circumstances of the case
 - b) there are sufficient environmental planning grounds to justify the contraventions.
2. 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 Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of Manly Development Control Plan:
 - o Clause 4.1.1.1 Residential Density and Dwelling Size
 - o Clause 4.1.2.1 Wall Height
 - o Clause 4.1.2.2 Number of Storeys
 - o Clause 4.1.3 Floor Space Ratio
 - o Clause 4.1.4.1 Street Front Setbacks
 - o Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages
 - o Clause 4.1.4.4 Rear Setbacks
 - o Clause 4.1.5.1 Minimum Residential Total Open Space Requirements
 - o Clause 4.1.4.2 Landscaped Area
 - o Clause 4.4.5 Earthworks
 - o Schedule 3 Parking and Access
 - o Clause 6.12 Essential services
4. Pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the local public interest.














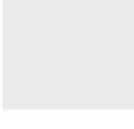
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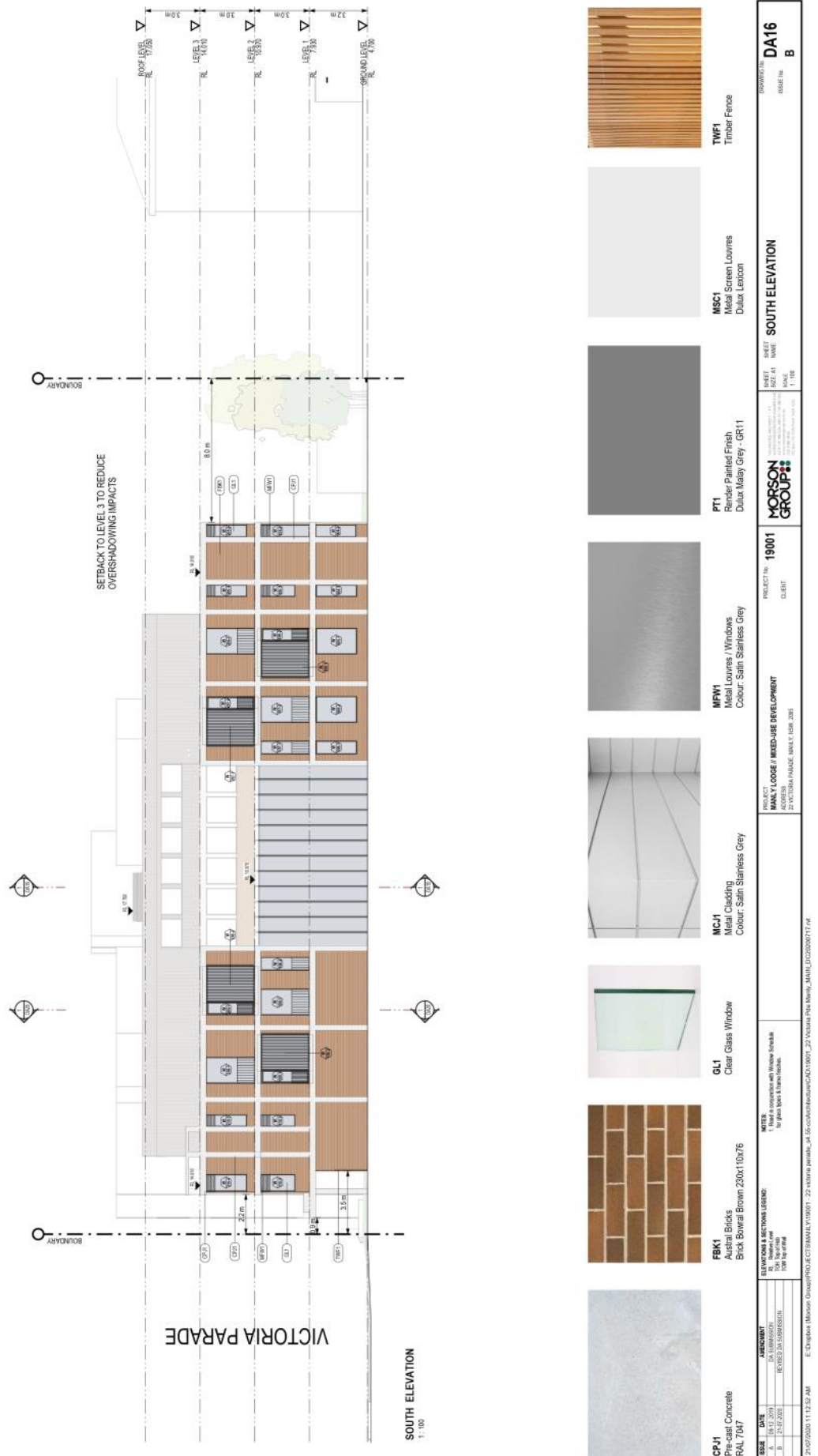
	CP/J1 Pre-cast Concrete RAL 7047		FBK1 Austral Bricks Brick Bowral Brown 230x110x76		GL1 Clear Glass Window		MC/J1 Metal Cladding Colour: Satin Stainless Grey		MF/W1 Metal Louvers / Windows Colour: Satin Stainless Grey		PT1 Render Painted Finish Dulux Malay Grey - GR11		MSC1 Metal Screen Louvers Dulux Leticia		TWF1 Timber Fence									
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REVISIONS & SECTIONS LEGEND:		NOTES: 1. All dimensions are in millimetres unless otherwise stated. 2. For glass types & frame finishes, refer to glass specification schedule.		PROJECT MANYT LODGE // MIXED-USE DEVELOPMENT 25 VICTORIA PARADE, MANLY NSW 2088		PROJECT No. 19001 CLIENT			MORSON GROUP <small>COMMERCIAL ARCHITECTS PTY LTD 1/150-1/151 VICTORIA PARADE, MANLY NSW 2088 02 9370 3444 www.morsongroup.com.au</small>
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APPENDIX 2: CLAUSE 4.6: EXCEPTIONS TO DEVELOPMENT STANDARDS – HEIGHT OF BUILDINGS

1. Introduction

The Clause 4.6 application has been prepared on behalf of the applicant, The Morson Group, in support of a Development Application for the demolition of the existing structures and the construction of a part-four/part-five storey hotel accommodation with 49 rooms, ground floor café/restaurant, communal rooftop terrace, basement car parking for 22 vehicles and associated site and landscaping works at no. 22 Victoria Parade, Manly NSW 2095.

The request seeks to vary the maximum height of buildings development standards prescribed in Clause 4.3: Height of Buildings and the variation of the development standard has been prepared pursuant of Clause 4.6: Exceptions to Development Standards of MLEP2013.

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

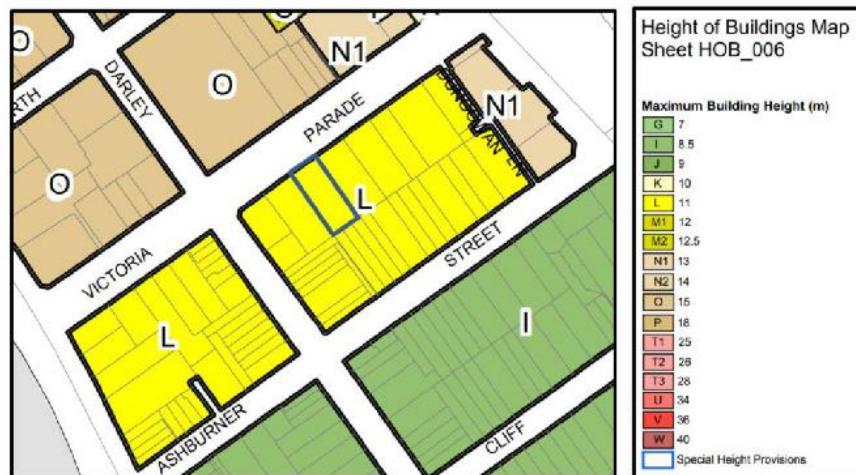


Figure 25: Height of Buildings Map of the Manly Local Environmental Plan 2013

The Height of Buildings Map of MLEP2013 prescribes that the site is within area 'L' and has a maximum building height of 11m.

2. Variation to the maximum height of buildings requirements

The area of non-compliance to the maximum height of building requirements extends from the upper half of the fourth-floor level and above including all associated pergola structures and lift overruns at the rooftop level of the building.



Figure 26: The proposed southern elevation of the building

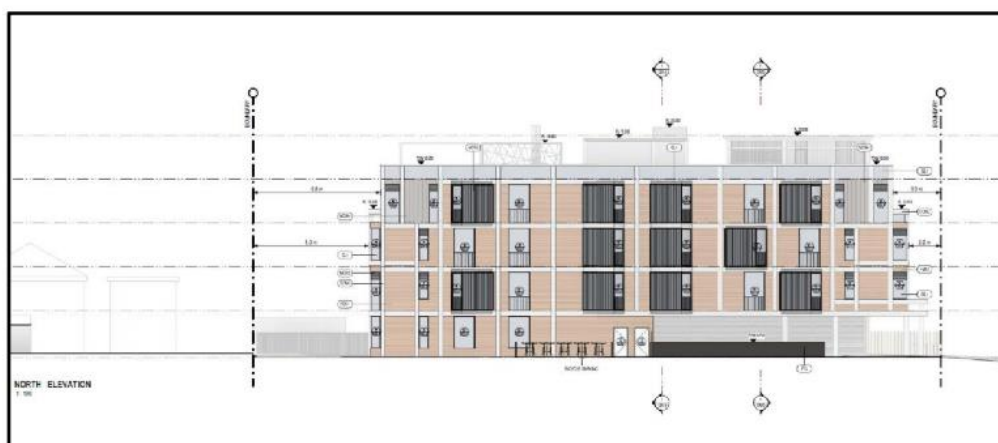


Figure 27: The proposed northern elevation of the building

The areas of non-compliance and the degree in which the proposed building breaches the maximum building height are as follows:

Areas of non-compliance	Proposed RL	Breach of Height
Proposed lift overrun	RL20.65	4.92m (44%)
Proposed roof of the fifth-floor level	RL20.05	4.32m (39%)
Proposed fire stairs	RL19.90	4.17m (37%)
Proposed roof pergola structure	RL19.55	3.82m (34%)
Proposed roof parapet of fourth floor level	RL18.05	3.32m (30%)

The maximum variation to the height is as follows:

Proposed Height of Buildings	15.92m
Maximum Permissible Height of Building	11m
Exceedance of the LEP Development Standard	4.92m (44% variation)

The Clause 4.6: Exceptions to Development Standards contends that strict compliance with the maximum height of 18m as prescribed within Clause 4.3(2) of the Manly Local Environmental Plan 2013 is unreasonable and unnecessary in the circumstances of the case and that exceedance by a maximum of 4.92m can be supported by Council in considering the merits of the proposal.

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

1. *The objectives of this clause are as follows:*
 - a. *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - b. *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
2. *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - a. *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - b. *that there are sufficient environmental planning grounds to justify contravening the development standard.*
4. *Development consent must not be granted for development that contravenes a development standard unless:*
 - a. *the consent authority is satisfied that:*
 - i. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - b. *the concurrence of the Secretary has been obtained.*
5. *In deciding whether to grant concurrence, the Secretary must consider:*
 - a. *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - b. *the public benefit of maintaining the development standard, and*
 - c. *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

3. Compliance with Clause 4.6(4) Exceptions to Development Standards

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

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

In the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council [2018] NSWLEC118* the position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in one or more of the following ways:

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

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

The objectives of Clause 4.3: Height of Buildings are as follows:

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

The topographical nature of the existing street characteristics within the urban block of Victoria Parade is relatively flat with a nominal fall from the street alignment (from east to west) as well as from the front to the rear of the site. The buildings along Victoria Parade are not characterised by any topographical fall or slope of the site and generally consist of a similar ground level (existing) when measured from the Council footpath level. The built form within the street is also typified with residential flat buildings which vary between four to six storeys in building height and are the prevailing built form pattern within this street section of Victoria Parade. The existing buildings contain mostly low profile skillion roof profiles, aside from nos. 18-20 and 34 Victoria Parade, consisting of a hipped roof and curved roof feature, respectively.



Figure 28: Streetscape elevation of Victoria Parade within the urban block

The proposed five-storey scale of the building will be entirely compatible with the height and scale of the existing buildings within the urban block. The proposed building height plane as measured from the upper floor level will remain entirely compatible with the size and scale of the existing buildings within the street. The proposed roof parapet will not extend above the predominant building height plane that has been set by the adjoining buildings and will appear sympathetic with the scale of buildings that present to the street.

In addition, the built form has been designed to ensure it appropriately transitions between the lower four-storey scale of the southern neighbour by incorporating an increased setback at the upper floor level at 5.7m. The increased setback recognises the lower building profile and provides a step in which the bay window has been designed to match the ridge height of the gable roof element of the immediate southern neighbour. This improves the relationship between the height of the proposed development and the immediate adjoining neighbour. The low profile skillion roof element of the building will also be compatible with the style and configuration of the existing roof forms within Victoria Parade.

As the proposal remains the last undeveloped site within the urban block, the development will ensure the design scheme replicates the height and scale of the existing building, and is consistent with the desired future character of the existing buildings.

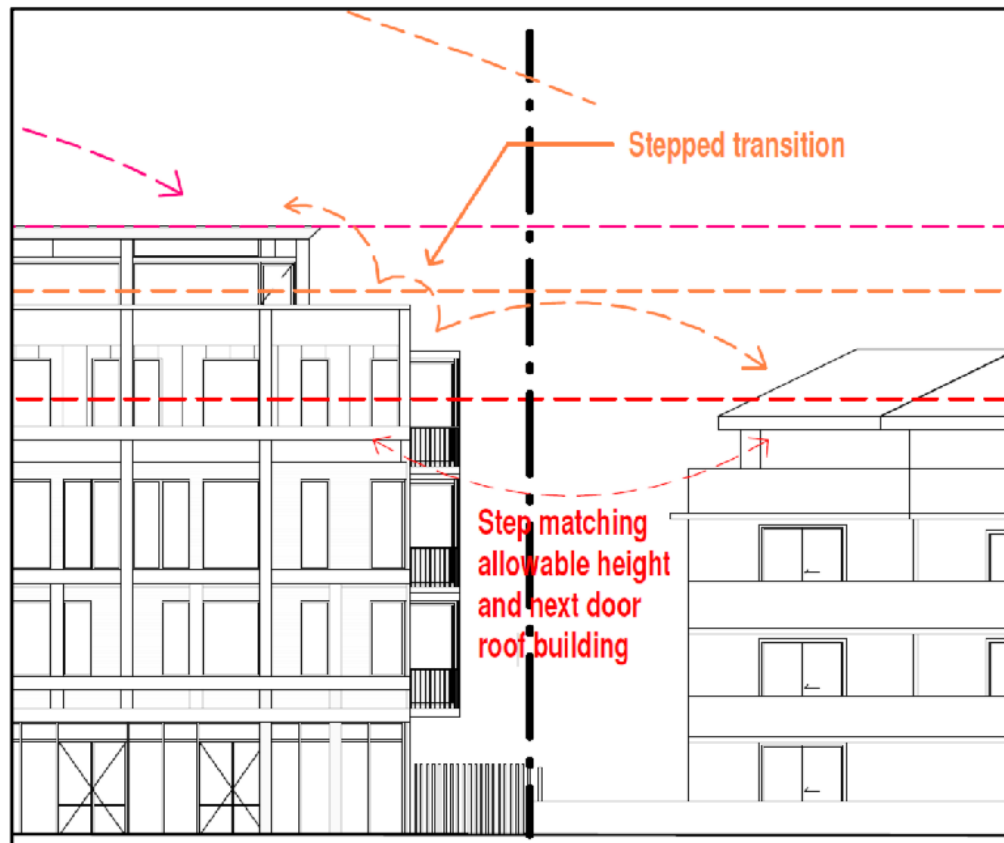


Figure 29: Proposed transition between the five-storey scale to the four-storey scale of the southern neighbour

(b) To control the bulk and scale of buildings,

In considering all of the existing four-to-six storey buildings within the urban block, exceed the maximum building height provisions of 11m, it would appear that development standard has been virtually abandoned or destroyed by Council's decisions in granting consents that depart from the standard. Any development that is required to fully comply with the maximum building height of 11m will appear a full one to two-storeys lower than the existing buildings within the street and fails to consider the established building height planes within the street. Further consideration should be given to the more recent development approval at no. 46 Victoria Street, which was granted development consent for the construction of a five-storey building (367/2010) with a maximum building height of 19.5m.

Notwithstanding this, the architectural design of the building ameliorates the bulk and scale of the building when viewed from the existing streetscape. The building comprises a number of front building setbacks including 4.9m at the ground floor level, 2.2m at the first and second floor, 3.4m at the third floor and 4.9m at the fourth-floor level. The varying front setbacks provide a modulated façade incorporating a number of recesses within the building envelope plane. Additionally, a combination of materials and finishes to the building include a face brick at the ground to second floor levels and a more lightweight metal clad wall finish to the upper floor levels which further enhances the articulated elements of the building. The bulk and scale is mitigated through a combination of articulated architectural design treatments including modulation to the external wall and use of finishes to the building, all of which contribute to the fine grain architecture of the building.

(c) *To minimise disruption to the following:*

- i. *Views to nearby residential development from public spaces (including the harbour and foreshores)*

The proposal will be in keeping with the heights and average front setbacks of the existing buildings within the street. The part-four/part-five storey hotel accommodation will not detract from the views of the scenic foreshore protection or harbour areas to the residential development, given the proposal will adopt a similar building height plane as the existing buildings within the street. The proposed development will remain entirely compatible with the height and scale of the buildings within Victoria Parade and will not disrupt existing views.

