



northern  
beaches  
council

# AGENDA

## NORTHERN BEACHES LOCAL PLANNING PANEL

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

**WEDNESDAY 3 FEBRUARY 2021**

Beginning at 12.00pm for the purpose of considering and determining matters included in this agenda.

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

**Panel Members**

Peter Biscoe	Chair
TBA	
Robert Hussey	Town Planner
Peter Cotton	Community Representative

**Quorum**

A quorum is three Panel members

**Conflict of Interest**

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

## Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 3 February 2021

<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 20 January 2021	
<b>3.0</b>	<b>PUBLIC MEETING ITEMS .....</b>	<b>5</b>
	<b>DEVELOPMENT APPLICATION</b>	
3.1	DA2020/1163 - 24 Wandeen Road, Clareville - Construction of a dwelling house including a swimming pool .....	5
	<b>PLANNING PROPOSAL</b>	
3.2	Planning Proposal (PEX2020/0002) - 5 Bowling Green Lane, Avalon Beach.....	75
<b>4.0</b>	<b>NON PUBLIC MEETING ITEMS .....</b>	<b>118</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	DA2020/1260 - 16 Grandview Drive, Newport - Construction of a secondary dwelling .....	118
4.2	DA2020/0739 - 54-62 May Road, Narraweena - Demolition works and construction of a Shop Top Housing Development with basement carparking .....	155

## **2.0 MINUTES OF PREVIOUS MEETING**

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

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 16 December 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	DA2020/1163 - 24 WANDEEN ROAD, CLAREVILLE - CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL
AUTHORISING MANAGER	Rodney Piggott
TRIM FILE REF	2020/765981
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

#### PURPOSE

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

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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. DA2020/1163 for construction of a dwelling house including a swimming pool at Lot 102 DP 13760, 24 Wandeen Road, Clareville subject to the conditions and for the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1163
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<b>Responsible Officer:</b>	Megan Surtees
<b>Land to be developed (Address):</b>	Lot 102 DP 13760, 24 Wandeen Road CLAREVILLE NSW 2107
<b>Proposed Development:</b>	Construction of a dwelling house including a swimming pool
<b>Zoning:</b>	E4 Environmental Living
<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>	Krystal Ann Pszczonka
<b>Applicant:</b>	Rise Projects Pty Ltd

<b>Application Lodged:</b>	23/09/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	06/11/2020 to 20/11/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	58
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 1,303,045.00
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### EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application DA2020/1163. This application seeks consent for the construction of a two and three storey residential dwelling with swimming pool and associated landscaping works (including the removal of multiple trees).

The proposed dwelling extends beyond the prescribed maximum building height of 8.5m, however, as the siting of the building footprint will be located over a slope in excess of 30% (16.7 degrees), the development is permitted to extend beyond 8.5m, but remain below 10.0m. As such, a Clause 4.6 is not required in this instance and the building height has been assessed accordingly within this report. Notwithstanding this numeric non-compliance, the proposal is not considered to result in an unreasonable bulk, scale, or amenity impacts when viewed from public and private places.

The application was notified between 30 September and 14 October, which resulted in over 50 submissions in objection to the proposed development being received by Council. The objections related to a range of amenity and environmental impacts.

As a result of the preliminary assessment of the application, a Request for Further Information (RFI) was sent to the Applicant on 12 October 2020. Amended plans were provided to Council on 26 October 2020. As a result of the significant amount of submissions received, Council re-notified the amended plans between 6 November and 20 November 2020.

The proposed development continues to result in numeric non-compliances to controls within the Pittwater 21 Development Control Plan (P21 DCP), of which have been addressed within this report.

The Application is referred to the Northern Beaches Local Planning Panel for review and determination due to the amount of unresolved submissions received.

The Application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

Accordingly, based on the detailed assessment contained within this report, it is recommended that the application be **approved**.

## PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for the construction of a dwelling house with swimming pool and associated landscaping works, including the following:

### Dwelling

#### *Lower Ground Level:*

- Bedroom 5.
- Study.
- Bathroom.
- Powder room.
- Rumpus room with access to the pool area alfresco.

#### *Ground Level:*

- Two (2) vehicle garage with bin enclosure.
- Entry porch.
- Internal entryway with split level stairs down to the open-plan dining, living and kitchen area, and up to the first floor level.
- Butlers pantry.
- Laundry with external side access to a drying court along the western elevation.
- Alfresco dining off the living area with outdoor kitchen and BBQ area.
- Internal stairs to the lower ground level.

#### *First Floor Level:*

- Master Bedroom with walk-in robe and en-suite.
- Main bathroom.
- Bedrooms 2, 3 and 4.

### External Works

- Tree works (approximately 16 to be removed, 23 to be retained and 21 proposed for replacement planting [as indicated on the Landscape Plan provided, and within the Arboricultural Impact Assessment Report]).
- New driveway, with a portion of the western side being cantilevered with a vertical wall (so as to mitigate development impact upon T20).
- Swimming pool with associated alfresco area.
- Landscaping works including the provision of canopy trees, vegetation and low, medium and high hedging throughout the site.
- External stairs off the driveway and pathway along the western side of the dwelling allowing external access from the front to the rear of the site.
- Alfresco area for Bedroom 5.

### 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 - 7.6 Biodiversity protection

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater 21 Development Control Plan - A1.7 Considerations before consent is granted

Pittwater 21 Development Control Plan - B8.2 Construction and Demolition - Erosion and Sediment Management

Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - C1.25 Plant, Equipment Boxes and Lift Over-Run  
Pittwater 21 Development Control Plan - D1.5 Building colours and materials  
Pittwater 21 Development Control Plan - D1.9 Side and rear building line  
Pittwater 21 Development Control Plan - D1.11 Building envelope  
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

#### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 102 DP 13760 , 24 Wandeen Road CLAREVILLE NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Wandeen Road.</p> <p>The site is irregular in shape with a frontage of 19.4m along Wandeen Road and a maximum depth of 59.13m. The site has a surveyed area of 853.6m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone. The site has been vacant for an extended period of time.</p> <p>The site has a southerly orientation and is located on a considerable cross-fall slope exceeding 30%, falling in the direction from the south-eastern corner (street frontage) toward the rear north-west corner.</p> <p>The site is vacant of any built form. The site contains low lying shrubs and multiple canopy trees. The site is located within the Pittwater Spotted Gum Forest.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by one (1), two (2) and three (3) storey residential dwellings (some with swimming pools) located within a landscaped setting.</p>

Map:





#### **SITE HISTORY**

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been vacant, for an extended period of time.

#### **APPLICATION HISTORY**

The Application was received by Council on 23 September 2020. An assessment was conducted which indicated multiple issues which Council could not support. As such, a Request for Further Information (RFI) was sent to the Applicant on 12 October 2020, giving the Applicant 14 days to address these issues.

Amended plans were provided to Council on 26 October 2020. Upon receipt of these plans, Council observed that some issues identified in the RFI remained outstanding. The Applicant was emailed on 30 October 2020 and was given the option to either withdraw the application, amend to address the concerns or maintain the application with Council, which would result in a recommendation to the NBLPP of refusal. On the same day, the Applicant provided amended plans which reduced the remaining areas of non-compliance.

While Council's Community Participation Plan (CPP) does not require re-notification of amended plans of a lesser environmental impact, Council re-notified the amended plans due to the significant number of submissions received.

Council's Landscape Officer and Bushland and Biodiversity Officer reviewed the plans and raised concerns (which have been included in their referral comments under section 'Referrals' of this report) with regards to areas of non-compliance against the relevant controls of P21 DCP and clauses of PLEP 2014.

The Applicant was again given the option to withdraw the application or have the application be recommended to the NBLPP for refusal. The Applicant advised that the application would not be withdrawn and that Council should accept the final amendments which depict a cantilevered section of driveway. Council formally accepted these plans on 19 November 2020 and Council's Landscape

Officer and Bushland and Biodiversity Officer have reviewed these and are now satisfied that the proposed development will not unreasonably impact upon the health of the trees proposed for retention. A discussion on this can be found within the 'Referral' section of this report.

The conditions that were recommended by Council's technical experts required amendments to the plans. Due to the nature of the proposed amendments it was considered appropriate for the Applicant to submit amended plans addressing the issues prior to the determination of the application, so as to ensure the amendments could be satisfactorily achieved prior to an operative consent being issued. The applicant subsequently submitted the amended plans to Council on 19 January 2021 and they were referred to Council's Landscape Officer and Development Engineer for review. Their updated comments can be found elsewhere in this report under section 'Referrals'.

The final set of amended plans were not required to be re-notified in accordance with the Northern Beaches Council Community Participation Plan.

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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. Additional information was requested in relation to amending the architectural plans so as to result in a reduced built form - particularly to address the building</p>

Section 4.15 Matters for Consideration'	Comments
	<p>envelope encroachment, the numeric non-compliance to the landscaped area, privacy and impact upon trees to be retained. A final set of amendments were formally accepted by Council on 19 January 2021.</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 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</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 06/11/2020 to 20/11/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 58 submission/s from:

Name:	Address:
Mr Michael Anthony Henry	59 Dress Circle Road AVALON BEACH NSW 2107
Mrs Anna Maria Henry	22 Wandeen Road CLAREVILLE NSW 2107
Ms Lesley Dunton	14 Wandeen Road CLAREVILLE NSW 2107
Ms Eva Meland	20 Wandeen Road CLAREVILLE NSW 2107
Mr John Lachlan Lamble	185 Walker Street NORTH SYDNEY NSW 2060
Mr Roderick Anthony Harold Post	26 Therry Street AVALON BEACH NSW 2107
Mr Johan Willem Hendrik Manger	170 Plateau Road AVALON BEACH NSW 2107
Mr Colin McKenzie Thomson	15 Plateau Road AVALON BEACH NSW 2107
Derry Nicole Finkeldey	45 A Chisholm Avenue AVALON BEACH NSW 2107
Mr Martin Maynard	203 Hudson Parade CLAREVILLE NSW 2107
Ms Margaret Edith Dwyer	168 Hudson Parade CLAREVILLE NSW 2107
Mr Brian James Gee	14/374 Sydney Road BALGOWLAH NSW 2093
Mr Mark Donald Lorimer Baylis	8 Surf Side Avenue AVALON BEACH NSW 2107
Mrs Fiona Anne Shute	1 Wandeen Road CLAREVILLE NSW 2107
Anne Loxton	209 Hudson Parade CLAREVILLE NSW 2107
Peter Leslie Donald Loxton	209 Hudson Parade CLAREVILLE NSW 2107
Mr David Robert Evans	4 Wandeen Road CLAREVILLE NSW 2107
Clareville & Bilgola Plateau Residents Association	PO Box 292 AVALON BEACH NSW 2107
Mrs Diana Elizabeth Rouhan	PO Box 718 AVALON BEACH NSW 2107
Catherine Mary Kerr	1 A Paradise Avenue AVALON BEACH NSW 2107
Ms Heather Marjorie Macorison	6 Wandeen Road CLAREVILLE NSW 2107
Mrs Jodi Russell	77 Central Road AVALON BEACH NSW 2107
Mrs Chelsey Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107

<b>Name:</b>	<b>Address:</b>
Mr Matthew Seddon Bradhurst	C/- Vaughan Milligan Development Consulting Pty Ltd PO Box 49 NEWPORT BEACH NSW 2106
Mr Lewis Nixon Jackson	38 Wandeen Road CLAREVILLE NSW 2107
Birgit Hasseler	114 A Pacific Road PALM BEACH NSW 2108
Mr Terry Douglas Crawford	12 Wandeen Road CLAREVILLE NSW 2107
Kate Ponton	40 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Mr David Norman Poppleton	181 Hudson Parade CLAREVILLE NSW 2107
Mr Anthony Craig Boaden	34 Trappers Way AVALON BEACH NSW 2107
Prudence Wawn	47 Riverview Road AVALON BEACH NSW 2107
Victoria James	1 Canungra Place ELANORA HEIGHTS NSW 2101
Mrs Leanne Austin	7 Wandeen Road CLAREVILLE NSW 2107
Mr Ashley Becket Holt	14 Queens Avenue AVALON BEACH NSW 2107
Mr Arthur Rodman Bashford	19 Wandeen Road CLAREVILLE NSW 2107
Ms Danielle Janice Bressington	13 York Terrace BILGOLA PLATEAU NSW 2107
Mr Nicholas Clark	3 Mia Place CLAREVILLE NSW 2107
Mr Bruce William Crossie	173 Hudson Parade CLAREVILLE NSW 2107
Mr Richard Peter Stanning	26 Wandeen Road CLAREVILLE NSW 2107
Mrs Jillian Clare King	32 Queens Parade NEWPORT NSW 2106
Mrs Jocelyn Allen	36 Wandeen Road CLAREVILLE NSW 2107
Mr William John Powell	56 Narrabeen Park Parade WARRIEWOOD NSW 2102
Mr Alexander Simon Cockerton	293 Hudson Parade CLAREVILLE NSW 2107
Mr Thomas Matthew McGee	55 Careel Head Road AVALON BEACH NSW 2107
Mrs Katharine Dianne Stanning	26 Wandeen Road CLAREVILLE NSW 2107
Mrs Tracey Louise Trinder	75 Palmgrove Road AVALON BEACH NSW 2107
Mr Christian Alan David Trinder	75 Palmgrove Road AVALON BEACH NSW 2107
Mr Paul Anthony Gregsonn	21 Wandeen Road CLAREVILLE NSW 2107
Mrs Jennifer Beck	28 Wandeen Road CLAREVILLE NSW 2107
Andrew Gregory	47 Hudson Parade CLAREVILLE NSW 2107
Ms Miranda Maragret Korzy	80 Wandeen Road CLAREVILLE NSW 2107
Mr Jon Charles Hughes	30 Loblay Crescent BILGOLA PLATEAU NSW 2107
Mr David Griffith Pritchard	42 A Bardo Road NEWPORT NSW 2106
Eva Meland	Address Unknown
Mrs Janette Cynthia Evans	C/- Vaughan Milligan Development Consulting Pty Ltd PO Box 49 NEWPORT BEACH NSW 2106
Mrs Janet Mary Crossie	173 Hudson Parade CLAREVILLE NSW 2107
Mr J Lamble	175 Hudson Parade CLAREVILLE NSW 2107
Ms Cathryn Justine Lynch	36/56 Pirrama Road PYRMONT NSW 2009

The proposal received a large number of submissions objecting to the proposal. As of 30 November 2020, 59 submissions were received, all against the proposed development. 26 of the 59 submissions received after the application was re-notified reiterated that their original concerns remained following the provision of the amended plans.

Many of the submissions raised similar issues. The matters raised have been grouped and addressed as follows:

- **Objectors contend the proposal fails to meet the requirements and objectives of the following Controls within the Pittwater 21 Development Control Plan (P21 DCP) in the following ways:**

***A4.1 Avalon Beach Locality & D1.1 Character as Viewed from a Public Place***

**Objectors concerns:**

*As the proposal involves the removal of multiple canopy trees, including Pittwater and Wagstaffe Spotted Gum Forest species, the objectors contend that the proposal does not achieve the desired outcomes of the character of Avalon Beach, nor does the proposal achieve the outcomes of D1.1 of P21 DCP.*

**Comment:**

The desired future character of the locality of Avalon Beach encourages development to retain a low-density residential area resulting in a maximum of two (2) storeys within a landscaped setting that does not detract from the surrounding natural environment, and one that positively responds to the topography of the site. While multiple trees are proposed to be removed to facilitate the built form, the proposal also includes the retention of some trees and replacement planting of canopy trees, small, medium and large shrubs and a range of grasses. In this instance, Council is satisfied that the proposal remains consistent with desired future character of the locality.

With regards to the requirements of D1.1 of P21 DCP, the front of the dwelling utilises an entry portico and a recessed first floor level to create a degree of articulation when viewed from the street frontage. The retention of canopy trees in the south-western corner of the subject site allows a degree of visual relief of the built form when viewed from the street frontage. Council is satisfied that the proposed design achieves compliance with the requirements and outcomes of D1.1 Character as Viewed from a Public Place. This issue does not warrant refusal of the application.

***B3.1 Land Slip Hazard***

**Objectors concerns:**

*One objector, being the owner of 22 Wandeen Road (the property to the west of the subject site), has raised concern that the vibrations resulting from excavation works will cause their property harm.*

**Comment:**

The proposal is accompanied by a Geotechnical Assessment Report (prepared by White Geotechnical Group Pty Ltd, dated 15 September 2020). Council's Development Engineer has reviewed this application and raised no concern with regards to this control. Relevant conditions have been imposed by Council's Development Engineer. Subject to conditions, the proposal is considered to achieve compliance with this control. This issue does not warrant refusal of the application.

***B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community & B4.22***

**Preservation of Trees and Bushland Vegetation****Objectors concerns:**

*The proposal includes the removal of multiple canopy trees and, as such, the outcomes of the abovementioned controls have not been respected.*

**Comment:**

Council's Landscape Officer and Bushland and Biodiversity Officer have reviewed this application and raised no concern with regards to the removal of the proposed trees, acknowledging that as the site is vacant the removal of trees is inevitable to facilitate a dwelling house, which is permissible within the E4 Environmental Living zone as stipulated under *PLEP 2014*. Of concern to Council's Landscape Officer and Bushland and Biodiversity Officer, however, is the preservation and protection of the trees proposed to be retained. This has been addressed within their referral comments which can be found in this report, under section 'Referrals'. Relevant conditions have been imposed by Council's Landscape Officer and Bushland and Biodiversity Officer. Subject to conditions, the proposal is considered to achieve compliance with these controls. This issue does not warrant refusal of the application.

**B6.1 Access Driveways and B6.2 Internal Driveways****Objectors concerns:**

*Objectors request Council's 'Highway Officer' review this application in detail with consideration to the retention of the existing access driveway being utilised for this proposed development. Of further concern is that the proposed internal driveway will damage a Grey Iron Bark Eucalyptus paniculate, indicated on the plans and Arboricultural Report (prepared by Blues Brothers Arboriculture, dated 7 September 2020) as T17.*

**Comment:**

The proposed development is accompanied by Driveway plans (as indicated on drawing no. 6.2 (Rev D) and 4.3 (Rev D), prepared by Rise Projects, dated 30 November 2020). Council's Development Engineer has reviewed this application and raised no concern with regards to the proposed driveway access and internal driveway. Council's Development Engineer has imposed relevant conditions relating to the provision of a Traffic Management Plan. Further, the proposed development includes the provision of an off-street turning area (forward of the proposed garage) which will encourage vehicles to exit the site in a forward facing direction. The proposed development seeks consent for the removal of T17 so as to facilitate the proposed internal driveway. As discussed above, Council's Landscape Officer and Bushland and Biodiversity Officer have not raised concern with regards to the removal of T17, subject to conditions. The proposal is considered to achieve compliance with this control. This issue does not warrant refusal of the application.

**B6.3 Off-Street Vehicle Parking Requirements****Objectors concerns:**

*An objector raised concern, within a compliance table, that the proposed development does not achieve compliance with this control.*

**Comment:**

A submission indicates, within a compliance table, that the proposal does not achieve compliance with this control, although no further detail is outlined within this submission. The proposed development includes an attached two (2) vehicle garage. Under this control, a dwelling with 2 (two) bedrooms or more requires 2 (two) parking spaces per dwelling, with the following internal dimensions of an enclosed garage with multiple side by side vehicles: 5.7 metres x 6.0 metres for 2 (two) adjacent vehicles (and additional requirements for more vehicles, however this is not applicable under this application). The proposed development results in the following internal dimensions for the enclosed garage: 6 metres x 6 metres. The



proposal achieves compliance with this control. This issue does not warrant refusal of the application.

#### **B8.1 Construction and Demolition - Excavation and Landfill**

##### **Objectors concerns:**

*An objector raised concern, within a compliance table, that the proposed development does not achieve compliance with this control.*

##### **Comment:**

As above, a submission indicates, within a compliance table, that the proposal does not achieve compliance with this control however no further detail is outlined within the submission. As discussed elsewhere in this section, the proposal is accompanied by a Geotechnical Report (prepared by White Geotechnical Group Pty Ltd, dated 15 September 2020). Council's Development Engineer has reviewed this application and raised no concern with regards to the proposed excavation and landfill works required to facilitate the built form. Subject to conditions, the proposal is considered to achieve compliance with this control. This issue does not warrant refusal of the application.

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

##### **Objectors concerns:**

*Objectors raised concern that the proposed development does not achieve compliance with this control due to the proposed removal of multiple canopy trees and other vegetation. Of specific concern is that the built form will result in a general dominance over the landscaped portion of the site, the hard to soft surface ratio of the site is non-compliant and the proposal will result in a built form that would create multiple adverse amenity impacts upon adjoining and surrounding properties.*

##### **Comment:**

Council's Landscape Officer has reviewed this application, including the Landscape Plan and raised no objection to the proposal, subject to conditions. Further, the potential amenity impacts (privacy, amenity, and solar access) have been addressed elsewhere in this report. Subject to conditions, however, the proposal is considered to achieve compliance with this control. This issue does not warrant refusal of the application.

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

##### **Objectors concerns:**

*The proposed development does not result in a design that achieves a reasonable sharing of views available from surrounding and nearby properties and from the public domain. The information provided with the application is insufficient, thus prohibiting an analysis of the proposal against the Views - General planning principle, as developed from the Land and Environment Court (LEC) ruling of Tenacity Consulting V Warringah Council [2004] NSWLEC 140 at 25-29. In addition, the Statement of Environmental Effects (SEE) failed to complete a 'Rose Bay Marina Assessment', or failed to address the potential view loss of the water when viewed from the street frontage.*

##### **Comment:**

Three (3) objectors noted view loss as a result of the proposed development. These objectors reside at 22 Wandeen Road (to the west of the subject site) 26 Wandeen Road and 28 Wandeen Road (both to the east of the subject site). The objectors contend that insufficient information has been provided, thus prohibiting a detailed analysis of the four-step assessment. Following site visits at all three properties, Council contends that only one (1) property's views may be potentially affected as a result of the proposed development - being 26 Wandeen Road, directly adjoining the subject site to the east. As such, Council conducted an

independent assessment based on the four-step assessment as outlined with Tenacity Consulting V Warringah Council [2004] NSWLEC 140 25-29. The details of this assessment can be found in this report under section C1.3 Visual Privacy.

Further, upon a site visit and in conjunction with the submitted plans, Council is satisfied that, as a result of the angle of the subject site and siting of the proposed dwelling (including the generous front setback and considerable western side setback), the proposal is unlikely to create any unreasonable disruptions to the view of the water from the public domain of the street frontage as the water can still be viewed over the dwelling at 22 Wandeen Road. As such, an assessment of *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046 at 39-49 is not required in this instance. This issue does not warrant refusal of the application.

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

##### **Objectors concerns**

*The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 at 133-144 notes that areas of overshadowing arising from poor design is not acceptable, regardless of whether the proposal achieves compliance with the numeric requirements of this control. The proposal results in a poor design that doesn't respect the maximum building height and side building envelope control. Hourly shadow diagrams have not been provided with this application and we request Council to obtain such diagrams. The loss of sunlight is directly attributable to the non-compliant building envelope.

##### **Comment:**

Shadow diagrams have been provided with this application which indicate the proposed development results in maintaining a minimum of 3 hours of sunlight to adjoining sites' dwellings and private open spaces. As such, it is unnecessary for Council to request the applicant provide hourly shadow diagrams in this instance. This issue does not warrant refusal of the application.

#### **C1.5 Visual Privacy**

##### **Objectors concerns:**

*The windows along the western elevation and alfresco area at the rear of the property will have direct lines of sight into the windows and decks of adjoining properties, particularly 22 Wandeen Road, which will result in an unreasonable privacy and amenity impact upon the occupants of the adjoining property. Objectors contend that the windows, particularly along the western elevation, be amended to highlight windows and a privacy screen installed along the western elevation of the alfresco area. Further, the owners of 173 Hudson Parade contend that the rear pool area and elongated development will result in an unreasonable privacy impact upon their property.*

##### **Comment:**

The submission prepared by the owners of 22 Wandeen Road provides an assessment of the *Meriton v Sydney City Council* [2004] NSWLEC 313 at 45-46. Council has conducted an independent assessment of this control which can be found in this report under section C1.5 Visual Privacy. Further, the proposed pool area will result in a setback distance ranging between 13.9m - 16.0m - thus achieving compliance with the 9.0m requirement as stipulated under this control, as well as compliance with control D1.9 Side and Rear Building Line of P21 DCP. Amended plans were received on 19 January 2021 which depict alterations to the windows along the western elevation, as well as proposing a 1.65m high privacy screen for the entire length of the western elevation of the entry porch. Subject to the amended plans, the proposal is considered to achieve compliance with this control. This issue does not warrant refusal of the application.

**C1.6 Acoustic Privacy and C1.25 Plant, Equipment Boxes and Lift Over-Run****Objectors concerns:**

*The owners of the property to the rear contend that the proposed pool area is within close proximity to their dwelling, which will then result in an unreasonable acoustic impact to their enjoyment of their property. Further, the owners of the adjoining property, being 22 Wandeen Road, are concerned about the location of, and the noise generating from, air conditioning units (ACU) and the pool pump/filter.*

**Comment:**

The architectural plans provided do not show any air conditioning units or the location of the pool pump/filter. A condition of consent will be imposed relating to the maximum noise levels and location of the pool pump/filter. Further, the proposed plans do not show ACUs. The *State Environmental Planning Policy (SEPP) (Exempt and Complying Development Codes) 2008*, Subdivision 3 Air-conditioning Units permits the installation of ACUs without approval from a consent authority, subject to adhering to the development standards as outlined within Subdivision 3 of *SEPP (Exempt and Complying Development Codes) 2008*. Subject to conditions, the proposal is considered to achieve compliance with this control, in relation to the location of the pool pump/filter. This issue does not warrant refusal of the application.

**D1.8 Front Building Line****Objectors concerns:**

*The proposed dwelling does not achieve compliance with the numeric requirements and outcomes of this control. Of particular concern is that it doesn't achieve the desired future character of the locality, current views are not respected, vegetation is not retained thus resulting in the site being unable to achieve the bushland and rural character of the area, creating an undesirable streetscape, vehicle's entering/exiting the dwelling cannot do so in a forward facing direction, the new development does not appropriately respond to, nor does it reinforce, the spatial characteristics of the existing urban environment, and the minimum building line is not in accordance with 6.5m or the established building line (whichever is the greater).*

**Comment:**

The existing dwellings along Wandeen Road do not achieve a consistent established building line. As such, the minimum numeric requirement as stipulated under this clause, being 6.5m, applies to the proposal. Due to the angle of the front boundary line, the proposal results in a front setback distance to the front of the dwelling ranging between 9.0m and 14.0m, thus achieving compliance with the minimum 6.5m front setback requirement as stipulated under control D1.8 of P21 DCP. This issue does not warrant refusal of the application.

**D1.9 Side and Rear Building Line****Objectors concerns:**

*Although the side setback of 2.5m is provided, the non-compliance to the building envelope results in the outcomes not being achieved.*

**Comment:**

As indicated in the Built Form Control table within this report, the proposal generally achieves compliance with the minimum requirements as stipulated under this control, except for the proposed landing area located on the ground floor off the laundry along the eastern elevation (which results in a 0.2m side setback). A discussion on this is found in this report. Council is satisfied, however, that this minor area of non-compliance will not give rise to any unreasonable amenity impacts to the adjoining property to the east. Further, the building envelope breach is not applicable to this control's requirements and outcomes - see section D1.11 Building Envelope of this report for a discussion on the building envelope breach. This issue does not



warrant refusal of the application.

- **D1.11 Building Envelope Breach**

**Objectors concerns:**

*The proposal does not achieve the numeric requirements and outcomes of this control. Of particular concern is that it doesn't achieve the desired future character of the locality, current views are not respected, vegetation is not retained thus resulting in the site being unable to achieve the bushland and rural character of the area, creating an undesirable streetscape, the new development does not appropriately respond to, nor does it reinforce, the spatial characteristics of the existing urban environment, the built form is excessive and the proposed building has not been sited appropriately so as to mitigate the breach to the building envelope.*

**Comment:**

The proposal is non-compliant with the numeric requirements of this control. Council has conducted an independent assessment on the extent of the building envelope breach and a further discussion on the departure from the numeric controls can be found under section D1.11 of this report. Council is satisfied, however, that this area of non-compliance will not give rise to any unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is considered to achieve compliance with this control. This issue does not warrant refusal of the application.

**D1.14 Landscaped Area - Environmentally Sensitive Land**

**Objectors concerns:**

*The proposal does not achieve compliance with some of the outcomes of this control. Of particular concern is the inability for the proposal to achieve the desired future character of the locality, the bulk and scale of the built form is not minimised, a reasonable level of amenity and solar access is not provided, nor is it maintained, vegetation is not being retained to enhance the visually reduce the built form, and the natural vegetation and biodiversity of the site is not being conserved.*

**Comment:**

As indicated in the Built Form Control table within this report, the proposal does not achieve compliance with the numeric requirements of this control, resulting in a variation of 4%. A discussion on this is found in this report. Council is satisfied, however, that this minor area of non-compliance will not give rise to any unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is considered to achieve compliance with this control. This issue does not warrant refusal of the application.

**D1.20 Scenic Protection Category One Area**

**Objectors concerns:**

*The proposal has not been designed in a manner that minimises visual impacts within this scenic protection area. The provision of landscaped area results in an unacceptable dominance in the built form, resulting in an excessive bulk and scale which will, in turn, have an adverse impact upon the streetscape and on the visually amenity of the surrounding environment. Of particular concern is the removal of multiple high significance canopy trees*

**Comment:**

The desired future character of the locality of Avalon Beach encourages development to retain a low-density residential area resulting in a maximum of two (2) storeys within a landscaped setting that does not detract from the surrounding natural environment, and one that positively responds to the topography of the site. While multiple trees are proposed to be removed to facilitate the built form, the proposal also includes the retention of multiple trees and replacement planting of canopy trees, small, medium and large shrubs and a range of grasses.



In this instance, Council is satisfied that the proposal remains consistent with desired future character of the locality. A further discussion is not required.

With regards to the requirements of D1.20 of P21 DCP, the front of the dwelling utilises an entry portico and a recessed first floor level to create a degree of articulation when viewed from the street frontage - the generous front building line setback further contributes to reducing an unreasonable amenity impact upon the existing streetscape. The retention of canopy trees in the south-western front corner of the subject site allows a reasonable level of visual relief of the built form when viewed from the street frontage. Council is satisfied that proposed design achieves compliance with the requirements and outcomes of D1.20 Scenic Protection Category One Area. This issue does not warrant refusal of the application.

- **Objectors contend the proposal fails to meet the requirements and objectives of the following Clauses within the *Pittwater Local Environmental Plan (PLEP) 2014* in the following ways:**

**Clause 1.2 Aims of Plan**

**Objector's concerns:**

*Objectors contend that the proposal cannot achieve the objectives within this Clause in that it will adversely affect the character, amenity and existing residential population of the locality (being Clareville) by creating view loss and other amenity losses. As a result of the proposed building height departing from the maximum height requirement of 8.5m, the proposal creates a non-compliant building envelope, excessive bulk and scale impacting upon adjoining and surrounding developments in such a way that is inconsistent with the desired future character of the locality. Further, the objectors contend that the removal of certain Endangered Ecological Community (EEC) species to facilitate the built form does not achieve compliance with the outcomes of this Clause.*

**Clause 2.3 Zone Objectives - E4 Environmental Living zone**

**Objectors concerns:**

*The objectors contend that the building height is not conducive to a low-density residential area, and that the overall dwelling does not result in a single dwelling character which is indicative of the developments within the area of Clareville and Avalon Beach. Further concern is raised with regards to the built form being primary to the landscape setting, rather than secondary, following the proposed removal of multiple canopy trees to facilitate the built form.*

*As previously raised under the abovementioned point, the objectors contend that the proposal will result in a structure that is excessive in size resulting in a bulk and scale that is incompatible within the locality, presenting an undesirable built form when viewed from the street frontage and surrounding and adjoining properties, as well as impacting upon the amenity of neighbouring properties.*

*Objectors further contend that the proposal fails to provide adequate side setbacks to the eastern and western side boundaries, thus resulting in inadequate building envelope breaches.*

**Clause 4.3 Height of Buildings**

**Objectors concerns:**

*Objectors note that, upon review of the elevation plans provided, the overall building exceeds the 8.5m maximum building height development standard to an approximate maximum of 9.8m. The objectors contend that the proposal, therefore, fails to meet the objectives of this Clause of PLEP 2014 in that it is not consistent with the desired character of the locality (contending that both neighbouring dwellings achieve compliance with this control), creates unreasonable additional shadows, unreasonably impacts upon views of neighbouring properties, it does not*

*sensitively respond to the natural topography of the site and the resultant visual impacts of the overall development on the natural environment will create a 'jarring' effect on the landscape setting of the site and locality of Avalon Beach.*

#### **Clause 4.6 Exceptions to Development Standards**

##### **Objectors concerns:**

*The objectors contend that the Clause 4.6 written request to vary a development standard automatically fails as a result of failing to meet the objectives of Clause 4.3 of PLEP 2014 (see below comment in relation to the provision of a Clause 4.6). Objectors have assessed the statements made within the Statement of Environmental Effects (SEE) (prepared by DM Planning, dated September 2020) and conclude the departure from the maximum building height of 8.5m is not reasonable or necessary based on the issues mentioned in the above 'Objector Concern'.*

#### **Clause 7.2 Biodiversity**

##### **Objectors concerns:**

*The objectors contend that the removal of significant Pittwater Spotted Gum Forest (EEC) and Wagstaffe Spotted Gum Forest species, as well as other tree species, results in the proposal being unable to achieve the objectives of this Clause.*

##### **Comment:**

The abovementioned Clauses of PLEP 2014 have been addressed, in detail, within this Assessment Report under the relevant sections. It must be noted, however, that a formal written request to vary a development standard as per the requirements of PLEP 2014 Clause 4.6 is not required in this instance because the slope of the ground exceeds 30% (or 16.7 degrees), thus allowing for a departure from the 8.5m maximum building height, but must remain below 10.0m, as per sub-clause (2D) of Clause 4.3 of PLEP 2014. A further discussion on this matter can be found in this report. This issue does not warrant refusal of the application.

- **Planning Principles relevant to this Development Application**

##### **Objectors concerns:**

*The proposal must be subject to assessment against a variety of planning principles as outlined under relevant case law from the NSW Land and Environment Court (NSWLEC). The following Planning Principles are applicable to this application and must be taken into consideration:*

*View Loss: Tenacity Consulting v Warringah Council [2004] NSWLEC 140 at 25-29*

##### **Comment:**

As indicated in this report, an independent View Loss Assessment was undertaken at 26 Wandeen Road and 28 Wandeen Road. This can be found under section C1.3 of this report.

*Height, bulk and scale: Veloshin v Randwick Council [2007] NSWLEC 429 at 32-33*

##### **Comment:**

This current proposal relates to the construction of a residential dwelling within a residential zone. The proposed development associated with this Planning Principle relates to the construction of a "new building...containing two shops, eight one-bedroom apartments, a courtyard and parking for four cars...the height of the proposal is less than 12m. The Floor Space Ratio (FSR) is 2.14:1" (Veloshin v Randwick Council [2007] NSWLEC 429 at 5). The proposed height and bulk and scale of the proposed residential dwelling under this application has been assessed against relevant Clauses and Controls of P21 DCP and PLEP 2014 throughout this report and is found to be satisfactory. This issue does not warrant refusal of the application. A further discussion on this can be found under section 'Planning Principles' of this report.

*General impact: Davies v Penrith City Council [2013] NSWLEC 1141 at [116] to [121]*

Comment:

The proposal has been considered against all relevant controls within the P21 DCP and PLEP 2014 and outlined within this report, where necessary. As such, the general impact of the proposed development has been considered and included within the report, where necessary. A further discussion on this can be found under section 'Planning Principles' of this report.

*Surrounding development: Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191 at 22-31*

Comment:

In a similar manner to Veloshin v Randwick Council [2007] NSWLEC 429, this Planning Principle is associated to a proposed development that seeks consent to "demolish the existing buildings on the site and erect a three-storey residential flat building containing 17 apartments with basement parking for 39 car spaces" (Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191 at 6). The current proposal relates to the construction of a residential dwelling within a residential zone, as such, Council has considered the outcomes of this planning principle and is satisfied the proposal is consistent with the outcomes. Further, the proposal has been assessed against the relevant Clauses and Controls of P21 DCP and PLEP 2014 throughout this report. This does not warrant refusal of the application. A further discussion on this can be found under section 'Planning Principles' of this report.

- **Other issues as outlined by objectors which have not been addressed in the above are as follows:**

***Loss of Native Flora and subsequent Impact upon Native Fauna***

*The objectors contend that the site is home to multiple native flora and fauna species - particularly the Pittwater Spotted Gum Forest and the Wagstaffe Spotted Gum Forest, which are part of the Endangered Ecological Community (EEC). Further, objectors claim that a more suitable design could minimise the impact of the development on such native species.*

Comment:

Council's Landscape Officer and Bushland and Biodiversity Officer have reviewed this application and accompanying Arborist Report (prepared by Blues Brothers Arboriculture, dated 7 September 2020) and the Flora and Fauna Assessment Report (prepared by Narla Environmental Pty Ltd, dated September 2020). Council's Landscape Officer and Bushland and Biodiversity Officer have both reviewed this application and raised no concern with regards to the impact of the proposed development against the native flora and fauna of the site, subject to conditions. This issue does not warrant refusal of the application.

***Misleading and Missing Information***

*Objectors raised concern with regards to the potentially incorrect ground levels (existing), with specific reference to the western boundary and western elevation. The submissions note that the existing ground levels, as shown on the registered survey, are not shown on the plans, rather the plans indicate false/misleading lines to indicate existing ground levels. The objector requests a correction for the Western Elevation to show contour levels and spot levels.*

Comment:

The architectural plans provided with this application provide adequate details which meet Council's DA Lodgement Requirements, thus allowing the Assessing Officer to calculate the proposal against the relevant controls of P21 DCP and clauses of PLEP 2014. This issue does not warrant refusal of the application.



### **Height Poles**

*The submission provided by the owners of 22 Wandeen Road (which has been supported by multiple other residents) requests that the Applicant provide height poles to define the non-compliant building envelope, specifically to ascertain the following: all roof forms and all items on the roof, extent of all decks, and extent of privacy screens.*

#### Comment:

Council has conducted an independent assessment of this application, which has noted areas of non-compliances, particularly the building envelope non-compliance. This has been addressed under section D1.11 Building Envelope, which uses visual aids to indicate the areas of building envelope non-compliance. In this instance, the erection of height poles to assist in the assessment of the application was not necessary or required. This issue does not warrant refusal of the application.

### **Climate Change**

*Some objectors have raised concern that the loss of canopy trees will impact upon Climate Change, and be in contravention to Council signing a Climate Agreement.*

#### Comment:

While trees are proposed for removal, the application is accompanied by a Landscape Plan which indicates the retention of multiple trees and replacement tree and vegetation planting throughout the entirety site. Should this application be approved, the proposed planting as indicated on the Landscape Plan will form part of the consent and must be adhered to (should the application be approved), unless modified by a subsequent consent. This issue does not warrant refusal of the application.

### **Cost of Works**

*Some objectors have raised concern that the estimated cost of works is incorrect.*

#### Comment:

A Cost Summary Report has been provided with this application. This report breaks down estimated costs for the proposed development and has been signed by a registered builder and can be relied upon for assessment of the application. This issue does not warrant refusal of the application.

### **Permitting Additional/Amended Plans**

*Objectors raised concern with regards to Council permitting amended plans be submitted with this application.*

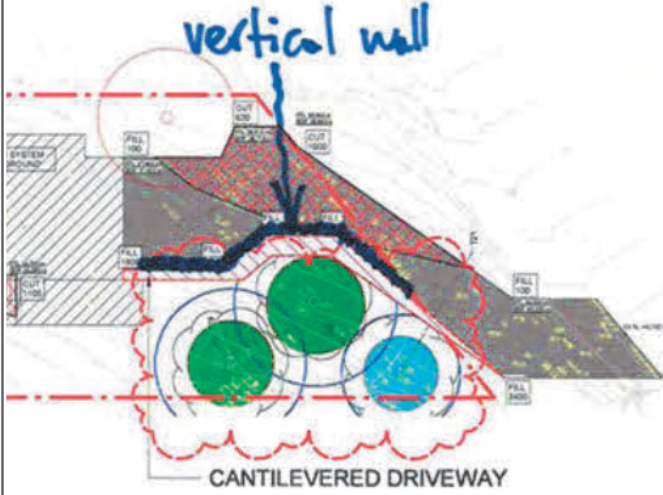
#### Comment:

As per Council's processes, should an application be received which does not adequately meet the numeric requirements and outcomes of a relevant control, Council outlines these issues to the Applicant and allows them an opportunity to rectify the issues, as was the case in this instance. The application was subsequently re-notified. Upon re-notification Council received further submissions outlining that the concerns outlined in original submissions remained. As such, these concerns have been addressed throughout the report. This issue does not warrant refusal of the application.

