

# AGENDA

## NORTHERN BEACHES LOCAL PLANNING PANEL

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

**WEDNESDAY 2 DECEMBER 2020**

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



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

**Panel Members**

Lesley Finn	Chair
Annelise Tuor	Town Planner
Graham Brown	Town Planner
Nick Lawther	Community Representative

**Quorum**

A quorum is three Panel members

**Conflict of Interest**

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



## Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 2 December 2020

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 18 November 2020	
<b>3.0</b>	<b>PUBLIC MEETING ITEMS .....</b>	<b>5</b>
3.1	DA2020/0502 - 34-36 Bardo Road NEWPORT - Demolition works and construction of Seniors Housing comprising 12 self-contained dwellings and site consolidation .....	5
3.2	DA2020/0442 - 231 Whale Beach Road WHALE BEACH - Demolition Works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision .....	61
<b>4.0</b>	<b>NON PUBLIC MEETING ITEMS .....</b>	<b>114</b>
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.	
4.1	DA2020/0607 - 9 Anembo Road DUFFYS FOREST - Demolition works and construction of an emergency services facility and subdivision .....	114
4.2	DA2020/1317 - 6 Palm Road NEWPORT - Change of use to a kiosk .....	158
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## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 18 NOVEMBER 2020**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 18 November 2020 were adopted by the Chairperson and have been posted on Council's website.

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### 3.0 PUBLIC MEETING ITEMS

ITEM 3.1	DA2020/0502 - 34-36 BARDO ROAD NEWPORT - DEMOLITION WORKS AND CONSTRUCTION OF SENIORS HOUSING COMPRISING 12 SELF-CONTAINED DWELLINGS AND SITE CONSOLIDATION
AUTHORISING MANAGER	LASHTA HAIDARI
TRIM FILE REF	2020/734954
ATTACHMENTS	1 <a href="#">↓ Assessment Report</a> 2 <a href="#">↓ Site Plan and Elevations</a>

#### PURPOSE

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

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#### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/0502 for demolition works and construction of Seniors Housing comprising 12 self-contained dwellings and site consolidation at Lots 33 and 34 DP 4689, 34-36 Bardo Road, Newport for the reasons for refusal set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0502
Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot 34 DP 4689, 36 Bardo Road NEWPORT NSW 2106 Lot 33 DP 4689, 34 Bardo Road NEWPORT NSW 2106
Proposed Development:	Demolition works and construction of Seniors Housing comprising 12 self-contained dwellings and site consolidation
Zoning:	R2 Low Density Residential
Development Permissible:	Yes, under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Wesley Warren James Beatriz James
Applicant:	Built Projects
Application Lodged:	19/05/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	29/05/2020 to 12/06/2020
Advertised:	29/05/2020
Submissions Received:	25
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 6,237,869.00

### EXECUTIVE SUMMARY

Development Application DA2020/0502 has been made by Built Projects for demolition works and construction of a two storey development divided into two (2) buildings, containing twelve (12) self-contained dwellings pursuant to State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004. The development includes a basement carpark for twenty eight (28) vehicles. The works also include removal of thirty (30) trees and site consolidation.

Public exhibition of the development resulted in twenty-five (25) submissions objecting to the proposal

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and raising concerns relating to overshadowing, traffic and parking, character, density, tree removal and compliance with SEPP HSPD.

The subject site is zoned R2 Low Density Residential under the Pittwater Local Environmental Plan 2014 (PLEP 2014). Development for the purposes of seniors housing is prohibited with the zone. The application has been lodged pursuant to SEPP HSPD.

The assessment of the application has found that the proposal in its current form cannot be supported as it fails to satisfy the requirements of both SEPP HSPD in terms of Clause 29 and Clause 50 and P21 DCP including front building line, side setback, landscaped open space and character.

Accordingly, the application is referred to the NBLPP with a recommendation for refusal and for the Panel to endorse the recommendation.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks approval for the consolidation of the two existing allotments into one lot, demolition of the existing structures followed by the construction of twelve (12) self-contained dwellings under the provisions of SEPP (Housing for Seniors and People with a Disability) 2004.

The proposed dwellings are to be contained within three separate buildings with the front two buildings being two storeys in height and the rear building being a combination of one and two storeys in height, with all buildings erected over a single level of basement parking. Vehicular access to the proposed basement is to be via a new single width driveway which runs parallel with the eastern side boundary.

The works also seek the removal of twenty nine (29) trees, twenty seven (27) from within the site and two (2) from the Council verge.

## 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

DA2020/0502



Pittwater Local Environmental Plan 2014 - Part 2 Permitted or prohibited development  
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks  
Pittwater 21 Development Control Plan - A4.10 Newport Locality  
Pittwater 21 Development Control Plan - B4.6 Wildlife Corridors  
Pittwater 21 Development Control Plan - C1.1 Landscaping  
Pittwater 21 Development Control Plan - C1.4 Solar Access  
Pittwater 21 Development Control Plan - C1.12 Waste and Recycling Facilities  
Pittwater 21 Development Control Plan - C1.20 Undergrounding of Utility Services  
Pittwater 21 Development Control Plan - C1.21 Seniors Housing

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 34 DP 4689 , 36 Bardo Road NEWPORT NSW 2106 Lot 33 DP 4689 , 34 Bardo Road NEWPORT NSW 2106
<b>Detailed Site Description:</b>	<p>The subject site consists of two (2) allotment located on the northern side of Bardo Road, known as Lot 33 and Lot 34, Section 2 in DP 4689, known as Nos. 34 and 36 Bardo Road Newport.</p> <p>The site is regular in shape with a combined frontage of 40.23m along Bardo Road and a depth of 60.96m. The site has a total surveyed area of 2452m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and each accommodates a single brick dwelling house. No. 34 has a separate garage on the eastern side of the site with an inground swimming pool between the garage and the dwelling and a number of ancillary sheds. No. 36 has a metal shed to the rear of the dwelling.</p> <p>The site contains a gentle fall from north (rear) to the street of approximately 5m providing a fall of around 8%.</p> <p>The site contains a number of trees located mostly along the boundaries with some additional trees located at the rear of No. 36.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by a seniors housing development to the east, No 30-32 Bardo Road which contains five (5) detached dwellings, residential float buildings at No. 28 and No. 24-26, a residential flat building to the west at No. 38 Bardo Road. On the opposite side of the road, the character is mostly residential dwelling houses with a townhouse development opposit the site at No. 39.</p>

Map:

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## SITE HISTORY

### Development Application DA2020/0502

Development Application DA2020/0502 was lodged with Council on 19 May 2020. The application seeks consent for demolition works, site consolidation and construction of twelve (12) self-contained dwellings pursuant to SEPP (Housing for Seniors and People with a Disability) 2004. It is noted that there was no pre-lodgement meeting sought for this development.

Following receipt of internal referral comments, the Applicant was sent a letter requesting the application be withdrawn due to a number of reasons including landscape, Urban Design, Bushland and Biodiversity and Waste including inconsistencies with the requirements of SEPP (HSPD) 2004.

On 9 November 2020, the applicant submitted amended plans and supporting documentation, however due to the late submission of the amended plans Council was unable re-notify the amended plans or to facilitate re-assessment by the various referral areas. The plans were not formally accepted under the provisions of the EP & A Act, 1979. Accordingly, this assessment addresses the application as it was lodged with Council.

## 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

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Section 4.15 Matters for Consideration'	Comments
	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)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section 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</p>





Section 4.15 Matters for Consideration'	Comments
	<p>acceptable.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is not considered suitable for the proposed development given its location and proximity to access to the required services and facilities is in excess of 400m.
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	The provision of Seniors housing in the locality is generally in the broader public interest. However, this assessment has found the proposal to be contrary to the relevant requirement(s) of the P21 DCP and SEPP HSPD 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 localised public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 29/05/2020 to 12/06/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 25 submission/s from:

Name:	Address:
Milena Bucalina	10 / 38 Bardo Road NEWPORT NSW 2106
Withheld	NEWPORT NSW 2106
Mr Shane Christopher Cox	14 / 38 Bardo Road NEWPORT NSW 2106
Mrs Stephanie Gai Brown	C/- Vaughan Milligan Development Consulting Pty Ltd PO Box 49 NEWPORT BEACH NSW 2106

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Name:	Address:
Mr Louis Christian Werth	8 / 45 - 53 Ocean Avenue NEWPORT NSW 2106
Mr Roger Taylor Russell	52 Bardo Road NEWPORT NSW 2106
Mrs Eleni Wellings	11 / 39 Bardo Road NEWPORT NSW 2106
Ms Megan Katharine Kennedy	PO Box 179 NEWPORT BEACH NSW 2106
Lee Anthony Charles McGlenn	11 / 38 Bardo Road NEWPORT NSW 2106
Mrs Susan Michele Casey	87 Dolphin Crescent AVALON BEACH NSW 2107
Amy Cuss	41 Bardo Road NEWPORT NSW 2106
Mr John Garth Kirkland	23 Irrubel Road NEWPORT NSW 2106
Mr Joseph John Cilia	45 Bardo Road NEWPORT NSW 2106
Mr David Stewart Sams	27 Irrubel Road NEWPORT NSW 2106
Ms Debbie Ann McHenry	6 / 38 Bardo Road NEWPORT NSW 2106
Anonymous	N/A
Justine Patricia Fitzsimmons	8 / 38 Bardo Road NEWPORT NSW 2106
Ms Eliza Jane Bryant	43 Bardo Road NEWPORT NSW 2106
Ms Susan Louise Stanton	2 / 38 Bardo Road NEWPORT NSW 2106
Mr Oliver Craig Sharp	12 / 38 Bardo Road NEWPORT NSW 2106
Ms Lauren Macladrie Boler	60 Bardo Road NEWPORT NSW 2106
Mr Lindsay Wellings	6 / 30 - 32 Bardo Road NEWPORT NSW 2106
Katherine Clarke	63 Palmgrove Road AVALON BEACH NSW 2107
Mr Paul Stuart Harrison Mrs Karin Christine Harrison	50 Bardo Road NEWPORT NSW 2106
Rebecca Bryant Mr Cameron Christopher Bryant	58 Bardo Road NEWPORT NSW 2106

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

- **Scale and density of development. Overdevelopment of the site.**

Comment: The proposed development does not comply with the density and scale as prescribed in Clause 50 of SEPP (HSPD). If a proposal complies with that standard it cannot be used to refuse consent. However, as the proposed development does not comply with that clause, the proposal can be considered to result in a scale and density which is an overdevelopment of the site if it's found to be incompatible with the character of the area, as established by the LEC in *Salanitro-Chafei v Ashfield Council* [2005] NSWLEC 366. The case establishes a threshold of density at paragraph 27, which states:

*27 The above [reference to SEPP Seniors and SEPP 53] suggests that there is a general acceptance by the planning profession that an open suburban character is most easily maintained when the FSR of buildings does not exceed 0.5:1. The question raised above may therefore be answered thus:*

*The upper level of density that is compatible with the character of typical single dwelling areas is around*



*0.5:1. Higher densities tend to produce urban rather than suburban character. This is not to say that a building with a higher FSR than 0.5:1 is necessarily inappropriate in a suburban area; only that once 0.5:1 is exceeded, it requires high levels of design skill to make a building fit into its surroundings.*

As detailed in this report, the proposed development in terms of built form is found not to be sympathetic to the character of the Newport Locality and its interface with low density residential development surrounding the site. In this regard, the proposal is considered to be over development of the site.

This issue constitutes a reason for the refusal of the application.

- ***Visual impact - not in keeping or compatible with other development***

Comment: The proposed development does not present a cohesive or consistent form of development which is reflected by the Urban Design comments.

- ***Landscaped area non-compliance out of character with the Newport locality***

Comment: While the development provides landscaping on the site which satisfies the numerical requirement of the SEPP, the Pittwater21 DCP requires a landscape provision of 50% of the site in order to

- ***Non-compliance with SEPP HSPD maximum 400m distance to services.***

Comment: This issue has been raised by Council's Traffic Engineer and is not supported. Further, the Applicant has submitted a Clause 4.6 variation to this development standard which is not considered satisfactory. This issue forms a reason for refusal.

- ***Side boundary setback non-compliance***

Comment: The development includes non-compliances with both the western and eastern elevations with the front building section to the west providing a 1.615m setback at ground and first floor level and to the east at first floor level a 1.615m setback. It is also noted that the proposed basement structure provides less than 0.5m setback from both boundaries with some retaining wall elements to the east extending with a nil setback. This is considered excessive and is not supported.

- ***Height and FSR non-compliance - (proposed 0.717:1)***

Comment: The proposed development complies with both the height requirement under SEPP HSPD and Pittwater LEP at a maximum height of 7.76m. The development does result in a non-compliance with the FSR requirement under the SEPP of 0.5:1. The development has an FSR of 0.717:1. While a Clause 4.6 request for variation has been submitted for the distance to services, there is not 4.6 request for FSR.

- ***Safety - parked cars and narrow single car width, kindergarten across the road - truck movements at drop off and pick up times.***



Comment: The Traffic Impact Assessment submitted with the application discounts the need for any assessment of parking or vehicle behaviour within Bardo Road due to the number of spaces provided within the development. While the site provides a numerically compliant number of parking spaces, the existing conditions within the vicinity of the site do not appear to have been acknowledged.

- ***Traffic - dispute figures based on 18 year old policy***

Comment: The application is accompanied by a Traffic Impact Assessment prepared by Auswide Consulting dated May 2020. The report provides an assessment of the impact of the traffic increase resulting from the development based on the traffic generation rates contained with the RTA Guide to Traffic Generating Development (2002). While this document is old, it is still the current industry reference in relation to these matters. The report concludes that the development would increase traffic movements by up to 24 trips per day which the report considers 'negligible'. Notwithstanding the applicant's traffic report, the site fails to satisfy the minimum distance from public transport and is therefore not supported by Council's Traffic Engineer.

- ***Loss of bush and scenery - tree vandalism investigated by compliance***

Comment: Following complaints in relation to purported tree poisoning, a compliance investigation was commenced. At the time of writing, no definitive conclusions had been made in relation to these claims.

- ***Misleading DA submission details - reported as 12 x 3 bed actually 10 x 3 bed and 2 x 4 bed. Aboricultural report states that the development includes 6 x 2 storey and 2 x single storey apartments plus basement totally incorrect.***

Comment: The supporting documents provide conflicting descriptions of the development form. In its originally submitted form the development includes 10 x 3 bedroom dwellings and 2 x 4 bedroom dwellings. The two x 4 bedroom dwellings are two storey, with two (2) single storey dwellings within the rear (Apartments 7 and 8)

- ***Construction Management Plan recommends trucks to do a right hand turn from Bardo into Seaview Road. No RHT permitted***

Comment: As identified within this submission, the methodology detailed for construction traffic is flawed and ill considered. Traffic conditions in this location do not support a right hand turn into Seaview Avenue to access Barrenjoey Road.





- ***Construction Traffic Management Plan states excavation to start at 6.00am, not acceptable in a residential area. construction zone referred to in report not shown on plans. Proposal states a 50 week build. Is there a penalty if the build takes longer? Site workers are to park in Bardo Road or Bishop Street both of which are devoid of parking spaces***

Comment: In relation to proposed excavation start times, Council's standard conditions restrict excavation works before 8.00am Monday to Friday. Council are unlikely to support amended excavation work times to 6.00am within a residential location. In terms of the length of the construction period, there is no legislated period within which construction should must be confined. As the Traffic Report fails to provide any audit or assessment of on-street parking availability within Bardo Road or the surrounding street network, no reliance should be given to support the availability for on-street parking for construction related vehicles.

- ***Overshadowing impacts on the properties on the western side of 30-32 Bardo Road, 38 Bardo Road***

Comment: The drawing submitted with the application provide limited detail to inform the full extent of overshadowing from the proposed development. It appears that additional overshadowing will impact the eastern facade of No. 38 Bardo Road in the morning from 9am till before midday. Likewise in the afternoon, additional overshadowing will impact on the properties at No. 32 Bardo Road. Insufficient detail has been provided to accurately demonstrate the full impact of the development on the adjoining properties.

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- ***Fauna and Wildlife impacts***

Comment: As identified within the Bushland and Biodiversity referral, the site is mapped as part of the high priority wildlife corridor. The proposal fails to provide any wildlife corridors. This forms a reason for refusal.

- ***Landscape plan not included in the development documentation. No screen planting provided between the site and 38 Bardo Road.***

Comment: A Landscape Plan is provided in the submitted set of drawings L01 Issue A Landscape Planting Plan prepared by Susan Read Landscapes. This plan identifies that planting is proposed along the western boundary of the site consisting of a row of 24 Syzygium Straight and Narrow adjacent to Apartment 001 and 003, 6 Syzygium Resilience adjacent to Apartment 005 and 11 Waterhousea Floribunda 'Sweeper' adjacent to Apartment 007. All species provide a mature height of 5-8m located behind a 1.8m high timber fence. This planting is considered acceptable as screen planting.

- ***Garbage bins and collection***

Comment: Council's Waste team have reviewed the proposed development and do not support the development as detailed.

- ***Plans note excavation to the basement at 5.3m, auger holes only show a depth of 1.4m and DCP tests were to a maximum of 2.7m. Geotechnical report recommendations - deep excavation.***

Comment: The Geotechnical report indicates that the proposed development provides a risk to life and property is 'unacceptable' in its proposed form. Further details relating to excavations should be identified to satisfy the requirements identified

- ***Footpath currently only on part of the road and no path from 39 to 47 Bardo, Gladstone only has a path on the northern side no traffic lights or pedestrian crossing or footpath to cross safely***

Comment: The footpath from the site along Bardo Road is not adequate and will require upgrading to provide a suitable pathway 1.5m in width for the entire access route to the bus stops. It is noted that footpaths in Bishop Street and Gladstone Street have already been upgraded.

- ***Acoustic impacts from the single driveway on the eastern side services 24 vehicles plus guests***

Comment: No acoustic assessment has been provided in relation to the basement carpark and the location of the single access in close proximity to the dwellings at No. 30-32 Bardo Road. Given the intensification of this site from two (2) dwellings to twelve (12) dwellings and up to 28 vehicles, there is insufficient information provided to support the proposal in this regard.



- **Loss of property values**

Comment: Property values are not a relevant consideration under Section 4.15 of the EP & A Act, 1979.

- **Asbestos risk**

Comment: Should the application be considered for approval, a condition of consent may be imposed which reinforces the responsibility of the developer under Work Cover requirements to deal with any asbestos on the site in accordance with the requirements of the legislation.

- ***Note the recent Application for Development (under the same SEPP) of the residential site at 60 Binalong Road, Allambie Heights which was intended to be suitable for people with a disability and low income which was completed in January 2020. That Development is currently being sold by the Developer and once it is sold there is nothing which forces the new owner to comply with the original intent of the Development***

Comment: In accordance with Section 18(2) of SEPP HSPD, consent to a development pursuant to this EPI must not be granted unless specific conditions are imposed on the consent. Section 18(2) states:

(2) A consent authority must not consent to a development application made pursuant to this Chapter unless—

(a) a condition is imposed by the consent authority to the effect that only the kinds of people referred to in subclause (1) may occupy any accommodation to which the application relates, and

(b) the consent authority is satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the [Conveyancing Act 1919](#), limiting the use of any accommodation to which the application relates to the kinds of people referred to in subclause (1).

In accordance with this requirement, restrictions are incorporated on the land title so that when they are sold, this limitation on the occupants is clearly divulged. This issue is not considered a determining element for this development.

- **Damage to adjoining properties as a result of the construction works.**

Comment: The proposed basement excavation is extensive and is identified within the Geotechnical Report prepared by White Geotechnical Group as: "This level of risk to life and property is 'UNACCEPTABLE'. To move the risk to 'ACCEPTABLE' levels, the recommendations in Section 13 are to be followed."

While delapidation surveys would be conditioned on a consent to establish a pre-development condition report of adjoining properties, it is considered that further investigation and information is required to provide certainty around the method of excavation. Excavation depth is identified to be approximately 5.3m however testing on the site occurred to a depth of only 2.7m. Given the proximity of the





excavation to the side boundaries of the site and the neighbouring properties, the likelihood of damage to these properties is considered high. This issue is a reason for refusal.

- **Additional run off and overland flow.**

Comment: Council's Development Engineer has reviewed the proposed stormwater management for the site and has accepted the proposed design.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>SUPPORTED</b></p> <p>The proposed development comprises of a basement with two level residential dwellings at the front portion and single level at the rear portion. Additionally</p> <p>No objections are raise subject to conditions to ensure compliance with the Building Code of Australia (BCA). It is noted that the proposed development may not fully comply with some requirements of the BCA however it is considered that these matters may be readily determined at Construction Certificate Stage and by way of an acceptable 'Alternate Solution' Design.</p>
Landscape Officer	<p><b>NOT SUPPORTED</b></p> <p>The development application proposes the demolition of existing buildings and structures and the construction of a 12 dwelling seniors housing development under SEPP65 - Seniors Housing, including the consolidation of the two existing allotments into one lot.</p> <p>In the landscape assessment of this application, consideration of the submitted Landscape Plan prepared by Susan Read Landscapes and the Arboricultural Impact Assessment &amp; Tree Protection Plan prepared by Joshua's Tree Service is assessed against the following relevant controls:</p> <ul style="list-style-type: none"> <li>• Housing for Seniors or People with a Disability: clause 33 Neighbourhood amenity and streetscape, clause 34 Visual and acoustic privacy, and clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings</li> <li>• Pittwater 21 DCP Controls: B4.22 Preservation of Existing Trees and Bushland Vegetation, C1.1 Landscaping, C1.21 Seniors Housing, and C1.24 Public Road Reserve - Landscaping and infrastructure</li> </ul> <p>The following landscape outcomes are to be achieved to satisfy the relevant Housing for Seniors or People with a Disability controls:</p> <ul style="list-style-type: none"> <li>• clause 33 Neighbourhood amenity and streetscape: the</li> </ul>



Internal Referral Body	Comments
	<p>proposed development should: (e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and (f) retain, wherever reasonable, major existing trees</p> <ul style="list-style-type: none"> <li>• clause 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 planning, the location and design of windows and balconies, the use of screening devices and landscaping</li> <li>• clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings: on any of the following grounds (c) landscaped area: if (ii) in any other case - a minimum of 30% of the area of the site is to be landscaped; (d) Deep soil zones: if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the deep soil zone). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres</li> </ul> <p>In consideration of clause 33 (e) it is considered that the available deep soil area on the surface will only permit the establishment of small and possibly medium sized trees and not the large tall-trunk canopy trees that existed upon the site and as evident in the locality, including large Turpentine, Stringy Barks, and Spotted Gums, which require substantial surface areas.</p> <p>The control intent of clause 34 to provide visual privacy to neighbours is able to be achieved along the rear boundary, subject to selection of appropriate tree species, but is not able to be achieved for much of the side boundaries where basement alignment close to the boundaries will limit the possibility for planting of a size that will offer screening. Concern is raised that for the proposed ground floor apartments 1, 2, 3, 4 and part 5 and 6, insufficient landscape garden width and soil volume is available to support planting capable of providing privacy to adjoining neighbours.</p> <p>Whilst the numerical compliance of the proposal confirms that clause 50 is not a reason for refusal, the area allocated as deep soil to support the growth of trees is limited to the rear boundary area, albeit that only small to medium sized trees may be possible in this area. The front setback planting opportunities within deep soil is limited to one tree in the south west area as the front setback contains built elements within the deep soil area preventing planting of trees with the inclusion of the following elements in to the deep soil area: underground OSD encroachment, basement stairs, walling, entry path, and an extensive ramp. These elements reduce the deep soil</p>

Internal Referral Body	Comments
	<p>area capable of supporting trees and as such only shrub and groundcover planting would be capable to establish. Concern is raised that the built form is not softened by this proposal and does not meet the requirements of Clause 33 Neighbourhood amenity and streetscape, of SEPP65, nor the requirements to minimise the bulk and scale as referenced in C1.1 Landscaping and C1.21 Seniors Housing of the Pittwater 21 DCP.</p> <p>The following landscape outcomes are to be achieved to satisfy Pittwater 21 DCP:</p> <ul style="list-style-type: none"> <li>• C1.1 Landscaping: retention of canopy trees; a range of low lying shrubs, medium to high shrubs and canopy trees shall be retained or provided to soften the built form; the front of buildings shall be landscaped to screen those buildings from the street by 50%, with consideration for clause 37 Crime prevention under SEPP65 - Seniors Housing; screening shall be of vegetation (not built items) when viewed directly onto the site</li> <li>• C1.21 Seniors Housing: visual bulk and scale of development is limited</li> <li>• C1.24 Public Road Reserve - Landscaping and infrastructure: a 1.5m footpath across the development site frontage shall be provided, noting a footpath of less width exists to Seaview Ave; street tree planting at 6m centres is to be provided within the road verge</li> </ul> <p>In its current design layout, the front setback to Bardo Rd of 6m is inadequate to support planting of trees to soften the built form as the frontage is occupied by OSD encroachment, basement stairs, entry path, front boundary walling, services, and an extensive ramp, that reduces the deep soil area capable of supporting canopy trees to the eastern end of the site frontage where one tree is proposed. The proposed tree planting of Angophora costata (a large canopy tree capable of attaining 20 metres and more) is located in close proximity to the building, walling, stairs and services, such that its long term establishment and survival is unlikely. The remaining landscape area proposes shrub and groundcover planting. Thus the built form is not softened by this proposal and does not meet the requirements of Clause 33 Neighbourhood amenity and streetscape, of SEPP65, nor the requirements to minimise the bulk and scale as referenced in C1.1 Landscaping and C1.21 Seniors Housing of the Pittwater DCP. To support the application proposal, deep soil area within the front setback shall be provided that will be of sufficient surface area to allow for the establishment of canopy trees. Under C1.1 Landscaping, references are provided including the requirement for each tree planted to have a minimum of 3 metres x 3 metres of ground area, and located a minimum of 5 metres from existing and proposed built structures.</p>

Internal Referral Body	Comments
	<p>The rear setback is 6.11m, excluding the paved terrace areas that reduce the rear setback to approximately 4.8m from paved terraces to the boundary. The landscape proposal includes the planting of four tall-trunk canopy trees, two located close to each other at the north-east boundary, one at the north-west boundary, and one forward of the paved terraces to apartment 7, and in consideration of the location of existing trees. Concern is raised that this setback distance is not adequate to support such large tall-trunk canopy trees and in fact is only suitable for small to medium sized trees, which with their canopy density are likely to impact upon solar access to the apartments.</p> <p>The landscape proposal for the side setbacks is inadequate to provide privacy to adjoining properties, with the exclusion of the landscape proposal shown along the side boundaries for apartments 7 and 8. The landscape proposal along the remaining side boundaries contain planters or at-grade gardens of insufficient width to support planting to achieve privacy. Planters and at-grade gardens are to be increased in width to provide sufficient soil volume to support planting capable of achieving at least 3 metres in height at maturity, as well as small tree planting, and removal or reduction of the proposed lawn areas shall be undertaken.</p> <p>The development proposal retains five trees of medium or high significance within the site identified in the Arboricultural Impact Assessment &amp; Tree Protection Plan as trees 6, 7, 8, 16 and 32. Tree 6 - Norfolk Island Pine located at the front of No. 36, and tree 39 - Cheese Tree located at the rear of No. 34 are trees of high significance. Two of the existing street trees are proposed for retention, and no trees on adjoining properties are to be impacted upon.</p> <p>Concern is raised in regard to the protection of the high retention value Norfolk Island Pine. In the first instance, the existing Norfolk Island Pine shall be retained and Council requires the development is to be designed to accommodate the future health and growth of this tree by aligning built elements such as basement excavation, building setback, paved terraces, ramps and the like to a distance away from the Norfolk Island Pine as determined by the structural root zone and tree protection zone requirements.</p> <p>Council does not accept the Arboricultural Impact Assessment &amp; Tree Protection Plan statement <i>"If the development is approved in its current form the retention of this tree will need to be considered flexible by Council, as there is no way to determine the impact the basement will have on its structural integrity until excavation takes place, and actual roots can be observed and assessed."</i> The arboricultural assessment and recommendations, instead, shall be revised to provide a definitive setback distance from the Norfolk Island Pine where no development activity is permitted, and this advice will be reflected in the design layout of any proposed basement excavation, building setback, paved terraces, ramps and the like. The structural root zone is calculated at 3.01m and the tree protection</p>

Internal Referral Body	Comments
	<p>zone is calculated at 9.24m, and with a 10% intrusion into the tree protection zone as permitted under Australian Standard 4970-2009 Protection of Trees on Development Sites, it is feasible to provide advice on the "no-go" surface areas that shall not have built elements proposed upon, and further to advise of the tree protection measures required should intrusion occur over and above the 10% encroachment limit.</p> <p>It appears that the alignment of the basement wall considers the impact upon structural root zone through an indication that vertical pile construction shall be utilised, however the extent of any batter shall be provided to allow the arboricultural assessment to be accurate. The impact to the Norfolk Island Pine from excavation for paved terraces, ramp walls, and the front boundary wall will potentially impact upon the Norfolk Island Pine. The proposal shall provide definitive construction methodology to ensure minimal impact to the Norfolk Island Pine including an alternative design layout to reduce the built elements within the tree protection zone.</p> <p>In it's current form and in consideration of the landscape and arboricultural concerns raised, the application can't be supported.</p>
NECC (Bushland and Biodiversity)	<p><b>NOT SUPPORTED</b></p> <p>The proposed development has been assessed against Pittwater LEP 2014 cl.7.6 Biodiversity and P21 DCP B4.6 Wildlife Corridors. As identified within the Landscape Referral response, impacts of the development on trees, likely issues with trees to be retained, and the landscape treatment proposed is insufficient. The site is mapped as part of the high priority wildlife corridor, and therefore the development is to be amended to satisfy the objective to provide wildlife corridors via creation, restoration, and / or regeneration of habitat. The proposal is to address the relevant controls to ensure no net loss in native canopy trees, ensure that at least 60% of any new planting incorporates native vegetation (as per species listed in Native Plant Species Guide available on the Council website), not include environmental weeds, and maximise linkage within the wildlife corridor.</p> <p>Based on the information provided Bushland and Biodiversity are not satisfied that the development is designed, sited and will be managed to avoid, minimise or appropriately manage any adverse environmental impact.</p>
NECC (Development Engineering)	<p><b>NOT SUPPORTED</b></p> <p>The submitted Geotechnical report certifies that an acceptable risk is achievable for the development. The access and stormwater management is acceptable. However the Council's Traffic Officer has refused the application as result of unsuitable pathway access to public transport. As a result the application cannot be supported.</p>



Internal Referral Body	Comments
Strategic and Place Planning (Urban Design)	<p><b>NOT SUPPORTED</b> <b>Pittwater DCP - D10 Newport Locality</b></p> <p><b>D10.1 Character as Viewed from a Public Space</b></p> <p><i>To achieve the desired future character of the Locality. To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built form and natural environment. (En, S, Ec) To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment. The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec) High quality buildings designed and built for the natural context and any natural hazards. (En, S) Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)</i></p> <p>The proposed development is for a Seniors Housing development at 34 Bardo Road. This street is on the fringe of the local commercial area however sits within the R2 zone.</p> <p>The locality is not typified by dense urban residential development and sits within a unique landscaped setting of low rise detached dwellings. And whilst adjacent to another Seniors Development the overall built form bulk and massing is not acceptable within the context.</p> <p><b>D10.3 Scenic Protection</b></p> <p><i>Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment. (En, S)</i></p> <p>The proposed development is distinctly primarily built form with little landscaping across the site to mitigate the effects of the intensity of the built form.</p> <p>The single vertical circulation lobby connecting the two buildings has the effect of connecting the two blocks, what is described as two buildings, into one whole development when read from the street. Thus an extensive elevation to the southern elevation street frontage on Bardo Road has a perceived notion of a large singular structure.</p> <p>Separation of the two buildings with a clear and significantly landscaped treatment through the middle, with separate entry lobbies to each building is recommended.</p>

Internal Referral Body	Comments
	<p><b>D10.7 Front Building Line</b></p> <p><i>Achieve the desired future character of the Locality. (S)</i>  <i>Equitable preservation of views and vistas to and/or from public/private places. (S)</i>  <i>The amenity of residential development adjoining a main road is maintained. (S)</i>  <i>Vegetation is retained and enhanced to visually reduce the built form. (En)</i>  <i>Vehicle manoeuvring in a forward direction is facilitated. (S)</i>  <i>To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.</i>  <i>To encourage attractive street frontages and improve pedestrian amenity.</i>  <i>To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.</i></p> <p>The ground level apartments fronting Bardo Road sit almost a full storey (2 metres) above street level with the entrance to the front of the site dominated by the ramp access way. Whilst it is understood that testing of levels to provide access to the building requires compliance under DDA, the ramp has the effect of creating a walled community sitting high above the ground/street level. This is a direct result of the topography. And whilst access is a critical requirement the effect is that the whole 10 metre setback zone to the Front building line is dominated by hard structures rather than landscaping and subversion of the built form.</p> <p>The relationship to the built form from a pedestrian scale is somewhat overwhelming. Coupled with the full width street frontage of built form elevation to the street frontage the human scale connection is somewhat diminished.</p> <p>Additionally there are private terraces that encroach the front setback zone by approximately 4 metres which cannot be supported.</p> <p><b>D10.8 Side and Rear Building Line</b></p> <p><i>To achieve the desired future character of the Locality. (S)</i>  <i>The bulk and scale of the built form is minimised. (En, S)</i>  <i>Equitable preservation of views and vistas to and/or from public/private places. (S)</i>  <i>To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.</i>  <i>To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)</i>  <i>Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)</i></p>

Internal Referral Body	Comments
	<p><i>Flexibility in the siting of buildings and access. (En, S)</i>  <i>Vegetation is retained and enhanced to visually reduce the built form. (En)</i>  <i>To ensure a landscaped buffer between commercial and residential zones is established. (En, S)</i></p> <p>The control for R2 low density nominates 2.5m setback to one boundary and 1m setback to the other. However given the intensity of development proposed and the ground plan footprint/coverage a preferable setback would allow for the incorporation of deep soil planting zones and a sufficient buffer to the neighbouring properties.</p> <p>Multi residential dwelling nominates 3m side setbacks, however in consideration of the site coverage and the bulk and scale of the development a minimum 3 metre setback to the side boundaries is highly recommended as a way to address several of the controls identified in these comments that assist to subvert the built form whilst providing a level of landscaped amenity and tree canopy coverage across the site.</p> <p>The drawings show hard surface structures within the setback zone. The zones should be free of hard surface paving and the like to allow for planting.</p> <p><b>Plan Arrangement Ground Level (Upper Level)</b></p> <p>The drawings demonstrate Apartments 003 and 004 have private outdoor BBQ and paved terrace areas which are immediately adjacent to bedrooms of the northern block of apartments, separated only by a minimal planting zone no more than 900mm, insignificant enough to allow for acoustic and privacy issues to be mitigated between the two main north south block of apartments.</p> <p>A greater separation that is defined by shared outdoor gardens and green space allowing for substantial green canopy cover is highly recommended on the east west axis as a separation strategy between the apartments, as well as on the north/south axis to allow for through site visual and green links to broader view aspects, creating a finer grain approach to the site.</p> <p>This strategy would no doubt have a knock on effect to the upper level apartments which would require testing to develop the most appropriate planning strategy.</p> <p>Overall, the site would benefit from a significantly reduced footprint at ground level to allow for the creation of four smaller blocks of built form that have a strong green/landscaped framework that addresses the concept of a connected and green seniors living community. Aesthetics, palette of materials and articulation across the front elevation and general built form is well articulated and can be supported.</p>

Internal Referral Body	Comments
Traffic Engineer	<p><b>NOT SUPPORTED</b></p> <p>In accordance with 'Housing for Seniors or people with a disability' a seniors living development must be within 400m of public transport.</p> <p>The applicant has identified that the local bus services are located approximately 450m which exceed the maximum allowance. Further, the paths leading to and from the bus stops are not flat and hence any additional distance beyond the maximum allowable would be deemed an imposition on the residents/tenants.</p> <p>Therefore the application cannot be supported.</p>
Waste Officer	<p><b>NOT SUPPORTED</b></p> <p>This proposal <b>does not comply</b> with Council design requirements. Specifically, the bin storage room is in the basement car park which has resulted in the following non-compliances with Council's waste handling and storage policy</p> <ul style="list-style-type: none"> <li>• Access to the bin storage room is via the vehicular driveway - <i>Unacceptable - access to bin storage rooms must be via a separate dedicated path way.</i></li> <li>• Access to the bin storage room is obstructed by the vehicle security door - <i>Unacceptable - access to bin storage rooms must be unimpeded by vehicular security or other locked doors</i></li> <li>• Bin storage room door opens inwards - <i>unacceptable - bin room access doors must open outwards.</i></li> <li>• Bin storage room is too far from the property boundary with the street. - <i>unacceptable - maximum permitted distance is 6.5 metres.</i></li> </ul> <p>A suitably designed bin room is required at street level no more than 6.5 metres from the property boundary with the street.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p><b>SUPPORTED</b></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 residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

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

A BASIX certificate has been submitted with the application (see Certificate No.1097224M dated 28 April 2020).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	45	45

A condition may be included requiring compliance with the commitments indicated in the BASIX Certificate should the application be considered for approval.