- ii. *Views from nearby residential development to public spaces (including the harbour and foreshores)*

The proposal will not contribute to any adverse view loss impacts to the neighbouring buildings, in particular the immediate adjoining neighbours at nos. 18-20 Victoria Parade and no. 28 Victoria Parade. It should be noted that any existing views as appreciated from south of East Manly Cove Beach and to the north of Manly Beach are not considered to be views worthy of retention in accordance with the Planning Principles of Tenacity Consulting v Warringah [2004] NSWLEC140. The existing views to the west that are appreciable from no. 28 Victoria Parade are only visible from existing bedrooms and are considered to be side views. In addition, the existing views to the east that are appreciable from no. 18-20 Victoria parade are also side views and will be compromised due to the existing buildings along Victoria Parade and the Norfolk Island Pine Trees that are located within the road reservations. In considering the above, the view loss impacts are considered to be negligible/minor and are not significant views worthy of retention.

- iii. *Views between public spaces (including the harbour and foreshores)*

The proposal will maintain the existing view corridor through Victoria Parade which provides views from Manly Beach to East Manly Cove Beach. The development incorporates an appropriate setback to the front property boundary to maintain views between the two areas of public open space.

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

The proposal will continue to provide a reasonable level of direct solar access to the immediate adjoining neighbours. The existing single dwellings at the rear (east) of the site including nos. 17, 19 and 21 Ashburner Street will ensure that the main living areas will continue to receive more than the required two hours of direct solar access and will not reduce the total amount of direct solar access to the private open spaces by more than one-third between the hours of 9am – 3pm, 21 June. Further, the existing residential units to the south at no. 18-20 Victoria Parade will not further reduce the amount of direct solar access received by the units at the ground and first floor levels of the building than the current development approval (167/2015). In accordance with the shadow diagrams prepared by Morson Group, the immediate neighbours will continue to receive the required two hours of direct solar access between 9am – 3pm and will comply with the solar access provisions of MDCP2013 (amendment 11).

In respect to the areas of public open space, the proposed development does not contribute to any overshadowing on the existing public domain. In considering the above, the proposal is supportable in providing a compliant number of hours of direct solar access to the neighbouring dwellings and will comply with the above objective.

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

The subject site is not located within a recreation or an environmental protection zone. Not applicable.

3.1.2 The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.

Not applicable. The underlying objective or purpose of the development standard is relevant to the development application and is achieved in the matters raised above.

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

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

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

Agreed. The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard. It should be noted that all of the existing buildings within the street range from either four to six storeys in height. All the existing buildings within the urban block exceed the maximum building height of 11m and sets the desired future character of the street through Council granting development consents to buildings which deviate from the maximum height provisions. It is also worthwhile noting that the most recent development consent including no. 46 Victoria Parade granted development consent for the construction of a five-storey residential flat building comprising a maximum building height of 19.5m (367/2010). The approved development results in an exceedance of 8.5m and an exceedance to 77% of the maximum building height provisions.

3.1.5 The zoning of the land is unreasonable or inappropriate.

Not applicable. The zoning of the land as an R3: Medium Density Residential in which 'tourist and visitor accommodation' and 'café/restaurants' are a permissible form of development within the zone. The proposal represents development that is typified and expected within the R3: Medium Density Residential Zone.

3.1.6 Some other way.

Not applicable. The above represents that these five ways are not exhaustive of the ways in which an applicant must demonstrate that compliance with a development standard is unreasonable or unnecessary. In this instance it is sufficient to establish only one way, which is compliance with the objectives of the development standard. In this instance there are two ways which demonstrates that the development standard is unreasonable and unnecessary. See 3.1.1 and 3.1.4, above.

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

Subclause (3)(a) of Clause 4.6 prescribes that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

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

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

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

There are sufficient grounds to justify the contravention of the development standard for the following reasons:

- The exceedance above the maximum height of buildings requirement of MLEP2013 is supportable in that the proposed building height plane will be compatible with the size and scale of existing buildings within the streetscape setting of Victoria Parade. The existing streetscape setting consists of residential flat buildings that range between four to six storeys in height. The proposal is five storeys in height, will sit comfortably within the site and be commensurate with the built form pattern along Victoria Parade.
- The proposed part-four/part-five storey scale of the building will be compatible with the number of storeys of the existing residential flat buildings within the urban block. The building does not detract from the existing streetscape setting in that the proposed roof parapet will be similar to the height of the neighbouring buildings within the street.
- The proposed part-four/part-five storey scale of the building has been sensitively and skillfully designed to appropriate transition between the five-storey building element to the four-storey scale of the southern neighbour through the provision of an increased side boundary setback

and a stepped built form transition along the southern façade of the building. The stepping will ensure that the bay window will remain compatible in height with the gable roof element of the building.

- The subject allotment is an infill site and remains as the last undeveloped lot within the street. Due to the existing residential flat buildings along the street being subject to strata subdivision it is unlikely that these buildings will undergo any further redevelopment. Subsequently, while the proposed development will exceed the maximum height of buildings, it is unlikely that the exceedance will contribute to an undesirable planning precedent given the nature of the adjoining buildings.
- The proposal will not contribute to any adverse environmental impacts in terms of solar access and overshadowing, visual and acoustic privacy, view loss or bulk and scale.

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

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

The following requires that the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.3: Height of Buildings and R3: Medium Density Residential Zone of MLEP2013.

3.3.1 The objectives of Clause 4.3 Height of Buildings

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

3.3.2 The objectives of Zone R3: Medium Density Residential

The proposal will be compatible with the objectives of the R3: Medium Density Residential Zone in the following ways:

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

The proposal involves the construction of 'tourist and visitor accommodation', specifically 'hotel or motel accommodation' as defined within MLEP2013. While the proposal does not provide for permanent housing on the site, it provides for temporary accommodation for tourists and visitors all of which is permissible within the R3: Medium Density Residential Zone. It is expected that the provision of a new hotel accommodation with 49 rooms will likely reduce the demand for other temporary accommodation such as occupants letting out rooms for periods of less than three months including air-bnbs within the immediate vicinity of the site. This will further support housing needs by consolidating hotel or motel accommodation to designated areas of the site.

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

As raised above, the proposal does not provide for any permanent housing accommodation on the site. The proposal is for the purposes of a 'tourist and visitor accommodation', specifically 'hotel or motel accommodation' as defined by MLEP2013. The provision of temporary accommodation will reduce the ongoing demand for other forms of temporary accommodation including Air-BnB's. It is expected that the provision of new hotel accommodation with 49 new rooms will increase the supply for temporary accommodation within the immediate locality. This will lower the market demand of existing Air-BnB's being let out as tourist and visitor accommodation and promote existing dwellings being let out for the purposes of residential accommodation, as intended. This will promote residential accommodation in providing a range of housing types to the local area.

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

The proposal includes the provision of a café/restaurant at the ground floor level of the building. The use of this premises will provide pre-packaged goods and takeaway food and drink from the premises which will continue to meet the needs of local residents. It should be noted that the existing site currently provides for a café/restaurant at the ground floor level and the proposal will retain this use to ensure this service continues as part of the new development.

- *To encourage the revitalization of residential areas by rehabilitation and suitable redevelopment*

The proposal will continue to encourage revitalisation of the residential areas within the R3: Medium Density Residential Zoning. The proposed part-four/part-five storey hotel accommodation represents a contemporary addition to the existing streetscape setting. The development is appropriately articulated from the existing street façade in that the building incorporates a number of articulations to the built form including recesses to the street façade with a stepped building alignment as the site steps up to the upper floor levels as well as a number of materials and finishes to enhance the urban qualities of the building within the street. The building incorporates an appropriate disposition of building elements, textures, materials and colours, which reflect the function, internal layout and structure of the development. The building façade is articulated to complement and enhance the streetscape and neighbourhood character.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

The existing site is currently occupied by the 'Manly Lodge' known as a boutique hotel accommodation. The proposal involves the demolition of the existing structures and construction of a part four/part five storey hotel accommodation containing 49 rooms. The proposal will provide a greater number of accommodation rooms to the immediate locality and will retain existing tourist accommodation uses on site. The quality of the rooms and the development will represent a significant improvement to the existing hotel accommodation on site and will reinforce Manly as an iconic area and an international tourist destination.

APPENDIX 2: CLAUSE 4.6: EXCEPTIONS TO DEVELOPMENT STANDARDS – FLOOR SPACE RATIOS

1. Introduction

The Clause 4.6 application has been prepared on behalf of the applicant, Morson Group, in support of a Development Application for the demolition of the existing structures and the construction of a part four/part five storey hotel accommodation with 49 rooms, ground floor café/restaurant, communal rooftop terrace, basement car parking for 22 vehicles and associated site and landscaping works at no. 22 Victoria Parade, Manly NSW 2095.

The request seeks to vary the maximum floor space ratio development standards prescribed in Clause 4.4: Floor Space Ratio and the variation of the development standard has been prepared pursuant of Clause 4.6: Exceptions to Development Standards of MLEP2013.

Clause 4.4(2) specifies that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.



Figure 30: Floor Space Ratio Map of the Manly Local Environmental Plan 2013

The Floor Space Ratio Map of MLEP2013 prescribes that the site is within area 'I' and has a maximum floor space ratio of 0.75:1.

2. Variation to the maximum floor space ratio requirements

In accordance with the Floor Space Ratio Map, the subject site is identified as being within a site 'I' area and contains a maximum floor space ratio map 0.75:1 (724.5sqm).

Clause 4.4(2) prescribes the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The proposal will result in a maximum gross floor area of 1674.4sqm which equates to a floor space ratio of 1.73:1. The proposal will exceed the maximum gross floor area by 949.9sqm.



Figure 31: Proposed ground floor level of the building



Figure 32: Proposed typical floor level of the building

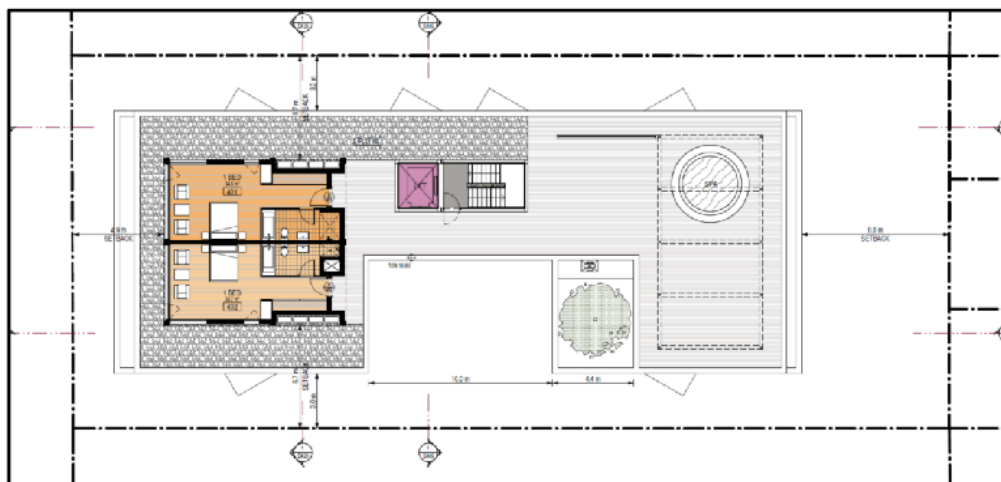


Figure 33: Proposed upper floor level of the building

The Clause 4.6: Exceptions to Development Standards contends that strict compliance with the maximum floor space ratio of 0.75:1 as prescribed within Clause 4.4(2) of the Manly Local Environmental Plan 2013 is unreasonable and unnecessary in the circumstances of the case and that exceedance by a maximum gross floor area by 949.9sqm can be supported by Council in considering the merits of the proposal.

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

6. *The objectives of this clause are as follows:*
 - c. *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - d. *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
7. *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.*
8. *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:*
 - 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.*
9. *Development consent must not be granted for development that contravenes a development standard unless:*
 - c. *the consent authority is satisfied that:*
 - iii. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - iv. *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*
 - d. *the concurrence of the Secretary has been obtained.*
10. *In deciding whether to grant concurrence, the Secretary must consider:*
 - d. *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - e. *the public benefit of maintaining the development standard, and*
 - f. *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

3. Compliance with Clause 4.6(4) Exceptions to Development Standards

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

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

In the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council [2018] NSWLEC118* the position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in one or more of the following ways:

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

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

The objectives of Clause 4.4: Floor Space Ratios are as follows:

- (a) To ensure the bulk and scale of development is consistent with the existing and desired streetscape character*

The proposal will remain compatible with the bulk and scale of the development and the existing buildings within the urban block of Victoria Parade. The existing street is characterised by residential flat buildings between four to six storeys in scale, all of which exceed the maximum building height requirements of 11m. The additional building height and the number of storeys translates to an increase in the gross floor area, above the minimum requirements, which each building is expected to absorb under a compliant development scheme. This translates to all of the existing buildings exceeding both the maximum building height and floor space ratio permitted under the MLEP2013.

When viewed from the streetscape setting, the additional gross floor area will be appropriately absorbed into the building and will remain compatible in terms of the size and scale of the neighbouring buildings along Victoria Parade. The additional gross floor area, which exceeds the minimum requirements from the original Development Approval (167/2015), translates to both a fourth and fifth storey to the building, and the additional storeys will be in keeping with the building heights of the neighbouring buildings within the street. The proposed development will be compatible with the predominant building height plane as set by the existing buildings and will be commensurate to the built form pattern including the size and scale of developments situated in the urban block.

When viewed from the adjoining neighbours, the additional gross floor area has been sensitively and skillfully distributed throughout the building envelope without contributing to the visual bulk and scale from the neighbouring premises. The building envelope has largely been configured as a U-shaped envelope which consists of a substantial void provided through the central portion of the building. The extensive void level provides an increased building separation of approximately 9m to the southern neighbours to minimise the appreciable visual bulk and massing of the building to the south. To the north, the distribution of the gross floor area has been limited to the western end of the site, fronting Victoria Parade. The eastern end of the site is a single-storey lower at four storeys in scale with rooftop structures located on the building. The height of the building at the rear will be lower when measured from the roof parapet of the northern neighbour at no. 28 Victoria Parade. The four-storey scale of the building and the 8m setback are both appropriate in minimising the apparent bulk and scale visible from the rear neighbours at nos. 17, 19 and 21 Ashburner Street.

- (b) To control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

The proposed development is located in close proximity to the existing Manly Town Centre in accordance with Schedule 2 – Map A of MDCP2013. The proposed bulk and scale of the development does not impact upon any existing views to the landscape and townscape features to/from the site. The proposed works are adequately set back from important street corners located at the intersections of Victoria Parade and South Steyne and will not impede any view vistas through the site, in particular those identified for retention including Sydney Road, The Corso and Whistler Street. The proposed development when viewed from the townscape will not detract from the appearance of the adjoining buildings in terms of bulk and scale given the development has been designed to ensure that it is compatible with the building height plane to the neighbouring buildings.

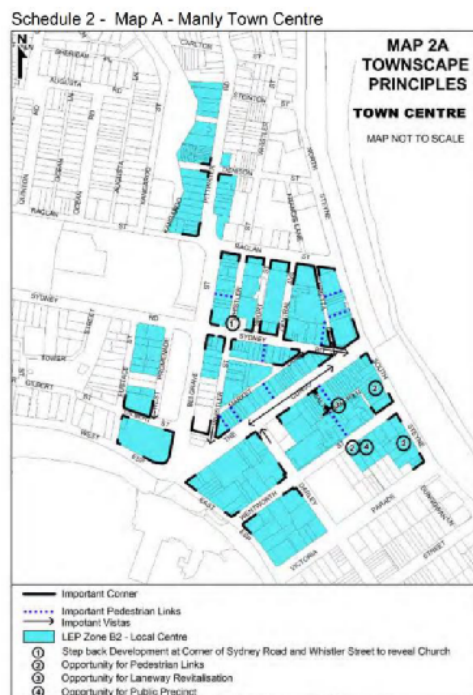


Figure 34: Schedule 2 - Map A of the Manly Town Centre of the Manly Development Control Plan 2013

In terms of landscape features, the existing Norfolk Island Pine Trees are located on the road reservation of Victoria Parade. The trees are identified as being of a high retention value and contribute to the heritage setting of the local area, being identified as heritage items as per Schedule 5: Heritage Conservation of MLEP2013. The proposal will not compete with or conceal the location of the existing trees given the proposed building is adequately set back from these trees. The proposed building will continue to sit beneath the tree line and will preserve the landscape qualities of the existing trees. When viewed from key viewing vistas along Victoria Parade the existing trees will continue to dwarf the development.

- (c) To maintain an appropriate visual relationship between new development and the existing character and landscape of the area.

The proposal will continue to provide a positive visual relationship between the new and existing character within the street. The existing character consists of residential flat buildings between four-six storeys in scale with a reduced front setback to the street. The proposed development is part four/part five storeys, which will be entirely compatible in terms of overall building height from the

front façade and is in keeping with the existing streetscape context. The parapet of the upper floor level will be consistent with the roof parapet of the adjoining buildings and additional design measures have been adopted to alleviate the visual bulk and scale of the building when viewed from the street. The building incorporates an increased setback to the upper floor level to reduce the continuous length of the external wall and appropriate stepping has been provided to the four-storey scale of the building to the south. While the proposal does not provide any soft landscaping within the front setback, it is noted that this is generally consistent with the current arrangement of the existing building which similarly does not provide any soft landscaping to the front. The proposed front setback of the building is consistent with the previous development approval with a greater setback provided at the upper floor level to minimise the bulk and scale of the development. The proposed setback is adequate in providing appropriate visual separation between the proposed building and the existing Norfolk Island Pine Trees located on the road reserve of Victoria Parade.

- (d) To minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.*

The non-compliant gross floor area to the proposed development will not contribute to any adverse environmental impacts to the adjoining neighbours or the public domain. The inclusion of the large over-sized voids provided through the central portion of the building envelope provides increased building separation to the southern neighbour (18-20 Victoria Parade). The increased building separation will not contribute to any further overshadowing to the north-facing window openings at the ground and first floor levels of the southern neighbour than the current development approval (167/2015). In addition, the second and third floor levels of the building will continue to receive the required two hours of direct solar access.