## **REFERRALS**

Internal Referral Body	Comments
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Internal Referral Body	Comments
Landscape Officer	<p><b>Planner Note:</b> Council's Landscape Officer has reviewed the updated plans provided to Council on 19 January 2021 and raised no concern with the amendments, subject to conditions.</p> <p><b>Updated Comments 27 November 2020</b></p> <p>The proposal is for a new dwelling, garage, swimming pool and landscape works on a vacant lot.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environmental Plan clause E4 Environmental Living zone, and the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D1 Avalon Beach Locality, including D1.14 Landscaped Area - Environmentally Sensitive Land</li> </ul> <p>The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features such as rock outcrops and watercourses, and the retention of existing trees. The existing vacant site comprises Pittwater Spotted Gum Forest native trees such as Spotted Gum, other association Gums, and Black She-Oak.</p> <p>The retention of existing trees within the front and rear setback areas provides the opportunity to satisfy the planning controls of Pittwater Local Environmental Plan clause E4 Environmental Living zone and Pittwater 21 DCP. Existing trees identified as T1 - Spotted Gum, T2 - Spotted Gum, T3 - Bangalay Gum, and T4 Bangalay Gum are to be retained and protected within the rear of the property, and existing identified as T19 - Spotted Gum, T20 - Spotted Gum, T21 - Spotted Gum are to be retained and protected within the front of the property.</p> <p>Fourteen site trees are proposed for removal to accommodate the proposed development including two trees of high retention value, four trees of moderate retention value, five trees of low retention value, and three exempt species. Of the two trees assessed with high retention value, T14 Spotted Gum is located within the building footprint without a design alternative, and the arboricultural assessment of T17 Grey Ironbark) provides no design alternative. Two indigenous tree replacements are proposed in the Landscape Plan as replacements, as well as numerous indigenous understorey small trees.</p> <p>The Landscape Plan includes proposals for extensive indigenous planting of canopy trees, understorey trees and screening plants to satisfy the landscape outcomes of E4 Environmental Living zone and Pittwater 21 DCP. Amendments to the Landscape Plan are required to ensure that existing ground levels are not altered within</p>

Internal Referral Body	Comments
	<p>the tree protection zone of existing trees T19, T20, and T21 within the front of the property, and existing trees T1, T2, T3 and T4 within the rear of the property. The proposed extent of retaining walling and ground leveling within the tree protection zone of T4 shall be amended and the location of walling shall be at least 4.2 metres from T4, ie, the calculated tree protection zone. This will additionally assist with negating impact to the large Spotted Gum (identified as N12) within adjoining property No. 26 Wandeen Rd.</p> <p>Existing ground levels within the tree protection zone of existing trees T19 - Spotted Gum, T20 - Spotted Gum, T21 - Spotted Gum shall remain unaltered, and the proposed driveway as amended shall include a vertical wall at the alignment of the cantilevered driveway section, as demonstrated below to ensure the protection of the existing trees:</p>  <p>The vertical wall at the edge of the cantilevered driveway is to be constructed prior to establishment of the site access ramp, effectively restricting access to the majority of tree protection zones of T19, T20 and T21, and tree protection fencing to be placed along the alignment of the cantilevered driveway. All existing ground levels within the tree protection fencing shall remain unaltered.</p> <p>Subject to conditions of consent, Landscape Referral raise no objections with the amended plans.</p> <p><b>Original Comments 10 November 2020</b></p> <p>The proposal is for a new dwelling, garage, swimming pool and landscape works on a vacant lot.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local</p>

Internal Referral Body	Comments
	<p>Environmental Plan clause E4 Environmental Living zone, and the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D1 Avalon Beach Locality, including D1.14 Landscaped Area - Environmentally Sensitive Land</li> </ul> <p>The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features such as rock outcrops and watercourses, and the retention of existing trees. The existing vacant site comprises Pittwater Spotted Gum Forest native trees such as Spotted Gum, other association Gums, and Black She-Oak.</p> <p>The retention of existing trees within the front and rear setback areas provides the opportunity to satisfy the planning controls of Pittwater Local Environmental Plan clause E4 Environmental Living zone and Pittwater 21 DCP, and site planning should investigate how to best design development to achieve this outcome.</p> <p>Council provided pre-lodgement advice including landscape comments requiring development to satisfy the planning controls of the E4 Environmental Living zone and Pittwater 21 DCP where bulk and scale of buildings shall be minimised, such that buildings are to give the appearance of being secondary to landscaping and vegetation. Additionally the advice included that any development proposal to remove existing trees of High and Moderate significance shall be justified, and otherwise shall be refused if an alternative design layout or construction technique is available, any land cut and fill shall be located to result in minimal root zone disturbances, alterations to existing ground levels within the tree protection zone is to be minimised, and that, as is the case with this proposal any impact in excess of 10% of the tree protection zone shall be reported and assessed by tree root investigation in accordance with section 3.3.3 Major Encroachment under Australian Standard AS4970-2009 Protection of Trees on Development site, prior to finalisation of the site planning layout.</p> <p>A Landscape Plan and Arboricultural Impact Assessment is provided with the development application. The Statement of Environmental Effects states that numerous existing trees are proposed to be removed, and that appropriate compensatory planting is proposed. The Landscape Plan provides one large tree replacement at the rear of the property and various smaller native trees along common boundaries, as well as other understorey native planting within the landscape area. Additionally the Landscape Plan includes alterations to existing ground levels and retaining walling that will impact upon</p>



Internal Referral Body	Comments
	<p>existing trees, as discussed below.</p> <p>Concern is raised that the design does not consider the preservation of High retention trees through an alternative design layout and construction techniques. The Arboricultural Impact Assessment proposes the removal of the following existing High retention value trees T14 - Spotted Gum and T17 - Spotted Gum due to the location of the building footprint (T14) and the construction technique for the driveway (T17). In view of the planning controls of the E4 Environmental Living zone and Pittwater 21 DCP it is considered that the preservation of T17 - Spotted Gum is essential to adequately address the integration of any development into the landscape setting, and this is extended to the preservation of the other High retention value trees in proximity to T17 within the frontage, being T19 - Spotted Gum, T20 - Spotted Gum, and T21 - Spotted Gum, as well as the Moderate retention value tree identified as T16 - Red Mahogany Gum.</p> <p>In this regard, Landscape Referral does not support the proposal as is it considered that the development proposal, in its current form will impact upon the long term health of the Spotted Gums identified as T17, T19, T20 and T21, and T16 - Red Mahogany Gum. The proposed driveway is designed to be constructed utilising alterations to the existing ground levels within the tree protection zones of the trees through cut and fill as shown in the Cut/Fill Plan, and retaining wall construction as shown in the Landscape Plan. Reduced existing ground levels by land cut in proximity to T17 is proposed within the structural root zone and tree protection zone. Additionally land fill and retaining wall construction in the vicinity of existing trees T16, T19, T20 and T21 results in structural root zone and tree protection zone encroachments that are likely to impact the long term health of these trees, proposed for retention in the Landscape Plan. It is therefore considered that this development proposal will detrimentally impact the long term survival prospects of the existing trees within the frontage that currently provide a landscape setting capable of softening any development behind.</p> <p>Concern is raised that the proposed retention of existing tree T4 - Bangalay Gum within the rear is impacted by land cut as shown in the Cut/Fill Plan, and construction of retaining walling as shown in the Landscape Plan, within the structural root zone and tree protection zone, and it is not reported to what extent such land cut and construction of retaining walling will impact upon the tree protection zone of existing tree identified as N12 - Spotted Gum, located within adjoining property No. 26 Wandeen Road.</p> <p>The proposal is therefore unsupported.</p>
NECC (Bushland and Biodiversity)	<p><b>Planner Note</b></p> <p>Council's Bushland and Biodiversity Officer has reviewed the amended plans (dated 19 January 2021) and raised no concern with the proposed amendments to the proposed plans, subject to</p>



Internal Referral Body	Comments
	<p>conditions.</p> <p><b>Updated Biodiversity Response (27 November 2020)</b>            These updated referral comments are based on the following additional information:            - Site Plan, Drawing No. 1.2, Revision D (Rise Projects, 20/11/2020)            - Cut/Fill Plan, Drawing No. 1.6, Revision D (Rise Projects, 20/11/2020)            - Driveway Plan, Drawing No. 6.2, Revision D (Rise Projects, 20/11/2020)</p> <p>The amended plans indicate modifications to the driveway including partial canterlevering within the Tree Protection Zones (TPZs) of Trees 19, 20, 21. This amendment, in addition to conditions of consent recommended by Council's Landscape referral body, will serve to minimise impacts to these significant trees and enable their safe retention. Conditioned amendments will also assist in negating impacts to Tree 4 and the large Spotted Gum (identified as N12) within the adjoining property. As such, it is considered that the proposal (as amended by conditions recommended by the Landscape referral body) can be undertaken whilst retaining a substantial portion of significant native trees on site and neighbouring properties. The proposal is therefore considered to be consistent with relevant biodiversity controls.</p> <p><b>Original Biodiversity Response (18 November 2020)</b>            There is insufficient information to assess the proposal's compliance with relevant biodiversity controls. The following provisions apply to the site:</p> <ul style="list-style-type: none"> <li>- NSW <i>Biodiversity Conservation Act 2016</i> (BC Act)</li> <li>- Pittwater LEP Clause 7.6 (Biodiversity)</li> <li>- Pittwater DCP Clause B4.7 (Pittwater Spotted Gum Forest Endangered Ecological Community)</li> </ul> <p>The property is a vacant block with a vegetation community consistent with the Pittwater Spotted Gum Forest Endangered Ecological Community (EEC), as declared under the Biodiversity Conservation Act 2016 (BC Act).</p> <p><i>NSW Biodiversity Conservation Act</i>            In accordance with Section 7.3 of the Act, a 'test of significance' for impacts to the EEC has been prepared by a suitably qualified ecologist and submitted with the DA. The test of significance concludes that the proposal is unlikely to have a significant impact upon the broader local occurrence of the EEC and that further assessment under the NSW Biodiversity Assessment Method (BAM) is therefore not required. The Biodiversity referral body concur with this conclusion and consider that assessment requirements under the BC Act (including those for other relevant threatened species) have been satisfactorily addressed by the ecologist.</p>

Internal Referral Body	Comments
	<p><i>Pittwater 21 LEP/DCP Controls</i></p> <p>This control aims to achieve development which does not have "an adverse impact on Pittwater Spotted Gum EEC" and results in "no significant onsite loss of canopy cover or net loss in native canopy trees". The proposed development will result in the removal of nine prescribed native trees - two assessed as being of high 'significance value' (Trees 14 and 17), five of moderate value (Trees 7, 9, 11, 15, 16), and two assessed as low significance value (Trees 6 and 18). Nine prescribed onsite trees are also proposed for retention; these are Trees 1, 2, 3, 4, 12, 13, 19, 20 and 21. This level of tree removal may be considered acceptable for a new dwelling on a vacant and highly vegetated site, given that construction of a dwelling house is permissible under the zoning. It is also acknowledged that development potential on the subject site is constrained by site conditions including a number of significant trees and a steeply sloping frontage.</p> <p>However, concern has been raised by Council's Landscape referral body that the extent of cut, fill and/or construction proposed within the Tree Protection Zones (TPZs) of five prescribed trees (which were identified for retention in the submitted plans) will result in long-term impacts which will prevent those trees from realising their safe useful life expectancy. Specifically, it is considered that potential long-term impacts to Trees 4, 19, 20, 21 and neighbouring Tree 4 (N4) have not been adequately addressed in the submitted plans, arboricultural assessment, or by the amended plans and detail provided post-lodgement as additional information.</p> <p>It is therefore considered that there remains an unacceptable level of uncertainty as to the full extent of impacts to prescribed trees. It is noted that impacts to a further five significant native trees (in addition to the nine already proposed for removal) would be inconsistent with PLEP Clause 7.6 and PDCP B4.7 and therefore could not be supported by the Biodiversity referral body. As such, the proposal's compliance with biodiversity controls cannot be adequately assessed until it is clarified how the applicant will achieve safe long-term retention of Trees 4, 9, 20 and 21, given the extent of groundworks/construction required within the trees' TPZs.</p>
NECC (Development Engineering)	<p>The submitted Geotechnical report certifies that an acceptable risk is achievable for the development. The stormwater Management plans prepared by NB consulting shows provision of OSD with storage capacity of 14m<sup>3</sup> with stormwater discharge rates in accordance with Northern Beaches Council's "Water Management for Development Policy". The proposed revised driveway gradients and levels are acceptable.</p> <p>No objection to approval, subject to conditions.</p> <p><b>Updated Comments Dated 20/01/2020</b></p>

Internal Referral Body	Comments
	<p>The revised driveway plan prepared by Rise Projects drawing no 1.2 Rev E dated 18/01/21, provides for vehicular turning area which would enable vehicles to exit in a forward direction. The proposal will provide for safe vehicular entry and exit to the development.</p> <p>No Development Engineering objection, subject to conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that a decision is not required, in this instance.

#### **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. 1135681S).

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

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

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

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

#### Ausgrid

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

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

#### Comment:

The proposal was referred to Ausgrid who provided a response stating that a decision is not required, in this instance.

### **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:	10.0m	9.6m	N/A	Yes

#### **Planner Note**

The building footprint is located over a slope of approximately 35%. Pursuant to Clause 4.3, subclause 2D of the *PLEP 2014*, the building height may exceed 8.5m, but not be more than 10.0m if:

*(a) the consent authority is satisfied that the portion of the building above the maximum building height*

*is minor, and*

Comment:

Due to the significant cross-fall of the site, there are multiple areas of the proposed structure that extend beyond 8.5m, but remain below 10.0m. The portion of the building height extending beyond 8.5m is considered minor in nature as it is generally the roof structure and the top of the wall, particularly to the rear of the dwelling which encompasses the Master Bedroom and Master en-suite, and toward the front of the dwelling which encompasses the roof form over the internal staircase. Council, as the consent authority, is satisfied that the proposal achieves compliance with this outcome.

*(b) the objectives of this clause are achieved, and*

Comment:

The objectives of this Clause are achieved in that the overall proposed development, by virtue of its height and scale, is consistent with the desired character of the locality and adjoining and nearby properties. The proposed development is unlikely to cause any unreasonable amenity and solar access impacts, nor is it likely to impact upon the views currently obtained by adjoining properties. Further, the proposal responds appropriately to the natural topography of the site by minimising excavation and fill and instead using pier footings. As the site is currently void of any built form, the proposal subsequently involves the removal of multiple canopy trees to facilitate the proposed structure. In this instance, the proposal also includes substantial landscape planting, which includes the planting of locally native trees (including a Sydney Red Gum, Smooth-barked Apple tree). As such, the overall proposal will positively enhance the natural environment on the site, ultimately visually reducing the built form when viewed from neighbouring properties and public places. Council, as the consent authority, is satisfied that the proposal achieves compliance with this outcome.

*(c) the building footprint is located on a slope in excess of 16.7 degrees (being 30%), and*

Comment:

The building footprint is located on a slope of approximately 35%. Council, as the consent authority, is satisfied that the proposal achieves this outcome.

*(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

Comment:

As discussed above, the proposed development has been designed so as to mitigate the use of extensive excavation and fill on the site by way of using pier footings. As such, Council, as the consent authority, can be satisfied that the building has been sited and designed to accommodate for the slope of the land, thus achieving compliance with this outcome.

In this instance, Council can be satisfied that the proposed development achieves compliance with the objectives of subclause 2D of Clause 4.3. As such, the maximum building height on the site is 10.0m. Therefore, the proposed development achieves compliance with Clause 4.3 of the PLEP 2014.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.6 Biodiversity protection	Yes



Clause	Compliance with Requirements
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

#### Detailed Assessment

#### **7.6 Biodiversity protection**

Under Clause 7.6 Biodiversity Protection of *PLEP 2014*, 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 any significant adverse environmental impact, or
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised - the development will be managed to mitigate that impact.

#### Comment:

Council's Bushland and Biodiversity Officer has reviewed this application and raise no issues with regards to the proposed development against the abovementioned objectives of this clause within PLEP 2014, subject to conditions.

Council, as the consent authority, can be satisfied that the proposed development achieves compliance with the abovementioned objectives of this Clause.

#### **7.7 Geotechnical hazards**

Under Clause 7.7 Geotechnical Hazards of *PLEP 2014*, development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and
- (b) the consent authority is satisfied that:
  - (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or
  - (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or
  - (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.

#### Comment:

Council's Development Engineer has reviewed this application and raised no concern with regards to the proposed management of waste water, stormwater and drainage across the land. Council's Development Engineer has imposed relevant conditions to satisfy appropriate stormwater discharge from the site. Further, a Geotechnical Assessment Report has been provided with this application. This

report has been prepared by a suitably qualified Geotechnical Engineer in accordance with Council's Geotechnical Risk Management Policy for Pittwater. The report states that the geotechnical risk associated with the proposed development is acceptable, subject to compliance with recommendations outlined within the report, prepared by White Geotechnical Group (dated 15 September 2020). Council's Development Engineer has reviewed this application and imposed conditions of consent to ensure compliance with the Geotechnical Assessment Report (prepared by White Geotechnical Group, dated 15 September 2020).

Further, an updated Stormwater Management Plan (drawing no. D01 - D04 [inclusive] Issue A, prepared by NB Consulting Engineers, dated September 2020) was provided to Council. This was reviewed by Council's Development Engineer who raised no issues with the updated Stormwater Management Plan.

Council, as the consent authority, can be satisfied that the proposed development will achieve compliance with the abovementioned objectives.

### **Pittwater 21 Development Control Plan**

#### Built Form Controls

<b>Built Form Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
Front building line	6.5m	<b>Dwelling:</b> 9.0 - 14.0m	N/A	Yes
Rear building line	6.5m	<b>Swimming Pool:</b> 13.9 - 16.0m <b>Dwelling:</b> 20.7m - 24.1m	N/A N/A	Yes Yes
Side building line	2.5m (Western boundary)	<b>Dwelling:</b> 3.6m <b>Swimming Pool:</b> 3.6m	N/A N/A	Yes Yes
	1m (Eastern boundary)	<b>Landing:</b> 0.2m <b>Dwelling Lower Ground:</b> 3.0 - 7.2m <b>Ground Floor:</b> 2.0m <b>Dwelling First Floor:</b> 2.0m - 2.6m	80% N/A N/A N/A	No Yes Yes Yes
Building envelope	3.5m (Western elevation)	<b>Outside envelope:</b> Nil - 0.2m for a distance of 0.8m Nil - 1.1m for a distance of 6.4m	5.7% (max.) 31.4% (max.)	No No
	3.5m (Eastern elevation)	<b>Outside envelope:</b> Nil - 0.5m for a distance of 3.1m Nil - 0.5m for a distance of 2.8m Nil - 1.5m for a distance of 6.4m	14.2% (max.) 14.2% (max.) 42.8% (max.)	No No No
Landscaped area	60% (512.2m <sup>2</sup> )	57.6% (492.10m <sup>2</sup> )	4.0%	No

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

95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	No	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	No	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	No	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	No	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **A1.7 Considerations before consent is granted**

The proposed lower ground floor level will include a large rumpus room with bench space, a powder room, bathroom, study and Bedroom 5 with private alfresco area. External access can be gained at two entry points on this level with a door from the rumpus room to the lower deck alfresco area, and another door from the private alfresco area into Bedroom 5.

In this instance, there is the potential for this lower ground level to operate as separate habitation. While a Secondary Dwelling is permitted within the E4 Environmental Living zone as stipulated under the Land Use Table of *PLEP 2014*, this application is not seeking consent for a principal dwelling with an attached secondary dwelling.

The amended plans provided to Council indicate the removal of the external alfresco area to Bedroom 5 to reduce the usability of the lower ground floor level as separate habitation. However, the potential for separate habitation remains and thus a condition of consent will be included within this report to ensure the use of the premises remains a single residential dwelling, unless modified by another application.

#### **B8.2 Construction and Demolition - Erosion and Sediment Management**

An erosion and sediment control plan was not provided with this application. As such, should this application be approved, a condition of consent will be included within this report to ensure appropriate sediment and erosion control measures are installed prior to the commencement of any works, and during all construction works.

#### **B8.6 Construction and Demolition - Traffic Management Plan**

A Traffic Management Plan has not been provided with this application. In this instance, however, Council's Development Engineer has noted this and included a condition of consent within this report to ensure the Applicant obtain, and submit to the Principal Certifying Authority (prior to the issue of the Construction Certificate), a Traffic Management and Control Plan. This plan, as outlined within the condition of consent, is to be prepared to Roads and Maritime Services (RMS) standards by an appropriately certified person.

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

Multiple objectors raised concern with regards to the potential view loss as a result of the proposed development.

However, at site visits to 28 Wandeen Road, and 26 Wandeen Road (both with the owners of each property being present) it was observed that only one (1) dwelling requires a view loss assessment, being 26 Wandeen Road (the property to the east of the subject site). As the proposed development will not extend beyond the dwelling 26 Wandeen Road, it would be impossible for 28 Wandeen Road to

experience a view loss.

In regards to C1.3 View Sharing of P21 DCP any concerns relating to view loss will consider the Planning Principle for view sharing *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*. It is a requirement of this Planning Principle that a four part test be undertaken to consider the extent of views potentially impacted by the proposed development.

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

#### Step 1. Nature of the views affected

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

#### Comment to Principle 1:

The views obtained from within and external to the dwelling at 26 Wandeen Road are partial water views to the west, which are obscured by trees and surrounding dwellings - see images below.



**Image 1. Sitting in the Lounge Room, facing north-west. As the proposed dwelling does not extend beyond the lounge room window at 26 Wandeen Road, it is not anticipated to block views obtained from this window.**



**Image 2. Standing on the Balcony, facing north.**



**Image 3. Approximate views in a western and northern direction from 26 Wandeen Road (the proposed dwelling house is indicated by the purple rectangle; red arrow indicates potential view obstruction, while green arrows indicate current views unlikely to be impacted).**

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

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

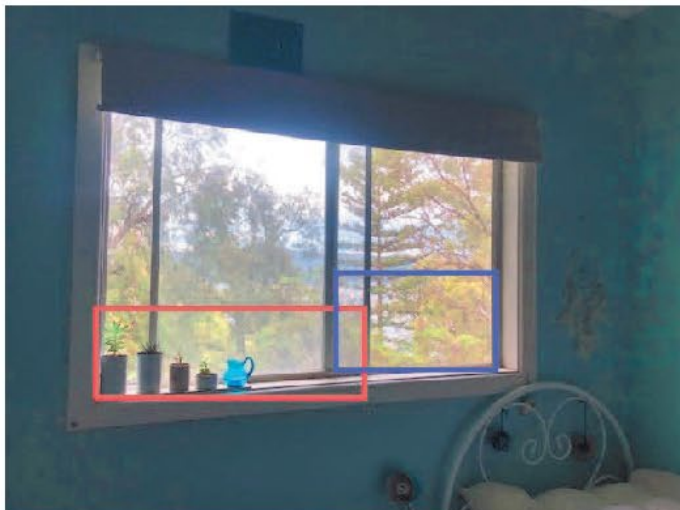
### Comment to Principle 2:

The areas of main concern relate to the views obtained over the western side boundary line, in both a seated and standing position within and external to the dwelling - refer to Image 1. and images below.

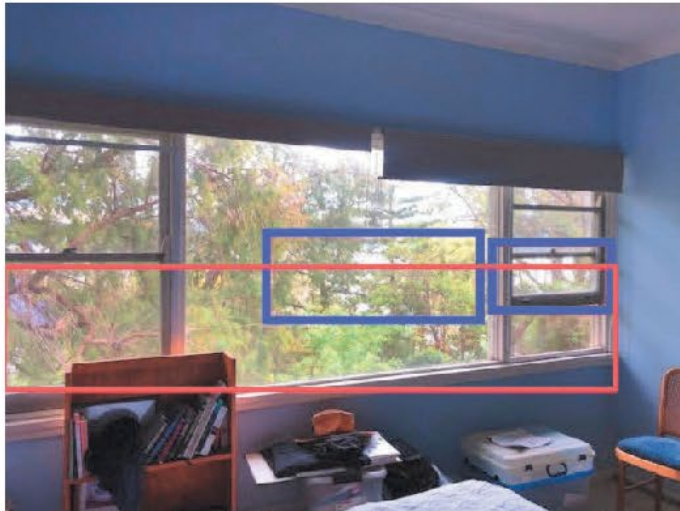




**Image 3. Standing in the Lounge Room, facing north-west (red box indicates approximate location of the roof form of the ground floor level alfresco area).**



**Image 4. Standing in Bedroom 1, facing north-west (red box indicates approximate location of roof form of the ground floor level alfresco area; blue box indicates the water).**



**Image 5. Standing in Bedroom 2, facing north-west (the glare of the grey sky makes it difficult to ascertain the location of the water in the photo, in this instance the blue boxes indicate approximate location of the water; the red box indicates the approximate location of the first floor master bedroom).**



**Image 6. Standing on the rear balcony, facing west (the proposed dwelling does not extend beyond the dwelling at 26 Wandeen Road).**





**Image 7. Standing on the rear balcony, facing north-west (the proposed dwelling does not extend beyond the dwelling at 26 Wandeen Road).**

### Step 3. Extent of impact

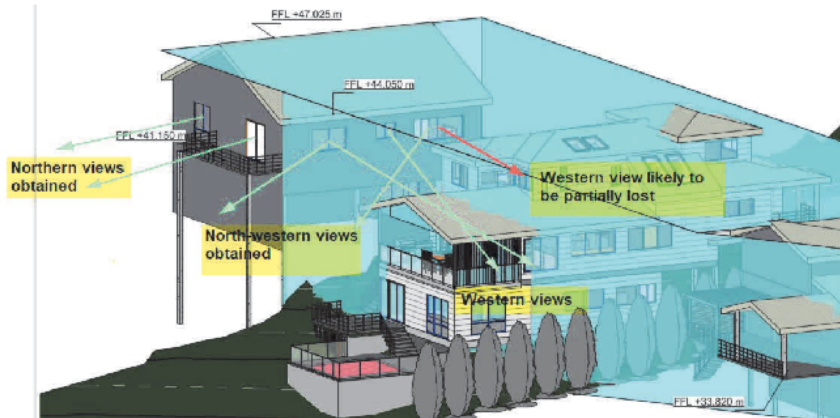
*“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people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

#### Comment to Principle 3:

The views currently obtained by the occupants of 26 Wandeen Road are obtained over the western side boundary and northern rear boundary, consequently these views are obscured by trees and other vegetation. However, their view loss concerns do not relate to the northern rear boundary, rather to the western side boundary.

As stipulated under Step 1 of this four-part assessment, whole views are valued more highly than partial views, and under Step 2, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries, while sitting views are more difficult to protect than standing views. Step 3 notes that impact on views from living areas is more significant than from bedrooms.

The proposed alfresco area at the rear of the dwelling will achieve a height of 6.9m (measured from the ground level to the roof form). The sill height of the windows along the western elevation of 26 Wandeen Road achieve a height of 5.4m (measured from the ground level to the sill height). As indicated on the Southern and Northern Elevation plans (drawing no. 3.1 Rev D, prepared by Rise Projects, dated 20 November 2020), the rear of the proposed dwelling is considerably lower than the dwelling at 26 Wandeen Road. As such, the views currently obtained from the lounge room (both seated and standing), and from Bedroom 1 are likely to remain and will occur over the roof form. As indicated in the image below, most of the views from 26 Wandeen Road will be retained, notwithstanding the potential view loss from Bedroom 2.



In this instance, the protection of partially obscured views over the western side boundary (which is obtained from Bedroom 1, Bedroom 2 and the living room from both a seated and standing position) is considered difficult to achieve. With the retention of the partially obscured northerly views over the rear boundary, which is enjoyed externally on the rear balcony, and within the dwelling from service rooms such as the kitchen, as well as the dining and living room, Council considers the potential impact upon the views as negligible.

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

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

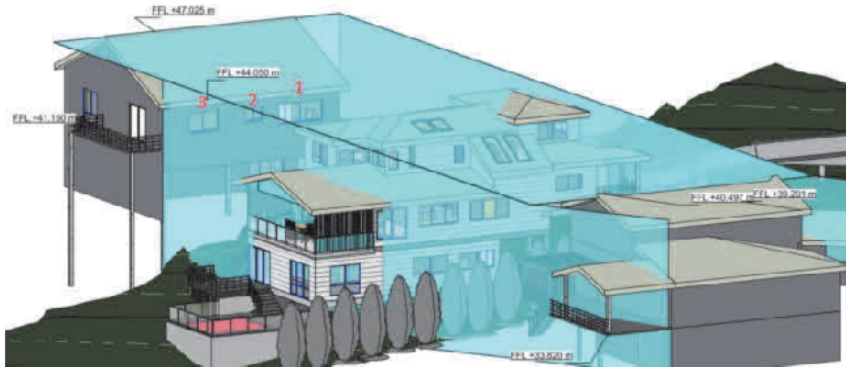
#### Comment to Principle 4:

The proposed development seeks consent for the construction of a dwelling house with an attached two (2) vehicle garage, swimming pool and associated landscaping works (which requires the removal of multiple trees as the site is vacant).

The subject site is constrained by a considerable slope which falls steeply in the direction from the south-eastern corner toward the rear north-western corner where the slope begins to soften. As a result of this, and in order to achieve an attractive front façade so as to contribute to the existing streetscape, the dwelling extends beyond the 8.5m maximum building height prescribed under Clause 4.3 of the PLEP 2014 to a maximum height of 9.6m (which occurs centrally to the dwelling). Further, the proposal results in a numeric non-compliance to the following controls of P21 DCP: D1.9 Side and Rear Building Line, D1.11 Building Envelope and D1.14 Landscaped Area - Environmentally Sensitive Land. Council has assessed the numeric non-compliances to D1.11 and D1.14 and determined the non-compliances are minor and considered acceptable on merit - a further discussion on these can be found under the relevant sections of this report.

The architectural plans provided to Council (prepared by Rise Projects, dated 30 November 2020), specifically drawing no. 6.7.2 Rev D 'Height Limitation' (see image below), provides a 3D image of the subject site and adjoining properties from a south-easterly perspective. This 3D image is useful to

understand the potential view impact as a result of the proposed dwelling. The windows along the western elevation for 26 Wandeen Road are labelled as 1, 2 and 3. Windows 1 and 2 are for the bedrooms and window 3 is for the living room.



**Image 8. 3D impression of proposed development (subject site is central, 26 Wandeen Road is above the subject site).**

As the rear of the proposed dwelling does not extend beyond the dwelling at 26 Wandeen Road, and as a result of the significant slope of the land meaning the proposed dwelling sits lower than the dwelling at 26 Wandeen Road, the areas of non-compliance are not seen to considerably obscure the views across the western side boundary line from windows 2 and 3. However, the views currently enjoyed from one bedroom (window 1) is likely to be impacted as a result of the proposed development. Although, as indicated in the above View Loss Assessment, this is a negligible impact.

The proposed development has been considered against the underlying outcomes and controls within C1.3 View Sharing of P21 DCP as outlined below:

### **Outcomes**

*A reasonable sharing of views amongst dwellings.*

#### Comment:

The proposed development will result in a reasonable sharing of views amongst dwellings. In conjunction with a site visit, the Development Application has provided adequate information to undertake a full and proper assessment of any potential view loss. The proposal will result in a negligible loss of view from 26 Wandeen Road. The loss of view is not unreasonable and will maintain a reasonable sharing of views over the proposed dwelling to the north-west. The views to the north currently enjoyed by the occupants of 26 Wandeen Road will remain as is as a result of the proposed development. Multiple objections raised concern with regards to the potential view loss as a result of the proposed development. As discussed above, one (1) submission raised concern with regard to immediate view loss as a result of the proposal while other submissions were more concern with the potential view loss that the locality would experience as a result of the proposal, rather than an immediate view loss to their properties.

The proposed development has been assessed against the four-part View Loss Assessment established by the NSW Land and Environment Court and is considered to be acceptable.

*Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and, where possible, enhanced.*

#### Comment:

The proposed development will not unreasonably impact upon views and vistas from roads and public places. The proposal includes generous side setbacks on all levels, with significant articulation from the



western elevation for the first floor level. As such, any pedestrian or motorist passing the subject site will be continue to experience obscured views of the water when passing the subject site (see images below).



**Image 9. Google Street View of subject site in a north-westerly direction.**



**Image 10. Google Street View of subject site in a north-westerly direction.**

*Canopy trees take priority over views.*

Comment:

The proposed development is located on a vacant site. As such, the removal of multiple trees will be required to facilitate the built form. Council is satisfied that the proposal is not unreasonably removing canopy trees to create substantial water views for the occupants of the proposed development. Further, Council's Landscape Officer and Bushland and Biodiversity Officer have reviewed this application and raised no concern with regards to the proposed removal of canopy trees and other trees/vegetation throughout the site.

The information provided with the development application, in conjunction with a site visit, has allowed Council to accurately establish the level of view loss from the adjoining property to the east, 26 Wandeen Road. Council is satisfied that the proposed development achieves consistency with the outcomes of Clause 1.3 View Sharing of P21 DCP and the Land and Environment Court's Planning Principle for view sharing *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*.

### **C1.5 Visual Privacy**

Objectors raised concern with regards to potential privacy impacts as a result of the proposed development. As such, a merit consideration is conducted below.

Merit Consideration

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

Comment:

During the site visit to 22 Wandeen Road (the property to the west of the subject site) it was noted that there were potentially multiple areas of the proposed development that may impact upon the occupants' privacy. The first area of concern was the master bedroom en-suite which has four (4) skylights located along the eastern elevation. The second area of concern related to the main private open space which is partially exposed to potential direct overlooking from the proposed windows along the western elevation of the ground floor level.

A Window and Door Schedule was not been provided with the application, and the windows and doors were not labelled on the architectural plans. However, the NatHERS certificate indicates the type and performance of the windows and doors chosen as part of this development. Using the NatHERS Certificate provided, Council can approximately ascertain the height and size of the windows and doors proposed.

Whilst conditions were proposed to required amendments to the proposed windows along the western elevation, as well as include the erection of a 1.65m high privacy screen along the western elevation of the proposed front porch, Council considered it appropriate to request amended plans, rather than rely upon written conditions and satisfaction of the conditions by the PCA. The amended plans that were submitted in January 2021 now show opaque treatments (for half the window width) for the two (2) windows along the western elevation (for the dining room) (thus achieving a privacy height of 1.6m, measured from the finished floor level of the ground floor), as well as to the window of the internal stairs that provide access from the ground level to the lower ground level. Further, the amended plans depict a 1.65m high privacy screen along the western elevation of the front porch.

As amended, Council is satisfied that the proposal is unlikely to unreasonably impact upon the privacy and amenity of adjoining properties.

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

Comment:

The proposal will maintain the sense of territory and safety currently obtained by the occupants of the subject site and those of adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **C1.25 Plant, Equipment Boxes and Lift Over-Run**

The plans submitted with the application do not show where the pool pump and filter for the proposed swimming pool will be located. As such, a condition of consent will be included to ensure the pool pump and filter will be located appropriately on the site so as to reduce any unreasonable noise impacts upon neighbouring properties. As previously discussed, should the owners of the site wish to install air conditioning units, they can do so under the SEPP (Exempt and Complying Development Codes) 2008, Subdivision 3, subject to compliance with the development standards of this subdivision.

#### **D1.5 Building colours and materials**

A colour schedule has not been provided with this application. As such, condition of consent will be included within this report to ensure the external colours and finishes are of dark and earthy tones (BCA M - D range) so as to integrate the built form into the surrounding natural environment.



### **D1.9 Side and rear building line**

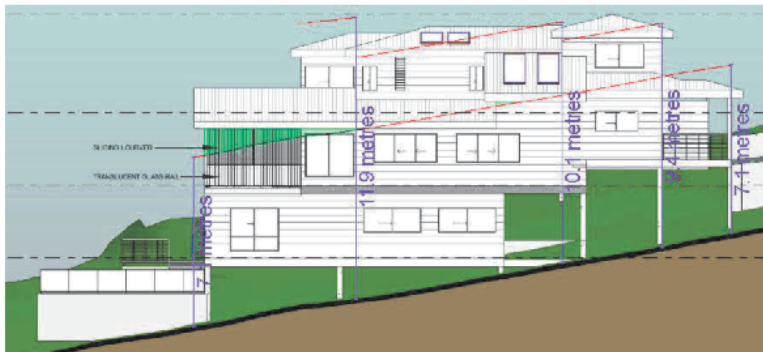
The built form generally achieves compliance with this control, notwithstanding the minor non-compliance as a result of the landing along the eastern elevation, located on the ground level off the internal laundry. This minor non-compliance will not give rise to any unreasonable amenity, privacy or solar access impacts. As such, a detailed merit consideration to this clause is not required in this instance.

### **D1.11 Building envelope**

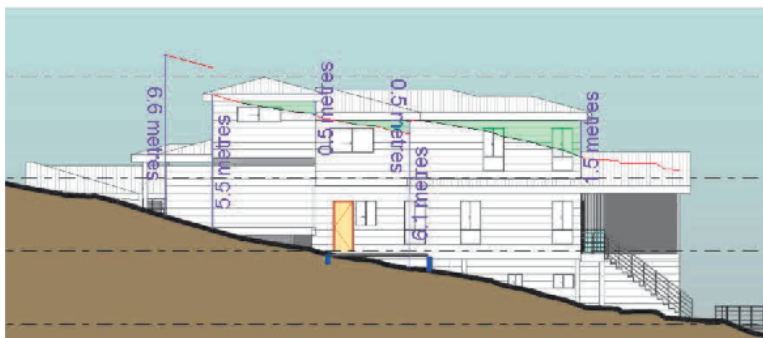
#### Detailed description of non-compliance

The objectors have raised concern with regards to multiple areas of numeric non-compliance with controls within P21 DCP, of particular concern is the non-compliance with the building envelope requirement.

A small portion of the external wall and a portion of the proposed privacy screen for the alfresco area along the western elevation protrudes through the prescribed building envelope (see Image 1. Western Elevation). Further, a portion of the external walls and a part of the master bedroom windows along the eastern elevation protrude through the prescribed building envelope (See Image 2. Eastern Elevation).



**Image 1. Western Elevation.**



**Image 2. Eastern Elevation.**

Where the building footprint is situated on a slope over 16.7 degrees (that is, 30%) a variation to the numeric requirements of this control may be considered on a merit basis. In this instance, the building footprint is located on a slope in excess of 30%, as such, a merit based assessment is considered below.

### Merit Consideration

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

#### Comment:

As is indicated on the Landscape Plan provided, the retention of three (3) trees within the front south-western corner of the site (being T19, T20 and T21), as well as the additional planting of other native species (including a range of shrubs and other vegetation, and multiple canopy trees), the proposed development will retain a height that is below the natural environment. The proposal will present as a two (2) storey residential dwelling when viewed from the street frontage. Further, the overall design will result in a contemporary building that utilises modulation, particularly the first floor level which is heavily articulated along the western elevation. The front of the dwelling uses an entry portico and recessed first floor level to create a degree of articulation when viewed from the street frontage and neighbouring properties. Further, the proposal is for the construction of a single dwelling house - thus achieving a low-density residential nature. In this instance, the proposed development is considered to achieve compliance with this outcome.

*To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

#### Comment:

As discussed above, the retention of some trees on the site, particularly T19, T20 and T21, and the planting of other locally native plant species throughout the site, will enhance the existing streetscape and create a dwelling that is below the height of the trees within the surrounding natural environment. Further, the generous compliant front setback distances (ranging from 9.0m - 14.0m) will promote a building scale and density that is in keeping with the surrounding developments. In this instance, the proposed development is considered to achieve compliance with this outcome.

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

#### Comment:

The site has been vacant for an extended period of time. As such, the existing natural environment is required to be altered in order to facilitate the construction of a dwelling. In this instance, the removal of multiple canopy trees is requested in order to centrally site the proposed dwelling to achieve compliance with the front, side and rear setbacks, and ensure the maximum height of the building does not encroach beyond the permitted height as stipulated under *sub-clause (2D) of Clause 4.3 of PLEP 2014*. Due to the slope of the site, the proposed structure appropriately steps with the land, using pier footings where possible so as to limit the need for cut and fill throughout the site. Further the retention of multiple canopy trees and the proposed vegetation and canopy tree planting ensures the proposal sensitively relates to the spatial characteristics of the existing natural environment. In this instance, the proposed development is considered to achieve compliance with this outcome.

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

#### Comment:

As a result of the steep topography of the site, the most significant breach is toward the rear of the dwelling along the western elevation. As is indicated in the Built Form Control table (which can be found elsewhere in this report), the building envelope encroachment begins as compliant and gradually encroaches. Amended plans were received by Council whereby the first floor, along the western elevation, was further stepped in to attempt to mitigate this encroachment and provide visual relief of the built form when viewed from neighbouring properties. Further, the retention of multiple canopy trees

(being T19, T20 and T21), as well as the replanting of multiple canopy trees and other vegetation throughout the site will minimise the built form when viewed from the street frontage and surrounding developments. In this instance, the proposed development is considered to achieve compliance with this outcome.

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

Comment:

A View Loss Assessment has been undertaken to ascertain the potential impact upon views to 26 Wandeen Road (being the property uphill to the east of the subject site). This can be found under section C1.3 View Sharing of this report.

In terms of views and vistas to and/or from public places, the proposal is considered to be acceptable as partially obscured views of the water can be seen from the street. These partial views are unlikely to be unreasonably impacted due to the angle of the subject site (with the proposed dwelling achieving a north-south orientation) and the retention of existing canopy trees and other vegetation.

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

Comment:

Objectors raised concern of the potential privacy and amenity impacts arising as a result of the proposed development. Site visits were conducted at 22 Wandeen Road, 26 Wandeen Road and 28 Wandeen Road to ascertain any potential privacy and/or amenity impacts stemming from the proposed development. It was determined that 28 Wandeen Road was not unreasonably impacted (from a privacy, amenity and solar access perspective) as the proposed development did not extend beyond the dwelling at 26 Wandeen Road.

However, upon a site visit at 22 Wandeen Road it was noted that there were potentially multiple areas that may be impacted as a result of the proposed development. The first area of concern is the master bedroom en-suite which has four (4) skylights located along the eastern elevation. The second area of concern is the main private open space which is partially exposed to potential direct overlooking from the proposed windows along the western elevation of the ground floor level, particularly the floor to ceiling window for the internal staircase from the ground level to the lower ground level.

A Window and Door Schedule was not provided with the application, and the windows and doors were not labelled on the architectural plans. However, the NatHERS Certificate indicates the type and performance of the windows and doors chosen as part of this development. Using the NatHERS Certificate provided, Council can approximately ascertain the height and size of the windows and doors proposed.

Whilst conditions were proposed to require amendments to the proposed windows along the western elevation, as well as include the erection of a 1.65m high privacy screen along the western elevation of the proposed front porch, Council considered it appropriate to request amended plans, rather than rely upon written conditions and satisfaction of the conditions by the PCA. The amended plans that were submitted in January 2021 now show opaque treatments (for half the window width) for the two (2) windows along the western elevation (for the dining room) (thus achieving a privacy height of 1.6m, measured from the finished floor level of the ground floor), as well as to the window of the internal stairs that provide access from the ground level to the lower ground level. Further, the amended plans depict a 1.65m high privacy screen along the western elevation of the front porch.

As amended, Council is satisfied that the proposal is unlikely to unreasonably impact upon the privacy and amenity of adjoining properties.

Shadow diagrams have been provided with the application. These diagrams indicate that on June 21 at 9am, the proposed development will cast a shadow over the bulk of the adjoining property to the west, being 22 Wandeen Road. As the day progresses (12pm), the shadow is then cast directly over the front setback area of the subject site and Council's road reserve, then toward the afternoon (3pm) the shadow is cast over a portion of the front and eastern side setback area of the subject site, and over the front south-western corner of the dwelling and front setback area of 26 Wandeen Road, as well as a portion of Council's road reserve and Wandeen Road. As such, Council is satisfied that the proposal will result in a reasonable level of solar access for the subject site and adjoining properties.

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

Comment:

As the site has been vacant for an extended period of time, multiple canopy trees and vegetation is required to be removed to facilitate the proposed development. However, a Landscape Plan has been provided which indicates the retention and replanting of multiple canopy trees and vegetation (ranging from shrubs [reaching maximum heights of 5m], ground covers and grasses). The retention of existing canopy trees T19, T20 and T21 and the additional planting as indicated on the Landscape Plan will visually reduce the built form when viewed from neighbouring properties and public places, particularly the streetscape.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **D1.14 Landscaped Area - Environmentally Sensitive Land**

Detailed description of non-compliance

The subject site is located within Area 1 of the Landscaped Area Map. As such, the site requires a minimum of 60% (or 512.2m<sup>2</sup>) landscaped area. The proposed development will result in a numeric non-compliant landscaped area of 57.6% (or 492.10m<sup>2</sup>), thus presenting a variation of 4.0%.

Provided the outcomes of the control can be achieved, a variation may be permitted which allows pathways (and the like) of 1.0m width or less, and 6% of the total site to be included in the overall landscaped calculation of the site. With the variations applied, the proposed landscaped area is increased to 63.6% (or 543.0m<sup>2</sup>), thus achieving numeric compliance.