#### **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 twelve (12) self contained seniors housing apartments.

### **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 proposed development is considered to be consistent with aim (a) of the Policy as the development for Seniors Housing will provide an increase supply of accommodation to meet the needs



of seniors or people with a disability.

However, the proposed development fails to satisfy aims (b) and (c) in terms of the provision for efficient use of existing infrastructure and services. The site is short of the required 400m to the closest bus stop providing services to the required facilities. The Applicant's Access Report prepared by Accessibility Solutions states that the site is 394m and 447m from the two bus stops on the northern and southern sides of Gladstone Street near the intersection with Barrenjoey Road. The report fails to adequately detail the route and the how these distances are achieved. It is considered that non-compliance with this requirement for proximity to services is not adequately supported. The applicant has submitted a Clause 4.6 request to vary this requirement.

When considered against the aim of achieving a good design, the development must also be considered in context with the provisions of SEPP (HSPD). The aim of the policy is to encourage seniors housing achieving a good design outcome which respects the character of the locality it is located in and seeks to minimise the impacts on amenity and the character of the area. The proposed built form does not minimise impacts on the character as detailed within this report and is therefore considered inconsistent with the aims of this policy. This issue is included as a reason for refusal.

## Chapter 2 – Key Concepts

Comment: The proposed development is consistent with the key concepts contained within SEPP (HSPD). The development comprises self-contained dwellings which are to be occupied by seniors or people with a disability. On this basis, the proposed development is considered consistent with Chapter 2 of SEPP (HSPD).

## 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
<b>PART 2 - Site Related Requirements</b>			
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	There are identified bus services which provide access or connections to small centres north and south of the site as well as connections to Manly and the Sydney CBD.	Yes
26(2)	Access complies with this clause if: (a) the facilities and	394m to the southbound bus stop on Gladstone Street. 447m to the northbound bus stop.	No

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Development Criteria			
Clause	Requirement	Proposal	Complies
	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.		
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	N/A	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	Reticulated water and sewerage infrastructure is presently available to the site. The proposed seniors housing development is capable of connecting to a reticulated water system, in accordance with the provisions of Clause 28.	Yes
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	The development as proposed is considered inconsistent with the requirements contained within Clause 25 (5) for the following reasons:  i) The site is located within a low density residential area where there is a mix of historical building forms including small walk up apartment buildings, detached dwellings in a seniors housing development and single dwelling houses. Notwithstanding this, the site and the adjoining properties are impacted by an identified high priority wildlife corridor. No acknowledgement or consideration is apparent in the proposed building design for the future retention and enhancement of this environmental feature.  iii) While the Applicant has provided an Access Report to support the extension of the maximum travel distance to a bus stop, the justification provided to support this non-compliance fails to provide adequate cause to support this variation. In addition, the report fails to identify the condition of the existing pedestrian path from the site along Bardo Road to Bishop Street which not constructed to current standards and would need upgrading to 1.5m width.	No

Development Criteria			
Clause	Requirement	Proposal	Complies
	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.	v) The proposed development included twelve (12) apartments constituting ten (10) x 3 bedroom and two (2) x 4 bedroom apartments with a significant basement parking structure for twenty eight (28) vehicles. The proposed bulk and scale of the development is considered excessive and inconsistent with the character within the immediate locality which is demonstrable with the non-compliant FSR of 0.717:1 and the uncharacteristic landscaped area provision of 32.6%.	
<b>PART 3 - Design Requirements – Division 1</b>			
30	A site analysis is provided.	A Site Analysis Plan and Statement of Environmental Effects submitted with the application satisfactorily address the requirements of this clause.	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 provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	<p>Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form.</p> <p>Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.</p>	<p>The proposed development provides a two storey development with basement parking. The building form represents a substantial building mass oriented east west across the site providing no integration with the natural environment or achieving a balance between landscapes and built form.</p> <p>The Desired Character for the Newport locality is clearly identified:</p> <p><i>"The Newport locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape."</i></p>



Section	Requirements	Comment
		The proposed built form is considered inconsistent with the desired character of the locality which seeks low density development forms. The scale of the development is excessive even allowing for the additional density discretions provided by SEPP HSPD and the beneficial and facultative nature of this instrument.
2. Site Planning and design	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>-Minimise the impact of new development on neighbourhood character</li> <li>-Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.</li> </ul>	<p>The proposed development does not minimise the impact on the neighbourhood character which integrates older established medium density developments with single low density forms of development.</p> <p>The developments presentation to Bardo Road is reflective of a large residential flat building elevated above street level and framed by a large wall seeking to obscure the substantial ramp access required for the site.</p> <p>The residual undeveloped sections of the site provide limited potential to support a tree canopy supporting the existing wildlife corridor which affects the site.</p>
3. Impacts on streetscape	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>-Minimise impacts on the existing streetscape and enhance its desirable characteristics</li> <li>-Minimise dominance of driveways and car park entries in streetscape.</li> </ul>	<p>As identified above, the development does not provide a sympathetic presentation to the street or integration with the landform in a landscaped setting. The building does not reflect a low density residential character.</p>
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	As identified by the public submissions received, the proposed development fails to respond to the character of development in this locality and results in numerous impacts on the neighbouring properties.
5. Internal site amenity	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>-Provide safe and distinct pedestrian routes to all dwellings and communal facilities.</li> </ul>	The site layout creates pedestrian access which is overwhelming the front setback of the site and channels occupants into a single gun barrel access path..

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 <i>elements of the location's current character so that new buildings contribute to the quality and identity of the area.</i>	<p>The Newport Locality statement provides the following identification of character:</p> <p><i>The residential areas are of a diverse style and architecture, a common thread being the landscaped, treed frontages and subdued external finishes.</i></p> <p><i>Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development.</i></p>	No
	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.	Not applicable.	N/A
	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 to the site's land form, and (iii) adopting building heights at the street frontage that are	<p>The proposed development does not provide compliant setbacks to the adjoining properties, particularly within the front half of the site.</p> <p>The building form at the front of the site is not considered to adequately respond to the land form with an elevated ground floor above a basement level and imposing front wall structure forming a barrier to the extensive accessible ramp which requires a substantial amount</p>	No

Control	Requirement	Proposed	Compliance
	compatible in scale with adjacent development, (iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors. 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,	of the front setback.  The location of the front facade of the building provides elements which are considered inconsistent with the required setback. Apartment 001 and Apartment 002 encroach the front setback and introduce additional bulk into this location which is considered unsympathetic and unnecessary.	No
	e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.	In relation to this requirement, Council's Landscape Architect provided the following assessment:  <i>"In consideration of clause 33 (e) it is considered that the available deep soil area on the surface will only permit the establishment of small and possibly medium sized trees and not the large tall-trunk canopy trees that existed upon the site and as evident in the locality, including large Turpentine, Stringy Barks, and Spotted Gums, which require substantial surface areas."</i>	No
	f. retain , wherever reasonable, major existing trees, and	The proposed development seeks removal of 30 trees out of the 37 surveyed within the Arborist Report. Concerns are raised over the potential impact on a high retention Norfolk Island Pine (Tree 6). The Landscape assessment of this application does not support the proposal on a	No

Control	Requirement	Proposed	Compliance
	g. be designed so that no building is constructed in a riparian zone.	number of levels. The site is not within a riparian zone.	No
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 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.	<p>Council's Urban Designer has raised concerns in relation to the location and proximity of the private outdoor BBQ entertaining areas to adjacent apartment bedrooms:</p> <p><i>The drawings demonstrate Apartments 003 and 004 have private outdoor BBQ and paved terrace areas which are immediately adjacent to bedrooms of the northern block of apartments, separated only by a minimal planting zone no more than 900mm, insignificant enough to allow for acoustic and privacy issues to be mitigated between the two main north south block of apartments.</i></p> <p><i>A greater separation that is defined by shared outdoor gardens and green space allowing for substantial green canopy cover is highly recommended on the east west axis as a separation strategy between the apartments, as well as on the north/south axis to allow for through site visual and green links to broader view aspects, creating a finer grain approach to the site.</i></p> <p><i>This strategy would no doubt have a knock on effect to the upper level apartments which would require testing to develop the most appropriate planning strategy.</i></p>	No
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main	The solar diagrams submitted with the application indicate that 83% of the apartments receive a minimum of 3 hours	No



Control	Requirement	Proposed	Compliance
	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.	sunlight.  The level of detail in relation to demonstrating solar access to each apartment is considered insufficient. Apartments 001, 003, 004 and 005 appear to have very restricted areas for outdoor private open space which is impacted by the building design. The two building elements provide little separation to enable sunlight penetration into these ground floor areas and the overall amenity of these spaces appears compromised.	
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	No objections have been raised by Council's Development Engineers in relation to the proposed stormwater and OSD design.	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 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	The entry to the ground floor apartments do not comply with the requirements of this clause as they do not provide any visibility to the approach to the entry from inside the apartment. Each entry is tucked into a recess which is generally surrounded by solid walls. Apartment 005 and 006 may be afforded greater visibility and security as they each have glazing with an oblique sight line to the entry approach.	No

Control	Requirement	Proposed	Compliance
	designed to allow residents to see who approaches their dwellings without the need to open the front door.		
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 proposed development has failed to adequately demonstrate that suitable compliant access can be provided from the site to the closest public transport links to access essential services. These deficiencies are detailed within this report and include inadequate footpath width and provision from the site to Gladstone Street and access for a return trip with 400m.	No
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The proposed waste storage area does not satisfy the requirements of Council's Waste Management Guidelines.	No

**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	2452m <sup>2</sup>	Yes
Site frontage	20 metres	40.23m	Yes
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	>8m	Yes
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	Maximum 2 storeys	Yes

Control	Required	Proposed	Compliance
	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).	Rear 25% single storey	Yes

#### Clause 41 Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

Control	Required	Proposed	Compliance
Wheelchair Access	If the whole site has a gradient less than 1:10, 100% of the dwellings must have wheelchair access by a continuous path of travel to an adjoining public road. If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the greater.	Wheelchair access has been provided to all apartments. Apartment 008 and 009 require the use of a stair lift to gain access to the front entry of these apartments which is not considered an ideal or preferred design outcome on a site where these constraints could be better considered.	Yes
Security	Pathway lighting (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	Lighting may be conditioned to ensure compliance with glare and reflection should the application be considered for approval.	Yes
Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel, and (b) must be lockable,	The letter boxes are located adjacent to the front boundary of the site and are at the bottom of the accessible pedestrian ramp.	Yes

Control	Required	Proposed	Compliance
	and (c) must be located together in a central location adjacent to the street entry.		
Private car accommodation	(a) Carparking space must comply with AS2890 (b) One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a power operated door to be installed at a later date.	Each apartment is provided with a space that measures 3.8m and is provided with a garage door. The power operation of the garage door may be subject to a condition of consent should the application be supported.	Yes
Accessible entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	Complies	Yes
Interior general	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	The plans indicate compliance in this regard.	Yes
Bedroom	At least one bedroom within each dwelling must have: (a) An area sufficient to accommodate a wardrobe and a queen size bed (b) A clear area for the bed of at least 1200 mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction. (c) Power and telephone outlets and wiring described in Clause 8 of Schedule 3.	Complies in accordance with the Access Report	Yes
Bathroom	The bathroom is to comply with the requirements described	Complies in accordance with the Access Report Yes	Yes



Control	Required	Proposed	Compliance
	in Clause 9 of Schedule 3.		
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	Complies in accordance with the Access Report	Yes
Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	Complies in accordance with the Access Report	Yes
Door hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	Complies in accordance with the Access Report	Yes
Ancillary items	Switches and power points must be provided in accordance with AS4299.	Complies in accordance with the Access Report	Yes
Living & dining room	A living room must have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.	Complies in accordance with the Access Report	Yes
Kitchen	The kitchen must comply with the requirements of Clause 16 of Schedule 3	Complies in accordance with the Access Report	Yes
Access to kitchen, main bedroom, bathroom & toilet	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Complies in accordance with the Access Report	Yes
Laundry	The laundry must comply with the requirements of Clause 19 of Schedule 3.	Complies in accordance with the Access Report	Yes
Storage	A self-contained dwelling must be provided with a linen storage in accordance with Clause 4.11.5 of AS4299	Complies in accordance with the Access Report	Yes
Garbage	A garbage storage area must be provided in an accessible location.	Complies in accordance with the Access Report	Yes

**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	8m or less (Measured from ceiling of topmost floor to ground level immediately below)	7.76m	Yes
Density and scale	0.5:1	0.717:1	No. The extent of non-complying floor space is approximately 532m <sup>2</sup> and represents approximately an additional 43% floor space beyond the requirements within Clause 50 which is not supported. The extent of non-compliance contributes to the bulk and scale of the building form which is considered inconsistent with the character of the locality both established and future character.  The extent of site coverage also contributes to the deficient landscaped provision and lack of consideration for wildlife corridors impacting the site. The proposal cannot be supported in this regards and this issue forms a reason for refusal.
Landscaped area	30% of the site area is to be landscaped	798m <sup>2</sup> (32.6%)	Yes
Deep soil zone	15% (367.8m <sup>2</sup> ) of the site area Two	377.27m <sup>2</sup> (15.4%)	Yes

Control	Required	Proposed	Compliance
	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.		
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	Applicants documentation indicates 10 of the 12 dwellings (83%) receive 3 hours solar access to the living areas and private open space. Insufficient detail is provided to demonstrate this is correct.	No
Private open space	<p>(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</p> <p>(ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and</p>	Complies	Yes



Control	Required	Proposed	Compliance
	that is accessible from a living area		
Parking	0.5 car spaces per bedroom (38 bedrooms proposed – 19 carparking spaces required)	24 resident spaces and 4 visitor spaces. 28 spaces in total.	Yes

### **SEPP (Infrastructure) 2007**

#### Ausgrid

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

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

#### Comment:

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

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

Is the development permissible?	No
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
Minimum subdivision lot size:	700sqm	No. 34 - 1226m2 No. 36 - 1226m2	N/A	Yes
Height of Buildings:	8.5m	7.76m	N/A	Yes

#### Compliance Assessment

DA2020/0502





Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
Part 2 Permitted or prohibited development	No
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	No
7.1 Acid sulfate soils	Yes
7.2 Earthworks	No
7.3 Flood planning	Yes
7.4 Floodplain risk management	Yes
7.6 Biodiversity protection	No
7.10 Essential services	Yes

#### Detailed Assessment

#### **Part 2 Permitted or prohibited development**

The proposal is permissible pursuant to State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004.

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

Description of non-compliance:

Development standard:	Proximity to Bus Stop
Requirement:	400m
Proposed:	447m
Percentage variation to requirement:	12%

#### Assessment of request to vary a development standard:

#### 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:**

**The distance to services (bus stop) 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) states that the development is consistent with the aims of the SEPP and provides that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. The applicant relies on the Access Report prepared by Accessibility Solutions P/L to justify the proposed non-compliant access.

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

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

**Comment:**

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

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written*



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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

*"It is noted that the relevant public transport services are Bus Routes 188, 199 & L90 and that each service relies upon both Bus Stop A & B identified on the Bus Stop Distance Plan prepared by Popov Bass, Drawing No. 0565-DA140 and dated 28/4/20. Both Bus Stops are relied upon noting that the bus services are not loop services and therefore service both sides of the street.*

*Bus Stop A is identified as being 394.1m from the site whilst Bus Stop B is located 447.6m from the site.*

*In determining that strict compliance with the 400m development standard is unreasonable in the circumstances of this case, reference is made to the Access Report prepared by Accessibility Solutions (NSW) P/L and which accompanies the Development Application. That report at Section 2.4 states that:*

*While clause 26(4) of the SEPP HS requires a concrete footpath or similar for measuring “distance”, predominantly for motorized wheelchairs and scooters then the users of these devices are not adversely impacted by the 447 metre trip and hence the variation is acceptable.*

*For ambulant pedestrians it is noted that the most direct pedestrian route along the western side of Bishop Street reduces the distance by 35 metres making the journey to southbound services 412 metres with the extra 12 metres beyond the 400 metre target negligible and satisfactory to accept the variation.*

*Notwithstanding the above comment, given the gradual, almost level footpath along Gladstone Street it is my opinion that the additional 47 metres would have negligible impact on pedestrians and is a reasonable variation to the requirements of Clause 26 of the SEPP HS to warrant a clause 4.6 (SEPP*



1) application.

*The presence of multiple seniors living developments in Bardo Road directly adjacent and opposite the subject site confirms the general locality is suitable for the proposed development."*

This assessment does not support the justification provided as sufficient environmental planning grounds. The intent of the SEPP is to provide opportunities for Seniors housing in locations that are able to support the needs of the occupants being 'seniors or people with a disability'.

The return trip distance is 12% beyond the maximum 400m required and is considered to be pushing the limitation of the suitability of this site for this form of development by understating the non-compliance as 'negligible'.

In this regard, the applicant's written request has not 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 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*

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of SEPP HSPD . An assessment against these objectives is provided below.

**Objectives contained within SEPP (HSPD):**

*14 Objective of Chapter*

*The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.*





Comment: The proposed development does not provide enough consideration of occupants of this form of development who are not able bodied or independently mobile. The maximum distance to access a bus service to essential services beyond 400m is not considered acceptable.

### Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment:

The proposed development will provide an increase in the availability of housing for seniors and people with a disability in this locality. While the site is located within a low density residential environment the built form and scale of the development fails to satisfy a low density character anticipated by the local controls and character statement for this locality.

It is considered that the development does not satisfy this objective.

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

Comment:

The proposed seniors housing development fails to demonstrate that it is within 400m of access to a transport service to essential services. This is an essential requirement for this form of housing required to meet the day to day needs of its residents.

It is considered that the development does not satisfy this objective.

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

Comment:

The proposed development is not considered to be one of low intensity or scale which fits compatibly with surrounding land uses.

It is considered that the development does not satisfy this objective.

### Conclusion:

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

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



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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the 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 Clause 26 Location and access to facilities within SEPP HSPD Development Standard can not be assumed.

## 7.2 Earthworks

The proposed basement excavation extends to a depth of approximately 5.3m. The proposed development fails to satisfy the requirements of Part 7.2 (3)(d) as insufficient detail has been provided by the initial site testing to accurately prescribe the necessary excavation methods. Site testing within the Geotechnical Report prepared by White Geotechnical Group did not extend as deep as the proposed excavation resulting in a risk profile of 'unacceptable'. Accordingly, further resolution of the true extent of ground conditions and subsequent methods for excavation are required to provide certainty around this issue.

### Pittwater 21 Development Control Plan

#### Built Form Controls

Built Form Control Site Area - 2452m <sup>2</sup>	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	6.0m to Apartment 002 and partially enclosed terrace of 002 and 001 1.0m to access ramp	7.7% 83%	No No
Rear building line	6.5m	6.1m 4.8m to paved terrace	6.2%	No
Side building line (multi-dwelling housing)	East - 3m	1.6m to Apartment 001 23.2m	47%	No
	West - 3m	3m to face of building	N/A	Yes
Building envelope	East - 3.5m	Up to 2.9m Outside envelope	N/A	No
	West - 3.5m	Up to 2.7m Outside envelope	N/A	No
Landscaped area	50% (1226m <sup>2</sup> )	32.6% (798.92m <sup>2</sup> )	17.4%	No

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.10 Newport Locality	No	No
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.11 Flood Prone Land	Yes	Yes
B4.6 Wildlife Corridors	No	No
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	No	No
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	No
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	No	No
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	No	No
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	No	No
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.21 Seniors Housing	No	No
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.17 Pollution control	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	No	No
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	No
D10.8 Side and rear building line (excluding Newport Commercial	No	No



Clause	Compliance with Requirements	Consistency Aims/Objectives
Centre)		
D10.11 Building envelope (excluding Newport Commercial Centre)	No	No
D10.12 Landscaped Area - General	No	No
D10.14 Fences - General	No	No
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

#### Detailed Assessment

#### **A4.10 Newport Locality**

The desired character outlined in the Locality Statement for the Avalon Beach Locality within P21 DCP provides clear guidance on the form of development anticipated for the future. The anticipated character includes:

*The Newport locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.*

*Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.*

*Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.*

*A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.*

#### **Comment**

The proposed development is not considered complementary to the desired character for this locality as it does not propose or even present as low density residential development. The proposed development presents as medium density development such as a residential flat building which would be anticipated closer to and around the commercial centres.

The scale of the development and the site coverage is uncharacteristic and incompatible with the





surrounding locality.

The proposal is inconsistent with the aims set out in cl 1.2 (b) Aims of the Plan of PLEP 2014 as the excessive removal of existing trees and vegetation on the site and lack of new replacement plantings to form canopy coverage is considered inconsistent with the Newport Locality as it fails to maintain the continuity of the wildlife corridor which crosses the site.

The broader public benefit of providing seniors housing on this site does not in this instance outweigh the concerns in relation to site coverage, built form and the impact within the localised context.

#### **B4.6 Wildlife Corridors**

The application has been considered in detail in terms of its compliance with the requirements of this control by Council's Bushland and Biodiversity section. The proposal is unsupported for the following reasons:

*"... impacts of the development on trees, likely issues with trees to be retained, and the landscape treatment proposed is insufficient. The site is mapped as part of the high priority wildlife corridor, and therefore the development is to be amended to satisfy the objective to provide wildlife corridors via creation, restoration, and / or regeneration of habitat. The proposal is to address the relevant controls to ensure no net loss in native canopy trees, ensure that at least 60% of any new planting incorporates native vegetation (as per species listed in Native Plant Species Guide available on the Council website), not include environmental weeds, and maximise linkage within the wildlife corridor*

Part B 4.6 seeks to provide for the retention and enhancement of wildlife corridors ensuring/providing the connection of flora and fauna habitats. The controls specify the following expectations:

- Development shall not directly impact on / or significantly reduce / degrade habitat for locally native species, threatened species, endangered populations or endangered ecological communities.
- Development shall retain, and provide an adequate buffer to, wildlife corridors.
- Development shall provide wildlife corridors via creation, restoration, and / or regeneration of habitat.
- Development shall not result in a significant loss of canopy cover or a net loss in native canopy trees.
- Development shall ensure that at least 60% of any new planting incorporates native vegetation (as per species listed in *Native Plants for Your Garden* available on the Pittwater Council website). Landscaping is to be outside areas of existing bushland and not include environmental weeds.

The proposed development removes 30 trees from the site. This issue forms a reason for refusal of the application.

#### **C1.1 Landscaping**

The proposed landscaping on the site has been assessed by Council's Landscape Architect as unacceptable. Some of the key areas where the proposal fails to satisfy the requirements of Section C1.1 Landscaping.

*"The area allocated as deep soil to support the growth of trees is limited to the rear boundary area, albeit that only small to medium sized trees may be possible in this area.*



*The front setback to Bardo Rd of 6m is inadequate to support planting of trees to soften the built form as the frontage is occupied by OSD encroachment, basement stairs, entry path, front boundary walling, services, and an extensive ramp, that reduces the deep soil area capable of supporting canopy trees to the eastern end of the site frontage where one tree is proposed.*

*The proposed tree planting of *Angophora costata* (a large canopy tree capable of attaining 20 metres and more) is located in close proximity to the building, walling, stairs and services, such that its long term establishment and survival is unlikely. The remaining landscape area proposes shrub and groundcover planting. Thus the built form is not softened by this proposal.*

*Concern is raised in regard to the protection of the high retention value Norfolk Island Pine. In the first instance, the existing Norfolk Island Pine shall be retained and Council requires the development is to be designed to accommodate the future health and growth of this tree by aligning built elements such as basement excavation, building setback, paved terraces, ramps and the like to a distance away from the Norfolk Island Pine as determined by the structural root zone and tree protection zone requirements."*

These issues form a reason for refusal.

#### **C1.4 Solar Access**

The information submitted with the application in relation to overshadowing and solar access are considered insufficiently detailed to adequately assess the actual extent of solar access and impact on private open space areas and glazing to windows within the development and adjoining properties.

The solar access diagrams are at a scale of 1:500 and it appears from those diagrams that the ground floor apartments within the front building pavilion fail to receive adequate solar access in accordance with the requirements of the clause. This issue forms a reason for refusal.

#### **C1.12 Waste and Recycling Facilities**

The application was referred to Council's Waste Officer who does not support the proposed waste arrangement on the site. This issue forms a reason for refusal.

#### **C1.20 Undergrounding of Utility Services**

Should the application be considered for approval, a condition of consent would be imposed requiring the provision of underground services to the site.

#### **C1.21 Seniors Housing**

The proposed development fails to adequately address the outcomes of Part C.21. The specific outcomes of the control include:

- Visual bulk and scale of development is limited.
- Restricted footprint of development on site.
- Retention of the natural vegetation and facilitate planting of additional landscaping where possible.
- Achieve desired future character of the locality.
- Social mix of residents in the neighbourhood.
- Minimal cumulative impact from State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

**Controls*****Cumulative Impact***

*Seniors housing developed in accordance with the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, outside the R3 Medium Density Residential and B4 Mixed Use zones shall:*

- *Be in keeping with the development of the surrounding area in regard to bulk, building height, scale and character.*
- *Not result in such an accumulation of Seniors Housing developments to create a dominant social type in the surrounding neighbourhood.*
- *Not result in such an accumulation of Seniors Housing developments to create a dominant 'residential flat building' appearance in the neighbourhood.*

In terms of the development's response to the outcomes and controls of this requirement, it is noted that there are number of existing and historical seniors housing developments currently within this streetscape at No. 30-32 Bardo Road (7 dwellings), No. 24-26 Bardo Road (10 dwellings) and No 49 Bardo Road (5 dwellings). A further twelve (12) dwellings on the subject site raises concerns in relation to the cumulative impact of these Seniors housing development within this street. The appearance of this development however differs from the other developments within this street providing a streetscape more aligned with a residential flat building than single dwellings that the aforementioned developments present.

The proposal is not considered to successfully address the outcomes and controls of this clause and this forms a reason for refusal for the proposed development.

**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 \$62,378.85 would be required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$6,237,869.

**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:

- 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

This report provides a comprehensive assessment of the application for the redevelopment of the site as a seniors housing development containing twelve (12) dwellings.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP (HSPD) 2004, SEPP 55, SEPP (Infrastructure), PLEP 2014, the relevant codes and policies of Council, the relevant provisions of the Pittwater 21 DCP.

#### Public Exhibition

The public exhibition of the DA resulted in a very significant response from the community. Objections to the proposed development include concerns relating to FSR, erosion of the natural environmental character through the extensive removal of trees, amenity impacts, over-development of the site, insufficient landscaping and inadequate access to suitable transport infrastructure and essential services.

The issues raised in the submissions have been addressed in the 'Public Exhibition & Submissions' section of this report and are generally concurred with.

While it is acknowledged that the Applicant has submitted some amended plans seeking to address the issues raised by Council in its referral comments and issues letter, the amendments were provided a week before this report was required to be finalised for the agenda. This unfortunately did not provide sufficient time for a detailed assessment or re-notification. Based on an initial review, while the amended proposal appears to reduce the FSR on the site, the proposal still seeks a substantial site coverage at 0.63:1. The amendments do improve some of the issues identified with the location of the driveway and the front accessible ramp however the resolution of the front facade of the development requires further resolution to provide a more discreet transition into a low density residential area.

The application was referred to a number of internal departments. Fundamental concerns have been raised by Council's Landscape Architect, Development Engineer, Waste Officer, Urban Designer and issues raised within the traffic Engineers comments.

The assessment of the application against the provisions of SEPP (HSPD) has identified that the proposal is not satisfactory in relation to a number of the requirements of the SEPP.





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.



## 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 DA2020/0502 for the Demolition works and construction of Seniors Housing comprising 12 self-contained dwellings and site consolidation on land at Lot 34 DP 4689,36 Bardo Road, NEWPORT, Lot 33 DP 4689,34 Bardo Road, NEWPORT, for the reasons outlined as follows:

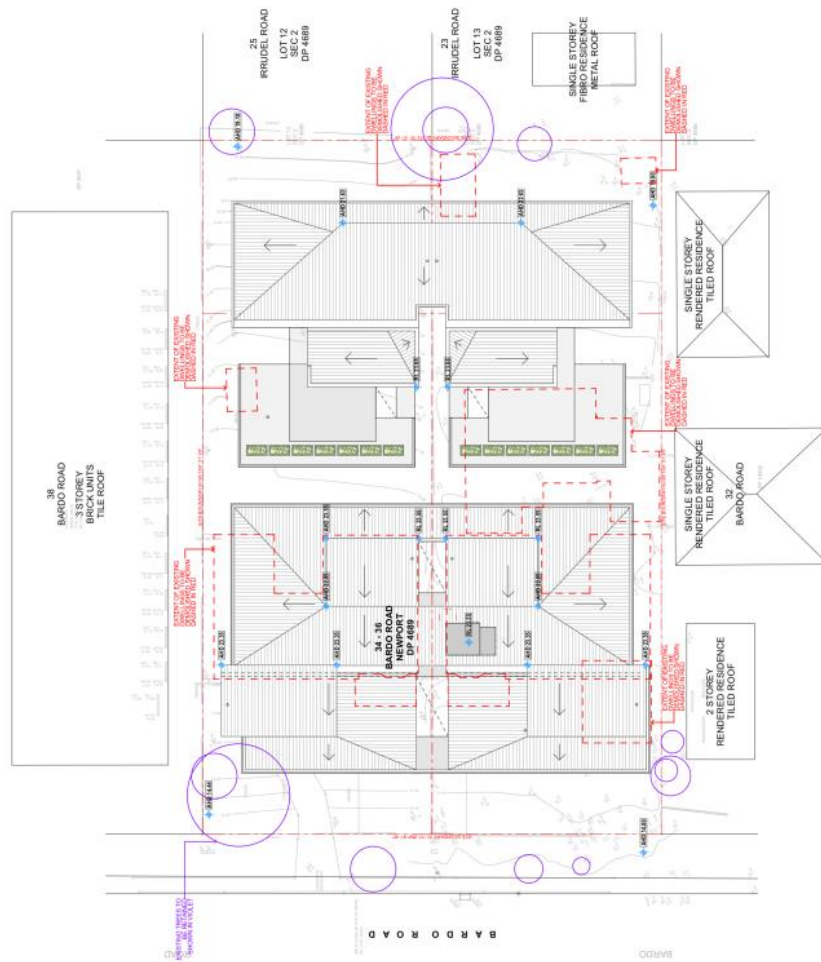
1. The Panel is not satisfied that:
  - 1) the applicant's written requests under clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify contraventions of clause 26 under the SEPP (Housing for Seniors and People with a Disability) 2004 development standards has adequately addressed and demonstrated that:
    - a) compliance with the standards is unreasonable or unnecessary in the circumstances of the case; and
    - b) there are sufficient environmental planning grounds to justify the contraventions.
  - 2) the proposed development will be in the public interest because it is consistent with the objectives of the standards and the objectives for development within the zone in which the development is proposed to be carried out.
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 Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2014:
  - Clause 26(2) Access
  - Clause 29 Character
  - Clause 31 Design of in-fill self-care housing
  - Clause 32 Design of residential development
  - Clause 33 Neighbourhood Amenity and streetscape
  - Clause 34 Visual and Acoustic privacy
  - Clause 38 Accessibility
  - Clause 39 Waste Management
4. 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 the Pittwater 21 Development Control Plan:
  - Clause A4.10 Newport Locality
  - Clause B4.6 Wildlife Corridors
  - Clause B8.1 Construction and Demolition - Excavation and Landfill
  - Clause C1.1 Landscaping
  - Clause C1.4 Solar Access
  - Clause C1.6 Acoustic Privacy
  - Clause C1.12 Waste and Recycling Facilities

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Clause C1.18 Car/Vehicle/Boat Wash Bays  
Clause C1.21 Seniors Housing  
Clause D10.1 Character as viewed from a public place  
Clause D10.7 Front building line (excluding Newport Commercial Centre)  
Clause D10.8 Side and rear building line (excluding Newport Commercial Centre)  
Clause D1.15 Fences  
Built Form Control Side building line (multi-unit housing)  
Built Form Control Landscaped areas

5. Pursuant to Section 4.15(1)(b)(i) of the Environmental Planning and Assessment Act 1979, the proposed development will result in unacceptable impacts on the natural environment (wildlife corridors) of the Newport Locality.
6. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with the Desired Future Character of the location and is an over-development of the site.
7. 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.