In terms of visual privacy, the northern and southern façades of the building consists of a combination of narrow window openings, articulated bay windows and off-set window openings along the northern and southern elevations of the building. The combined window treatments will minimise any direct overlooking into the habitable room windows of the northern and southern neighbours and will provide a reasonable level of visual amenity to the adjoining buildings. Any direct overlooking from the rooftop terrace will be largely minimised due to its being co-located to a communal rooftop terrace at no. 28 Victoria Parade and will overlook the hipped roof form to the southern neighbour to the east.

The public domain will remain unimpacted by the proposed development. The proposal does not contribute to any overshadowing to the existing road and street verge or result in any view loss impacts visible from the existing public domain. A number of accommodation rooms and window openings will front the existing street alignment and will offer casual surveillance to the existing streetscape.

- (e) To provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

The site is not located within a business zone or identified as being located within a local centre zoning. Nevertheless, the proposal involves retaining the existing use of the premises for the purposes of a tourist and visitor accommodation and will increase the provision of local services including temporary accommodation to tourists and visitors as well as employment to ensure the upkeep of the premise is kept to a high standard.

3.1.2 The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.

Not applicable. The underlying objective or purpose of the development standard is relevant to the development application and is achieved in the matters raised above.

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

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

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

Agreed. The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard. It should be noted that all of the existing buildings within the street range from either four to six storeys in height, all of which exceed the maximum permitted floor space ratio of 0.75:1. The proposed building density will be comparatively similar to the massing and scale of the existing development within the street in terms of proportions and building configurations. The proposed development will maintain similar front, side and rear setbacks and occupies a similar building footprint as a number of existing developments including nos. 14, 40, 42 and 46 Victoria Parade.

It should be also considered that more recent development applications including no. 46 Victoria Parade was granted development consent for the construction of a five-storey residential flat building resulted in a floor space ratio of 2.06:1 with a floor space ratio of 1392sqm.

3.2.5 The zoning of the land is unreasonable or inappropriate.

Not applicable. The zoning of the land is R3: Medium Density Residential in which 'tourist and visitor accommodation' and 'café/restaurants' are a permissible form of development within the zone. The proposal represents development that is typified and expected within the R3: Medium Density Residential Zone.

3.2.6 Some other way.

Not applicable. The above represents that these five ways are not exhaustive of the manner in which an applicant must demonstrate that compliance with a development standard is unreasonable or unnecessary. In this instance it is sufficient to establish only one way which is compliance with the objectives of the development standard. However, there are two ways which demonstrate that the development standard is unreasonable and unnecessary.

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

Subclause (3)(a) of Clause 4.6 prescribes that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

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

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

- 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 Clause 4.6(4)(a)(i).

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

There are sufficient grounds to justify the contravention of the development standard for the following reasons:

- The non-compliant floor area of the proposed development will not result in a development that is excessive in size and scale within the streetscape. The additional gross floor area above the maximum requirements will be distributed to levels four and five of the building and the additional storeys above the approved development will maintain the predominant building height plane of the neighbouring buildings.
- The non-compliant floor area will not contribute to adverse visual bulk and scale impacts from the neighbouring buildings. The proposal includes a significant building separation to the southern neighbour through the provision of a large central void within the building footprint. The oversized void will provide ample building separation and recesses the southern external façade which minimises the length of the continuous wall plane along the southern elevation. The northern and southern (side) elevations have also been appropriately articulated through the provision of bay windows and varying window openings to each respective level of the building.
- The exceedance to the maximum floor space ratio will result in a similar building footprint as the existing buildings within the street. The proposal will occupy a similar building footprint relative to the site area as the neighbouring developments including nos. 14, 40, 42 and 46 Victoria Parade.
- The allotment is an infill site and remains as the last undeveloped lot within the street. Due to the existing residential flat buildings within the street being subject to strata subdivision, it is unlikely that these buildings will undergo any further redevelopment. Subsequently, while the proposed development will exceed the maximum floor space ratio is unlikely that the exceedance will contribute to an undesirable planning precedent given the nature of the adjoining buildings.
- The proposal will not contribute to any adverse environmental impacts in terms of solar access and overshadowing, visual and acoustic privacy, view loss or bulk and scale.

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

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

The following requires that the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.4: Floor Space Ratio and R3: Medium Density Residential Zone of MLEP2013.

3.3.1 The objectives of Clause 4.4 Floor Space Ratio

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

3.3.2 The objectives of Zone R3: Medium Density Residential

The proposal will be compatible with the objectives of the R3: Medium Density Residential Zone in the following ways:

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

The proposal involves the construction of 'tourist and visitor accommodation', specifically 'hotel or motel accommodation' as defined within MLEP2013. While the proposal does not provide for permanent housing on the site, it provides for temporary accommodation for tourists and visitors all of which is permissible within the R3: Medium Density Residential Zone. It is expected that the provision of a new hotel accommodation with 49 rooms will likely reduce the demand for other temporary accommodation such as occupants letting out rooms for periods of less than three months including air-bnbs within the immediate vicinity of the site. This will further support housing needs by consolidating hotel or motel accommodation to designated areas of the site.

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

As raised above, the proposal does not provide for any permanent housing accommodation on the site. The proposal is for the purposes of a 'tourist and visitor accommodation', specifically 'hotel or motel accommodation' as defined by MLEP2013. The provision of temporary accommodation will reduce the ongoing demand for other forms of temporary accommodation including Air-BnB's. It is expected that the provision of new hotel accommodation with 49 new rooms will increase the supply for temporary accommodation within the immediate locality. This will lower the market demand of existing Air-BnB's being let out as tourist and visitor accommodation and promote existing dwellings being let out for the purposes of residential accommodation, as intended. This will promote residential accommodation in providing a range of housing types to the local area.

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

The proposal includes the provision of a café/restaurant at the ground floor level of the building. The use of this premises will provide pre-packaged goods and takeaway food and drink from the premises which will continue to meet the needs of local residents. It should be noted that the existing site currently provides for a café/restaurant at the ground floor level and the proposal will retain this use to ensure this service continues as part of the new development.

- *To encourage the revitalization of residential areas by rehabilitation and suitable redevelopment*

The proposal will continue to encourage revitalisation of the residential areas within the R3: Medium Density Residential Zoning. The proposed part-four/part-five storey hotel accommodation represents a contemporary addition to the existing streetscape setting. The development is appropriately articulated from the existing street façade in that the building incorporates a number of articulations to the built form including recesses to the street façade with a stepped building alignment as the site steps up to the upper floor levels as well as a number of materials and finishes to enhance the urban qualities of the building within the street. The building incorporates an appropriate disposition of building elements, textures, materials and colours, which reflect the function, internal layout and structure of the development. The building façade is articulated to complement and enhance the streetscape and neighbourhood character.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

The existing site is currently occupied by the 'Manly Lodge' known as a boutique hotel accommodation. The proposal involves the demolition of the existing structures and construction of a part four/part five storey hotel accommodation containing 49 rooms. The proposal will provide a greater number of accommodation rooms to the immediate locality and will retain existing tourist accommodation uses on site. The quality of the rooms and the development will represent a

significant improvement to the existing hotel accommodation on site and will reinforce Manly as an iconic area and an international tourist destination.

ITEM 3.4**DA2020/0552 - 181 ALLAMBIE ROAD ALLAMBIE HEIGHTS -
DEMOLITION WORKS AND CONSTRUCTION OF A SENIORS
LIVING DEVELOPMENT****AUTHORISING MANAGER** Steve Findlay**TRIM FILE REF** 2020/699925**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 development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and 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. DA2020/0552 for demolition works and construction of a Seniors Living Development at Lot 2615 DP 752038, 181 Allambie Road, Allambie Heights subject to the conditions and for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0552
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Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 2615 DP 752038, 181 Allambie Road ALLAMBIE HEIGHTS NSW 2100
Proposed Development:	Demolition works and construction of a Seniors Living Development
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Allambie Heights Village Ltd Department Of Lands
Applicant:	Allambie Heights Village Ltd

Application Lodged:	28/05/2020
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	06/07/2020 to 20/07/2020
Advertised:	05/06/2020
Submissions Received:	110
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 17,920,858.00
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Executive Summary

The application seeks consent for the construction of 24 independent living units under the provisions of SEPP (Housing for Seniors or People with a Disability) 2004 (HSPD) 2004. The site has been used for the purposes of social housing (55 units) since 1966, hence the the total number of units on the site will be 79 units.

A previous application (DA2018/1667) was submitted in 2018 and was referred to the Northern Beaches Local Planning Panel (NBLPP). The current application is similar in nature to this earlier application, with the exception of changes such as the relocation of the communal area and removal of the golf course. On 12 June 2019, the NBLPP deferred the matter on the grounds that approval by the

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NSW RFS had not been provided.

Subsequently, the RFS issued their approval, which was subject to conditions requiring substantial amendments to the proposal. The NBLPP resolved to refuse the application on 3 September 2019, due to the amendments required.

The proposed development is situated behind existing buildings fronting Allambie Road. The site is owned by the Department of Industry – Lands (Crown Land) and is currently leased to Allambie Heights Village.

Under the provisions of Warringah Local Environmental Plan 2011 (WLEP 2011), the subject site is within the R2 Low Density Residential zone. The proposed development is defined as Seniors Housing, which is prohibited under the WLEP 2011, however, the proposal is made permissible by virtue of SEPP (HSPD) 2004.

The application was referred to internal departments and external authorities. Council's Natural Environment Team does not support the application due to the impact on remnant bushland caused by the Asset Protection zones required under Planning for Bushfire Protection.

Notwithstanding the above issues and the recommendation for refusal of the application, the remainder of the assessment has found that the proposal is generally acceptable and can be supported subject to conditions. In particular, the assessment has found that the proposed development is satisfactory from an urban design and planning perspective with regards to its overall character and built form and from a traffic perspective.

The applicant has lodged a request under Clause 4.6 of the WLEP 2011 to vary the building height development standard under the SEPP (HSPD) 2004. The proposed building height is up to 0.65m above the permissible height of 8.0m under the SEPP, representing a variation of 8.1%. The variation is considered acceptable largely due to the topography of the land, the lack of adverse impacts and it is offset throughout the development. Specifically, the variation is not considered to result in excessive bulk and scale, does not result in adverse shadow and amenity impacts on surrounding properties and there is no impact on streetscape or the visual and scenic quality of the locality. Incidentally, the height variation does not result in an additional floor level.

The public exhibition of the application resulted in 110 submissions, all of which raised concerns with the proposed development. The majority of the submissions raised concerns with regards to environmental aspects of the proposal on bushland and biodiversity and generally on the Manly Dam catchment. The issues raised in the submissions have been addressed in the "Public Notification" section of this report.

On balance, the assessment of the proposed seniors housing development on this site against the applicable planning controls and related legislation reveals that it is still unable to be recommended for approval, owing to the adverse impact on remnant bushland and biodiversity values of adjoining land.

Therefore, the application is recommended for refusal for the reasons detailed in the recommendation section of this report.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for the demolition works and construction of a seniors housing

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development, which consists of partial demolition works, site preparation works, the removal of trees and the construction of an 24 independent units in two separate blocks (known as Building A and Building B) to be occupied as seniors housing.

Specifically, the development includes the following:

- **Building A** – 8 units over two storeys (4 units per floor) . Units are accessible from two lifts located on the parking level.
- **Building B** – 16 units over two storeys (8 units per floor). Ground floor units are accessible directly from the parking level, through private courtyards. First floor units are accessible by two lifts and raised walkways above ground floor courtyards.
- **Carparking** - the carpark provides 30 resident parking spaces, which includes 2 visitor parking spaces and a loading bay.
- **Access** – existing vehicular access to the site is via Martin Luther Place and the existing internal driveway. A new loop road is proposed to expand from this internal driveway to the parking area for the proposed development.
- **Landscape works** - The landscape design comprises new tree plantings, turf areas, and community activity areas and structures.

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 - 2.3 Zone objectives and Land Use Table
Warringah Local Environmental Plan 2011 - 5.10 Heritage conservation
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation
Warringah Development Control Plan - E2 Prescribed Vegetation
Warringah Development Control Plan - E5 Native Vegetation
Warringah Development Control Plan - E6 Retaining unique environmental features

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Warringah Development Control Plan - E7 Development on land adjoining public open space

SITE DESCRIPTION

Property Description:	Lot 2615 DP 752038 , 181 Allambie Road ALLAMBIE HEIGHTS NSW 2100
Detailed Site Description:	<p>The subject site is generally rectangular, with long northern and southern boundaries, and narrow western and eastern boundaries. The site is located at No. 181 Allambie Road, Allambie Heights, and has a legal description of Lot 2615 in DP 752038. The land has total area of approximately 3.72 hectares (37,200m²).</p> <p>The site slopes in a westerly direction and contains large areas of bushland for approximately half of the area of the site, being the western portion. Bushland also extends along the northern boundary of the site adjacent to an existing Sydney Water pipeline.</p> <p>The site is currently occupied aged care facility known as William Charlton Village, which provides seniors housing development. The existing buildings are located on the eastern portion of the site and include ILUs in 2 storey walk-up buildings, administration/staff buildings and detached outbuildings. Vehicular access to the site is via Allambie Road and also Martin Luther Lane, to the south.</p> <p>The site adjoins on its southern boundary is another seniors development also operated by Allambie Heights Village, that provides a variety of ILUs, assisted living units, dementia care and a full range of catering, recreation, transportation and administration facilities. Located to the north of the site is a Sydney Water pipeline, which runs parallel to the northern boundary of the subject site and is surrounded by bushland. Further to the north of the pipeline is a retirement village known as Fred Hutley Village, which comprises a range of affordable ILUs.</p> <p>The bushland to the west and south west of the site forms part of the Manly Dam catchment and is under the ownership of the Crown.</p>

Map:



SITE HISTORY

Pre-lodgement Meeting

A pre-lodgement meeting (PLM) was originally held with Council relating to the proposed development of the site as seniors housing on 21 November 2017.

Development Application DA2018/1667

This was the original application and was submitted in 2018 and referred to the Northern Beaches Local Planning Panel (NBLPP) for determination. The subject application is similar in nature to this application with the exception of changes such as relocation of the communal area and removal of the golf course.

On 12 June 2019, this application was deferred by the NBLPP as it still had not received the required approval from the NSW RFS.

The NSW RFS finally issued approval (General Terms of Approval) to the proposal, subject to conditions. However, the panel refused the application on 3 September 2019 on the grounds that the conditions of approval required substantial amendments to be made to the proposal.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

The public interest has been considered as part of the application process. Overall, the public interest is best served by the consistent application of the requirements of the relevant planning controls, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised and/or managed. The proposal has been assessed against the provisions of the relevant planning controls and is deemed to be unacceptable in terms of its impact on the natural environment. On this basis, the proposal is not considered to be in the public interest.

Section 4.15 Matters for Consideration'	Comments

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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)	Clause 98 of the Environmental Planning and Assessment Regulation 2000 states that a prescribed condition of consent is that the work is to be undertaken in accordance with the Building Code of Australia (BCA). If the application is approved a condition of consent could be included in the recommendation to ensure that the proposal complies with the BCA.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the relevant sections in this report. A number of inconsistencies with the relevant controls have been identified which indicate the impact of the development on the built environment is not acceptable.</p> <p>(ii) The development will provide housing designed specifically for seniors or people with a disability and therefore the development ensures that the housing stock caters for a broad cross section of the community. The proposed development will not therefore have a detrimental social impact on the locality.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	<p>The suitability of the site in terms of likely impacts on the environment and amenity has been discussed in detail in the various section of this report. In summary, the suitability of the site for the development as proposed in its current form remains uncertain, due to fact that the proposal has not fully addressed the environmental impacts of the proposed development.</p> <p>In this regard, under the circumstances, the site is not considered to be suitable for this particular form and scale of development, given that Council's Biodiversity Team do not support the proposal due to the environmental impacts caused by the Asset Protection Zones (APZ's).</p>



Section 4.15 Matters for Consideration'	Comments
	Therefore, a conclusive determination that the site is suitable cannot be made at this stage.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	<p>The public interest has been considered as part of the application process. Overall, the public interest is best served by the consistent application of the requirements of the relevant planning controls, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised and/or managed. The proposal has been assessed against the provisions of the relevant planning controls and is deemed to be unacceptable in terms of its impact on the natural environment (bushland).</p> <p>On this basis, the proposal is not considered to be in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

See assessment under the referral for *Integrated Development – NSW Rural Fire Service - Rural Fires Act (s100B Subdivisions and Special Fire Protection Purposes under)*

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 06/07/2020 to 20/07/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 110 submission/s from:

Name:	Address:
Terese Lynette Norman	34 Binalong Avenue ALLAMBIE HEIGHTS NSW 2100
Kristian Bruneteau	Address Unknown
Terrence Flower	Address Unknown
Janice Saxby	23 The Circle NARRAWEENA NSW 2099
Karen Montgomery	15/9 Jodie Court MERMAID WATERS NSW 4218
Benjamin Foster	33 Ronald Avenue GREENWICH NSW 2065
Ms Virandathi Asha Kovel	24 King Street MANLY VALE NSW 2093
Mr Benjamin Rodney Wicks	32 Monserra Road ALLAMBIE HEIGHTS NSW 2100
Ms Tiziana Beninati	13 Nenagh Street NORTH MANLY NSW 2100
Dr Nathan Lo	Address Unknown
Ms Leonie Gail Cowan	37 King Street MANLY VALE NSW 2093