While the proposal achieves numeric compliance with the variations applied, a merit consideration is undertaken below.

Merit consideration

*Achieve the desired future character of the Locality.*

Comment:

As discussed elsewhere in this report, the retention of three (3) trees within the front south-western corner of the site (being T19, T20 and T21), as well as the additional planting of other native species (including a range of shrubs and other vegetation, and multiple canopy trees), the proposed development will retain a height that is below the natural environment. The proposal will present as a



two (2) storey dwelling when viewed from the street frontage. Further, the overall design will result in a contemporary building that utilises modulation, particularly the first floor level which is heavily articulated along the western elevation. The northern elevation (being the front of the dwelling) uses an entry portico and recessed first floor level to create a degree of articulation when viewed from the street frontage and neighbouring properties. Further, the proposal is for the construction of a single dwelling house - thus achieving a low-density residential nature. In this instance, the proposed development is considered to achieve compliance with this outcome.

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

Comment:

While the proposal results in an initial numeric non-compliance, it is not indicative of the proposed additional landscape planting and retention of existing canopy trees. The site will retain a landscaped setting surrounding a built structure, which is compatible with the surrounding developments in the immediate vicinity, and within the wider community of Avalon Beach. As discussed elsewhere in this report, the bulk and scale of the proposal is not uncommon within the locality (see reference to Image 3. 23 Wandeen Road). The proposal is generally compliant with the front, side and rear setback controls (notwithstanding the encroachment of the 'external landing' on the ground floor level along the eastern elevation), and the retention, and additional planting, of canopy trees and a wide range of shrubbery throughout the site, the built form is visually minimised. In this instance, the proposed development is considered to achieve compliance with this outcome.

*A reasonable level of amenity and solar access is provided and maintained.*

Comment:

As discussed elsewhere in this report, amended plans were received (dated 19 January 2021, prepared by Rise Projects) which show amendments to the proposed window schedule along the western elevation, and the erection of a 1.65m high privacy screen to the entire length of the western side of the front porch. These amendments satisfactorily ensure a reasonable level of privacy (and thus amenity) will be provided to the occupants of the subject site and those of adjoining properties. Further, the shadow diagrams provided with this application indicate the proposal achieves compliance with requirements as stipulated under control C1.4 Solar Access of P21 DCP. The proposal is considered to achieve compliance with this outcome.

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

Comment:

As discussed elsewhere in this report, the site has been vacant for an extended period of time. Thus, multiple canopy trees and other vegetation are required to be removed to facilitate the siting of the proposed development. However, multiple canopy trees are proposed to be retained throughout the site, as well as the provision of additional planting to contribute to visually reducing the built form when viewed from public places and neighbouring properties. The proposal achieves compliance with this outcome.

*Conservation of natural vegetation and biodiversity.*

Comment:

The Application has been reviewed by Council's Landscape Officer and Bushland and Biodiversity Officer. Both initially raised concerns with regards to the proposed development impacting upon the canopy trees proposed to be retained. Of primary concern was the proposed driveway's impact upon the Tree Protection Zone (TPZ) of T4, T19, T20 and T21. Amended plans were provided to reflect a portion of the driveway as cantilevered so as to minimise the impact upon T19, T20 and T21 - Council's Landscape Officer and Bushland and Biodiversity Officer are satisfied that the amended proposal



achieves compliance with the relevant landscaping and biodiversity controls. Their comments can be found under section 'Referrals' within this report. The proposal is considered to achieve compliance with this outcome.

*Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

Comment:

Amended stormwater management plans have been provided with this application (prepared by NB Consulting Engineers, dated 15 December 2020). Council's Development Engineer has reviewed this application and raised no concern with regards to the proposed stormwater management plan, subject to conditions. The proposal is considered to achieve compliance with this outcome.

*To preserve and enhance the rural and bushland character of the area.*

Comment:

The proposed landscape plan will ensure the site will enhance the rural and bushland character of the area. The proposal is considered to achieve compliance with this outcome.

*Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.*

Comment:

While the proposal results in a minor numerical non-compliance to the minimum requirement of this control, a reasonable level of soft surface is provided which will provide for the infiltration of water to the water table, minimise run-off and assist with stormwater management. The proposal is considered to achieve compliance with this outcome.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **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 \$13,030 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,303,045.

## **Planning Principles**

- *Veloshin v Randwick Council [2007] NSWLEC 429 at 32-33*

Comment:

Council has considered this planning principle and the proposed development is considered to be consistent with the outcomes of this planning principle. Discussions on the height, and bulk and scale of the proposed development can be found elsewhere in this report. This does not warrant refusal of the application.

- *Davies v Penrith City Council [2013] NSWLEC 1141 at [116] to [121]*

Comment:

Council has considered this planning principle and the proposed development is considered to be consistent with the outcomes of this planning principle. Discussions on the general impact of the proposed development can be found elsewhere in this report. This does not warrant refusal of the application.

- *Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191 at 22-31.*

Comment:

Council has considered this planning principle and the proposed development is considered to be consistent with the outcomes of this planning principle. Further, Council has considered the potential impacts as a result of the proposal upon adjoining and nearby dwellings - discussions of which can be found elsewhere in this report. This does not warrant refusal of the application.

As discussed, the abovementioned Planning Principles as outlined by the New South Wales Land and Environment Court have been considered during the assessment of this application. Council, as the consent authority, is satisfied that the proposed development achieves the outcomes of these planning principles.

## 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 has been required for the following specific issues:

The proposed development includes a numeric non-compliance with the following PLEP 2014 Clause:

- *Clause 4.3 Building Height*

Comment:

The proposed development includes a variation to the building height development standard. However, the proposed building footprint is located on a slope in excess of 30% (or 16.7 degrees), and as stipulated under sub-clause (2D) of Clause 4.3, the development standard of 8.5m does not strictly apply, nor is the Applicant required to provide a Clause 4.6 written request to vary the development standard. In this instance, the proposed development is supported on merit.

While the proposal includes a minor departure from the numeric development standard of Clause 4.3, it has been considered in relation to the provisions of sub-clause (2D) of Clause 4.3 of the *PLEP 2014* and the context of the subject site and surrounding locality of Avalon Beach, and Clareville. While the proposed development results in a minor breach to the building height development standard, the potential impacts of the development on the amenity of the adjoining and nearby properties has been assessed as reasonable.

The proposed development includes non-compliances with the following P21 DCP controls:

- B8.2 Construction and Demolition - Erosion and Sediment Management
- B8.6 Construction and Demolition - Traffic Management Plan
- C1.3 View Sharing
- C1.5 Visual Privacy
- C1.25 Plant, Equipment Boxes and Lift Over-Run
- D1.5 Building colours and materials
- D1.9 Side and rear building line
- D1.11 Building envelope
- D1.14 Landscaped Area - Environmentally Sensitive Land

The abovementioned controls have been addressed within this report where necessary. These non-compliances are considered to result in minimal material impact upon adjoining or nearby properties. Further, these non-compliances are considered reasonable when assessed against the relevant objectives of each control, except for C1.5 Visual Privacy whereby the endorsement of amended plans will ensure the reasonableness of the proposed development.

The proposed development 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/1163 for Construction of a dwelling house including a swimming pool on land at Lot 102 DP 13760, 24 Wandeen Road, CLAREVILLE, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
1.2 (Rev E) Site Plan	18 January 2021	Rise Projects Pty Ltd.
1.5 (Rev D) Roof Plan	20 November 2020	Rise Projects Pty Ltd.
2.0 (Rev F) Lower Level Layout	19 January 2021	Rise Projects Pty Ltd.
2.1 (Rev F) Ground Floor Layout	19 January 2021	Rise Projects Pty Ltd.
2.2 (Rev E) First Floor Layout	18 January 2021	Rise Projects Pty Ltd.
3.1 (Rev F) Elevations 1 (North & South Elevations)	19 January 2021	Rise Projects Pty Ltd.
3.2 (Rev F) Elevations 2 (West & East Elevations)	19 January 2021	Rise Projects Pty Ltd.
4.1 (Rev D) Section - 1 (Section 1 & Section 2)	20 November 2020	Rise Projects Pty Ltd.
4.1.2 (Rev D) Section - Void	20 November 2020	Rise Projects Pty Ltd.
4.2 (Rev E) Section - 2 (Section 3 & Section 4)	18 January 2021	Rise Projects Pty Ltd.
4.3 (Rev E) Section - 3 (Section 5 & Section 6)	18 January 2021	Rise Projects Pty Ltd.
6.2 (Rev E) Driveway & Tree TPZ Zone	18 January 2021	Rise Projects Pty Ltd.
6.8.1 (Rev D) Slope Section 1 (Section Front)	20 November 2020	Rise Projects Pty Ltd.
6.8.2 (Rev D) Slope Section 2 (Section Rear)	20 November 2020	Rise Projects Pty Ltd.
6.8.4 (Rev E) Section - Details (Site Plan,	18 January 2021	Rise Projects Pty

Section A-A & Section B-B)	Ltd.
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<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
1.6 (Rev E) Cut / Fill Plan	18 January 2021	Rise Projects Pty Ltd.
D01 (Issue B) Lower Floor Stormwater Drainage Plan	15 December 2020	NB Consulting Engineers
D02 (Issue B) Ground Floor Stormwater Drainage Plan	15 December 2020	NB Consulting Engineers
D03 (Issue B) First Floor and Roof Stormwater Drainage Plans	15 December 2020	NB Consulting Engineers
D04 (Issue B) Stormwater Drainage Details Sheet 1	15 December 2020	NB Consulting Engineers

<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>
BASIX Certificate (1135681S)	14 September 2020	Energy Advance
Nationwide House Energy Rating Scheme (NatHERS) Certificate No. E3ZNI40X6J	14 September 2020	Energy Advance
Energy Efficiency Report (Ref No. RP 211)	14 September 2020	Energy Advance
Arboricultural Impact Assessment (AIA) Report	7 September 2020	Blues Bros Arboriculture
Landscape Referral Response	12 November 2020	Blues Bros Arboriculture
Flora and Fauna Assessment Report	September 2020	Narla Environmental
Geotechnical Investigation (Ref. J2913)	15 September 2020	White Geotechnical Group

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

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

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
L-01 - L-07 (inclusive) (Issue G)	17 December 2020	Site Design + Studios

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	15 September 2020	Sean McNeil

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



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

**2. Prescribed Conditions**

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

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

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

of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

### 3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

waste/recycling centres.

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

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

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

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

- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$13,030.45 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 \$1,303,045.00.

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.

### 5. Security Bond

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

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

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



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

6. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White geotechnical group dated 18th August 2020 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

7. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

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

8. **Boundary Identification Survey**

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

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

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

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

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's PITTWATER DCP21, and generally in accordance with the concept drainage plans prepared by NB Consulting Engineers, drawing DO1 to D04 dated September 2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia,

National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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

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

10. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

11. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

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

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

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

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

13. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

14. **Tree Protection Plan**

a) A Tree Protection Plan shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures to protect the following trees:

- o T19 - Spotted Gum, T20 - Spotted Gum, and T21 - Spotted Gum, within the front of the property,
- o T1 - Spotted Gum, T2 - Spotted Gum, T3 - Bangalay Gum, and T4 - Bangalay Gum, within the rear of the property,
- o T22 and T23 - road verge street trees.

b) The Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture, incorporating the following:

- o layout of the development, including existing and proposed underground services,
- o location of all trees identified for retention, including extent of canopy,
- o access routes throughout the site for construction activity,
- o location of tree protection fencing / barriers,
- o root protection in the form of mulching or boards proposed within the tree protection zone,
- o trunk and branch protection within the tree protection zone,
- o location of stockpile areas and materials storage,
- o inspection hold points,
- o other general tree protection measures.

c) Tree protection methods are to be in accordance with AS4970-2009 Protection of Trees on Development Sites, and as referenced in the Arboricultural Impact Assessment, section 6.1.3, 6.2.1, 6.2.2 and 6.2.3.

Reason: Tree protection.

15. **Preparation of a Tree Removal Protocol**

The Project Ecologist is to prepare a Tree Removal Protocol which includes the provision of (at a minimum): a pre-clearance survey, direct supervision of tree removal, protocol for rescue of fauna and relocation of log hollow sections onsite to provide fauna habitat. The Tree Removal Protocol must also include procedures for stop work and formal impact assessment in the event that fauna species are found during the pre-clearance survey. The Tree Removal Protocol is to be submitted to the Principal Certifying Authority prior to issue of Construction Certificate.

Reason: To protect native wildlife.

16. **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.

17. **External Finishes to Walls and Roof**

The external finishes to the walls and roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are **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.

18. **Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

### CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

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

The Project Arborist shall be in attendance and supervise all works as nominated, including:

- T19 - Spotted Gum, T20 - Spotted Gum, and T21 - Spotted Gum, within the front of the property,
- T1 - Spotted Gum, T2 - Spotted Gum, T3 - Bangalay Gum, and T4 - Bangalay Gum, within the rear of the property,
- T22 and T23 - road verge street trees.

All tree protection measures specified must:

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



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

Note:

- A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

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

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

- T24 (Illawarra Flame Tree).

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services Section prior to removal.

Reason: Public liability.

21. **Tree removal within the property**

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

- T6, T7, T11, T12, T13, T15 and T18 (She Oak); T9 and T16 (Red Mahogany); T14 (Spotted Gum); and T17 (Red Mahogany).

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

- T5 (Chinese Elm); T8 and T10 (Sweet Pittosporum).

Reason: To enable authorised building works.

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

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

22. **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.

23. **Survey Certificate**

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

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

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

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

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

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

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

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

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

25. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

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

26. **Traffic Control During Road Works**

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

Reason: Public Safety.

27. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.5 metres wide within the road reserve in accordance with Northern Beaches Council Drawing No A4-3330/3 and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

**28. Tree and vegetation protection**

- a) Existing trees and vegetation shall be retained and protected, including:
  - o All trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
  - o All trees and vegetation located on adjoining properties,
  - o All road reserve trees and vegetation not approved for removal.
- b) Tree protection shall be undertaken as follows:
  - o Tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
  - o 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,
  - o 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,
  - o 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,
  - o 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,
  - o 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,
  - o 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,
  - o 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,
  - o 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,
  - o 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,
  - o The tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

Note:

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

Reason: Tree and vegetation protection.

29. **Implementation of Tree Removal Protocol**

Tree removal is to be undertaken in accordance with the Tree Removal Protocol prepared by the Project Ecologist. Compliance with the Tree Removal Protocol is to be certified in writing by the Project Ecologist and this written certification provided to the Certifying Authority prior to issue of Occupation Certificate.

Reason: To protect native wildlife during the construction phase.

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

30. **Landscape works completion**

Landscaping is to be implemented in accordance with the approved Landscape Plans L-01 to L-07 inclusive as prepared by Site Design Studios, Issue G, and including the following conditions:

- i) Existing ground levels shall be maintained within the tree protection zone as shown on Plan L-02 for existing trees T19, T20 and T21, and including the existing ground levels under the cantilevered driveway portion,
- ii) all new canopy trees shall be located within a minimum 9m<sup>2</sup> deep soil area and be located at least 5 metres from existing and proposed buildings, and at least 3 metres for smaller trees, and at least 2 metres from a driveway,
- iii) tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views,
- iv) The external area to the south of Bedroom 5 is to be landscaped appropriately with small shrubs. The planting selection is to incorporate locally native species.

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

Reason: Environmental amenity.

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

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

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



Reason: tree protection.

32. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

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

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

33. **Certification Elevated Parking Facility Work**

The Applicant shall submit a Structural Engineers' certificate certifying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

Reason: Compliance with this consent.

34. **Retaining wall and suspended slab and Beam**

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

Reason: Public and Private Safety

35. **Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

36. **Environmental Reports Certification**

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

- (a) Arboricultural Impacts Assessment (AIA) Report, prepared by Blues Bros Arboriculture, dated 7 September 2020.
- (b) Landscape Referral Response, prepared by Blues Bros Arboriculture, dated 12 November 2020.
- (c) Flora and Fauna Assessment Report, prepared by Narla Environment, dated September 2020.
- (d) Geotechnical Investigation (Ref. J2913), prepared by White Geotechnical Group, dated 15 September 2020.

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

Reason: To ensure compliance with standards.

37. **Salvaging of Hollows**

Any hollows in trees to be removed are to be salvaged prior to any vegetation clearing and reused as fauna habitat within areas of retained native vegetation on the site. Compliance with this condition is to be certified in writing by the Project Ecologist and evidence provided to the Certifying Authority prior to issue of any Occupation Certificate.

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

38. **Protection of Natural Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans. Details demonstrating compliance are to be provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

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

39. **Nest Box Installation**

A minimum of one nest box suitable for microbats is to be installed within areas of retained native vegetation on the site. 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 Construction Certificate.

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

40. **House / Building Number**

The house number is to be affixed to the building, or letterbox, to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

41. **Swimming Pool Pump / Filter**

The swimming pool pump / plant is to be located a reasonable distance from neighbouring properties and/or be acoustically treated to ensure it does not result in greater than 5Dba at the nearest residential receiver.

Details are to be submitted to the Principal Certifying Authority (PCA) prior to the issue of the Occupation Certificate.

Reason: To ensure no unreasonable impacts on acoustic privacy within the locality.

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

42. **Environmental and priority weed control**

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: Preservation of environmental amenity.

43. **Landscape maintenance**

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

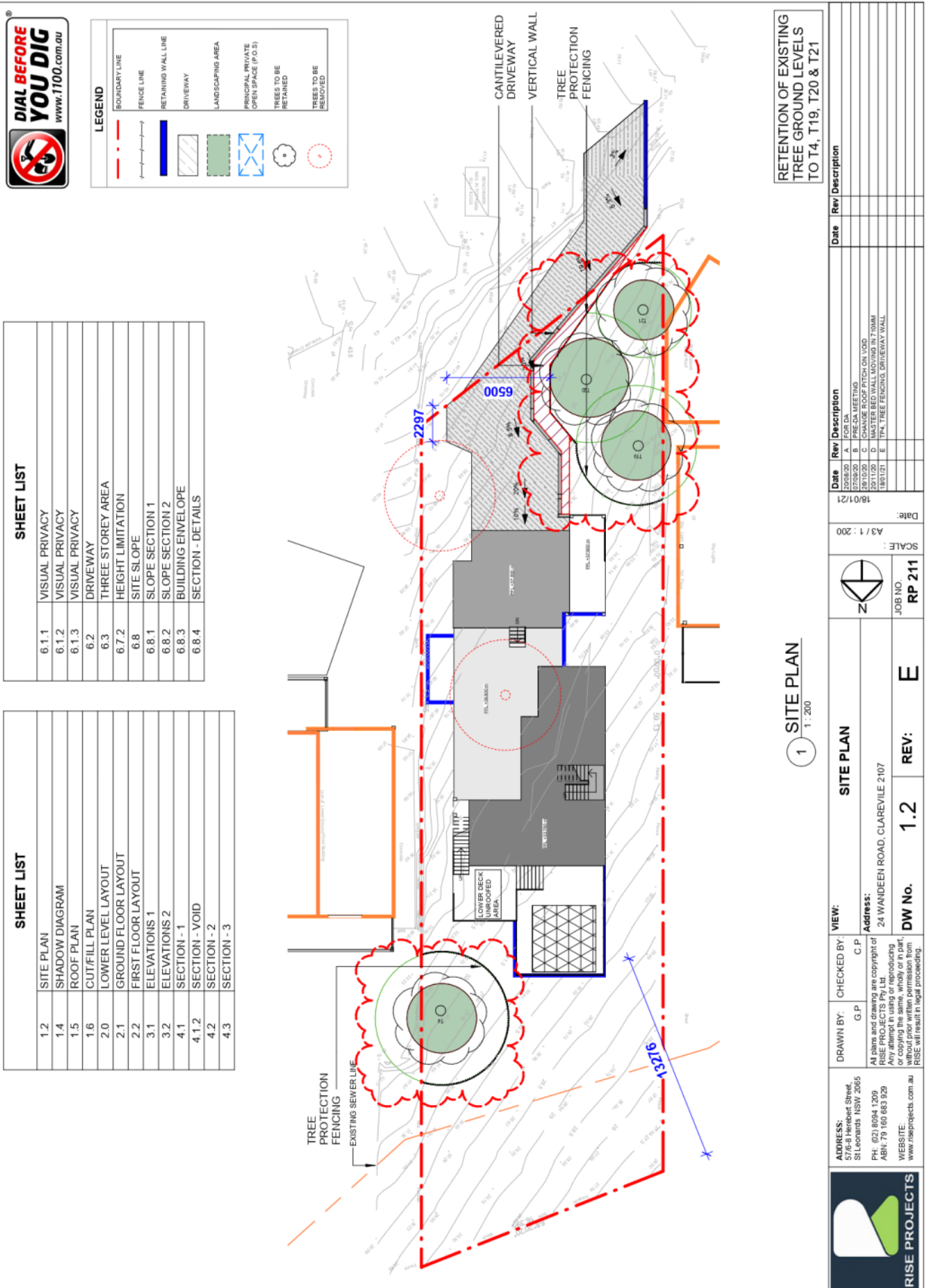
If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Amended Landscape Plan.

Reason: To maintain local environmental amenity.

44. **Use of Premises**

The proposed dwelling is to be solely used as a single dwelling (unless modified under the relevant consent). The area identified as the 'rumpus' room, as shown on drawing no. 2.0 (Rev D) Lower Level Layout, (prepared by Rise Projects, dated 30 November 2020) must not include any cooking facilities. The lower ground floor level (and any other level within the dwelling) must not be used for the purposes of separate accommodation/habitation.

Reason: To ensure the proposed development achieves compliance with the granted consent.



RETENTION OF EXISTING  
TREE GROUND LEVELS  
TO T4, T19, T20 & T21

Date	Rev	Description	Date	Rev	Description
18/01/21	1	FOR C.A.			
18/01/21	2	FOR C.A.			
18/01/21	3	FOR C.A.			
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18/01/21	100	FOR C.A.			



**SITE PLAN**  
1:200

**DW No. 1.2 REV: E**

**Address:**  
24 WANDER ROAD, CLAREVILLE 2107

**VIEW:**  
C.P.

**CHECKED BY:**  
G.P.

**DRAWN BY:**  
G.P.

**Address:**  
5/7a-8 Herkner Street,  
St Leonards NSW 2065

**PH:** (02) 8094 1209  
**ABN:** 79 160 683 929

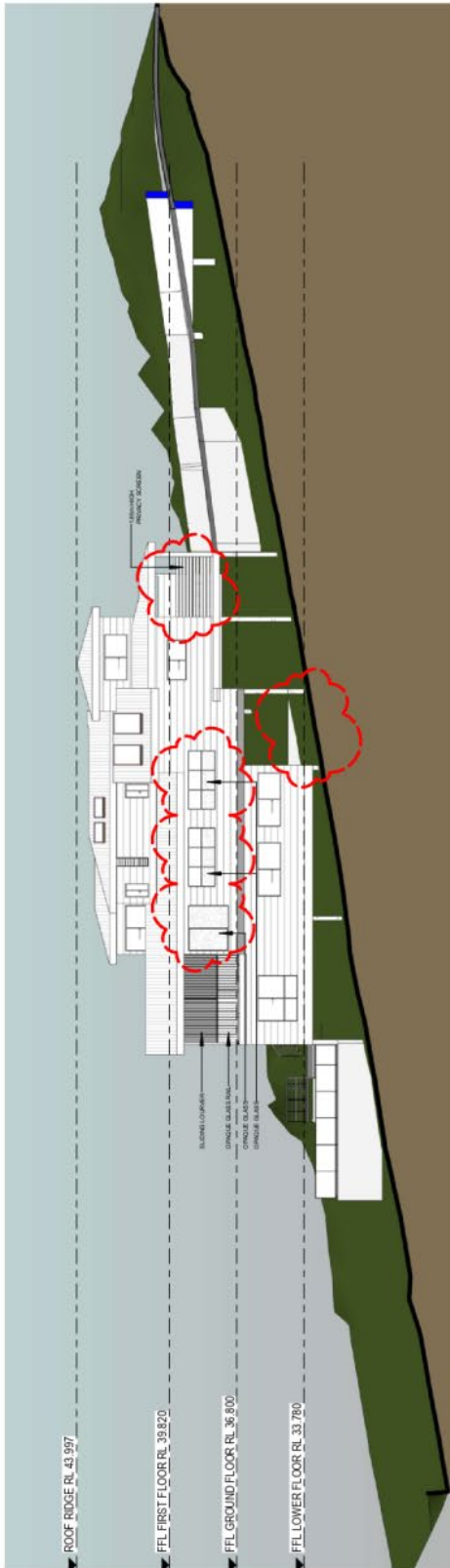
**WEBSITE:**  
www.riseprojects.com.au



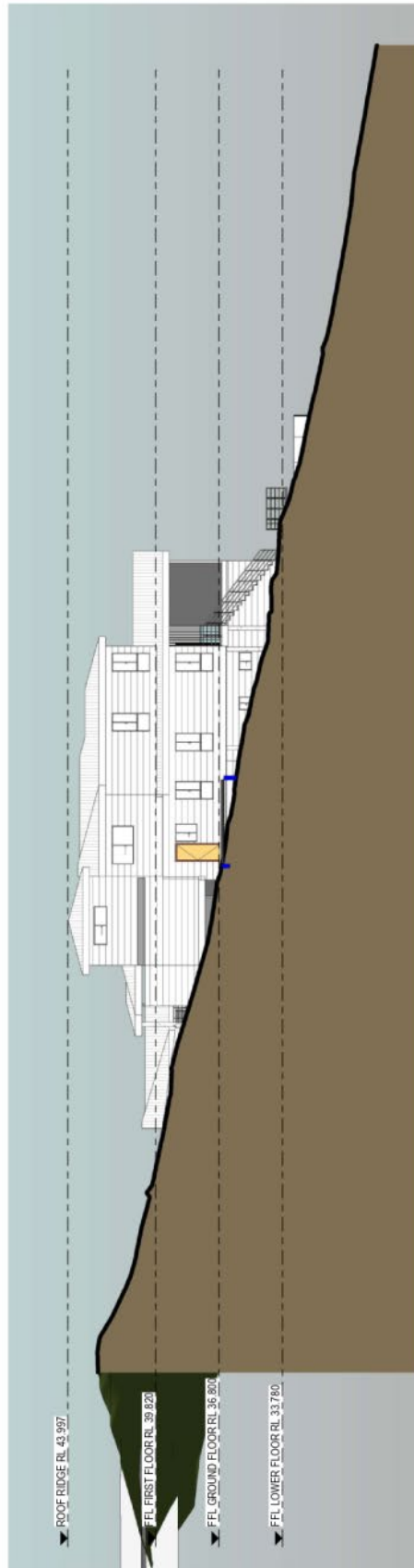





 <b>RISE PROJECTS</b> <small>Without prior written permission from: www.riseprojects.com.au</small>	<b>ADDRESS:</b> 57/6-8 Herbert Street, St Leonards NSW 2055  <b>PH:</b> (02) 8094 1209 <b>FAX:</b> (02) 8094 1209 <b>ABN:</b> 79 160 683 929		<b>DRAWN BY:</b> G.P	<b>CHECKED BY:</b> C.P	<b>VIEW:</b>  <b>ELEVATIONS 1</b>		<div>Date: 19/01/21 Scale: A3 / 1 : 100</div>		<div>Date</div> <div>Rev</div>	<div>Description</div> <div>Description</div>
	<b>Address:</b> 24 WANDREEN ROAD, CLAREVILLE 2107									
						<b>DW No.</b> 3.1	<b>REV:</b> F	<b>JOB NO.</b> RP 211		



3 WEST  
1:200



4 EAST  
1:200

	<b>ADDRESS:</b> 5/16-8 Herkner Street, St Leonards NSW 2055 PH: (02) 8094 1209 ABN: 79 160 683 929 <b>WEBSITE:</b> www.riseprojects.com.au	<b>DRAWN BY:</b> G.P. <b>CHECKED BY:</b> C.P. <small>All plans and drawing are copyright of RISE PROJECTS Pty Ltd. No part of this drawing may be copied or copying the same, wholly or in part, without prior written permission from RISE will result in legal proceeding.</small>	<b>VIEW:</b> <b>ELEVATIONS 2</b> <b>Address:</b> 24 WANDEEN ROAD, CLAREVILLE 2107 <b>DW No.</b> 3.2 <b>REV:</b> F <b>JOB NO.</b> RP 211	<b>SCALE:</b> A3 / 1 : 200 <b>Date:</b> 19/01/21	<table> <tr> <th>Date</th><th>Rev</th><th>Description</th><th>Date</th><th>Rev</th><th>Description</th></tr> <tr> <td>19/01/21</td><td>1</td><td>FOR QA</td><td></td><td></td><td></td></tr> <tr> <td>20/01/21</td><td>2</td><td>FOR QA</td><td></td><td></td><td></td></tr> <tr> <td>20/01/21</td><td>3</td><td>FOR QA MEETING</td><td></td><td></td><td></td></tr> <tr> <td>20/01/21</td><td>4</td><td>CHANGE ROOF PITCH ON VOD</td><td></td><td></td><td></td></tr> <tr> <td>20/01/21</td><td>5</td><td>CHANGE BED WALL MOVING IN 70MM</td><td></td><td></td><td></td></tr> <tr> <td>18/01/21</td><td>6</td><td>TP4 TREE FENCING DRIVEWAY WALL</td><td></td><td></td><td></td></tr> <tr> <td>18/01/21</td><td>7</td><td>PRIVATE SCREEN, OPAQUE WINDOWS</td><td></td><td></td><td></td></tr> </table>	Date	Rev	Description	Date	Rev	Description	19/01/21	1	FOR QA				20/01/21	2	FOR QA				20/01/21	3	FOR QA MEETING				20/01/21	4	CHANGE ROOF PITCH ON VOD				20/01/21	5	CHANGE BED WALL MOVING IN 70MM				18/01/21	6	TP4 TREE FENCING DRIVEWAY WALL				18/01/21	7	PRIVATE SCREEN, OPAQUE WINDOWS			
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<b>ITEM 3.2</b>	<b>PLANNING PROPOSAL (PEX2020/0002) - 5 BOWLING GREEN LANE, AVALON BEACH</b>
<b>AUTHORISING MANAGER</b>	<b>Anne-Maree Newbery</b>
<b>TRIM FILE REF</b>	<b>2020/645882</b>
<b>ATTACHMENTS</b>	<b>1 Planning Proposal - 5 Bowling Green Lane, Avalon Beach</b>

## PURPOSE

To report to the Northern Beaches Local Planning Panel a Planning Proposal for 'Green 3' at the Avalon Beach Bowling Club, 5 Bowling Green Lane, Avalon Beach. The planning proposal seeks to amend Pittwater Local Environmental Plan to zone the land for recreational purposes. This report recommends that the Panel advise Council to progress the Planning Proposal to a Gateway Determination.

## SUMMARY

A Planning Proposal has been prepared for 'Green 3' at Avalon Beach Bowling Club, 5 Bowling Green Lane, Avalon Beach. The Proposal seeks to amend Pittwater Local Environmental Plan 2014 to zone the land for recreational purposes.

The Proposal has been assessed in accordance with the NSW Department of Planning and Environment's (DPIE) *Planning Proposal: A Guide to Preparing Planning Proposal* (December 2018).

The Planning Proposal underwent non-statutory exhibition from 6 November to 20 November 2020, during which three submissions in support of the proposal were received.

An assessment of the Planning Proposal against DPIE's *Planning Proposals: A Guide to Preparing Planning Proposals* confirms that the proposal is consistent with the relevant directions and objectives of the Greater Sydney Region Plan and the priorities of the North District Plan and Northern Beaches Local Strategic Planning Statement and demonstrates strategic and site specific merit.

## BACKGROUND

Avalon Bowling Club is located within Dunbar Park, an open space area sited adjacent to the Avalon Beach commercial centre (Figure 1). The Park, being Lot 7 in DP 124040, is owned and managed by Council and includes the Avalon Recreation Centre, the Avalon Bowling Club, Avalon RSL Club outdoor area (leased from Council) and Woolworth's carpark (leased from Council). The western section of the land is leased to Avalon Bowling and Recreation Centre Limited (ABBRC) to operate the Avalon Bowling Club.





Figure 1 – Aerial Photo of Dunbar Park

The land (formally Lot 2 in DP 517185 as shown in figure 2) was purchased by Council on 26 September 2016 from ABBRC in accordance with a Pittwater Council resolution of 20 April 2015.

The land was purchased by Council on the 26 September 2016 and as a condition of sale ABBRC requested the following:

- *That the land comprising Green 3 be reclassified as Community Land, as soon as reasonably practicable after settlement as per the resolution of Council dated 20 April 2015 (Council Resolution).*
- *After completion of the contract Council will consolidate Green 3 and Lot 6 (Consolidation).*
- *Green 3 will be rezoned from R2 Low Density to RE1 Public Recreation (rezoning) as per Council Resolution.*



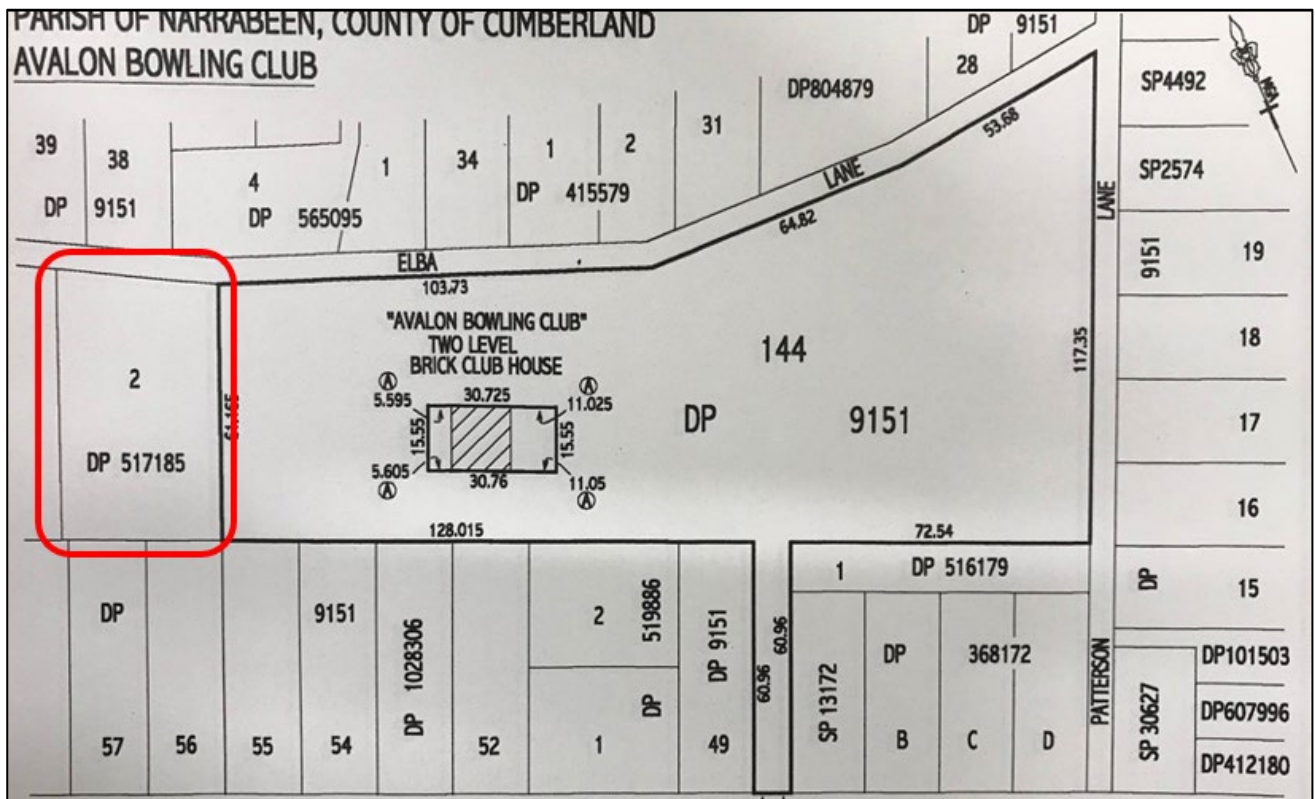


Figure 2: Plan of Subdivision Prior to Consolidation; Highlighted in Red, Lot 2 DP 517185 (Green 3).

Lot 2 DP 517185 and Lot 6 in DP 1102075 were subsequently consolidated into one lot, being Lot 7 in DP 124040 (Figure 3). The reclassification of Green 3 from Operational land to Community land was completed on 26 December 2016 in accordance with the requirements of the Local Government Act 1993, Section 31.

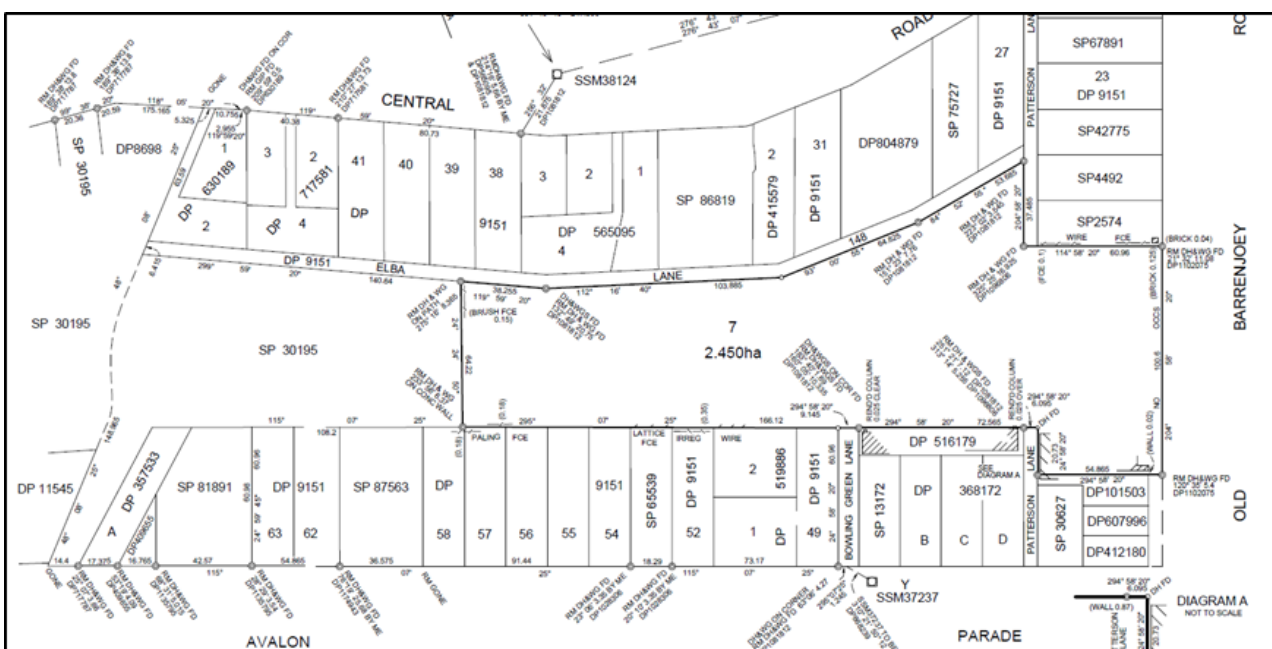


Figure 3 – Plan of Subdivision

## SITE DESCRIPTION

The subject site incorporates 'Green 3' of the Avalon Beach Bowling Club (the Club) and forms the western section of Lot 7 DP 124040, Dunbar Park (figure 4). 'Green 3' continues to be utilised by the Club for lawn bowls and club related purposes.

The subject site adjoins land developed for residential purposes to the north, south and west. Dunbar Park and the Avalon Beach Bowling Club are sited to the east.

The site does not contain any native vegetation, however is subject to flooding during a 1% AEP event.



Figure 4 – Subject Site, Green 3

## CURRENT ZONING

The site 'Green 3' is zoned R2 Low Density Residential under Pittwater LEP 2014. Properties adjoining the site to the north, south and west are zoned R2 Low Density Residential and Dunbar Park which adjoins the site to the east is zoned RE1 – Public Recreation.

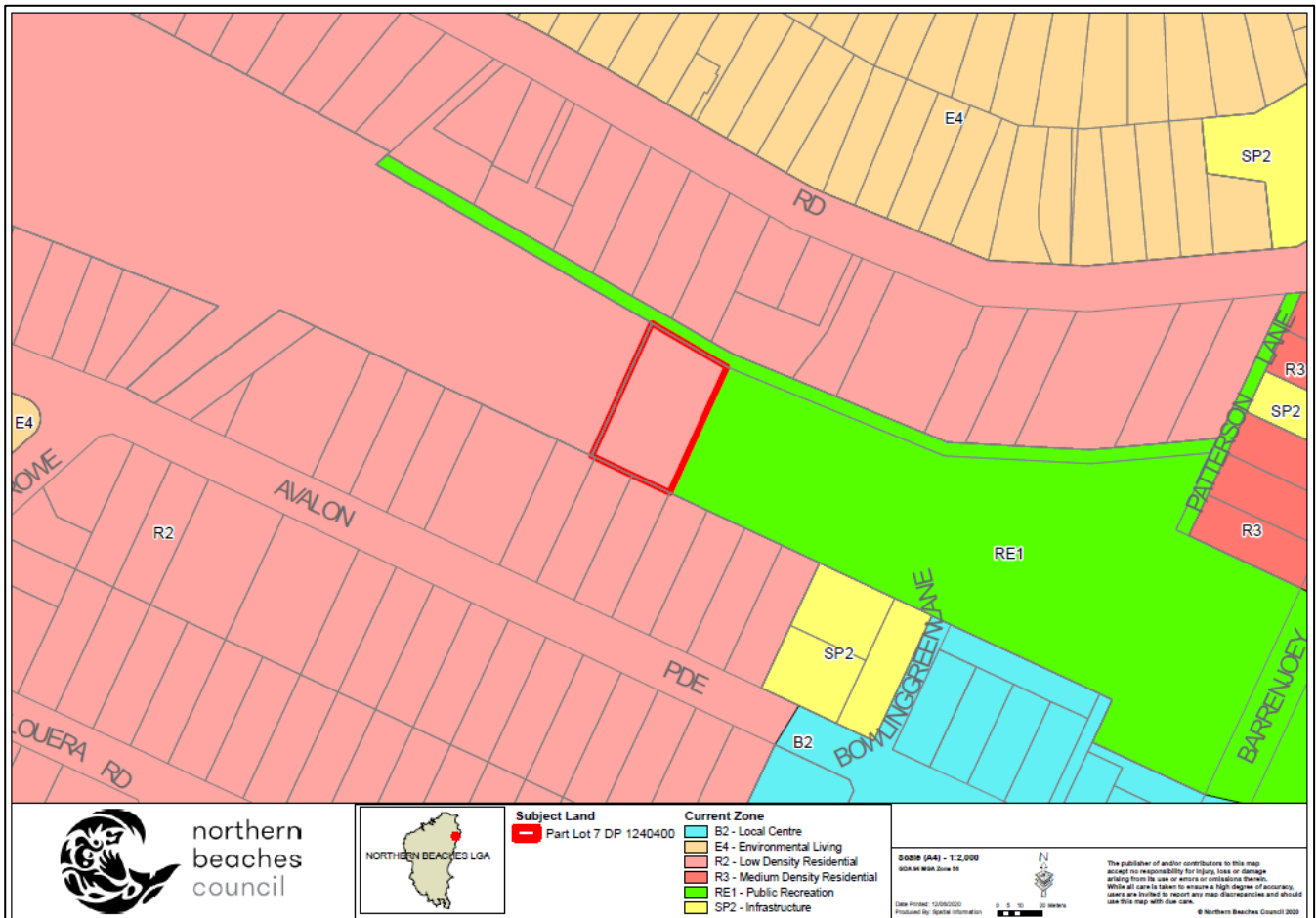


Figure 5 – Existing Zoning Map

The objectives of the R2 Low Density Residential are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day-to-day needs of residents.
- To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.