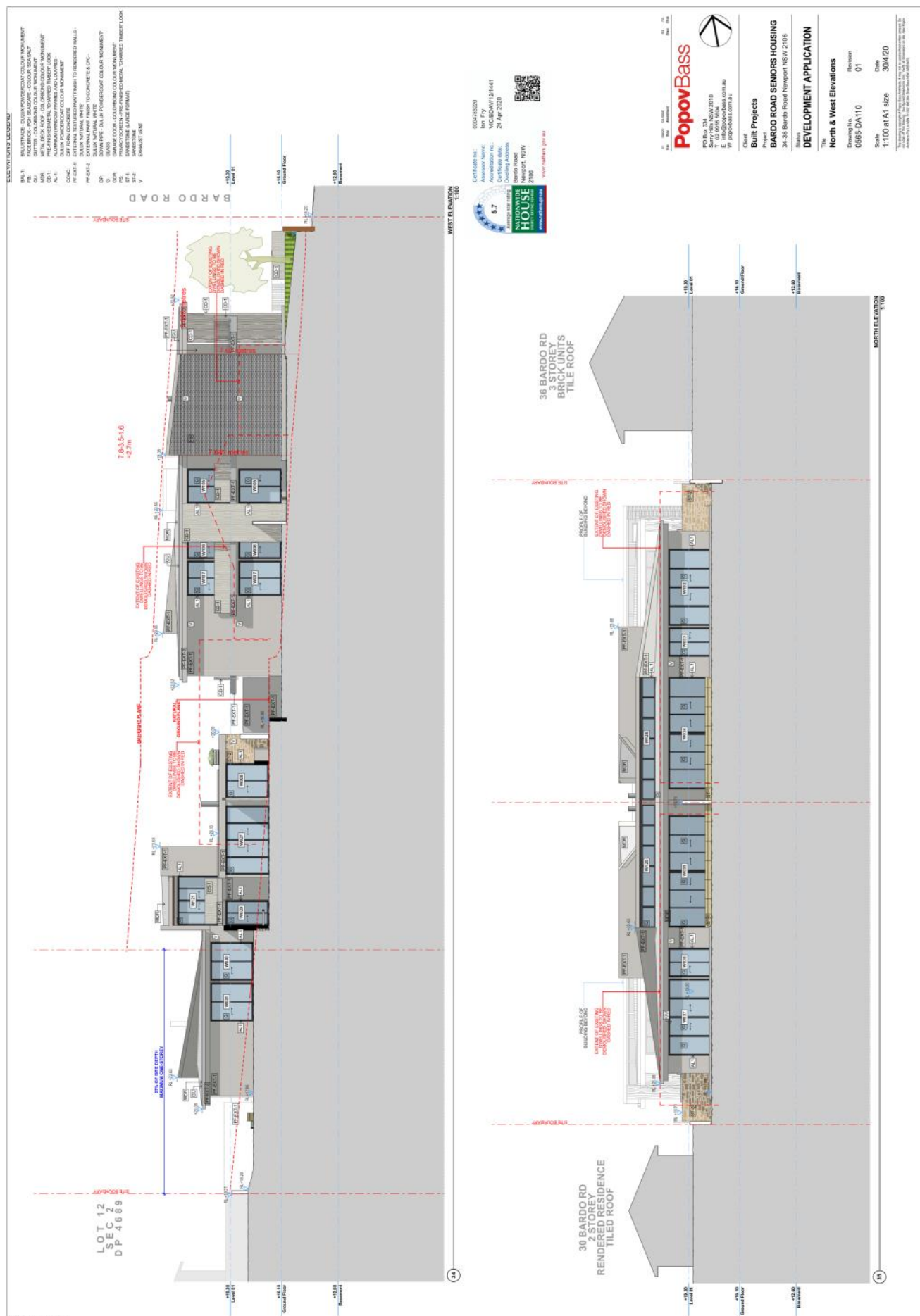


0554783220  
Lot 171  
Lot 171/1441  
24 Apr 2020

Certificate No.  
Assessor Name  
Assessor No.  
Certificate Date  
Building Address  
Bardo Road  
Newport NSW 1505  
12106

**PopovBass**  
PO Box 334  
Newport NSW 1505  
T 02 8655 6504  
F 02 8655 6504  
W popovbass.com.au

**Built Projects**  
Project  
**BARDO ROAD SENIORS HOUSING**  
34-36 Bardo Road Newport NSW 1505  
Status  
The  
**Site Plan**  
Drawing No  
0554783220  
Scale  
1:200 at A1 size  
Date  
30/4/20







**ITEM 3.2**

**DA2020/0442 - 231 WHALE BEACH ROAD WHALE BEACH -  
DEMOLITION WORKS AND CONSTRUCTION OF A MIXED USE  
DEVELOPMENT COMPRISING SHOP TOP HOUSING AND  
RETAIL PREMISES, WITH ASSOCIATED CARPARKING,  
LANDSCAPING AND STRATA SUBDIVISION**

**AUTHORISING MANAGER STEVE FINDLAY**

**TRIM FILE REF 2020/735000**

**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.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/0442 for demolition works and construction of a mixed use development comprising shop top housing and retail premises, with associated carparking, landscaping and strata subdivision at Lot B DP 316404, 231 Whale Beach Road, Whale Beach for the reasons for refusal set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0442
<b>Responsible Officer:</b>	Lashta Haidari
<b>Land to be developed (Address):</b>	Lot B DP 316404, 231 Whale Beach Road WHALE BEACH NSW 2107
<b>Proposed Development:</b>	Demolition Works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision
<b>Zoning:</b>	B1 Neighbourhood Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Leslie Anthony Cassar Diana Nancy Cassar
<b>Applicant:</b>	Leslie Anthony Cassar Diana Nancy Cassar
<b>Application Lodged:</b>	06/05/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New multi unit
<b>Notified:</b>	22/05/2020 to 05/06/2020
<b>Advertised:</b>	22/05/2020
<b>Submissions Received:</b>	170
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$ 13,009,841.00

### Executive Summary

This report provides an assessment of a proposed mixed-use (shop top housing) development at No. 231 Whale Beach Road (the site). The site is located with dual frontage to both Whale Beach Road and Surf Road and is situated within the B1 Neighbourhood Centre under Pittwater LEP 2014 (PLEP 2014).

The proposal involves the demolition of existing buildings and construction of a 4- 5 storey development

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containing retail premises (327m<sup>2</sup>), five (5) residential apartments and two levels of basement car.

The application is recommended for refusal because having regard to the design and character requirements embodied in the applicable planning controls including the requirements of SEPP 65 and considering the site's prominent beach site location, the proposal is not considered to be an appropriate or suitable response in its current form. Further, the assessment of the proposal against the provisions of P21 DCP, which establishes how successfully the development harmonises with the established and desired future character of the locality has identified that the development, as proposed, is not a successful built form in terms of how it relates to the desirable elements of the neighbourhood or how it transitions the increase in density with the low density residential locality.

The application was referred to internal departments and external authorities. In the responses, there are a number of referral issues raised in relation to the proposed development, which also form reasons for refusal in that the application is deficient in identifying the relevant impacts associated with the subject site.

The public exhibition of the DA resulted in a significant response from the community, including both concerned residents and a number of letters supporting the proposal. Those objecting to the proposal raised concerns primarily on the basis of the bulk and scale and consequent visual, scenic and view impacts of the development, and the amount of additional traffic that would be generated. Those supporting the development raised the benefits of the urban renewal of the site.

It is important to acknowledge that the redevelopment of the subject site would be a significant improvement in comparison to the existing situation and the proposed development contains many examples of good design in terms of its architecture, including the levels of articulation, design of balconies, and strongly defined architectural elements presenting to the Whale Beach frontage. However, while the architectural design of the building is a positive feature of the development, the bulk and scale of the structure has not been successfully resolved and is ultimately considered to be inconsistent with the character and context of the locality.

On balance, the proposal (as lodged) is not sufficiently consistent with the applicable controls and the development will result in a size, mass, bulk and scale of development that does not reflect the objectives and outcomes envisaged by the planning controls on a sloping site, adjacent Whale Beach and surrounding by detached dwelling houses. The design should be more stepped on the site, with greater levels of terracing of the upper levels to better relate to the hillside topography in the area and greater side setbacks to alleviate and ameliorate the sheer bulk and scale of the building.

Therefore, it is recommended that substantial amendments be carried out to the built form to address these concerns prior to any approval being given to the proposal.

Accordingly, the assessment concludes that proposal cannot be supported in its current form and is recommended for refusal.

## **PROPOSED DEVELOPMENT IN DETAIL**

The applicant seeks consent for demolition of the existing building and construction of five-storey shop-top housing development, including 5 residential apartments, 3 retail premises and 1 basement level of parking for 21 cars.

The proposed development also proposes associated site and landscape works and associated strata subdivision.

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Figure 1 below is provided to assist in the identification of the proposed development within the site and adjoining development.



**Figure 1** – Subject site and the proposed site layout (Source: Adapted by the author from DA01, dated April 2020 and prepared by Richard Cole Architects)

## ASSESSMENT INTRODUCTION

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

- 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 - 7.2 Earthworks

Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality

Pittwater 21 Development Control Plan - B4 Controls Relating to the Natural Environment

Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

Pittwater 21 Development Control Plan - D12.1 Character as viewed from a public place

Pittwater 21 Development Control Plan - D12.5 Front building line

Pittwater 21 Development Control Plan - D12.6 Side and rear building line

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot B DP 316404 , 231 Whale Beach Road WHALE BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment which has dual frontage to Whale Beach Road and Surf Road.</p> <p>The site is irregular in shape with a dual frontage of 30m along western frontage to Whale Beach Road and a 30 m long eastern frontage to Surf Road. The site has a surveyed area of 844m<sup>2</sup>.</p> <p>The site is located within the B1 Neighbourhood centre zone under Pittwater LEP 2014 and accommodates a café fronting Whale Beach Road and residential accommodation towards the Surf Road frontage.</p> <p>Topographically, the site is steep in nature with a fall from Whale Beach Road to Surf Road (Sloping West to East).</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is predominately residential, the subject site is located in between residential dwellings to the North and South. Further to the south adjoining the southern neighbour is a five-storey commercial/community building which houses Whale Beach Surf Lifesaving Club. To the east, is a grassed area for the Whale Beach Surf Club patrol members to park vehicles and</p>



across the road is Whale Beach. On the west of the site across Whale Beach Road are two-three storey residential dwellings.

Map:



## SITE HISTORY

### Pre-Lodgement Meeting (PLM)

A pre-lodgement meeting was held with the applicant on 7 February 2019 to discuss the proposal for redevelopment of the site.

### DEVELOPMENT APPLICATION HISTORY

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

An opportunity was presented to the applicant to withdraw the application by letter dated 23 September 2020, with a view to addressing the specific concerns and preparing the required information and resubmitting a new DA. The applicant was advised that failure to withdraw the application would result in Council reporting the application based upon the information provided at lodgement.

The applicant advised Council that the application would not be withdrawn and they would be preparing amended plans to address the specific concerns raised. At the of writing this report, Council had received the amended plans, which have not been notified or assessed as part of this report, on the basis that Council did not have sufficient time to assess, notify and have the amended plans reviewed by the referral bodies.

### 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
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DA2020/0442

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. In summary, the</p>



Section 4.15 Matters for Consideration'	Comments
natural and built environment and social and economic impacts in the locality	<p>proposed development is capable of being constructed so as to not result in any adverse environmental impacts on the natural environment. However, the proposed development in its current form will have an adverse impact on the visual and scenic quality of the site and locality, the streetscape by virtue of its excessive size, bulk and scale. Therefore, the impacts of the proposal are unsatisfactory in its current form.</p> <p><b>(ii) Social Impact</b></p> <p>The proposed development will not have a detrimental social impact in the locality considering the mixed use character of the proposal.</p> <p><b>(iii) Economic Impact</b></p> <p>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	<p>The site is suitable for the proposed development as the site is zoned for that purpose and the development will replace the existing development which does not provide a positive contribution to the character of the locality.</p> <p>The fact that the site is bordered by public roads, is elevated with ample opportunities for views and sunlight access, leads itself to a development of this type and configuration. However, the two street frontages and the configuration of the available land being located in between low density housing presents significant design challenges. Subject to the resolution of these design and character issues, the site is considered to be suitable for the proposed mixed use development.</p>
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 Desired Character statement for the Palm Beach Locality as contained within Pittwater 21 DCP provides the community with a level of certainty as to the scale and intensity of future development and the form and character of development that is in keeping with the zoning of the site.</p> <p>It is acknowledged, and as evident by the number of support letters received from the community, that the development of the site could provide a much needed boost to the immediate and surrounding locality and streetscapes, certainly in comparison to the current situation. However, the benefits of new and modern uses on the site do not outweigh the fact that the proposal, in its current form, represents a scale of development that is excessive for the site and locality.</p>





Section 4.15 Matters for Consideration'	Comments
	<p>This assessment has found the development to be inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and should be reduced to better reflect a sympathetic and sensitive scale of development in what is an environmentally sensitive area.</p> <p>On balance, this assessment finds that the public benefits do not outweigh the need for the proposal to appropriately respond to the planning controls and the context and character of the locality.</p>

### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 22/05/2020 to 05/06/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 170 submission/s from:

Name:	Address:
Design Collaborative Pty Ltd	3/225 Clarence Street SYDNEY NSW 2000
Mr Robyn Lee Jarvis	233 Whale Beach Road WHALE BEACH NSW 2107
Mr Denis George Pierce	10 Etival Street PALM BEACH NSW 2108
Anna Ortado	22 Norma Road PALM BEACH NSW 2108
Kirsten Morley	Address Unknown
Mr Wallace Macarthur King	41 The Point ROAD WOOLWICH NSW 2110
Maxmilian Wagner	7 Loblay Crescent BILGOLA PLATEAU NSW 2107
Mrs Michelle Margaret Porter	12 Burrawong Road AVALON BEACH NSW 2107
Ms Samantha Kylie Livingston	37 A Park Avenue AVALON BEACH NSW 2107
Mrs Leena Wood	49 Dress Circle Road AVALON BEACH NSW 2107
Rachael Rofe	20 George Street AVALON BEACH NSW 2107
Mr Samuel David Watson	2 / 33 Elaine Avenue AVALON BEACH NSW 2107
Ms Simone Louise Keogh	915 Barrenjoey Road PALM BEACH NSW 2108
Mrs Melanie Helen Mary Axford	1 Alexander Road AVALON BEACH NSW 2107
Mrs Rebekah Chandler	18 Park Avenue AVALON BEACH NSW 2107
Grace Quiney	91 Bynya Road PALM BEACH NSW 2108

Name:	Address:
Simon Gates	Address Unknown
Mr Trevor John Harrison	6 Surf Road WHALE BEACH NSW 2107
Mr Christopher John Power	55 Riviera Avenue AVALON BEACH NSW 2107
Mr Derek Leigh Butterworth	181 Barrenjoey Road NEWPORT NSW 2106
Angelica Hill	Address Unknown
Mrs Kalinda Anne Hawson	60 Whale Beach Road AVALON BEACH NSW 2107
Brita Benjamin	169 Whale Beach Road WHALE BEACH NSW 2107
Susan Thomson	Address Unknown
Zane Westwood	53 Marine Parade AVALON BEACH NSW 2107
Mr Christopher John Hill	36 Bareena Road AVALON BEACH NSW 2107
Harrison West	22 Coonanga Road AVALON BEACH NSW 2107
Ms Catherine Alexandra Young	905 Barrenjoey Road PALM BEACH NSW 2108
Mr Sebastian Hartog	4 / 46 Marine Parade AVALON BEACH NSW 2107
Mr Paul Gregory Stanton	25 Patrick Street AVALON BEACH NSW 2107
Mrs Karen Elizabeth Chapman	14 A Pacific Road PALM BEACH NSW 2108
Mr Andrew Robert Owens	23 Park Avenue AVALON BEACH NSW 2107
Mr Peter John Moore	7 / 13 Surfview Road MONA VALE NSW 2103
Mrs Pauline Marie Allan	8 Coral Close AVALON BEACH NSW 2107
John Gouldthorpe	Address Unknown
Baden Cram	7 A Catalina Crescent AVALON BEACH NSW 2107
Ms Anna Elizabeth Kiernan	7 / 30 Elaine Avenue AVALON BEACH NSW 2107
Gail Margaret Broady	41 Patrick Street AVALON BEACH NSW 2107
Ebony Tales	Address Unknown
Mrs Jennifer Junette Beashel	13 Capua Place AVALON BEACH NSW 2107
Ms Julie Irene Malcolm	6 Careel Head Road AVALON BEACH NSW 2107
Tim Dedman	118 Central Road AVALON BEACH NSW 2107
Mr Mitchell Stuart Geddes	13 / 50 Palm Beach Road PALM BEACH NSW 2108
August Eldridge	51 Elaine Avenue AVALON BEACH NSW 2107
Mr Shannon Patrick Nolan	24 Dolphin Crescent AVALON BEACH NSW 2107
Mrs Paula Madaline Lowe	75 Riviera Avenue AVALON BEACH NSW 2107
Oscar Regan	51 Kanimbla Crescent BILGOLA PLATEAU NSW 2107
Mr Bodhi Kawulia	60 Hilltop Road AVALON BEACH NSW 2107
Mr Dale Mark Butler	843 Barrenjoey Road PALM BEACH NSW 2108
Kate Brennan	4 Harley Road AVALON BEACH NSW 2107
Paris Excell	2 / 32 Cavill Street FRESHWATER NSW 2096
Ms Katherine Futschek	116 Central Road AVALON BEACH NSW 2107
Mrs Nichole Kathleen Fox	37 Whale Beach Road AVALON BEACH NSW 2107
Mr Barry Garth Brown	4 Welch Street NORTH MANLY NSW 2100
Mr Vien Van Luong	200 Whale Beach Road WHALE BEACH NSW 2107

Name:	Address:
Ms Uyen Doan Le	
Mr Daniel Franklin Hofbauer	22 Gilliver Avenue VAUCLUSE NSW 2030
Ms Judith Nan Rogley	196 Whale Beach Road WHALE BEACH NSW 2107
Ms Anna Maria Monticelli	11 Ebor Road PALM BEACH NSW 2108
Mrs Anna Geraldine Little	37 Palmgrove Road AVALON BEACH NSW 2107
Mrs Julie Anne Westcott	31 Rayner Road WHALE BEACH NSW 2107
Sam Kiernan	42 Nullaburra Road NEWPORT NSW 2106
Hugh Morris	Address Unknown
Mrs Jane Therese Anglicas	8 Rock Bath Road PALM BEACH NSW 2108
Mrs Jennifer Anne Reddan	22 Kevin Avenue AVALON BEACH NSW 2107
Mrs Chelsey Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107
Mr Jacqueline Susan Rees	1 Boanbong Road PALM BEACH NSW 2108
Dylan Rees-Ewen	1 Boanbong Road PALM BEACH NSW 2108
Mr Karl Ronald Attkins	PO Box 293 AVALON BEACH NSW 2107
Tim Storer	Address Unknown
Ms Jillian Marie Eglinton	PO Box 231 AVALON BEACH NSW 2107
Paul Westcott	31 Rayner Road WHALE BEACH NSW 2107
Mrs Glenda Gaye Shirbin	Po Box 1226 MONA VALE NSW 1660
Mr John Martin Shirbin	176 Whale Beach Road WHALE BEACH NSW 2107
Ian Ashley Richards	40 Plateau Road BILGOLA PLATEAU NSW 2107
Mr John Warburton	106 Whale Beach Road AVALON BEACH NSW 2107
Mr Owen Leo Coughlan	868 Barrenjoey Road PALM BEACH NSW 2108
Olivia Rees-Ewen	1 Boanbong Road PALM BEACH NSW 2108
Mr Gregory Michael Doyle	1 / 74 - 76 Avalon Parade AVALON BEACH NSW 2107
Mr Robert Owen Wall	33 George Street AVALON BEACH NSW 2107
Igor Hodoba	165 Prince Alfred Parade NEWPORT NSW 2106
Sheldon Barry Pozniak	2803/184 Forbes Street DARLINGHURST NSW 2010
Ms Judith Lydia Mercure	83 Dolphin Crescent AVALON BEACH NSW 2107
Ms Deborah Ellen Taylor	12 Currawong Avenue PALM BEACH NSW 2108
Louise Margaret Samuels	163 Whale Beach Road WHALE BEACH NSW 2107
Mr Jonathon Pratten	4 Malo Road WHALE BEACH NSW 2107
Ms Annette May Baggie	166 Whale Beach Road WHALE BEACH NSW 2107
Mrs Pamela Margarette Rowlinson	122 Central Road AVALON BEACH NSW 2107
Georgette Nolan	666 Barrenjoey Road AVALON BEACH NSW 2107
Ms Rebecca Lorae Kniess	13 / 29 Gladstone Street NEWPORT NSW 2106
Mr Anthony Francis Morrow	9 / 55 Darley Street East MONA VALE NSW 2103
Mrs Barbara Geraldine Osborne	PO Box 407 NEUTRAL BAY NSW 2089
Mrs Alicia Jacqueline Campbell	34 Kanimbla Crescent BILGOLA PLATEAU NSW 2107

Name:	Address:
Ms Skye St John Patterson	41 Riviera Avenue AVALON BEACH NSW 2107
Erin Broady	16 Catalina Crescent AVALON BEACH NSW 2107
Mr Martin David Armstrong	Po Box 3095 BELLEVUE HILL NSW 2023
Kasey Tocchini	25 Whale Beach Road AVALON BEACH NSW 2107
Marlon Newling	29 Dress Circle Road AVALON BEACH NSW 2107
Jedd Wheeler	Address Unknown
Ms Kimberley Ann Saddington	18 Patrick Street AVALON BEACH NSW 2107
Johnathan Shields	23 Ruskin Rowe AVALON BEACH NSW 2107
Darcy Crump	Address Unknown
India Turner	6 Joseph Street AVALON BEACH NSW 2107
Mr Paul Nicholas Chadwick	Po Box 213 MOSMAN NSW 2088
Mr Aaron Paul Hendrikson	50 Sydney Road WARRIEWOOD NSW 2102
Ms Katrina Amy Chandler	22 Rayner Road WHALE BEACH NSW 2107
Annette Donald	21 Whale Beach Road AVALON BEACH NSW 2107
Mrs Marian Gale Purvis	13 Surf Road WHALE BEACH NSW 2107
Clare Julia Crawford	8 Gunjulla Place AVALON BEACH NSW 2107
Mr Michael John Beckwith	90 Whale Beach Road WHALE BEACH NSW 2107
Mrs Virginia Lizelle Stack	5 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Mrs Janne Dennehy	260 Whale Beach Road WHALE BEACH NSW 2107
Ms Janet Gladys Nash	10 Waruda Street KIRRIBILLI NSW 2061
Catherine Treweeke Lawyer	11A Avenue Road MOSMAN NSW 2088
Mr Robert Donald Mackinnon	16 Norma Road PALM BEACH NSW 2108
Mrs Christine Heather Mackinnon	16 Norma Road PALM BEACH NSW 2108
Gemma Cook	39 Morella Road WHALE BEACH NSW 2107
Mrs Valda Jean Ewen	2 Iluka Road PALM BEACH NSW 2108
Vanessa Iskander	12 Cabarita Road AVALON BEACH NSW 2107
Kurtis Green	Address Unknown
Keyo Rhodes	43 Plateau Road AVALON BEACH NSW 2107
Mr Gordon Frederick Selig	PO Box 790 PENNANT HILLS NSW 1715
Mr Roger Dominic Byrne	5 Robert Street FRESHWATER NSW 2096
Leigh Brian Clapham	2 The Circle BILGOLA PLATEAU NSW 2107
Mr Catherine Naito	229 Whale Beach Road WHALE BEACH NSW 2107
Mr John Charles Gorman	17 Prince Edward Parade HUNTERS HILL NSW 2110
Mr Mark Graham Pearsall	10 Beauty Drive WHALE BEACH NSW 2107
Mr David Henry Allen Mrs Rae Marie Allen	8 Beauty Drive WHALE BEACH NSW 2107
John Webster	Address Unknown
Ms Diana Julie Crewes	18 Kananook Avenue BAYVIEW NSW 2104
Mr Andrew Francis Goldsmith	18 Norma Road PALM BEACH NSW 2108



Name:	Address:
Mr Anthony Justin Hamer	47 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mrs Elizabeth Gole	172 Whale Beach Road WHALE BEACH NSW 2107
Ms Esther Kaye Strain	4 Norma Road PALM BEACH NSW 2108
Ms Lilian Keldoulis	234 Whale Beach Road WHALE BEACH NSW 2107
Mark Craig Switzer	60 Bynya Road PALM BEACH NSW 2108
Mr Christopher John Hendrikson	1036 Barrenjoey Road PALM BEACH NSW 2108
Pamela Kay Paton	6 Cynthea Road PALM BEACH NSW 2108
Mrs Michaela Jane Browne	6 Maroa Crescent ALLAMBIE HEIGHTS NSW 2100
Mr Jonathon Stanton Browne	24 Collaroy Street COLLAROY NSW 2097
Karen Esmore	7 Norma Road PALM BEACH NSW 2108
Mr Richard Hugh West	87 Florida Road PALM BEACH NSW 2108
Tracy Naphthali	10 Beauty Drive WHALE BEACH NSW 2107
Mr Bryan Christie Webster	194 Whale Beach Road WHALE BEACH NSW 2107
Fairlie Kingston	Address Unknown
Ms Tania Diane Wehbe Carla Barbara Wehbe	PO Box 495 PARRAMATTA NSW 2124
Think Planners	PO Box 121 WAHROONGA NSW 2076
Mr John Leslie Nicholson	13 Morella Road WHALE BEACH NSW 2107
Ms Jane Templeton Durham	9 Careel Bay Crescent AVALON BEACH NSW 2107
Ms Eve Maria Heaton Molyneux	26 The Strand WHALE BEACH NSW 2107
Ian Oliver Cook	180 Whale Beach Road WHALE BEACH NSW 2107
Ms Virginia Anne Pursell	47 Ferry Road GLEBE NSW 2037
Ms Janette Ailsa Davie	887 Barrenjoey Road PALM BEACH NSW 2108
Komosion Pty Ltd	Suite 111, 30-40 Harcourt Parade ROSEBERY NSW 2018
Kerry Dibbs	132 Whale Beach Road WHALE BEACH NSW 2107
Mrs Jill Elizabeth Karhan	6 Bowden Street WOOLLAHRA NSW 2025
Mrs Carla Michelin Williams	116 Whale Beach Road WHALE BEACH NSW 2107
Ms Michelle Jessica Cox	10 Etival Street PALM BEACH NSW 2108
Mr Frank James Geddes	19 Cannes Drive AVALON BEACH NSW 2107
Mr Robbi Luscombe Newman	12 Perentie Road BELROSE NSW 2085
Ms Susan Nugan	45 Medusa Street MOSMAN NSW 2088
Mrs Helen Clarke Lapin	11 Tasman Road AVALON BEACH NSW 2107
Mr Harold Charles Wolfe Scrubby	PO Box 500 NEUTRAL BAY NSW 2089
Ms Anne Templeton Grace Durham	12 Old Pacific Highway NEWRYBAR NSW 2479
Avalon Preservation Trust Incorporated as Avalon Preservation Association	24 Catalina Crescent AVALON BEACH NSW 2107
Mr Frank Whittaker Edgell	19 Thyra Road PALM BEACH NSW 2108



Name:	Address:
Bush	
Bruce Hamer	16 Prince Alfred Parade NEWPORT NSW 2106
Mr Hayden William Kerr	35 Mariposa Road BILGOLA PLATEAU NSW 2107
Hon. Sandra Christine Nori	19 Raymond Road BILGOLA PLATEAU NSW 2107
Mr Nicholas Harry Wright	28 The Strand WHALE BEACH NSW 2107
Mr Dennis Leslie Wright	12 Park Avenue AVALON BEACH NSW 2107

A total of 153 submissions were received by Council (not including multiple submissions from the same people). Out of the 153 submissions, 24 submissions were in support of the proposal and 129 objected to the proposal.

### Assessment of Residents Issues

The matters raised within the submissions have been considered and are addressed as follows:

- **The character of the development is not in keeping with the locality and the bulk and scale are not appropriate for the site.**

A large number of submissions received have raised concern that the development is out of character for the Palm Beach Locality and the bulk and scale of the development is not appropriate for the site. Concerns have also been raised due to the large scale of the development that is close to the side boundaries, the development will create unacceptable visual privacy concerns.

#### Comment:

This issue has been discussed in detail throughout this report. In summary, the assessment has found that the design of the proposed development is not consistent with the character of the area and the development in its current form is excessive in terms of bulk and scale.

The concerns raised in this regards are concurred with and are included as reasons for refusal.

- **The Height is Excessive**

Concerns have been raised that the development does not comply with the 8.5m height limit.

#### Comment:

The development has been designed to achieve full compliance with the height control applying to the site.

Therefore, this issue should not be given determining weight.

- **The development has insufficient parking and will cause excessive traffic**

A number of submissions raised concerns regarding the additional traffic generated by the proposed development given insufficient parking provided by the development, and the impact of two driveways



in close proximity of each other. Concern was also raised that the location of the two driveways will jeopardise pedestrian safety.

Comment:

Council's Traffic Engineer has reviewed the proposed development and has raised concerns in relation to number of issues relating to traffic impacts. Based on Council's Traffic Engineer's assessment, the concerns raised in this regard are concurred with and are included as reasons for refusal.

- **The development causes unacceptable impacts on existing views.**

The concern raised with the regards to loss of views is from the adjoining property owners at:

- 11 Morella Rd, Whale Beach
- 196 Whale Beach Rd, Whale Beach
- 198 Whale Beach Rd, Whale Beach
- 200 Whale Beach Rd, Whale Beach
- 229 Whale Beach Rd, Whale Beach

Comment:

The applicant has provided view impacts studies showing the view impacts associated with the existing building and proposed building on the site. In addition, height poles were also erected to determine view impacts of the proposed development.

The impacts on the above properties have been assessed in accordance with the principles of Tenacity Consulting v Warringah Council 2004. It is agreed that in terms of overall building height, the view impact on the adjoining properties is minor as more than 50% of the roof of the proposed development is at least 1.0 metre below the maximum allowable building height, and the eastern edge of Level 4 is 2.3 metres below the height of the existing building.

However, concern is raised with overall bulk of the building as it relates to the side setbacks of the development, which should be increased to improve view corridors.

In this regard, the issue raised in concurred with and included as reason for refusal.

- **The development will set a precedent for other similar development**

Concern has been raised that allowing this development will open the door for similar development in this area.

Comment:

The site is zoned B1 Neighbourhood Centre and is the only lot in Whale Beach to have this zoning. Therefore, there is no ability of the proposed development setting a precedent for other similar developments in the area.

Therefore, this issue should not be given determining weight.

- **The extent of excavation is excessive**

Concern has been raised that the extent of excavation is excessive.

Comment:

DA2020/0442



This issue is addressed in detail within the Pittwater 21 DCP section of the report. In summary, the assessment has concluded that the design of the proposed development is found to be inconsistent with the requirements of the control relating to sloping sites, in that the development does not incorporate sufficient stepping down of the built form to reduce the overall bulk and scale of the development, such that it integrates with the landform and landscape and minimises site disturbance.

In this regard, the issue raised in concurred with and included as reason for refusal.

- **The development will generate unacceptable noise**

Concerns have been raised that the development will generate unacceptable noise. In particular, a submission received from the owner of No.233 Whale Beach, which is prepared by an acoustic consultant, raises concerns with the garbage collection for the proposed development. The submission provides a number of recommendations, which if adopted, will address the specific concerns raised by the owner of No.233 Whale Beach Road.

Comment:

The proposal is accompanied by an Acoustic Impact Assessment Report (prepared by JHA). The report has been reviewed by Council's Environmental Health (Acoustic) Officer who has raised no objections to the proposal subject to conditions.

The report recommends a number of measures be undertaken to mitigate the potential acoustic impacts of the development. Should the application be approved, it is advised that the the recommendations contained in the submitters acoustic report be incorporated into the conditions of consent to mitigate the potential acoustic impacts.

Accordingly, the concern raised is noted and can be addressed by condition of consent should the application be worthy of approval.

- **The development has insufficient landscaping and relies on screen planting to 233 Whale Beach Road.**

Concern has been raised that the development provides insufficient landscaping and relies on screen planting to 233 Whale Beach Road to screen the development.

Comment:

This issue is addressed in detail within the landscape referral comments in this report. In summary, the proposal lacks sufficient landscaping to soften the built form and to mitigate the visual impacts when viewed from adjoining properties and adjoining public spaces.