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Name:	Address:
Ms Nicole Peta Rando	14 B Bate Avenue ALLAMBIE HEIGHTS NSW 2100
Ryan Stokes	10 Hopetoun Avenue CHATSWOOD NSW 2067
Ms Margaret Joan Grant	60 Owen Stanley Avenue ALLAMBIE HEIGHTS NSW 2100
Ms Elise Bland	58 / 16 Mona Vale Road MONA VALE NSW 2103
Victoria Jane Heaton	27 Headland Road NORTH CURL CURL NSW 2099
Shona Marjorie McKenzie	106 A Clontarf Street NORTH BALGOWLAH NSW 2093
Margaret Ritchie	Address Unknown
Matthew Skellett	17 Berry Avenue GREEN POINT NSW 2251
Wendy Gleen	Address Unknown
Mrs Louise Vera Langley	10 / 45 Sturdee Parade DEE WHY NSW 2099
Harry Moxham	1 Inglebar Avenue ALLAMBIE HEIGHTS NSW 2100
Aidan Masters	Address Unknown
Ms Angela Mary Penn	30 Marinella Street MANLY VALE NSW 2093
Belinda Batty	Address Unknown
Mrs Julie-Ellen Harvey	26 Delaigh Avenue NORTH CURL CURL NSW 2099
Mr Ryan Ho	6 Arnhem Road ALLAMBIE HEIGHTS NSW 2100
Ms Edwina Laginestra	22 Wyndora Avenue FRESHWATER NSW 2096
Ms Janine Andrea Dawson	4 / 226 Sydney Road FAIRLIGHT NSW 2094
Dorien Mergan	Address Unknown
Mrs Kathryn Mary McLean	2 Wonga Street NORTH BALGOWLAH NSW 2093
Mrs Nicole Ruth Margetts	18 Condoover Street NORTH BALGOWLAH NSW 2093
Lyne Croteau	Address Unknown
Kris De Laine	Address Unknown
Heike Roth	21 Tottenham Street NORTH BALGOWLAH NSW 2093
Georgina Ball	Address Unknown
Mr Giles Adam Knapman	17 Mons Road NORTH BALGOWLAH NSW 2093
Mrs Anne-Marie Pickard	2 A Abingdon Street NORTH BALGOWLAH NSW 2093
Graham Lathleiff	Address Unknown
Adam Williams	Address Unknown
Mr Malcolm John Fisher	37 King Street MANLY VALE NSW 2093
Rachel Fleming	10 / 17 - 19 Boronia Street DEE WHY NSW 2099
Ms Judith Claire Bennett	C/- Jesmac Home Improvements 2/16 Dale Street BROOKVALE NSW 2100
Mrs Ellie Robertson	93 Derna Street HOLSWORTHY NSW 2173
Lucy Sternhell	7 Martin Street FRESHWATER NSW 2096
Mr Victor Petersen	15 Bluegum Crescent FRENCHS FOREST NSW 2086
Ms Leicia Petersen	15 Bluegum Crescent FRENCHS FOREST NSW 2086
Mr Michael Houston	12 Palm Parade NORTH NARRABEEN NSW 2101
Mrs Sue Diane Anderson	PO Box 755 AVALON BEACH NSW 2107
Ms Pamela Jannice Rawling	1 / 32 Brighton Street FRESHWATER NSW 2096
Belinda Clarke	2 Seebrees Street MANLY VALE NSW 2093

Name:	Address:
Adrian Breakspear	1 / 49 Eurobin Avenue MANLY NSW 2095
Mr Adrian David Fellowes	83 Campbell Parade MANLY VALE NSW 2093
Mrs Susan Patricia Kelly	20 Gloucester Street NORTH BALGOWLAH NSW 2093
Marta Zibarte	9 / 26 The Crescent MANLY NSW 2095
Mrs Eira Wynn Janet Battaglia	50 / 8 Koorala Street MANLY VALE NSW 2093
Rhys John Collins	41 Gordon Street MANLY VALE NSW 2093
Chloe Hurt	12 / 11 - 15 Spring Cove Avenue MANLY NSW 2095
Mrs Denise Mary Keen	29 / 80 Evans Street FRESHWATER NSW 2096
Mr Terrance Keith Le Roux	3 / 6 Jackson Street BALGOWLAH NSW 2093
Mr Bruce Richard Wilson	45 Southern Cross Way ALLAMBIE HEIGHTS NSW 2100
Robyn West	22 Headland Road NORTH CURL CURL NSW 2099
Mrs Victoria Sharp	10 Churchill Crescent ALLAMBIE HEIGHTS NSW 2100
Ms Jennifer Joan Forster	PO Box 888 BALGOWLAH NSW 2093
Dr Cornelia Donata Eva Johanna Harris	Lot 2671 Morgan Road BELROSE NSW 2085
Nicola Navena Andrews	2 Austin Avenue NORTH CURL CURL NSW 2099
Mr Stephen Gray	Address Unknown
Amelia Burgess	Address Unknown
Mrs Keelah Lam	36 Lauderdale Avenue FAIRLIGHT NSW 2094
Ms Valerie Helen Hutt	5 Southern Cross Way ALLAMBIE HEIGHTS NSW 2100
Mrs Ann Ginette Priestley	6 / 120 Addison Road MANLY NSW 2095
Mrs Jennifer Mary Cullen	PO Box 88 CHURCH POINT NSW 2105
Ms Bronwyn Morris	22 Quinton Road MANLY NSW 2095
Mrs Tanya McAllan	33 Wyuna Avenue FRESHWATER NSW 2096
Mrs Emma Wilson	54 Innes Road MANLY VALE NSW 2093
Ms Julia Barbara Walsh	11 Arana Street MANLY VALE NSW 2093
Mrs Susan Narelle Byrne	7 Arana Street MANLY VALE NSW 2093
Ms Rozetta Mary Payne	28A Prince Street MOSMAN NSW 2088
Martine Cooper	Address Unknown
Ms Paloma Llamazares	18 Sandy Bay Road CLONTARF NSW 2093
Miss Ellin Byrne	7 Arana Street MANLY VALE NSW 2093
Mr David Marshall Lyndon James	3 Bolwarra Road NORTH NARRABEEN NSW 2101
Ms Anne Mary Corbett	37 A Wilson Street FRESHWATER NSW 2096
Jacquelyn Johnson	1/79 Myrtle Street CHIPPENDALE NSW 2008
Sonya Ku	Address Unknown
Emily Ann Fewster	25 Tottenham Street NORTH BALGOWLAH NSW 2093
Mr Raymond James Cox	3 Austin Avenue NORTH CURL CURL NSW 2099
Ms Paula Tracey Cowan	36 Playfair Road NORTH CURL CURL NSW 2099
Ishbel Cullen	Address Unknown



Name:	Address:
Ann Elizabeth Sharp	77 Brighton Street CURL CURL NSW 2096
Nature Conservation Council of NSW	LEVEL 2 301 KENT Street SYDNEY NSW 2000
Jacqueline Marlow	154 Woorarra Avenue ELANORA HEIGHTS NSW 2101
Mr Kevin John Collins	41 Gordon Street MANLY VALE NSW 2093
Miss Diane Carolyn Willman	49 Upper Beach Street BALGOWLAH NSW 2093
Gesiena De Haan	35 A King Street MANLY VALE NSW 2093
Ronald De Haan	35 A King Street MANLY VALE NSW 2093
Mr Greg Wallis	19 Foam Street FRESHWATER NSW 2096
Save Manly Dam Catchment Committee Inc	Address Unknown
Ms Jill Green	6 Harrington Avenue WARRAWEE NSW 2074
Mrs Helen Louise Johnston	66 Woolgoolga Street NORTH BALGOWLAH NSW 2093
Mrs Ann Frances Collins	41 Gordon Street MANLY VALE NSW 2093
Mr David Sydney Palmer	57 Parkland Road MONA VALE NSW 2103
Mr Norman Raven Monshall Ms Jean Harris	10 Tamworth Place ALLAMBIE HEIGHTS NSW 2100
Carolina Gomes	Address Unknown
Mrs Jocelyn Mary Christensen	78 Frenchs Forest Road East FRENCHS FOREST NSW 2086
Ms Rachael Anne Shupe	44 / 41 Roseberry Street MANLY VALE NSW 2093
Mrs Julie Regalado	11 Harvey Street SEAFORTH NSW 2092
Geoff McKay	Address Unknown
Mr Matthew McKeown	2 Larissa Road ALLAMBIE HEIGHTS NSW 2100
Ms Gillian Marie Gan	17 Mortain Avenue ALLAMBIE HEIGHTS NSW 2100

The matters raised within the submissions have been considered and are addressed as follows:

1. Insufficient Parking

have been raised that there is insufficient parking provided for the development.

Comment:

The parking requirement for the development is stipulated under the provisions of SEPP (HSPD) 2004. An assessment of the car parking provision and location on the site has been undertaken. In summary, the amount of car parking is adequate for the development, as addressed elsewhere in this report.

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

2. Impact of Construction on existing residents (noise, dust, amenity)

Concern is raised regarding the excavation and construction impacts associated with the development and the potential impact on adjoining development.

Comment:

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With regards to excavation and construction management, appropriate conditions to minimise impact can be imposed on a consent should this application be approved by the Panel.

Therefore, this issue should not be given determining weight

3. Impact on the Natural Environment

A significant number of submissions raised concerns in relation to the impact of the development on the natural environment. The following specific concerns were raised:

- *Impact on threatened flora and fauna in the area and Manly Dam Catchment and sensitive bushland surrounds;*
- *Extensive tree removal as a result of Asset protection Zones;*
- *The existing landscape area provides a transition between the bushland and existing buildings;*
- *Bushland and riparian buffer areas in Manly Dam Catchment should be zoned E2 for conservation not R2 (residential);*
- *Surrounding detention basins adversely affected (Manly Warringah War Memorial Park and Manly Dam);*
- *Extensive excavation will intercept subsurface flow and result in irreversible changes to the natural hydrology of the site; and*
- *Natural features of the subject site should be protected.*

Comment:

This issue is addressed in the relevant referral sections by Council's Natural Environment Section and the NSW RFS referral comments. In summary, the impacts on the natural environment are found to be unsatisfactory and this reason is included as a reason for refusal.

4. Development is not Suitable for this land

Concerns have been raised that, as the site is Crown Land, it should be maintained as public open space, and be available for bushwalking and picnic areas. A submission also raised concern that the development is inconsistent with the current lease agreement for the site.

Comment:

The site is owned by Department of Industry - Lands and is currently leased to *Allambie Heights Village*. The site is zoned to permit a seniors housing development, and the applicant has lodged the application with valid owners consent from the Department.

The issue as it relates to the lease agreement and whether the site should be used for public recreation purposes is not a matter for Council to consider as part of the assessment of the application.

Therefore, this issue should not be given determining weight.

5. Bushfire Impact

Concerns have been raised that the siting of a development of this type within an area that is bushfire prone is dangerous, due to the limited mobility of residents. In addition, concerns have also been raised that the Asset Protection Zones (APZ) required for the development will impact on the environmental qualities of the site and its surrounds.

Comment:

The site is identified as bushfire prone land. A Bushfire Report accompanies the application. In the



report, recommendations are provided to ensure the safety of the residents of the facility in accordance with the provisions of 'Planning for Bush Fire Protection 2006' as published by the NSW Rural Fire Service (NSWRFS).

Further, as detailed in the referral response from the NSWRFS under the 'Referrals' section in this report, the Service is supportive of a license agreement along with Sydney Water, to manage the Asset Protection Zone.

However, Council's Natural Environment team does not support the proposal due to the environmental impact caused by the Asset Protection Zones.

Accordingly, this matter forms a reason for refusal.

6. Visual Impacts, Height of Buildings and Impact on the War Memorial Area (Heritage)

Concerns have been raised in relation to the visual impact of the development from many vantage points within the Manly-Warringah War Memorial Park. The submissions has also raised concern in relation to the impact of the development on the War Memorial area as it is heritage listed.

Comment:

The application was not accompanied by a specific visual impact assessment, however the siting of the proposed development within the site and when viewed from the War Memorial Area is unlikely have any significant visual impact. In fact, the impact will not be any worse than the existing development on the subject site and the adjoining site to the south.

The issue of the impact of the development on the War Memorial Area is addressed under WLEP 2011 section of this report and found to be acceptable.

A Clause 4.6 variation request has been provided in relation to the building height and this has sufficiently justified contravention of the building height standard. An assessment of this can be found in the building height section of this report.

Therefore, this issue should not be given determining weight.

7. Not consistent with the requirements of SEPP (HSPD) 2004

The submissions have raised concerns that the development does not comply with the following clauses of the SEPP:

- *Clause 12 of SEPP not addressed;*
- *Not compatible with the surrounding land uses*
- *Exceeds the maximum height requirement*

Comment:

The issues above are discussed at length in the SEPP (HSDP) section of this report. In summary, it has been found that the development is consistent with the character of the area, as required under the provisions of SEPP 65 - Design Quality of Residential Apartment Development and SEPP HSPD and the non-compliance in relation to the 8.0m height is supported in this instance.

Clause 12 of SEPP HSPD is not applicable to the proposed development.

Therefore, the specific issues raised in relation to SEPP HSPD should not be given determining weight.



8. Insufficient Community Consultation

Concern was raised that the application was not the subject of sufficient community consultation. In particular, concerns are expressed that details of the application were not notified to enough residents.

Comment:

The Northern Beaches Community Participation Plan and the EPA Regulation 2000 requires adjoining properties to be notified by letter. The extent of the letter notification can be extended at the discretion of the responsible Council officer, should it be warranted due to the potential impacts of the development.

The notification was carried out to all properties that were considered to be potentially impacted by the development. Residents beyond that notified area are captured by the advertisement on Council's website.

The public exhibition of the application was carried out in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Northern Beaches Community Participation Plan.

Therefore, this issue should not be given determining weight.

9. Inconsistent with the R2 Zone Objectives

Concerns have been raised that the proposed development is incompatible with the objectives and future form of development envisaged for the zone.

Comment:

The proposal's consistency with the objectives of the R2 zone is considered under the WLEP 2011 section of this report. In summary, the proposed development has been found to be consistent with the objectives of the zone and this issue should not be given determining weight.

10. Affordable Housing

Submissions have been made that the proposed development is not affordable so there no benefit to the local community.

Comment:

The proposed development seeks consent under the provisions of SEPP HSPD which does not specify requirements for such housing to be affordable.

Therefore, this issue should not be given determining weight.

11. Crown Land

The proposal is inappropriate for Crown Land.

Comment:

Owner's consent has been provided by the Department of Lands for the lodgement of the application and a lease agreement is already in place.

12. Traffic



Submissions have raised concern in regard to the impact the proposal would have on surrounding traffic issues including Allambie Road.

Comment:

Council's Traffic Officer has assessed the application and is supportive of the proposal, subject to conditions. This is partly due to the general peak generation period for a Seniors Living development not coinciding with the Network Commuter Peak Period.

13. Aboriginal Heritage

Submissions have raised concern in regard the lack of an Aboriginal Due Diligence Report.

Comment:

The application was referred to Council's Aboriginal Heritage Officer who has recommended a preliminary due diligence inspection be undertaken prior to any works commencing onsite. If approval is to be given, an appropriate condition can be imposed on the consent.

14. Construction Impacts

Submissions have raised concern in regard to the impacts of construction.

Comment:

If the application is to be approved, conditions should be imposed to mitigate/manage construction related impacts.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported (Subject to conditions)</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Food Premises, Skin Pen.)	<p>Supported (subject to conditions)</p> <p>No objection subject to conditions.</p>
Landscape Officer	<p>Supported (subject to conditions)</p> <p>The Arborist's Report and Landscape Plans submitted with the application are noted.</p> <p>The Arborist's Report indicates that of the 107 trees assessed, 85 are to be removed. The trees incorporate local native, non local native, exotic and exempt species.</p> <p>The Landscape Plan indicates replanting of 89 trees in addition to</p>

Internal Referral Body	Comments
	<p>shrub and groundcover planting and native bushland regeneration areas.</p> <p>The proposed works are generally in the area of already developed land. The proposed planting indicated on the landscape plans is not objected to in general terms.</p> <p>It is noted that Asset Protection Zone requirements of the RFS impact upon proposed planting densities and remnant bushland areas.</p> <p>I would defer to the comments of Council's Bushland and Biodiversity section regarding environmental impacts of the development across the site and adjoining lands.</p> <p>No objections are raised to approval with regard to landscape issues subject to conditions as recommended.</p>
NECC (Bushland and Biodiversity)	<p>Not Supported</p> <p>The proposed development footprint is in proximity to the western portion of the site which is covered with high quality native vegetation. Direct and indirect impacts to native vegetation will result from tree removals, clearing and modification for asset protection zones, sewer infrastructure, passive recreation, with increased and ongoing management of native vegetation and fauna habitat as part of the overall bush fire management measures.</p> <p>The application included a Biodiversity Development Assessment Report (BDAR) that has quantified the biodiversity values of the land and applied the avoid, minimise and offset hierarchy and assessed the direct and indirect impacts associated with the proposed development. While the potential impacts of the most recent development design have been reduced from that of the previous application, the development in its current format is not supported due to unacceptable impacts to the natural environment. The location and design of the proposed development does not satisfy the objectives and/or requirements of the Warringah Development Control Plan 2011, including</p> <ul style="list-style-type: none"> • E2 Prescribed Vegetation • E5 Native Vegetation • E6 Retaining unique environmental features, and • E7 Development on land adjoining public open space. <p>The proposed development will directly and indirectly impact native vegetation and fauna habitat, including threatened species or vegetation communities with potential for a serious and irreversible impact as mapped on the Biodiversity Values Map. The development is located on land adjoining public open space, and should protect, preserve and enhance the native bushland and natural qualities of the adjoining the Park, and not threaten the protection or preservation of the bushland and fauna habitats. Additional impacts</p>