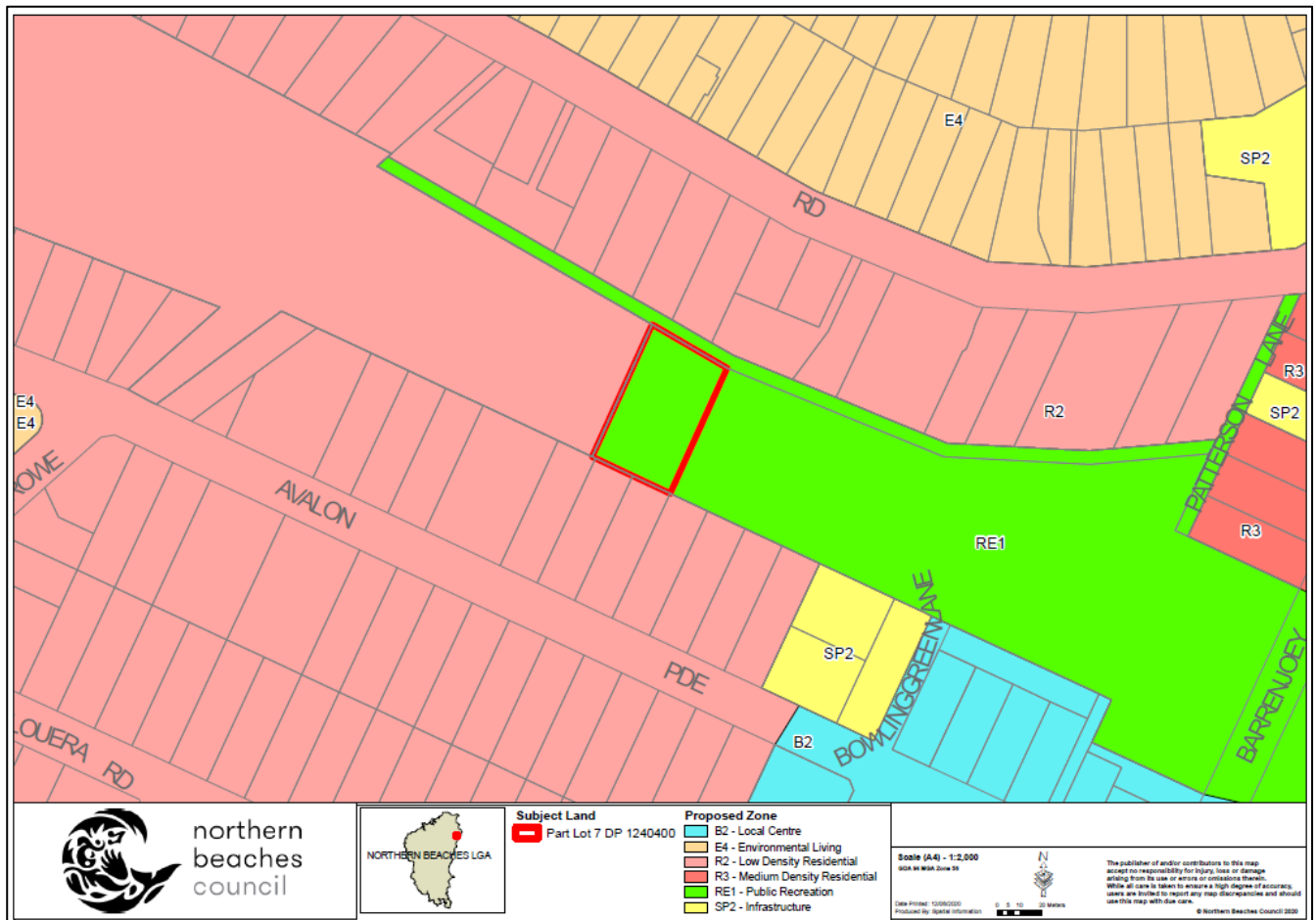


Figure 6 – Proposed Zoning Map

## THE PROPOSAL

The Planning Proposal seeks to amend the planning controls within Pittwater LEP 2014 to rezone the site to facilitate public recreation uses in conjunction with the Avalon Bowling Club. Specifically, the Planning Proposal seeks to:

- Change the zoning of the site from R2 Low Density Residential to RE1 Public Recreation

The Objectives of the RE1 Public Recreation Zones are:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To allow development that does not substantially diminish public use of, or access to, public open space resources.
- To provide passive and active public open space resources, and ancillary development, to meet the needs of the community.



## ASSESSMENT OF PLANNING PROPOSAL

The following assessment is undertaken in accordance with the NSW Department of Planning, Industry and Environment's '*Planning Proposals: A Guide to Preparing Planning Proposals*'.

### Part 1 – Objectives or Intended Outcomes

The Planning Proposal seeks to amend the Pittwater LEP 2014 to change the zone of the subject site from R2 Low Density Residential to RE1 Public Recreation.

### Part 2 – Explanation of Provisions

The proposed amendments to Pittwater Local Environmental Plan 2014 are:

- Amend LZN\_016 map to change the zoning from R2 Low Density Residential to RE1 Public Recreation.

### Part 3 – JUSTIFICATION

#### Section A – Need for the Planning Proposal

**1. Is the Planning Proposal a result of an endorsed Local Strategic Planning Statement, Strategic Study or report?**

The Planning Proposal is not the result of any endorsed Local Strategic Planning Statement, strategic study or report. The Planning Proposal is the result of a former Pittwater Council Meeting resolution of the 20 April 2015 that required the following actions be undertaken following the completion of the contract for sale:

- Reclassify Green 3 (part of Lot 7 DP 124040) from Operational Land to Community Land (Completed 26 December 2016); and
- Re-Zone Green 3 from R2 Low Density Residential to RE1 Public Recreation.

**2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Yes, the Planning Proposal is the best means to rezone the subject site from R2 Low Density Residential to RE1 Public Recreation.

#### Section B - Relationship to Strategic Planning Framework

**3. Will the Planning Proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?**

Yes, The Planning Proposal gives effect to the following regional plans, district plans and strategy.

**3.1 A Metropolis of Three Cities – Greater Sydney Region Plan**

The proposal has been reviewed against relevant outcomes of the Greater Sydney Region Plan 'A Metropolis of Three Cities'. The proposal is consistent with the broad directions of the Plan as outlined in Table 1 below.

Table 1: Relevant Objectives and Directions of a Metropolis of Three Cities.

Direction	Objective	Planning Proposal
A City supported by infrastructure.	Objective 2: Infrastructure aligns with forecast growth.  Objective 3: Infrastructure adapts to future needs.	Avalon Beach is characterised as an ageing population with static growth, the average age of residents is 45, in comparison to 36 for Greater Sydney. Population projections indicate that the ageing trend will continue with the 75 – 79 years age group experiencing the largest growth between 2016- 2026.  The preservation of open space within proximity to the village centre will service the needs and requirements of the changing demographic of the area and support the use of the site for recreational purposes in line with the current Avalon Beach Bowling and Recreation Centre.
A Collaborative City	Objective 5:  Benefits of growth realized by collaboration of governments, community and business.	Council is working in collaboration with the Avalon Beach Bowling and Recreation Centre to ensure that Avalon Beach has sufficient open space to satisfy community needs now and into the future
A City for people.	Objective 7: Communities are healthy, resilient and socially connected.	The Planning Proposal seeks to increase land zoned for the purpose of public recreation that will provide additional opportunities for the community to connect socially and physically through passive and active recreation.
A City of great places	Objective 12:  Great places that bring people together.	The rezoning of the subject site will secure the open space for the use of the Avalon Beach Bowling and Recreation Centre and for the use of the community.

### 3.2 The North District Plan:

The Planning Proposal gives effect to the following objectives of the North District Plan

Table 2: North District Plan –Priorities.

Livability Theme		
Priority	Objective	Planning Proposal
<p>Planning Priority</p> <p>N3 - Providing services and social infrastructure to meet people's changing needs.</p>	<p>Objective 6: Services and infrastructure meet communities' changing needs.</p>	<p>The demographics of Avalon Beach is changing with the highest growth experienced in the 75 -79 age group. The average age is 45, in comparison to 36 for Greater Sydney, with 50% of the population aged between 35-69 years.</p> <p>Avalon Beach is an aging population and the planning proposal will provide additional open space zoned land to meet the demographic trend and changing needs and requirements of the community now and into the future.</p>
<p>Planning Priority</p> <p>N4 – Fostering Healthy, Creative, Culturally Rich and Socially Connected Communities.</p>	<p>Objective 7: Communities are healthy, resilient and socially connected.</p>	<p>The Planning Proposal seeks to increase land zoned for public recreation purposes in the Avalon Beach locality. The additional public open space will provide additional opportunities for the community to connect socially and physically through passive and active recreation activities associated with the Avalon Beach Bowling Club and surrounding Dunbar Park area.</p>
<p>Planning Priority</p> <p>N6 - Creating and renewing great places and local centers, and respecting the District's heritage.</p>	<p>Objective 12: Great places that bring people together.</p>	<p>Dunbar Park is located within the Avalon Beach village and holds significant value to the local community. Dunbar Park consists of a diverse range of facilities and infrastructure catering to the social and recreational needs of the community.</p> <p>The Planning Proposal will facilitate and enable the Avalon Beach Bowling and Recreation Centre to secure their current activities and foster the development of a social and recreational hub that will bring the community together for range of social and recreation purposes.</p>

Sustainability Theme		
Priority	Objective	Planning Proposal
Planning Priority N20 - Delivering high quality open space	Objective 31: Public space is accessible, protected and enhanced.	<p>The North District Plan highlights the importance of open space as a form of green infrastructure that not only enhances the character of the District, but also supports active lifestyles and provides opportunities to unite and bring communities together.</p> <p>The District Plan recognises that there is limited opportunity to increase the quantity of open space.</p> <p>The Planning Proposal addresses this issue and seeks to provide additional open space zoned land by rezoning R2 Residential Low Density land to RE1 Public Open Space.</p>
Planning Priority N22 - Adapting to the impacts of urban and natural hazards and climate change	Objective 37 Exposure to natural and urban hazards is reduced	<p>The site is subject to high and medium flood hazards in the 1% AEP flood event. The District North Plan advocates the need to avoid or reduce exposure to natural hazards where possible. The site is currently zoned for residential purposes that would permit additional residential development to be exposed to flooding hazards. The Planning Proposal seeks to remove the residential land zoning and replace it with a public open space zone which is more compatible with the flood affectation of the site.</p>

**a. Does the proposal have strategic merit?**

Yes. The Planning Proposal gives effect to an endorsed former Pittwater Council Meeting resolution relating to 5 Bowling Green Lane, Avalon Beach. Furthermore, it will give effect to the relevant directions and objectives of the Greater Sydney Region Plan, specifically objectives 2,3,5,7 and 12, and Planning Priority N3, N4, N6, N20 and N22 of the Sydney North District Plan.

**b. Does the proposal have site specific merit?**

Yes. The Planning Proposal has site-specific merit. While the site is currently zoned R2 Low Density Residential and adjoins residential zoned land to the north, south and west it has a long history of being used for open space and recreation purposes as part of the Avalon Bowling Club and adjoins Dunbar Park to the east. Furthermore, in accordance with the Council resolutions relating to the purchase of the subject site the land has been consolidated into Dunbar Park and will be leased to Avalon Beach Bowling and Recreation Centre for recreational uses.



#### 4. Is the planning proposal consistent with a council's local Strategy or other local strategic plans?

Yes. The Planning Proposal gives effect to the following planning priorities of the LSPS

##### 4.1 Northern Beaches Local Strategic Planning Statement

Table 3: Relevant Northern Beaches Local Strategic Planning Statement Priorities.

Priority	Principles	Planning Proposal
Priority 6 High quality open space for recreation	<ul style="list-style-type: none"> <li>Improve the provision, diversity and quality of open space for recreation.</li> <li>Ensure open space responds to demand and meets diverse community needs.</li> <li>Encourage collaboration and partnerships to promote use.</li> </ul>	<p>Priority 6 recognises that open space forms a central part of the Northern Beaches lifestyle and supports leisure for fun, relaxation or fitness.</p> <p>The Planning Proposal will retain the current use of the site, as open space, and rezone the land to RE 1 Public Recreation to reflect the use and ensure it remains open space into the future.</p>
Planning Priority 11 Community facilities and services that meet changing community needs.	<ul style="list-style-type: none"> <li>Enhance the effectiveness of existing facilities</li> <li>Encourage partnerships for shared and joint use of government and privately owned facilities for community uses</li> </ul>	<p>The Priority seeks to provide a range of community facilities and services that allow people to connect, create and learn.</p> <p>The Planning Proposal seeks to rezone the site to RE1 Public to support the continuation of the site for open space and recreation uses undertaken by Avalon Beach Bowling Recreation Centre.</p>
Planning Priority 12 An inclusive, healthy, safe and socially connected community.	<ul style="list-style-type: none"> <li>Develop neighborhoods that inspire social interaction and inclusion and support health and wellbeing.</li> <li>Cater for social interaction, creative and cultural pursuits, and night time activity in public spaces.</li> <li>Provide accessible, welcoming and safe places for all ages, abilities and cultures.</li> </ul>	<p>The proposed rezoning will further allow Avalon Beach Bowling Club to provide outdoor physical activities and opportunities for social interaction in a safe and accessible environment.</p>

#### 5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

Yes the Planning Proposal is considered consistent with applicable State Environmental Planning Policies (as shown in Table 4), namely:

##### • State Environmental Planning Policy (Koala Habitat Protection) 2019

The SEPP and associated guidelines are to be applied in two ways, being:

1. By councils preparing Koala Plans of Management which forms part 2 of the Guideline,

2. By landholders and councils when preparing and assessing a development application under part 3 of the Guideline.

The Planning Proposal is consistent with the requirements of the SEPP.

- **State Environmental Planning Policy No. 55 – Remediation of Land**

The site is currently zoned R2 Low Density Residential and caters for sensitive residential land uses. The Planning Proposal seeks to rezone the site to RE1 Public Recreation. Given the current zoning and history of the site, the risk of contamination possibilities is considered low.

Table 4: Compliance with State Environmental Planning Policies (SEPPs)

SEPPs (as at November 2020)		Applicable	Consistent
19	Bushland in Urban Areas	Yes	Yes
21	Caravan Parks	Yes	Yes
33	Hazardous and Offensive Development	Yes	Yes
36	Manufactured Home Estates	Yes	Yes
47	Moore Park Showground	No	N/A
50	Canal Estate Development	Yes	Yes
55	Remediation of Land	Yes	Yes
64	Advertising and Signage	Yes	Yes
65	Design Quality of Residential Apartment Development	No	N/A
70	Affordable Housing (Revised Schemes)	Yes	Yes
	(Aboriginal Land) 2019	No	N/A
	(Activation Precincts) 2020	No	N/A
	(Affordable Rental Housing) 2009	Yes	Yes
	(Building Sustainability Index: BASIX) 2004	Yes	Yes
	(Coastal Management) 2018	No	N/A
	(Concurrences and Consents) 2018	No	N/A
	(Education Establishments and Child Care Facilities) 2017	Yes	Yes
	(Exempt and Complying Development Codes) 2008	Yes	Yes
	(Gosford City Centre) 2018	No	N/A
	(Housing for Seniors or People with a Disability) 2004	Yes	Yes
	(Infrastructure) 2007	Yes	Yes
	(Koala Habitat Protection) 2019	Yes	Yes
	(Kosciuszko National Park – Alpine Resorts) 2007	No	N/A
	(Kurnell Peninsula) 1989	No	N/A
	(Mining, Petroleum Production and Extractive Industries) 2007	No	N/A
	(Major Infrastructure Corridors) 2020	No	N/A
	(Penrith Lakes Scheme) 1989	No	N/A
	(Primary Production and Rural Development) 2019	No	N/A
	(State and Regional Development) 2011	No	N/A
	(State Significant Precincts) 2005	No	N/A
	(Sydney Drinking Water Catchment) 2011	No	N/A
	(Sydney Region Growth Centres) 2006	No	N/A
	(Three Ports) 2013	No	N/A
	(Urban Renewal) 2010	No	N/A
	(Vegetation in Non-Rural Areas) 2017	Yes	Yes
	(Western Sydney Aerotropolis) 2020	No	N/A
	(Western Sydney Employment Area) 2009	No	N/A
	(Western Sydney Parklands) 2009	No	N/A
Sydney Regional Environmental Plans (Deemed SEPPs):			
8	(Central Coast Plateau Areas)	No	N/A
9	Extractive Industry (No 2 -1995)	No	N/A
16	Walsh Bay	No	N/A

SEPPs (as at November 2020)		Applicable	Consistent
20	Hawkesbury – Nepean River (No 2 – 1997)	No	N/A
24	Homebush Bay Area	No	N/A
26	City West	No	N/A
30	St Marys	No	N/A
33	Cooks Cove	No	N/A
	(Sydney Harbour Catchment) 2005	No	N/A

## 6. Is the planning Proposal Consistent with Applicable Ministerial Directions (S9.1 directions)?

The Planning Proposal is consistent with applicable Ministerial Directions including:

Table 5: Applicable Ministerial Directions (S9.1).

S9.1 Direction	Requirement	Comment
<p>3.1 Residential Zones</p> <p>Objectives</p> <p>(1) The objectives of this direction are: (a) to encourage a variety and choice of housing types to provide for existing and future housing needs,</p> <p>(b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and</p> <p>(c) to minimise the impact of residential development on the environment and resource lands.</p>	<p>A planning proposal must include provisions that encourage the provision of housing that will:</p> <p>(a) broaden the choice of building types and locations available in the housing market, and</p> <p>(b) make more efficient use of existing infrastructure and services, and</p> <p>(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and</p> <p>(d) be of good design.</p> <p>(5) A planning proposal must, in relation to land to which this direction applies:</p> <p>(a) contain a requirement that residential development is not permitted until land is adequately serviced (or</p>	<p>While the site is zoned for residential purposes, it has historically been used for open space and recreational purposes.</p> <p>Council now seeks to amend the existing zoning from R2 Low Density to RE1 Public Recreation to reflect the current and long-term use of the land as open space and recreation</p>

	<p>arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and</p> <p>(b) not contain provisions which will reduce the permissible residential density of land.</p>	
<p>4.3 Flood Prone Land</p> <p>Objectives</p> <p>(1) The objectives of this direction are: (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</p>	<p>This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land</p>	<p>The site is flood affected in the 1% AEP flood event.</p> <p>Amending the zoning of the site from residential to public recreation will be consistent with the objectives of this Direction.</p>
<p>6.1 Approval and Referral Requirements</p> <p>The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development</p>	<p>This direction seeks to minimise provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority.</p>	<p>The Planning Proposal does not seek to introduce approval or referral requirements and is consistent with the Direction.</p>



6.2 Reserving Land for Public Purposes.  a) To facilitate the provision of public services and facilities by reserving land for public purposes.	A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning.	Council purchased the site on 26 September 2016 from Avalon Beach Bowling and Recreation Centre. Council now seeks to amend the existing zoning from R2 Low Density to RE1 Public Recreation to reflect the current and long-term use of the land as open space and recreation
7.1 Implementation of 'A plan for growing Sydney.'	The objective of this direction is to give legal effect to the vision, transport and land use strategy, policies, outcomes and actions contained in 'A plan for growing Sydney'.	This Planning Proposal is consistent with the directions and objectives of the Greater Sydney Regional Plan – A Metropolis of Three Cities

Table 6: Compliance with Ministerial Directions

Directions (as at November 2020)		Applicable	Consistent
<b>1</b>	<b>Employment and Resources</b>		
1.1	Business and Industrial Zones	No	N/A
1.2	Rural Zones	No	N/A
1.3	Mining, Petroleum Production and Extractive Industries	No	N/A
1.4	Oyster Aquaculture	No	N/A
1.5	Rural Lands	No	N/A
<b>2</b>	<b>Environment and Heritage</b>		
2.1	Environment Protection Zones	No	N/A
2.2	Coastal Protection	No	N/A
2.3	Heritage Conservation	No	N/A
2.4	Recreation Vehicle Areas	No	N/A
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEP's	No	N/A
<b>3</b>	<b>Housing, Infrastructure and Urban Development</b>		
3.1	Residential Zones	Yes	Yes
3.2	Caravan Parks and Manufactured Home Estates	No	N/A
3.3	Home Occupations	No	N/A
3.4	Integrating Land Use and Transport	No	N/A
3.5	Development Near Licensed Aerodromes	No	N/A
3.6	Shooting Ranges	No	N/A
3.7	Reduction in non-hosted short term rental accommodation period	No	N/A
<b>4</b>	<b>Hazard and Risk</b>		
4.1	Acid Sulfate Soils	No	N/A
4.2	Mine Subsidence and Unstable Land	No	N/A
4.3	Flood Prone Land	Yes	Yes
4.4	Planning for Bushfire Protection	No	N/A
<b>5</b>	<b>Regional Planning</b>		
5.1	Implementation of Regional Strategies	No	N/A
5.2	Sydney Drinking Water Catchments	No	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	No	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	No	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	No	N/A
5.6	Sydney to Canberra Corridor (Revoked 10 July 2008 See	No	N/A

Directions (as at November 2020)		Applicable	Consistent
	amended Direction 5.1)		
5.7	Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	No	N/A
5.8	Second Sydney Airport: Badgerys Creek (Revoked 20 August 2018)	No	N/A
5.9	North West Rail Link Corridor Strategy	No	N/A
5.10	Implementation of Regional Plans	No	N/A
5.11	Development of Aboriginal Land Council land	No	N/A
<b>6</b>	<b>Local Plan Making</b>		
6.1	Approval and Referral Requirements	Yes	Yes
6.2	Reserving Land for Public Purposes	Yes	Yes
6.3	Site Specific Provisions	No	N/A
<b>7</b>	<b>Metropolitan Planning</b>		
7.1	Implementation of A Plan for Growing Sydney	Yes	Yes
7.2	Implementation of Greater Macarthur Land Release Investigation	No	N/A
7.3	Parramatta Road Corridor Urban Transformation Strategy	No	N/A
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	No	N/A
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	No	N/A
7.8	Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.9	Implementation of Bayside West Precincts 2036 Plan	No	N/A
7.10	Implementation of Planning Principles for the Cooks Cove Precinct	No	N/A
7.11	Implementation of St Leonards and Crows Nest 2036 Plan	No	N/A
7.12	Implementation of Greater Macarthur 2040	No	N/A

## COMMUNITY ENGAGEMENT

The Planning Proposal was placed on non-statutory public exhibition for 14 days in accordance with the Northern Beaches Community Participation Plan from 6 November – 20 November 2020. Notification included:

- Notification letters to adjoining landowners and occupiers;
- Email to community members who have registered their interest;
- An updated Council Public Exhibition website 'Your Say' with relevant information; and
- Council's Community News

During the non-statutory exhibition period three submissions were received with all submissions supporting the Planning Proposal.

## AGENCY REFERRALS

The Planning Proposal was not referred to any state agencies for comment.

## INTERNAL REFERRALS

Given the nature of the Planning Proposal, no internal referrals were undertaken.

## TIMING

It is anticipated that the timeframe for the completion of the Planning Proposal is approximately 10 – 12 months from the date of Council's approval to proceed. Following the issue of a Gateway

Determination, Council will be required to formally exhibit the Planning Proposal for 28 days. The matter will be reported back to Council for final consideration following exhibition.

### LINK TO COUNCIL STRATEGY

The Planning Proposal relates to the following goals of the Shape 2028 Northern Beaches Community Strategic Plan:

Goal 7 - *'Our urban planning reflects the unique character of our villages and natural environment and is responsive to the evolving needs of our community';*

Goal 8 - *'Our neighborhoods inspire social interaction, inclusion and support health and wellbeing';* and

Goal 9 - *'Our community is healthy, active and enjoys a broad range of creative, sporting and recreational opportunities'.*

### FINANCIAL CONSIDERATIONS

The assessment of the Planning Proposal is funded by the prescribed Planning Proposal fee as set out in Councils Fees and Charges 2020/21 and does not have an adverse impact on Council's budget.

### SOCIAL CONSIDERATIONS

The Planning Proposal is not anticipated to have any adverse social impacts, given the site is currently used in conjunction with the Avalon Beach Bowling Club and located adjacent to the Dunbar Park. Subsequent to the consolidation of lots, the site now forms part of Dunbar Park and will continue to be used for recreational purposes.

### ENVIRONMENTAL CONSIDERATIONS

Given the site has historically been developed and extensively used for recreational purposes, specifically a bowling green, it is anticipated that there will be no adverse environmental impacts.

### CONCLUSION

The Planning Proposal which seeks to amend the Pittwater LEP 2014 by rezoning part of Lot 7 DP 124040, specifically 'Green 3', 5 Bowling Green Lane, Avalon Beach from R2 Low Density Residential to RE1 Public Recreation is supported to progress to gateway.

An assessment of the Planning Proposal against the NSW Department of Planning, Industry and Environment's *'Planning Proposals: A Guide to Preparing Planning Proposals'* confirms that the proposal is consistent with the relevant direction and objectives of the Greater Sydney Region Plan and the priorities of the North District Plan and Northern Beaches Local Strategic Planning Statement, demonstrates strategic and site specific merit and considered appropriate in its context.

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### RECOMMENDATION OF MANAGER STRATEGIC & PLACE PLANNING

That the Panel recommends that Council endorse the Planning Proposal, for 5 Bowling Green Lane, Avalon Beach, to be submitted to the Department of Planning, Infrastructure and Environment to seek a Gateway Determination.

## **PLANNING PROPOSAL**

Amendments to Pittwater Local Environmental Plan 2014

### **Rezoning of Avalon Beach Bowling Club, 5 Bowling Green Lane Avalon Beach**

January 2021



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## **Part 1 – Objectives or Intended Outcomes**

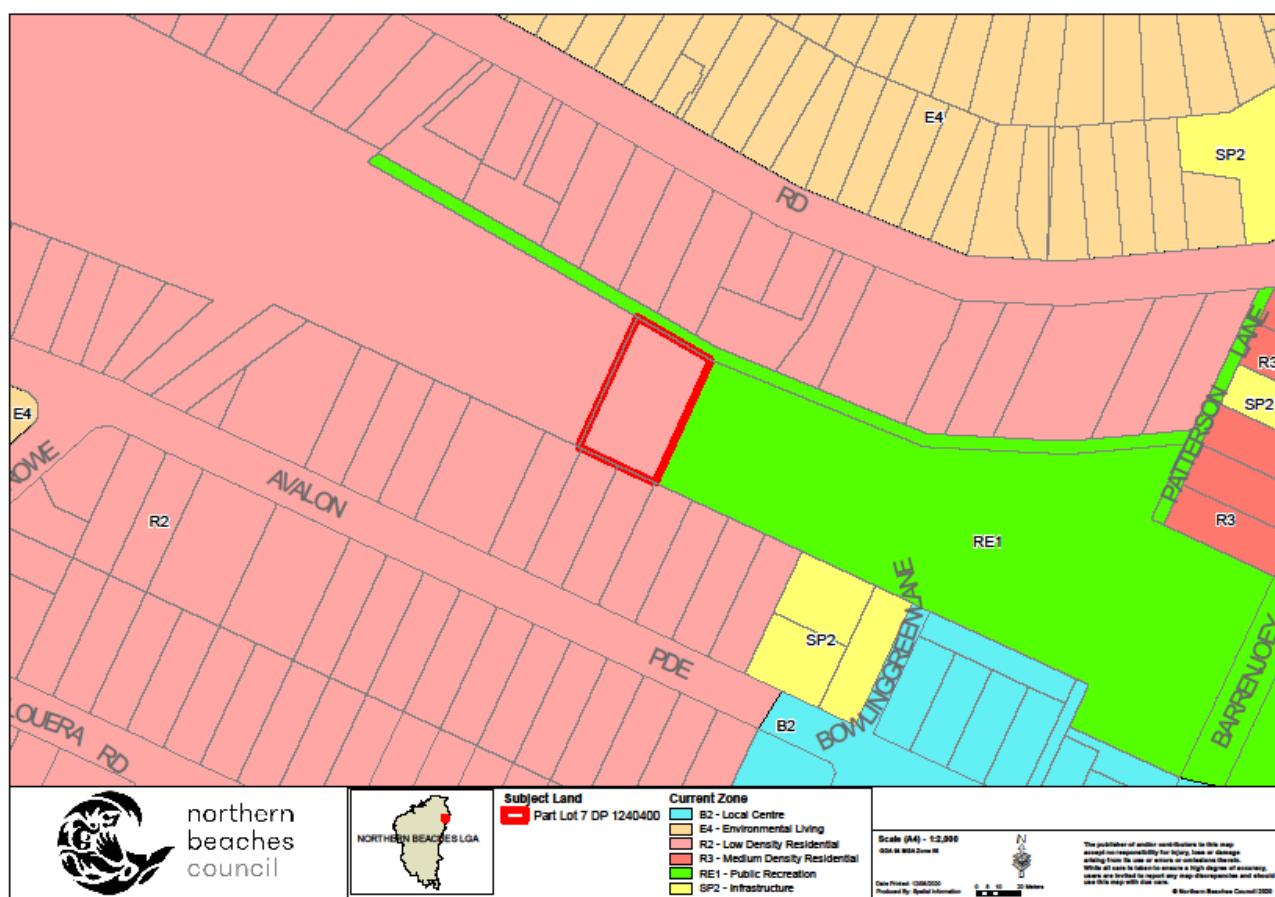
To amend the Pittwater Local Environmental Plan 2014 to rezone land at 5 Bowling Green Lane, Avalon Beach for recreational purposes.

## Part 2 – Explanation of Provisions

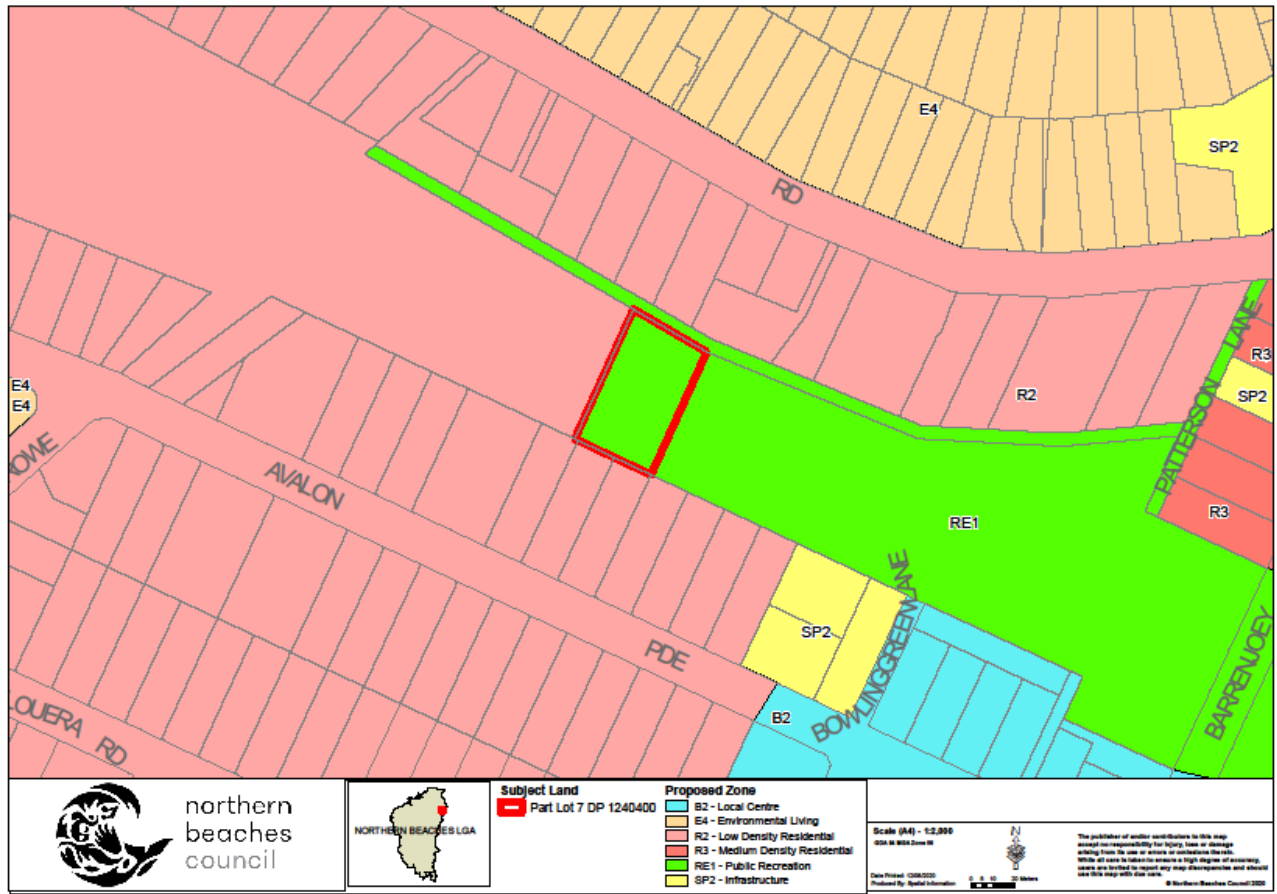
The proposed outcome will be achieved by:

- Amending Pittwater Local Environmental Plan 2014 Land Zoning Map (Sheet LZN\_016) from R2 Low Density to RE1 Public Recreation.

### Map 1 - Existing Land Use Zone



Map 2 - Proposed Land Use Zone





## Part 3 – Justification

### Section A – Need for the Planning Proposal

#### 1. Is the Planning Proposal a result of an endorsed Local Strategic Planning Statement, strategic study or report?

Yes. The Planning Proposal is the result of endorsed former Pittwater Council Meeting recommendations relating to Green 3 (being part Lot 7 in DP 124040), 5 Bowling Green Lane Avalon Beach.as shown in Map 1.

#### Map 3 – Subject Land.



A history of the former Pittwater Council resolutions relating to the subject site is listed below in Table 1.

**Table 1: Council Meetings**

<b>Council Name</b>	<b>Report Name</b>	<b>Date</b>	<b>Resolution</b>
Former Pittwater Council	Avalon Bowling & Recreation Club, Bowling Green Lane, Avalon – Purchase of Green 3 by Council	20 April 2015	<ol style="list-style-type: none"> <li>1. That Council purchase Green No.3 (Lot 2 DP 517185) Bowling Green Lane, Avalon in line with Avalon Bowling &amp; Recreation Club's proposal comprising a total package of \$765,000 broken down as follows:               <ol style="list-style-type: none"> <li>a) Rental for the remaining 10 years of the lease agreement for both the Club House and the middle bowling green (Green No.2) to be waived- equivalent to a total saving to Club of \$165,000 (including. GST).</li> <li>b) \$500,000. For the purchase of Green No.3 to be paid over 10 years in \$ 50,000 annual payments.</li> <li>c) \$100,000 allocated to club House repairs and upgrades in the 2015/2016 financial year.</li> </ol> </li> <li>2. That this purchase be included in the 2015/2019 Delivery Program and Budget.</li> <li>3. That the General Manager be authorised to complete the purchase transaction and execute relevant documentation under the common seal of Council.</li> </ol>
Former Pittwater Council	Avalon Bowling Club & Recreation Club, Bowling Green Lane, Avalon – Proposed New Consolidated Lease for Club house, Green No.2 and Green No.3	07 December 2015	<ol style="list-style-type: none"> <li>1. That Council purchase Green No.3 (Lot 2 DP 517185) Bowling Green Lane, Avalon in line with Avalon Bowling &amp; Recreation Club's proposal comprising a total package of \$765,000 broken down as follows:               <ol style="list-style-type: none"> <li>d) Rental for the remaining 10 years of the lease agreement for both the Club House and the middle bowling green (Green No.2) to be waived- equivalent to a total saving to Club of \$165,000 (Inc. GST).</li> <li>e) \$500,000. For the purchase of Green No.3 to be paid over 10 years in \$ 50,000 annual payments.</li> <li>f) \$100,000 allocated to club House repairs and upgrades in the 2015/2016 financial year.</li> </ol> </li> <li>2. That this purchase be included in the 2015/2019 Delivery Program and Budget.</li> </ol>

			<p>3. That the General Manager be authorised to complete the purchase transaction and execute relevant documentation under the common seal of Council.</p> <p>4. That upon acquisition by Council, the subject land be classified as Community Land, the 2,390m2 be added to Council's Open Space Strategy and Inventory, and be incorporated into the Dunbar Park Plan of Management.</p> <p>5. The terms and conditions be administered in accordance with Recommendation 1 above.</p>
Former Pittwater Council	Outcome of Public Exhibition of Avalon Bowling	15 February 2016	<p>1. That Council note the outcomes of the public exhibition of the draft consolidated lease with Avalon Beach Bowling and Recreation Club for Green 3, Green 2 and the Clubhouse at Bowling Green Lane, Avalon.</p> <p>2. That as per Councils resolution dated 20 April 2015 and pursuant to the Act, Council will undertake the following soon after the completion of the contract for sale:</p> <ul style="list-style-type: none"> <li>• Consolidate Green 3 (Lot 2 DP 517185) and Dunbar Park (Lot 6 D P 1102075).</li> <li>• Reclassify Green 3 (Lot 2 DP 517185) from Operational Land to Community Land</li> <li>• Re-Zone Green 3 from R2 Low Density Residential to RE1 Public Recreation.</li> </ul> <p>3. That simultaneously with the Consolidation of lots, Avalon Beach Bowling and Recreation Club will surrender both the Clubhouse Lease and Green 2 Lease and enter into a new consolidated lease for Green 3, Green 2 and the Clubhouse with Council as lessor and Avalon Beach Bowling and Recreation Club as lessee.</p> <p>4. That the General Manager be authorised to sign any documentation required to finalise the consolidated lease agreement with Avalon Beach Bowling and Recreation Club for Green 3, Green 2 and the Clubhouse, Bowling Green Lane, Avalon and to affix the common seal of Council if required.</p>

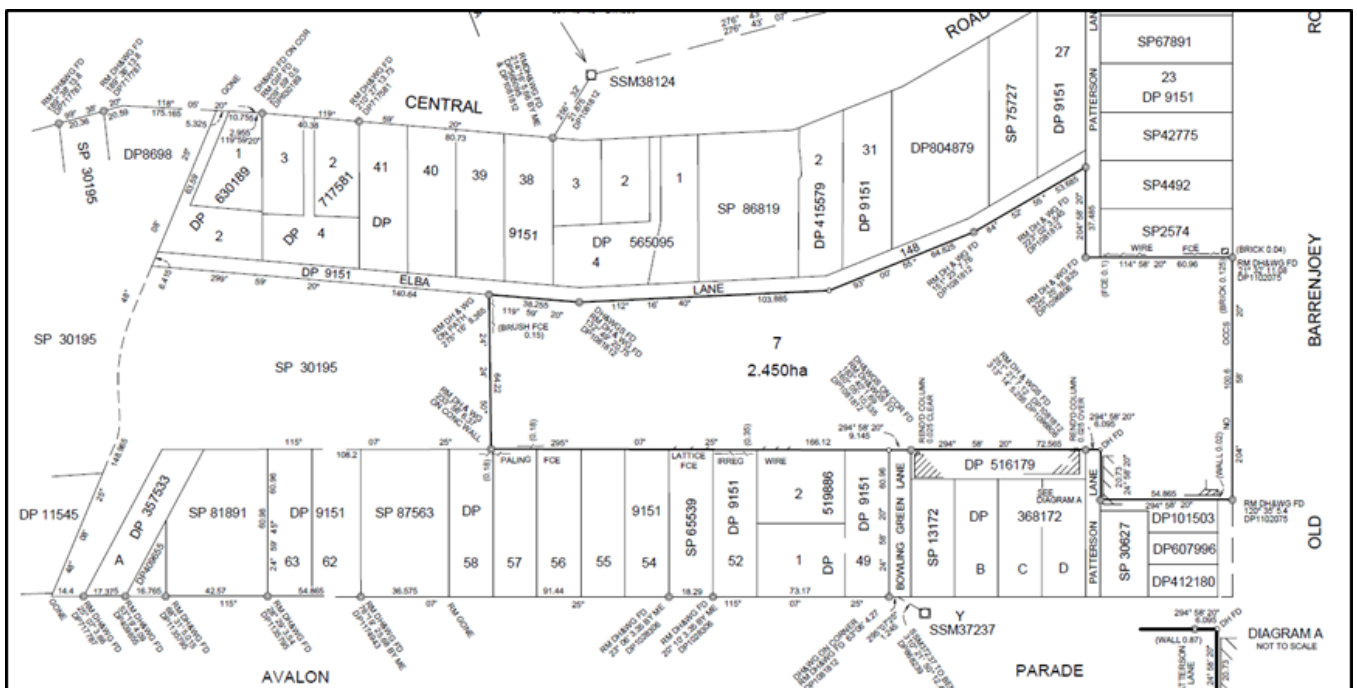


Northern Beaches Council	Outcome of Public Exhibition of Avalon Bowling for the classification of land known as Green No.3 (Lot 2 DP 517185) at Bowling Green Lane, Avalon NSW 2107	13 December 2016	That Council: <ul style="list-style-type: none"> <li>a) Proceed with the classification of Green No. 3 (Lot 2 Deposited Plan 517185) at Bowling Green Lane, Avalon NSW 2107 as 'Community Land.</li> <li>b) Delegate its authority to the General Manager to execute all necessary documentation to give effect to this resolution.</li> </ul>
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The proposal to change the zoning of the subject site will allow the lessee, Avalon Beach Bowling Recreation Centre, to use Green 3 for recreational uses in conjunction with the Avalon Bowling Club.

In accordance with Council resolution of the 15 February 2016, Lot 2 DP 517185 was consolidated into adjoining Council owned land comprising Dunbar Park with the new Certificate of Title, being Lot 7 in DP 124040, issued on the 7 May 2018, as shown in Map 2.