In this regard, the issue raised in concurred with and included as reason for refusal.

**Submissions in Support**

- The existing building is old and out of character and the re-development should be supported.
- The design and appearance of the building is a vast and much needed improvement to the existing building on site.
- The Palm Beach Whale Beach Association (PBWBA) made the following statement:

*"The PBWBA is aware of this application. We have been briefed on the project. Our Honorary Architect has reviewed the plans. The PBWBA believes that the site should be redeveloped in order for the Community to maintain access to retail facilities. The committee passed a motion*





*last year, that:- "The PBWBA has no objection to this application provided that it complies with all the required Council development controls and that it includes the provision for disabled access."*

Comment:

The redevelopment of the site in the manner proposed is generally supported. The existing building, particularly when viewed from Surf Road currently is out of character and does not make a positive contribution to the unique character of the Whale Beach locality.

The redevelopment of the site along the lines proposed provides the opportunity to improve the visual and scenic quality of the locality by providing urban renewal, improved aesthetics and a high standard of architecture. Whilst the redevelopment of the site is supported, it is required to be designed having regard to the local character of the area and to minimise the impact on the streetscape, views, vistas and outlooks in the area. This must be done by providing a built form that is sympathetic and sensitive to the site and the area in terms of its bulk and scale, setbacks and how it nestles into this hillside site.

It is recognised and acknowledged that there are significant benefits of the site being redeveloped in this manner, but unfortunately the excessive size and scale of the development as presented in this application, does not go far enough in reducing the bulk and scale of the development such that it can be considered to be consistent with the sensitive local character of the area. Therefore the development cannot be supported in its current form.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<b>Supported (subject to conditions)</b> 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.
Environmental Health (Industrial)	<b>Supported (subject to conditions)</b> DA2020/0442 relates to development of an apartment complex including food premises on the top and lower levels and retail. Conditions have been provided in the internal reference for food business. In addition to those conditions, there is a need for control of noise, odour and vibrations from equipment within plant rooms and ventilation systems connected with the building to ensure noise and vibration from this equipment does not impact on the health and well being of persons living within the complex and other surrounding premises.
Environmental Health (Food Premises, Skin Pen.)	<b>Supported (subject to conditions)</b> The Current Development Consent includes the addition of two food premises, Council has no objections as long as conditions are complied with to ensure control of odour, smoke, noise and the set up of the business comply with AS4784-2004 and Food Safety Standards 3.2.3 and Food Safety Standards 3.2.2.
Landscape Officer	<b>Refusal</b>

DA2020/0442



Internal Referral Body	Comments
	<p>The development application is for the demolition of existing structures and construction of a five-storey shop-top housing development, comprising five (5) residential apartments, three (3) retail premises, basement car parking, associated site and landscaping works and strata subdivision.</p> <p>Council's Landscape Referral is assessed against State Environmental Planning Policy No. 65 Design Quality for Residential Apartment Development, Pittwater LEP Zone B1 Neighbourhood Centre, and the following Pittwater 21 DCP Controls: B4.22 Preservation of Trees and Bushland Vegetation; C2.1 Landscaping; C2.20 Public Road Reserve - Landscaping and Infrastructure; and D12 Palm Beach Locality, including D12.1 Character as viewed from a public place.</p> <p>The SEPP 65 Design quality principles included in Schedule 1 that are relevant to the landscape outcomes of the proposal include: Principle 1: Context and neighbourhood character; Principle 4: Sustainability; and Principle 5: Landscape.</p> <p>In addition, under SEPP 65, the following provisions are to be considered: 3E: Deep Soil Zones; 3D: Communal Open Space; and 3F: Visual Privacy.</p> <p>Landscape Plans and a Arboricultural Impact Assessment accompany the application, and both are submitted in accordance with Northern Beaches Council's DA Lodgement Requirements. The proposal for full width road verge as public domain pavement is a sensible proposal commensurate with the retail premises at ground level that may support cafes or restaurants or the like that benefit the community, as this meets the Zone B1 Neighbourhood Centre objectives to provide small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood, with the expectation that the proposal has potential for outdoor seating as part of the proposed retail premises. However, no garden bed planting is permitted within the road reserve and only street tree planting will be supported.</p> <p>The Arboricultural Impact Assessment assesses existing trees within the road reserve and within adjoining properties. No existing trees exist within the development site. The proposal to remove existing trees within the Whale Beach Road road verge is not supported, and shall be retained as these are not impacted by development works and are an established streetscape amenity element. Any proposal for works within the road reserve shall incorporate the existing trees, and the proposal is subject to a Roads Act Application for Civil Works under Sections 138 and 139, inclusive of Public Domain Plans for approval, with sufficient information such as: alignment levels showing existing and proposed levels for altered driveway crossovers, and kerbs and gutters; existing and proposed pavement levels, with proposed gradients no more than a 2.5% fall from building openings to top of kerb, and to match existing levels along adjoining properties;</p>

Internal Referral Body	Comments
	<p>details of any utility alignment and level changes; and details of the proposed concrete pavement finish from building to kerb.</p> <p>All other adjoining property trees are proposed for retention. Concern is raised that Tree 4 within No. 229 Whale Beach Road is encroached upon by the development and the report indicates possible decline in health, and concludes that a compensatory tree protection zone equal to a 4.5 metre setback along the southern boundary is required, contrary to the proposed 1.0 metres basement setback as proposed. Council does not permit any impact to existing trees within adjoining properties, regardless of species or horticultural value, unless adjoining owner's consent is obtained for consideration by Council.</p> <p>Concern is raised that the development does not integrate with the landscape character of the locality, and that the proposal is unable to support landscape planting of a size that is capable of softening the built form. The deep soil areas referred to in Principle 1: Context and neighbourhood character, and 3E Deep Soil Zones, located along the western boundary and part northern boundary, are occupied by pavements, stairs, a kiosk, with small garden beds areas of planting along the western boundary, and courtyards and planters along part of the northern boundary, that is unable to soften the built form. The 3 metre side setbacks are interrupted by basement, courtyards and planters that effectively reduce the capability of planting to achieve softening of the built form. Along the southern boundary, the deep soil area is contained to an uninterrupted 1.0 metre wide zone for the length of the boundary, and 1.2 meters uninterrupted along the northern boundary, reducing the potential growth height of proposed planting.</p> <p>At this stage, the landscape proposal is not supported in terms of achieving design integration by landscape provisions, as well as non support for the proposed removal of trees within the road reserve of Whale Beach Road, and the impact upon tree 4 within the neighbouring property.</p>
NECC (Development Engineering)	<p><b>Refusal</b></p> <p>The proposed development is located within a Geotechnical Hazard H1 area. In accordance with Clause B3.1 Landslip Hazard of Pittwater DCP 201, a risk assessment is to be undertaken (Geotechnical Risk Management Policy for Pittwater) for the site and submitted to Council. In this regards the submitted geotechnical report has not provided forms 1 and 1(a) in accordance with Geotechnical Risk Management Policy for Pittwater.</p> <p>The proposed southern driveway/vehicular crossing to the development shows an encroachment within Council adjoining property (Park). Property Commercial &amp; Tourist Assets team for comments/approval prior to full assessment of the application.</p> <p>The proposed northern driveway/vehicular crossing to the development encroaches over the frontage to neighbours property at 233 Whale Beach</p>

Internal Referral Body	Comments
	Rd. Road Asset has provided comments to advise that this does not comply with Clause B6.1 Pittwater 21 Development Control Plan. Applicant is required to discuss with the adjoining owner and provide documentary evidence on the outcome.
NECC (Stormwater and Floodplain Engineering – Flood risk)	<b>Supported (subject to conditions)</b> The proposed DA generally complies with the the flood controls in the DCP and LEP.
Road Reserve	<b>Refusal</b> There is limited impact on existing road assets. The blade wall on the driveway entry and driveway entry extending across the frontage of the neighboring property does not comply.  Further details of proposed landscaping and works on both street frontages will require further consideration by Development Engineering in relation to requiring a Road Act application for infrastructure works (paving, retaining, driveways, and other improvements within the roadway.)
Strategic and Place Planning (Urban Design)	<b>Refusal</b> The concept design and articulation of the built form generally is supportable however further refinements to the design, including bulk and scale and softening of the material palette, particularly is it reads from both Whale Beach Road and Surf Road, will be discussed.  <b>4.3 Height of Buildings</b> It is acknowledged that the building does not breach the height of buildings plane and the applicant has responded to the request to provide comparative building height planes across the site.  <b>4.12 Palm Beach Locality</b> Whilst it is noted the front setback to Whale Beach Road has pulled the front building line back further to allow for greater circulation zones and considered placemaking response, the upper level 'breeze block treatment surrounding the PV array and rooftop plant is not supportable. The understated nature of the street elevation to this frontage would have a greater fit with the locality and context by limiting the expression to the horizontal datum which demonstrates a simplicity in line, form, bulk and scale. The addition of the rooftop solar PV panel array and the mechanical plant required with the screening provided in the form of a breeze block screen and the flyover copper roof that provides protection to the stair access way has the perceived effect of increased height to the whole structure at this street elevation. Recommendations that look to delete or reduce in size the upper level apartment 5, and retaining the form and elevational treatment to provide screening to the mechanical plant and PV array is recommended. This would assist to reduce the impact of the additional elements of screening and flyover canopy roof above the horizontal datum line of the top of the building as read from the street. Additionally, deletion or reduction of Apartment 5 and the associated private outdoor balcony will have the associated effect of reducing the bulk and scale of the development as viewed from Surf Road.

Internal Referral Body	Comments
	<p><b>Materials</b></p> <p>The general palette can be supported. However the extents of off-form concrete to the Surf Road elevation that forms the verandah parapet arc of the commercial zone could be softened or broken down further so as to reduce the overall impacts of the bulk and scale of the development as it reads from Surf Road.</p> <p><b>Side Setbacks</b></p> <p>It is noted the dimensioned setback of 3 metres on the documentation shows a minimal 800 mm of green space with the remaining 2200mm hard surface and other material. This space does not allow for sufficient green planting to provided a buffer to the neighbouring properties. The applicant should refer to the Landscape Referral Officer comments for details.</p> <p>In consideration of the bulk and scale of the proposed development and in accordance with the Locality statement for Palm Beach, there is a requirement to incorporate and enhance the built form through significant planting to mitigate the impacts of the building bulk and scale.</p> <p><i>'A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.'</i></p> <p><b>SUMMARY</b></p> <p>Overall the development has merit, however there are elements that, with further refinement including a reduction in bulk and scale, particularly from the Surf Road aspect, could be supported. Further design development to address the key criteria of Desired Future Character, Locality Statement and generally bulk and scale of the proposal is recommended.</p>
Traffic Engineer	<p><b>Refusal</b></p> <p>Issues and Comments in accordance with the Pittwater 21 Development Control Plan (DCP)</p> <p><b>Access Driveway:</b></p> <p>The Applicant proposes to retain the existing driveway on Surf Road (southern end of the site) for access to the basement level car park, and a new driveway at the northern end for access to the</p> <p>ground level car park. The Applicant has indicated that the two access driveways are required as the site constraints do not allow for only one driveway to service the proposed development, and vehicular access from Whale Beach Road was not feasible due to the gradient</p>



Internal Referral Body	Comments
	<p>of the slope of the site.</p> <p>The site frontage is approximately 15m and only one access driveway is permitted under the DCP where the frontage to a local public road is less than 30m.</p> <p><b>Off-Street Parking:</b></p> <p>Required parking spaces for residential dwellings, visitors, accessible (included as part of retail), motorcycle and bicycle storage have been provided.</p> <p>Swept paths are provided to demonstrate access to parking spaces, however the proposed layout makes circulation within the car park and manoeuvring into designated parking spaces difficult or requiring multiple reversing manoeuvres. This is further complicated when vehicles are entering and exiting at the same time which requires one vehicle to backup to areas within the car park where two vehicles can pass.</p> <p>There is a shortfall of 2 spaces for retail and no designated provisions for garbage collection, removalists/deliveries. The Traffic and Parking report concludes that ample parking opportunities exist in the surrounding streets to cater for the additional parking demand. Surveys were conducted on two separate Saturdays in September 2019 with at least 70 spaces vacant throughout the day (to a maximum of 120) within 150 m walking distance from the site.</p> <p>The Traffic and Parking report specifies that no loading docks are proposed with loading/unloading occurring on Whale Beach Road, and the 2.2m height clearance to the car park would not enable access for a Small Rigid Vehicle.</p> <p>The Statement of Environmental Effects further indicates that 'Loading and unloading and retail waste collection will occur from Whale Beach Road, and that the 'Ground level retail and all residential waste will be collected by a small rigid vehicle adjacent to the entrance into the car parking facilities from Surf Road.' Deliveries off Whale Beach Road impacts the availability of the existing 1 hour timed parking restrictions provided, and can lead to double parking and congestion and safety issues on Whale Beach Road when these spaces are occupied. These concerns were also raised in a DA submission from residents. Loading/unloading can also be problematic as the frontage access to Level 3 is below the street level where stairs lead to the main entrance, however a ramp access is provided at the northern end of the site.</p> <p>On-site parking should be provided for service vehicles and access driveways should be separated from access used by the general public for access to public parking areas.</p>

Internal Referral Body	Comments
	<p><b>Traffic Impacts:</b></p> <p>The Traffic and Parking report concluded that the additional traffic from the proposed development will be minor and have no noticeable impact on the street network operation nor on safety risks.</p> <p>The traffic generation was reported as 18 trips (7 in / 7 out) during the morning peak and 18 trips (11 in / 7 out) during the afternoon peak hour, with additional trip generation being 9 trips (4 in / 5 out) during the morning peak and 9 trips (5 in / 4 out) during the afternoon peak hour.</p> <p>This calculation should be slightly higher as the projected future generation was based on the retail rate (4.6 trips per 100m<sup>2</sup> for the total GFA) for all three retail areas, when it is indicated in the SOEE that commercial uses include a café and plans and photo montages show seating for a café for Retail 1, where a rate of 5 trips per 100m<sup>2</sup> should be applied for restaurants/cafes.</p> <p>The actual traffic impacts would be much greater since off-street parking for visitors and retail is on-site and traffic generation is now localised at the access driveways off Surf Road.</p> <p>As the current site does not provide on-site parking for the existing café, the difference in traffic generation at the new access driveways could be up to an additional 17 trips during the morning and peak periods.</p> <p>The proposal cannot be supported in its current form due to overall number of issues and non-compliances considered together with the site constraints and location. However, the impacts of the non-compliances can be minimised and an acceptable proposal could be supported on merit if these issues are addressed by providing the following modifications and provision of infrastructure in Public Road Reserve:</p> <ul style="list-style-type: none"> <li>• <b>Widening of access driveway to car parks</b></li> </ul> <p>The proposed access driveway for the basement level is only 3.6m wide, and the curved alignment provides insufficient visibility between entering and exiting vehicles. This can not be improved by a convex mirror and traffic signals are not practical. A minimum combined entry/exit width of 5.5m should be provided from the public road to parking area to allow two way vehicle access.</p> <p>Movements in the ground level are park are restricted, and similarly the access driveway widening to 5.5m should also be considered. The garbage storage area could be relocated if approved by Waste Services. As a minimum requirement the Applicant needs to demonstrate that the car park layout enables vehicles to pass and any required waiting areas are clearly marked so that vehicles entering the</p>

Internal Referral Body	Comments
	<p>ground level car park are not forced to reverse back onto Surf Road. Speed humps should also be installed on the private property approaching the entry/exit to ensure that vehicles slow down prior to crossing Council's Public Road Reserve.</p> <ul style="list-style-type: none"> <li> <b>Provision of Indented service/delivery bay in Surf Road</b> <p>A 2.5m wide indented bay is required for waste and service vehicle access and designed to enable forward in and forward out access for a waste collection vehicle 9.7m in length, as a minimum requirement. The indented bay can be provided in the Council Public Road Reserve between the two access driveways to the basement and ground level car parks. The facility would remove the need for loading/unloading to occur on Whale Beach Road and impacting the existing timed parking spaces.</p> </li> <li> <b>Realignment of kerb between the access driveway to the basement car park and The Strand</b> <p>The section of Surf Road between Whale Beach Road and The Strand is narrow and the road width varies from 5.5 from the northern end to 7m. Parking is restricted on both sides of the road except for the section located immediately east of the existing driveway where parallel parking is permitted for approximately 3 vehicles. The access driveway to the basement car park is located on the bend in Surf Road and existing parking narrows the road and obstructs sightlines for vehicles exiting the site. The kerb realignment should retain parking for 3 parallel vehicles and provide a 6m road width for two-way traffic.</p> </li> <li> <b>Provision of footpath</b> <p>A minimum 1.5m wide footpath is required along the entire Surf Road frontage and extended to the intersection with The Strand. The existing footpath on the opposite side of the road should also be extended to The Strand with the addition of a handrail where required. This is to provide pedestrian facilities and safety where there is high pedestrian activity between Whale Beach Road, access to the proposed café and Whale Beach.</p> </li> </ul>
Waste Officer	<p><b>Refusal</b></p> <p>Access to the bin storage facilities does not meet Council requirements. Specifically:</p> <ul style="list-style-type: none"> <li>Access to both the residential and commercial bin storage bays is via a vehicular driveway.</li> <li>The doors of both bin storage bays swing out over the vehicular driveway.</li> </ul>



Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>Unacceptable - a path that is separate from the vehicle driveway must be provided for servicing waste bins.</li> <li>open doors obstruct vehicle movement and obscure waste collection staff from the view of vehicle drivers.</li> </ul> <p><u>Waste Management Plan (WMP)</u> The WMP must be amended. It is not acceptable to refer to another document - in this case the Construction Management Plan (CMP). The CMP does not provide sufficient information regarding waste generation and disposal from the proposed works. When referring to estimated types and volumes of waste from demolition and construction it merely states "TBA". Incorrect number of residential dwellings is described in the WMP.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***

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

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

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

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

##### **SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential and cafe 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 mixed use development land use.

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





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

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

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

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

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

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

As previously outlined, the proposed development is for the erection of a shop top housing development plus basement car parking for the provisions of five (5) self-contained dwellings and retail premises.

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 did not have an appointed Design Review Panel at the time when the application was lodged.

## DESIGN QUALITY PRINCIPLES

### Principle 1: Context and Neighbourhood Character

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



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

Comment:

The subject site is surrounded by an E4 - Environmental Living zone which is comprised of low density residential development in the form of multi-level detached dwellings on sloping sites, which generally step down with the topography. The specific controls (particularly the Desired Character statement) clearly indicates that development within the subject site should be similar in scale and appearance to that envisaged in the Locality, which is largely buildings that step down the topography the land.

In this context, the proposed development (as lodged) is not consistent with the locality in that the scale of the development does not sufficiently step down with the slope of the land and for this reasons it is not sufficiently integrated with the natural landform.

Accordingly, the proposed development is found to inconsistent with 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 has been conceived on the basis that the subject site is a unique site, being a single parcel of land zoned B1 that interfaces with low density residential development on all sides.

This site should be developed to some extent in a special manner with strong definition to the public roads and a built form that emphasizes its unique status, but this should be carried out in a manner which is sympathetic and sensitive to the low density environs and sensitive coastal location of the site.

The height of the proposed development is 8.5m which is considered, in terms of metres, to be consistent with the height of surrounding development and compliant with the overall Building Height. However, the horizontal built form (massing) of the development consists of a continual 3 storey street wall structure along the side elevations, which offers very little building separation to adjoining development. This aspect of the design is a significant departure from the requirement to provide adequate transitions to adjoining dwelling houses, particularly when viewed from the various vantage points.

In this regard, the development is not regarded as being a sufficiently considered and sensitive response to the scale of existing development, particularly when viewed from the public domains or the adjoining developments.

For these reasons, the development does not meet the objectives of Design Quality Principle 2. This



issue has been included as a reason for refusal.

**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 housing density for the site is stipulated within Clause 4.5A of Pittwater LEP 2014, which requires a maximum of 1 dwelling per 150m<sup>2</sup> of the site area for shop-top housing in a B1 Neighbourhood Centre.

The proposal complies with Clause 4.5A with a site area of 866.30m<sup>2</sup> with five (5) apartments.

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

**Principle 4: Sustainability**

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

Comment:

The proposed works include part demolition and excavation works to accommodate the new development.

In this regard, a condition of consent could be imposed requiring the submission of a Construction Management Plan (CMP) detailing disposal and recycling of demolition and excavation materials, should the application be approved.

In addition, a BASIX certificate for 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 details of the proposed landscaping for the site, which has been reviewed by Council's Landscape Officer, who has raised concern that the development does not integrate with the landscape character of the locality, and that the proposal is unable to support landscape planting of a size that is capable of softening the built form.

For these reasons, the development does not meet the objectives of Design Quality Principle 5. This issue has been included as a reason for refusal.

**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 requirements of the Apartment Design Guideline (ADG), where it has been found that the development is capable of complying with the relevant controls.

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.

Generally, the development provides secure access, which is separated from all vehicular access points. All apartments provide balconies and windows which provides passive surveillance over 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 proposes to construct a shop-top housing development, which will accommodate 5 apartments, which is considered to be a positive outcome in terms of providing a diversity type of housing within the locality.

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 a 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 responds aesthetically to the environment and context, contributing in an appropriate manner to the character of the area, despite the concerns in relation to size, mass, bulk and scale.

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
<b>Part 3 Siting the Development</b>		
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	<p><b>Not Consistent</b></p> <p>A context plan is provided to accompany the application.</p> <p>The building form does not reflect the current character as anticipated by</p>

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		the P21 DCP for the site.												
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<b>Not Consistent</b> The appears of the development as viewed from the street and adjoining development is found to be unsatisfactory.												
<b>Public Domain Interface</b>	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?	<b>Consistent</b> The development has been found to be consistent with requirement of this Clause in the it provides an improved public domain interface.												
<b>Communal and Public Open Space</b>	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)	<b>Not Consistent (but satisfactory)</b> The proposed development does not provide any communal open space for the residents of the development. However, given the site is located in close proximity to Whale Beach and the associated park land and public open space. The development also provides provides larger balconies for each unit, so therefore the requirement of communal space is not considered essential.												
<b>Deep Soil Zones</b>	Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant	6m	<b>Consistent</b> Deep soil areas provided with a minimum dimension of 3m. The total deep soil areas equate to 72.1m <sup>2</sup> which is 8.5% of the site area.
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m <sup>2</sup>	-	7%												
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m													
Greater than 1,500m <sup>2</sup>	6m													
Greater than 1,500m <sup>2</sup> with significant	6m													

	existing tree cover															
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><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as 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><b>Not Consistent</b></p> <p>The control requires a 6m setback for habitable rooms and a 3m setback for non-habitable rooms up to four storeys.</p> <p>The development proposes a 3m setback to both north and south side boundary.</p> <p>The proposed development provides inadequate setbacks to the adjoining E4 Environmental Living zoned properties. Specifically, the proposal provides inadequate physical separation between the building footprint and adjoining properties and insufficient deep soil landscape setbacks to allow landscape plantings to offset the height, bulk and scale of the development.</p> <p>The issue of noncompliance with the building separation requirements in relation to the northern and southern boundaries has been included as a reason for refusal.</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><b>Consistent</b></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><b>Not Consistent</b></p> <p>The proposed vehicular access has been assessed by Council's Traffic Engineer who</p>												

		has raised concerns to the proposal in terms of the location of the two vehicular access in close proximity of each other.
<b>Bicycle and Car Parking</b>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p><b>Consistent</b></p> <p>An assessment of car parking provision, having regard to WDCP 2011 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>
<b>Part 4 Designing the Building</b>		
<b>Amenity</b>		
<b>Solar and Daylight Access</b>	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	<p><b>Consistent</b></p> <p>All of the units (100%) will receive a minimum of 2 hours of direct sunlight between 9.00am and 3.00pm in mid-winter.</p>
		Not applicable
<b>Natural Ventilation</b>	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> <li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or</li> </ul>	<p><b>Consistent</b></p> <p>All of the units (100%) are naturally cross ventilated.</p>



	<p>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> <ul style="list-style-type: none"><li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li></ul>	<p><b>Consistent</b> No apartments exceed the 18.0m requirement.</p>												
<p><b>Ceiling Heights</b></p>	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p><b>Consistent</b> 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													
<p><b>Apartment Size and Layout</b></p>	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p><b>Consistent</b> All apartments within the development comply with the minimum area.</p>		
Apartment type	Minimum internal area													
Studio	35m <sup>2</sup>													
1 bedroom	50m <sup>2</sup>													
2 bedroom	70m <sup>2</sup>													
3 bedroom	90m <sup>2</sup>													
<p><b>Private Open Space and Balconies</b></p>	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	<p><b>Consistent</b> All apartments within the development comply with the minimum balcony area and depth.</p>						
Dwelling Type	Minimum Area	Minimum Depth												
Studio apartments	4m <sup>2</sup>	-												

	<table><tr><td>1 bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m.</p>	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m		
1 bedroom apartments	8m <sup>2</sup>	2m										
2 bedroom apartments	10m <sup>2</sup>	2m										
3+ bedroom apartments	12m <sup>2</sup>	2.4m										
		<b>Not Applicable</b> There are no ground floor apartments										
<b>Common Circulation and Spaces</b>	The maximum number of apartments off a circulation core on a single level is eight.	<b>Consistent</b> The maximum number of apartments off a circulation core on a single level is 2.  The proposed development includes access to all floors via a lift.										
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not Applicable										
<b>Storage</b>	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td></tr><tr><td>1 bedroom apartments</td><td>6m<sup>2</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>2</sup></td></tr><tr><td>3+ bedroom apartments</td><td>10m<sup>2</sup></td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m <sup>2</sup>	1 bedroom apartments	6m <sup>2</sup>	2 bedroom apartments	8m <sup>2</sup>	3+ bedroom apartments	10m <sup>2</sup>	<b>Consistent (subject to condition)</b> 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 imposed if the application is to be approved to ensure the proposed storage areas are allocated in accordance with the size requirements of the ADG for the respective units.
	Dwelling Type	Storage size volume										
Studio apartments	4m <sup>2</sup>											
1 bedroom apartments	6m <sup>2</sup>											
2 bedroom apartments	8m <sup>2</sup>											
3+ bedroom apartments	10m <sup>2</sup>											
	At least 50% of the required storage is to be located within the apartment.											
<b>Acoustic Privacy</b>	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	<b>Consistent (subject to condition)</b> An acoustic assessment which considers both internal and external noise sources including surrounding traffic noise, noise emissions associated with traffic										

		generated by activities on site was submitted. The acoustic assessment found that noise generated by the development will comply with all relevant standards.
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	<p><b>Consistent</b></p> <p><b>(i) Noise</b> The development has been designed in a manner to minimise impacts of external noise and to mitigate noise transmission, as discussed elsewhere in this report.</p> <p><b>(ii) Pollution</b> The completed development is unlikely to impact adversely on air quality or alter the microclimate of the area. No details regarding dust control relating to the construction have been provided. These details will be required to be submitted as a condition of consent, should the application be worthy of approval.</p>
<b>Configuration</b>		
<b>Apartment Mix</b>	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	<b>Consistent</b> The development proposes a two, and three bedroom apartments.
<b>Ground Floor Apartments</b>	Do the ground floor apartments deliver amenity and safety for their residents?	<b>Not Applicable</b> The development does not have ground level apartments .
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<b>Consistent</b> The facade treatment is appropriate for the site.
<b>Roof Design</b>	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the	<b>Consistent</b> The roof space is not readily accessible and cannot be used to serve the residential accommodation.

	use of the roof top.																																				
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<b>Not Consistent</b> Landscape plans have been submitted with the application, providing detailed plans for the landscape treatment. The Landscape Design has been detailed by Council's Landscape officer and the referral comments and found to be unsatisfactory.																																			
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>150m<sup>3</sup></td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m<sup>3</sup></td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m<sup>3</sup></td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		<b>Not Consistent</b> 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 <sup>3</sup>	1,200mm	10m x 10m or equivalent																																	
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent																																	
Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent																																	
Shrubs			500-600mm																																		
Ground Cover			300-450mm																																		
Turf			200mm																																		
Mixed Use	<p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>	<b>Consistent</b> The apartment mix is satisfactory.																																			
Awnings and	Locate awnings along streets with high pedestrian	<b>Not Applicable</b>																																			



<b>Signage</b>	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.	The DA does not propose any awning or signage and as such, this clause is not considered in the assessment of this application.
<b>Performance</b>		
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	<b>Consistent</b> 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.
<b>Water Management and Conservation</b>	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<b>Consistent</b> 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.
<b>Waste Management</b>	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	<b>Consistent</b> Subject to condition
<b>Building Maintenance</b>	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	<b>Consistent</b> The application includes a Schedule of Materials and Finishes which ensures the longevity and sustainability of the building.

## 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.

### SEPP (Coastal Management) 2018

The site is located within both the Coastal Use Area and Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 ("**CM SEPP**"), and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the proposal, the consent authority can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP,
- the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP,
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

### Pittwater Local Environmental Plan 2014

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

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	N/A	Yes
Density controls for certain residential accommodation	1 dwelling per 150m <sup>2</sup>	1 dwelling per 168.94m <sup>2</sup>	N/A	Yes



#### Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 2 Permitted or prohibited development	Yes
2.7 Demolition requires development consent	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	Yes
4.5A Density controls for certain residential accommodation	Yes
4.6 Exceptions to development standards	N/A
Part 5 Miscellaneous provisions	Yes
Part 7 Additional local provisions	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	No
7.10 Essential services	Yes

#### Detailed Assessment

##### 7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

*(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

*(b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

*(c) the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition can be included if the application was to be approved requiring any fill to be of a suitable quality.

*(d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions can be included if the application was worthy of approval to limit impacts during excavation/construction.



(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition can be included in the requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

### Pittwater 21 Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Primary front building line (Whale Beach Road)	3.5m	Basement, Ground, Level 1, Level 2: 1.6m to 4.0m	Nil to 54.3%	No
		Level 3, Level 4: 3.0m to 6.4m	Nil to 14.3%	No
		Level 3 bin store: Nil	100%	No
Secondary front building line (Surf Road)	1.75m (subject to consistency with objectives)	Basement: Nil	100%	No
		Ground: Nil to 2.3m	Up to 100%	No
		Level 1: Nil	100%	No
		Level 2, Level 3: 3.5m	N/A	Yes
		Level 4: 3.5m to 10.5m	N/A	Yes
Side building line	North - 3.0m	Basement: Nil to 2.4m	31.4% to 100%	No
		Ground: Nil to 3.0m	Nil to 100%	No
		Level 1, Level 2: 1.0m (retaining wall) to 3.0m (building)	Nil to 66.7%	No
		Level 3: Nil (access ramp) to 3.0m (building)	Nil to 100%	No
		Level 4: 3.0m	N/A	Yes
	South - 3.0m	Basement, Ground: 0.9m to 3.0m	Nil to 70%	No
		Level 1, Level 2, Level 3: 0.8m (retaining wall) to 3.0m (building)	Nil to 73.3%	No
		Level 4: 3.0m	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Section A Shaping Development in Pittwater	Yes	Yes
A1 Introduction	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4 Localities	No	No
A4.12 Palm Beach Locality	No	No
Section B General Controls	Yes	Yes
B1 Heritage Controls	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2 Density Controls	Yes	Yes
B2.3 Subdivision - Business Zoned Land	Yes	Yes
B3 Hazard Controls	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4 Controls Relating to the Natural Environment	No	No
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5 Water Management	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.3 Greywater Reuse	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.5 Rainwater Tanks - Business, Light Industrial and Other Development	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)	Yes	Yes
B6 Access and Parking	No	No
B6.1 Access driveways and Works on the Public Road Reserve	No	No
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B8 Site Works Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Management		
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
Section C Development Type Controls	Yes	Yes
C1 Design Criteria for Residential Development	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	No
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
Section D Locality Specific Development Controls	Yes	Yes
D12 Palm Beach Locality	No	No
D12.1 Character as viewed from a public place	No	No
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	Yes	Yes
D12.11 Fences - General	Yes	Yes
D12.14 Scenic Protection Category One Areas	No	No

#### Detailed Assessment

#### **A4.12 Palm Beach Locality**

The desired character of the Palm Beach locality is prescribed, as follows:



*The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape....*

*Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.*

*Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards...*

*A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors...*

Comment:

The proposal development is found to be inconsistent with the requirements of the desired character statement for the following reasons:

- The proposal exceeds the two storeys requirements in any one place, the proposal presenting as a 3- 5 storey building when viewed from different vantage points.
- The design of the proposed development is found to be inconsistent with the requirement of the controls relating to sloping sites, in that the development does not incorporate sufficient "stepping down" of the built form to reduce the overall bulk and scale of the development, such that it integrates with the landform and landscape and minimises site disturbance.
- The development does not maintain the landforms and natural environment of the site, in that the proposal includes a substantial extent and depth of excavation to accommodate the proposed development.
- The proposal lacks sufficient landscaping to soften the built form and to mitigate the visual impacts when viewed from adjoining properties and adjoining public spaces as referenced in the Landscape Officer comments in the referral section of this report.

#### **B4 Controls Relating to the Natural Environment**

Council's Landscape officer has assessed the application with regards to the requirement of this Clause, who has raised concern that the the development does not integrate with the landscape character of the locality, and that the proposal is unable to support landscape planting of a size that is capable of softening the built form.

The landscape proposal is not supported in terms of achieving design integration by landscape provisions, as well as the removal of trees within the road reserve of Whale Beach Road, and the impact upon Tree No. 4 within the neighbouring property.

Accordingly, this issue is included as reason for refusal.



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

The development retains the existing driveway on Surf Road (southern end of the site) for access to the basement level car park, and proposes a new driveway at the northern end for access to the ground level car park. The Applicant has indicated that the two access driveways are required as the site constraints do not allow for only one driveway to service the proposed development, and vehicular access from Whale Beach Road was not feasible due to the gradient of the slope of the site.

The site frontage is approximately 15m and only one access driveway is permitted under the DCP where the frontage to a local public road is less than 30m. The issue of two driveway within close proximity of each is not supported by Council's Traffic Engineer.