Internal Referral Body	Comments
	<p>that require further assessment, and potentially additional biodiversity offsets, have not been adequately addressed as described below.</p> <p>The Asset Protection Zone (APZ) requirement of 85 metres to the south-west increases the extent and ongoing reliance of vegetation management of land within the adjoining public reserve. The adjoining public reserve has some existing asset protection requirements, both as a result of a historic agreement with the adjoining development and the Fire Management Plan requirements. However, to achieve the full 85m setback (Manly Dam APZ (4) as shown in Map 2 of the Bush Fire Management Plan (Total Earth Care Feb 2020)), the development relies on the modification of native vegetation to create an asset protection zone beyond what currently exists. Parts of the proposed APZ within the Reserve are currently managed as a strategic fire advantage zone, and this does not meet the requirements of an APZ and would result in additional impacts which are not supported.</p> <p>In addition, the impacts of the proposed APZ within the adjoining Sydney Water land to the north (APZ (3) of Map 2), relies on the written agreement of Sydney Water, and the impact to native vegetation and threatend species habitat has not been assessed in the BDAR.</p> <p>A section of the site is mapped by Council as waterways and riparian lands, and any asset protection zone (APZ) should avoid and minimise impacts within the riparian area. However I note that the proposed design and management in this area has been supported by Councils Riparian referral body.</p> <p>Finally, the inclusion of pedestrian walkways into the native bushland area of the site mapped on the Biodiversity Values map is not supported, and these elements should be deleted.</p> <p>Based on the comments above, the development application is recommended for refusal as it does not satisfy the Warringah Development Control Plan 2011 and NSW Biodiversity Conservation Act 2016 requirements.</p>
NECC (Development Engineering)	<p>Supported (subject to conditions) No objection to the proposed development subject to conditions.</p>
NECC (Riparian Lands and Creeks)	<p>Supported (subject to conditions) According to the Warringah Creek Management Study 2004, the site possesses a first order stream, which flows in a southerly direction. The creek forms part of the Curl Curl Creek/Manly Dam catchment and according to the Creek Management Study is a Category A Catchment which is characterised as "very high ecological value; with less than 10% connected impervious area. This provides a high level of connectivity of natural vegetation in the floodplain and riparian zone of Curl Curl Creek and reasonable habitat for dispersal of native terrestrial fauna species. Geomorphic diversity is also very high, providing a wide range of habitats and supporting excellent native species richness. Curl Curl</p>

Internal Referral Body	Comments
	<p>Creek and its tributaries also provide high landscape and passive recreation value to the area".</p> <p>In addition, the catchment is known habitat to a range of native and threatened fauna species including Red Crowned Toadlet.</p> <p>The proposed development application is showing a better building integration in the site setting than the previous projects.</p> <p>The main building is now set further away from the creek line and the proposed infrastructure arrangement is generally offering a wider buffer.</p> <p>Note that the riparian is still within the APZ zone and the proposal is not fully satisfying the Council's DCP and Protection of Waterway and Riparian Lands Policy, however the water quality treatment chain (bioretention and pond) and the proposed vegetation regeneration might mitigate the impact of the APZ zone. It is recommended that the planting list is amended by an ecologist for (1) the bioretention to maintain a functional system (2) regeneration mix with native species/ local provenance.</p> <p>On this basis, the development application is acceptable.</p>
NECC (Water Management)	<p>Supported (subject to conditions)</p> <p>Additional information has been received and reviewed. The documentation is conforming with Council request. Environment & Climate Change is generally satisfied with the revisions and is therefore supportive of the proposal, subject to conditions.</p>
Parks, reserves, beaches, foreshore	<p>Supported (subject to conditions)</p> <p>No objections are raised to approval subject to conditions providing for protection of Council public assets as provided.</p>
Strategic and Place Planning (Urban Design)	<p>Supported</p> <p>The proposal seeks approval for a scheme revised (DA 2018/1667) in accordance with the recommendations of the Northern Beaches Local Planning Panel (NBLPP) on the grounds that insufficient information was provided to properly and fully assess the environmental impacts as a result of the RFS prescribed Asset Protection Zones (Section 4.15 (1)(a) of the Environmental Planning and Assessment Act 1979 (NSW)) and inconsistency with Clause 12(1)(a) of the Warringah Development Control Plan 2011, in particular the following clauses:</p> <ul style="list-style-type: none"> • Clause E2 Prescribed Vegetation; • Clause E5 Native Vegetation; • Clause E6 Retaining unique environmental features; and • Clause E7 Development on land adjoining public open space. <p>And that the required revisions would substantiate a significantly</p>

Internal Referral Body	Comments
	<p>different proposal.</p> <p>As a result of the application of the required 85m APZ setback the revised scheme proposes moving the communal activity centre further to the east with the provision of a landscaped open space including spaces for varying levels of occupation and interaction with the natural environment and mediates the transition between built form and the natural bushland setting adequately.</p> <p>Urban Design is satisfied with the revisions and is therefore supportive of the proposal.</p>
Traffic Engineer	<p>Supported (subject to conditions)</p> <p>The proposed development (as depicted in Annexure A for reference), includes the construction of infrastructure and other works required to facilitate the proposed senior living development consisting of 24 dwellings. The proposed development has the following features relevant to this Traffic and Parking Impact Assessment:</p> <ul style="list-style-type: none"> • 24 x two-bedroom seniors living units distributed across two apartment buildings; • Construction of an ancillary Communal building; • 30 x resident parking spaces located in a basement / lower ground level carpark and one (1) car wash bay on the ground floor; • 17 x visitor parking spaces with 2 provided within the basement / lower ground level carpark and the remaining 15 provided on ground level; • Construction of an emergency egress road to the north of the site. <p>All vehicular access to the site will be from the proposed two-way driveway off Martin Luther Place with the exception of waste collection and loading by vehicles up to a Small Rigid Vehicle (SRV) which will utilise the driveway of the adjacent William Charlton Village site which is located at the intersection of Allambie Road / Mortain Avenue</p> <p>It should be noted that the development was previously submitted under DA2018/1667.</p> <p>After discussion with Council's Planners, it is noted that the new DA seeks to reduce the scale of the development by deleting one (1) component and no further amendments.</p> <p>Therefore, Council's Traffic Team raise no further objections subject to the revised conditions.</p>
Waste Officer	<p>Supported</p> <p>No objection subject to conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The following comments were provided by an Ausgrid:

External Referral Body	Comments
	<i>Ausgrid has no objection with the proposed development as long as we can still maintain access through the existing roadway from pole FF48711 on the western side of the property.</i>
Aboriginal Heritage Office	<p>The Aboriginal Heritage Office (in an e-mail dated 12/11/2018) indicated there are known Aboriginal sites in the area. No sites are recorded in the current development area, however, the area of the proposed development is identified as having high potential for unrecorded Aboriginal sites.</p> <p>The Aboriginal Heritage Office recommends a preliminary inspection ('due diligence' under the National Parks and Wildlife Act 1974) by a qualified Aboriginal heritage professional. The assessment would provide information on what potential Aboriginal heritage issues exist on the land and recommendations for any further action if required.</p> <p>The requirement of the Aboriginal Heritage officer can be addressed by way of conditions, if the application is worthy of approval.</p>
Integrated Development – NSW Rural Fire Service - Rural Fires Act (s100B Subdivisions and Special Fire Protection Purposes under)	<p>The application was referred to the NSW RFS as Integrated Development.</p> <p>Section 100B of the Rural Fires Act 1997 enables the Commissioner of the NSW RFS to issue a Bush Fire Safety Authority for 'Special Fire Protection Purpose' development. Section 100B (6) of that Act identifies Seniors Housing (within the meaning of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004) as such development.</p> <p>In their response on 31 Jul 2020, the NSW RFS advised the following:</p> <p><i>"Subject to Northern Beaches Council management of the Manly Warringah War Memorial Park (specifically APZ 3) identified in Figure 6 – Prescribed Fire Management Zones in the document Manly Warringah War Memorial Park Fire Regime Management Plan 2006. This bush fire safety authority is also subject to the provision of an licence agreement being provided by Sydney Water allowing Allambie Heights Village Ltd and its nominated Bushfire Management subcontractors to manage the portion of Sydney Water controlled land, situated immediately north of 181 Allambie Road Allambie Heights 2100."</i></p> <p>Associated conditions of consent were also provided.</p> <p><u>Sydney Water Letter</u></p> <p>Sydney Water have provided which gives support for a license agreement to Allambie heights Village Ltd and nominated Bushfire management contractors for the purpose of an Asset Protection zone.</p>
Nominated Integrated Development – Natural Resources Access Regulator - Water Management Act	<p>The Natural Resources Access Regulator (NRAR) has reviewed documents for the above development application and considers that, for the purposes of the Water Management Act 2000 (WM Act), the proposed works are exempt from the need to obtain a controlled</p>



External Referral Body	Comments
2000 (s91 Controlled Activity Approval for works within 40m of watercourse)	<p>activity approval and no further assessment by this agency is necessary.</p> <p><u>Controlled Activity Not Required</u></p> <p>The proposed works are not located on waterfront land as defined by the WM Act - The proposed works are greater than 40m from top of bank of the watercourse.</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

The SEPP establishes State-wide provisions to promote the remediation of contaminated land.

SEPP 55 states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. The Managing Land Contamination: Planning Guidelines were prepared to assist councils and developers in determining when the land has been at risk.

Clause 7 of the SEPP requires that a consent authority must not grant consent to a development unless it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

Council's records indicate that the site has been used for residential (Seniors Housing) purposes for a long period of time. It is therefore considered that the site poses no risk of contamination and as such no further consideration is required under Clause 7(1) (b) and (c) of the SEPP 55.

SEPP 65 - Design Quality of Residential Apartment Development

The proposed development is required to comply with SEPP 65 and the associated Apartment Design Guide (ADG). In this regard, the proposed car parking level is more than 1.2m above ground level, with two storeys of residential above the car park, therefore the development is in part a three storey development, triggering the application of SEPP 65.

DA2020/0552



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

Clause 28 of SEPP 65 requires that, in determining a DA for consent to carry out development to which SEPP 65 applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

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

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

Northern Beaches Council does not have a SEPP 65 Design Review Panel. Since the DA was lodged, a Design and Sustainability Advisory Panel (DSAP) has been put in place, but this application was lodged too early in the process for the DSAP to be used.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important



for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:

The site has been used for seniors housing for a significant period of time and therefore the proposed development is considered to appropriately respond to the existing character of the area. The substantive articulation of the built form relates favourably to the existing village and would positively contribute to the quality and identity of the site, which is existing and established. Accordingly, it is considered that the proposal satisfies this principle.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment:

The proposed development, which involves new seniors housing buildings towards the rear of the site, would not result in any significant change to the character of development on the site or in the locality.

The overall height and scale of the proposed building is not considered excessive and is consistent with development that currently exists on this site and on the adjoining development to the south.

Building bulk is considered acceptable, with the massing of the buildings being broken-up by variation in the building form. The external colour scheme and finishes would blend with the surrounding natural environment to reduce visual and scenic impact.

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

Principle 3: Density

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

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

Comment:

The planning controls under WLEP 2011 and the WDCP 2011 do not specify a maximum housing density for the site. The appropriate density is determined by how the development responds to the Design Quality Principles of SEPP 65, and the relevant controls contained within the WLEP 2011.

The proposed density is assessed as being acceptable, as development fits comfortably within its local context. The overall height and scale of the proposed development is not considered excessive and is consistent with the remainder of the development that will be retained within the site.

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

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**Principle 4: Sustainability**

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs.

Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment:

The proposed works include part demolition and excavation work to accommodate the new development. In this regard, a condition can be imposed on any consent requiring the submission of a Construction Management Plan (CMP), detailing the disposal and recycling of demolition and excavation materials.

In addition, a BASIX Certificate for the development has been submitted with the application. The certificate confirms that the development is capable of achieving the water and energy targets and has obtained a pass for thermal comfort.

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

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment:

The landscape plans submitted with the application provide for a high quality landscape outcome for the site, which will ensure that the proposed development is characterised by a landscape setting.

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

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment:



The development has been assessed against the various amenity provisions of the Apartment Design Guideline (ADG), where it has been found that the development is capable of satisfying the relevant objectives and outcomes.

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

Principle 7: Safety

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

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

Comment:

The application is not accompanied by a formal Crime Risk Assessment as required by the ADG. However, the development provides secure access, which is separated from all vehicular access points and all apartments provide balconies and windows which provide passive surveillance over the village and public road.

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

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

This principle essentially requires design to respond to the social context and needs of the local community in terms of lifestyles, affordability and access to social facilities and optimising the provision of housing to suit the social mix and provide for the desired future community.

The development is to be occupied by seniors or people with the disability, which is considered to be a positive outcome in terms of providing a diversity type of housing within a locality which has an ageing population.

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

Principle 9: Aesthetics

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



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

Comment:

The proposed development is considered to be appropriate in terms of the composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the resultant building. The development positively responds to the environment and context, contributing in an appropriate manner to the character of the area.

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

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Consistent A context plan is provided to accompany the application. The building form reflects the current character as anticipated by the SEPP for the site.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent The proposed development is located behind the existing development on site and won't be visible from street.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Consistent The development has been found to transition well.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	Consistent The site has whole provide significant amount of communal space, which is considered satisfactory.
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements:	Consistent In excess of 7% of the site

	<table> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	area is deep soil zone.
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Consistent</p> <p>The proposed building separation is found to be satisfactory.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Consistent</p> <p>The development provides level pedestrian access to all floor levels from the basement car parking area.</p>												
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Consistent</p> <p>The proposed vehicular access has been assessed by Council's Traffic Engineer who has raised</p>												

		no objections to the proposal in terms of the location of the vehicular access.
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Consistent</p> <p>An assessment of car parking provision, having regard to SEPP (HSPD) and location of the site has been undertaken.</p> <p>In summary, the amount of car parking is sufficient for the development, as addressed elsewhere in this report.</p>
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. 	<p>Consistent</p> <p>Over 70% of the proposed units were received the required amount of sunlight.</p>
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. 	<p>Consistent</p> <p>Over 60% of the units are naturally cross-ventilated.</p>
Ceiling Heights	Measured from finished floor level to finished	Consistent

	<p>ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p>The floor to ceiling heights of the apartments within the development meet the minimum 2.7m as required by the ADG.</p>			
Minimum ceiling height																	
Habitable rooms	2.7m																
Non-habitable	2.4m																
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area																
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope																
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use																
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Consistent</p> <p>The minimum size of all bedroom is consistent with the requirement of this Clause.</p>					
Apartment type	Minimum internal area																
Studio	35m ²																
1 bedroom	50m ²																
2 bedroom	70m ²																
3 bedroom	90m ²																
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>Not Applicable</p> <p>The private open space requirement is stipulated under SEPP (HSPD) 2004</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
Common Circulation	<p>The maximum number of apartments off a</p>	<p>Consistent</p>															

and Spaces	circulation core on a single level is eight.	The maximum number of apartments off a circulation core on a single level is less than 8										
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	Consistent (subject to condition) The proposed building includes resident storage areas for all units within the building and as well as within the basement levels. A condition of consent could be recommended, if the application was recommended for approval to ensure the proposed storage areas are allocated in accordance with the size requirements of the ADG for the respective units.										
	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>		Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²
	Dwelling Type		Storage size volume									
	Studio apartments		4m ²									
	1 bedroom apartments		6m ²									
2 bedroom apartments	8m ²											
3+ bedroom apartments	10m ²											
	At least 50% of the required storage is to be located within the apartment.											
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent (subject to condition) The nature of the proposed use is unlikely to generate significant noise emissions associated with the occupation of the development, with the exception of air conditioning systems. A suitable condition could be imposed if the application was worthy of approval in relation to A/C systems										
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.											
Configuration												
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent The noise and pollution impact of the development is satisfactory.										
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Consistent The ground level apartments of the development is satisfactory.										
Facades	Ensure that building facades provide visual	Consistent										

	interest along the street and neighbouring buildings while respecting the character of the local area.	The development is respectful of the surrounding character, therefore the facade treatment is considered to be appropriate to enhance the streetscape and character of the area.																																			
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Consistent The roof design of the development responds to the adjacent building and is considered to be satisfactory.																																			
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent Landscape plans have been submitted with the application, providing detailed plans for the landscape treatment and found to be satisfactory.																																			
Planting on Structures	<p>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</p> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm							Consistent Refer to Principle 5 above and Landscape referral comments.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																																	
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Shrubs			500-600mm																																		
Ground Cover			300-450mm																																		

	Turf		200mm	
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.			Not Applicable
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.			Not Applicable The DA does not propose any awning or signage and as such, this clause is not considered in the assessment of this application.
Performance				
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?			Consistent A BASIX certificate report has been prepared for the development. The BASIX certificate confirms that required targets for water, thermal comfort and energy efficiency will be met
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?			Consistent Water management and conservation through the means of retention of stormwater for reuse has been assessed as compliant and further, compliance with the supplied BASIX Certificate can be conditioned, if the application was recommended for approval.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?			Consistent Subject to condition
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?			Consistent The application includes a Schedule of Materials and Finishes which ensures the longevity and sustainability of the building.



SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 934623M_04).

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

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

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

SEPP (Housing for Seniors or People with a Disability) 2004

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for Seniors Housing.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- (b) make efficient use of existing infrastructure and services, and*
- (c) be of good design.*

Comment:

The proposal is consistent with the aims of the SEPP, in that the proposal will increase the supply and diversity of residences that meet the needs of seniors or people with a disability and is of a good design.

The proposal makes efficient use of existing infrastructure and services. The site is well serviced by existing public transport and is located within 400m of the nearest bus stop.

When considering the proposal against the aim of achieving good design, the proposal must be considered in context with other provisions of the SEPP. The SEPP encourages seniors housing to be of a good design outcome, which maintains and minimises the impacts on the amenity and character of the area.

The proposed built form effectively minimises, reduces the impacts on the amenity and character of the area as detailed later within the assessment, and is considered to be of a good design.

The proposal has been found to be consistent with the aims of the SEPP and is supported in this instance.