Map 2 – Plan of Subdivision



On the 26 September 2016, Council purchased the land subject to a number of conditions of sale that reinforced the actions outlined in the Council resolution, being:

- *That the land comprising Green 3 be reclassified as Community Land, as soon as reasonably practicable after settlement as per the resolution of Council dated 20 April 2015 (Council Resolution).*
- *After completion of the Contract Council will consolidate Green 3 and Lot 6 (Consolidation).*
- *Green 3 will be reclassified from Operational Land to Community Land (Reclassification) and re-zoned from R2 Low Density to RE1 Public Recreation (Re-zoning) as per Council Resolution.*

The outstanding actions from Council's resolution of the 15 February 2016 and the subsequent condition of sale relate to the following:

- *Re-Zone Green 3 from R2 Low Density Residential to RE1 Public Recreation.*

The Planning Proposal seeks to address and finalise the Council resolution and the conditions of sale.

**2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Yes, the Planning Proposal is the best means to rezone Green 3 (part of Lot 7 DP 124040, formerly being Lot 2 DP 517185) from R2 Low Density Residential to RE1 Public Recreation.

**Section B – Relationship to Strategic Planning Framework**

**3. Will the Planning Proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?**

Greater Sydney Region Plan

The Planning Proposal gives effect to the following objectives of the Region Plan:

Direction	Objective	Assessment
A City supported by infrastructure.	Objective 2: Infrastructure aligns with forecast growth.  Objective 3: Infrastructure adapts to future needs.	Avalon Beach is characterised as an ageing population with static growth, the average age of residents is 45, in comparison 36 for Greater Sydney. Population projections indicate that the trend will continue with the 75 – 79 years age group experiencing the largest growth between 2016-2026.  The supply of additional open space within proximity to the village centre will service the needs and requirements of the changing



		demographic of the area and support the use of the site for recreational purposes in line with the current Avalon Beach Bowling and recreation Centre.
A Collaborative City	Objective 5: Benefits of growth realized by collaboration of governments, community and business.	Council is working in collaboration with the Avalon Beach Bowling and Recreation Centre to ensure that Avalon Beach has sufficient open space to satisfy community needs now and into the future.
A City for People.	Objective 7: Communities are healthy, resilient and socially connected.	The Planning Proposal seeks to increase land zoned for the purpose of public recreation that will provide additional opportunities for the community to connect socially and physically through passive and active recreation.
A City of Great Places	Objective 12: Great places that bring people together.	The rezoning and reclassifying of the subject site will provide the Avalon Beach Bowling and Recreation Centre the opportunity to extend the Bowling Club grounds to meet the needs of the community.

### The North District Plan

The Planning Proposal gives effect to the following objectives of the North District Plan:

Direction and Planning Priority	Assessment
<b>Livability - A city for people</b>	
Planning Priority N3  Providing services and social infrastructure to meet people's changing needs.  Objective 6: Services and infrastructure meet communities' changing needs.	The demographics of Avalon Beach is changing with the highest growth experienced in the 75 -79 age group. The average age is 45, in comparison to 36 for Greater Sydney, with 50% of people aged between 35-69 years.  Avalon Beach is an aging population and the planning proposal will provide additional open space zoned land to meet the demographic trend and changing needs and requirements of the community now and into the future.
Planning Priority N4  Fostering healthy, creative, culturally rich and socially connected communities.  Objective 7: Communities are	The Planning Proposal seeks to increase land zoned for public recreation purposes in the Avalon Beach locality. The additional public open space will provide additional opportunities for the community to connect socially and physically through passive and active recreation activities associated with the Avalon Beach Bowling club and surrounding Dunbar Park area.

healthy, resilient and socially connected.	
<p>Planning Priority N6</p> <p>Creating and renewing great places and local centers, and respecting the District's heritage.</p> <p>Objective 12: Great places that bring people together.</p>	<p>Dunbar Park is located within the Avalon Beach village and holds significant value to the local community. Dunbar Park consists of a diverse range of facilities and infrastructure catering to the social and recreational needs of the community.</p> <p>The Planning Proposal will facilitate and enable the Avalon Beach Bowling and Recreation Centre to expand their current activities and foster the development of a social and recreational hub that will bring the community together for range of social and recreation purposes.</p>
<b>Sustainability – Valuing green spaces and landscapes</b>	
<p>Planning Priority N20</p> <p>Delivering high quality open space</p> <p>Objective 31 Public space is accessible, protected and enhanced.</p>	<p>The North District Plan highlights the importance of open space as a form of green infrastructure that not only enhances the character of the District, but also supports active lifestyles and provides opportunities to unite and bring communities together.</p> <p>The District Plan recognises that there is limited opportunity to increase the quantity of open space.</p> <p>The Planning Proposal addresses this issue and seeks to provide additional open space zoned land by rezoning R2 Residential Low Density land to RE1 Public Open Space.</p>
<p>Planning Priority N22</p> <p>Adapting to the impacts of urban and natural hazards and climate change</p> <p>Objective 37 Exposure to natural and urban hazards is reduced</p>	<p>The site is subject to high and medium flood hazards in the 1% AEP flood event. The District North Plan advocates the need to avoid or reduce exposure to natural hazards where possible. The site is zoned for residential purposes that will permit additional residential development to be exposed to flooding hazards. The Planning Proposal seeks to remove the residential land zoning and replace it with a public open space zone which is compatible with the flood affectation of the site.</p>

**a) Does the proposal have strategic merit?**

Yes. The Planning Proposal gives effect to endorsed former Pittwater Council Meeting recommendations relating to 5 Bowling Green Lane, Avalon Beach. Furthermore it will give effect to the relevant directions and objectives of the Greater Sydney Region Plan, specifically objectives 2,3,5,7 and 12, and Planning Priority N3, N4, N6 and N20 of the Sydney North District Plan.

**b) Does the proposal have site-specific merit?**

Yes. The Planning Proposal has site-specific merit. While the site is currently zoned R2 Low Density Residential and adjoins residential zoned land to the north, south and west, it has

historically been used for open space and recreation purposes as part of the Avalon Bowling Club and adjoins Dunbar Park to the east. Furthermore, in accordance with the Council resolutions relating to the purchase of the subject site the land has been consolidated into Dunbar Park and will be leased to Avalon Beach Bowling and Recreation Centre for recreational uses.

**4. Will the Planning Proposal give effect to a Council's endorsed Local Strategic Planning Statement, or another endorsed local strategy or strategic plan?**

Yes. The Planning Proposal gives effect to the following priorities of the Northern Beaches Local Strategic Planning Statement

Priority	Principles	Planning Proposal
Priority 6 High quality open space for recreation	<ul style="list-style-type: none"> <li>• Improve the provision, diversity and quality of open space for recreation.</li> <li>• Ensure open space responds to demand and meets diverse community needs.</li> <li>• Encourage collaboration and partnerships to promote use.</li> </ul>	<p>Priority 6 recognises that open space forms a central part of the Northern Beaches lifestyle and supports leisure for fun, relaxation or fitness.</p> <p>The Planning Proposal will retain the current use of the site, as open space, and rezone the land to RE 1 Public Recreation to reflect the use and ensure it remains open space into the future.</p>
Priority 11 Community facilities and services that meet changing community needs.	<ul style="list-style-type: none"> <li>• Enhance the effectiveness of existing facilities</li> <li>• Encourage partnerships for shared and joint use of government and privately owned facilities for community uses</li> </ul>	<p>The Priority seeks to provide a range of community facilities and services that allow people to connect, create and learn.</p> <p>The Planning Proposal seeks to rezone the site to RE1 Public Recreation to support the continuation of the site for open space and recreation uses undertaken by Avalon Beach Bowling Recreation Centre. The proposal will also allow for the expansion of the bowling club grounds to meet the increasing demands of an ageing population within the community.</p>

**5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?**

Yes the Planning Proposal is considered consistent with applicable State Environmental Planning Policies (as shown in Table 2), namely:

- **State Environmental Planning Policy (Koala Habitat Protection) 2019**

The SEPP and associated guidelines are to be applied in two ways, being:

1. By councils preparing Koala Plans of Management which forms part 2 of the Guideline,
2. By landholders and councils when preparing and assessing a development application under part 3 of the Guideline.

The Planning Proposal is consistent with the requirements of the SEPP.

- **State Environmental Planning Policy No. 55 – Remediation of Land**

The site is currently zoned R2 Low Density Residential and caters for residential land uses. The Planning Proposal seeks to rezone the site to RE1 Public Recreation. Given the current zoning and history of the site, the risk of contamination possibilities is considered low.

Table 2: Compliance with State Environmental Planning Policies (SEPPs)

SEPPs (as at November 2020)		Applicable	Consistent
19	Bushland in Urban Areas	Yes	Yes
21	Caravan Parks	Yes	Yes
33	Hazardous and Offensive Development	Yes	Yes
36	Manufactured Home Estates	Yes	Yes
47	Moore Park Showground	No	N/A
50	Canal Estate Development	Yes	Yes
55	Remediation of Land	Yes	Yes
64	Advertising and Signage	Yes	Yes
65	Design Quality of Residential Apartment Development	No	N/A
70	Affordable Housing (Revised Schemes)	Yes	Yes
	(Aboriginal Land) 2019	No	N/A
	(Activation Precincts) 2020	No	N/A
	(Affordable Rental Housing) 2009	Yes	Yes
	(Building Sustainability Index: BASIX) 2004	YES	Yes
	(Coastal Management) 2018	No	N/A
	(Concurrences and Consents) 2018	No	N/A
	(Education Establishments and Child Care Facilities) 2017	Yes	Yes
	(Exempt and Complying Development Codes) 2008	Yes	Yes
	(Gosford City Centre) 2018	No	N/A
	(Housing for Seniors or People with a Disability) 2004	Yes	Yes
	(Infrastructure) 2007	Yes	Yes
	(Koala Habitat Protection) 2019	Yes	Yes
	(Kosciuszko National Park – Alpine Resorts) 2007	No	N/A
	(Kurnell Peninsula) 1989	No	N/A
	(Mining, Petroleum Production and Extractive Industries) 2007	No	N/A
	(Major Infrastructure Corridors) 2020	No	N/A
	(Penrith Lakes Scheme) 1989	No	N/A
	(Primary Production and Rural Development) 2019	No	N/A
	(State and Regional Development) 2011	No	N/A
	(State Significant Precincts) 2005	No	N/A
	(Sydney Drinking Water Catchment) 2011	No	N/A
	(Sydney Region Growth Centres) 2006	No	N/A
	(Three Ports) 2013	No	N/A



SEPPs (as at November 2020)		Applicable	Consistent
	(Urban Renewal) 2010	No	N/A
	(Vegetation in Non-Rural Areas) 2017	Yes	Yes
	(Western Sydney Aerotropolis) 2020	No	N/A
	(Western Sydney Employment Area) 2009	No	N/A
	(Western Sydney Parklands) 2009	No	N/A
Sydney Regional Environmental Plans (Deemed SEPPs):			
8	(Central Coast Plateau Areas)	No	N/A
9	Extractive Industry (No 2 -1995)	No	N/A
16	Walsh Bay	No	N/A
20	Hawkesbury – Nepean River (No 2 – 1997)	No	N/A
24	Homebush Bay Area	No	N/A
26	City West	No	N/A
30	St Marys	No	N/A
33	Cooks Cove	No	N/A
	(Sydney Harbour Catchment) 2005	No	N/A

## 6. Is the Planning Proposal consistent with applicable Ministerial Directions (s9.1 directions)?

The Planning Proposal is consistent with applicable Ministerial Directions (as shown in Table 3) including:

S9.1 Direction	Requirement	Comment
<p>3.1 Residential Zones</p> <p>Objectives</p> <p>(1) The objectives of this direction are:</p> <p>(a) to encourage a variety and choice of housing types to provide for existing and future housing needs,</p> <p>(b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and</p> <p>(c) to minimise the impact of residential development on the environment and resource lands.</p>	<p>A planning proposal must include provisions that encourage the provision of housing that will:</p> <p>(a) broaden the choice of building types and locations available in the housing market, and</p> <p>(b) make more efficient use of existing infrastructure and services, and</p> <p>(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and</p> <p>(d) be of good design.</p> <p>(5) A planning proposal must, in relation to land to which this direction applies:</p> <p>(a) contain a requirement that</p>	<p>While the site is zoned for residential purposes, it has historically been used for open space and recreational purposes.</p> <p>Council now seeks to amend the existing zoning from R2 Low Density to RE1 Public Recreation to reflect the current and long-term use of the land as open space and recreation.</p>

	residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land.	
<p>4.3 Flood Prone Land</p> <p>Objectives</p> <p>(1) The objectives of this direction are:</p> <p>(a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and</p> <p>(b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</p>	<p>This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.</p>	<p>The site is flood affected in the 1% AEP flood event.</p> <p>Amending the zoning of the site from residential to public recreation will reduce potential flooding impacts on adjoining residential properties.</p>
<p>6.1 Approval and Referral Requirements</p> <p>The objective of this direction is to ensure that LEP provisions encourage the</p>	<p>This direction seeks to minimise provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority.</p>	<p>The Planning Proposal does not seek to introduce approval or referral requirements and is consistent with the Direction.</p>

efficient and appropriate assessment of development.		
6.2 Reserving Land for Public Purposes.  a) To facilitate the provision of public services and facilities by reserving land for public purposes.	A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning.	Council purchased the site on 26 September 2016 from Avalon Beach Bowling and Recreation Centre.  Council now seeks to amend the existing zoning from R2 Low Density to RE1 Public Recreation to reflect the current and long-term use of the land as open space and recreation.
7.1 Implementation of 'A plan for growing Sydney.'	The objective of this direction is to give legal effect to the vision, transport and land use strategy, policies, outcomes and actions contained in 'A plan for growing Sydney'.	This Planning Proposal is consistent with the directions and objectives of the Greater Sydney Regional Plan – A Metropolis of Three Cities, as referred to under 3.1.

Table 3: Compliance with Ministerial Directions

Directions (as at November 2020)		Applicable	Consistent
<b>1</b>	<b>Employment and Resources</b>		
1.1	Business and Industrial Zones	No	N/A
1.2	Rural Zones	No	N/A
1.3	Mining, Petroleum Production and Extractive Industries	No	N/A
1.4	Oyster Aquaculture	No	N/A
1.5	Rural Lands	No	N/A
<b>2</b>	<b>Environment and Heritage</b>		
2.1	Environment Protection Zones	No	N/A
2.2	Coastal Protection	No	N/A
2.3	Heritage Conservation	No	N/A
2.4	Recreation Vehicle Areas	No	N/A
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEP's	No	N/A
<b>3</b>	<b>Housing, Infrastructure and Urban Development</b>		
3.1	Residential Zones	Yes	Yes
3.2	Caravan Parks and Manufactured Home Estates	No	N/A
3.3	Home Occupations	No	N/A
3.4	Integrating Land Use and Transport	No	N/A
3.5	Development Near Licensed Aerodromes	No	N/A
3.6	Shooting Ranges	No	N/A
3.7	Reduction in non-hosted short term rental accommodation period	No	N/A
<b>4</b>	<b>Hazard and Risk</b>		
4.1	Acid Sulfate Soils	No	N/A

<b>Directions (as at November 2020)</b>		<b>Applicable</b>	<b>Consistent</b>
4.2	Mine Subsidence and Unstable Land	No	N/A
4.3	Flood Prone Land	Yes	Yes
4.4	Planning for Bushfire Protection	No	N/A
<b>5</b>	<b>Regional Planning</b>		
5.1	Implementation of Regional Strategies	No	N/A
5.2	Sydney Drinking Water Catchments	No	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	No	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	No	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	No	N/A
5.6	Sydney to Canberra Corridor (Revoked 10 July 2008 See amended Direction 5.1)	No	N/A
5.7	Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	No	N/A
5.8	Second Sydney Airport: Badgerys Creek (Revoked 20 August 2018)	No	N/A
5.9	North West Rail Link Corridor Strategy	No	N/A
5.10	Implementation of Regional Plans	No	N/A
5.11	Development of Aboriginal Land Council land	No	N/A
<b>6</b>	<b>Local Plan Making</b>		
6.1	Approval and Referral Requirements	Yes	Yes
6.2	Reserving Land for Public Purposes	Yes	Yes
6.3	Site Specific Provisions	No	N/A
<b>7</b>	<b>Metropolitan Planning</b>		
7.1	Implementation of A Plan for Growing Sydney	Yes	Yes
7.2	Implementation of Greater Macarthur Land Release Investigation	No	N/A
7.3	Parramatta Road Corridor Urban Transformation Strategy	No	N/A
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	No	N/A
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	No	N/A
7.8	Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.9	Implementation of Bayside West Precincts 2036 Plan	No	N/A
7.10	Implementation of Planning Principles for the Cooks Cove Precinct	No	N/A
7.11	Implementation of St Leonards and Crows Nest 2036 Plan	No	N/A
7.12	Implementation of Greater Macarthur 2040	No	N/A

## **Section C – Environmental, Social and Economic Impact**

### **7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

No. There are no threatened species, critical habitat or ecological communities mapped on the site or within close proximity. The site is developed and used as a bowling green and forms part of Avalon Bowling Club. The Planning Proposal is to rezone the land so it is consistent with the remainder of Lot 7 DP 124040.

**8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?**

No. The Planning Proposal will not have any environmental effects. The proposal seeks to rezone the site to ensure it is consistent with the historical and current use of the site and remainder of Lot 7 in DP 124040.

**9. Has the Planning Proposal adequately addressed any social and economic effects?**

The Planning Proposal will not have any negative social or economic effects on the Avalon Beach locality. The zoning of the site is inconsistent with the remainder of Lot 7 in DP124040, which forms Dunbar Park. The proposal seeks to address the inconsistency and rezone the site to public recreation, which is consistent with its current and future use and is in line with community expectation.



## **Section D – State and Commonwealth Interests**

### **10. Is there adequate public infrastructure for the planning proposal?**

Yes. The site is used for recreational purposes and has adequate public infrastructure to serve the planning proposal, including the provision of a public car park that is adjacent to the Avalon Bowling Club and Dunbar Park.

### **11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?**

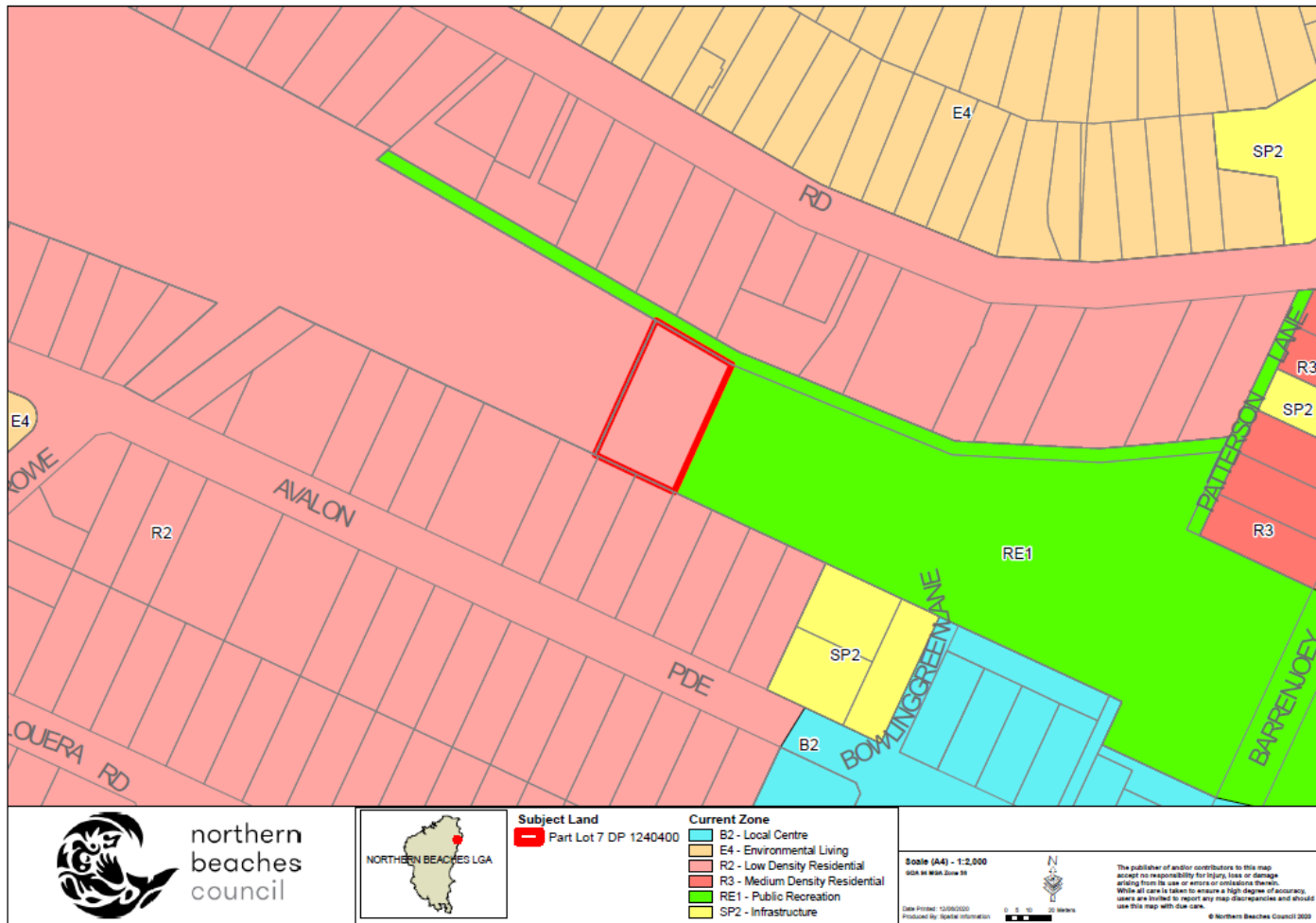
The Planning Proposal is being prepared in accordance with consultation guidelines and provisions prepared by the Department of Planning, Industry and Environment and all statutory consultation will occur in accordance with the requirements of any future Gateway Determination, including any State or Commonwealth authorities.

## Part 4 – Maps

### Map 3 – Site Identification Map

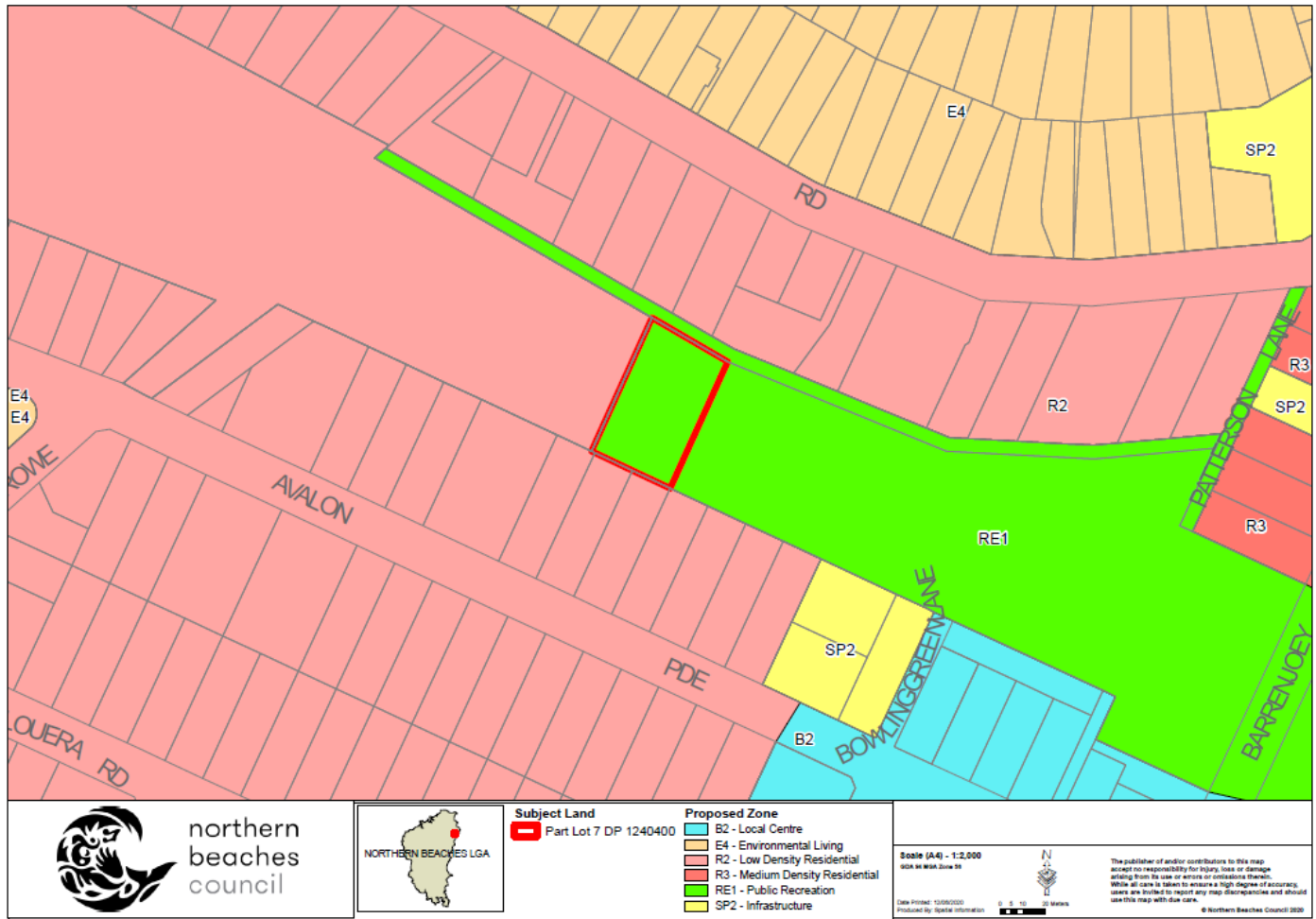


Map 4 – Land Use Zoning Map





Map 5 – Proposed Land Use Zoning Map







## Part 5 – Community Consultation

The Planning Proposal was placed on non-statutory public exhibition in accordance with the Northern Beaches Community Participation Plan for two weeks, from 6 November to 20 November 2020. Notification included:

- Letters to land owners and occupiers adjoining the subject site
- Electronic copies of the exhibition material on Council's website
- Emails to registered community members who have listed their interest on Council's Community Engagement Register

During the non -statutory exhibition, three submissions were received in support of the Planning Proposal.

## Part 6 – Project Timeline

Task	Anticipated timeframe
Anticipated commencement date (Gateway determination)	June 2021
Anticipated timeframe for the completion of required technical information	July 2021
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	July 2021
Commencement and completion dates for public exhibition period	July- August 2021
Timeframe for consideration of submissions	August - September 2021
Timeframe for the consideration of a proposal post exhibition	September 2021
Date of submission to the Department to finalise the LEP	October 2021
Anticipated date the local plan-making authority will make the plan (if authorised)	November 2021
Anticipated date the local plan-making authority will forward to the PCO for publication	December 2021

## 4.0 NON PUBLIC MEETING ITEMS

ITEM 4.1	DA2020/1260 - 16 GRANDVIEW DRIVE, NEWPORT - CONSTRUCTION OF A SECONDARY DWELLING
AUTHORISING MANAGER	Lashta Haidari
TRIM FILE REF	2021/045389
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is a relative of a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979.

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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. DA2020/1260 for construction of a secondary dwelling at Lot 93 DP 16029, 16 Grandview Drive, Newport subject to the conditions and for the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1260
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<b>Responsible Officer:</b>	Sarah McNeilly (Consultant Planner)
<b>Land to be developed (Address):</b>	Lot 93 DP 16029 16 Grandview Drive, Newport
<b>Proposed Development:</b>	Secondary dwelling
<b>Zoning:</b>	E4 Environmental Living
<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>	Malcolm Charles White
<b>Applicant:</b>	Christian Miles

<b>Application Lodged</b>	13/10/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential
<b>Notified:</b>	23/10/2020 to 06/10/2020
<b>Advertised:</b>	No
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	No
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$100,000
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### EXECUTIVE SUMMARY

The proposal seeks Development Consent for the development of a secondary dwelling in the rear yard of the site at 16 Grandview Drive, Newport. The public notification of the application resulted in no submissions being received.

The proposed secondary dwelling sits in the rear yard, which backs onto Crown of Newport Reserve to the east. The proposed structure sits within the rear setback (1.478 metres). The varied rear setback is supported with the impacts being reasonable with no residential rear neighbour and significant landscape screening existing and proposed.

The development also results in a non-compliant landscaped area (45.8%). Conditions are recommended which will allow for this to be increased to 50% through the removal of some exiting hard surfaces and a minor relocation of the structure to allow for a 1 metre side setback. This is still short of the 60% required by the DCP, however, the development is considered to fulfil the objectives of the landscape control.

The development also includes an ensuite for each bedroom. A condition to reduce to one bathroom is recommended to ensure compliance with the DCP.

With the above conditions included, the development is supported and recommended for approval.

The application has been assessed by an independent external planning consultant as the applicant is related to a member of staff.

### **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks Development Consent for construction of a secondary dwelling at the rear of an existing dwelling house. The works to be included as part of this application are as follows:

- Two Bedrooms, each with an ensuite
- Kitchen
- Laundry
- Living Area
- Deck

The secondary dwelling sits within the rear setback and has a pier and beam construction allowing for retention of trees and minimal impact to the existing natural ground levels.

### **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 DCP - C1.11 Secondary Dwellings and Rural Workers Dwelling
- Pittwater DCP – B9 Side and Rear Boundary
- Pittwater DCP – D10.3 Landscaped Area – Environmentally Sensitive Land

### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 93 DP 16029 16 Grandview Drive, Newport
<b>Detailed Site Description:</b>	The site has an area of 557.2m <sup>2</sup> with a frontage of 12.19m to Grandview Drive. The rear of the site adjoins Crown of Newport Reserve to the east. The site is located on the north-eastern side of Grandview Drive and has a depth of 45.725m. The frontage of the site includes access via a shared lower access road.



	<p>The site is located within the E4 Environmental Living zone and is currently developed with a stepped multi-level dwelling with metal roof. A parking platform is located at the frontage of the site. The property has a significant fall from the street frontage (RL36.77) towards the rear boundary (RL18.9). The site is surrounded by detached one and two storey dwellings within landscaped settings, and a large drainage reserve to the east.</p>
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#### **SITE HISTORY**

A search of Council's records has revealed one previous application.

##### Development Application (NO622/08)

The Development Application was lodged in 2008 for the alterations and additions to the existing dwelling (Submitted: 17/12/2008).

The land has been used for residential purposes for an extended period of time.

#### **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Northern Beaches Community Participation Plan.

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

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)**

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Not Applicable
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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 regulations	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. Should the Development Application be approved, these matters will be addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000: No additional information was formally requested however an amended plan, increasing landscaped area, was received from the applicant to address matter raised during the assessment of this development application.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. Should the Development Application be approved, these matters will be addressed via a condition of consent.</p> <p><u>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 the provisions of the Building Code of Australia (BCA). Should the Development Application be approved, this matter will be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p><b>(i) Environmental Impact</b> 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 and found to be reasonable and appropriate for the site.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) 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	See discussion on "Notification & Submissions Received" in this report.

submissions made in accordance with the EPA Act or EPA Regs	
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## REFERRALS

Internal Referral Body	Comments
Building Assessment	<p><b>Approval (subject to conditions)</b></p> <p>Council's Building Assessment Officer provided the following comments:</p> <p><i>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</i></p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i></p> <p><i>The proposal is therefore supported.</i></p> <p><i>Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.</i></p>
Natural Environment - Biodiversity	<p><b>Approval (subject to conditions)</b></p> <p>Council's Natural Environment (Biodiversity) Officer provided the following comments:</p> <p><i>The proposed development has been assessed against the following controls:</i></p> <ul style="list-style-type: none"> <li>• Pittwater LEP Clause 7.6 (Biodiversity Protection)</li> <li>• Pittwater DCP Clause B4.7 (Pittwater Spotted Gum Forest Endangered Ecological Community)</li> </ul> <p><i>The proposed granny flat is located within an area with no remnant native vegetation. As such, the proposal is unlikely to impact upon native vegetation or wildlife habitat and is therefore considered to comply with the controls.</i></p> <p><i>The proposal is therefore supported.</i></p> <p><i>Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.</i></p>
Parks, Reserves and Foreshores	<p><b>Approval (subject to conditions)</b></p> <p>Council's Parks, Reserves and Foreshores Officer provided the following comments:</p> <p><i>The development application is for a proposed secondary dwelling. Council's Parks Referral is assessed against the following Pittwater 21 DCP Controls:</i></p>



Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• <i>B8.2 Construction and Demolition - Erosion and Sediment Management</i></li> </ul> <p><i>The site adjoins a Public Reserve known as Newport Reserve including Howell Close Reserve that is located downslope of the development site. During the works surface sediment runoff and/or erosion is to be controlled, managed and contained to the immediate downslope of the works area and obstruct from entering the public reserve downslope.</i></p> <p><i>Subject to this requirement that satisfies clause B8.2, Parks Referral has no objections to the proposal, with conditions of consent.</i></p> <p><i>The proposal is therefore supported.</i></p> <p><i>Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.</i></p>
Landscape	<p><b>Approval (subject to conditions)</b></p> <p>Council's Landscape Officer provided the following comments:</p> <p><i>The development application is for a proposed secondary dwelling. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 zone Environmental Living, and the following Pittwater 21 DCP Controls:</i></p> <ul style="list-style-type: none"> <li>• <i>B4.22 Preservation of Trees and Bushland Vegetation</i></li> <li>• <i>C1.1 Landscaping</i></li> <li>• <i>C1.11 Secondary Dwellings and Rural Worker's Dwellings</i></li> <li>• <i>D10 Newport Locality</i></li> </ul> <p><i>The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees. The location of the secondary occurs within the rear of the property which is clear of existing trees.</i></p> <p><i>The eastern boundary shall be planted with screen planting along the entire boundary to reduce the built form as viewed from Newport Reserve including Howell Close Reserve and the residential properties within Howell Close.</i></p> <p><i>Landscape Referral raise no objections, subject to conditions of consent to protect existing trees and vegetation, and the completion of landscaping.</i></p> <p><i>The proposal is therefore supported.</i></p> <p><i>Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.</i></p>
Engineering	<p><b>Approval (subject to conditions)</b></p> <p>Council's Engineering Officer provided the following comments:</p> <p><i>The submitted Geotechnical report certifies that an acceptable risk is achievable for the development. The additional increase in impervious area requires the provision of OSD as per Council Pittwater DCP. No objection to approval, subject to conditions.</i></p> <p><i>The proposal is therefore supported.</i></p>

Internal Referral Body	Comments
	<i>Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.</i>
Natural Environment - Coastal Management	<p><b>Approval (subject to conditions)</b></p> <p>Council's Coastal Management Officer provided the following comments:</p> <p><i>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</i></p> <p><b>Coastal Management Act 2016</b>  <i>The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.</i></p> <p><i>The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</i></p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b>  <i>The subject land has been included as 'Proximity Area for Littoral Rainforest' on the 'Coastal Wetlands and Littoral Rainforest Area' map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 11 and 15 of the CM SEPP apply for this DA.</i></p> <p><b>Comment:</b>  <i>As per Clause 11 of the CM SEPP, the quality and quantity of surface and groundwater flows to the adjacent littoral rainforest has to be maintained. The DA has provided a 'Stormwater Concept Drainage Plan'. With implementation of this plan, the DA satisfies requirements under clauses 11, 14 and 15 of the CM SEPP.</i>  <i>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</i></p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b>  <i>No other coastal related issues identified.</i>  <i>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</i>  <i>The proposal is therefore supported.</i></p> <p><i>Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.</i></p>

External Referral Body	Comments
Ausgrid	The proposal was referred to Ausgrid as part of the original application. No response was 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.

#### **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. 1137791S dated 21 September 2020).

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

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

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

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

##### Ausgrid

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

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

##### Comment:

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

#### **SEPP (Coastal Management) 2018**

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows;

#### **10 Development on certain land within coastal wetlands and littoral rainforests area**

(1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*

- the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
- the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
- the carrying out of any of the following:*

- (i) earthworks (including the depositing of material on land),
- (ii) constructing a levee,
- (iii) draining the land,
- (iv) environmental protection works,
- (d) any other development.

Comment:

This Clause is not relevant to the subject site.

### 11 Development on land in proximity to coastal wetlands or littoral rainforest

*(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*

- a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
- b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

This Clause is relevant to the subject site. Council's Bushland and Biodiversity Officer has reviewed the application and raised no objections to the application, subject to relevant conditions.

### 12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) the proposed development:*
  - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
  - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
  - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal*

Comment:

This Clause is not applicable to the subject site.

### 13 Development on land within the coastal environment area

*(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*

- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Comment: The site is not located within the Coastal Environment Area Map.

(2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*

- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
- (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment: The site is not located within the Coastal Environment Area Map.

#### **14 Development on land within the coastal use area**

(1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*

- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following—*
  - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
  - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
  - (iv) *Aboriginal cultural heritage, practices and places,*
  - (v) *cultural and built environment heritage, and*

(b) *is satisfied that—*

- (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
- (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*

(c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment: The site is not located within the Coastal Use Area Map.

#### **15 Development in coastal zone generally—development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed development is unlikely to increase the risk of coastal hazards and is therefore acceptable.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

#### **Pittwater Local Environmental Plan 2011**

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

#### **Principal Development Standards**

<b>Standard</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation</b>	<b>Complies</b>
4.3 (2FA) Height of Buildings	5.5m	5.497 m	-	Yes

#### **Compliance Assessment**

<b>Clause</b>	<b>Compliance with Requirements</b>
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

#### **Detailed Assessment**

#### **E4 Environmental Living**

The objectives of the E4 zone are considered to be fulfilled as is detailed below.

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors*

The development is appropriate when considered against the values of the zone and can be supported subject to conditions of consent. The works are located within a cleared section of the site and ample landscape area will be retained to ensure that character and environmental value of the site and locality are retained.

#### **Clause 5.4 Controls relating to miscellaneous permissible uses**

Subclause (9) provides:

#### **(9) Secondary dwellings:**

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

1. 60 square metres,
2. 25% of the total floor area of the principal dwelling.

The proposed secondary dwelling has an area of 59.7m<sup>2</sup> (confirmed by Council's Plan Measuring software).

### **Pittwater Development Control Plan 2011**

#### **Built Form Controls**

<b>Built form Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation</b>	<b>Complies</b>
Front Building Line	6.5m	N/A	N/A	Yes
Rear building Line	6.5m	1.478m	77%	No
Side building line	2.5m (west boundary)	2.6m	-	Yes
	1m (east boundary)	0.95m	5%	No
Building envelope	3.5m (east boundary)	3.5m	N/A	Yes
	3.5m (west boundary)	3.5m	N/A	Yes
Landscaped area	60%	45.8% 255.53m <sup>2</sup>	23.5%	No

#### **Compliance Assessment**

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition – Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition – Waste minimisation	Yes	Yes
B8.4 Construction and Demolition – Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition – Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	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
C1.11 Secondary Dwellings and Rural Workers Dwelling	No	Yes
C1.12 Waste and Recycling	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D9.17 Scenic Protection Category One Areas	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front Building Line	Yes	Yes
D10.8 Side and Rear Building line	No	Yes
D10.11 Building Envelope	Yes	Yes
D10.13 Landscaped Area – Environmentally Sensitive Land	No	Yes
D10.14 Fences – General	Yes	Yes
D10.16 Construction, retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes



### C1.11 Secondary Dwellings and Rural Workers Dwelling

#### Description of Non-compliance

The DCP requires a secondary dwelling to contain no more than one bathroom. The proposed development proposes two bathrooms within the secondary dwelling.

#### Merit consideration

This issue can be resolved, with a condition of consent requiring the removal of one bathroom. This will require modifications to the floor plan, which are considered reasonable to be revised at Construction Certificate stage as possible changes to windows will not result in privacy concerns.

With the inclusion of this condition, it is concluded that the proposed development is consistent with the relevant objectives of the PDCP 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.

### D10.8 Side and Rear Building line

#### Description of Non-compliance

The DCP requires a side setback of 2.5 metres to the north and 1.0 metre to the south. The proposed north boundary is compliant while the southern side boundary is non-compliant by 50mm.

The DCP requires a 6.5m rear setback, the site proposes a non-compliant 1.478 metres. This represents a variation of 5% and 77%, respectively.

#### Merit consideration

The variation to the side setback is considered reasonable, but a condition requiring compliance is proposed, to assist in achieving a more reasonable landscaped area. The variation to the rear setback is supported as proposed.

Both are considered below against the desired outcomes.

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

The proposal will fit within the desired future character. Compliance with the side setback can be achieved and the impact on the non-compliant rear setback is reasonable with no rear residential neighbour and substantial screening provided.

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

The proposed secondary dwelling is a small single storey structure, which is dwarfed by the existing multi-level dwelling in the location. Its bulk and scale is acceptable.

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

Any views and/or vistas currently obtained by the subject site and adjoining properties will not be impacted as a result of the proposed secondary dwelling.

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

As discussed above, the proposed development will not impact upon existing views.

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

The slope of the land and siting of the secondary dwelling results in a reasonable level of privacy and the solar access.

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

The site has existing vegetation at rear of the property. These trees are proposed to be retained, and further landscaping conditioned to the rear boundary to the reserve. There is no impact from the Grandview Drive streetscape with all works in the rear yard.

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

No amenity impacts will arise as a result of the proposed development.

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

No vegetation is proposed to be removed as a result of the proposed development.

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

The subject is located within, and surrounded by, residential zoning. This clause is not relevant to this application.

With the inclusion of this condition, it is concluded that the proposed development is consistent with the relevant objectives of the PDCP 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.

#### **D10.13 Landscaped Area – Environmentally Sensitive Land**

##### Description of Non-compliance

The site has a proposed landscaped area of 45.8%. The DCP requires 60% landscaped area. Conditions are proposed which will allow for an increase in the landscaped area by 27m<sup>2</sup> to 50%, with a concrete platform at the front of the site to be removed (See photograph below) and decking associated with an existing spa to be deleted (See photo below).



Deck to be deleted



Concrete slab to be replaced with soft landscape

Additionally, the 950mm setback to the southern boundary is to be conditioned to be increased to 1000mm. This will allow for this area to be included in the landscape calculation. This condition also notes that the height must be maintained, so if the dwelling is moved 50mm to the north, the fall in the land is considered to ensure that the LEP height control is not breached.

The applicant provided a possible revised landscape plan which also suggested deletion of an existing deck at the rear of the dwelling. This change is not supported or included in the conditioned amendments as it is to the detriment of the existing dwelling and would not add to the landscaped area with additional decking located above on upper levels.

The conditioned changed would allow for a total landscaped are of 50% including the 6% variation permitted for impervious landscape treatments including pathways.

The lesser landscape area is supported in this instance for the following reasons:

1. Ample areas are provided to ensure on site drainage, with elevated platforms and structures ensuring a flow of water easily over the site.

2. The site abuts a drainage reserve to the rear, ensuring that the impacts of the development are not felt on a rear residential neighbour.
3. The proposal structure is small instance and well screened by landscaping both existing and conditioned.
4. The non-compliance is not to the detriment of any adjoining residential neighbours.

The proposed landscape area, subject to the imposition of above conditions at 50%, is considered against the desired outcomes of the control below.

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

The character of the area will be retained with the structure being low scale, well screened and developed in a cleared portion of the site where no environmental impacts result.

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

The structure is small in scale and will not present with excessive bulk.