In addition to the above, the proposed development does not provide loading and unloading facilities for the development. The Statement of Environmental Effects further indicates that 'Loading and unloading and retail waste collection will occur from Whale Beach Road, and that the 'Ground level retail and all residential waste will be collected by a small rigid vehicle adjacent to the entrance into the car parking facilities from Surf Road. Council's Traffic Engineer has raised concern with proposal in this regard, stating that this will impact the street parking.

This issue has included as reason for refusal.

### B6.3 Off-Street Vehicle Parking Requirements

The parking requirements are as follows:

- 5 x 2 bedroom units (2 space per dwelling) = 10 spaces required
- 1.7 visitors spaces = 2 spaces
- Retail spaces (1 per 30 m<sup>2</sup> GFA and the total GFA is 313m<sup>2</sup>) = 10 spaces required

Total required = 22 spaces

The proposed development = 21 spaces

The proposed development results in a non-compliance of one parking space for retail component of the development. It is considered that the non-compliance of 1 space could be supported given the site is located in close proximity to Council's carparking area adjacent Whale Beach.

### D12.1 Character as viewed from a public place

The proposed development in terms of visual bulk and scale is not a considered response to the predominant scale of the existing development within the Palm Beach Locality. the proposed development is not consistent with the locality in that the scale of the development does not sufficiently step down the slope of the land and is not integrated with the natural landform.

The scale of the development is uncharacteristic. The extent of site coverage and side setbacks are not compatible with the context of the character of the locality.

### D12.5 Front building line

Minimum setback prescribed and minimum setback proposed is stipulated in the table below:

Built Form Control	Requirement	Proposed	Complies
Primary front building line	3.5m	Basement, Ground, Level	No

DA2020/0442



(Whale Beach Road)		1, Level 2: 1.6m to 4.0m	
		Level 3, Level 4: 3.0m to 6.4m	No
Secondary front building line (Surf Road)	1.75m (subject to consistency with objectives)	Level 3 bin store: Nil	No
		Basement: Nil	No
		Ground: Nil to 2.3m	No
		Level 1: Nil	No
		Level 2, Level 3: 3.5m	Yes
		Level 4: 3.5m to 10.5m	Yes

The proposed development is inconsistent with the 3.5m minimum setback prescribed by this development control to Whale Beach Road and to Surf Road. Whilst the non-compliance is carried across all three levels of the proposed development, the setback of the basement carparking level will not be visually obtrusive and the extent of non-compliance and excavation at the lower levels is entirely hidden from view. Despite the non-compliance with the numerical control, the siting of the proposal is considered to be appropriate, and will achieve consistency with the outcomes of the control as the development setback of the proposed building is consistent with the location of the existing building.

#### D12.6 Side and rear building line

Minimum setback prescribed and minimum setback proposed is stipulated in the table below:

Built Form Control	Requirement	Proposed	Complies
Side building line	North - 3.0m	Basement: Nil to 2.4m	No
		Ground: Nil to 3.0m	No
		Level 1, Level 2: 1.0m (retaining wall) to 3.0m (building)	No
		Level 3: Nil (access ramp) to 3.0m (building)	No
		Level 4: 3.0m	Yes
	South - 3.0m	Basement, Ground: 0.9m to 3.0m	No
		Level 1, Level 2, Level 3: 0.8m (retaining wall) to 3.0m (building)	No
		Level 4: 3.0m	Yes

The proposed development provides inadequate side setbacks to the adjoining E4 Environmental Living zoned residential properties. Specifically, the proposal provides inadequate physical separation between the building footprint and adjoining properties and insufficient deep soil landscape setbacks to allow landscape plantings to offset the height, bulk and scale of the development.

Overall, the proposal lacks sufficient landscaping to soften the built form and to mitigate the visual impacts when viewed from adjoining properties and adjoining public spaces as referenced in the Landscape Officer referral comments.



In this regard, the proposal is found to be inconsistent with the objectives of this control.

## 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:

- Inconsistent with the objectives of the DCP
- Consistent 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 proposed land uses are permissible with consent on the site pursuant to the provisions of PLEP 2014. As discussed throughout this report, there are no objections raised to proposed land uses on the site and redevelopment of the site will be highly beneficial to the site as well as the locality as a whole.

The proposed development has been assessed in terms of its built form and has found it not to be sufficiently sympathetic to this scenic and visually sensitive location and not sufficiently compatible as a form of development that will interface with the low density residential development surrounding the site.

However, the balance of development over preserving and maintaining the character of the locality has not been achieved. It is recommended that the buildings form should be broken down to a greater extent to better step the down with the topography of the site, to produce a form of development on the site which contextually fits within the established character of the locality to provide for a 'seaside-village' character.

There are a number of possible options for amendments to be made to this development to address the concerns raised in this report, such that it is designed in a manner that is consistent with the applicable planning controls and a development that is a more sympathetic development outcome for the site; one that is responsive to the topography of the land, the streetscape and the visual qualities of its prominent headland location. Discussions were held with the applicant in relation to design solutions, however, the process for dealing with an amended scheme is via a new Development Application, owing to the significant notification, assessment and referral requirements that are involved.

DA2020/0442



On balance, whilst there is significant architectural, streetscape and character benefits from the redevelopment of the site in the manner presented in this application, the excessive size, mass, bulk and scale of the building as lodged, unfortunately does not sufficiently satisfy the applicable controls. An amended scheme which addresses these issues should be explored and progressed, one which better achieves the visual and scenic quality outcomes embodied in the planning controls for sloping coastal sites in a low density residential setting and one that provides better protection of amenity and visual sensitivity to adjoining properties.

Accordingly, the proposal is recommended for refusal for the reasons provided below.

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 DA2020/0442 for the Demolition Works and construction of a Mixed Use Development comprising Shop Top Housing and retail premises, with associated carparking, landscaping and strata subdivision on land at Lot B DP 316404,231 Whale Beach Road, WHALE BEACH, for the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development and its associated Apartment Design Guide.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.7 Geotechnical hazards of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with the Desired Future Character of the location and is an over-development of the site.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.3 View Sharing of the Pittwater 21 Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.

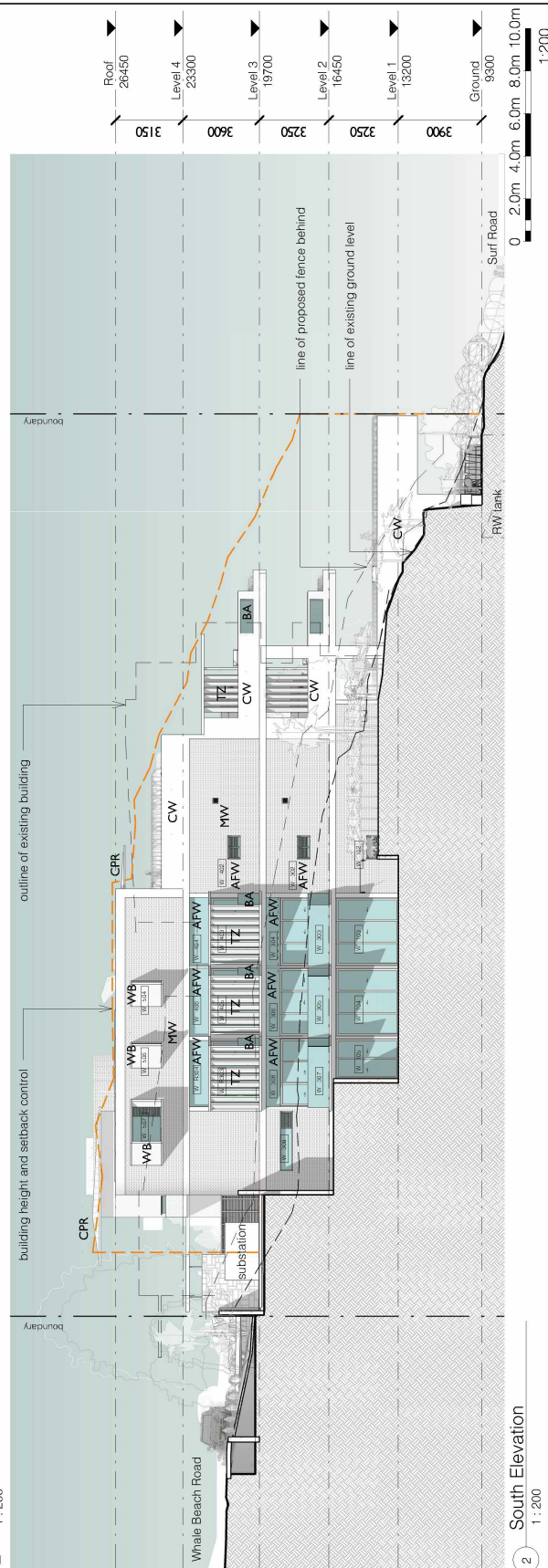


[illegible]





**1 North Elevation**  
1 : 200



**2 South Elevation**  
1 : 200

Revisions		Elevations	
No.	Description	Date	By
1	Issued for Services Consultation	27/09/19	KL
2	Addition of Substation	24/10/19	KL
3	Issued for Review	12/12/2019	KL
4	Preliminary DA	03/04/2020	KL
5	Development Application	17/04/2020	KL

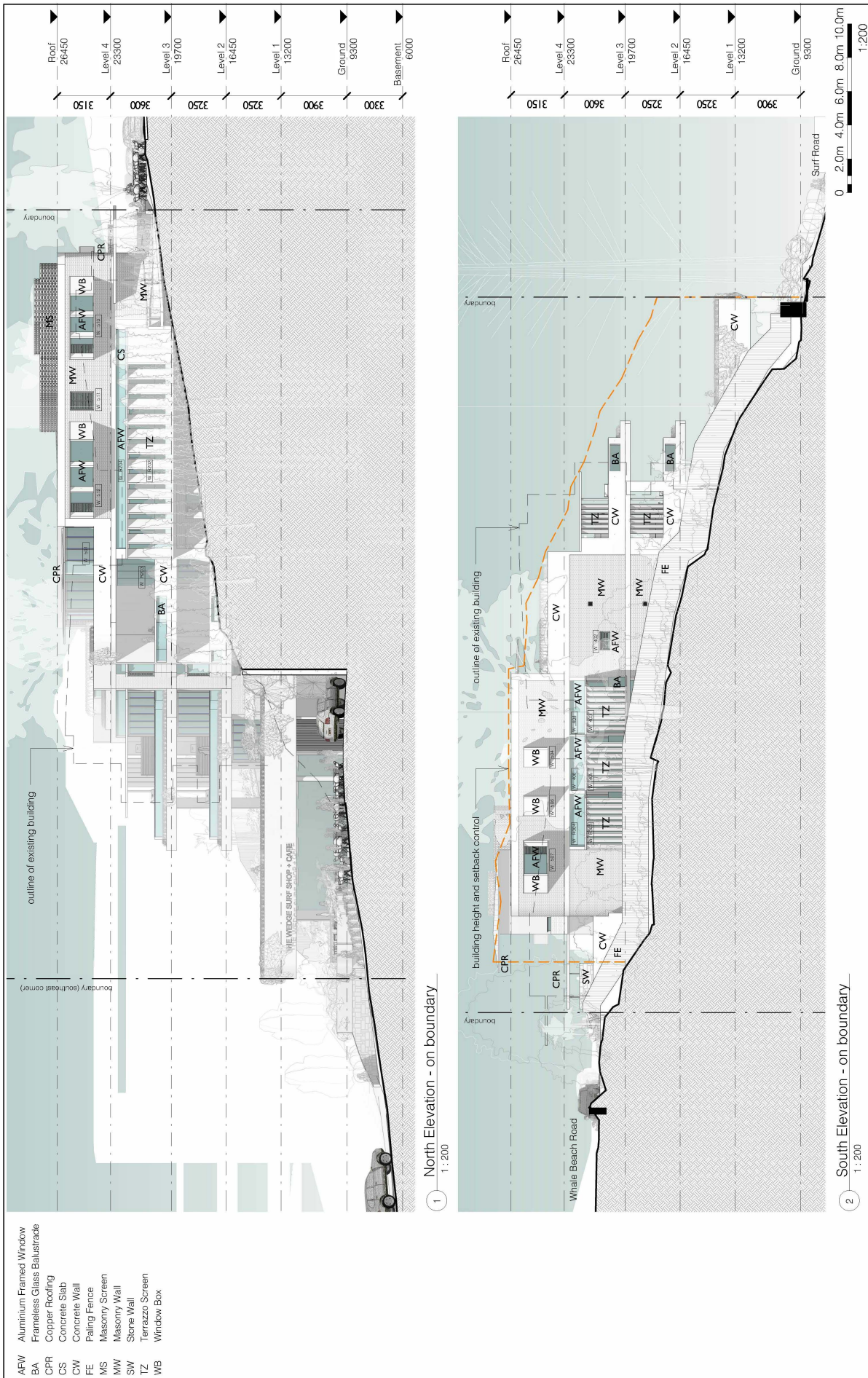
  

139 PALMGROVE ROAD, AVALON BEACH NSW 2107		WHALE BEACH NEIGHBOURHOOD	
t 02 99 18 3943		DEVELOPMENT APPLICATION	
m 0418 627 024		231 Whale Beach Road, Whale Beach	
e mail@richardcolearchitect.com.au		Project number	
w www.richardcolearchitect.com.au		Date	
acn 093 598 415 abn 598 093 598 415		Checked by	
nominated architect Richard Cole B.Sc (Arch) (Hons) 1 B.Arch (Hons) 1 Reg. No. 60388		Scale	
		1 : 200	
		DA10	









Boundary Elevations		
Project number	1609	Checked by
Date	April 2020	Scale
Drawn by	KW	DA12

WHALE BEACH NEIGHBOURHOOD		
DEVELOPMENT APPLICATION		
231 Whale Beach Road, Whale Beach		
Leslie Cassar		

No.	Revision Description	Date
L	Preliminary DA	03/04/2020
M	Development Application	17/04/2020

139 PALMGROVE ROAD, AVALON BEACH NSW 2107	
t 02 8918 3843	
m 04 18 627 024	
e mailto:richard@richardcolearchitect.com.au	
w www.richardcolearchitect.com.au	
asn 003 598 415 abn 58 085 415	
nominated architect Richard Cole B.Sc. (Arch) (Hons 1) B.Arch (Hons 1) Reg. No. 6538	



## 4.0 NON PUBLIC MEETING ITEMS

ITEM 4.1	DA2020/0607 - 9 ANEMBO ROAD DUFFYS FOREST - DEMOLITION WORKS AND CONSTRUCTION OF AN EMERGENCY SERVICES FACILITY AND SUBDIVISION
AUTHORISING MANAGER	LASHTA HAIDARI
TRIM FILE REF	2020/735052
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Subdivision Plan, Site Plan and Elevations

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the land owner is the council.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/0607 for demolition works and construction of an emergency services facility and subdivision at Lot 440, DP 46550, Lot 7003, DP1054793, Lot 7015, DP 1054791, 9 Anembo Road, Duffys Forest and Lot 7003 in DP 93993, Anembo Reserve, Duffys Forest subject to the conditions and for the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0607
<b>Responsible Officer</b>	Sarah McNeilly (Consultant Planner)
<b>Land to be developed (address)</b>	Lot 440, DP 46550, Lot 7003, DP1054793, Lot 7015, DP 1054791 No. 9 Anembo Road, Duffys Forest, Lot 7003 in DP 93993 Anembo Reserve (Crown Reserve No 84371)
<b>Proposed Development</b>	Demolition works and construction of an emergency services facility and subdivision.
<b>Zoning:</b>	RE1 Public Recreation
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Crown Land
<b>Applicant:</b>	Northern Beaches Council
<b>Application lodged:</b>	12 March 2020
<b>Application Type:</b>	Local
<b>State Reporting category:</b>	
<b>Notified:</b>	22/06/2020 to 06/07/2020
<b>Advertised:</b>	Not Advertised, in accordance with Community Participation Plan.
<b>Submissions:</b>	Nil (0)
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$1,621,789.00

### EXECUTIVE SUMMARY

The proposal seeks Development Consent for the demolition of the existing rural fire station and associated works, and construction of a new single storey fire station building and associated parking and external facilities. The application also includes a consolidation of 4 lots to create 2 simplified lots with a small area of additional space given from the Reserve to the Rural Fire Station zone

The public notification of the application resulted in no submissions being received.

The site is unsewered and the development proposes a pump out sewage solution. This has been the subject of discussion with Council's Health and Biodiversity officers, to find a solution which best addresses concerns with regard to the risk of a pump-out system being neglected, and the environmental toll of other alternatives which occupy larger areas.

Council's Health Officer has provided support for the pump out solution and this will be subject to conditions on use with a Plan of Management required.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the current proposal is worthy of approval, and development consent is recommended subject to conditions of consent.

## **PROPOSED DEVELOPMENT IN DETAIL**

The development application seeks to:

### **Fire Station Buildings**

- Demolish the existing rural fire station including the primary structure (278m<sup>2</sup>)
- Demolish metal shed and carpark area.
- Construction of a new single storey (6.3m) fire station building (458m<sup>2</sup>) providing:
  - Truck parking for up to 4 vehicles
  - Cleaning area
  - Utility room
  - Male, female and accessible bathrooms facilities
  - Multi-function room with kitchen
  - Media room
  - Entry area

Two options for materials for the new fire station building are detailed on the plans:

1. metal sheeting, which is noted to be sacrificial in the event of a fire, or
2. concrete panels.

Both will achieve flame zone requirements. The applicant has confirmed that the option to be considered by this Development Application is option 1 - metal sheeting.

### **External Facilities**

- Rainwater tanks x 2 (volume 20,000 litres each)
- Hose drying post
- New open hardstand area and driveway access
- Parking for 10 vehicles include 2 accessible spaces
- Construction of an on-site wastewater (sewage) disposal system with pump out connection
- New external lighting
- Creation of improved Asset Protection Zone
- Stormwater trenching

A total of 630m<sup>2</sup> of vegetation will be removed or modified.

### Subdivision

Consolidate the boundaries of the existing 4 lots to create 2 new simplified lots with a small area of additional space given from the Reserve to the Rural Fire Station lot.

- The resulting new Rural Fire Service lot will increase from 3 lots with a total area of 1146m<sup>2</sup> to 1 lot with a total area of 3519.3m<sup>2</sup>.
- The 21.9-hectare Crown Reserve will decrease in size by 1173m<sup>2</sup>.

Following the preliminary assessment, the applicant met with Council and the following additional information was provided by the applicant:

- Amended details of the wayfinding signage
- Amended wastewater proposal to better address concerns of Environmental Health and Waste Management Officers.

These details were provided on 30 October 2020 following discussions with the applicant and relevant Council officers.

### Ownership of Land

The site is Crown Land with Council the nominated Crown Land Manager (CLM) under the provisions of the Crown Land management Act 2016. Crown lands have confirmed that Council has the authority to act as the owner, and provide consent for lodgement of the application.

The land is classified as community land and the Urban Bushland Reserves Plan of Management for Anembo, Bantry Bay, Condover, Lillihina And Rohoker Reserves November 2008 applies to the site. This is addressed later in the report and the works are found to be consistent with the POM.

### SUMMARY OF ASSESSMENT ISSUES

The assessment issues are summarised below:

- Unsewered land
- Bushfire Prone Land
- Warringah Development Control plan – E3 Threatened Species, populations, ecological communities
- Warringah Development Control plan – E4 Wildlife Corridors
- Warringah Development Control plan – E5 Native Vegetation



## SITE DESCRIPTION

<b>Property Description:</b>	Lot 440, DP 46550, Lot 7003, DP1054793, Lot 7015, DP 1054791, No. 9 Anembo Road, Duffys Forest, NSW & Lot 7003 in DP 93993, Anembo Reserve (Crown Reserve No 84371)
<b>Detailed Site Description:</b>	<p>The subject site consists of three allotments forming the Rural Fire Services site being Lot 440, DP 46550, Lot 7003, DP1054793, Lot 7015, DP 1054791 and is known as No. 9 Anembo Road, Duffys Forest and the larger Crown Reserve (Crown Reserve No 84371) legally described as Lot 7003 in DP 93993 being Anembo Reserve. The RFS site has an area of 1145m<sup>2</sup> in total and the Crown Reserve has an area of approximately 21.9 hectares.</p> <p>The site is irregular in shape with the Rural Fire Service land fronting the southern end of Anembo Road. The area is accessed by a gated driveway, leading to a bitumen car park and the current rural fire service station and a metal shed. The Crown Reserve surrounding the RFS site is well vegetated and sits on the eastern, southern and western boundaries of the RFS lots. The Reserve houses a horse arena and horse trails and is surrounded by Ku-ring-gai chase national park.</p> <p>The site is located within the RE1 Public Recreation.</p> <p>The character of the immediate locality to the north is predominately large rural lots with detached dwelling houses and associated primary productions outbuildings.</p>

Map



## SITE HISTORY

### DA2018/1883

#### ***Demolition works and construction of an emergency services building and subdivision***

This application was submitted on 28 November 2018 and withdrawn by the applicant on 15 August 2019 as the proposal triggered the preparation of a Biodiversity Development Assessment Report. The scope of works was similar but greater than the current scheme and issues were raised by Council with regard to site disturbance; on-site wastewater treatment; and access along the existing horse trails.

### **Pre-lodgement Meeting (PLM2020/0057)**

The applicant attended a pre-lodgement meeting at Council on 31 March 2020, to discuss the amended scheme. The PLM minutes concluded that the proposed subdivision and fire station will improve the ability of the NSW Rural Fire Service to provide emergency services. No concern was raised to the built form of the fire station or the parking layout subject to APZ management requiring minimal vegetation/tree removals and avoidance of any potential impacts on threatened species and communities.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the initial public exhibition process no submissions were received.

## REFERRALS

Internal Referral Body	Comments
Engineering	<p>Council's Engineering Officer has provided the following comments:</p> <p><i>No objections to the Duffys Forest RFS redevelopment subject to conditions. The proposal is therefore supported.</i></p> <p>Recommendation: Approval subject to conditions</p>
Environmental Health – Unsewered land	<p>Council's Environmental Health Officer has provided the following comments:</p> <p><b>4/11/2020</b>  <i>Although development relying on a pump-out system should be prohibited; it is not a viable option in the long-term because of widespread misuse and abuse, Council, we can accept a pump out system in this instance taking into consideration the following:</i></p> <ul style="list-style-type: none"> <li>- <i>The proposed development is a critical service in protecting human life and the community's assets</i></li> <li>- <i>The flora of concern is critically endangered making a surface or subsurface disposal area non-viable</i></li> <li>- <i>Compliant operation of the pump out system can be achieved by conditioning the provision of a Plan of Management (POM) prior to CC. We can request this is submitted to the satisfaction, of our team specifically, before the CC is issued.</i></li> </ul> <p><i>The POM must include key information including scheduled pump outs, list of licensed pump out providers, list of responsible persons and emergency contacts, etc.</i></p> <p>Recommendation: Approval subject to conditions</p> <p><b>12/06/2020</b>  <i>Development relying on a pump-out system should be prohibited; it is not a viable option in the long-term because of widespread misuse.</i>            Recommendation: Refusal (superseded)</p>
Natural Environment - Biodiversity	<p>Council's Natural Environment (Biodiversity) Officer has provided the following comments:</p> <p><b>30/10/20</b></p>

Internal Referral Body	Comments
	<p><i>On analysis of the various sewage treatment options proposed, I support the Ecologist's recommendation to retain the current pump out sewerage system. Maintaining the current system, rather than any of the three on-site treatment options considered, will not require native vegetation clearing thereby avoiding additional impacts to biodiversity.</i></p> <p><b>21/7/20</b> Council's natural environment, biodiversity section has reviewed the proposal against relevant Warringah 2011 DCP controls including:</p> <ul style="list-style-type: none"> <li>- E1 Preservation of Trees or Bushland Vegetation</li> <li>- E2 Prescribed Vegetation</li> <li>- E4 Wildlife Corridors</li> <li>- E5 Native vegetation</li> </ul> <p><i>As identified in the Flora and Fauna Assessment (GIS Environmental Consultants 2020), the revised application has demonstrated a process of avoiding and mitigating impacts including (but not limited to):</i></p> <ul style="list-style-type: none"> <li>- A reduction on the size of the APZ from 30m to 10m</li> <li>- A reduction in direct impacts to native vegetation from approximately 3000m<sup>2</sup> to 630m<sup>2</sup></li> <li>- Reduced impacts on threatened flora (<i>Tetratheca glandulose</i>) which occurs on site</li> <li>- The use of pump out sewage system rather than construction of an onsite sewage dewatering area.</li> </ul> <p><i>The revised application no longer triggers requirements for a Biodiversity Development Assessment Report including associated offset obligations. Further mitigation of impacts has been identified in the Flora and Fauna Assessment and would form part of the conditions of consent subject to approval of the application.</i></p> <p><i>The proposal is therefore supported.</i></p> <p><b>Recommendation: Approval</b></p>
Traffic Engineer	<p>Council's Traffic Engineering Officer has provided the following comments:</p> <p><i>The proposal is for construction of a replacement Fire Station building and associated car parking.</i> Gross floor area (GFA) = 458.1 m<sup>2</sup> <b>Traffic:</b></p>



Internal Referral Body	Comments
	<p>· Demolition and Construction Traffic Management Plans are required. · Traffic impact:</p> <p><i>Rates as per Guidelines for Traffic Generating Developments under Industry/Factory in Section 3.10.1.</i></p> <ul style="list-style-type: none"> <li>- Daily vehicle trips = 5 per 100 m2 gross floor area</li> <li>- Evening peak hour vehicle trips = 1 per 100 m2 gross floor area</li> </ul> <p><i>Traffic generation:</i></p> <ul style="list-style-type: none"> <li>- Daily traffic = 23 trips</li> <li>- Peak hour traffic = 5 trips</li> </ul> <p><i>Negligible and no concern.</i></p> <p><b>Public transport availability</b> Yes.</p> <p><b>Parking:</b> · Required as per Warringah DCP</p> <p><i>Vehicles:</i></p> <ul style="list-style-type: none"> <li>- As per Industry type development: 1.3 space / 100 m2 GFA, accordingly 6 spaces</li> </ul> <p><i>Bicycles:</i></p> <ul style="list-style-type: none"> <li>- As per c3(A): 1 space/200m2 GFA and 1/600m2 for visitors, accordingly 3 spaces</li> </ul> <p>· Provided: 10 vehicular spaces including 2 accessible spaces. Bicycle parking is not provided exclusively but there are enough space for bicycle parking provisions.</p> <p>· Occasional excessive parking requirements rely on on-street parking of 40 available spaces in 250m length of road. Based on empirical analysis 4 shortfall of parking during monthly meeting and 20 shortfall of parking during AGM.</p> <p><i>Parking requirements are satisfactory.</i></p> <p><b>Access and circulation swept paths:</b></p> <ul style="list-style-type: none"> <li>· Access: <ul style="list-style-type: none"> <li>- Existing driveway will be used.</li> <li>- Exit/Entry in a forward direction</li> </ul> </li> <li>· Swept paths <ul style="list-style-type: none"> <li>- Not provided. However, aisle width of 6.1m is more than the required aisle width of 5.8m.</li> </ul> </li> </ul> <p><b>Pedestrian safety:</b> No concerns.</p>

Internal Referral Body	Comments
	<p><b>Servicing:</b> <i>Waste management Plan has been submitted.</i></p> <p><b>Ongoing</b> <i>All facilities should be maintained throughout the lifetime of project.</i></p> <p><b>Conclusion</b> <i>In view of the above, the development proposal can be approved with conditions. The proposal is therefore supported.</i></p> <p>Recommendation: Approval</p>
Water Management	<p><b>17/11/2020</b> Council's Water Management Officer has confirmed that they have no objections to the proposed development subject to the inclusion of conditions of consent.</p> <p>Recommendation: Approval subject to conditions</p> <p><b>22/7/2020</b> <i>The applicant has not provided sufficient treatment of water quality to satisfy the controls.</i></p> <p><i>The lot is located in the Kierans Creek catchment, and is less than 100 metres from National Park. Kierans Creek is a Category B (high priority) catchment under Warringah's Creek Management Study (2004), and therefore stormwater discharged from the development must not impact receiving waters. Runoff must be retained at natural discharge rates and sediments controlled at the source. Stormwater flow is to mimic natural conditions, avoiding concentrated discharge points.</i></p> <p><i>The lot requires a vegetated infiltration treatment system with a sediment forebay. It is recommended that the system disperses discharged flows across a wide area to replicate natural conditions as much as possible.</i></p> <p><i>The water management plan must be prepared by a qualified stormwater engineer and a MUSIC file must be submitted with the application.</i></p> <p><i>The proposal is therefore unsupported.</i></p> <p>Recommendation: Refusal (Superseded)</p>

Internal Referral Body	Comments
Natural Environment (Coastal)	<p>Council's Natural Environment (Coastal) Officer has provided the following comments:</p> <p><i>The proposal is supported without condition. The proposed development is not covered by sections 13, 14 or 15 of the NSW Coastal Management SEPP. The proposal is therefore supported.</i></p> <p>Recommendation: Approval</p>
Landscape Architect	<p>Council's Landscape Officer has provided the following comments:</p> <p><i>The Arborist's Report submitted with the application is noted. The report identifies 13 trees to be removed to accommodate the works. No objections are raised to the proposed removals.</i></p> <p><i>The site is located within environmentally sensitive land. I would defer to comments from Council's Bushland and Biodiversity section for comments and conditions relating to the natural environment.</i></p> <p><i>No objections are raised with regard to landscape issues subject to conditions.</i></p> <p><i>The proposal is therefore supported.</i></p> <p>Recommendation: Approval</p>

External Referral Body	Comments
Rural Fire Service	<p>The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and supports the proposal subject to conditions of consent.</p>

## 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 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Not Applicable
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p>Division 8A of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters may be addressed via a condition of consent should this application be approved.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000: Council did not formally request additional information. However, additional information was supplied following discussions with the applicant to further clarify waste water options and signage.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent should this application be approved.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be addressed via a condition of consent should this application be approved.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>In particular, the proposed development is considered to provide a positive contribution to the built environment,</p>



Section 4.15 'Matters for Consideration'	Comments
and economic impacts in the locality	being replacement structures for existing community services.  The proposed development will not have a detrimental social impact on the locality.  The proposed development will not have a detrimental economic impact on the locality.
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	The application was notified for a period of 14 days from 22/06/2020 to 06/07/2020. The public exhibition resulted in nil (0) submissions.
Section 4.15 (1) (e) – the public interest	The development is considered to be in the public interest providing a rural fire service facility, for the benefit of the local community.

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

#### STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS) AND STATE REGIONAL ENVIRONMENTAL PLANS (SREPS)

##### State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 replaces the repealed provisions of clause 5.9 of the standard instrument LEP relating to the preservation of trees and vegetation.

The aims of this Policy are to protect the biodiversity values of trees and other vegetation, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The development proposes 13 trees to be removed to accommodate the works. No objections are raised to the proposal by Council's Bushland and Biodiversity section and the loss is supported by expert consultant reports. The development is appropriate when considered against the requirements of the SEPP.

#### 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 recreational 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 ongoing land use.

#### WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

Is the development permissible	Yes Emergency services facilities are a permissible use with consent
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	-	3,519m <sup>2</sup>	-	N/A
Height of Buildings	-	6.395m	-	N/A

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.6 Exceptions to development standards	N/A
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

### Zone objectives

The objectives of the RE1 zone are as follows:

- *To enable land to be used for public open space or recreational purposes.*

The installation of replacement rural fire service facilities within the public open space area continues to allow for use for recreation purposes. The proposed location of the structures remains primarily within the existing cleared area and do not disrupt the use of the space.

- *To provide a range of recreational settings and activities and compatible land uses.*

The recreational setting is retained.

- *To protect and enhance the natural environment for recreational purposes.*

The natural environment is retained and protected.

- *To protect, manage and restore public land that is of ecological, scientific, cultural or aesthetic value.*

The upgraded and replacement emergency service building and associated facilities have been sited to ensure that the valuable areas of the land are retained and protected.

- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

The development is appropriate when considered against the values of the zone and can be supported subject to conditions of consent.

### WARRINGAH DEVELOPMENT CONTROL PLAN 2011

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B12 National Parks Setback	Yes	Yes
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities		
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
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
B8 Privacy	Yes	Yes

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D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened Species, populations, ecological communities	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

##### **Objectives of DCP**

The objectives of the DCP are met by the proposed development as is demonstrated in the following:

- *To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood*

Comment: The development responds to the location of the site replacing an existing fire station and ancillary facilities with replacement and upgraded structures in a similar location.

- *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome*

Comment: The development will have an appropriate impact and the overall landscape will not be detrimentally impacted.

- *To inspire design innovation for residential, commercial and industrial development*

N/A

- *To provide a high level of access to and within development.*

Access and wayfinding signage is improved.

- *To protect environmentally sensitive areas from overdevelopment or visually intrusive development so that scenic qualities, as well as the biological and ecological values of those areas, are maintained*



Comment: Scenic qualities and natural qualities are not detrimentally impacted by the Rural Fire Service station which is considered to be of appropriate scale when considered against the structures which it will replace.

- *To achieve environmentally, economically and socially sustainable development for the community of Warringah*

Comment: This is achieved with the facility required by the community and located in an appropriate space with reasonable and sustainable impacts.

#### **D10 Building Colours and Materials**

The Development Application plans include two options for materials for the new fire station building being:

1. metal sheeting, which is noted to be sacrificial in the event of a fire, or
2. concrete panels.

Both will achieve flame zone requirements. The applicant has confirmed that the preferred option is option 1 - metal sheeting. As this option is sacrificial during a fire event, it is considered an inappropriate solution for the site. Accordingly, the application has been conditioned to require construction with concrete panels.

#### Detailed Assessment

#### **E3 Threatened Species, populations, ecological communities; E4 Wildlife Corridors; E5 Native Vegetation**

The site is located within an area included as a wildlife corridor and the larger area of the Crown Reserve has ecological value. The applicant has provided a Biodiversity Management Plan and a Flora and fauna Assessment which demonstrate the proposal has a reasonable and appropriate impact and is located in the cleared area.