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Chapter 2 – Key Concepts

Comment: The proposal is for seniors living and ancillary uses, which are to be occupied by seniors or people with a disability as provided by the SEPP. On this basis, it is considered that the proposal is consistent with Chapter 2 of the SEPP.

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	The subject site has satisfactory access to: a) Shops, banks and other retail and commercial services that residents may reasonably require, and b) Community services and recreation facilities, and c) The practice of a general medical practitioner.	Yes
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400metres away.	The subject site is an existing Seniors Housing site and is located within 400m of various bus stops on Allambie Road and these stops are accessible by means of a suitable access pathway.	Yes
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	The site is identified as being bushfire prone and has been assessed as a "special fire protection purpose". In this regard, the NSW RFS has reviewed the proposal including the requirement of this clause and provided conditions of consent.	Yes
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage	The site has been operating as senior's housing for a significant period of time and is fully serviced by potable water and sewer	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	infrastructure.	Infrastructure. The proposal is satisfactory with regards to the requirements of Clause 28.	
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v): i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	The proposed development is not found to be consistent with the requirement of Clause 25 (5) (b) (ii) as the proposal will have impacts on its natural environment and due this impact, the proposal is found to be unacceptable.	No
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	A site analysis is provided.	Yes

Clause 31 Design of in-fill self-care housing

Pursuant to Clause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The key principles of the policy have been reviewed and the proposed development is considered to enhance internal site amenity and respond appropriately to its context for the reasons stipulated within following sections of this report.

Clause 32 Design of residential development

In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2



of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	<p>The proposed development is considered to appropriately respond to the existing character of the area. The substantive articulation of the built form relates favourably to its context and will positively contribute to the quality and identity of the site, which is already used for senior's development.</p> <p>The current proposal represents an satisfactory design outcome for the site and locality from that presently existing on the site currently by virtue of articulation and façade treatment.</p>	Yes
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.	<p>The development site is not within any Heritage Conservation Area, however, the site is located in the vicinity of an item of heritage significance being a heritage conservation area being 'Manly Dam and Surrounds'.</p> <p>The proposed development is not considered to introduce any significant adverse impacts on the heritage significance of the adjoining conservation area given the physical separation of the site from Manly Dam and its surrounds.</p>	Yes
	c. Maintain reasonable neighbour amenity and appropriate residential character by; (i) providing building setbacks to reduce bulk and overshadowing (ii) using building form and siting that relates	<p>The siting and location of buildings within the site has regard to the front building line, side setback and has provided sufficient landscape buffer in order to preserve the amenity of the adjoining properties in terms of privacy, solar access, and view lines.</p> <p>The development is found to</p>	Yes

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Control	Requirement	Proposed	Compliance
	<p>to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development,</p> <p>(iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors.</p> <p>d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,</p> <p>e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.</p> <p>f. retain , wherever reasonable, major existing trees, and</p> <p>g. be designed so that no building is constructed in a riparian zone.</p>	<p>be consistent with the requirements of this Clause.</p> <p>The proposed setbacks to the front of the development and the extent of landscaping provided within the setback are considered satisfactory to minimise the visual impact of the development.</p> <p>The articulation and stepping of the built form are sympathetic to the character in the area and provides an effective and sensitive transition between the subject development and surrounding development.</p> <p>The proposal includes areas of landscaping which are consistent and sympathetic to the existing provision of landscaping throughout the streetscape.</p> <p>The impact of proposed development on existing trees have been assessed by Council's Landscape officer and found to be acceptable.</p> <p>The proposed buildings is not located within a riparian zone and Council's Riparian officer is satisfied with the proposal, subject to conditions.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site	The development has been designed to maintain a reasonable level of acoustic and visual privacy between properties. Appropriate building setbacks and effective use of privacy	Yes

Control	Requirement	Proposed	Compliance
	planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	treatments maintain a satisfactory level of privacy to adjoining properties.	
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	The proposed development will allow for adequate levels of daylight to living areas of residents and neighbours as required by the SEPP.	Yes
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	The application has been reviewed by Council's Development Engineer who raises no objections to the proposal with appropriate conditions being imposed, should the application be worthy of approval.	Yes
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows	The proposal will provide a satisfactory level of personal property security for residents and visitors, which has been designed to encourage crime prevention. The ongoing maintenance of	Yes

Control	Requirement	Proposed	Compliance
	observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	the development is subject to a private arrangement with the body corporate of the proposal.	
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	The proposal provides safe and obvious pedestrian links from the site that provides access to public transport, services or local facilities. The proposal provides a safe environment for pedestrians and motorists with convenient access and car parking for residents and visitors.	Yes
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	Council's Waste Officer has reviewed the proposal and has raised no objection with regards to waste facility provided for the development.	Yes

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height



Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	37,200m ²	Yes
Site frontage	20 metres	The site has a frontage greater than 20.0m wide	Yes
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	The building height exceeds the 8m by 0.65m maximum at various sections of the building.	No* (Refer to Clause 4.6 Variation)
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	Buildings adjacent to the northern and southern property boundaries are two storeys in height.	Yes
	A building located in the rear 25% of the site must not exceed 1 storey in height (development within 15.51 metres of the rear boundary).	No new work will encroach upon the rear 25% of the site.	Yes

*The non-compliance with Clause 40 are addressed in detail Clause 4.6 of WLEP 2011 section of this report.

Clause 41 Standards for hostels and self contained dwellings

Clause 41 prescribes various standards concerning accessibility and usability having regard to relevant Australian Standards. The applicant has submitted a report and checklist prepared by an accredited access consultant verifying that the proposal will comply with the relevant standards. These standards may be reinforced via suitable conditions of consent, should the application be worthy of approval.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8.0m or less (Measured vertically from ceiling of topmost floor to ground level)	8.65m	No (refer to Clause 4.6)

Control	Required	Proposed	Compliance
	immediately below)		
Density and scale	0.5:1	0.16:1	Yes
Landscaped area	30% of the site area is to be landscaped (1925sqm)	7,580sqm	Yes
Deep soil zone	15% of the site area Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	Over 14,680sqm is provided, which is well in excess of 15% of the site area	Yes
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	Over 70% of apartments receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.	Yes
Private open space	(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and (ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres	All the units are provided with the minimum 15m2 of private open space.	N/A



Control	Required	Proposed	Compliance
	(or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area		
Parking	0.5 car spaces for each bedroom. 0.5x 48 bedroom = 24 spaces required	30 spaces provided	Yes

Chapter 4 – Miscellaneous

Comment: The proposed development is consistent with the provisions contained in Chapter 4. The site is not on environmentally sensitive land, is not affected by amendments to other SEPPs, and the special provisions do not apply to the land.

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 following comments were provided by an AUSGRID officer:

"Ausgrid has no objection with the proposed development as long as we can still maintain access through the existing roadway from pole FF48711 on the western side of the property."

Clause 102 - Roads and Maritime Service (RMS)

With regards to requirements of Clause 104(2) (b) and Schedule 3 of the SEPP, the development does not have a capacity for 200 or more motor vehicles. Therefore, the SEPP Infrastructure does not apply in this respect and does not require the referral of the application to the RMS.

Warringah Local Environmental Plan 2011

DA2020/0552



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	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	The height requirement is covered by SEPP (HSPD) 2004	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
2.3 Zone objectives and Land Use Table	Yes
2.7 Demolition requires consent	Yes
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

2.3 Zone objectives and Land Use Table

The underlying objectives of the R2 Low-Density Residential zone:

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

The development will provide housing designed specifically for seniors or people with a disability and therefore the development ensures that the housing stock caters for broad cross-section of the community.

The proposed design of the development has sought to minimise the impact on the adjoining low-density residential environment, through the incorporation of a landscape buffer, generous setbacks and recessed facades.

The development is considered to be consistent with this objective.

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

The proposal does not provide any other land use, therefore this objective is not applicable to the proposed development.

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

The landscape plans submitted with the application provide for an improved and high-quality landscape outcome for the site, which will ensure that the proposed development is characterised by a landscape setting.

The development is considered to be consistent with this objective.

4.6 Exceptions to development standards

ASSESSMENT OF CLAUSE 4.6 VARIATION REQUEST

Clause 4.6 of WLEP 2011 applies to the proposed development as the overall height of all buildings exceeds the 8.5m height limit. However, the application has been lodged pursuant to SEPP (HSPD) 2004, which contains a Building Height Development Standard, which prevails over the height standard within WLEP 2011.

A recent judgement of the NSW LEC in *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 provides direction to the consent authority that they may need to themselves in fact form a view as to whether the matters in Clause 4.6(3) (a) and (b) are met and not simply rely on the applicant to do so. It is not enough for the applicant to simply cover the matters or that an argument had been advanced.

As such the following assessment against Clause 4.6 and presents both the applicant's argument and an assessment of that argument to ensure that Clause 4.6 is wholly considered:

Clause 40 (4) (a) of SEPP (HSPD) 2004

A request to vary the development standard for the 8m building height limit has been made under clause 4.6 in relation of clause 40 (4) (a) of the SEPP (HSPD) 2004, as mentioned earlier in this report.

The development proposes a maximum height of 8.65m, which varies the 8.0m height requirement by 0.65m that equates to a 8.1% variation to the building height standard as stipulated by SEPP (HSPD) 2004.

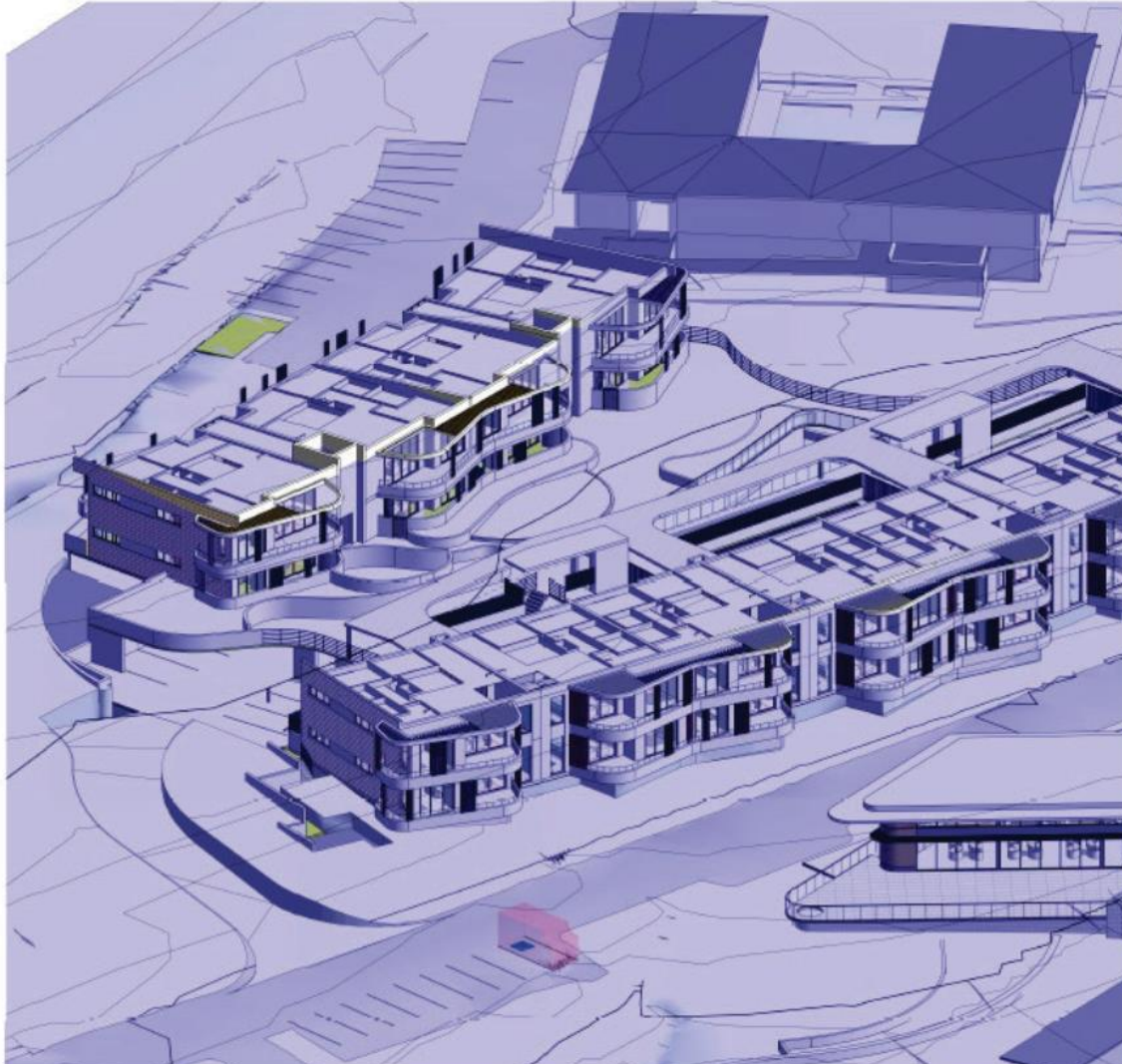


Figure 1- showing the non-compliance with 8m height (8m height limit indicated in blue), source: Architectural Plans (DA-902), prepared by Jackson Teece

Clause 4.6 'Exceptions to development standards' is the mechanism by which an applicant's request to vary a development standard can be considered. Clause 4.6 provides flexibility in applying certain development standards on the following grounds:

(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 40 of SEPP (HSPD) 2004 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:

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

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

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report) has demonstrated that the objectives of the development standard are achieved. The non-compliance is found to be inconsistent with the objectives of the standard as detailed in the later section of this report.

(a) That there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

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

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"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."

Section 1.3 of the EPA Act reads 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.*

Applicant's Written Request

The Applicant's written request of Clause 4.6 as contained in the Statement of Environmental Effects or Clause 4.6 Report argues, in part:

- In terms of bulk and scale, the proposed development has a two storey form which is visually compatible with existing two storey built form on the site located to the east at William Charton Village, which will be retained. The two storey form is also compatible with the built form and scale of buildings on adjoining allotments, including the site to the south which is also a Senior Housing development.*
- The building height breach can be attributed in part to site topography which slope significantly from north to south. The development has been designed to respond to topography by terracing building mass, however height breaches occur area are largely unavoidable without incorporating level changes throughout the development, which is not desirable in a development housing the elderly, where level graded access is necessary.*
- The proposal will provide a well-designed and appropriate independent living development which will not create a significant impact on adjoining properties.*



Assessment Officers Comments

The Applicant's written request (attached to this report) has demonstrated that the objectives of the development standard are achieved. As discussed below, the non-compliance is considered to be minor and found to be consistent with the objectives of the standard.

The applicant's justification has been prepared on the grounds of there being sufficient environmental planning grounds. As such, the grounds for the variation that are particular to the circumstances of the proposed development are that the site is sloping and the proposed height responds to the existing topography. In view of the particular circumstances of this case, strict compliance with Clause 4.3 of the LEP is considered to be both unnecessary and unreasonable on the following environmental planning grounds:

- The proposal is consistent with the intent of Clause 4.3 which is to maintain the character of the area. The proposal achieves this outcome, notwithstanding the proposed numerical variation;
- In this instance, it is considered that removal of the non-complying elements to achieve strict compliance would not result in an improved planning outcome – the additional height does not cause any material impact in terms of privacy or view loss to neighbouring residential areas, or adverse overshadowing to residential properties or the public domain. The variation results in an improved internal amenity for the occupants of this development and a built form in keeping with adjoining development and in essence would result in a better planning outcome;
- The development has been designed to respond to the topography by 'terracing' the building mass, where the height breaches occur and are largely unavoidable without incorporating level changes throughout the development, which is not possible in an seniors housing development, where level graded access is necessary; and
- The amenity of adjoining properties is not significantly impacted on by the non-compliance, and the proposed non-compliance will not result in any view impacts.

Conclusion on Environmental Planning Grounds

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

Accordingly, is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

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

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

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Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 - Low Density Residential zone .

Assessments against these objectives are provided below.

Objectives of the Development Standard

There are no underlying objectives of the standard within Clause 40 of SEPP (HSPD), therefore it is appropriate for the purpose of this assessment to use the underlying objectives as prescribed by Clause 4.3 – ‘Height of Buildings’ of the WLEP 2011 to relevantly determine the suitability of the non-compliance associated with the proposed development.

The objectives of Clause 4.3 are as follows:

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

Comment:

It is not uncommon for senior’s housing developments to be somewhat different in character, form or scale to the types of development generally envisaged in R2 Low-Density Zones. The development within the site through its historical development is already inconsistent with the general built form principles of the R2 zoning.

The proposed built form and breaking-up of the building mass will ensure the development fits comfortably within its local context. The overall height and scale of the proposed development is not considered excessive and is consistent with the remainder of the development that will be retained within the site.

The proposed development is considered, in its design, to be compatible with the height and scale of surrounding and nearby development. The substantial articulation of the built form relates favourably to the scale and height of surrounding and nearby development.

The proposed height and scale of the buildings is considered to be an improved design outcome for the site and is consistent with that envisaged for the site.

The development is considered to be consistent with this objective.

(b) To minimise visual impact, disruption of loss of privacy and loss of solar access

Comment:

The proposed development raises no significant external amenity impacts on adjoining developments in terms of loss of views, privacy, solar access or overshadowing.

The development is considered consistent with this objective.

(c) To minimise the adverse impact of development on the scenic quality of Warringah’s coastal



and bush environments.

Comment:

The development will not have an unreasonable impact on the scenic quality of Northern Beaches coastal and bush environments. The buildings are broken-up through variation of the building form and use of appropriate colours and finishes, which are consistent with the surrounding coastal and bush environment and will assist in reducing any impact on these environments.

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

Comment:

The substantial articulation of the built form, including the breaking-up of the mass of the buildings, and the use of high-quality materials and finishes, will ensure the development will not have an unreasonable visual impact when viewed from the adjoining and nearby public spaces.

What are the Underlying Objectives of the Zone?

In assessing the variations sought, consideration must be given to the consistency of the proposal with the underlying objectives of the R2 Low-Density Residential zone.