- ***A reasonable level of amenity and solar access is provided and maintained.***

Amenity and solar access levels for the site and neighbours are retained at a compliant and ample level.

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

No vegetation is proposed to be removed. Additional vegetation screening has been conditioned by Council's Landscape Officer.

- ***Conservation of natural vegetation and biodiversity.***

The proposal is located in a cleared portion of the site and no natural vegetation will be impacted.

- ***Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.***

Council's engineer supports the proposal.

- ***To preserve and enhance the rural and bushland character of the area.***

The bushland character of the area will be retained with the structure being low scale, well screened and developed in a cleared portion of the site where no environmental impacts result.

- ***Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.***

The large areas of elevated structures on the site result in a far greater area of infiltration being available than is demonstrated by the landscape calculation. This objective is achieved.

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



### 7.12 CONTRIBUTIONS

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019. A monetary contribution of \$1000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$100,000.

### 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 Environmental Planning Instruments and draft EPI's;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

The proposal is supported subject to the inclusion of conditions to allow for increased landscape area, and a floor plan amendment to remove one bathroom. Whilst the rear setback and landscape area will remain non-compliant with the numeric controls of the Pittwater DCP, the secondary dwelling is considered to satisfy the objectives of these controls and, subject to recommended conditions, be worthy of consent.

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

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

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

### RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/1260 for the construction of a secondary dwelling on land at Lot 93 DP 16029, 16 Grandview Drive, 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
20064 - Sheet 1 – Site Plan and Site Analysis Plan	09/09/20	Michal Korecky
20064 – Sheet 2 – Proposed Floor Plan	09/09/20	Michal Korecky
20064 – Sheet 3 – Proposed East Elevation	09/09/20	Michal Korecky
20064 – Sheet 4 – Proposed North Elevation	09/09/20	Michal Korecky
20064 - Sheet 5 – Proposed West Elevation	09/09/20	Michal Korecky
20064 - Sheet 6 – Proposed South Elevation	09/09/20	Michal Korecky
20064 - Sheet 7 – Section A	09/09/20	Michal Korecky

Engineering Plans		
Drawing No.	Dated	Prepared By
20064 - Sheet 12 – Stormwater Concept Drainage Plan	09/09/20	Michal Korecky
20064 - Sheet 13 – Erosion and Sediment Management Plan	09/09/20	Michal Korecky

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (1137791S)	21/09/2020	Michal Korecky
Geotechnical Report (J2919)	21/09/2020	White Geotechnical Group Pty Ltd

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

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

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

## **2. Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the

- excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

### **3. General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
  - 1 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 1 8.00 am to 1.00 pm inclusive on Saturday,
  - 1 No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 1 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and

construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

#### Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$1,000.00 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 \$100,000.00.

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

### 5. 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

**6. Geotechnical Report Recommendations have been incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical group dated 21st September, 2020 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately

**7. Amendments to the approved plans**

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

- a. The floor plan of the secondary dwelling is to be amended so that only one bathroom is provided for use by the occupants of the secondary dwelling.
- b. The southern side setback is to be increased to a minimum of 1 metre. The height of the secondary dwelling must not be increased with this alteration to the plans.
- c. The concrete platform in the southern western corner of the Grandview Drive frontage is to be removed and is to be provided as a landscaped area. The pathway providing access to the side boundary path/ steps is to be retained.
- d. The deck associated with the existing spa is to be deleted and is to be provided as a landscape area.

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

Reason: To ensure development minimises unreasonable impacts to residential amenity and to ensure compliance with Pittwater 21 Development Control Plan

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's clause B5.7 and B 5.10 PITTWATER DCP21. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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

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

**9. Stormwater Management**

Stormwater shall be disposed of in accordance with Council's Policy. The stormwater management plan is to be implemented to ensure that there is no increase in stormwater pollutant loads arising from the approved development. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development, ensuring that the proposed works do not negatively impact receiving waters.

**10. 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.

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

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

**12. External Finishes to Secondary Dwelling**

The external finishes to the walls, roof and balcony of the secondary dwelling must comprise dark and earthy tones as shown in Clause 10.4 'Building colours and materials' of the Pittwater 21 Development Control Plan.

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

Reason: To ensure development enhances the visual quality and identity of the streetscape and to minimise excessive glare or reflectivity issues.

**13. Waste Management Plan**

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

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

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

**14. Construction Management Program**

A Construction Traffic Management Plan is to be prepared for the development given its unusual access arrangements.

The Construction Traffic Management Plan should include (but not be limited to) the following:

- Details for maintaining access to adjacent properties
- Details regarding access to the site for trucks
- Details for storage of materials
- Provision of parking for workers
- Details for loading and unloading of materials

The Construction Traffic Management Plan shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

**15. External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

#### CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area, in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

**17. Works on Land owned or managed by Council**

No works are to be carried out on Land owned or managed by Council without the written approval of the Council.

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity, telecommunications etc.), and landscaping works on Land owned or managed by Council.

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

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

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

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

### 19. 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.

### 20. Installation and Maintenance of Sediment Control

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

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

### 21. No Access through Land owned or managed by Council

Site access is not approved for delivery of materials nor construction of the development through adjacent Land owned or managed by Council.

Reason: public safety, landscape amenity and tree protection.

### 22. Protections of Council's Public Assets

Any damage to Council's public assets shall be made good by the applicant and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

The dumping or storage of building materials, spoil, vegetation, green waste, or any other material in Land owned or managed by Council is prohibited.

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance. Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately Contact Council's Tree Services section and resolve the matter to Council's satisfaction.

Reason: to protect and/or restore any damaged public asset.

### 23. Tree and vegetation protection

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
  - ii) all trees and vegetation located on adjoining properties,
  - iii) all road reserve trees and vegetation.



b) Tree protection shall be undertaken as follows:

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

The Certifying Authority must ensure that:

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

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

Reason: tree and vegetation protection.

#### **24. Storage of Materials on Council Land Prohibited**

The dumping or storage of building materials, spoil, vegetation, green waste, or any other material in the Council reserve is prohibited.

Reason: Safety, environmental protection

**25. Right of Way Access**

Access for the right of way is to be reasonably maintained at all times.

Reason: To minimise impacts to nearby properties and residents.

**26. 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 Principal 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****27. Damage to the right of way**

Any damage to the right of way, caused by the construction of the development, is to be repaired prior to the issue of the occupation certificate.

Reason: To ensure the site is left in an acceptable state and that access is maintained for Nos.18 and 20 Grandview Drive.

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

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

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

Reason: To ensure bushland management.

**29. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

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

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

**30. Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**31. Required screen planting**

Screen planting shall be planted in accordance with the following schedule:

- i) at least eleven (11) screening native shrubs capable of attaining a height of 3.0 metres at maturity, planted at a minimum 200mm container pot size,
- ii) plants are to be installed for the full extent of the eastern boundary at minimum 1 metre intervals in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

Reason: to maintain environmental amenity.

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

**32. Landscape maintenance**

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

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

Reason: to maintain local environmental amenity.

**33. No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

**34. Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

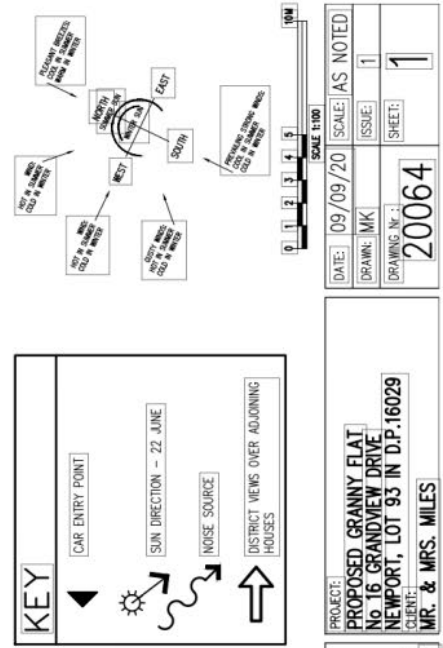
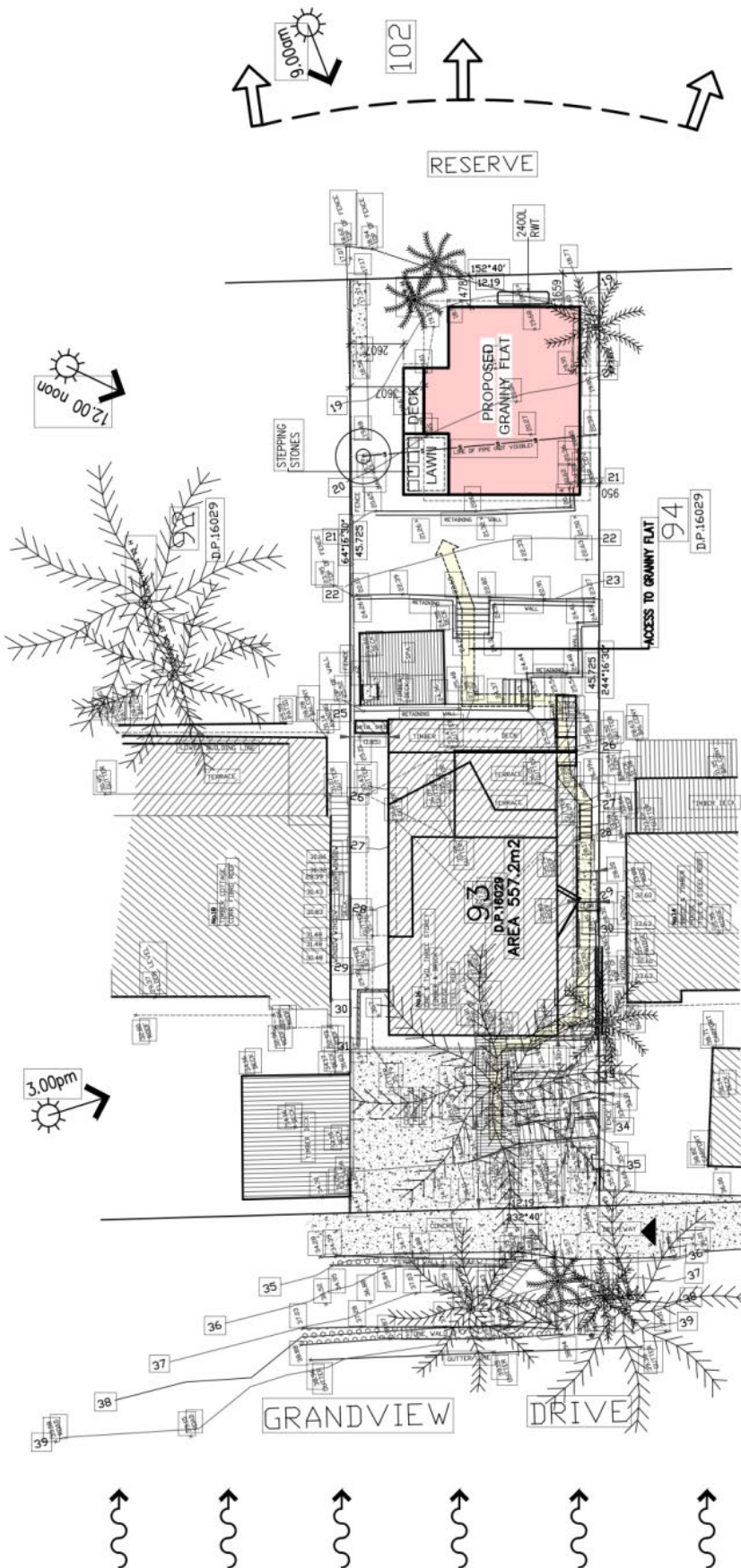
**35. Works to cease if item found**

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage





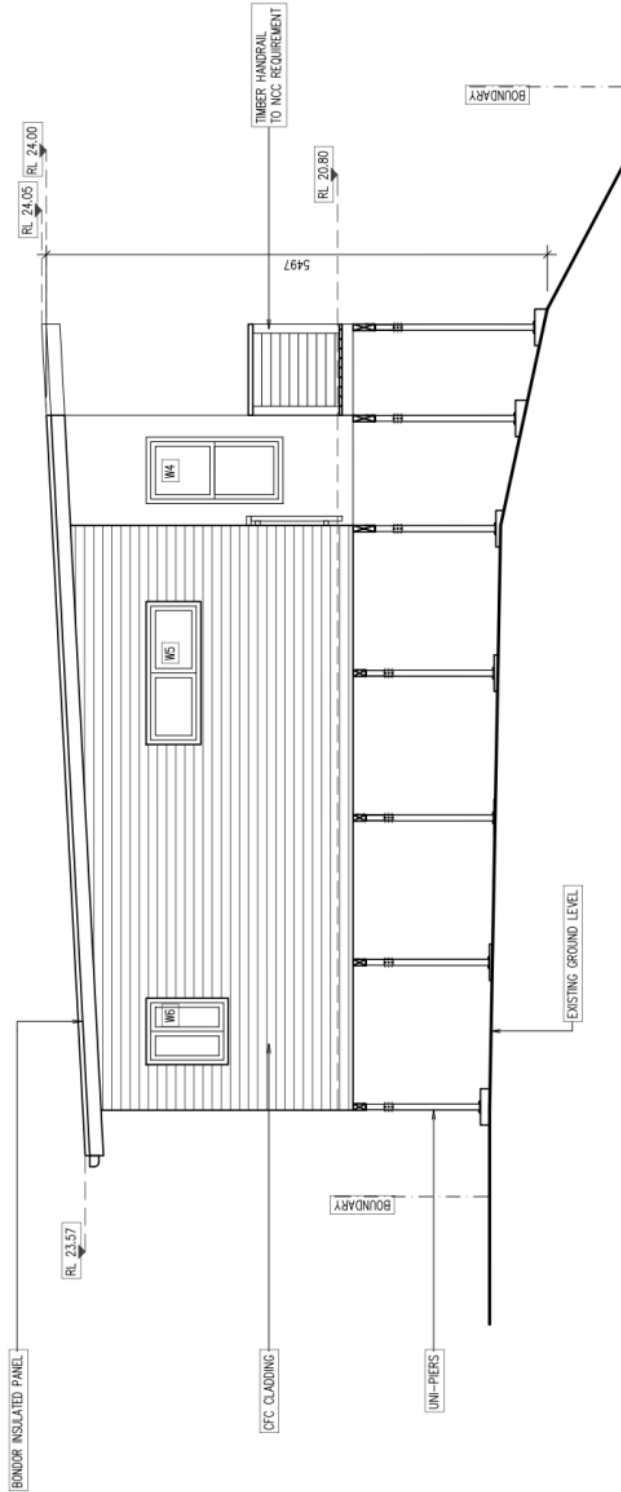


SITE PLAN AND SITE ANALYSIS PLAN

1:200

<b>GENERAL NOTES:</b> 1. All dimensions are to the centre line of the road or the centre line of the building. 2. All dimensions are to the centre line of the road or the centre line of the building. 3. All dimensions are to the centre line of the road or the centre line of the building. 4. All dimensions are to the centre line of the road or the centre line of the building. 5. All dimensions are to the centre line of the road or the centre line of the building. 6. All dimensions are to the centre line of the road or the centre line of the building. 7. All dimensions are to the centre line of the road or the centre line of the building. 8. All dimensions are to the centre line of the road or the centre line of the building. 9. All dimensions are to the centre line of the road or the centre line of the building. 10. All dimensions are to the centre line of the road or the centre line of the building.		<b>PROJECT:</b> PROPOSED GRANNY FLAT No. 16 GRANDVIEW DRIVE NEWPORT, LOT 93 IN D.P. 16029 CLIENT: MR. & MRS. MILES
<b>DESIGN BY:</b> MICHAL KORECKY 21 MALVA ROAD, MARRAMEKA NSW 2059 PHN: 79 393 130 298 Email: koreckym@gmail.com www.plandesign.com.au Phone: 99813332, Mob: 0438 148 944	<b>DATE:</b> 09/09/20 <b>SCALE:</b> AS NOTED <b>ISSUE:</b> 1 <b>SHEET:</b> 1 <b>DRAWING NO.:</b> 20064	<b>ISSUED FOR:</b> DA <b>DATE:</b> 09/09/20 <b>AMENDMENT:</b> <b>COPYRIGHT:</b> All plans and drawings are subject to copyright and are not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, without prior written permission of the author.

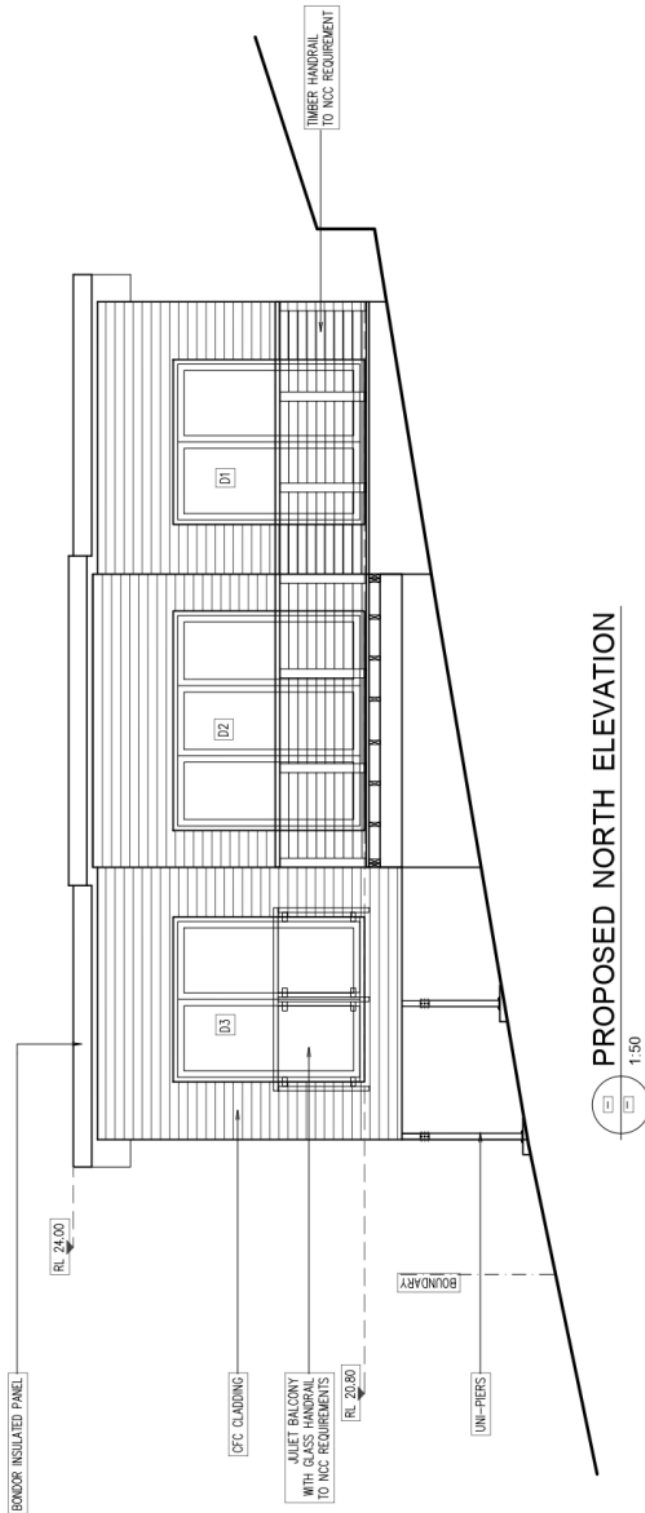




PROPOSED EAST ELEVATION



<b>GENERAL NOTES:</b> 1. Refer to the notes on the drawings for any variations to the drawings. 2. All dimensions are to the face of the work unless otherwise stated. 3. All work is to be done in accordance with the Australian Standards and the relevant codes of practice. 4. All work is to be done in accordance with the relevant codes of practice and the relevant codes of practice. 5. All work is to be done in accordance with the relevant codes of practice and the relevant codes of practice. 6. All work is to be done in accordance with the relevant codes of practice and the relevant codes of practice.		<b>DESIGN BY:</b> <b>MICHAEL KORECKY</b> 21 MALVA ROAD, MARRAMEVA NSW 2099 PH: 79 393 130 298 Email: koreckydesign@gmail.com www.koreckydesign.com.au Phone: 99813332, Mob: 0438 148 944		<b>PROJECT:</b> <b>PROPOSED GRANNY FLAT</b> <b>No. 16 GRANDVIEW DRIVE</b> <b>NEWPORT, LOT 93 IN D.P. 16029</b> <b>CLIENT:</b> <b>MR. &amp; MRS. MILES</b>		<b>DATE:</b> 09/09/20 <b>SCALE:</b> AS NOTED <b>ISSUE:</b> 1 <b>SHEET:</b> 3	
<b>ISSUED FOR DA</b> No. 1 AMENDMENT 1 DATE: 09/09/20		<b>DRAWN:</b> MK <b>DRAWING NO.:</b> 20064		<b>SCALE:</b> 1:50		<b>0 1 2 3 4 5m</b>	



PROPOSED NORTH ELEVATION

1:50



SCALE 1:50

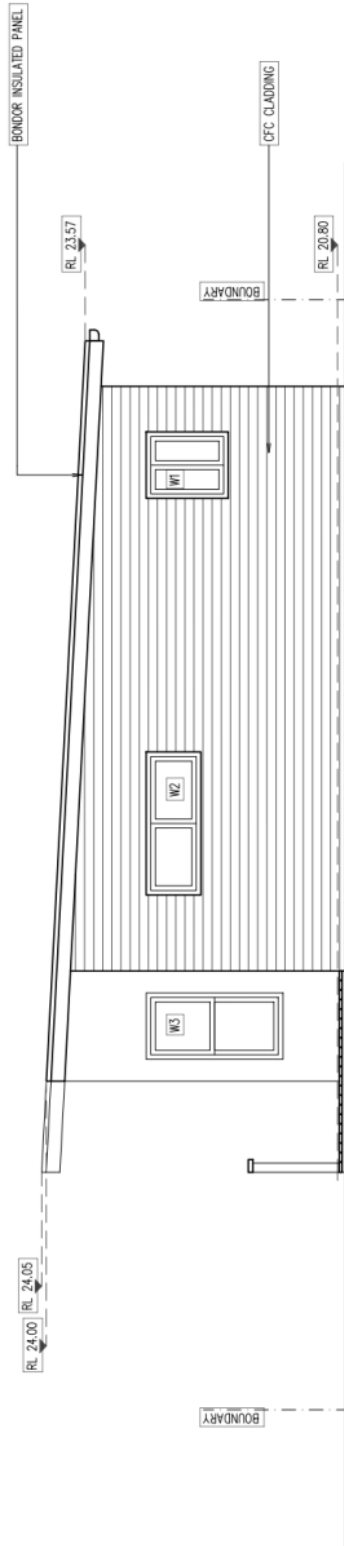
DATE: 09/09/20	SCALE: AS NOTED
DRAWN: MK	ISSUE: 1
DRAWING NO: 20064	SHEET: 4

PROJECT: PROPOSED GRANNY FLAT No. 16 GRANDVIEW DRIVE NEWPORT, LOT 93 IN D.P. 16029
CLIENT: MR. & MRS. MILES

DESIGN BY: MICHAL KORECKY 21 MALVA ROAD, MIRRAMBA MIRA 2059 PH: 79 393 130 298 Email: koreckym@gmail.com www.plandesign.com.au Phone: 99813332, Mob: 0438 148 944
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ISSUED FOR DA	DATE: 09/09/20
No. 1	AMENDMENT 1
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GENERAL NOTES: 1. Refer to the notes on the drawings for all necessary details. 2. All dimensions are to the face of the work unless otherwise stated. 3. All work is to be in accordance with the Australian Standards and the relevant codes of practice. 4. All work is to be in accordance with the relevant codes of practice and the relevant codes of practice. 5. All work is to be in accordance with the relevant codes of practice and the relevant codes of practice. 6. All work is to be in accordance with the relevant codes of practice and the relevant codes of practice.
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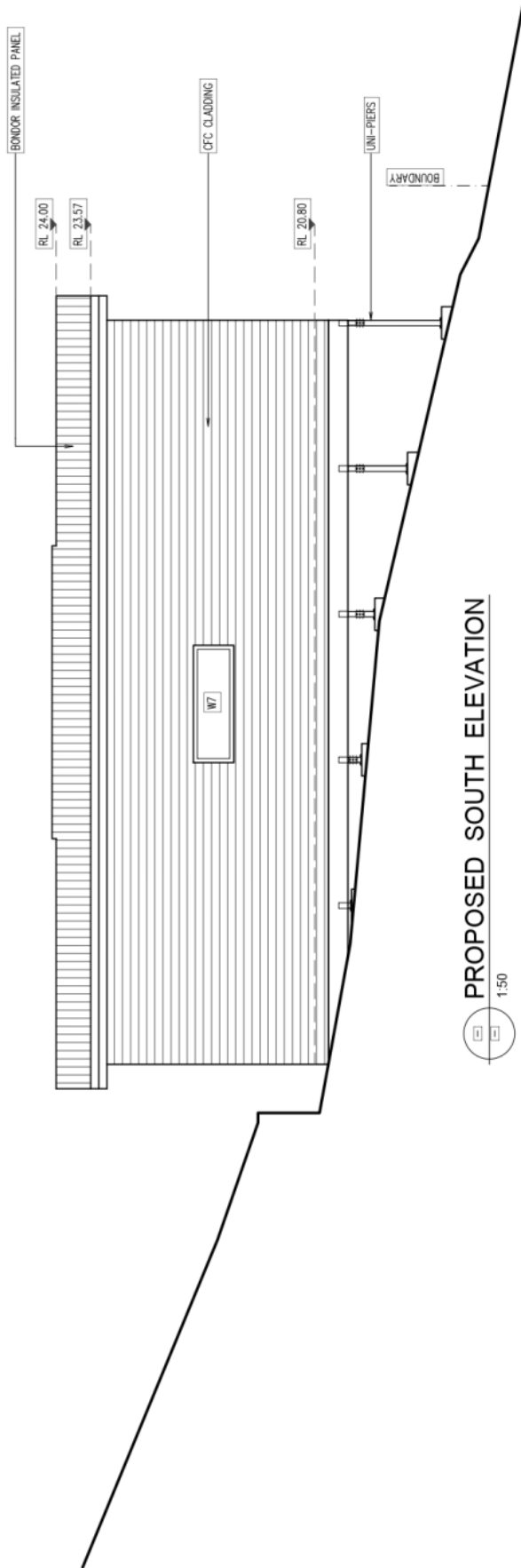
PROPOSED WEST ELEVATION

1:50



SCALE 1:50

<b>GENERAL NOTES:</b> 1. Refer to the site plan and sections of the project for construction details. Do not scale the drawing. 2. All dimensions are to the face of the work unless otherwise stated. 3. All dimensions are to be in accordance with the Australian Standard AS 1926.1. 4. All dimensions are to be in accordance with the Australian Standard AS 1926.1. 5. All dimensions are to be in accordance with the Australian Standard AS 1926.1. 6. All dimensions are to be in accordance with the Australian Standard AS 1926.1. 7. All dimensions are to be in accordance with the Australian Standard AS 1926.1. 8. All dimensions are to be in accordance with the Australian Standard AS 1926.1. 9. All dimensions are to be in accordance with the Australian Standard AS 1926.1. 10. All dimensions are to be in accordance with the Australian Standard AS 1926.1.		<b>PROJECT:</b> PROPOSED GRANNY FLAT No. 16 GRANDVIEW DRIVE NEWPORT, LOT 93 IN D.P. 16029 <b>CLIENT:</b> MR. & MRS. MILES		<b>DESIGN BY:</b> <b>MICHAEL KORECKY</b> 21 MALVA ROAD, MARRAMELA NSW 2099 PH: 79 393 137 298 Email: koreckym@gmail.com www.plandesign.com.au Phone: 99813332, Mob: 0438 148 944		<b>DATE:</b> 09/09/20		<b>SCALE:</b> AS NOTED		<b>ISSUE:</b> 1		<b>SHEET:</b> 5	
<b>ISSUED FOR:</b> DA		<b>AMENDMENT:</b>		<b>DATE:</b>		<b>SCALE:</b>		<b>ISSUE:</b>		<b>SHEET:</b>			
<b>1</b>		<b>1</b>		<b>1</b>		<b>1</b>		<b>1</b>		<b>1</b>			



PROPOSED SOUTH ELEVATION

1:50



SCALE 1:50

DATE: 09/09/20	SCALE: AS NOTED
DRAWN: MK	ISSUE: 1
DRAWING NO: 20064	SHEET: 6

PROJECT: PROPOSED GRANNY FLAT No. 16 GRANDVIEW DRIVE NEWPORT, LOT 93 IN D.P. 16029
CLIENT: MR. & MRS. MILES

DESIGN BY: MICHAL KORECKY
21 MALVA ROAD, MIRRAMBA NSW 2099
PH: 79 393 130 298
Email: koreckym@gmail.com
www.plandesign.com.au
Phone: 99813332, Mob: 0438 148 944

ISSUED FOR DA	09/09/20
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AMENDMENT	
No.	
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GENERAL NOTES:

1. Refer to check and confirm all necessary dimensions in this plan to construction. Do not scale the drawing.
2. All dimensions that relate to the building and its components are subject to verification by the surveyor and the engineer.
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**ITEM 4.2****DA2020/0739 - 54-62 MAY ROAD, NARRAWEENA -  
DEMOLITION WORKS AND CONSTRUCTION OF A SHOP TOP  
HOUSING DEVELOPMENT WITH BASEMENT CARPARKING****AUTHORISING MANAGER** Steve Findlay**TRIM FILE REF** 2020/766056**ATTACHMENTS**  
1 Assessment Report  
2 Site Plan & Elevations  
3 Clause 4.6**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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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, grants **deferred commencement approval** to Application No. DA2020/0739 for demolition works and construction of a Shop Top Housing Development with basement carparking at Lots 13-17 DP 801798, 54-62 May Road, Narrabeena subject to the conditions and for the reasons set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0739
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<b>Responsible Officer:</b>	Lashta Haidari
<b>Land to be developed (Address):</b>	Lot 13 DP 801798, 62 May Road NARRAWEENA NSW 2099 Lot 14 DP 801798, 60 May Road NARRAWEENA NSW 2099 Lot 15 DP 801798, 58 May Road NARRAWEENA NSW 2099 Lot 16 DP 801798, 56 - 56 May Road NARRAWEENA NSW 2099 Lot 17 DP 801798, 54 - 54 May Road NARRAWEENA NSW 2099
<b>Proposed Development:</b>	Demolition works and construction of a Shop Top Housing Development with basement carparking
<b>Zoning:</b>	Warringah LEP2011 - Land zoned 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>	Ji Hui Pty Ltd
<b>Applicant:</b>	Jvurban Pty Ltd

<b>Application Lodged:</b>	03/07/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	10/07/2020 to 24/07/2020
<b>Advertised:</b>	10/07/2020
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: Building - 20.35% Lift overrun - 40.35%
<b>Recommendation:</b>	Deferred Commencement Approval

<b>Estimated Cost of Works:</b>	\$ 7,923,678.00
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### EXECUTIVE SUMMARY

The proposal involves demolition works and construction of mixed-use development (Shop Top Housing and Retail Premises) on the five (5) lots located at No. 52 to 62 May Road, Narrabeena.

The site sits within the May Road Neighbourhood Centre, which comprises a strip of a predominantly single storey shops and business premises. The site as a whole contains eight (8) torrens title lots. Current occupancies are mainly food and drink premises. The development site adjoins No's 64 to 72 May Road, being single storey shops that extend to the west and comprise the remainder of the neighbourhood centre.

The site has an area of 1,417.34m<sup>2</sup>, and has a front boundary to an open at grade public carpark and Warringah Road beyond, a rear boundary to Poplar Lane and an eastern side boundary with a Public Reserve. The site is zoned B1 Neighbourhood Centre under the WLEP 2011 and the proposed development is a permissible land use.

The proposal is reliant upon a variation to the maximum building height development standard prescribed by clause 4.3 of WLEP 2011. In this regard, the proposal is assessed as being consistent with the objectives of the standard and the zone and the applicant has satisfactorily established that the proposed variation is appropriate in the context of the neighbourhood centre and the surrounds. The development will not result in unreasonable impacts to adjoining properties, the streetscape or the adjoining public reserve by virtue of the non-compliant building height.

For this reason, the applicant has successfully demonstrated that strict compliance with the development standard is unreasonable and unnecessary and there are sufficient environmental planning grounds to justify contravening the development standard. It is considered that the Clause 4.6 variation is well founded and has addressed the matters within Clause 4.6(3) and should be supported.

The proposal is subject to the provisions of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development as it is 3 storeys in height and contains 16 apartments. The proposal has been assessed as being consistent with the design principles and the relevant guidelines under the Apartment Design Guide.

The proposal will result in a non-compliance with the WDCP 2011 in terms of the number of car parking spaces required for the proposed development, as it relates to the retail and commercial component of the development. The shortfall in car parking on this site has been the subject of detailed assessment in terms of the DCP requirements and the applicant's justification. The applicant has demonstrated that the proposed car parking is adequate for the development, which is supported by Council's Traffic Engineering section.

The DA was publicly exhibited in accordance with the Northern Beaches Community Participation Plan and no submissions were received.

The assessment concludes that the character, design and external appearance of the development are satisfactory, the internal amenity of the residential units is satisfactory, the development will be afforded with the necessary functional and operational components and the impacts of the development are acceptable and can be appropriately managed or mitigated by the imposition of suitable conditions of consent.

Special conditions are recommended in relation to contamination, acoustic treatments, landscaping and construction and traffic management.

Accordingly, the assessment considers the development is in the public interest and should be approved.

## PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent for demolition works and construction of mixed use development which consists of the following:

- Six (6) retail tenancies providing a total floor area of 425.5m<sup>2</sup>;
- Three (3) commercial tenancies providing a total floor area of 182.1m<sup>2</sup>; and
- 16 residential apartments, containing: 4 one bedroom dwellings; 10 two bedroom dwellings; and 2 three bedroom dwellings.

Specifically, the proposed development incorporates:

### Basement Level

- 34 vehicle parking spaces total
- 25 resident spaces and storage (incl 2 accessible + 4 visitor)
- 9 retail spaces (incl. 1 accessible)
- 18 resident bicycle spaces/storage
- Plant and services rooms
- Stairs and 2 lifts to other levels
- Vehicle ramp to laneway

### Ground Floor Level

- 6 x retail premises (facing car park)
- 3 x commercial premises (facing central courtyard)
- 2 x separate garbage rooms (residential + commercial storage)
- Plant and services rooms
- Stairs and lift to other levels
- Central courtyard with lifts, stairs to basement and landscaping
- Vehicle ramp from Poplar Lane to basement

### Level 1

- 8 x residential apartments
- Stairs and lift to other levels

### Level 2

- 8 x residential apartments
- Stairs and lift to lower levels

The proposal also includes landscape works.

Figure 1 and Figure 2 below is provided to assist in the identification of the proposed building footprint

within the site and the appearance of the building, as viewed from the public carparking on May Road.

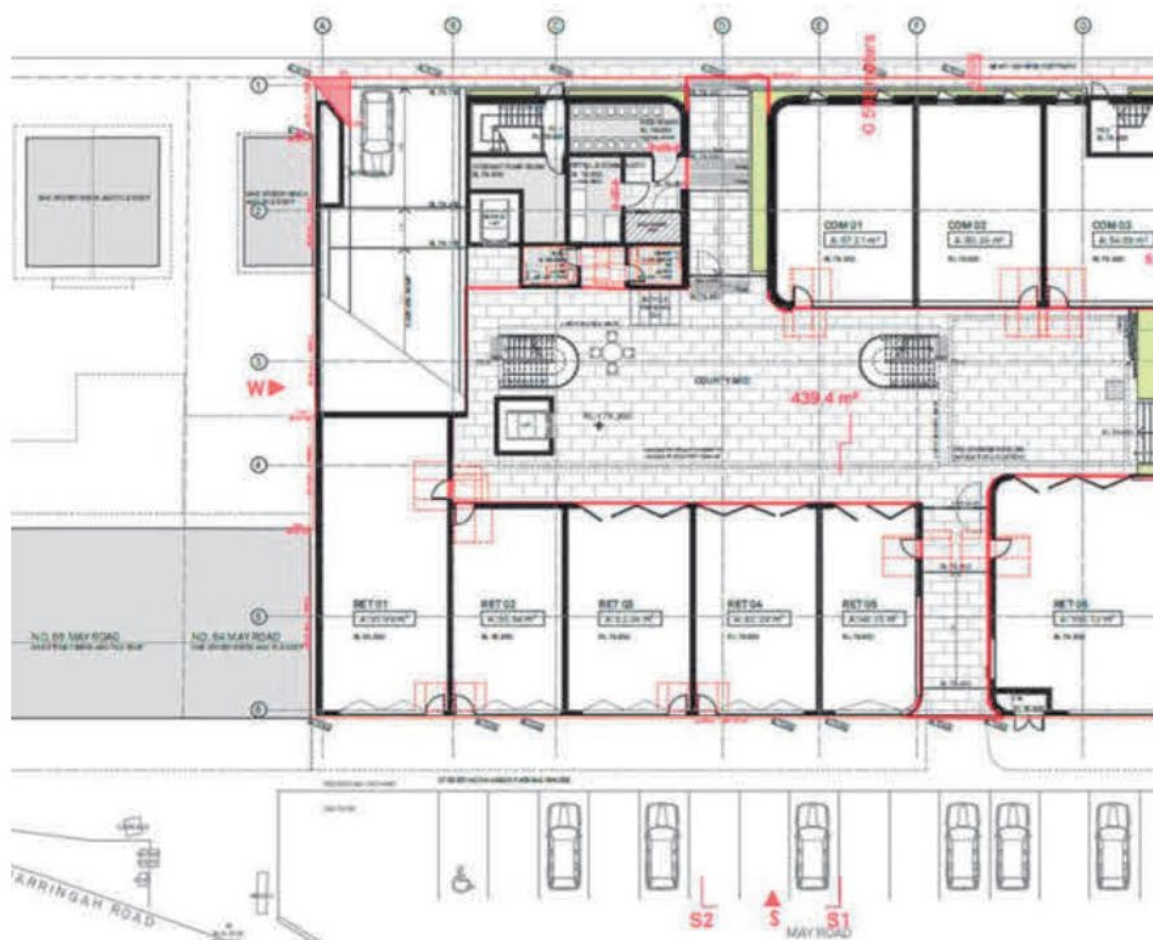


Figure 1 – Ground Floor Plan (Source: Benson McCormack Architecture)





**Figure 2 – View of the proposed development from May Road (Source: Benson McCormack Architecture)**

## **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 - 6.2 Earthworks

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D3 Noise

## **SITE DESCRIPTION**

<b>Property Description:</b>	<p>Lot 13 DP 801798 , 62 May Road NARRAWEENA NSW 2099</p> <p>Lot 14 DP 801798 , 60 May Road NARRAWEENA NSW 2099</p> <p>Lot 15 DP 801798 , 58 May Road NARRAWEENA NSW 2099</p> <p>Lot 16 DP 801798 , 56 - 56 May Road NARRAWEENA NSW 2099</p> <p>Lot 17 DP 801798 , 54 - 54 May Road NARRAWEENA NSW 2099</p>
<b>Detailed Site Description:</b>	<p>The subject site comprises 5 individual allotments and is located within the May Road neighbourhood shopping centre. The combined allotments have an area of approximately 1,417.34m<sup>2</sup>. The lot has a development site area of 1,417.34sqm with front boundary to an open at grade car park, which fronts Warringah Road, of 44.285m, rear boundary fronting Poplar Lane of 44.485m, eastern boundary, fronting the May Road park of 32.005m and western boundary, adjoining No. 64 May Road, of 32.005m.</p> <p>The May Road shops are unique as they read as an island site, which is currently occupied by a traditional strip retail building containing a range of mostly local shops and businesses. Existing buildings are single storey with pitch tile roofs over. None of the existing properties within the centre provide off-street customer car parking. The centre benefits from 28 at public at grade car parking spaces within the adjoining May Road Reserve.</p> <p>The property is zoned B1 Neighbourhood Centre under the Warringah Local Environmental Plan 2011 (LEP), and is adjacent to a 580m<sup>2</sup> pocket park and playground to the east.</p> <p>The surrounding development consists of new townhouse development undertaken by NSW Department of Housing</p>

and low density residential dwellings, with vehicle access onto Poplar Lane, which is located to the north west of the subject site.

The western side is occupied by No.s 64 – 72 May Road, being single storey shops that comprise the remainder of the neighbourhood centre. The car park of the May Road Neighbourhood Centre and the Warringah Road corridor is immediately south of the development site.

Map:



## **SITE HISTORY**

The subject site has been used for neighbourhood shops for a significant period of time.

### Pre-Lodgement Meeting

A pre-lodgement meeting for the demolition works and construction of a shop-top housing development was held between the applicant and Council on 20 August 2019.

### Amendments and additional information

The application has been subject to the following amendments and additional information since lodgement:

- Revised Clause 4.6 in relation to the building height, dated 18 January 2020;
- Desktop Report Environmental Review" by Canopy Enterprises dated December 2020
- Relocation of lift core to the western end of courtyard at Ground Level.
- Basement entry / exit ramp realigned and car parking spaces re-allocated. These changes to address comments made by Councils Traffic Engineer.
- Introduction of breaks within both the Southern and Northern facades to reduce the perceived bulk and scale of the proposal, whilst providing greater solar access to the internal courtyard.
- The entry from May Road to the internal courtyard has been widened at the entry and the relocation of the passenger lift.
- Additional opening to the east elevation to reduce the bulk of the development when from the

- adjoining park.
- The wastes rooms have been rearranged to separate the Residential Waste Storage Area and the Bulky Waste Storage Area. The waste rooms/storage are provided with minimum opening width for maneuvering. Rear gate access is relocated closer to the courtyard to provide unobstructed access to waste areas. This change looks to address comments made in the Waste Management Assessment.
- Basement entry / exit ramp realigned and 1.5m wide footpath introduced to Poplar Lane frontage. These changes seem to address comments received from Councils Traffic Engineer.
- Introduction of translucent canopy to the top floor common corridor to improve solar access to the courtyard.
- External wall of Units 12 and 13 realigned in part.

The amendments are addressed in this report. Revised plans were not re-notified as it was considered that they represented a reduction in impact and would have a negligible difference to surrounding residences.