The site is outside the area mapped as Threatened and High Conservation Habitat within Anembo Reserve. However, threatened species were identified in close proximity during the field survey of the site including:

- *Tetratheca glandulosa* (plants – some located along the southwestern boundary)
- *Syzygium paniculatum* (plant located at front of site adjacent driveway)
- *Eucalyptus camfieldii* (tree – occurs south of site)
- Eastern Pygmy Possum *Cercartetus nanus*
- Rosenberg's Goanna *Varanus rosenbergi*
- Red Crowned Toadlet *Pseudophryne australis* (in Anembo Reserve)

Council's Natural Environment Officer is satisfied that the proposal is appropriate with regard to impacts subject to conditions of consent.

## **E7 Development on Land Adjoining Public Open Space**

### Description of Non-compliance

The DCP requires development on land adjoining public open space complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces.

### Merit consideration

The RFS proposal and continued use is consistent with the public open space landscape character. It is of negligible impact on the enjoyment of the open space or the visual aesthetic of the Reserve.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the WDCP and the objectives specified in Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **URBAN BUSHLAND RESERVES PLAN OF MANAGEMENT FOR ANEMBO, BANTRY BAY, CONDOVER, LILLIHINA AND ROHOKER RESERVES November 2008**

The site is covered by the Urban Bushland Reserves Plan of Management for Anembo Reserve. The Plan makes reference to the Rural Fire Service use of the site but does not specifically deal with future upgrades. The structure of the POM bases its forward planning on the premise of retention and improvement of the natural environment, appropriate bushfire hazard protection and ensuring the retention of sustainable recreation facilities.

It is considered that the proposed development is consistent with the key objectives and intent of the Plan of Management.

## **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**

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

A monetary contribution of \$16,218 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,621,789.

## CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant Environmental Planning Instruments and draft EPI's;
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy 71 – Coastal Protection
- Warringah Local Environment Plan 2011;
- Warringah Development Control Plan 2011;
- Codes and Policies of Council AND
- Urban Bushland Reserves Plan of Management for Anembo, Bantry Bay, Condover, Lillihina And Rohoker Reserves November 2008

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application, and does not result in any unreasonable impacts for the surrounding open space, Crown Reserve, or neighbouring residential properties subject to the conditions contained within the recommendation.

The development is considered to be an appropriate upgrade for the Rural Fire Service facilities, that has appropriately considered the need to ensure negligible impacts on the surrounding natural environment with biodiversity a key consideration in this location.

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

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

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

## RECOMMENDATION

THAT Council as the consent authority approve Development Consent to DA2020/0607 for Demolition works and construction of an emergency services facility and subdivision on land at Lot 440, DP 46550, Lot 7003, DP1054793, Lot 7015, DP 1054791, No. 9 Anembo Road, Duffys Forest & Lot 7003 in DP 93993, Anembo Reserve (Crown Reserve No 84371), 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
DA-A-000 Rev. E	16/03/2020	Quattro Architecture
DA-A-020 Rev.E	16/03/2020	Quattro Architecture
DA-A-030 Rev.E	16/03/2020	Quattro Architecture
DA-A-040 Rev.F	11/05/2020	Quattro Architecture
DA-A-050 Rev.E	16/03/2020	Quattro Architecture
DA-A-070 Rev.E	16/03/2020	Quattro Architecture
DA-A-090 Rev.E	16/03/2020	Quattro Architecture
DA-A-100 Rev.E	16/03/2020	Quattro Architecture
DA-A-200 Rev.F	11/05/2020	Quattro Architecture
DA-A-201 Rev.F	11/05/2020	Quattro Architecture
13614Ddetail – Survey Plan Iss.5	02/03/2020	CMS Surveyors Pty Limited

Engineering Plans/Stormwater		
Drawing No.	Dated	Prepared By
H000 Iss.A	13/03/2020	Glenn Haig & Partners
H001 Iss.B	06/08/2020	Glenn Haig & Partners
SW001 Iss.A	13/03/2020	Glenn Haig & Partners



<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Arboricultural Impact Assessment Report	20/01/2020 Rev. 18/05/2020	Blues Bros Arboriculture
Access Report	16/10/2017	BCA Access Solutions
BCA Capability Statement	30/03/2020	MBC Certifiers
Bushfire Protection Assessment Ver.2	January 2020	Eco Logical Australia
Flora & Fauna Assessment Report	26/05/2020	GIS Environmental Consultants
Geotechnical Report (Infiltration Testing)	20/07/2018	White Geotechnical Group
Statement of Environmental Effects	May 2020	Boston Blyth Fleming
Traffic Impact Assessment Report with Car Park Certification Rev.1.2	December 2019	Solution 1 Traffic Engineers
Visual Impact Statement	07/04/2020	Quattro Architecture

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

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

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	25/10/2016	Northern Beaches Council

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. Submission of pump out certification

Certification of pump out are to be submitted to Council on a quarterly basis for the first 12 months of operation. After which the certification be made available to Council upon request.

Reason: Ensure protection of the environment

## 3. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- 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);
- 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 (Crown Land Only)

(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) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (c) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (d) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.
- (e) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (f) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (h) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths,

roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (j) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

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

- (k) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

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

#### 5. Fencing Height / Vegetation

No fencing and/or vegetation along the road frontage shall impede pedestrian or driver visibility.

Reason: To ensure maximum vehicular and pedestrian visibility. (DACTRBOC1)

### FEES / CHARGES / CONTRIBUTIONS

#### 6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$16,217.89 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 \$1,621,789.00.

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



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

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

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

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

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

#### 7. **Security Bond**

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

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

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

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

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

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

#### 8. **Preparation of Environmental Management Checklist**

A Construction Environmental Management Checklist (CEMC) is to be prepared and is to incorporate all measures for the protection of native vegetation, wildlife and habitats during the construction phase. Measures specified in the checklist are to include all conditions of consent addressing construction-related impacts to biodiversity. The CEMC is to be provided to the Principal Certifying Authority prior to the issue of the Subdivision Works Certificate.

Reason: To protect native vegetation, wildlife and habitats in accordance with relevant

Natural Environment LEP/DCP controls.

**9. Installation of Nest Boxes**

Nest boxes are to be installed at ratio of 1 (tree hollow removed) to 2 nest boxes. Nest boxes are to be of suitable size for fauna species equivalent to size of hollows lost for tree removals. Nest boxes must be attached in accordance with industry best practice (e.g. expandable tree sensitive methods).

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Certifying Authority prior to issue of the Subdivision Works Certificate.

Reason: To maintain wildlife habitat in accordance with relevant Natural Environment LEP/DCP controls.

**10. Permanent Delineation of Asset Protection Zones**

Prior to the commencement of any vegetation clearance/modification, the boundaries of the bushfire Asset Protection Zone (APZ) are to be surveyed by a registered surveyor and permanently delineated by way of permanent Bollards which complies with the following Subdivision Works specifications:

- i Bollards: Minimum 100mm high galvanised posts of at least 40mm diameter with galvanised cap. Bollards are to be spaced at a maximum of 10m intervals (avoiding horse trails).

Any proposed alternative fence designs must be approved by Council in writing.

Clearing of vegetation for APZ establishment must only occur within the marked APZ boundaries. Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifying Authority prior to issue of the Subdivision Works Certificate.

Reason: To protect native vegetation and wildlife in accordance with relevant Natural Environment LEP/DCP controls.

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

**11. Directional Signage & Pedestrian Access**

The applicant is to provide a detailed plan to the satisfaction of Council Landscape Officer detailing directional signage including:

- Direct pedestrian / cycle path from road and through RFS carpark to access public land safely without sharing with a horse trail
- Associated signage to provide a clear recognition of access for horses and separate access for pedestrians/cyclists
- The mobile unit shall be relocated/realigned to allow for path access.

Reason: To ensure safe and clear access for pedestrians

**12. Building Materials – Concrete Panels**

The approval is for concrete panel construction. Revised plans are to be provided at Construction Certificate stage deleting all references to the alternate building material options.

Reason: To ensure plans are specific.

**13. Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's, WARRINGAH WATER MANAGEMENT POLICY PL850. Stormwater drainage plans generally in accordance with the concept plan submitted with the Development Application by Glen Haig and partners (Drw H0001 -H0002) prepared by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows and compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

**14. Detailed Design of Stormwater Quality System**

A certificate from a Civil Engineer, stating that the stormwater quality management system has been designed in accordance with the HYDRAULIC SERVICES PLAN (172961H001/rev B/06.08.20) and the Council's Water Management Policy.

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

Reason: Protection of the receiving environment

**15. Soil and Water Management Plan**

A Soil and Water Management Plan (SWMP) shall be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER-3) and implemented onsite prior to commencement. The SWMP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004) and Council's Water Management Policy. The SWMP must include the following as a minimum:-

- i Site boundaries and contours;
- i Vehicle access points, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- i Location of all drains, pits, downpipes and waterways on and nearby the site;
- i Planned stages of excavation, site disturbance and building;
- i Stormwater management and discharge points;
- i Integration with onsite detention/infiltration;
- i Sediment control basin locations and volume (if proposed);
- i Proposed erosion and sediment controls and their locations;
- i Location of washdown and stockpile areas including covering materials and

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- methods;
- i Vegetation management including removal and revegetation;
- i A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- i Inspection and maintenance program;
- i North point and scale.

All Site drainage and sediment and erosion control works and measures as described in the SWMP, and any other pollution controls, as required by these conditions, shall be implemented prior to commencement of any other works at the Site.

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

Reason: To promote the long-term sustainability of ecosystem functions

#### 16. Sewage pumpout Plan of Management

Prior to the issue of any Construction Certificate a Plan of Management is to be prepared for the pump out system to the satisfaction of the Certifying Authority. The plan shall include detail to manage the requirements detailed as follows but not limited to:

- 1) Scheduled pump outs
- 2) Details of licensed pump out providers
- 3) List of responsible persons for the system
- 4) Emergency contact
- 5) Emergency shutdown procedure
- 6) Pump out procedure
- 7) Location and use of spill kits and containment
- 8) Name and address of licence and approved sanitary depot for management
- 9) Servicing time frames and providers.

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

#### 17. Wastewater Certified Engineering Details

The applicant shall submit to Council Certified Engineering Details for the On-Site Wastewater Treatment System drawn to scale. The drawings shall be dimensioned and accompanied by a listing of all components with name, model, size, description, function, material of manufacture and location of the wastewater system. All components are to be shown including electric motor (s), gearbox, compressor, pump(s), valves, diffusers, venturi, media, media fixings, chlorinator, pipework, scum collection and sludge pumping equipment, baffles, partitions, brackets, fastenings, electrodes, float switches, control panel and the arrangement of alarms.

Reason: Compliance with Australian Standards and NSW Health Guidelines

#### 18. NSW Health Certificate of Accreditation

The applicant shall submit to Council a copy of the NSW Health Certificate of Accreditation Or equivalent for the proposed On-Site Wastewater Treatment System. The Certificate shall identify the model/type of system, the manufacturer's name and business address/contact details, date of issue of the Certificate, Certificate number and expiry date of the Certificate.



Reason: Compliance with Australian Standards and NSW Health Guidelines

**19. Pre-commencement Dilapidation Report**

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

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

Reason: Protection of Council's infrastructure during construction.

**20. Delineation Asset Protection Zone**

Prior to the commencement of any onsite building works or commencement of vegetation clearance/modification, the extent of the bush fire Asset Protection Zone must be surveyed and marked on ground.

The clearing of vegetation for Asset Protection Zone establishment is to be confined within Asset Protection Zone boundaries.

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

Reason: Bushland Protection.

**21. No Artificial Lighting – Fauna Habitats**

No artificial light is to be directed toward or illuminate the adjoining natural areas at any time during or post-construction. Light spillage must be contained to the building footprint and hardstand areas only.

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

Reason: Minimise impacts on nocturnal native fauna

**22. Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure all bushland protection measures are carried out according to the conditions of consent.

The Project Ecologist will provide certification that all recommendations relating to the Flora and Fauna Assessment (GIS Environmental 2020) are carried out. The Project Ecologist will ensure that all conditions relating to the biodiversity management of the property are fully implemented.

The Project Ecologist must have one of the following memberships/accreditation  
i Practising member of the NSW Ecological Consultants Association OR

- i Biodiversity Assessment Method assessor accreditation under the NSW Biodiversity Conservation Act 2016

Reason: To ensure bushland management.

**23. Landscaping**

All plants used in the landscaping for this development must be local native species as per the species list identified in the Flora and Fauna Assessment (GIS 2020). No Grevillea or Banksia hybrids are to be used in the landscaping for this development. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Biodiversity conservation and management

**24. 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_rights/buildings/good.htm).  
<[www.hreoc.gov.au/disability% 20rights%20/buildings/good.htm](http://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

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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)

## 25. Vehicle Access & Parking

All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards). Where disabled parking spaces are provided, they must be in accordance with AS2890.6:2009

With respect to this, the following revision(s) must be undertaken;

All internal driveways and vehicle access ramps must have ramp grades and transitions complying with AS 2890.1. To ensure the gradient requirements and height clearances are satisfied, a driveway profile must be prepared for all internal ramps showing ramp lengths, grades, surface RL's and overhead clearances, taken from the crest of the ramp to the base. The driveway profile must be taken along the steepest grade of travel or sections having significant changes in grades, where scraping or height restrictions could potentially occur and is to demonstrate compliance with AS 2890 for the respective type of vehicle.

Plans prepared by a suitably qualified Engineer shall be submitted to the accredited certifier prior to the issue of a Construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles. (DACTRCPC1)

## 26. Car Parking Finishes

All driveways, car parking areas and pedestrian paths are to be surfaced and sealed. Details of treatment to these areas are to be submitted to the Accredited Certifier prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff. (DACTRCPC2)

# CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

## 27. Tree and vegetation protection

- a) Existing trees and vegetation shall be retained and protected, including:
  - i) all trees and vegetation not indicated for removal in the Arboricultural Impact Assessment dated 18 May 2020 prepared by Blues Bros Arboriculture, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
  - ii) all trees and vegetation located on adjoining properties,
  - iii) all road reserve trees and vegetation not approved for removal.
- b) Tree protection shall be undertaken as follows:
  - i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated 18 May 2020 prepared by Blues Bros Arboriculture and Australian Standard 4970-2009 Protection of Trees on Development Sites,

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

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



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

Reason: tree and vegetation protection.

**28. Protection Fencing**

Protection fencing measures (including sedimentation fences) are to be installed in accordance with all approved plans including those specified in the Flora and Fauna Assessment (GIS Environmental 2020). Fencing must avoid areas of *Tetratheca glandulosa*). Protection measures are to be maintained for the duration of the works. Protection fencing that is no longer required is to be removed once all works are completed.

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

Reason: Environmental Protection

**29. Work Zones and Permits**

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

Reason: To ensure works vehicles do not impact on parking, traffic flows and pedestrian thoroughfares. (DACTRDPC1)

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

**30. 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.

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

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by Glenn Haig drawing 172961SW001/revA/13.03.20 prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

**32. Substitution of Stormwater Treatment Measure**

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must be submitted to the Principal Certifying Authority for approval prior to installation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

**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:

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

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. Protection of rock and sites of significance**

- a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.
- b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

**36. Fauna and Tree Hollow re-location**

During any vegetation clearance for Asset Protection Zones and construction works the Project Ecologist is to be present to re-locate any displaced fauna that may be disturbed during this activity.

Tree hollows are to be salvaged from trees within the development area and placed within the retained vegetation / Conservation Areas within the Lots. This is to be done by a qualified and experienced Arborist, under the direction of the Project Ecologist.

Details prepared by the project ecologist in writing demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure bushland management in accordance with Local Habitat Strategy 2007.

**37. Implementation of Traffic Control / Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Traffic Control / Management Plan and approved permits. All traffic controls must be undertaken by personnel having appropriate RMS accreditation.

Reason: To ensure works practices do not impact on parking, traffic flows and pedestrian thoroughfares. (DACTREDW1)

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

**38. Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by the design engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

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

**39. Certification for the installation of Stormwater Treatment Measures**

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the plans prepared by HYDRAULIC SERVICES PLAN (172961H001/rev B/06.08.20). The certificate must confirm that

stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the /Occupation Certificate.

Reason: Protection of the receiving environment.

**40. Positive Covenant for Stormwater Quality System**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater quality system in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Quality Operation and Maintenance Plan.

The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Council), at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. The Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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 ongoing maintenance of the on-site stormwater detention system.

**41. Stormwater Quality Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure proposed stormwater quality system remain effective.

The Plan must contain the following:

- a) Maintenance schedule of all stormwater quality treatment devices
- b) Identification of maintenance and management responsibilities
- c) Maintenance requirements for establishment period
- d) Routine maintenance requirements
- e) Inspection and maintenance record and reporting
- f) Funding arrangements for the maintenance of all stormwater quality treatment devices
- g) Vegetation species list associated with each type of vegetated stormwater treatment device
- h) Waste management and disposal
- i) Traffic control measures (if required)
- j) Maintenance and emergency contact information
- k) Renewal, decommissioning and replacement timelines and activities of all stormwater quality treatment devices
- l) Work Health and Safety requirements

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.



**42. Works as Executed Drawings – Stormwater Quality System**

Works as Executed Drawings for the stormwater quality system must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

**43. Post-Construction Road Reserve Dilapidation Report**

The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must have been carried out in accordance with the provisions of the Building Code of Australia

Note: Where by Council is not the Principal Certifying Authority, Refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority, Post Construction Dilapidation Report and infrastructure inspection by Council.

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

**44. Environmental Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

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

Reason: To ensure compliance with standards.

**45. Suction line to pump out system**

The suction line to the pump out system is to be fitted with a gate valve and approved locking device.

Reason: To reduce the potential for spills of sewage

**46. Waste Water System**

Prior to the issuing of any interim / final occupation certificate, a copy of a s68 (Local Government Act 1993) approval to operate the Waste Water System, and the waste water system must be activated and effectively operating to the satisfaction of the Principal Certifying Authority.

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

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

**47. Decommissioned existing system**

Written confirmation shall be submitted (from the persons contracted to carry out the demolition works associated with the existing wastewater system) confirming that the existing on-site wastewater treatment system has been completely decommissioned and demolished in accordance with the following NSW Health requirements Advisory note 3:

- a) All solid and liquid waste contents from the wastewater tanks shall be removed and either fed into the existing effluent disposal area on-site or desludged by tanker removal to an authorised liquid waste disposal facility.
- b) The sides, lid, baffle (if fitted) and square junctions of the tank are to be hosed down as the waste is being removed.
- c) The tank is to be disinfected by broadcasting builders lime over the exposed surfaces.
- d) Several holes are to be punched into the base of the tank. The lid and those parts of the walls, baffles and square junctions above the ground are to be demolished and collapsed into the tank and the tank filled with clean soil or rubble and topped with clean soil.

Reason: Compliance with Australian Standards and NSW Health Guidelines

**48. Metal plaque on tank**

The tank associated with the Wastewater System shall have the following information permanently and legibly marked on a non-corrosive metal plaque attached to the lid.

- a) The brand name of the system,
- b) The manufacturer's name or registered trademark,
- c) The month and year of manufacture.

Reason: Compliance with Australian Standards and NSW Health Guidelines

**49. Wastewater Certification required**

Prior to release of the Occupation Certificate a practising and licensed Plumber shall submit to the Principal Certifying Authority documentation certifying that the on-site wastewater treatment system complies with the following conditions of consent:

- a) All plumbing and drainage works have been carried out by a practising licensed plumber/drainier.
- b) All electrical work (if required) must be carried out by a licensed electrician and in accordance with the relevant provisions of AS/NZS 3000.
- c) The onsite wastewater system is not installed in such a way that it can contaminate domestic water supply.
- d) Effluent does not discharge into any natural watercourse or stormwater drain.
- e) The on-site wastewater treatment system is installed in strict accordance with manufacturer's specifications.
- f) Works have been carried out in accordance with the NSW Code of Practice Plumbing and Drainage.
- g) The owner/occupier shall enter into an annual service contract, requiring servicing according to the manufacturer's specifications. Inspection reports are to be submitted to Council for review.

- h) Noise generated from the pumps used in the system must not breach the noise provisions of the Protection of the Environment Operations Act 1997.

Reason: Compliance with Australian Standards and NSW Health Guidelines

**50. Weed Removal and Management**

No weeds are to be imported on to the site.

All invasive and priority weeds on the site are to be removed and managed continuously, in accordance with the Biosecurity Act 2015.

Details demonstrating the removal and management of weeds are to be prepared by the project ecologist in writing and submitted to the Principal Certifying Authority prior to occupation certificate.

Reason: Weed management and biosecurity

**51. Removal of Redundant Driveways**

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy. (DACTRFPOC1)

**52. Reinstating the damaged road reserve during construction**

Any damages to road reserve shall be reinstated to Council standard. Suitably prepared plans shall be submitted to for an approval under and approved by Council. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maintain road reserve to the standards. (DACTRFPOC2)

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

**53. Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Reason: Protection of the receiving environment.

**54. Collection of Sewage**

The Septic Tank pump out system is to be emptied at least every seven (7) days or sooner when the tanks reach 65% capacity. An Alarm system is to be installed as part of the system that warns the occupants when the tank reaches 65% capacity and similar alarms are to be triggered at ever successive 10% increase above the first alarm.

Reason: To ensure no potential for spills of sewage.

**55. Dipstick for pump out system**

A graduated dipstick of copper material not less than 13mm in diameter is to be provided in each tank of the pump out system. The highest gradation must indicate when the collection well is full.

Reason: So that accurate measurement of the levels in the tanks can be conducted.

**56. Parking for sewage management vehicles**

All vehicles accessing the site to service the pump out system are to park on-site and not encroach on the adjoining roads or lands.

Reason: To ensure that there is no obstruction to adjoining public roads or spaces.

**57. Water supply to septic tank**

An adequate water supply is available all of the year to the septic tank

Reason: preventing damage to the tank.

**58. Accessibility of parking facilities**

The parking facilities including visitor parking are to be accessible and identifiable at all times. Necessary signs and markings have to be maintained throughout the lifetime of the development.

Reason: To ensure motorists are not forced to park on public streets when parking has been provided within the development. (DACTRGOG1)

**59. Parking Enclosure**

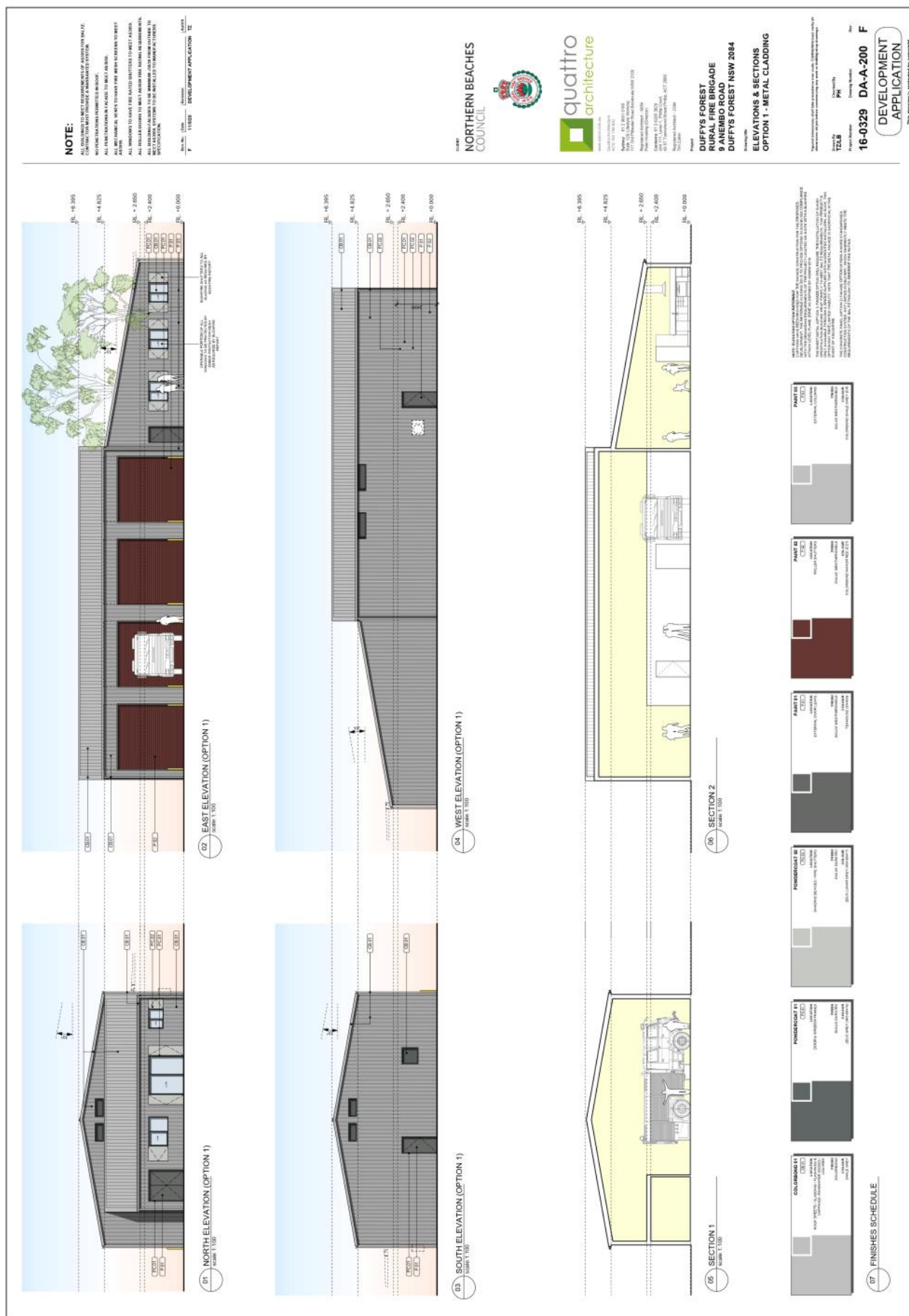
No parking spaces or access thereto, shall be constrained or enclosed by any form of structure such as fencing, cages, walls, storage space, or the like, without prior consent from Council.

Reason: To ensure accessibility is maintained. (DACTRGOG2)









[illegible]



ITEM 4.2	DA2020/1317 - 6 PALM ROAD NEWPORT - CHANGE OF USE TO A KIOSK
AUTHORISING MANAGER	LASHTA HAIDARI
TRIM FILE REF	2020/735065
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plan and Elevations

## PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the land owner is the council.

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/1317 for change of use to a kiosk at Lot 2 DP 1066239, 6 Palm Road, Newport subject to the conditions and for the reasons set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1317
<b>Responsible Officer:</b>	Jordan Davies
<b>Land to be developed (Address):</b>	Lot 2 DP 1066239, 6 Palm Road NEWPORT NSW 2106
<b>Proposed Development:</b>	Change of use to a kiosk
<b>Zoning:</b>	RE1 Public Recreation
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Newport Bowling Club Ltd Northern Beaches Council
<b>Applicant:</b>	Alanna Smit Structural Interiors
<b>Application Lodged:</b>	21/10/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	23/10/2020 to 06/11/2020
<b>Advertised:</b>	23/10/2020
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 40,439.00

### Executive Summary

The proposal is referred to the Local Planning Panel as it is an application categorised as having a 'conflict of interest' as the land on which the proposed development is located is under the ownership of Northern Beaches Council.

The Newport Bowling Club is located upon the subject site and currently provides opportunity for outdoor recreation and social interaction for the residents of Newport. The application seeks to establish a 'kiosk' within the grounds of the Newport Bowling Club within an existing storage building on the site and erect a pergola providing a 35m<sup>2</sup> covered area adjacent to the kiosk building.

The land is zoned RE1 Public Recreation and sits to the south of the Newport Commercial Centre and directly to the west of the Newport Community Centre and tennis courts. The assessment of this



application has found that the proposed kiosk is in a suitable location within the site and will not result in any unreasonable amenity impacts for surrounding residential properties within the vicinity of the site and compliments the existing operation of the Newport Bowling Club.

The application was notified for a period of 14 days in accordance with the Northern Beaches Community Consultation Plan and no submissions were received.

The proposal is compliant with the provisions of the *Pittwater LEP 2014*, *Pittwater 21 DCP* and is supported by Council's internal referral bodies subject to recommended conditions of consent. There are no significant planning issues or submission issues identified through the assessment of the applicant and the proposal is recommended for approval subject to the conditions attached to this report.

### PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for the establishment of a kiosk within the ground of the Newport Bowling Club.

Specifically, the development consists of:

- Establishment of a kiosk within an existing storage shed building;
- Internal kitchen fitout of the kiosk;
- Two new windows and a new door for the kiosk building;
- Construction of new pergola extending off kiosk building;
- Hours of operation at 6am to 6pm, Seven (7) days per week.
- Staffed by 2-3 persons;
- Outdoor seating capable of accommodating 18 people (no internal seating).

It is noted that the internal kiosk kitchen fit out has been substantially completed prior to submission of the development application. Council's Building Assessment Team have reviewed the proposal and recommended a condition of consent requiring that a building information certificate be obtained for the completed works prior to any issue of an occupation certificate.

### 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 RE1 Public Recreation  
Pittwater Local Environmental Plan 2014 - 5.4 Controls relating to miscellaneous permissible uses  
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation  
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements  
Pittwater 21 Development Control Plan - C2.9 Waste and Recycling Facilities

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 1066239 , 6 Palm Road NEWPORT NSW 2106
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Palm Road and the south-western side of Barrenjoey Road. The site is known as 6 Palm Road, Newport and legally described as Lot 2 DP 1066239.</p> <p>The site is irregular in shape with a frontage of 110m along Palm Road and a depth of 83m. The site has a surveyed area of 6143m<sup>2</sup>.</p> <p>The site is located within the RE1 Public Recreation zone and accommodates the Newport Bowling Club which consists of three bowling greens, three maintenance buildings/sheds and the club house building upon the immediately adjoining site Lot 1 DP 1066239 (also known as 6 Palm Road). The site is a locally listed heritage item under the Pittwater LEP.</p> <p>The site contains large open areas of bowling green and low lying shrubs around the perimeter of the site. One canopy tree is located along the north-western boundary in proximity to the building proposed to be used as the kiosk. The site is relatively level throughout with no significant gradient.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by a variety of development. Immediately adjoining the site to the north-west is a Council car park. Across the road to the north is shop Newport Commercial centre and land zoned B2 consisting of shop top housing. To the west is the Newport Community Centre and Tennis Courts. Across the road to the south are detached residential dwellings.</p>

Map:





## SITE HISTORY

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

Application **N0845/03** for Construction of a new deck and awning, associated alterations to the existing roof of the Lawn Bowls Clubhouse was approved on 29/04/2004 by Pittwater Council.

Application **N0710/04** for Pump grey water onto bowling green (waste water disposal system) was approved on 07/04/2005 by Pittwater Council.

Application **N0745/03** for Consolidation of 22 lots into 3 lots for leasing purposes was approved on 06/02/2004 by Pittwater Council.

## 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 commercial purposes for an extended period of time. The proposed development retains the commercial use of the site, and is not

Section 4.15 Matters for Consideration'	Comments
	considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p>

Section 4.15 Matters for Consideration'	Comments
the locality	<p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 23/10/2020 to 06/11/2020 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 of the application Council received no submissions.

#### REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported (Subject to conditions)</b> 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 proposed Pergola.</p> <p>In regards to the fit out of the kiosk - As these works have already been carried prior to approval being obtained a Building Information Certificate Application is required to be lodged with Council and such application will need to address the works and recommendations contained in the BCA Report prepared by GRS Building Reports Pty Ltd dated 12 October 2020.</p> <p>There are no objections to approval of the use of the development subject to inclusion of the attached conditions of approval and</p>



Internal Referral Body	Comments
	consideration of the notes below.
Environmental Health (Food Premises, Skin Pen.)	<p><b>Supported (Subject to conditions)</b> Environmental Health support the proposal, however food safety conditions are recommended to ensure that the pre-existing food premises fit-out complies with relevant food safety legislation.</p> <p>No noise-related issues were identified.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p><b>Supported</b> The proposed change of use to a kiosk with a new pergola is not considered to increase flood risk. The proposed development generally complies with the flood requirements of the LEP and DCP.</p>
Parks, reserves, beaches, foreshore	<p><b>Supported</b> The application is for the existing shed to be converted to a takeaway kiosk requiring a formal change of use to a Kiosk. Additionally, a new pergola is proposed over the outdoor seating area. Council's Parks Referral is assessed against the objectives of Pittwater Local Environment Plan for land zoned RE1 Public Recreation, the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> <li>• B8 Site works and Management</li> </ul> <p>Under Pittwater LEP RE1 zoning permits restaurants and cafes.</p> <p>The proposed works are principally within existing built footprint and no environmental impacts are envisaged. The proposal is therefore supported.</p>
Strategic and Place Planning (Heritage Officer)	<b>HERITAGE COMMENTS</b>
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject property is a heritage item
	<ul style="list-style-type: none"> <li>• <b>Newport Bowling Club</b> - 6 Palm Road, Newport</li> </ul>
	<p>Details of heritage items affected</p> <p>Details of the item as contained within the Pittwater inventory is as follows:  <u>Statement of significance:</u>  Newport Bowling Club is historically and socially significant for the Newport community as a place of community gathering and sports activities. It has been in operation since 1943 and represents a leisure activity that is central to Australian culture. The significance of the bowling club lies on its historical and social values rather than the building fabric or architectural values of the building; however, the building is a representative of such club buildings of its period.</p> <p><u>Physical description:</u>  Large suburban style bowling greens with a single-storey Inter-War clubhouse building featuring a skillion roof with a series of gables,</p>



Internal Referral Body	Comments		
	large glazing to the facade and a facade-long veranda with timber balustrade for spectators. Some later additions to the club building and the greens are evident. The boundaries of the greens are defined by the seat benches, hedges and stone walls, in particular along the water course.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	The proposal seeks consent to use an existing storage shed as a kiosk and to construct a new wooden pergola on the Newport Bowling Club site. The site is a heritage item, however the listing relates predominantly to its social and historical significance rather than physical attributes. As such, the physical changes proposed to the shed and the construction of the pergola are deemed to not have an impact upon the identified heritage significance of the site. In fact, the kiosk could be considered a complimentary use of the site that relates to its identified social and recreational values.		
	Therefore Heritage raises no objections and requires no conditions		
	Consider against the provisions of CL5.10 of PLEP.		
Is a Conservation Management Plan (CMP) Required? No			
Has a CMP been provided? No			
Is a Heritage Impact Statement required? Yes			
Has a Heritage Impact Statement been provided? Yes			
Traffic Engineer	<b>Supported (Subject to conditions)</b> The application has been reviewed and the proposed conversion of the shed in the kiosk use is supported from a transport perspective, subject to conditions related to parking conversion within the adjoining car park to address parking turn over concerns.  <i>*Planner Note: Subsequent discussions have been held with traffic team regarding the recommendation for a condition to be imposed for</i>		



Internal Referral Body	Comments
	<p><i>the conversion of six (6) parking spaces into 2 hour parking spaces within the adjoining public carpark (car park is currently a 12 hour parking zone). Given the size of the kiosk and the fact it will be used in conjunction with the Bowling Club, the required change to public carparking is not warranted in this circumstance. It is not considered to be in the public interest to remove long term parking within the adjoining public carpark to assist parking turnover to service the kiosk. Therefore, the condition to require the conversion of six (6) 12 hours spaces into 2 hours spaces is not recommended in the conditions. Traffic team have confirmed they have no objection to removal of the condition based on the above reasoning.</i></p> <p><i>Similarly, a full construction traffic management plan is not considered necessary in the circumstance given the small scale of the construction which will consist of a pergola only (internal fitout already completed). The condition for a construction traffic management plan is not recommended in the conditions.</i></p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

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

##### SEPP 55 - Remediation of Land

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

##### SEPP (Infrastructure) 2007



### Ausgrid

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

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

### Comment:

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

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

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

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	3.295m	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.10 Essential services	Yes
Schedule 5 Environmental heritage	Yes

### Detailed Assessment

### **Zone RE1 Public Recreation**

DA2020/1317



The application for the use of the shed as a 'kiosk' has been considered against the land use definitions within the Pittwater LEP 2014. A 'Kiosk' being defined as:

- *means premises that are used for the purposes of selling food, light refreshments and other small convenience items such as newspapers, films and the like.*

By virtue of the limited floor area within the kiosk (8.47sqm) and given that no internal seating is provided, the use is considered to be a 'kiosk' rather than a 'food and drink premises' or 'takeaway food and drink premises'. The main purpose of the kiosk is to sell light refreshments (coffee, drinks) and food within the grounds of the bowling club to complement the exiting bowling club use and recreational nature of the site and surrounds. The outdoor area is proposed to accommodate 18 people beneath the pergola. This will be included as a condition of consent to ensure the nature of the use is kept to a reasonable scale and consistent with the land use definition.

#### 5.4 Controls relating to miscellaneous permissible uses

Clause 5.4(6) requires that kiosks do not have a gross floor area greater than 20sqm.

The gross floor area of the proposed kiosk is 8.47sqm and compliant with the control.

#### 5.10 Heritage conservation

The site is identified as a local heritage item under the Pittwater LEP 2014 containing 'Newport Bowling Club' which holds significance both socially and culturally, rather than its specific physical attributes.

A Heritage Assessment report has been submitted with the development application and reviewed in regards to the controls contained within Clause 5.10 PLEP. Council's heritage officer has undertaken a review of the proposal and is supportive of the development, raising no concerns that the development will have a detrimental impact upon the heritage significance of the site. See detailed comments elsewhere in this report.

Therefore the proposal meets the requirements of Clause 5.10 Heritage Conservation.

#### 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
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.13 Flood Hazard - Flood Emergency Response planning	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.5 Rainwater Tanks - Business, Light Industrial and Other Development	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C2.1 Landscaping	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.5 View Sharing	Yes	Yes
C2.8 Energy and Water Conservation	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.11 Signage	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.21 Food Premises Design Standards	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	Yes	Yes

#### Detailed Assessment

#### **B6.3 Off-Street Vehicle Parking Requirements**

The DCP does not specify a parking rate for a 'kiosk' and there has historically been no on-site parking for the Newport Bowling Club, with the Club relying on the adjoining public Council car park on the corner of The Boulevard and Barrenjoey Road, parking in the Newport Commercial Centre and on-street parking along Palm Road. The kiosk is considered to be a relatively small scale, with no internal seating, which is considered ancillary to the bowling club use. There are surrounding land uses such as the community centre, bowling club and nearby commercial centre which the kiosk compliments and people are likely to use together. The kiosk not necessarily being a destination in its own right given the size and proximity to other land uses.

The application has been referred to Council's Traffic Engineers to assess the impact of the proposed kiosk on the surrounding road network and available parking. Council's Traffic Engineers are satisfied that the proposal will not result in an unreasonable impact for the parking and traffic (see referral comments earlier in this report).



## **C2.9 Waste and Recycling Facilities**

The applicant has provided a copy of the commercial waste agreement for the use of the kiosk which includes two 660L Waste Storage bins (1 x General Waste and 1x Cardboard Recycling). The bins are to be located in the waste storage area which is also utilised by the Newport Bowling Club which is accessible from the Palm Road Street Frontage at the south-western corner of the site, which enables collection from Palm Road. This is acceptable with regards to waste storage for 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**

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

## **CONCLUSION**

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

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

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

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

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

In summary, a detailed assessment of the proposal has been undertaken along with an assessment by



Council's internal referral bodies. The proposed development does not result in any unreasonable impacts upon surrounding residents with regards to noise, traffic and parking, visual bulk and scale or impact upon the heritage listing of the site.

No submissions were received during the neighbour notification period and conditions of consent have been applied to ensure the operation of the kiosk is managed in such a way to limit environmental and amenity impacts upon the surrounding sites.

The proposal is therefore recommended for approval subject to the conditions contained within this report.

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 DA2020/1317 for Change of use to a kiosk on land at Lot 2 DP 1066239, 6 Palm Road, NEWPORT, 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
DA 03	9 October 2020	Alanna Smit Structural Interiors
DA 04	9 October 2020	Alanna Smit Structural Interiors
DA 05	9 October 2020	Alanna Smit Structural Interiors
DA 06	9 October 2020	Alanna Smit Structural Interiors
DA 07	9 October 2020	Alanna Smit Structural Interiors
DA 08	9 October 2020	Alanna Smit Structural Interiors
DA 09	9 October 2020	Alanna Smit Structural Interiors
DA 10	9 October 2020	Alanna Smit Structural Interiors
DA 11	9 October 2020	Alanna Smit Structural Interiors
DA 12	9 October 2020	Alanna Smit Structural Interiors
DA 14	9 October 2020	Alanna Smit Structural Interiors

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BCA Report, P430/Rev 1a	12 October 2020	GRS Building Reports

##### 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. **Approved Land Use**

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

A Kiosk is defined as:

- o *"means premises that are used for the purposes of selling food, light refreshments and other small convenience items such as newspapers, films and the like."*

(development is defined by the Pittwater Local Environment Plan 2014 (as amended) Dictionary)

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

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

## 3. **No Approval for any Signage**

No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2011 and State Environmental Planning Policy No. 64). A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

## 4. **Prescribed Conditions**

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

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



- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

## 5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.



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

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

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges



paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

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

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

### 6. Security Bond

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

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

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





Authority prior to the issue of the Construction Certificate.

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

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

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

#### 7. **Flooding**

In order to protect property and occupants from flood risk the following is required:

##### Building Components and Structural Soundness – C2

The pergola must be designed and constructed to ensure structural integrity up to the Flood Planning Level of 4.66m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

##### Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 4.66m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

##### Storage of Goods – D1

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level of 4.66m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

**Reason:** To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

#### 8. **Building Certificate - Unauthorised Works on site**

An application for a Building Certificate is to be lodged for all unauthorised works onsite.

Details of the fit out of the Kiosk including demonstrating compliance with the report prepared by GRS Building Reports Pty Ltd dated 12 October 2020 are to be submitted to Council prior to the issue of the Construction Certificate for the proposed Pergola.

Reason: To regularise unauthorised development.

### CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT



9. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

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

10. **Requirement to notify about new Acid Sulfate Soils evidence**

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement.

Reason: protection of the environment

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

11. **Kitchen Design, construction and fit out of food premises**

The construction fit-out and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises'. Prior to any Occupation Certificate (OC) being issued certification is to be provided by a suitably qualified person that the fit-out complies with the above requirement.

Reason: To ensure that the kitchen complies with the design requirements.

12. **Registration of Food Business**

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

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

13. **Ongoing Operation and Fit Out of Food Premises**

The ongoing operation and fit out of the premises must be maintained in accordance with the following requirements:

- Food Act 2003
- Food Regulations 2004



- Australian Standard AS4674-2004: Construction and fit out of food premises
  - Australia and New Zealand Food Standards Code 3.2.3: Food Premises and Equipment
  - Australia and New Zealand Food Standards Code 3.2.2: Food Safety Practices and General Requirements
- Reason: To ensure compliance with legislation and to protect public health and safety.

14. **No cooking on the premises**

No cooking of food requiring the use of a stove, oven, hot plate, grill, fryers or the like is permitted on the premises.

Reason: The application has provided no provision for mechanical ventilation or a grease trap.

15. **Deliveries and waste service collections**

Deliveries and waste service collections shall only occur:

- After 6am and prior to 10pm Monday to Saturday.
- After 8am and prior to 8pm Sundays and Public Holidays.

Reason: To minimise the impacts of noise on neighbouring premises.

16. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Friday – 6am to 6pm
- Saturday – 6am to 6pm
- Sunday and Public Holidays – 6am to 6pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.









Reason: Information to ensure that amenity of the surrounding locality is maintained.

17. **Outdoor seating numbers**

The seating associated with the kiosk use is limited to a maximum capacity of 18 seated patrons.

Reason: To ensure the development is consistent with the land use definition and does expand beyond what is intended by this consent.

**LEGEND**

	New Timber work		New floor area
	New Brick work		Existing
	New wet area		Demolish
	New Tilled roof		Landscape area

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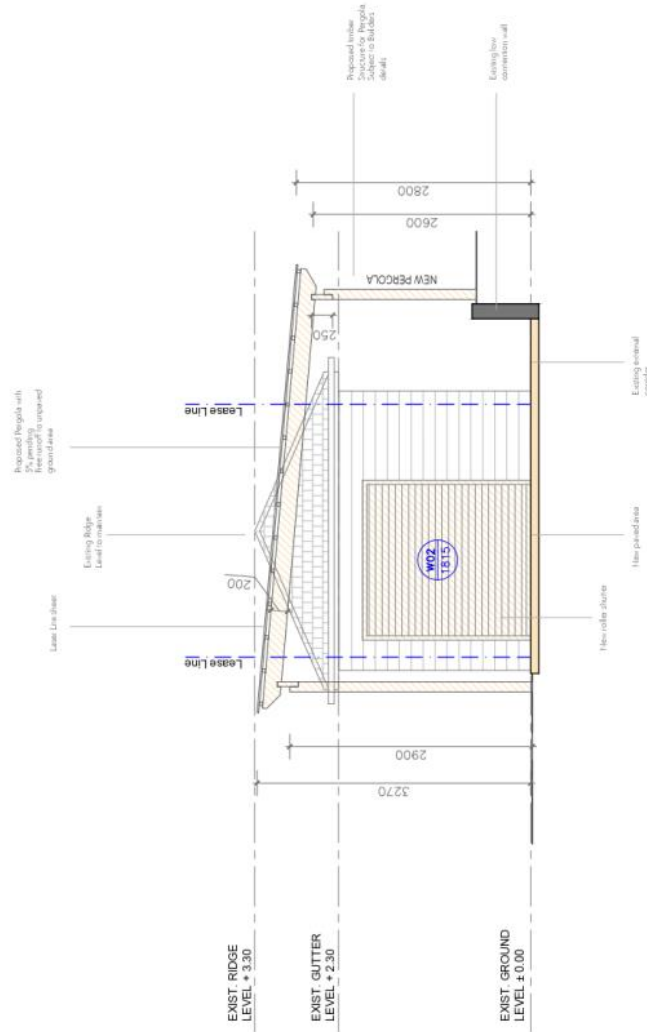
All levels and dimensions are to be checked and verified on site prior to commencement of any work, making of shop drawings or fabrication of components.

Do not scale on drawings. Use figured dimensions.

REV.	DATE	COMMENTS

MALANNA SMIT / STRUCTURAL INTERIORS





DRAWING NO.  
**DA 07**  
DATE  
**09/10/20**

CLIENT NAME  
**RUKUS KIOSK**  
PROJECT ADDRESS  
**2-6 Bain Rd NEWPORT**  
SCALE  
**1:50 @A3**

**LEGEND**

	New floor area
	Existing
	Demolish
	Landscape area
	New Timber work
	New Brick work
	New wet area
	New tiled roof

**NOTES**

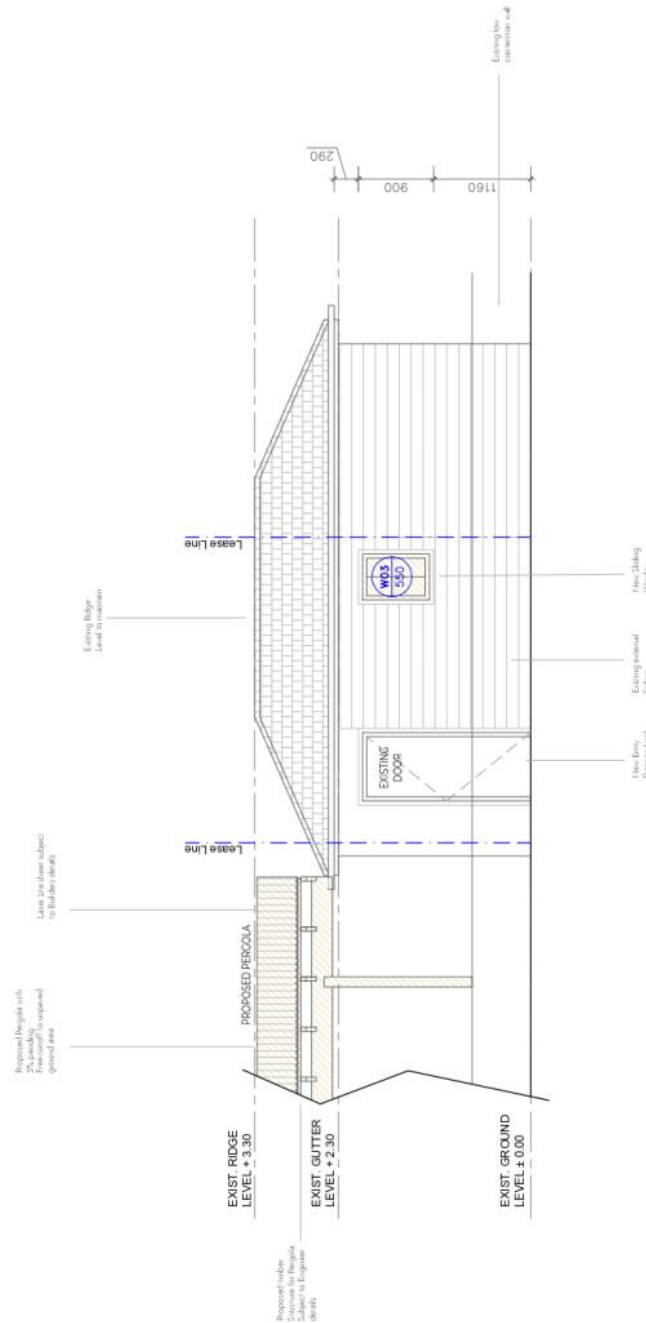
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REV.	DATE	COMMENTS





**CLIENT NAME** RUKUS KIOSK  
**DRAWING NAME** SOUTH ELEVATION  
**DRAWING NO** DA 09  
**DATE** 09/10/20  
**PROJECT ADDRESS** 2-6 Palm Rd NEWPORT  
**SCALE** 1:50 @A3

**LEGEND**

- New floor area
- Existing
- Demolish
- Landscaping area
- New Timber work
- New Brick work
- New wall area
- New Tiled roof

**NOTES**

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REV.	DATE	COMMENTS



ALANNA SMIT / STRUCTURAL INTERIORS

ITEM 4.3	DA2020/1215 - 5/20 DOWLING STREET QUEENSCLIFF - ALTERATIONS AND ADDITIONS TO AN EXISTING RESIDENTIAL FLAT BUILDING
REPORTING MANAGER	RODNEY PIGGOTT
TRIM FILE REF	2020/700030
ATTACHMENTS	1 <a href="#">↓ Assessment Report</a> 2 <a href="#">↓ Site Plan and Elevations</a> 3 <a href="#">↓ Clause 4.6</a>

## PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/1215 for alterations and additions to an existing residential flat building at Lot 5 SP 5340, 5/20 Dowling Street, Queenscliff subject to the conditions and for the reasons set out in the Assessment Report.





## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1215
<b>Responsible Officer:</b>	Thomas Burns
<b>Land to be developed (Address):</b>	Lot 5 SP 5340, 5 / 20 Dowling Street QUEENSCLIFF NSW 2096
<b>Proposed Development:</b>	Alterations and additions to an existing residential flat building
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	No
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Elizabeth Renee Askew
<b>Applicant:</b>	Elizabeth Renee Askew
<b>Application Lodged:</b>	01/10/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	15/10/2020 to 29/10/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 36.47%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 120,000.00

This report is submitted to the Northern Beaches Local Planning Panel (NBLPP) for the consideration of Development Application DA2020/1215 for alterations and additions to an existing residential flat building. The works are confined to Unit 5 of the residential flat building, which is located on the upper floor.

The maximum building height of the development is 11.6m, which represents a 36.47% variation to the Height of Buildings Development Standard, which prescribes an 8.5m building height limit. Despite this, the new works are sited 1.055m below the established ridge level and confined to an existing building footprint, with the maximum building height of the existing flat building remaining unaltered.

The development is defined as a residential flat building pursuant to the Warringah Local Environmental

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Plan 2011 (WLEP 2011) and is prohibited within the R2 Low Density Residential zone. Section 4.67(3) of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) stipulates that the provisions contained within an Environmental Planning Instrument do not strictly apply to a development that relies on existing use rights, which in this case applies to the subject application. Despite this, the applicant has submitted a written request under Clause 4.6 to vary the height limit, in line with the recent judgement in the NSW Land and Environment Court Case of *Made Property Group Pty Limited v North Sydney Council [2020] NSWLEC 1332*.

The applicant has demonstrated that compliance with the height standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the 36.47% variation to Clause 4.3 of the WLEP 2011.

The development received one (1) submission, which related to plumbing and waterproofing matters, both of which are considered during construction works by the appointed Certifying Authority.

It is recommended that the NBLPP approve the application, subject to the conditions attached to this report.

## PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing residential flat building. The works are confined to Unit 5 of the flat building and occur within the footprint of the existing outdoor terrace. Specifically, the proposed development is as follows:

- Demolish external wall and doors.
- Infill window adjoining bedroom 1.
- New addition within the footprint of the outdoor terrace to include a lounge room and bathroom.
- New roof over extension and new glazed doors and windows.

## 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 Local Environmental Plan 2011 - Zone R2 Low Density Residential  
Warringah Local Environmental Plan 2011 - 6.2 Earthworks  
Warringah Development Control Plan - C3 Parking Facilities  
Warringah Development Control Plan - C4 Stormwater  
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
Warringah Development Control Plan - D6 Access to Sunlight  
Warringah Development Control Plan - D7 Views  
Warringah Development Control Plan - D8 Privacy

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 5 SP 5340 , 5 / 20 Dowling Street QUEENSLIFF NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Dowling Street, Freshwater. The site also adjoins Oliver Street. Vehicular access is obtained from Dowling Street, whilst pedestrian access is obtained from both Dowling Street and Oliver Street.</p> <p>The site is irregular in shape with five boundaries (5) with a frontage of 18.595m along Dowling Street and a small frontage of 6.735m along Oliver Street. The site has respective depths of 45.995m and 47.91m along the northern and southern boundaries and has a surveyed area of 895sqm.</p> <p>The site is identified within R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011 (WLEP 2011) and accommodates a three (3) storey residential flat building with a face brick facade and tiled roof. The flat building contains eight (8) units. A carport is located within the rear yard.</p> <p>The site is devoid of any significant canopy trees and contains small lawn areas, a small tree approximately 4m in height adjacent to the northern side boundary and small palm trees along the front boundary (Dowling Street). The site does not contain any threatened species.</p> <p>The site experiences a fall of approximately 3.4m that slopes away from Dowling Street towards the rear.</p> <p>The site is not burdened by any significant site constraints or restrictive covenants.</p> <p><b>Detailed Description of Adjoining and Surrounding Development</b></p> <p>Adjoining and surrounding development largely comprises low-density residential development, although there are</p>





numerous examples of residential flat buildings within close proximity to the site, including the southern adjoining property (16 Dowling Street).

Map:



## SITE HISTORY

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

### Land Use Consent No. 70/55

Land Use Consent No. 70/55 for a residential flat building approved by Council on 24 March 1970.

### Building Approval No. 0389/70

Building Approval No. 0389/70 for a residential flat building approved by Council on 5 May 2020.

## Application History

The Assessment Officer undertook a site visit at the subject site on 28 October 2020. The site visit revealed that remediation works were being undertaken to the balconies of the flat building, specifically to repair the waterproofing of these areas.

## 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	See discussion on "Environmental Planning Instruments" in this report.

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Section 4.15 Matters for Consideration'	Comments
instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

- Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?

Section 4.65 of the Act defines an existing use as:

*"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and*

*(b) the use of a building, work or land:*

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:



Council's records indicate that the subject site was approved for a residential flat building under Land Use Consent No. 70/55 on 24 March 1970, prior to the coming into force of the Warringah Local Environmental Plan 2011 (WLEP 2011) on 9 December 2011.

2. Was the use of the land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The evidence available to Council reveals that the use of the land commenced as a lawful purpose prior to the coming into force of the WLEP 2011, which prohibits residential flat buildings in the R2 Low Density Residential zone. Since the approval date on 24 March 1970, Council's records contain no other approvals on the site that pertain to a land use other than that of a residential flat building, as defined under the WLEP 2011.

3. Has the use of the land been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The evidence available to Council reveals that Building Approval No. 0389/70 was approved on 5 May 1970, which enabled construction works to commence. The aforementioned building approval directly relates to Land Use Consent No. 70/55, which approved the use of the site for a residential flat building. There is no evidence that would suggest that the approved works did not commence within 12 months of the consent issuance date.

- **What is "the land on which the existing use was carried out" for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: *"if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose"*.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

**1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?**

*While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.*

**Comment:**

Whilst the development cannot be assessed against numerical controls governing bulk and scale, such controls still need to be taken into account in order to gain an informed understanding of the future context of character and surrounding development.

This assessment will draw a comparison between the bulk and scale of the development and bulk and scale of surrounding development and what is likely to occur in the vicinity in the future, based on applicable planning controls.

**Surrounding Development**

The site directly to the south (16 Dowling Street) accommodates a three storey residential flat building, whilst the property directly to the north (24 Dowling Street) accommodates a two storey dwelling house. In conjunction to 16 Dowling Street, there are other examples of similar residential flat buildings within the direct vicinity of the subject site, which include 3 Dowling Street (3 storey RFB 43m to the south-east), 7 Dowling Street (3 storey RFB 30m to the south-east) and 21 Cavill Street (part-3 part-4 storey RFB 9m to the south-west). Other development is characterised by dwelling houses, typically of one (1) or two (2) storeys.

**Building Height**

The site is subject to an 8.5m statutory height limit, as is applicable in the R2 Low Density Residential zone. The maximum building height of the proposed development 11.6m (RL48.92), which is sited 1.055m below the established ridge height of the flat building (RL48.92).

**Front Setback**

The minimum front setback control that applies in the R2 Low Density Residential zone (which includes the subject site) is 6.5m. The development does not alter the existing front building line (taken from Dowling Street), with the works being sited to the rear of the flat building and separated over 6.5m from the Dowling Street frontage.

**Side Setback**

The minimum side setback for the site (and R2 zone) is 900mm. Generally a 4.5m side building line is required for a residential flat building under the WDCP 2011. The proposed development is located within the footprint of an existing outdoor terrace on the upper floor and does not alter the established side building lines of 4.09m and 3.66m from the northern and southern side boundaries.

**Rear Setback**

The minimum rear setback for the site (and R2 zone) is 6m. The 6m rear building line is also applied to





residential flat buildings within the R3 Medium Density Residential zone. The development is located within the footprint of an existing outdoor terrace and the established rear building line of 11.73m is unaltered. The external wall of the new addition is setback 14.94m from the rear boundary.

### Concluding Comments of Bulk and Scale

The proposed development pertains to a small addition to provide additional floor space for Unit 5 on the top level of the subject residential flat building. The works take place within a portion of the existing outdoor terrace footprint. The proposed development will not alter the overall building height and footprint of the subject flat building and will maintain the existing landscape elements within the site. In this regard, the proposed development is considered to maintain an appropriate relationship with the existing and future context of the locality.

### 2. What is the relevance of the building in which the existing use takes place?

*Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.*

#### Comment:

The resulting development will maintain a bulk and scale that is acceptable and consistent with the surrounding residential flat buildings within close proximity to the site.

### 3. What are the impacts on adjoining land?

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

#### Comment:

This assessment has considered the potential amenity impacts upon adjoining properties, with specific regard to the objectives of the Warringah Development Control Plan 2011 (WDCP 2011).

### Solar Access

In relation to solar access, it is noted that the additional overshadowing resulting from the development is minor and only equates to lower portions of existing windows located on the second floor at 16 Dowling Street (southern adjoining property). These windows are located on the northern elevation of the adjoining property, with the overshadowing of these windows only occurring after 3pm on June 21 (winter solstice). Therefore, the overshadowing is considered to be insignificant and acceptable. This is further discussed in the section of this report relating to Clause D6 of the WDCP 2011.

### Views

In relation to views, it is noted that balconies and terraces on adjoining properties have been orientated towards the west to obtain distant views of the escarpment to the west of Manly Dam. The development is sited below the existing ridge level and is not likely to give rise to unacceptable levels of view loss, given the orientation of adjoining private open space and location of significant views that are to the



west. No substantial views are obtained from southern adjoining properties to the north. This is further discussed in the section of this report relating to Clause D7 of the WDCP 2011.

### Privacy

In relation to privacy, it is noted that windows orientated towards side boundaries contain high sill heights where appropriate and afford appropriate separation to negate opportunities for direct overlooking into adjoining private open space or visually sensitive rooms on adjoining properties. This is further discussed in the section of this report relating to Clause D8 of the WDCP 2011.

### Concluding Comments of Amenity

Based on the above assessment, it is concluded that the development will not result in unacceptable amenity impacts.

### 4. What is the internal amenity?

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

#### Comment:

The proposal has been suitably designed to ensure that it achieves an adequate standard of internal amenity.

### Conclusion

The use has been approved under a previous environmental planning instrument and as such, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (WLEP 2011).

### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/10/2020 to 29/10/2020 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 1 submission/s from:

Name:	Address:
Mr Mathew Richard Pigott	7 / 20 Dowling Street QUEENSCLIFF NSW 2096

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

### Plumbing

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Concern was raised with regard to the plumbing, specifically whether the existing system could withstand an additional bathroom.

Comment:

This is not a matter of consideration at Development Application stage and can be considered during construction stage by the appointed Certifying Authority.

**Waterproofing**

Concern was raised with regard to the waterproofing and whether the waterproofing of the top floor (currently being undertaken as part of building remediation works) would be compromised by the proposed development.

Comment:

This is not a matter of consideration at Development Application stage and can be considered during construction stage by the appointed Certifying Authority.

Concluding Remarks

All of the concerns raised within the submission have been appropriately addressed above. The matters raised in the submission do not warrant a reason for refusal.

**REFERRALS**

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<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 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**

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**(SREPs)****SEPP 55 - Remediation of Land**

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

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

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

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

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

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

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

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

The proposal constitutes relatively minor alterations and additions to an existing residential flat building, specifically to provide additional floor space for Unit 5 on the third storey. The overall height and footprint of the subject flat building will remain unaltered. In this regard, the proposal is not considered a substantial redevelopment or substantial refurbishment of an existing flat building.

Accordingly, no further consideration of this Policy is required for the purpose of this assessment.

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

A BASIX Certificate has been submitted with the application (see Certificate No. A383692 dated 14 August 2020). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

**SEPP (Coastal Management) 2018**

The site is identified within the 'Coastal Environment Area' under the provisions of the SEPP (Coastal Management) 2018. Accordingly, the proposal is considered against Clauses 13 and 15 of the Policy as follows:

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### **13 Development on land within the coastal environment area**

*(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

*(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

*(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).*

#### Comment:

The site is visually and physically separated from the coastal zone or environmentally sensitive lands, being approximately 360m to the north from Manly Lagoon and over 500m to the west of Freshwater Beach. Given the above and the scale of works proposed, Council can be satisfied that the development is designed, sited and will be managed to avoid an adverse impact upon the matters referred to in Clause 13.

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

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

#### Comment:

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The proposal pertains to relatively minor alterations and additions to an existing residential flat building and is unlikely to cause increased risk of coastal hazards within the locality.

#### Concluding Remarks

Having regard to the above assessment, it is concluded that the proposed development demonstrates consistency with the relevant matters prescribed within the SEPP (Coastal Management) 2018.

#### **Warringah Local Environmental Plan 2011**

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.6m (RL47.865)	36.47%	No

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	N/A
6.4 Development on sloping land	Yes

#### Detailed Assessment

#### **Zone R2 Low Density Residential**

The proposed development relies on existing use rights. As such, compliance with the zone objectives is not relevant to this application.

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

##### Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	11.6m
Percentage variation to requirement:	36.47%



The site is subject to an 8.5m maximum building height under the requirements of Clause 4.3 of the WLEP 2011. The proposed development contains a maximum building height of 11.6m, which represents a 36.47% variation from the Development Standard.

Whilst Section 4.67(3) of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) stipulates that the provisions contained within an Environmental Planning Instrument do not strictly apply to a development that relies on existing use rights, the recent judgement in the Land and Environment Court Case of *Made Property Group Pty Limited v North Sydney Council [2020] NSWLEC 1332* required a written request pursuant to Clause 4.6 to be submitted to vary a Development Standard, despite the subject development benefiting from existing use rights.

Accordingly, Council requested that the applicant submit a written request pursuant to Clause 4.6 of the WLEP 2011 to contravene the Height of Buildings Development Standard.

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 Clause 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 EP&A Act 1979 reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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





- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

*"Clause 4.6 requires the departure from the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard. As demonstrated below, there are no negative impacts resulting from the proposed works: Overshadowing, Privacy and View Loss have all been assessed and found to be no issue.*

**Bulk and Scale:**

*The height control primarily is used to protect against undesirable impacts resulting from an inappropriate bulk and scale. The height of the additional roof in this instance is well below the existing roof ridge and as such does not represent an obtrusive extension of the existing bulk and scale.*

**Overshadowing:**

*The impact of additional height was considered one of the factors to address due the possibility of overshadowing the neighbour. In consideration of this the height of the southern edge of the extension was kept in alignment with the existing gutter line – which is quite low. The extension utilises a skillion roof arrangement and a sloping ceiling so that for the new Lounge area and WC the southern ceiling height is 2.3m and it angles up to 3m.*

*A survey of the site and neighbour was completed. The proposed scheme was modelled to determine the extent of shadow impact. This found that while the works do overshadow the neighbouring residential flat building at No. 16, the existing building already casts shadow onto these units and the additions do not reduce further any sunlight into living room windows.*

*Most of the windows of the Unit building at No. 16 facing the subject site are bathroom or bedroom windows and the main living windows face East and West out the Western end of the property or over Dowling Street. As demonstrated clearly in the elevational shadow diagrams, the additional mid-winter shadow falls on wall area of the adjacent building to the south and does not cause a reduction in sunlight to any windows. This was determined at Pre-DA to be a critical factor in determining the impact of the proposed additions and with this analysis complete it is submitted that the shadow impact is not a reason to refuse approval.*

**View Loss:**

*The building sits at the crown of the road overlooking Oliver Street. The only views that may be affected by the development would be from the first floor of No. 16, however they have a constructed a solid privacy screen along the subject site side of their unit. There is no view loss resulting from the proposal.*

**Privacy Impacts:**

*The proposed works occupy a very large open roof terrace outside of Unit 5. In constructing the proposed works, this fills in a large portion of this space and there is only one small highlight window in the extension and one highlight window in the Bedroom to replace the West facing window. As such the works do not increase any privacy impacts – in fact it reduces the possibility of overlooking".*

Comment:

It is agreed that despite the height variation, the overall bulk and scale of the resulting development will be acceptable. This argument is validated, given the ridge level of the new addition is sited 1.055m below the established building height and the additional floor space will be located within an existing building footprint (without footprint of outdoor terrace). The development is not increasing the building density or overall building height and therefore, the bulk and scale is deemed to be acceptable.

It is also accepted that the development will not result in unacceptable overshadowing impacts. This matter is discussed in detail within the section of this report relating to Clause D6 of the WDCP 2011, where it is concluded that a small portion of additional overshadowing will occur to windows on the second floor at 16 Dowling Street (southern adjoining property). The minor overshadowing is occurring after 3pm on the winter solstice and as such, is acceptable.

It is also agreed that the height variation will not result in unacceptable levels of view loss. This matter is discussed in detail within the section of this report relating to Clause D7 of the WDCP 2011, where it is concluded that unaltered overall building height, coupled with the western orientation of outdoor private open space on adjoining sides and local topography that slopes from east to west, will ensure that the development does not compromise significant views.

It is also accepted that the height variation will not prompt unacceptable privacy impacts. This matter is discussed in detail within the section of this report relating to Clause D8 of the WDCP 2011, where it is concluded that adequate separation and the appropriate siting of windows will ensure that the privacy impacts associated with the development are reasonable.