An assessment of the proposed development against the objectives of the R2 Low-Density Residential zone is provided under the zoning section of this report, where it was found that the proposed development is consistent with the zone objectives.

Conclusion

The proposed variation to the building height control of the SEPP (HSPD) 2004 does not result in a loss of amenity to the adjoining properties and is therefore considered to be acceptable particularly when balanced against the benefits of the development which are:

- The redevelopment of the site that will provide visual and amenity improvements to the area;
- The additional building height will not reduce privacy, increase overshadowing or present unacceptable visual impacts to surrounding properties. The shadow diagrams accompanying the application demonstrate that appropriate solar access will be retained to the adjoining properties; and
- It is considered that the proposed height variation will not be contrary to the public interest.

The assessment above demonstrates that the proposal is consistent with the objectives of the building height standard.

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

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

Planning Circular PS-18-003, as issued by the NSW Planning and Environment on 21 February 2018, 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 clause 40 of SEPP (HSPD) 2004 Development Standard can be assumed by the Local Planning Panel.

5.10 Heritage conservation

The site is located in the vicinity of an item of heritage significance being a heritage conservation area, namely "Manly Dam and Surrounds" identified under the LEP as Number C9. The proposed development is not considered to introduce any significant adverse impacts on the Heritage significance of the adjoining Conservation Area for the following reasons:

- The change in levels between the Conservation Area and the subject site; and
- The fact that a seniors development already exists on the site.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	The height is covered by SEPP (HSPD) 2004	N/A	N/A
B5 Side Boundary Setbacks	0.9m	In excess of 0.9m to both north and south boundaries	N/A	Yes
B7 Front Boundary Setbacks	10.0m	The new development provides in excess of 10m	N/A	Yes
B9 Rear Boundary Setbacks	6.0m	The proposed development will not encroach on the rear setback area.	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	50%	The LOS is covered by SEPP (HSPD) 2004	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
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
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	No	No
E5 Native Vegetation	No	No
E6 Retaining unique environmental features	No	No
E7 Development on land adjoining public open space	No	No
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D6 Access to Sunlight

Site Specific Requirement

Clause 35 under SEPP (HSPD) 2004 establishes precedence for solar access over the WDCP 2011 and states that development is to ensure that adequate daylight is received to the main living areas of neighbours in the vicinity and residents receive an adequate provision of sunlight to substantial areas of private open space.

In the addition to the above, the development is also assessed against the requirements of clause D6 of the WDCP 2011.

Impact on the Adjoining Properties

The shadow diagrams submitted with the application show that the shadow cast by the proposed development will generally fall within or marginally beyond the boundaries of the site. Therefore, the



impact of the proposed development on the adjoining properties is found to be acceptable.

Impact on the proposed development

The shadow diagrams indicate that the development will result in overshadowing of varying degrees to the new buildings on site, including the newly proposed internal courtyard. However, given the density of the existing and proposed development, it is considered that direct sunlight at all times of the day is unachievable and that a degree of overshadowing is both inevitable and unavoidable.

In this regard, the proposed development is found to satisfy the solar access requirement of the SEPP (HSPD) 2004 and WDCP 2011.

D9 Building Bulk

Clause D9 seeks to minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

In respect to the requirement of this Clause, Council's Urban Designer has reviewed the proposed development and has raised no objection to the design of the development in relation to building bulk. Accordingly, it is considered that proposal represents good design and innovative architecture and will enhance the urban environment. The visual impact of the building will be positive.

The proposal is found to be satisfactory in relation to the objectives of this Clause.

E1 Preservation of Trees or Bushland Vegetation

Council's Natural Environment sections (Biodiversity) do not support the proposed development due to the potential impact of the development on the bushland within the site and within the adjoining public land.

Based on the assessment provided by Council's Natural Environment Sections, the application is recommended for refusal.

E2 Prescribed Vegetation

Council's Natural Environment sections (Biodiversity) do not support the proposed development due to the potential impact on the development on the bushland within the site and within the adjoining public land.

Based on the assessment provided by Council's Natural Environment Sections, the application is recommended for refusal.

E5 Native Vegetation

Council's Natural Environment sections (Biodiversity) do not support the proposed development due to the potential impact on the development on the bushland within the site and within the adjoining public land.

Based on the assessment provided by Council's Natural Environment Sections, the application is therefore recommended for refusal.

E6 Retaining unique environmental features

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Council's Natural Environment sections (Biodiversity) do not support the proposed development due to the potential impact on the development on the bushland within the site and within the adjoining public land.

Based on the assessment provided by Council's Natural Environment Sections, the application is recommended for refusal.

E7 Development on land adjoining public open space

Council's Natural Environment sections (Biodiversity) do not support the proposed development due to the potential impact on the development on the bushland within the site and within the adjoining public land.

Based on the assessment provided by Council's Natural Environment Sections, the application is recommended for refusal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

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 assessment of the application has been carried out having regard to the provisions of Section 4.15



of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP 55, SEPP (HSPD) 2004, SEPP Infrastructure, WLEP 2011, the relevant codes and policies of Council, including the relevant provisions of the WDCP 2011.

The proposal seeks approval for a revised scheme, which is generally based on the previous DA2018/1667. The Northern Beaches Local Planning Panel refused the original DA on the grounds that insufficient information was provided to properly and fully assess the environmental impacts as a result of the RFS prescribed Asset Protection Zones (Section 4.15 (1)(a) of the Environmental Planning and Assessment Act 1979 (NSW)) and inconsistency with Clause 12(1)(a) of the Warringah Development Control Plan 2011.

It is noted that the 85m APZ in the revised scheme is less impacting on remnant bushland due to the shifting of the communal activity centre further to the east on the site, however, the assessment reveals the impacts are still significant and unacceptable, as outlined in the assessment comments provided by Council's Natural Environment Team.

On balance, the natural environment issues are problematic to the point that they constitute reasons why the application is being recommended for refusal. This is despite the fact that the planning, urban design, character, landscaping, traffic, stormwater, services infrastructure and noise assessments reveal the application has significant merit on those grounds.

The development contains non-compliances with the 8.0m Height of Buildings Development Standard as prescribed under Clause 40 (4) (a) of the SEPP (HSPD). The variations sought have been assessed under the provisions of Clause 4.6 of the WLEP 2011 and the departure from the development standard is supported for the reasons mentioned in the Clause 4.6 section of this report.

The public exhibition of the DA resulted in 110 submissions, all of which raised concerns with the proposed development. The majority of the submissions raised concerns with regards to environment impact, incompatibility with character, non-compliance with SEPP (HSPD) 2004 and construction related impacts. The issues raised in the submissions have been addressed in the "Public Notification" section of this report and the natural environment related concerns are concurred with and form reasons for refusal.

Accordingly, it is recommended that the Northern Beaches Local Planning Panel refuse the application for the reasons detailed within the "Recommendation" section of 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 DA2020/0552 for the Demolition works and construction of a Seniors Living Development on land at Lot 2615 DP 752038, 181 Allambie Road, ALLAMBIE HEIGHTS, 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 Warringah Local Environmental Plan 2011.
2. Pursuant to Section 4.15 (1)(a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(1)(a) of Warringah Development Control Plan 2011, the development is inconsistent with the following Clauses as follows:

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- Clause E2 Prescribed Vegetation;
- Clause E5 Native Vegetation
- Clause E6 Retaining unique environmental features; and
- Clause E7 Development on land adjoining public open space



4.0 NON PUBLIC MEETING ITEMS

ITEM 4.1	DA2020/0817 - 14 GLADSTONE STREET NEWPORT - SUBDIVISION OF AN APPROVED DUAL OCCUPANCY DEVELOPMENT
AUTHORISING MANAGER	Anna Williams
TRIM FILE REF	2020/699972
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. DA2020/0817 for subdivision of an approved dual occupancy development at Lot 11 DP 10548, 14 Gladstone Street, Newport subject to the conditions and for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0817
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 11 DP 10548, 14 Gladstone Street NEWPORT NSW 2106
Proposed Development:	Subdivision of an approved dual occupancy development
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:	P & V Fiedler Pty Ltd
Applicant:	Urbanesque Planning Pty Ltd
Application Lodged:	22/07/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	04/08/2020 to 18/08/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.2A Minimum subdivision lot size for strata plan schemes in certain rural, residential and environment protection zones: 43.1%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 0.00

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of development application DA2020/0817 from P&V Fiedler Pty Ltd for the strata subdivision of an approved detached dual occupancy at 14 Gladstone Street, Newport.

The subject site is zoned R2 Low Density Residential under the provisions of *Pittwater Local Environmental Plan 2014* (PLEP 2014), and the proposed development is permissible with consent.

The proposal is reliant upon variations to the minimum subdivision lot size for dual occupancies prescribed by clause 4.2A of PLEP 2014, with a 301.5m² or 43.1% shortfall in relation to both proposed

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lots. The applicant's written request to vary this development standard has not satisfactorily addressed the matters required, and the extent of variation attributes to inconsistency with the objectives of the R2 zoning. As such, the consent authority cannot be satisfied of the matters of clause 4.6(4) of PLEP 2014.

In accordance with the direction issued by the Minister for Planning and Public Spaces on 30 June 2020, development applications involving a variation to a numerical development standard greater than 10% are to be deferred to the relevant local planning panel for determination. As such, the subject application is referred to the Northern Beaches Local Planning Panel for determination, with a recommendation of refusal.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the strata subdivision of a detached dual occupancy approved pursuant to DA2019/1338. The proposed strata subdivision will result in two 398.5m² lots, each containing one dwelling.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone R2 Low Density Residential
Pittwater Local Environmental Plan 2014 - 4.2A Minimum subdivision lot size for strata plan schemes in certain rural, residential and environment protection zones

SITE DESCRIPTION

Property Description:	Lot 11 DP 10548 , 14 Gladstone Street NEWPORT NSW 2106
Detailed Site Description:	The site is a rectangular shaped corner site, with a 20.115m wide frontage to Gladstone Street, a 39.625m wide frontage to Bishop Street, and a total area of 797.1m ² . The site

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currently contains a single storey dwelling and a swimming pool, with vehicular access to Bishop Street. The site benefits from a development consent for the demolition of the existing dwelling and the construction of a detached dual occupancy development, which has not been commenced.

The site is zoned R2 Low Density Residential and is surrounded by development of varying zoning, density, age and character, including a public reserve to the north and north-east, a residential flat building on R2 zoned land to the east, a subdivided (torrens title) dual occupancy on R2 zoned land to the west, residential dwellings on R2 zoned land to the south and residential dwellings on R3 zoned land to the south-west.

Map:



SITE HISTORY

On 21 May 2020, Development Application DA2019/1338 for the demolition of the existing dwelling and the construction of a detached dual occupancy was approved by Council. Of relevance, it is noted that the application involved a variation to clause 4.1B (Minimum lot sizes for dual occupancies) of PLEP 2014, noting that the lot size is 797.1m² and the minimum lot size for dual occupancies as prescribed by clause 4.1B of PLEP 2014 is 800m².

On 22 July 2020, the subject application was lodged with Council.

On 8 October 2020, Council provided the applicant an opportunity to amend the clause 4.6 submission, to further substantiate the variation request.

On 26 October 2020, an amended clause 4.6 submission was received.

CONTEXTUAL HISTORY

The site is located opposite two sites, 18 Gladstone Street and 12A Bishop Street, that are undersized

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R2 Low Density Residential zoned lots. With lot sizes of 472m² and 329m² respectively, the undersized lots result from development consent for the torrens title subdivision of an attached dual occupancy issued under the provisions of State Environmental Planning Policy No. 25 - Residential Allotment Sizes and Dual Occupancy Subdivision, which has since been repealed.

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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.
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 unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirements of clause 4.2A of PLEP 2014 and will result in a development which will create an undesirable



Section 4.15 Matters for Consideration'	Comments
	precedent and be contrary to the expectations of the community. In this regard, the development is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

Internal Referral Body	Comments
Strategic and Place Planning	<p>Refusal</p> <p><i>The former Pittwater Council had a longstanding view that subdivision of dual occupancies was not permitted and the Pittwater LEP 1993 did not permit it. I presume the historical reasons are reflected in the current objective set out in 4.2A(1) of the Pittwater LEP 2015, namely to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.</i></p> <p><i>With the introduction of the Standard Instrument LEP, Council undertook to translate the Pittwater LEP 1993 as a 'like for like'. To ensure the subdivisions of dual occupancies would continue not to be permitted, Council first drafted provisions in clause 2.6 Subdivision—consent requirements. The then DP&I raised issue with a proposed clause to directly prohibit the subdivision of dual occupancies and subdivision. As an alternative to the use of clause 2.6, DP&I advised that Council could consider setting a minimum lot size through its Lot Size Map which Council then did.</i></p> <p><i>If the variation is small enough, clause 4.6 Exceptions to development standards can be applied, however the minimum lot size requirement is basically the Pittwater LEP 2014's way of prohibiting the subdivision of dual occupancies so should be applied as intended.</i></p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and

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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)

Nil

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size for strata plan schemes in certain rural, residential and environment protection zones	700m ²	Lot 1: 398.5m ² Lot 2: 398.5m ²	Lot 1: 43.1% Lot 2: 43.1%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
4.2A Minimum subdivision lot size for strata plan schemes in certain rural, residential and environment protection zones	No
4.6 Exceptions to development standards	No
7.10 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

The proposed development has been considered with respect to the objectives of the R2 Low Density Residential zone, as follows:



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

Comment: Without strata subdivision, each of the dwellings forming the detached dual occupancy are owned by the one entity. This would ordinarily result in at least one of the dwellings being a rental property. As a result of the proposed subdivision, each dwelling may be owned by separate entities, which may result in both dwellings being occupied by owners. Alternatively, both properties may be rented, irrespective of the title arrangements. Whilst the proposed strata subdivision may result in a different outcome with regard to the development's contribution to the rental market, the strata subdivision of the detached dual occupancy will still provide for the housing needs of the community.

However, the question then arises as to whether the resultant development provides an outcome that is in keeping with the low density residential environment anticipated under the provisions of PLEP 2014. The minimum lot size for R2 zoned land in the former Pittwater LGA is 550m², which increases to 700m² for all R2 zoned land north of Mona Vale Road, inclusive of the entire Newport Locality. The proposed development represents a significant shortfall of not only the minimum lot size applicable for the site, but also the minimum lot size for all R2 zoned land subject to the provisions of PLEP 2014.

The proposed lot sizes are uncharacteristic of the R2 zone, and are more akin to the lots sizes anticipated within the R3 Medium Density zone. As such, the proposed development is not considered to be consistent with a low density residential environment.

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

Comment: N/A - the proposal is associated with a residential use.

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

Comment: N/A - the proposal is associated with a residential use.

As such, the proposal is not considered to be consistent with the objectives of the R2 Low Density Residential Zone.

4.2A Minimum subdivision lot size for strata plan schemes in certain rural, residential and environment protection zones

and 4.6 Exceptions to development standards

The application seeks consent for the strata subdivision of an approved but yet to be constructed dual occupancy, resulting in two strata lots, each with an area of 398.5m². Pursuant to clause 4.2A(3) of PLEP 2014, the size of any lot resulting from a subdivision of land for a strata plan scheme is not to be less than the minimum size shown on the Lot Size Map in relation to that land. The subject site is located within Area Q on the Lot Size Map, with a minimum lot size of 700m².

The minimum lot size for strata subdivision is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of PLEP 2014 can be applied. Pursuant to clause 4.6(2) of PLEP 2014, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the minimum lot size for strata



subdivision is not expressly excluded and thus, the clause can be applied in this instance.

What is the extent of the breach?

The application seeks consent for two strata lots, each with an area of 398.5m², being variation of 301.5m² or 43.1% with respect to each lot.

Has the applicant's submission addressed the relevant criteria of clause 4.6 of PLEP 2014?

Pursuant to clause 4.6(4) of PLEP 2014, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of PLEP 2014. The application was supported by a submission (attached) addressing the provisions of clause 4.6 of PLEP 2014, which has been considered with regard to the criteria of clause 4.6(3) of PLEP 2014, as follows:

- a. *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,*

Comment: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. With regard to this clause, there is only one objective:

"to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements"

The applicant provided a statement confirming that the proposed strata subdivision of the approved dual occupancy will not result in the fragmentation of land, nor the creation of additional dwelling entitlements. This position is supported, noting that strata subdivision does not result in fragmentation of land and the resultant development would remain a detached dual occupancy, with no additional dwellings permissible on the land.

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

Comment: The environmental planning grounds put forward by the applicant are as follows:

1. *The variation achieves the objective of the standard which is to ensure that land to which the clause applies is not fragmented by subdivision that would create additional dwelling entitlements.*
2. *The land is not fragmented by the subdivision as it is a Strata subdivision and it does not create additional dwelling house entitlements.*
3. *Maintenance of and compatibility with the established neighbourhood character. The local context is varied such that the Strata subdivision of the development is inconsequential in terms of the character of the area.*

The first two points put forward by the applicant relate to consistency with the objective of the standard. If simply meeting the objective of the standard and satisfaction of subclause (a) was considered to be 'sufficient grounds' to justify the variation, subclause (b) itself would have no work to do. As such, the applicant must provide separate reasoning to justify the variation to the



minimum lot size standard.

In accordance with the findings of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, "environmental planning grounds" should relate to the subject matter, scope and purpose of the EP&A Act, including the objects in s1.3 of the EP&A Act. Furthermore, in accordance with the findings of *Pritchard v Northern Beaches Council* [2020] NSWLEC 1310, they must be "sufficient" and be some way tethered to the breach proposed.

The proposed strata subdivision is essentially a paper exercise to facilitate the separate sale of each of the dwellings approved on the site. This outcome is not endorsed by the provisions of PLEP 2014, which was a like-for-like translation of PLEP 1993 that expressly prohibited the strata subdivision of dual occupancies.