#### 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 suitability of the site addressed under SEPP 55 of this report and found to be satisfactory.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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. Additional information was requested in relation to proposed development to address various referral issues.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent</p>

Section 4.15 Matters for Consideration'	Comments
	<p>authority to consider AS 2601 - 1991: The Demolition of Structures. This 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 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 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	<p>The various controls contained within WLEP 2011 and the WDCP 2011 provide 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 future character envisaged for the zone.</p> <p>Whilst the development does not achieve compliance with the relevant Height of Buildings Development Standard 8.5m, the variations were considered to be minor and are supported under Clause 4.6 of WLEP 2011. The development has been found to be consistent with the key Controls contained within the WDCP 2011.</p>



Section 4.15 Matters for Consideration'	Comments
	This assessment has found the development to be consistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and within the respective zones and is therefore considered, in its current form, to be in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 10/07/2020 to 24/07/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

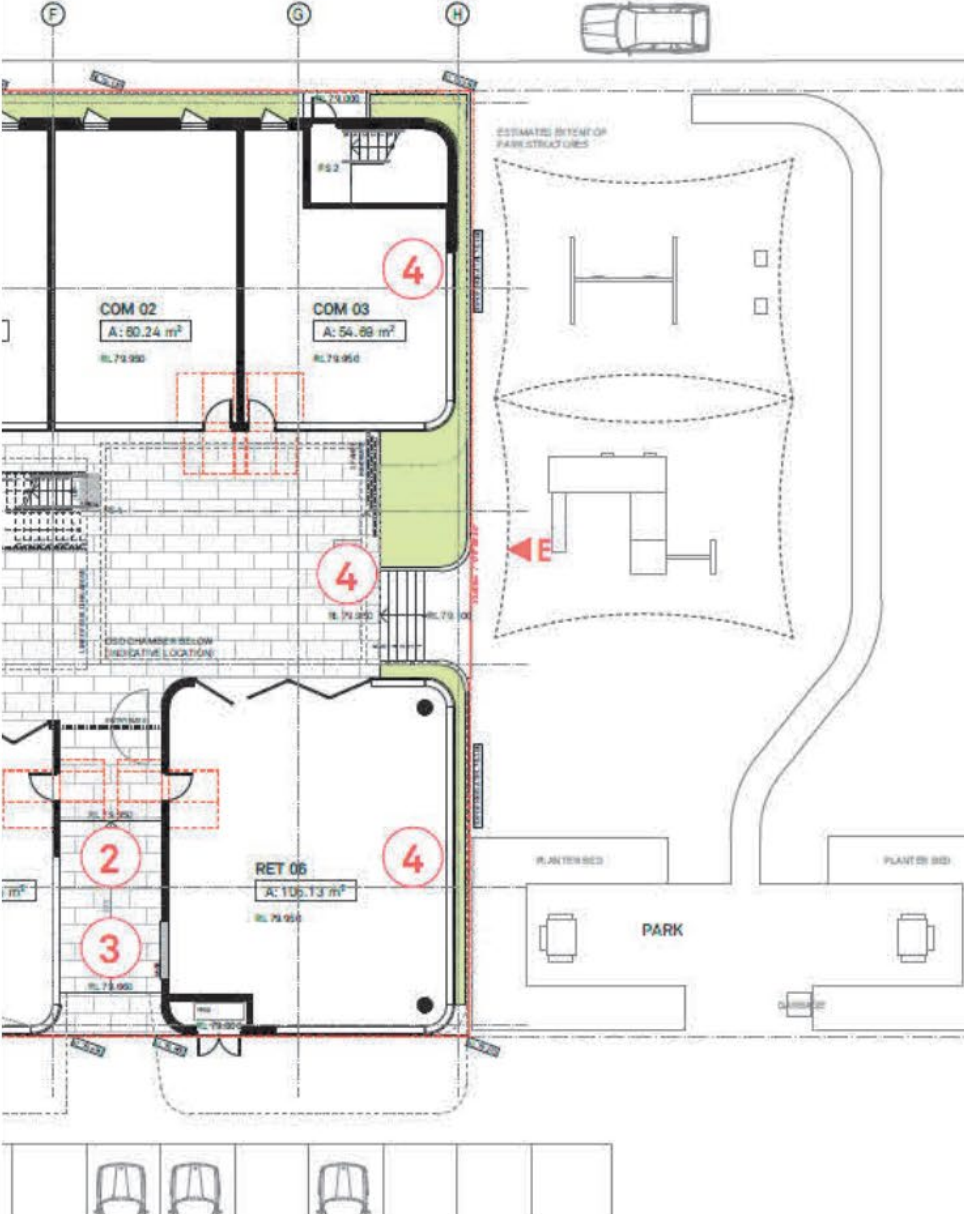
#### REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported (subject to condition)</b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA as Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Contaminated Lands)	<p><b>General Comments</b></p> <p>Environmental Health have been requested to consider the proposal for "Demolition and construction of a Shop Top Housing Development with basement carparking". The State of Environmental Effects states <i>"The proposal involves the excavation and construction of a basement level for parking and services – across the majority of the site. This work will essentially remove the existing soil and bund the site along its boundaries. A Stage 1 Environmental Site Assessment is not submitted with the DA documentation as the site has a long and established history of non pollution creating uses."</i></p> <p>Based on the limited information Environmental Health are unsure of the level of contamination (if any). Conditions are to be imposed in relation to contamination.</p> <p><b>Amendment to above information dated 19 January 2021:</b></p>



Internal Referral Body	Comments
	<p>Since the original referral response was generated by Environmental Health, the applicant supplied an report titled "Desktop Report Environmental Review" by Canopy Enterprises December 2020.</p> <p>The report states that soil will be removed from the site and also takes into account the potential presence of asbestos containing materials.</p> <p>As a result of this report, and given the known history of uses at the site, Environmental Health considers the proposal acceptable.</p> <p>It is considered necessary to condition to the development to ensure future use of the site protected from contamination.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
Environmental Health (Industrial)	<p><b>Not supported (Satisfactory subject to condition)</b></p> <p>Environmental Health have been requested to consider the proposal for "Demolition work and construction of a Shop Top Housing Development with basement carparking". It is considered necessary to ascertain how the amenity of the neighborhood, as well as the residences may be affected by the proposed development as a whole, particularly in relation to any potential noise impacts. As no acoustic report has been supplied with the application the proposal is not considered acceptable at this time.</p> <p><u>Comment:</u> The requirement of an acoustic report has been imposed as condition of consent.</p>
Landscape Officer	<p><b>Supported (subject to conditions)</b></p> <p>The Arborist's Report and Landscape Plans provided with the application are noted.</p> <p>The Arborist's Report recommends removal of 2 trees on the site due to health and structural issues. The trees, 1 x Lemon Scented Gum <i>Corymbia citriodora</i> and 1 x Jacaranda <i>Jacaranda mimosifolia</i> (an exempt species) have been rated as Low significance and High hazard. Whilst mature and providing significant canopy cover, the trees are not supported for retention in the report due to their poor condition regardless of the proposed development.</p> <p>The Landscape Plan indicates replanting of 6 trees and 8 palms/tree ferns within the development.</p> <p>In consideration of the above, the proposal is considered to adequately address the planning concerns with regard to landscape issues.</p> <p>Comments from Council's Parks and recreation section are noted, raising concerns with location of the access stairs into the adjoining park and play equipment.</p> <p>If this access was deleted, additional soft landscape could be incorporated by extending planter over the location of the stairs.</p>

Internal Referral Body	Comments
	No objections are raised to approval subject to conditions as recommended.
NECC (Development Engineering)	<p><b>Supported (subject to conditions)</b> The proposed OSD system is satisfactory. The stormwater connection to the council pit be via a new gully pit at the kerb adjacent to the subject site as conditioned.</p> <p>No objections to approval subject to conditions as recommended.</p>
Parks, reserves, beaches, foreshore	<p><b>Supported (subject to conditions)</b> Following a meeting with the applicant's consultants Planner and Architect, Parks can support the application subject to the following conditions, which include removal of the stairs on eastern side of the site and replacing with an extension of the planter and landscape treatment.</p> <p><u>Original Comment</u> Parks reserves and Foreshores provided PLM comments regarding impacts on the adjacent park to the east of the site.</p> <p>The proposal has not addressed the comments provided.</p> <p>The access stairs to the park land into the children's playground, which is not acceptable outlined previously. (See plan extract and PLM comments below)</p> <p>The visual transition is also poor with minimal setback to the park.</p> <p>At this stage, the proposal is not able to be supported.</p>

Internal Referral Body	Comments
	 <p>PLM comments: In principal, Parks has no issue with the development establishing a direct access into the adjacent May Reserve; however, the current entry/exit point in the plans does not fit with</p>

Internal Referral Body	Comments
	<p>existing infrastructure in the reserve.</p> <p>If this access is something that the developer wants to pursue, then further discussion will be required with the Parks team, to address issues such as:</p> <ul style="list-style-type: none"> <li>• Entry/exit location on eastern side of development</li> <li>• Reserve infrastructure location <ul style="list-style-type: none"> <li>o Shade sail locations</li> <li>o Playground location</li> </ul> </li> <li>• Pedestrian/playground conflict</li> <li>• Reserve landscaping</li> </ul> <p>Developers should be ensuring they address part E7 of the DCP, requirements as follow</p> <p>Objectives</p> <ul style="list-style-type: none"> <li>• To protect and preserve bushland adjoining parks, bushland reserves and other public spaces.</li> <li>• To ensure that development responds to its adjacent surroundings to preserve and enhance the natural qualities of the environment.</li> <li>• Development on land adjoining open space is to complement the landscape character public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces.</li> </ul> <p>Requirements</p> <ol style="list-style-type: none"> <li>1. Development on land adjoining public open space is to complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and public open spaces.</li> <li>2. Public access to public open space is to be maximised.</li> <li>3. Buildings are to be located to provide an outlook to public open space, without appearing to privatise that space.</li> <li>4. Development is to provide a visual transition between open space, bushland reserves other public spaces and buildings, including avoiding abutting public open space with boundaries or fences.</li> <li>5. Development is to protect views to and from public open space.</li> <li>6. Development is to provide buffers for bushfire protection on private land, not on public land.</li> <li>7. If the adjoining parks, bushland reserves or public open space contain bushland, development is not to threaten the protection or preservation of the bushland.</li> <li>8. Development should be designed to maximise opportunities for casual surveillance of public open space.</li> <li>9. Development is to utilise landscaping or existing landscape elements to screen development.</li> </ol>
Road Reserve	<p><b>Supported</b></p> <p>No impact on existing road assets. Applicant to give consideration to upgrading paving on Warringah Road/May Road Frontage as this infrastructure is over now 20+ years old. Planning and Recreation to advise regarding property access off May Road Public Reserve.</p>
Strategic and Place Planning	<p><b>Supported</b></p> <p>The subject site is within the draft Brookvale Structure Plan 1.5km area of influence. No objections are raised to the proposed development.</p>
Strategic and Place	<p><b>Supported</b></p> <p>The proposal has addressed the following issues identified in the Pre-Lodgement Meeting</p>

Internal Referral Body	Comments
Planning (Urban Design)	<p>1. The building height of 8.5m has been exceeded with the third storey proposal. The CI variation can be supported if public benefits in the form of a public central courtyard is provided and the exceedance in height sensitively treated. The top storey has been set backed 3m. It should be cladded with a roofing material preferably in a darker colour to contrast against the bottom two floors so that it gives the impression of a roof form. <b>Response:</b> The building height breach has been set-backed from the edge of the building 3m and treated with a darker colour scheme to give the impression of a two-storey and a form when viewed from the surrounding streets.</p> <p>2. Solar access to 50% of the courtyard should be achieved. Consider creating a solar courtyard by deleting the top storey residential units to the north and replacing with a roof garden communal open space. Apartment Design Guide (page 55) recommends communal open space has a minimum area equal to 25% of the site area. <b>Response:</b> The building gap on the top floor facing north has been increased to 9m to allow more solar access into the internal courtyard.</p> <p>3. The central courtyard should be designed as a conducive public space with sensitive treatment of the balustrading details and softening the potentially harsh common corridor surrounds with green walls and soft landscaping. <b>Response:</b> Soft landscaping, glass balustrades, feature wall and entry door recesses have been proposed to create an interesting space in the courtyard.</p> <p>4. The access to the park next door from the central courtyard should take into account the feedback from Council's Parks and Recreation team. The thoroughfare introduced through the middle of the park could create an undesirable safety concern. However visual surveillance in the form of a raised deck café sitting area overlooking the park could be a improvement to the park safety. <b>Response:</b> Visual surveillance overlooking the park has been increased using full height glazing and a wide entry gap to the internal courtyard.</p>
Traffic Engineer	<p><b>Supported (subject to conditions)</b></p> <p>Following the meeting with the applicant on 25/11/2020, it was agreed that the proposed development can be supported subject to the provision of 2 additional retail parking spaces conversion of two parking spaces in the basement carpark to vertical mechanical stacker. Therefore, the proposal can be supported subject to conditions.</p>
Waste Officer	<p><b>Supported (subject to conditions)</b></p> <p>The proposal now complies with the Waste Management Design Guidelines.</p>

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



External Referral Body	Comments
and Maritime Services - SEPP Infrastructure (cl 100 Development on proposed classified road)	The application was referred to Transport for NSW (TfNSW) for comment in accordance with the State Environmental Planning Policy (Infrastructure) 2007. TfNSW by letter dated 26 July 2020 has raised no objection to the proposed development subject to conditions.

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

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

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

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

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

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

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

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary Environmental Review dated December 2020 and prepared by Canopy Enterprises. In its conclusion, the review states:

The desktop review herein has not identified information which would indicate a discernible concern for contamination or otherwise trigger a requirement for further environment assessment at the Site.

The surface layer of soils at the Site however have a discernible potential to be contaminated at levels of concern due to the following:

- soil material may have been imported in the past from unknown sources which have been and remains contaminated;
- unknown past (and present) use of the land by various occupiers, in particular at the rear sections of the retail outlets;
- historic construction (and past part demolition or variations to structures) which may have been fabricated from Asbestos Containing Materials (ACM) pre circa the 1980s; and
- present use of the Site by a Fish and Chip Shop and Pool Shop which may involve uses which are known to potentially cause contamination.

It is Canopy's opinion however, based on the desktop research and extensive experience in assessment of contaminated land that on the balance of probability any contamination at levels of concern in soils (if present) will be limited to the surface fill layer.

Based on the above and subject to the excavated soils to accommodate the carpark basement are disposed of off-site and there being no material amendments to the development proposal it is Canopy's opinion that the Site will be made suitable for the proposed land use in accordance with SEPP 55 Clause 7 (1) (a-c) without further assessment.

Council's Environmental Health Department have reviewed the Phase 1 Investigation and advise:

*The report states that soil will be removed from the site and also takes into account the potential presence of asbestos containing materials.*

*As a result of this report, and given the known history of uses at the site, Environmental Health considers the proposal acceptable.*

In this regard, Council can be satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out subject to the recommendations included in the investigation and the conditions imposed by Council's Environmental Health Department within the draft consent.

#### **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 construction of a shop top housing development with basement car parking for the provision of sixteen (16) apartments and six (6) 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 of lodgment of the development application.

## 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 proposed development is on land which currently comprises of neighbourhood shops in accordance with a B1 Zone, adjoins a May Reserve Playground to the east and is surrounded by residential development of varying scale and character located on land zoned R2 zone. As such, the context of the development differs from each side of the site. With the provision of progressive setbacks that help to break up the building massing, through-site pedestrian connections and the use of a variety of materials, the development will contribute to the character of the streetscape and neighbourhood without physically or visually dominating the surrounding area.

The portions of the development facing Warringah Road, May Road and May Reserve Playground incorporates active retail frontages. Through-site links also provide visual relief to the building along the public frontages of the site, which is particularly apparent along Poplar Lane. The topmost level has also been setback to minimise excessive bulk and scale in the streetscape and ensure compatibility with development in the adjacent R2 Low Density Residential zone. The design of the development presents an appropriate relationship in terms of scale, height and architectural design between the subject development and surrounding context and character of the neighbourhood.

Accordingly, the proposed development is found to be consistent 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 development includes a scale, bulk and height which is appropriate to the existing and desired character of the street and surrounding buildings.

The proposed development generally presents as a three storey shop-top housing development, consistent with the size/scale of other shop-top housing developments within Narraweena. Whilst the topmost level of the proposal exceeds the maximum building height plane, the perceived scale is not a dominant feature when viewed from the public domain due to an increased setbacks.

The architectural design of the development also includes good levels of articulation and building proportions that ensure amenity impacts to neighbouring properties are minimised and are reasonable. The use of a range of external finishes and incorporating landscape elements ensure the development is complementary to the zone.

The proposed built form defines the public domain and contribute to the character of the streetscape which predominantly features a development that responds to the business zoning.

Accordingly, the proposed development is found to be consistent with this principle.

**Principle 3: Density**

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

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

Comment:

There are no provisions within WLEP 2011 or WDCP 2011 that relate to the density anticipated on the subject site, and as such, the appropriateness of the density proposed is appraised based on the amenity of the development, the size/scale of the development and the impact of the development upon the surrounding environment.

The use of shop-top housing is permissible within the B1 Neighbourhood Centre zone and that the addition of 16 units will be an appropriate contextual fit for the site, without unreasonable detriment to the surrounding locality. Furthermore, the development being a shop-top housing complex provides amenities for both residents of the development and surrounding residents that will contribute to creating an active and complementary development.

Accordingly, the proposed development is found to be consistent with 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 development is supported by a BASIX Certificate, which include recommendations to ensure that the building performs in accordance with industry standards. Furthermore, the majority of apartments achieve natural cross ventilation with adequate levels of natural daylight, such that the amenity and liveability of apartments is high, without excessive reliance upon air-conditioning and artificial lighting.

Accordingly, the proposed development is found to be consistent with 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.

Accordingly, the proposed development is found to be consistent with this principle.

Comment:

The application was supported by detailed landscape plans that demonstrate an appropriate landscape solution for the site, including the provision of trees and planters integrated throughout the development. The landscaping has further been positioned in a manner to increase privacy for the subject and surrounding sites.

Accordingly, the proposed development is found to consistent with this principle.

**Principle 6: Amenity**

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment:

As detailed in the assessment against the ADG and WDCP 2011, the proposed development provides a reasonable level of amenity for future occupants of the development, without unreasonably compromising the amenity of adjoining residences.

The development is considered to achieve the required levels of sunlight access and natural ventilation required by the ADG and provides for generally efficient layouts which allow for ease of access for all age groups and degrees of mobility through the provision of the lift from the basement car park.



Accordingly, the proposed development is found to be consistent with 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 development provides for acceptable levels of safety and security in accordance with the principles of Crime Prevention Through Environmental Design (CPTED).

The elevated and exposed nature of the development enables an improved degree of passive surveillance above what is already achievable from the site and which appropriately fits the intended higher density residential purpose.

The territorial spaces within the site are appropriately defined to identify communal and private areas and includes clearly defined secure and visible access points that could be easily maintained.

Accordingly, the proposed development is found to be consistent with 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:

The development proposes 1, 2 and 3 bedroom apartments which are not common in the neighbourhood, as predominantly low density detached housing is found. The proposed development provides for housing that will be more affordable than what is existing and has spaces which are able to accommodate diverse groups such as singles, couples, small families and retirees.

The development is considered to be beneficial to the locality by providing housing diversity and social interaction with a mix of people, further enhanced by the provision of communal open space proposed.

Accordingly, the proposed development is found to be consistent with this principle.

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

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

The development has been designed to provide a transition between the surrounding residential zone by virtue of increased setbacks where the site abuts another site of a different zoning. Through the provision of progressive setbacks, articulation and the use of a variety of materials, the development is considered to contribute towards the existing or future local context of the character of the streetscape and neighbourhood.

Accordingly, the proposed development is found to be consistent with 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?	<b>Consistent</b> A Site Analysis Plan (in conjunction with the Statement of Environmental Effects) has been submitted with the application.
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<b>Consistent</b> As discussed elsewhere in this report under the Design Quality Principles and within the relevant clauses under the WDCP 2011, the development responds to the streetscape and site and optimises solar access within the development and to neighbouring properties.
<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 transitional space between the public ground floor and the private first and second floor is accessible via stairways and a lift which enhance the safety and security of the building. The open central courtyard as well as

		<p>unit private open spaces with views towards the playground allow passive surveillance of the public realm to occur.</p> <p>The amenity of the public domain is significantly enhanced compared to what is existing and is satisfactory for the area.</p>						
<b>Communal and Public Open Space</b>	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> <li>1. Communal open space has a minimum area equal to 25% of the site</li> <li>2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</li> </ol>	<p><b>Consistent</b></p> <p>The communal open space comprises of the central courtyard and the associated landscape and seating areas.</p> <p>The communal open space is calculated to be 439m<sup>2</sup> equivalent to 31% of the total site area. The communal open space is for public use, and is also accessible from the retail premises. It is considered that the areas of communal open space are sufficient on this site and will significantly enhance the public domain, in particular with the through-site linkages to the May Road, Poplar Lane frontages and May Reserve Playground.</p> <p>Further, it is calculated that at least 50% of the communal courtyard (the principal usable space) will receive a minimum of 2 hours of sunlight between 9.00 am and 3.00 pm on 21 June (Winter Solstice).</p>						
<b>Deep Soil Zones</b>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td>7%</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	<p><b>Not Consistent - (satisfactory on merit)</b></p> <p>The proposed development site is surveyed to be 1417m<sup>2</sup> thereby requiring 7% of the site area to be deep soil landscaping with</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)						
Less than 650m <sup>2</sup>	-	7%						

	<table><tr><td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr><tr><td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr><tr><td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr></table>	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	<p>minimum dimensions of 3m.</p> <p>In accordance with the calculations of the criteria, the site has 0% deep soil landscape area.</p> <p>Despite varying this requirement, it is found that the development has introduced adequate areas of landscaping (through raised planters and the like) on the Ground Floor and the upper levels of the building to afford residents opportunities to harness the benefits of landscaping. Therefore, the landscape treatment proposed is considered to be appropriate and acceptable in this particular circumstance.</p>						
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m													
Greater than 1,500m <sup>2</sup>	6m													
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m													
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><i><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</i></p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i></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>Consistent</b></p> <p>The proposed separation between the subject development and adjacent property boundaries of Poplar Lane is 5.4m. This northern boundary is however seen to be secondary street frontage, rather than a side or rear boundary.</p> <p>Notwithstanding this, it is recognised that habitable room windows located between 5.7-5.8m from habitable room windows and the swimming pool in the rear yard at No. 43 Oceana Street. In order to protect privacy, the northern elevation of the proposed First Floor incorporates recessed balconies and narrow windows.</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	Do the building entries and pedestrian access	<b>Consistent</b>												

<b>and entries</b>	<p>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>The development comprises of three pedestrian entrances into the complex through to the large communal courtyard. The entry is publically accessible and easily identifiable.</p>
<b>Vehicle Access</b>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p><b>Consistent</b> The proposed vehicular access has been assessed by Council's Traffic Engineer and Roads &amp; Assets team who have raised no objections the proposal, subject to conditions.</p> <p>As such, the development satisfies the criteria.</p>
<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> The subject allotment is not within 80m of a railway station or light rail stop in the Sydney Metropolitan Area and is not zoned nor within 400mm of land zoned B3 Commercial Core or B4 Mixed Use.</p> <p>A total of 23 bicycle parking spaces provided on site, 5 of which are publicly accessible within the central courtyard is compliant with requirements of the WDCP.</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</li> </ul>	<p><b>Consistent</b> A total of 13 out of 16 units (81.2%) achieve a compliant provision of solar and daylight access in</p>



	<p>at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</p>	accordance with the guidelines.								
	<ul style="list-style-type: none"><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>Not Consistent - (satisfactory on merit)</b></p> <p>Whilst only 3 south facing units receive no direct sunlight in mid-winter, this amounts of 19% of the total number of units.</p> <p>Despite varying this requirement, each of these south facing units are seen to provide an adequate level of natural light and benefit from expansive views. As discussed earlier, the central courtyard with its seating areas is also readily accessible from these units. Therefore, the proposal is considered to be appropriate and acceptable in this particular circumstance.</p>								
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"><li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</li></ul>	<p><b>Consistent</b></p> <p>75% (i.e. 12 units) will achieve natural cross ventilation</p> <p>The development achieves a satisfactory number of apartments with cross ventilation.</p>								
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its</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	<p><b>Consistent</b></p> <p>The development proposes the following floor to ceiling heights:</p> <ul style="list-style-type: none"><li>Basement - 2700-3300mm;</li><li>Ground floor retail - 3200mm;</li><li>First Floor residential -</li></ul>
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									

	<table><tr><td></td><td>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>		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	<ul style="list-style-type: none"><li>2900mm; and</li><li>Second Floor residential - 2900mm.</li></ul>				
	area does not exceed 50% of the apartment area											
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope											
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use											
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>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> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p> <p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</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></p> <p>All 16 apartments within the complex meet the minimum internal area criteria.</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>											

	<ul style="list-style-type: none"><li>• 3.6m for studio and 1 bedroom apartments</li><li>• 4m for 2 and 3 bedroom apartments</li></ul> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>																
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table> <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>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	<p><b>Consistent</b></p> <p>The proposed apartments are all compliant with depths and areas specified within the criteria.</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m <sup>2</sup>	-															
1 bedroom apartments	8m <sup>2</sup>	2m															
2 bedroom apartments	10m <sup>2</sup>	2m															
3+ bedroom apartments	12m <sup>2</sup>	2.4m															
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p>	<p><b>Consistent</b></p> <p>The development proposed 8 apartments on the first floor with another 8 apartments on the second floor. Both floors are connected via common circulation spaces which include 2 separate stairways and 1 lift.</p>															
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td></tr><tr><td>1 bedroom apartments</td><td>6m<sup>2</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>2</sup></td></tr><tr><td>3+ bedroom apartments</td><td>10m<sup>2</sup></td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m <sup>2</sup>	1 bedroom apartments	6m <sup>2</sup>	2 bedroom apartments	8m <sup>2</sup>	3+ bedroom apartments	10m <sup>2</sup>	<p><b>Consistent</b></p> <p>Each apartment within the development has scope to occupy a single storage 'cage' within the basement car parking level adjacent to the car parking spaces. These spaces are considered satisfactory to store bulky goods.</p> <p>Further this, the apartments have an</p>					
Dwelling Type	Storage size volume																
Studio apartments	4m <sup>2</sup>																
1 bedroom apartments	6m <sup>2</sup>																
2 bedroom apartments	8m <sup>2</sup>																
3+ bedroom apartments	10m <sup>2</sup>																

		<p>appropriate level of storage internally by virtue of wardrobes and kitchen storage.</p> <p>Each apartment within the development has sufficient storage as per the recommendations of the ADG.</p>
<b>Acoustic Privacy</b>	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	<p><b>Consistent</b></p> <p>The development has been designed in such a manner that the plant services and driveway access will not give rise to unreasonable acoustic intrusion to occupants of the subject development or adjoining sites.</p>
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	<p><b>Consistent</b></p> <p>The development has been designed in a manner to minimise impacts of external noise and to mitigate noise transmission. The units are broken up by circulation corridors, and the central courtyard that acts as an open atrium resulting in minimal shared walls between the units. The proposed balconies are not of a size that is able to accommodate a large number of persons. Further, the existing buffer zone of Warringah Road will significantly contribute to reducing impact of noise transmission from building to those properties southwards.</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	<p><b>Consistent</b></p> <p>The development proposes a mix of 1, 2 and 3</p>

	the building.	<p>bedroom apartments. Given that the surrounding area is largely R2 Low-Density Residential, this subject site is one of the few allotments within the vicinity that has the capacity and permissibility to provide apartment living. The development will provide housing more affordable than that of the surroundings and as such, is considered to support the needs of the community now and in the future where the population will continue to increase.</p>
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<p><b>Consistent</b></p> <p>The building provides two facades to the street and one façade directly adjoining to a neighbouring property. The visual massing and bulk of the development is considered satisfactory by virtue of the significant articulation and stepping of which the design presents. Most notably is the central courtyard within the development that acts as the focal point of the design. The design consists of well composed horizontal and vertical elements that contribute to aiding the proportion of the building through visual manipulation - i.e. deep setbacks of balconies and portions of the building to provide a 'break' from the massing. The development is respectful of the surrounding residential character through the massing and as such, it is considered that the façade treatment is appropriate to enhance the streetscape</p>



		and character of the area.																																			
Roof Design	<p>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.</p> <p>Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.</p>	<p><b>Consistent</b></p> <p>The proposed roof design is satisfactory and cannot be maximised for residential accommodation and open space without significant amendment.</p> <p>The roof design is not dissimilar to the roof of other surrounding developments.</p>																																			
Landscape Design	<p>Was a landscape plan submitted and does it respond well to the existing site conditions and context.</p>	<p><b>Consistent</b></p> <p>The documentation accompanying the development application includes comprehensive landscape plans that respond well to the site and its context.</p>																																			
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		<p><b>Consistent</b></p> <p>The predominant area of planting on structures is within the Central Courtyard, Ground Floor and planters around balcony areas on the Second Floor.</p> <p>The landscaping plans and proposal have been reviewed by Council's Landscape Officer who has raised no objection to the Landscape aspect of the development, and as such, it is considered that the development has sufficient scope to allow for the establishment of landscaping.</p>
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent																																	
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Ground Cover			300-450mm																																		
Turf			200mm																																		

<b>Adaptable Reuse</b>	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Not applicable.
<b>Mixed Use</b>	<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>	<p><b>Consistent</b></p> <p>The subject site is easily accessible by public transport (bus) within a 200m radius of the site.</p> <p>The proposed development will continue to contribute to the public domain by virtue of commercial opportunities, the development also proposes the inclusion of 16 dwellings which will provide essential housing within the locality.</p> <p>The non-residential uses are located on the ground floor and can be accessed via the three public frontages which emphasises the use of the space and encourages street activation through to the central courtyard.</p> <p>The non-residential uses are in an area considered to be appropriate by virtue of zoning, desirability and that shops already exist in this location.</p>
<b>Awnings and Signage</b>	<p>Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.</p> <p>Signage must respond to the existing streetscape character and context.</p>	<p><b>Consistent</b></p> <p>The proposed awning design is considered to be acceptable for the context of the site and will contribute to providing cover to pedestrians along the May Road frontage.</p> <p>The application indicates building identification signage 'may's place' to the south-eastern corner of this awning, which is considered to acceptable</p>

		with responding to the existing streetscape character and context.
<b>Performance</b>		
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	<b>Consistent</b> BASIX requirements have been addressed in the application documentation and in this report.
<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 the on-site stormwater detention system has been assessed as compliant by Council's Development Engineer and further, compliance with the supplied BASIX Certificate has been conditioned.
<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> The application includes a Waste Management Plan which demonstrates safe and convenient collection and storage of waste and recycling.
<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.

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

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

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

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

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

Comment:

The development applications is not being refused pursuant to any of the standards listed within Clause 30 of SEPP 65.

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

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

(3) To remove doubt:

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

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

Comment:

Council has reviewed the proposed development in depth in conjunction with the ADG and is satisfied that the development satisfactorily complies with the design quality principles and meets the objectives and criteria/guidelines specified within the ADG.

### **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.

Roads and Maritime Service (Transport for NSW)

**Clause 102 - Impact of road noise or vibration on non-road development** states:

*(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.*

*(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—*

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

Comment:

The applicant has not submitted an acoustic report stating that the carpark in front of the site acts as a road between the subject site and Warringah Road, therefore the requirement of this Clause is not applicable to the proposed development. Council disagrees with the applicant's position as the site is located adjacent to Warringah Road which has volume in order of 47,000 vehicles per day, therefore this Clause is considered to apply to the proposed development.

Council requested confirmation from the applicant that the development is able to comply with the requirement of this Clause. In response, the applicant's architect (by letter dated 30 November 2020) has stated that the development is capable of complying with the acoustic levels as stipulated by this Clause.

Accordingly, Council is satisfied that the requirements of this Clause can be addressed by way of a deferred commencement condition.

Clause 104 and Schedule 3 of the SEPP requires that the following development(s) are referred to the RMS as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Shops	2,000m <sup>2</sup>	500m <sup>2</sup>

**Note:** Under Clause 104(2) of the SEPP, 'relevant size of capacity' is defined as meaning:

*"(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*

*(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3."*



Comment:

The application was referred to Transport for NSW (TfNSW) for comment as Traffic Generating Development under Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007, as the proposed development is located within 90m of a Classified Road and proposes retail and commercial tenancies of 607.6m<sup>2</sup>

TfNSW has provided their response which raises no objection to the proposed development, subject to conditions.

**Warringah Local Environmental Plan 2011**

Is the development permissible?	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	Building - 10.23m Lift overrun -11.93m	20.35% 40.35%	No

Compliance Assessment

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

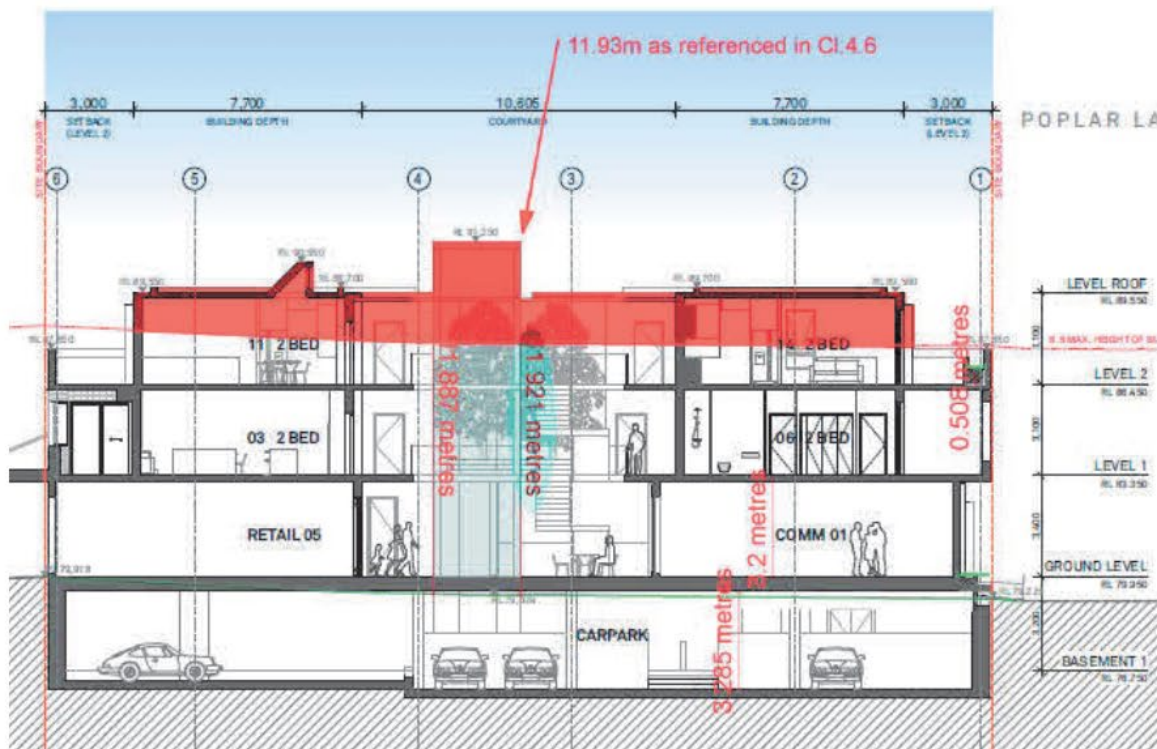
Detailed Assessment

**4.6 Exceptions to development standards**

Description of Non-compliance:

Development Standard:	Height of Buildings
Requirement:	8.5m
Proposed:	Building - 10.23m

	Lift overrun -11.93m
Percentage variation to requirement:	Building - 20.35%
	Lift overrun - 40.35%



**Figure 3 - Areas of Building Height Non-compliance are shown in Red (Source: Benson McCormack Architecture)**

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

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

Comment:

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

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

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

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

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

*(a) the consent authority is satisfied that:*

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

**1.3 Objects of Act(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.*

**Applicants Written Justification:**

The applicants written request argues, in part:

- The height variation to the top of the lift overrun is 11.93m and to the roof varies between 9.34m and 10.5m. The lift overrun is located in the central courtyard – barely discernible from ground level around the outside of the building. The upper level is well setback from the building alignment below making the upper level and variation not readily apparent or offensive on the streetscape or when viewed from surrounding road network or public places or surrounding residential properties.
- The consequence of strict compliance in the circumstances would necessitate the loss of an entire residential floor which would make the development economically unviable (refer to feasibility analysis) and be contrary to object (c) of the Act at s1.3 which seeks to promote the orderly and economic development of land. In this regard, the success of the development which is dependent on the additional level (i.e. the variation), is important in terms of the positive social and economic impacts that it will have on the viability and sustainability of the local centre which is tired and outdated and requires stimulation provided by a positive urban design based outcome, including providing necessary active retail uses with pleasant amenity and additional residential population in the form of various housing mix contributing to the village atmosphere, and also providing additional security and surveillance of the open carpark and also integrating with the public open space area to the east by providing both a visual and physical link and access.



- A fundamental element of the design to achieve this by creating a large open courtyard and full height void by deletion of floor space at both ground and first floor levels, which is transferred to the upper level constituting the need for a height variation.
- The development due to its financial feasibility (only attributable to the additional storey) allows for the creation of an attractive contemporary development to replace the existing outdated buildings, and provides increased passive surveillance and the opportunity for small businesses in the area to occupy new, fresh and modern premises to the benefit of the community.
- Whilst there is argument that the additional floor space could be accommodated at ground floor, it would be strictly limited to retail or business premises which would generate additional traffic impacts and be counter to the village atmosphere advocated by the creation of smaller scale retail spaces. Further it would deprive the opportunity of the integral landscaped internal courtyard designed in collaboration with Council, which is a pleasant space active and passive space with a high quality amenity as a landscaped communal open space for the use of both residents and also patrons, facilitating outdoor dining and area for social interaction. The through site link, in particular to the park allows for parents to have a coffee whilst their children play in the park or for residents to have direct access to and facilitate the use of the park and improve its supervision and safety.
- In addition the void (the volume of which is displaced to the upper level) through the building, allows for improved solar access and cross ventilation to the building interior and courtyard improving the environmental performance and amenity of the building.
- In the circumstances, the environmental benefits outweigh any technical necessity or benefit of the deletion of an entire residential floor.
- Further, it is noted that the transferred floor space is also compensation for the lost floor space at ground floor with the proponent providing a setback to the rear lane to widen the existing deficient footpath for the betterment of the local community without any need or benefit for the development itself.
- The existing buildings are extremely tired and at the end of their useful life requiring substantial capital to provide lettable area of necessary minimum standards to comply with the BCA and other occupational and health standards. The rebuilding based on land value and necessity to provide a basement carpark to accommodate any additional floor space can only be viable and possible with the addition of the third level. Absent this, the development is unviable as is any upgrade of the centre which will fall into disrepair and decay which would be contrary to the public interest. An appraisal from Laing + Simmons Dee Why is attached which confirms that the proposal is not viable without the upper level, a relevant consideration under s1.3 of the Act.
- The upper level variation which has positive social and economic impacts can be



accommodated without being readily discernible as being a non compliant element and is accommodated within a building that sits comfortably within its physical and suburban context providing a building of high quality and bench mark for future development.

- In summary, the contravention of the HOB development standard is considered to have positive social and economic outcomes for the Site and the locality and positive amenity outcomes for existing residences and businesses in the immediate area.

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

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

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

#### **Clause 4.6 (4)(a)(ii) (Public Interest) Assessment**

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

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

#### Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B1 Local Centre zone. An assessment against these objectives is provided below.

#### **Objectives of Development Standard**

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

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

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

#### Comment:

Whilst the subject development is a 3 storey building, the recessive setbacks and articulation of the massing of facades results in the development being of a scale, that is not considered unreasonable despite the non-compliance with the building height control. It is noted that there is no height in storey's control applying to the site.

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

Comment:

The visual impact of the development is reduced by virtue of setbacks (given the unique site location), landscaping and architectural treatment. There are no significant water views enjoyed from surrounding sites. Privacy and view loss have been addressed elsewhere in this report. In summary, the proposed development has been found to be consistent with the applicable planning controls in relation to amenity of the adjoining properties.

Shadow diagrams show that the areas of non-compliance will not impact on the solar access of adjoining properties.

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

Comment:

There would be no impact on the scenic quality of the area, including unreasonable obstruction of views from surrounding residential developments as a result of the proposal.

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

Comment:

The height variation will be visible from a number of vantage point, particularly from Warringah Road. Whilst visible, it is considered that the proposed development is a significant enhancement to what is existing on site and the visual impact is minimised by variations in the height and setbacks of the development and is further softened by the provision of landscaping. It is considered that the development will have no unreasonable or detrimental impacts on the surrounding areas.

The proposal is therefore consistent with the objectives of Clause 4.3 of the LEP.

**Zone Objectives**

In assessing the developments non-compliance, consideration must be given to its consistency with the underlying objectives of the B1 Neighbourhood Centre zone.

The underlying objectives of the B1 Neighbourhood Centre zone are:

- ***To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.***

Comment:

The development includes commercial uses (retail and commercial) which, because of the centralised and accessible location, will serve the needs of people who live in, work in and visit the local area.

It is considered that the development, satisfies this objective.

- ***To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.***

Comment:

The development provides sole vehicle access/egress onto May Road which will ensure the maintenance of a safe pedestrian thoroughfare along the remaining street frontages.

With regards to pedestrian comfort, the development provides an appropriate level of articulation and activation to the street in the form the shop fronts at ground level and recessed balconies and architectural design elements to the upper levels.

It is considered that the development, satisfies this objective.

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

Comment:

The subject site abuts the RE1- Public Recreation to the east of the site.

The development has been generally designed to respect this context by providing appropriate setbacks to the adjoining property to the east .Furthermore, careful consideration has been given to the interface between the site and the neighbouring low-density land opposite Poplar Lane by the inclusion of appropriate setbacks and Planter boxes on the upper level.

Conclusion:

For the reasons detailed above, the proposal is consistent with the objectives of the B1 Neighbourhood Centre zone.

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

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

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

**6.2 Earthworks**

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) 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, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

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*

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 has been included in the recommendation of this report 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 have been included in the recommendation of this report 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 has been included in the recommendation of this report 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.

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

### Warringah Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	Variation	Complies
B5 Side Boundary Setbacks (West)	Merit Assessment	Ground Floor: 0m First Floor: 0m Second Floor: 0m	- - -	Yes Yes Yes
B5 Side Boundary Setbacks (East)	Merit Assessment	Ground Floor: 0.5m First Floor: 0m Second Floor: 0m	- - -	Yes Yes Yes
B7 Front Boundary Setbacks (May Road)	Merit Assessment	Ground Floor: 0m First Floor: 0m Second Floor: 0m	- - -	Yes Yes Yes
B7 Secondary Front Setbacks (Poplar)	Merit	Ground Floor:	-	Yes

Lane)	Assessment	0.6m First Floor: 0m Second Floor: 0m	- -	Yes Yes
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#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

#### Detailed Assessment



### C3 Parking Facilities

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Residential	1 space per 1 bedroom dwelling 1.2 spaces per 2 bedroom dwelling 1.5 spaces per 3 bedroom dwelling	$(1 \times 4) + (1.2 \times 10) + (1.5 \times 2) = 19$ spaces	21	+2
Residential (visitor)	1 visitor space per 5 units	$(16 / 5) = 3.2$ (4) spaces	4	-
Shop - Retail	6.1 spaces per 100m <sup>2</sup> GLFA	425.5m <sup>2</sup> / 16.4m <sup>2</sup> = 25.9 (26) spaces	9	-17
commercial premises	1 space per 40m <sup>2</sup>	182.1m <sup>2</sup> / 40m <sup>2</sup> = 4.6 (5) spaces	0	-5
<b>Total</b>		54	34	<b>-20</b>

The development provides nine (9) off-street parking spaces dedicated to the retail and commercial components of the development. The proposed development, generates a requirement of 31 spaces for the retail and commercial components, therefore resulting in a parking shortfall of 22 spaces.