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 Clauses 1.3 (c) and (g) of the EP&A Act 1979.

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 Clause 4.6 (3)(b) of the WLEP 2011.

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

**Objectives of Development Standard**

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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:

As discussed previously in this report, the site is located within the immediate vicinity of similar residential flat buildings (i.e. 16 Dowling Street, 3 Dowling Street, 7 Dowling Street and 21 Cavill Street). The overall height and scale of the development will remain substantially unaltered, noting that the ridge level of the new addition (RL47.865) is sited 1.055m below the established ridge level of the flat building (RL48.92) and that the additional floor space is located within the footprint of the existing outdoor terrace. Furthermore, the development will maintain the existing landscape elements within the site. In this regard, the proposed development is considered to be compatible with the height and scale of surrounding and nearby residential flat buildings.

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

Comment:

The overall height and density of the development will remain consistent with the existing flat building and as such, the development will not have an unacceptable visual impact on the streetscape. As noted earlier within the report, the development will not result in unacceptable amenity impacts, specifically having regard to views, privacy and solar access.

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

Comment:

The site is visually and physically separated from coastal and bushland environments and therefore, the development will not detract from the scenic qualities of these areas.

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

Comment:

The the overall height and density of the flat building will remain unaltered, the development will not have an unacceptable visual impact upon the streetscape.

## Zone Objectives

The underlying objectives of the R2 Low Density Residential zone are:



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

Comment:

The development will not increase the density of the subject flat building and the overall bulk and scale will remain consistent with established residential flat buildings within the vicinity of the site.

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

Comment:

The site will retain the residential land use.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The site will not alter the existing landscape treatments on the site.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone, despite the development being associated with a prohibited land use.

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

Clause 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.

**6.2 Earthworks**

No earthworks are proposed.

**Warringah Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	9.4m (south)	30.56%	No

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B3 Side Boundary Envelope	5m then projected at 45 degrees (north)	Within envelope	-	Yes
	5m then projected at 45 degrees (south)	Outside envelope	4.39% - 8.66%	No
B5 Side Boundary Setbacks	0.9m (north)	6.81m - 10.75m	-	Yes
	0.9m (south)	3.66m	-	Yes
B7 Front Boundary Setbacks	6.5m	>6.5m and at rear of RFB	-	Yes
B9 Rear Boundary Setbacks	6m	14.94m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	no change to landscaping	N/A	N/A

**\*Notes:**

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

2. The development is considered against relevant built form controls applicable for the site. It should be noted that the above controls are generally applied to development permissible with consent in the R2 Low Density Residential zone.

**Part B Built Form Controls**

The Land and Environment Court Planning Principle established in the judgement by Senior Commissioner Roseth in *Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71* confirms that the provisions of Environmental Planning Instruments and Development Control Plans that derogate or detract from the benefit endowed on a site by existing use rights do not apply to the assessment of applications on sites where existing use rights apply. Therefore, zone objectives and planning controls that govern the size of a development (i.e building height, floor space ratio, building envelope and setbacks) are not strictly applied where existing use rights apply.

This includes qualitative provisions as well as quantitative provisions. Having regard to the above case law, the built form controls contained within the WDCP 2011 compliance table are not strictly applied to this particular application and is, therefore, only included as a record to identify how the proposed development relates to applicable planning controls that would otherwise apply to the subject site if existing use rights did not apply. In this regard, no further assessment is provided in this report relating to the numerical non-compliances identified within the Built Form Controls table above. Instead, this report includes a merit based assessment having regard to the matters for consideration prescribed within Section 4.15 of the Environmental Planning and Assessment Act 1979.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C3 Parking Facilities	N/A	N/A
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	N/A	N/A
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
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **C3 Parking Facilities**

The proposed development does not alter the existing parking arrangement on the site. The WDCP 2011 calculates the required parking rates based off the number of bedrooms within a residential flat building. The proposed development does not increase the number of bedrooms on the site and as such, will not impact upon the parking requirements for the site. Therefore, no further consideration of this control is required for the purpose of this assessment.

#### **C4 Stormwater**

Conditions have been included with this consent to ensure that stormwater is disposed of appropriately.

#### **D1 Landscaped Open Space and Bushland Setting**

The proposed works are confined to an existing building footprint and will not alter the existing landscaping on the site.

#### **D6 Access to Sunlight**

The shadow analysis submitted with the application indicates that the additional overshadowing resulting from the development is minor and only equates to lower portions of existing windows located on the second floor at 16 Dowling Street (southern adjoining property). These windows are located on the northern elevation of the adjoining property, with the overshadowing of these windows only occurring after 3pm on June 21 (winter solstice). Therefore, the overshadowing is considered to be



insignificant and acceptable.

#### **D7 Views**

The development is not likely to result in unacceptable levels of view loss. Balconies and terraces on adjoining properties have been orientated towards the west to obtain distant views of the escarpment to the west of Manly Dam. Figure 1 depicts this view corridor from the outdoor terrace on the upper floor within the subject flat building.

**Figure 1:** *views to south from the subject site*



Given the orientation of outdoor private open space and local topography that slopes from east to west, less substantial views are afforded to the north (depicted in Figure 2 below).

**Figure 2:** *views to north from the subject site*





In determining the reasonableness of the development's impact upon views, it is noted that the overall building height is sited 1.055m below the established ridge line and that the additional floor space is occupied within an existing building footprint.

Given the above, it is concluded that the development has been appropriately designed to minimise view loss and as such, Council is satisfied that the proposed development achieves consistency with the outcomes of this control and the planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council* (2004) NSWLEC 140.

#### D8 Privacy

No submissions were received raising concern of potential privacy impacts. Nevertheless, this assessment has carried out a detailed assessment against the privacy controls within the WDCP 2011.

Clause D8 of the WDCP 2011 stipulates that building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties. Ascertaining privacy impacts associated with a development is often difficult to quantify and can be slightly objective. Therefore, a more objective assessment can be provided by considering the development against the planning principle established in the NSW Land and Environment Court case of *Meriton v Sydney City Council* [2004] NSWLEC 313.

***"The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy".***

Comment:

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The subject site is located within a low density residential zone, however the southern adjoining property (16 Dowling Street) accommodates a three (3) storey residential flat building with eight (8) units. The northern adjoining site (24 Dowling Street) contains a two (2) storey dwelling house. For the northern site there is a reasonable expectation that some of their private open space and visual sensitive rooms will remain private. For the southern side, it is expected that visual privacy would be more difficult to conserve, given the higher density living arrangement.

***"Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level Even in high-density development it is unacceptable to have windows at the same level close to each other".***

Comment:

24 Dowling Street

24 Dowling Street contains one window within close visual proximity of the proposed development. This window is located on the southern elevation of 20 Dowling Street and on the first floor, with a sill height of RL38.05

The proposed development contains a new louvre style window on the northern elevation of the minor addition (W01). The sill correlates with the finished floor level, which is sited at RL44.53. It is noted that W01 is located 8.9m to the south-west of the adjoining window at 24 Dowling Street.

Given the 8.9m separation, south-western orientation and 6.48m height difference in sill heights, there would be extremely limited opportunities (if any) for the occupants of Unit 5 to directly overlook into the first floor window at 24 Dowling Street from window W01.

16 Dowling Street

16 Dowling Street contains four (4) windows within close visual proximity of the proposed development. These windows are located on the northern elevation of the adjoining property (also on upper floor) and depicted in Figure 3 below.

***Figure 3: windows on upper floor at 16 Dowling Street***



The sill height of these windows are as follows (referred to from east to west, or front to rear):

- RL45.35.
- RL45.35.
- RL Not known, although lower sill height compared to adjacent windows.
- RL45.35.

The proposed development contains two (2) new windows on the southern elevation (W03 and W04). The sill height of window W03 is RL46.2 (1.67m high sill), with W04 being sited at RL45.99 (1.46m high sill).

Window W03 is setback between 7.19m - 10.84m from the opposing windows at 16 Dowling Street, whilst window W04 is setback between 6.87m - 8.5m from the aforementioned windows. The levels of the proposed windows are also similar to the adjoining windows.

Window W03 does not directly face into an adjoining window, whilst window W04 directly faces into two (2) windows on the adjoining flat building.

***"The use of the space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time".***



#### 24 Dowling Street

As previously established, there are very limited (if any) opportunities for overlooking into the windows at 24 Dowling Street from window W01, given the height differences, setbacks and orientation of window W01 relative to the adjoining windows.

#### 16 Dowling Street

Council's records do not contain documentation that reveals the floor plan of the adjoining residential flat building at 16 Dowling Street and as such, Council is unable to determine the use of those rooms. Nevertheless, an assessment can be undertaken to determine the reasonableness of the privacy impacts based off the location of windows W03 and W04.

Window W03 adjoins a living area, which is considered to be an area where the occupants of the development will spend greater periods of waking time, compared to window W04 which adjoins a bedroom.

Notwithstanding, window W04 contains a 1.67m high window sill, which coupled with a minimum setback of 7.19m from the adjoining windows at 16 Dowling Street, is considered sufficient to ensure a reasonable level of visual privacy is maintained, noting that 16 Dowling Street accommodates medium density development where there is an expectation that complete visual privacy will not be maintained. Moreover, window W04 provides appropriate separation for low-use room (being a bedroom) to ensure an acceptable level of visual privacy is maintained.

***"Where the whole or the most of the private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection".***

#### Comment:

The outdoor terrace at 16 Dowling Street will still be subject to overlooking from the existing outdoor terrace on the subject site. Nevertheless, the proposed works will not exacerbate these privacy impacts.

***"Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable".***

#### Comment:

No additional measures are considered necessary to protect the privacy of adjoining and nearby properties.

***"Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight".***

#### Comment:

Landscaping is not relied upon as a privacy measure.

#### Concluding Remarks



Having regard to the above assessment, it is concluded that the privacy impacts associated with the development will be acceptable.

#### **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 \$ 600 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 120,000.

#### **CONCLUSION**

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

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

The proposed development involves alterations and additions to an existing residential flat building.

The maximum height of the proposed development is 11.6m, which exceeds the 8.5m height limit. Notwithstanding, the roof line of the new addition is sited 1.055m below the existing ridge level and the works are confined to an existing building footprint within the outdoor roof terrace.

When considered against the WLEP 2011 and WDCP 2011 objectives, the proposed development is considered to align with the relevant aims and requirements of these Policies, noting that the development will not result in any unacceptable amenity or environmental impacts.

Therefore, the application is recommended for approval.

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



## RECOMMENDATION

That 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 DA2020/1215 for Alterations and additions to an existing residential flat building on land at Lot 5 SP 5340, 5 / 20 Dowling Street, QUEENSCLIFF, 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
A100 (Revision C) - Site Analysis	17 August 2020	MHDP Architects
A101 (Revision C) - Unit 5 Floor Plan	17 August 2020	MHDP Architects
A102 (Revision B) - Unit 5 Roof Plan	17 August 2020	MHDP Architects
A201 (Revision C) - North Elevation	17 August 2020	MHDP Architects
A202 (Revision C) - South Elevation	17 August 2020	MHDP Architects
A203 (Revision C) - West Elevation	17 August 2020	MHDP Architects
A221 (Revision B) - Section A-A	17 August 2020	MHDP Architects
SK05 (Revision B) - External Finishes Schedule	17 August 2020	MHDP Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A383692	14 August 2020	Mark Hurcum Design Practice Pty Ltd

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	24 September 2020	MHDP Architects



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

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 sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

4. **No Consent for Works Being Undertaken To Balconies**

No consent is granted for the remediation works currently being undertaken on the balconies of the subject residential flat building.

Reason: The works constitute exempt development and are excluded from the scope of works proposed under this Development Application.

## FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$600.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$120,000.00.

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

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

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

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with



Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

##### 7. **BCA Report (Class 2-9)**

A 'Building Code of Australia (BCA) Assessment Report' from an appropriately qualified Accredited Certifier\* will need to be submitted with the Construction Certificate application addressing the following:

The report is to detail the extent to which the proposed building does or does not comply with the deemed-to-satisfy provisions of Sections C, D, E and F of the Building Code of Australia. The report is to also provide recommendations with respect to the building works required to ensure that the specified measures and facilities for the proposed development are appropriate for its intended use to:

- i) restrict the spread of fire from the building to other buildings nearby, and
- ii) protect persons using the building, and to facilitate their egress from the building in the event of fire, and
- iii) where appropriate, provide access for persons with a disability, and
- iv) provide facilities and services appropriate for the development

\*To be regarded as an "appropriately qualified accredited certifier" the certifier must hold the relevant level of accreditation that would enable the certifier to issue a construction certificate for the subject building.

The 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' is to be submitted to the Certifying Authority with the Construction Certificate application.

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

##### 8. **Compliance with Standards**

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



Standards.

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

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

9. **External Finishes to Roof**

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

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

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

10. **Stormwater Disposal**

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

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

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

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

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

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- 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.

12. **Survey Certificate**

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

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

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





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

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

13. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Certifying Authority.

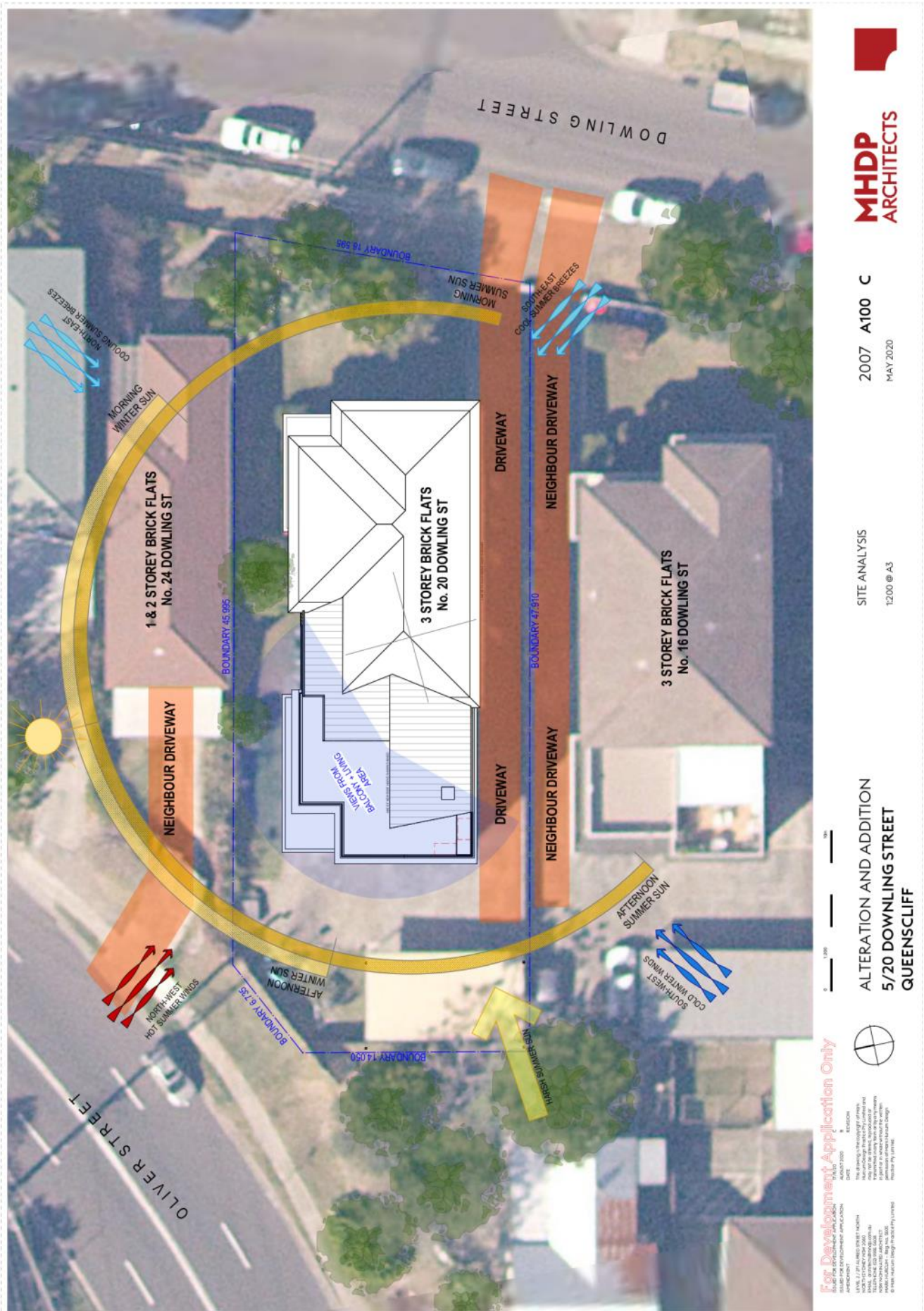
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

14. **Stormwater Disposal**

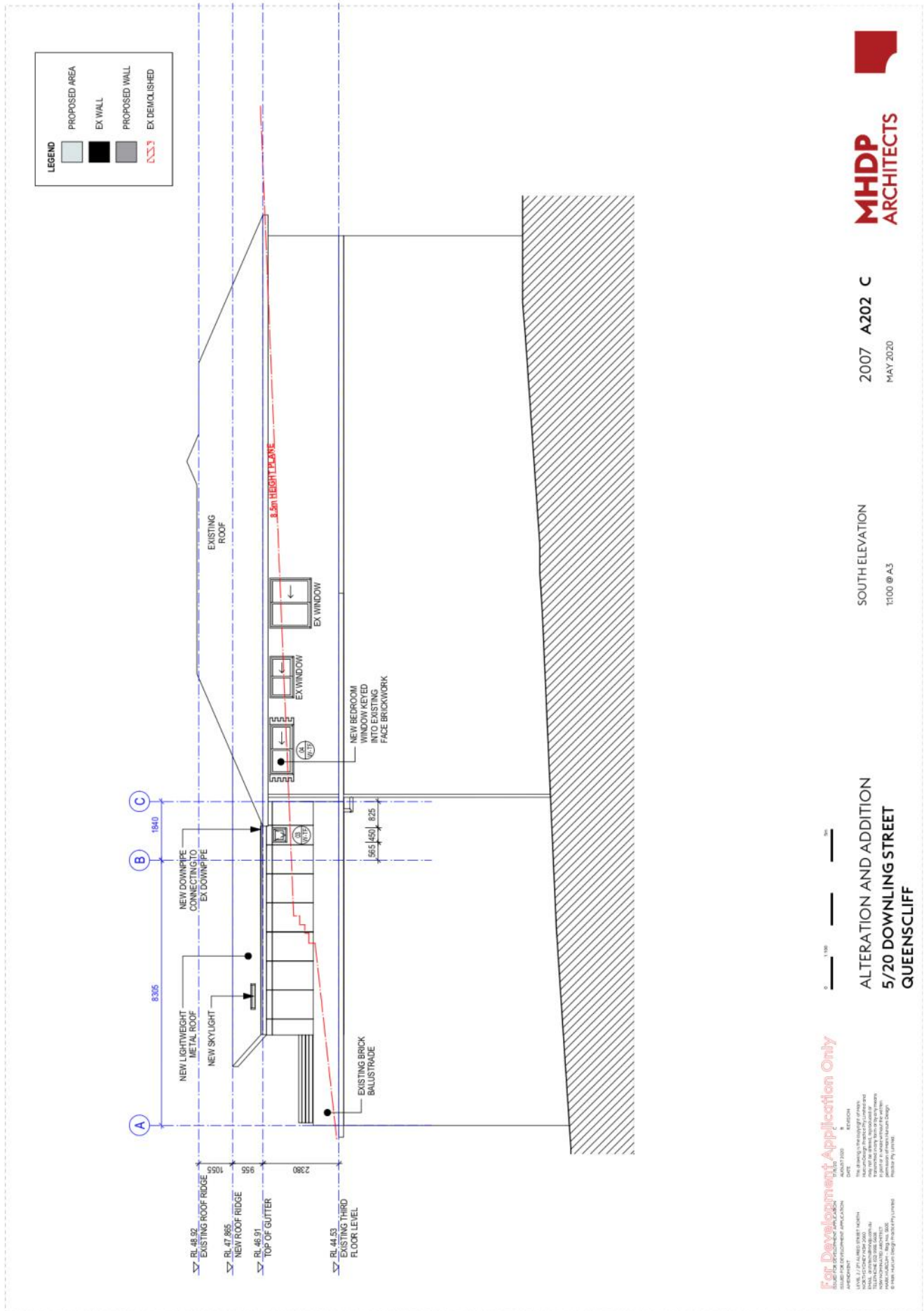
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

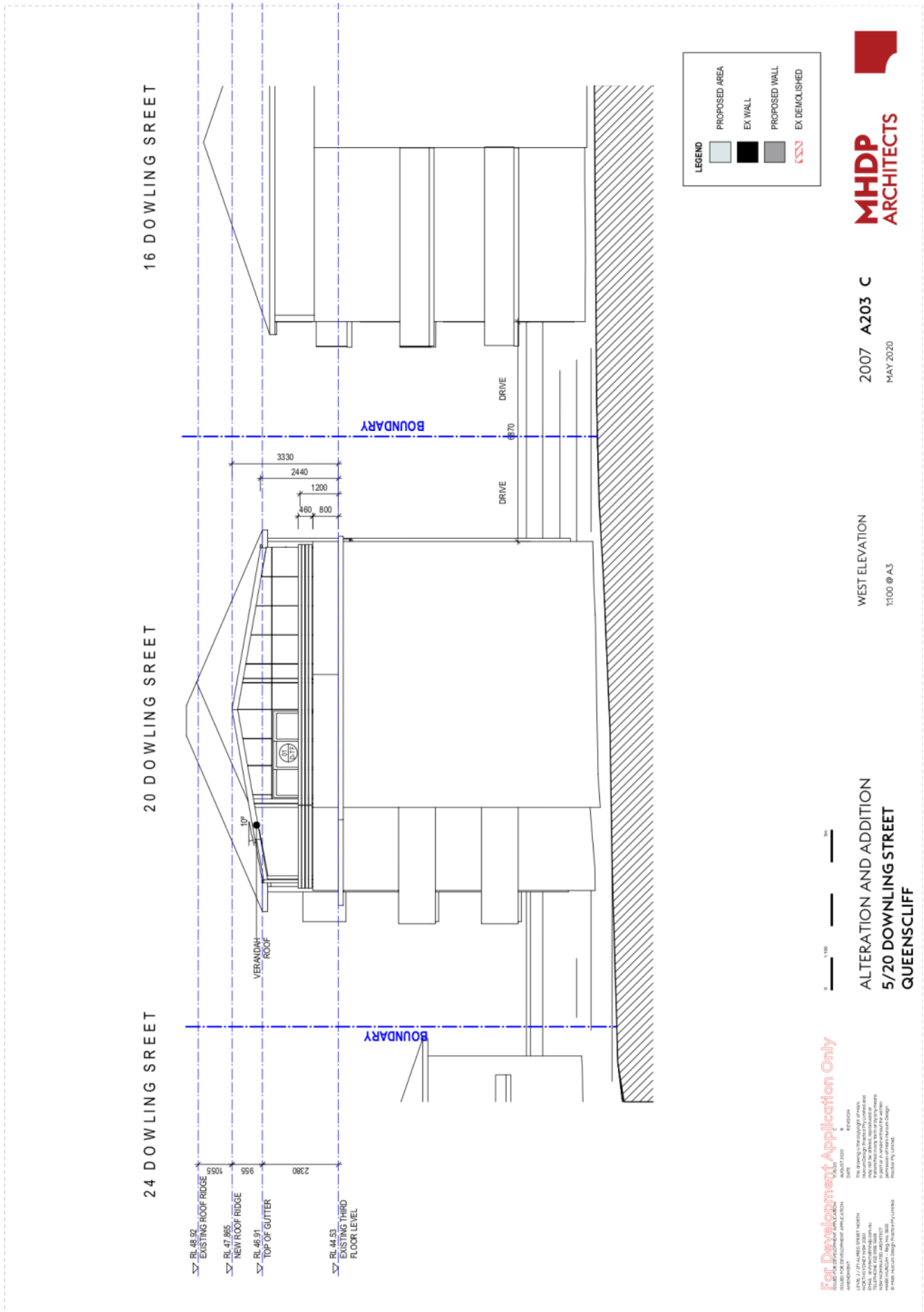












**CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING  
ALTERATIONS AND ADDITIONS  
TO EXISTING FOUR STOREY APARTMENT  
FOR UNIT 5, 20 DOWLING STREET QUEENSCLIFF  
13 NOVEMBER 2020**

This statement constitutes a request for variation to a development standard, made under Clause 4.6 of Warringah Local Environmental Plan 2011 for Northern Beaches Council.

The objectives of Clause 4.6 are as follows:

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

For this to occur, the Development Application is to be supported by a written application that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case. This application should be read in conjunction with the Development Application drawings and Statement of Environmental Effects as prepared by Mark Hurcum Design Practice.

As outlined during the Pre-DA meeting and confirmed in the Pre-DA minutes, it was not initially considered necessary for this application to include a Clause 4.6. The minutes state *"Pursuant to Clause 4.67(3) on the EP&A Act 1979, the provisions contained within the WLEP 2011 do not apply to an existing use."* It was requested however that why technically this did not apply, the Applicant was encouraged to address the zone objectives and building height development standard objectives in the SOEE in justifying for the additional building bulk and scale. This was done in the SEE submitted with the application.

**1.0 ZONING OF THE LAND**

The subject site is zoned R2 Low Density Residential

**2.0 OBJECTIVES OF THE ZONE**

The objectives of zone are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

**CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING  
ALTERATIONS AND ADDITIONS TO EXISTING FOUR STOREY APARTMENT  
FOR UNIT 5, 20 DOWLING STREET QUEENSCLIFF  
13 NOVEMBER 2020  
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**3.0 STANDARD TO BE VARIED**

The standard to be varied is Part 4, Clause 4.3 of LEP 2014, which sets the maximum building height for a building as shown on the Building Height Map.

The maximum building height for 20 Dowling Street Queenscliff is 8.5 metres (WLEP 2011).

**4.0 OBJECTIVES OF THE DEVELOPMENT STANDARD TO BE VARIED**

*The objectives of this clause are as follows:*

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

**5.0 EXTENT OF VARIATION TO THE STANDARD**

The extent of the non-conformity is described graphically on the North (A201) and South (A202) elevations, Section A-A (A221) and Shadow Elevations No. 16 Dowling Street (SK03). These drawings show the non-conformity of both the existing dwelling and the proposed works. This report should be read in conjunction with these drawings.

Maximum possible height:	8.5m (WLEP 2011)
Maximum existing height:	11.9m
Maximum proposed height:	11.6m

It is important to note that the existing building exceeds the 8.5m maximum building height. The proposed works do not exceed the ridge height of the existing building.

The entire of the top floor is above the 8.5m height limit. As noted at Pre-DA however pursuant to Clause 4.67(3) of the EPA Act 1979 the provisions within the WLEP 2011 do not apply to an existing use. Therefore assessment of height is a merit assessment.

**CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING  
ALTERATIONS AND ADDITIONS TO EXISTING FOUR STOREY APARTMENT  
FOR UNIT 5, 20 DOWLING STREET QUEENSCLIFF  
13 NOVEMBER 2020  
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**6.0 HOW STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS  
UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE?**

Strict compliance with this development standard is unreasonable given, as demonstrated above, the proposed unit renovation is to an existing building that already breaches the height limit. Strict compliance to the standard would preclude **any** development of this unit, even despite the fact that there are no environmental impacts resulting from the proposed development. The proposed works are created entirely below the existing ridge line, therefore not worsening the height non-compliance, and it also occupies the same existing footprint, therefore not making the building any greater impact on the site. As demonstrated below, the proposed works does not impact views, privacy or reduce direct sunlight to the living areas of the Southern neighbours (No.16 Dowling Street).

The proposed building's height and scale are consistent with the **existing** character of this part of the Queenscliff locality, even if by current zoning this is technically supposed to be a low-density area. Unless the entire building was demolished then any development of this site would not be able to comply with the desired future character of the locality. It is clearly unachievable to assume this site or similar neighbouring sites will ever see a backwards development or de-intensification will occur that would be in line with the R2 zoning.

It can be argued therefore that the proposal does not cause any negative impacts to the public area or neighbours and that despite the technical non-compliance of the WLEP height control it can be considered appropriate. As such, strict compliance with the control is both unreasonable and unnecessary.

**7.0 THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY  
CONTRAVENING THE DEVELOPMENT STANDARD**

Clause 4.6 requires the departure from the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard. As demonstrated below, there are no negative impacts resulting from the proposed works: Overshadowing, Privacy and View Loss have all been assessed and found to be no issue.

Bulk and Scale:

The height control primarily is used to protect against undesirable impacts resulting from an inappropriate bulk and scale. The height of the additional roof in this instance is well below the existing roof ridge and as such does not represent an obtrusive extension of the existing bulk and scale.

Overshadowing:

The impact of additional height was considered one of the factors to address due the *possibility* of overshadowing the neighbour. In consideration of this the height of the southern edge of the extension was kept in alignment with the existing gutter line – which is quite low. The extension utilises a skillion roof arrangement and a sloping ceiling so that for the new Lounge area and WC the southern ceiling height is 2.3m and it angles up to 3m.

A survey of the site and neighbour was completed. The proposed scheme was modelled to determine the extent of shadow impact. This found that while the works do overshadow the neighbouring residential flat building at No.16, the existing building already casts shadow onto these units and the additions do not reduce further any sunlight into living room windows.



CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING  
ALTERATIONS AND ADDITIONS TO EXISTING FOUR STOREY APARTMENT  
FOR UNIT 5, 20 DOWLING STREET QUEENSCLIFF  
13 NOVEMBER 2020  
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7.0 THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY  
CONTRAVENING THE DEVELOPMENT STANDARD (CONTINUED)

Most of the windows of the Unit building at No.16 facing the subject site are bathroom or bedroom windows and the main living windows face East and West out the Western end of the property or over Dowling Street. As demonstrated clearly in the elevational shadow diagrams, the additional mid-winter shadow falls on wall area of the adjacent building to the south and does not cause a reduction in sunlight to any windows. This was determined at Pre-DA to be a critical factor in determining the impact of the proposed additions and with this analysis complete it is submitted that the shadow impact is not a reason to refuse approval.

View Loss:

The building sits at the crown of the road overlooking Oliver Street. The only views that may be affected by the development would be from the first floor of No.16, however they have a constructed a solid privacy screen along the subject site side of their unit. There is no view loss resulting from the proposal.

Privacy Impacts:

The proposed works occupy a very large open roof terrace outside of Unit 5. In constructing the proposed works, this fills in a large portion of this space and there is only one small highlight window in the extension and one highlight window in the Bedroom to replace the West facing window. As such the works do not increase any privacy impacts – in fact it reduces the possibility of overlooking.

8.0 COMPLIANCE WITH THE OBJECTIVES PERTAINING TO STANDARD TO BE VARIED

As demonstrated below, all objectives of the Standard are met.

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

The proposed building's height and scale are consistent with the **existing** character of the Queenscliff locality, even if by current zoning this is technically supposed to be a low-density area. Unless the entire building was demolished then any development of this site would not be able to comply with the **desired future** character of the locality. It is clearly unachievable to assume this site or similar neighbouring sites will ever see a backwards development or de-intensification will occur that would be in line with the R2 zoning.

As shown in the 3D perspectives (SK04) the proposed addition integrates behind the structure of the existing unit. The third floor addition is set back from the existing balcony balustrade to reduce its scale when viewed from the rear road below.

**The objective is maintained.**

CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING  
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8.0 COMPLIANCE WITH THE OBJECTIVES PERTAINING TO STANDARD TO BE VARIED  
(CONTINUED)

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

The proposed dwelling is similar in scale and design to the neighbouring property on the southern side of Dowling Street. The works will also not be particularly visible from public areas due to being set back from the existing balcony edge on the North and West.

**The objective is maintained.**

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

As noted above, the works do have the potential to overshadow the neighbouring residential flat building at No.16, however the existing building already casts shadow onto these units. Most of the windows facing the subject site are bathroom or bedroom windows and the main living windows face East and West out the Western end of the property or over Dowling Street. A survey of the site and neighbour has been completed and elevational sun shadowing undertaken. As demonstrated clearly in the elevational shadow diagrams, the additional mid-winter shadow falls on wall area of the adjacent building to the south and does not cause a reduction in sunlight to any windows. This was determined at Pre-DA to be a critical factor in determining the impact of the proposed additions and with this analysis complete it is submitted that the shadow impact is not a reason to refuse approval.

As noted above, this potential was recognised early and is the reason for retaining the very low eaves along that side of the extension. This was vindicated by the shadow analysis.

**The objective is maintained.**

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

The building sits at the crown of the road overlooking Oliver Street. The only views that may be affected by the development would be from the first floor of No.16, and they have a privacy screen along the subject site side of their unit.

**The objective is maintained.**

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

The proposed alteration and addition does not affect the existing conditions of the natural topography.

**The objective is maintained.**

**CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING  
ALTERATIONS AND ADDITIONS TO EXISTING FOUR STOREY APARTMENT  
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**8.0 COMPLIANCE WITH THE OBJECTIVES PERTAINING TO STANDARD TO BE VARIED  
(CONTINUED)**

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

The proposed dwelling has been designed to minimise any adverse visual impact on the natural environment through a combination of form and materials and sympathetic finishes that respects the surrounding environment. In addition, the subject site is not a heritage item and not located within a heritage conservation area.

**The objective is maintained.**

**9.0 CONCLUSION**

It is submitted that a variation to Warringah Council LEP 2011 is appropriate for this project. The proposal does not adversely impact the neighbouring properties whilst complying with all objectives of the standard and providing suitable accommodation for the occupants.

Further, as noted by Council at the Pre-DA, *"Pursuant to Clause 4.67(3) on the EP&A Act 1979, the provisions contained within the WLEP 2011 do not apply to an existing use."*

As demonstrated above, strict compliance with this standard is unreasonable and unnecessary to apply to this Development Application and adequate environmental planning controls apply to be able to justify a variation to this standard.

Approval should not therefore be withheld as a result of the non-compliance with the Height Standard.