The strata subdivision of an approved dual occupancy is not something that impacts upon the visual appearance of the development, nor does it impact/alter the character of an area. As such, the applicant's third point, which suggests that the breach should be supported because the non-compliant proposal will be "inconsequential in terms of the character of the area", is not considered to be a sufficient environmental planning ground that would justify contravention of the standard. If this position was to be supported in this instance, it could be equally applied in relation to every dual occupancy, such that the standard would become irrelevant and obsolete.

Overall, the applicant's request has not satisfactorily addressed the matter required by clause 4.6(3) of PLEP 2014.

Is the proposal in the public's interest?

Under the provisions of clause 4.6(4)(a) of PLEP 2014, consent must not be granted to a proposal that contravenes a development standard unless the proposed development (as a whole) will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

As discussed in further detail separately above, the proposal is not considered to be consistent with the relevant objectives of the R2 Low Density Zone, in that the extent of the departure from the minimum lot size will result in a development that is at odds with the low density residential environment anticipated within the R2 zone.

The proposal is considered to be consistent with the objective of the minimum lot size for strata subdivision, as follows:

- *to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements*

Comment: The strata subdivision of a development does not result in the fragmentation of land, as the resultant site remains one lot of land, irrespective of how many strata lots are created. Further, the proposal will remain classified as a detached dual occupancy (2 dwellings on one lot of land), which is the maximum density permitted on the subject site. As such, the strata subdivision does not create additional dwelling entitlements, and the proposal is consistent with the objective of the standard.

However, there appears to be no circumstance in which the strata subdivision of a dual occupancy would ever result in an outcome that would be seen to be inconsistent with the objective of this clause, and the clause would serve no purpose in relation to strata subdivision. As such, it is important to



consider the intent of this clause; namely that the minimum lot size requirement prescribed by clause 4.2A of PLEP 2014 acts to deter, if not prohibit, the subdivision of dual occupancies.

Noting that the proposal is at odds with the true purpose of the clause, that has been endorsed by the community in two concurrent LEPs, it is difficult to suggest that the proposal is in the public's interest.

Furthermore, there is nothing put forward within the applicant's clause 4.6 submission that would differentiate this site from any other R2 zoned site under the provisions of PLEP 2014. Should the application be approved, the proposal would create an undesirable precedent that could be similarly adopted in relation to any dual occupancy development on R2 zoned land. The creation of a precedent that essentially makes a specific standard obsolete is not considered to be in the public's interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4) of PLEP 2014, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Planning Circular PS 18-003 (dated 21 February 2018) issued by the NSW Department of Planning and Environment, the Secretary's concurrence may be assumed by the Northern Beaches Local Planning Panel, if the application was to be approved.

Conclusion

The applicant's submission has not satisfactorily addressed the provisions of clause 4.6(3) of PLEP 2014, and the proposal is not in the public's interest, as the proposal is at odds with the objectives of the low density residential environment. Accordingly, the application is recommended for refusal in this regard.

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities	Yes	Yes
C4.5 Subdivision - Utility Services	Yes	Yes

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, 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:

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

The proposal seeks a considerable variation to the minimum subdivision lot size for dual occupancies prescribed by clause 4.2A of PLEP 2014 with respect to both of the proposed strata lots. The extent of variation is at odds with the low density residential character of the area, and will result in a development that will create an undesirable precedent that is not in the public's interest. Furthermore, the clause 4.6 submission provided to support the proposed variation has not satisfactorily demonstrated that there are sufficient environmental planning grounds to justify the proposed contravention.

It is noted that Northern Beaches Local Environmental Plan is currently under development, which will involve the review of the clause relating to the minimum subdivision lot size for dual occupancies, in addition to the zoning of land. The applicant may choose to make representations relating to the zoning of the site and/or the restrictions relating to strata subdivision of dual occupancies as part of any community consultation undertaken during this process.

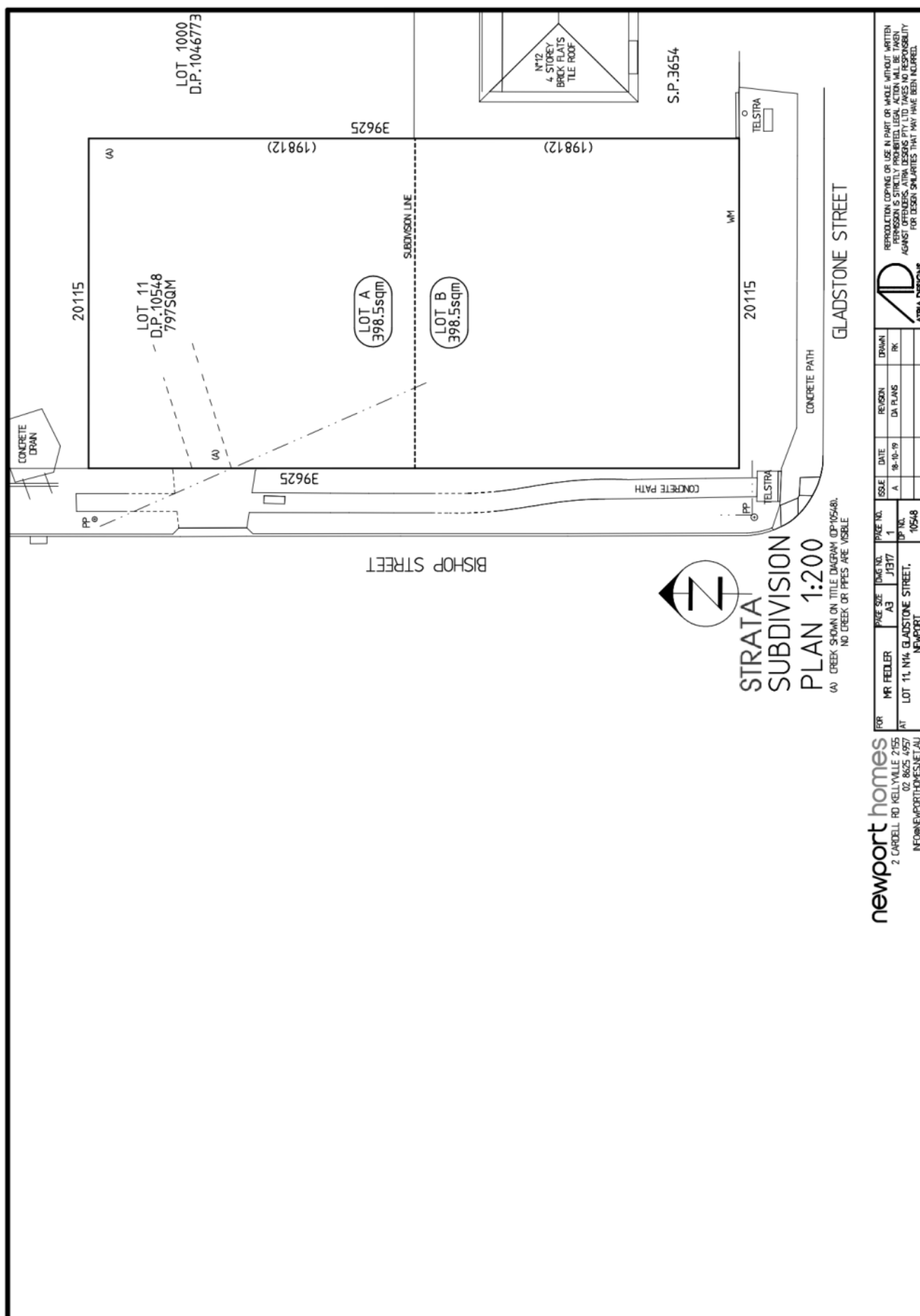
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.



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 DA2020/0817 for the Subdivision of an approved dual occupancy development on land at Lot 11 DP 10548,14 Gladstone Street, NEWPORT, for the reasons outlined as follows:

1. In accordance with the provisions of clause 4.6(4) of Pittwater Local Environmental Plan 2014 (PLEP 2014), consent cannot be granted to the proposal as;
 - a. The applicant's written request seeking to justify contravention of clause 4.2A (Minimum subdivision lot size for strata plan schemes in certain rural, residential and environmental protection zones) of PLEP 2014 has not satisfactorily addressed or demonstrated that there are sufficient environmental planning grounds to justify the contravention.
 - b. The proposed development is not in the public's interest, as the extent of the proposed variations to clause 4.1A (Minimum subdivision lot size for strata plan schemes in certain rural, residential and environmental protection zones) of PLEP 2014 will result in lot sizes that are inconsistent with the low density residential environment, and in turn, the objectives of the R2 Low Density Zone.





General Manager
Northern Beaches Council
1 Park Street
MONA VALE NSW 2103

22 October 2020

REQUEST UNDER CLAUSE 4.6 PLEP 2014

Property/s: 14 Gladstone Street Newport

Proposal: Strata title subdivision of approved detached dual occupancy

Lot No. Plan: Lot 11 in DP 10548

Zoning: R2 Low Density Residential under the Pittwater Local Environmental Plan 2014

Development Standard: Clause 4.2A(3) PLEP 2014 - Minimum subdivision lot size for strata plan schemes in certain rural, residential and environment protection zones.

1. BACKGROUND

This written request is made pursuant to Clause 4.6(3) of the Pittwater Local Environmental Plan 2014 (the LEP) to provide justification to vary a development standard concerning the minimum lot size for Strata title subdivision of an approved dual occupancy development at No. 14 Gladstone Street Newport. The dual occupancy was approved under DA No. 2019/1338 on 21 May 2020.

A Pre-DA meeting for the dual occupancy application was held with Council on 20 September 2018. Amongst other comments, Council advised that "Strata subdivision of the proposed dual occupancy could be considered subject to the proposal being issued development consent." As the proposal has now achieved development consent, this application seeks Strata subdivision. No additional dwelling house entitlements are created by the subdivision beyond the approved dual occupancy.

Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied as to the matters under Clause 4.6(4) of the LEP. It is the onus of the applicant to address the matters under Clause 4.6(3) of the LEP which are addressed through this written request.

Clause 4.2A of the Pittwater Local Environmental Plan provides:-

- (1) The objective of this clause is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.
- (2) This clause applies to land in the following zones that is used, or is proposed to be used, for the purpose of a dual occupancy—
 - a) Zone RU2 Rural Landscape,
 - b) Zone R2 Low Density Residential,

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- c) Zone R5 Large Lot Residential,
- d) Zone E4 Environmental Living.

- (3) The size of any lot resulting from a subdivision of land to which this clause applies for a strata plan scheme (other than any lot comprising common property within the meaning of the Strata Schemes (Freehold Development) Act 1973 or Strata Schemes (Leasehold Development) Act 1986) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

Note. Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides that strata subdivision of a building in certain circumstances is specified complying development.

- (4) This clause does not apply to the strata subdivision of land used, or proposed to be used, for the purpose of a dual occupancy for which development consent was granted on or before 2 June 2003.

The proposed Strata title subdivision will result in lot sizes which are less than the minimum lot size shown on the Lot Size Map. The size shown on the Lot Size Map is 700m². This is identified as a development standard which requires a variation under Clause 4.6 of the Pittwater Local Environmental Plan to enable the granting of consent to the development application.

The proposed lot area for each site is 398.5m² represents a variation of 57% when expressed as a percentage.

Environmental Planning Grounds Relied Upon

The environmental planning grounds supporting variation are on the basis of:-

- The variation achieves the objective of the standard which is to ensure that land to which the clause applies is not fragmented by subdivision that would create additional dwelling entitlements,
- The land is not fragmented by the subdivision as it is a Strata subdivision and it does not create additional dwelling house entitlements.
- Maintenance of and compatibility with the established neighbourhood character. The local context is varied such that the Strata subdivision of the development is inconsequential in terms of the character of the area.

The request will now further expand on the identified environmental planning grounds.

2. IS THE STANDARD A DEVELOPMENT STANDARD?

Clauses 4.1B(2) under the Pittwater Local Environmental Plan 2014 (the LEP) provides:-

- 2) Development consent may only be granted to development on a lot for the purpose of a dual occupancy if:
 - a) the development is permitted on that lot with development consent, and
 - b) the area of the lot is equal to or greater than 800 square metres. The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

A development standard is defined in S1.4 of the Environmental Planning and Assessment Act 1979 ("EPA Act") to mean:

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

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed."

The lot area control falls under subsection (a); therefore the control is a development standard and may be subject to a request for variation under Clause 4.6 of the PLEP.

3. CLAUSE 4.6 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

Clause 4.6 of the Pittwater LEP is a variations clause that is similar in effect to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are also different to those in SEPP 1.

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,

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- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) 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.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated,
 - (c) clause 5.4,

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4. THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate:-

- (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.

According to the relevant case law, common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised in *Wehbe v Pittwater Council* (2007). The five tests under *Wehbe* are tabulated below. Only one of the tests needs to be satisfied. Consideration of a variation is not limited to these tests – they are simply the most common ways invoked in considering whether compliance is unreasonable or unnecessary.

TESTS UNDER WEHBE	COMMENTS
1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.	<p>The sole objective of the development standard is expressed at Clause 4.2A(1) of the PLEP:-</p> <p>The objective of this clause is to ensure that land to which this clause applies is not fragmented by subdivisions that would <u>create additional dwelling entitlements</u>.</p> <p>The objective of the standard is concerned with the avoidance of subdivisions which create additional dwelling entitlements.</p> <p>Clearly, the Strata subdivision of the approved development does not create additional dwelling entitlements beyond the approved dual occupancy and the objective is unequivocally met.</p> <p>As the objective of the standard is set out in such clear terms, it is considered that consistency with this aspect alone, constitutes sufficient environmental planning grounds planning grounds to allow a variation to the standard.</p>
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;	The objective of the development standard is considered to be relevant to the development and the objective is met. Because the objective is achieved, compliance is unnecessary.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;	The objective of the standard would not be defeated or thwarted if compliance was required however because the development meets the objects or purpose of the standard, strict compliance is unreasonable. In other words, the development is in harmony with the objective of the standard.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;	The development standard has not been abandoned but the variation may be supported as the Strata subdivision does not create additional dwelling house entitlements.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard	The zoning of the land is appropriate for the development standard. The land is within the R2 Low Density Residential Zone. The zone objectives are:-

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<p>appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.</p>	<ul style="list-style-type: none"> • 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 provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses. <p>The first objective is relevant to the proposal. In this regard the proposal is not in conflict with the objective. The resulting development will provide for the housing needs of the community in a low density residential environment.</p> <p>The proposal demonstrates compatibility with the relevant zone objective.</p>
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Maintenance of and compatibility with the established neighbourhood character

The local character and subdivision pattern of the locality are varied. Please refer to the context analysis at Figure 1. The area is a mix of open space, Strata titled residential flat buildings, Strata titled multi dwelling housing, unsubdivided dual occupancies and subdivided dual occupancies.

The lot sizes are also varied dependent on the type of development supported, however of significant importance is the fact that subdivision does not impact on the established local character. The character is established by the planning controls, types of development, site density and building height. The Strata subdivision of the approved dual occupancies will not impact on the character of the area. They will be compatible with the area as they are compliant with Council's development controls which establish the character. After subdivision, there is no change to the character and there are no additional dwelling entitlements created by the subdivision. The act of subdivision is benign.

For the preceding reasons, it is considered there are sufficient environmental planning grounds to justify a variation to the development standard. Therefore, compliance with the development standard is unreasonable and unnecessary.



Figure 1: Context diagram noting the varied local character. The subject site is highlighted in yellow.

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Figure 2: Extract from the Pittwater LEP zoning map noting the variation in the subject area.

In relation to the consideration of environmental planning grounds in justifying contravening a development standard, it is worth pointing out that in *Four2Five Pty Ltd v Ashfield Council* (2015) Commissioner Pearson made a judgement that a Clause 4.6 variation requires identification of environmental planning grounds that are particular to the circumstances to the proposed development. In other words, simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

In a follow up judgement on further appeal, the Chief Judge, upheld the *Four2Five* decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard" is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The more recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February 2017, the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means (*emphasis added*):

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“the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant’s written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary”.

Accordingly, in regard to the proposed variation to the lot area control, it is considered that this Clause 4.6 request has demonstrated sufficient environmental planning grounds for Council to be satisfied that the request is adequate and to allow appropriate flexibility.

There is also no requirement under Clause 4.6 or case law that a non-compliant development must demonstrate a better planning outcome. (*Initial Action Pty Ltd v Woollahra Municipal Council (2018)*).

Additionally, under (*Initial Action Pty Ltd v Woollahra Municipal Council (2018)*) at [24], the Chief Judge stated that “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”. It is considered that this request is consistent with this aspect of the judgment as it does not rely on promotion of the benefits of the development.

5. THE ONUS ON THE CONSENT AUTHORITY

Pursuant to Cl.4.6(4)(a), the Council must form the positive opinion of satisfaction that the applicant’s written request has adequately addressed both of the matters required to be demonstrated by Clause 4.6(3)(a) and (b) and that 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.

The consent authority does not have to directly form the opinion of satisfaction but only indirectly form the opinion of satisfaction that the applicant’s written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in Clause 4.6(3)(a) and (b) have been adequately addressed in the written request in order to enable the consent authority to form the requisite opinion of satisfaction. (*Initial Action Pty Ltd v Woollahra Municipal Council (2018)*).

6. CONCLUSION

The intent of the development application is to allow for the Strata subdivision of an approved dual occupancy. Unequivocally, the subdivision does not result in the creation of additional dwelling entitlements beyond the approved dual occupancy which is the purpose of the development standard in question. Therefore, compliance is unnecessary and the withholding of consent is unreasonable.

Development standards tend to be strictly numerical in nature and fail to take into consideration the nature of the development, any site constraints or qualitative aspects of the development or of the particular circumstances of the case. Clause 4.6 of the standard instrument LEP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the development standard is unnecessary and that there are sufficient environmental planning grounds to allow Council to indirectly form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.

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