The proposed shortfall of commercial and retail carparking is considered to be acceptable in this circumstance for the following reasons:

- The existing development on the site comprises 7 commercial tenancies and provides no on-street car parking spaces.
- The existing development results in a public parking demand of 37 spaces. The proposed development is expected to result in a public parking demand of 22 spaces. The proposed development therefore results in a nett reduction in on-street parking demand of 15 spaces.
- There are 27 spaces available within the public parking area immediately in front of the neighbourhood centre, which will continue to serve the subject site.
- The site is serviced by number bus services along Warringah Road.
- Council's Traffic Engineer has reviewed the proposed development and has raised no objection to the proposed development subject to conditions.

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

### D3 Noise

### Merit consideration

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

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

#### Comment:

The acoustic impacts generated from the proposed retail tenancies is considered to be lesser than what is existing by virtue of a reduction of tenancies, non-noise generating uses (offices) and the architectural design of the building which will limit the transmission of acoustic impacts on properties to the north-east of the site. The architectural acoustic treatment of the building provides landscaping to soften impacts and is designed in a formation to restrict direct contact with surrounding residential properties.

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

#### Comment:

As discussed above, the architectural design of the development will significantly contribute to mitigating the reverberation of noise and as such, it is considered that there will be no unreasonable or detrimental impacts upon the surrounding area.

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

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

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is inconsistent 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 \$79,237 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$7,923,678.

### **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 represents a significant redevelopment and urban renewal of a large part of the May Road neighbourhood shopping centre. The proposal will result in a significant improvement in the character of the centre, it will enhance the streetscape and locality, improve accessibility, introduce residential use and activity into the centre, improve the interface and relationship with the adjoining public reserve, increase the amount of off-street parking and provide some impetus for the redevelopment of the remainder of the centre.

Conversely, the proposal will increased traffic on adjoining streets and in the public carpark in front of the centre, involve temporary disruption to the functioning of the centre, result in a loss of amenity associated with a lengthy construction period and will introduce additional noise and activity in the rear laneway. However, all of these impacts can be managed or mitigated through good plans to deal with demolition, excavation and construction, as well as during the operations of the completed development.

The development has been assessed in accordance with the relevant planning controls applying to the site, including SEPP 65, SEPP 55, WLEP 2011 and WDCP 2011. Most significantly, the application is seeking a variation to the building height development standard of 8.5m under Clause 4.6 of the WLEP 2011. In this regard, the proposal is considered to be a suitable and appropriate development having regard to its height and scale in relation to surrounding development and its consistency with the objectives and intent of the height standard under Clause 4.3 of the WLEP 2011.

Strict compliance with height standard in this case, is considered to be unreasonable and unnecessary having regard to the following:

- The proposed building height is compatible and consistent with new shop top housing development in the B1 zones in the locality and the proposed built form and future streetscape envisaged for the site under the planning controls.
- The proposed variation is relatively minor in nature and allows for the redevelopment of the site in a manner that is respectful of the scale and context of surrounding development and of that envisaged by the WDCP.
- The non-compliance with the height standard does not result in any loss of views, overshadowing or privacy impacts on any surrounding or adjoining development or from the public domain.
- The 3<sup>rd</sup> storey element, whilst partly non-compliant with the height standard, is recessive and well setback from the edges of the lower two storeys and does not result in excessive building bulk and scale. The internal courtyard design, where floorspace has purposefully not been filled-in, affords a high level of internal amenity and functionality for the users and occupants of the commercial and residential components of the building.
- The proposal represents good design and good planning outcomes.

The proposed development has been assessed as being consistent with the Design Quality Principles of State Environmental Planning Policy No. 65 and the Apartment Design Guide. The development has also been found to be consistent with the aims and objectives and requirements for the B1 Neighbourhood Centre zone under the provisions of WLEP 2011 and WDCP 2011.

The public exhibition of the application resulted in no submissions being received, which is indicative of the overall merits and well resolved design of the proposal.

Special conditions are recommended in relation to contamination, acoustic treatments, landscaping and construction and traffic management.

Therefore, it is considered that the proposal has adequately addressed and satisfied the relevant planning controls and objectives applying to the zone and other relevant legislation and is a suitable and appropriate development for the site and the locality.

Accordingly, 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

### DEFERRED COMMENCEMENT APPROVAL

A. Council is satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Section 95 of the EP&A Regulation 2000 to DA2020/0739 for Demolition works and construction of a Shop Top Housing Development with basement carparking on land at Lot 13 DP 801798,62 May Road, NARRAWEENA, Lot 14 DP 801798,60 May Road, NARRAWEENA, Lot 15 DP 801798,58 May Road, NARRAWEENA, Lot 16 DP 801798,56 - 56 May Road, NARRAWEENA, Lot 17 DP 801798,54 - 54 May Road, NARRAWEENA, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

### DEFERRED COMMENCEMENT CONDITIONS

1. **Acoustic Report**

An acoustic report is to be prepared by a qualified acoustic engineer, the report is confirm that the development that the following *L<sub>Aeq</sub> levels are not exceeded within the development:*

(a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*

(b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

Reason: Complies with Clause 102 of State of Environmental Planning Policy (Infrastructure) 2007.



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

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

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 2. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-0006, A-0009, A-0010, and A2052 - Rev 02	26/11/2020	Benson McCormack Architecture
A-0105 - Rev. 03	26/11/2020	Benson McCormack Architecture
A-0007, A-0101, A-0103, A-1301, A-0201, A-0202, and A-0203 - Rev 04	26/11/2020	Benson McCormack Architecture
A-0104, and A-2051 - Rev 05	26/11/2020	Benson McCormack Architecture
A-0102 - Rev 06	26/11/2020	Benson McCormack Architecture

Engineering Plans		
Drawing No.	Dated	Prepared By
200014-DA-C03.01, 200014-DA-C03.21, 200014-DA-C05.01, 200014-DA-C05.02, 200014-DA-C13.01, 200014-DA-C14.01, and 200014-DA-C22.01 - Rev. 2	31/03/2020	Enspire Solutions Pty. Ltd.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Access Report	12/03/2020	Accessible Building Solutions
Arborist Report	16/04/2020	Advanced Treescape Consulting
BCA Report - Ref. C002-0320	17/03/2020	Phoenix Building Approvals Pty. Ltd.
Geotechnical Report - Ref. 6093-G1	10/06/2020	AssetGeoEnviro

Section J Report	16/05/2020	Outsource Ideas Pty. Ltd.
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c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	05/03/2020	Joe Vescio

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

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

**3. Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Ausgrid	Ausgrid Referral Response	10/08/2020
TfNSW	Transport for NSW Referral Response	29/07/2020

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

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

**4. Food Businesses**

(a) Separate Development Consent from Council is required for the design, fit-out, construction and use of each tenancy as food businesses.

(b) Each development application must provide details to Council demonstrating compliance with Standard 3.2.3 of the Australia and New Zealand Food Standards Code, the Food Act 2003 and AS 4674 'Design, construction and fit out of food premises' and AS1668.2.

(c) Details must include plans for the design, construction and fit-out and of all kitchens, wet areas, garbage storage rooms, food store areas, kiosks/stalls used for sale of food and beverages, and requirements for mechanical ventilation.

Reason: To ensure that all food premises comply with the design requirements. (DACHPGOG5)

**5. Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

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

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

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

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

Reason: Legislative requirement.

## 6. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2018
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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



## FEES / CHARGES / CONTRIBUTIONS

### 7. Policy Controls

#### Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$79,236.78 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 \$7,923,678.00.

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

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

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

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

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

### 8. Security Bond

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

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

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

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

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

9. **Construction, Excavation and Associated Works Security Bond (Road works)**

The applicant is to lodge a bond with Council of \$10,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, removal of any redundant driveways road and pavement/shoulder reconstruction works as part of this consent.

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

Reason: Protection of Council's infrastructure.

10. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$25,000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

11. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

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

12. **Working on and Access to Reserves Permit**

Works undertaken by principal contractors working without Council supervision on Land owned or managed by Council require a "Working on Reserves" permit prior to commencement. Applications can be obtained from Council's website or the Parks and Recreation business unit.

Reason: public safety and the protection of Council infrastructure.

13. **Shoring of Council Property**

a) Should the proposal require shoring to support Land owned or managed by Council, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings. Council approval is required if temporary rock anchors or other construction measures are to be used within Council land.

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

Reason: to ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Land owned or managed by Council.

14. **Construction Traffic Management Plan**

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

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 6.00am-10.00am and 3.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Seven (7) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or

the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent

- o Proposed protection for Council and adjoining properties
- o The location and operation of any on site crane

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

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

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

15. **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 prior to the issue of the Construction Certificate. 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.

16. **Building Code of Australia Report**

The recommendations as detailed and recommended in the Building Code of Australia Assessment Report prepared by Phoenix Building Approvals P/L dated 17/3/2020, Report Ref No. C002-0320 are to be carried out in full to the Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

17. **Building Code of Australia Access Requirements**

The Building Code of Australia works and access measures to the building as detailed and recommended in the Access Report prepared by Accessible Building Solutions, dated 12/3/2020, Report Ref No. 220033 are to be carried out to the building. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Access for building occupant safety.

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council’s Water Management for Development Policy”, and generally in accordance with the concept drainage plans prepared by Enspire Solutions Pty Ltd, drawing number 200014-DA-C05.01, 200014-DA-C05.02, 200014-



DA-C14.01 and 200014-DA-C22.01, dated 9/04/2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. An overflow pipe shall be provided above the TWL within the tank and connected to the outlet pipe to prevent backflow.

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

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

19. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of driveway crossing, reinstatement of existing driveway crossings, stormwater connection from the site to new kerb inlet pit and connection to existing council gully pit which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. 5.5 metre wide driveway crossing in accordance with Northern Beaches Council Drawing No. A4-3330/1 N.
2. Reinstatement of all old driveway crossings to kerb and gutter and grass verge along the entire Popular Lane frontage.
3. 1.2 metre lintel and grate kerb inlet pit in front of the subject site with a Ø 375mm RRJ RCP extension to the council pit.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

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

20. **Structural Adequacy and Excavation Work**

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

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and



(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

**21. Sub-Soil Seepage**

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

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

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

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

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

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

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

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

**23. Amended Plans**

a) Plans are to be amended to delete the stairs and landing located on the eastern boundary of the site adjoining the public reserve.

b) The planter to the north of the stairs is to be extended across the area of the deleted stairs and landing.

c) Tree, shrub and groundcovers indicated on the Landscape Plan in the planter to the north are to be extended across the new planter.

d) Amended Plans are to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate.

Reason: Public safety

24. **Hazardous Building Materials Survey**

A hazardous building materials survey is to be conducted by a suitably qualified and experienced person. The survey is to include a survey of hazardous building materials including but not limited to asbestos. Following the survey a Hazardous Building Materials Register is to be prepared for the premises providing recommendations for the safe management/removal of hazardous building material.

Reason: To protect human health.

25. **Compliance with Standards**

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

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS2601.2001 - Demolition of Structures\*\*
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings\*\*
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting\*\*
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) \*\*
- (e) AS 4970 - 2009 'Protection of trees on development sites'\*\*\*
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking\*\*
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities\*\*
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities\*\*
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking\*\*
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities\*\*
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set\*\*
- (l) AS 1428.1 - 2009\* Design for access and mobility - General requirements for access - New building work\*\*
- (m) AS 1428.2 - 1992\*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities\*\*

\*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website [www.hreoc.gov.au/disability rights /buildings/good.htm](http://www.hreoc.gov.au/disability%20rights%20/buildings/good.htm). <[www.hreoc.gov.au/disability%20rights%20/buildings/good.htm](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 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)

26. **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.

27. **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.

28. **Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

29. **Provision of two additional car spaces and allocation of parking spaces**

A total of 36 parking spaces shall be provided within the basement carpark. The additional 2 parking spaces in addition to the 34 parking spaces shown in the master plans shall be provided via provision of 2 sets of vertical mechanical stackers within the basement carpark. The allocation of the parking spaces shall be as per the following:

- 14 space to retail and commercial uses.
- 19 spaces to residential units.
- 3 spaces to residential visitors.

A total of 23 bicycle spaces including eighteen (18) bicycle spaces within the car park, and five (5) publicly accessible bicycle parking spaces within the central portion of the ground floor level courtyard must be provided.

Detail plans demonstrating the above shall be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: Compliance with Warringah DCP

**30. Waste and Recycling Requirements**

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

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

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

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

**31. No Access Through Adjoining Park/Reserves**

Access to the site through an adjoining park/reserve is prohibited without the written approval of the Council.

Reason: To ensure protection of council parks/reserves.

**32. Works adjoining Council Land**

a) Prior to commencement of work, the property/reserve boundary is to be surveyed by a registered surveyor and such boundary is to be clearly marked on site.

b) A dilapidation report established at the commencement of the works shall contain a survey of pre-existing land features including photographic record of the Land under Council's care control and management adjoining the development, detailing the physical condition of items such as, but not exclusively limited to, physical assets such as crossovers, driveways, footpaths, utilities, furniture, play equipment, trees, gardens, lawn areas, bushland, and any rock outcrops.

c) This dilapidation report shall be submitted to Council and the Certifying Authority prior to commencement of works, and shall be the basis for rectification of any damage to Council's assets as listed in the Post Construction Dilapidation report submitted prior to the issue of the Occupation Certificate.

d) Any damage to these assets during the works must be replaced like for like to the satisfaction of the Certifying Authority, and shall be subject to acceptance by Council.

e) The applicant may be held liable to any damage to public infrastructures in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition. In this regard, where required, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.

f) Prior to commencement of works on site, appropriate public safety site management measures must be in place as the site adjoins a public park with playground equipment. Construction Management must address public safety and protection at all stages of the works and incorporate the following throughout demolition and construction:

g) safety and security of the site, road and footpath area including details of proposed fencing, hoarding and lighting,

ii) methods of loading and unloading machinery and building materials,

- iii) location of storage materials, excavation and waste materials,
- iv) erosion, sediment and dust control measures, and
- v) protection of the public from impacts of demolition, excavation and construction works.

h) During works, the site management measures set out in the above must remain in place and be maintained until the completion of works.

i) Construction materials must not be stored on Land owned or managed by Council. Safe pedestrian access free of trip hazards must be maintained at all times on or adjacent to any public access routes connected to Land owned or managed by Council.

Reason: Public Safety and to protect Council assets.

33. **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.

34. **Pre-Construction Dilapidation Report**

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

- o No.41, 43 and 45 Oceana Street, Narrabeena
- o 50 May Road (Public Reserve), Narrabeena
- o Road Reserve in May Road; and
- o Poplar Lane.

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

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

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

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



to the commencement of any works on site.

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

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

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

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

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

a) Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area, in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

b) Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

37. **Works on Land owned or managed by Council.**

No works are to be carried out on Land owned or managed by Council without the written approval of the Council.

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity, telecommunications etc.), and landscaping works on Land owned or managed by Council.

Reason: Protection of public assets, Public safety

38. **Tree protection**

(a) Existing trees which must be retained

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

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed

otherwise by a qualified Arborist on site.

iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.

iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause

E1 Private Property Tree Management and AS 4373 Pruning of amenity trees

v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

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

**39. 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.

**40. 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.

**41. Survey Certificate**

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

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

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

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

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

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

**42. Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

43. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

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

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

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

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of stormwater gully pits
- (d) Prior to pouring of kerb and gutter, driveway crossing
- (e) Subgrade level / basecourse level / subbase
- (f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

45. **Traffic Control During Road Works**

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

Reason: Public Safety.

46. **Kerb and Gutter Construction**

The Applicant is to construct kerb and gutter and associated works along the entire frontage of the site in Poplar Lane in accordance with Northern Beaches Council Drawing No. A4 2276/A. Prior to the pouring of concrete, the works are to be inspected by Council and an approval issued.

The approval is to be submitted to the Principal Certifying Authority.

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

**47. 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 Principal Certifying Authority.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

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

Reason: To protect human health and the environment.

**49. No Access through Land owned or managed by Council.**

- a) Site access is not approved for delivery of materials nor construction of the development through adjacent Land owned or managed by Council.
- b) The dumping or storage of building materials, spoil, vegetation, green waste, or any other material in Land owned or managed by Council is prohibited.
- c) Any damage to Council's public assets shall be made good by the applicant and/or the contractor, to the satisfaction of Council.

Note:

Council's public assets include, but is not limited to the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Reason: to protect and/or restore any damaged public asset, public safety.

**50. Protection of trees**

- a) Existing trees which must be retained
  - i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
  - ii) Trees located on adjoining land
- b) Tree protection
  - i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
  - ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
  - iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
  - iv) All tree pruning within the subject site is to be in accordance with relevant local planning controls and AS 4373 Pruning of amenity trees
  - v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

and adjacent to the site.

51. **Compliance with Recommendations within Hazardous Building Materials Register**

Recommendations within Hazardous Building Materials are to be implemented from commencement of any excavation, demolition or development works until the issue of any interim / final occupation certificate.

Reason: To protect human health.

52. **Off-site Disposal of Contaminated Soil - Chain of Custody**

'Chain of Custody' documentation shall be kept and submitted for the transport of the validated fill material from the (\*) site at (\*), to the subject premises.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and Council within seven (7) days of transport.

Reason: For protection of environment.

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

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled [INSERT] and dated [INSERT].

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

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

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

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

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

55. **Landscape completion certification**

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

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

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

56. **Post Construction Dilapidation Report of Land owned or managed by Council.**

a) Rectification works to Council's assets shall be contained in a Post Construction Dilapidation report submitted to Council prior to the issue of the Occupation Certificate.



b) The applicant may be held liable to any damage to public infrastructures in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition. In this regard, where required, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.

Reason: protection of Council's assets.

57. **Allocation of parking spaces (strata title)**

All carparking spaces are to be assigned to individual units. All residential units must be assigned a minimum of one parking space. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure parking availability for residents in accordance with section C3 of Warringah Council's Development Control Plan.

58. **Allocated Parking Spaces (retail/commercial)**

Parking allocated to this development must be clearly signposted and linemarked as being for the exclusive use of this development. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure parking availability.

59. **Stacked Parking Spaces (residential)**

Stacked parking spaces are to be assigned as the same residential unit which blocks in the parking spaces. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To minimize conflicts regarding parking areas.

60. **Footpath Construction**

The applicant shall construct 1.5m wide concentre footpath along full frontage of the site on Poplar Lane and the adjoining Council's reserve to provide pedestrian connection to the existing pathway within the Council's reserve. The applicant shall undertake any works associated with the footpath construction as required. This includes the construction of kerb and guttering and relocation of the playground fencing.

As the provision of public access way will rely on private property, a right of carriageway/right of footway will be created in Council's benefit for the ongoing preservation of pedestrian access.

Plans demonstrating the above requirements and designed in compliance with the Council's standards shall be submitted to and approved by Council prior to the issue of any Occupation Certificate.

Reason: To ensure the provision of safe and convenient pedestrian access to and from the

property

61. **Construction of a loading bay**

A dedicated loading bay shall be constructed within the Council car parking area on May Road. The loading bay is to accommodate small truck (SRV) and to be designed in compliance with AS2890 and in consultation with Council Transport team.

Plans demonstrating the above shall be submitted to Council for review and obtaining Traffic Committee approval.

The applicant shall undertake full construction of the loading bay and any associated works as required at no cost to Council.

Reason: To provide a designated loading bay to service the shops/retail.

62. **Mechanical Servicing**

The applicant is to include a Section 88E instrument on the title permitting Council to provide direction as to the repair/maintenance of any mechanical devices. In the instance where the building manager does not comply with the direction of Council, or fails to address repair/maintenance requirements in a timely manner, Council reserves the right to undertake the repairs and all fees associated will be borne by the building manager.

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

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

63. **Post-Construction Dilapidation Report**

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

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

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

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

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

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

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

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches

Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

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

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

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

**65. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf>

The form for the application can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf>

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered..

**66. Certification of Civil Works and Works as Executed Data on Council Land**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for

approval prior to the release of any security deposits.

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

67. **Screen Planting**

The species within the planter box on the northern side of the first floor level terrace must be grown and be maintained to a minimum height of 1m above the finished floor level of the terrace.

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

Reason: To protect the privacy of the adjoining properties.

68. **Compliance with Recommendations within the Hazardous Building Materials Register**

Prior to the issuing of any interim / final occupation certificate, documentation is to be submitted to the satisfaction of the Principal Certifying Authority that any recommendations within the Hazardous Building Materials Register have been implemented.

Reason: To protect human health. (DACHPFPOC6)

69. **Mechanical Ventilation certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

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

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

70. **Removal of All Temporary Structures/Materials and Construction Rubbish**

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

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

Reason: to protect reserve amenity and public safety.

71. **Required Planting**

a) Trees, shrubs and groundcovers shall be planted in accordance with Landscape Plans Dwg Nos LP01, 02, 03 & 04 Rev A dated 26.03.20 prepared by Matthew Higginson Landscape Architecture:

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

Reason: To maintain environmental amenity.

72. **Garbage and Recycling Facilities**

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

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

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

73. **Garbage and Recycling Facilities**

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

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

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

74. **Undergrounding of Telecommunications Services**

Arrangements are to be made for the provision of underground telecommunications services to the building.

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

Reason: Provision of telecommunication facilities in a manner that facilitates the future underground provision of cable services. (DACPLF06)

75. **Fire Safety Matters**

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

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

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

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

76. **No parking restriction along Poplar Lane**

No Parking restriction shall be installed on both sides of Poplar Lane along the development site's frontage subject to local Traffic Committee approval. A plan demonstrating the proposed signage within Council's Public Domain shall be prepared by a suitably qualified person and



submitted to and approved by the Local Traffic Committee prior to the issue of any Occupation Certificate.

The applicant is to install all signage and linemarking, as per any Roads Act approval. These works are to be completed prior to the issue of any Occupation Certificate.

Note: The applicant is advised that the plan will require approval by the local Traffic Committee if the proposal requires change in existing parking conditions and hence, adequate time should be allowed for this process

The applicant is to install all signage and linemarking, as per any Roads Act approval.. These works are to be completed prior to the issue of any Occupation Certificate.

Reason: To improve vehicular access in poplar Lane simultaneous

(DACTRFPOC1)

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

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

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

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

78. **Waste/Recycling Compliance Documentation**

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

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

79. **Positive Covenant for Waste Services**

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

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

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

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

plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

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

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

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

**81. No Plant on Roof**

No air conditioning units or plant is to be located on roof tops.

Reason: To ensure the amenity of the neighbouring residents

**82. Landscape maintenance**

i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

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

Reason: To maintain local environmental amenity.

**83. Hours of Operation**

The ground floor retail tenancies are subject to the following operating hours:

- o 7.00am - 7.00pm - Monday - Sunday

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.

Modification to these operating hours is to be made through a separate development application.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

**84. Commercial Waste Collection (DACPLG18)**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 8pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.(DACPLG18)

**85. Commercial Waste and Recycling Storage**

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed. (DACPLG19)

86. **Commercial Waste and Recycling Storage**

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed. (DACPLG25)





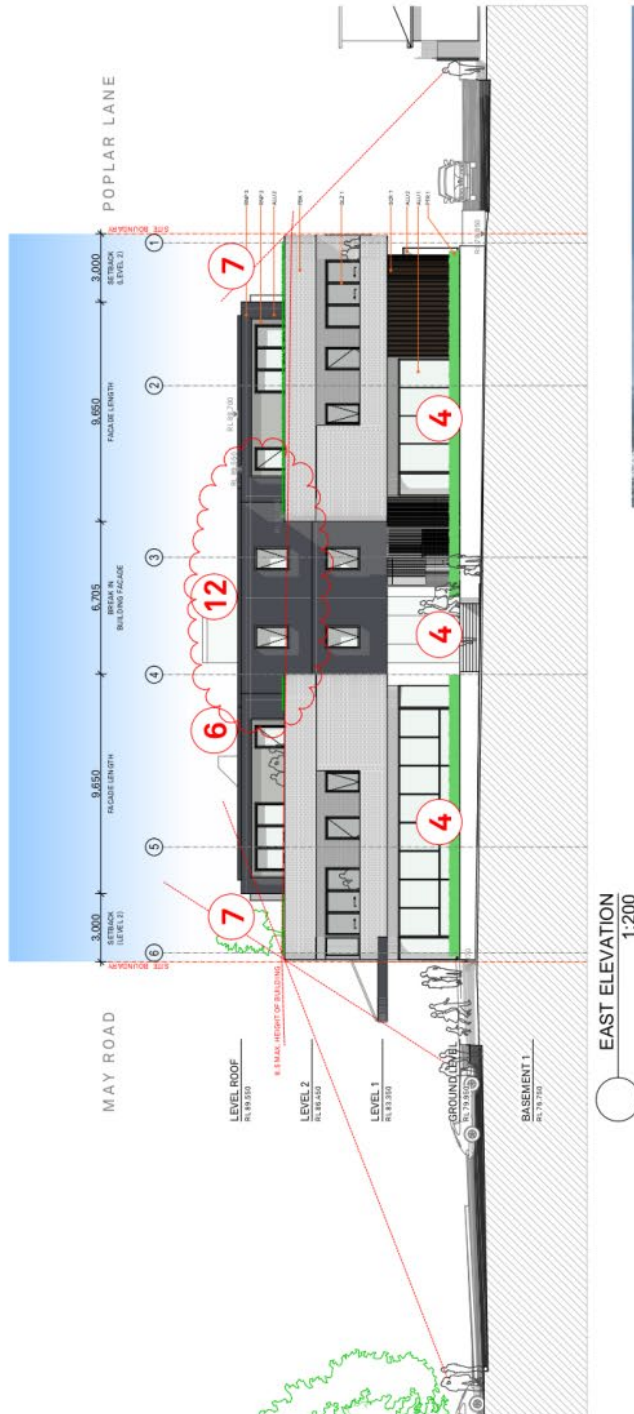
View towards South-East corner of site from May Road with existing park to right hand side of image

7. Stepping back of the top storey of the proposed building to reduce bulk and to maintain a predominantly 2 storeys character, form and appearance from the street. This change is proposed to address comments made by council in their Pre-DA advice.

STUDIO 5, 505 BALMAIN RD  
JULYFIELD NSW 2040  
TEL: 02 9518 0778  
FAX: 02 9518 0778  
enquiries@bensonmccormack.com

REVISION			LEGEND			CLIENT			PROJECT DETAILS			DRAWING TITLE			SCALE			NOTES		
Rev	Date	Description	Chk	CE	Comments	CE	Comments	CE	Comments	CE	Comments	CE	Comments	CE	Comments	CE	Comments	CE	Comments	
1	01/01/2020	Initial issue for client	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
2	01/01/2020	Client feedback incorporated	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
3	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
4	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
5	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
6	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
7	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
8	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
9	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
10	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
11	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
12	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
13	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
14	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
15	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
16	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
17	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
18	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
19	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
20	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
21	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
22	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
23	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
24	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
25	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
26	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
27	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
28	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
29	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
30	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	
31	01/01/2020	Final design approved	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	ADP	





View towards North-East corner of site from Poplar Lane with existing park to left hand side of image

**SCHEDULE OF CHANGES TO ADDRESS PRE-DA COMMENTS**

4. Interfacing development with adjoining park, creating a connective transition to and from the park and the internal courtyard. By opening up the Eastern facade to the adjacent park, it also provides solar access to the internal courtyard. This aims to create visual connectivity and a more open and accessible courtyard to the park in a form of raised deck. This change looks to address comments made by Council's Urban Planner.
6. Adjustment to Level 2 external wall colour to provide a darker colour scheme to contrast against 2 lower floors. This is implemented to give an impression of a predominantly 2 storey character, form and appearance. This change looks to address comments made by Council's Urban Planner.
7. Stepping back of the top storey of the proposed building to reduce bulk and to maintain a predominantly 2 storeys character, form and appearance from the street. This change is proposed to address comments made by council in their Pre-DA advice.
12. External wall of Units 12 and 13 realigned in part to address comments received from Council.

**BENSON  
McCORMACK  
ARCHITECTURE**

STUDIO 5, 505 BALMAIN RD  
BALMAIN NSW 1510  
ABN: 78 129 130 280  
BN: 7536  
P: +61 2 9818 0777  
F: +61 2 9818 0778  
E: enquiries@bensonsmccormack.com  
W: www.bensonsmccormack.com

REVISION	DESCRIPTION	DATE
01	Issue for Pre-DA	07/07/2019
02	Issue for Pre-DA	07/07/2019
03	Issue for Pre-DA	07/07/2019
04	Issue for Pre-DA	07/07/2019
05	Issue for Pre-DA	07/07/2019
06	Issue for Pre-DA	07/07/2019
07	Issue for Pre-DA	07/07/2019
08	Issue for Pre-DA	07/07/2019
09	Issue for Pre-DA	07/07/2019
10	Issue for Pre-DA	07/07/2019
11	Issue for Pre-DA	07/07/2019
12	Issue for Pre-DA	07/07/2019
13	Issue for Pre-DA	07/07/2019
14	Issue for Pre-DA	07/07/2019
15	Issue for Pre-DA	07/07/2019
16	Issue for Pre-DA	07/07/2019
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95	Issue for Pre-DA	07/07/2019
96	Issue for Pre-DA	07/07/2019
97	Issue for Pre-DA	07/07/2019
98	Issue for Pre-DA	07/07/2019
99	Issue for Pre-DA	07/07/2019
100	Issue for Pre-DA	07/07/2019



view from Poplar Lane with break in the Northern facade, creating connectivity and solar access into the internal courtyard

[illegible]

STUDIO 5, 505 BALMAIN RD  
JULYFIELD NSW 2040  
ABN: 76 129 130 285  
BN 7536  
P. +61 2 9818 0777  
F. +61 2 9818 0778  
enquiries@benmccormack.com



**Amended Clause 4.6 Variation Request to the  
Height of Buildings Development Standard under  
Clause 4.3 of Warringah LEP 2011**

**Proposed Shoptop Housing Development**

**52-62 May Road, Narraweena**

**Prepared by: Joe Vescio**

**Dated: 18 January, 2021**



## 1 Introduction

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### 1.1 Commission

*JVUrban Pty Ltd* has been commissioned by the Applicant to prepare a written request ('Variation Request') pursuant to cl4.6 of *Warringah Local Environmental Plan 2011* (the LEP) in respect of a proposed development for shop top housing development comprising ground floor retail/commercial and sixteen (16) residential apartments, at 52-62 May Road, Narraweena (the Site).

The Proposal is described in detail in Section 3 of the Statement of Environmental Effects (SEE) prepared by *JVUrban Pty Ltd* and generally comprises construction of shop top housing above basement car parking and services.

The Proposal exceeds the 8.5m maximum Height of Buildings (HOB) development standard under cl4.3 of the WLEP having a maximum building height of RL91.25 to the top of the lift overrun. The general roof level is RL89.55m AHD or 10.23m above existing ground level.

Notwithstanding the contravention of the development standard, the development is considered to be consistent with the objectives of the development standard and the objectives of the zone within which the development is to be carried out. There are sufficient environmental planning grounds to justify the contravention in this instance including the lack of adverse amenity impacts and positive social and economic considerations as a result of the development.

This written request has been prepared to provide a detailed assessment in accordance with the statutory requirements of cl4.6 so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the HOB development standard.

### 1.2 Material Relied Upon

This Variation Request has been prepared based on the Architectural Drawings prepared by Benson McCormack Architecture, Project No. 1853A.

This Variation Request should be read in conjunction with the detailed environmental planning assessments contained in the DA documentation submitted with the DA and documents appended thereto.



## 2 The Relevant LEP Provisions

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### 2.1 Warringah Local Environmental Plan 2011

#### 2.1.1 Clauses 2.2-2.3 – Zoning and Permissibility

Clause 2.2 and the Land Zoning Map of the LEP provide that the entire Site is zoned B1 Neighbour Centre Zone and the Land Use Table in Part 2 of the LEP specifies the objectives of this zone as follows:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

The proposed land use is defined as a shop top housing which is permissible with development consent in the B1 Zone pursuant to the WLEP 2011.

#### 2.1.2 Clause 4.3 – Height of Buildings (HOB)

Clause 4.3 of the W LEP 2011 sets out the HOB development standard as follows:

- “(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,*
  - (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
  - (c) to minimise any adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,*
  - (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.”*

The Height of Buildings Map designates a maximum 8.5m height limit for the Site (see **Figure 1**).



## 2 The Relevant LEP Provisions



Figure 1 Extract of WLEP 2011 Map (HOB\_10AA)

The WLEP Dictionary contains the following definitions:

**Height of Buildings Map** means the Warringah Local Environmental Plan 2011 Height of Buildings Map.

**building height** (or **height of building**) means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

### 2.1.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of the LEP states the objectives of the clause 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 The Relevant LEP Provisions

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In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) (see Section 4.7), Preston CJ ruled that there is no provision that requires the applicant to demonstrate compliance with these objectives for the consent authority to be satisfied that the development achieves these objectives. Furthermore, neither cl4.6(3) nor cl4.6(4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”.

Accordingly, the remaining subclauses of cl4.6 provide the operable provisions and preconditions which must be satisfied before a consent authority may grant development consent to a development that contravenes a development standard imposed by an environmental planning instrument.

Clause 4.6(2) provides that:

- (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.*

The HOB development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- (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.*

The proposed development does not comply with the HOB development standard pursuant to cl4.3 of the WLEP2011. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed in Section 5.1.

## 2 The Relevant LEP Provisions

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In addition, there are considered to be sufficient environmental planning grounds to justify contravening the development standard as detailed in Section 5.2.2.

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

- (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.*

Sections 5.2 and 5.3 of this written request address the matters required under cl4.6(4)(a) of the LEP and Section 5.4 addresses cl4.6(4)(b).

Clause 4.6(5) provides that:

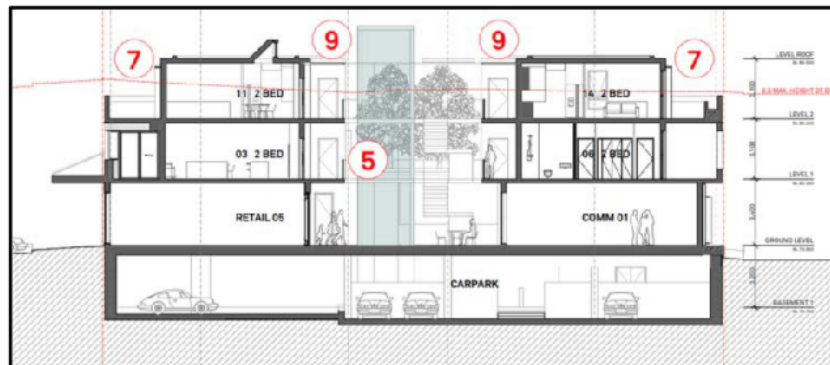
- (5) In deciding whether to grant concurrence, the Secretary must consider:*
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) the public benefit of maintaining the development standard, and*
  - (c)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

Section 5.5 of this written request addresses the matters required under cl4.6(5) of the LEP.

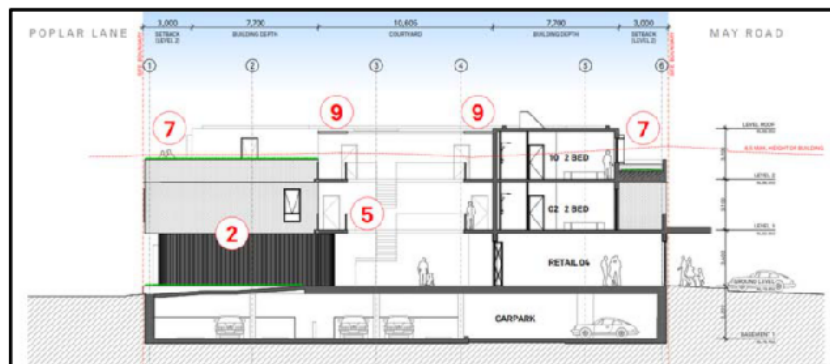
Clauses 4.6(6) and (8) are not relevant to the proposed development and cl4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

## 4 Case Law

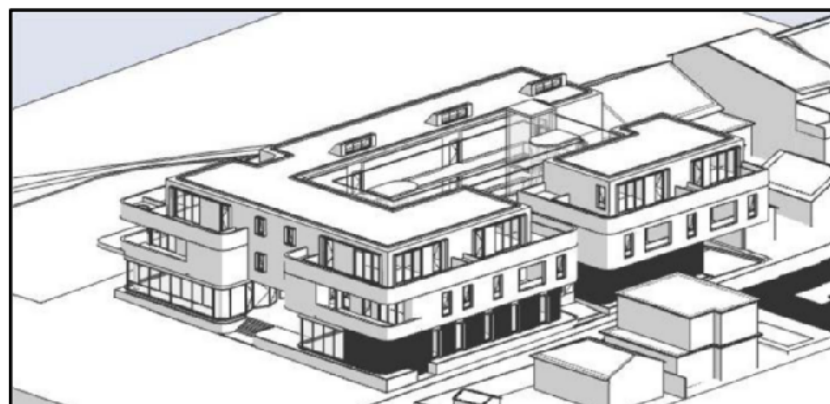
The proposed shop top housing development will result in a maximum height (to the top of the lift overrun) above existing ground level of 11.93m, constituting a non-compliance of up to 3.43m. The following figures show the 8.5m LEP height line across the main street frontage elevations and section plan of the building.



**Figure 2: Extract of Section plan showing LEP 8.5m height line (Source: Benson McCormack Architecture, Project No. 1853A)**



**Figure 3: Extract of Section plan showing LEP 8.5m height line (Source: Benson McCormack Architecture, Project No. 1853A)**



**Figure 4: 3D view of proposed looking from north-east. May Road and pocket park is on the left (Source: Benson McCormack Architecture, Project No. 1853A)**

## 4 Case Law

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### 4.1 Introduction

The proposed variation to the development standard has been considered in light of the evolving methodology and “tests” established by the NSW Land & Environment Court (the Court) and the following subsections provide a brief summary of key Judgments in regard to variations under the former SEPP 1 and cl4.6 of the SILEP.

### 4.2 *Winten Developments Pty Ltd v North Sydney Council* [2001]

Through the Judgment in *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46 (“Winten”) the Court established a ‘5-part test’ for considering whether strict compliance with a development standard is unreasonable or unnecessary in a particular case. The elements of this test can be summarised as:

- Is the planning control a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*?
- Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?
- Is the objection well founded?

The 1<sup>st</sup> ‘test’ continues to be relevant and is a precondition for the application of cl4.6 – see Section 5.1.

The 2<sup>nd</sup> ‘test’ is required to be demonstrated under cl4.6(4)(a)(ii) – see Section 5.2.1.

The 3<sup>rd</sup> ‘test’ was specific to cl3 of SEPP 1 and has not been transferred to cl4.6 of the SILEP. Notwithstanding, in Initial Action (see below), Preston CJ indicated that it is reasonable to infer that “environmental planning grounds” as stated in under cl4.6(3)(b), means grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EP&A Act – see Section 5.2.2.

The 4<sup>th</sup> ‘test’ is required to be demonstrated under cl4.6(3)(a) - see Section 5.1. The 5<sup>th</sup> ‘test’ is analogous to cl4.6(4)(a) – see Section 5.3.



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### 4.3 *Wehbe v Pittwater Council* [2007]

The 5-part test under *Winten* was later supplemented by the Judgment in *Wehbe v Pittwater Council* [2007] LEC 827 (“*Wehbe*”) where Chief Justice Preston expressed the view that there are 5 different ways in which an objection to a development standard may be assessed as being well founded and that approval of the objection may be consistent with the aims of SEPP 1. These included:

1. Notwithstanding the non-compliance, is the proposal consistent with the relevant environmental or planning objectives?
2. Is the underlying objective or purpose of the development standard not relevant to the development with the consequence that compliance is unnecessary?
3. Would the underlying objective or purpose of the development standard be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable?
4. Has the development standard been virtually abandoned or destroyed by the consent authority’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable?
5. Is the zoning of the particular land unreasonable or inappropriate such that the development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and therefore, compliance with the standard would be unreasonable or unnecessary?

### 4.4 *Four2Five Pty Ltd v Ashfield Council* [2015]

In the Judgment of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (“*Four2Five*”) Pearson C expanded on the earlier Judgments of *Winten* and *Wehbe*, indicating that whilst consistency with zoning and standard objectives of the development standard is addressed specifically in cl4.6(4)(a)(ii), there remains an onus of also demonstrating that there are “*sufficient environmental planning grounds*” such that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

## 4 Case Law

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The environmental planning grounds that support the proposed variation to the FSR development standard in this circumstance are detailed in the original SEE submitted with the DA, the Supplementary SEE and summarised in Section 5.2.2 of this variation request.

### 4.5 *Randwick City Council v Micaul Holdings Pty Ltd [2016]*

In his Judgment of *Randwick City Council v Micaul Holdings Pty Ltd [2016]* NSWLEC 7 ('Micaul') Preston CJ made it clear that development consent cannot be granted for a development that contravenes a development standard unless the consent authority:

- (a) has considered a written cl 4.6 objection seeking to vary the development standard as required by cl4.6(3) of the SILEP;
- (b) is satisfied that the cl4.6 objections adequately addressed the matters required to be demonstrated by cl4.6(3) (as required by cl4.6(4)(a)(i));
- (c) is satisfied that the 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 as required by cl4.6(4)(a)(ii).

In addition, Preston CJ elucidated that the consent authority does not have to be directly satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – only that it be indirectly satisfied that the applicant's written request adequately addresses the matters in cl4.6(3) that compliance with the development standard is unreasonable or unnecessary.

Furthermore, Preston CJ confirmed that an established means of demonstrating that compliance with a development standard is unreasonable or unnecessary is to establish that a development would not cause environmental harm and is consistent with the objectives of the development standard.

### 4.6 *Moskovich v Waverley Council [2016]*

Providing further guidance on the interpretation of cl4.6 compared to its predecessor SEPP 1, the Judgment in *Moskovich v Waverley Council [2016]* NSWLEC 1015 ('Moskovich') outlines that cl4.6(3)(a) is similar to cl 6 of SEPP 1 and the ways of establishing that contravention of a development standard is well founded expressed in Wehbe (e.g. "achieving" the objectives of the development standard) are equally appropriate for the consideration of cl4.6(3)(a).

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However, cl4.6(4)(a)(ii) has different wording to SEPP 1 and requires the consent authority to be satisfied that the proposed development is in the public interest because it is “consistent” with objectives of the development standard and objectives for the zone rather than “achieving” the objectives. Consequently, the considerations of cl4.6(3)(a) and cl4.6(4)(a)(ii) are different with the achievement test being more onerous and requiring justification in ‘ways’ such as those expressed in *Wehbe*.

Accordingly, whilst the Judgments in *Winten* and *Wehbe* related to variation requests under SEPP 1, the methodology and reasoning expressed in those Judgments continues to be the accepted basis upon which to assess variation requests pursuant to cl 4.6 with minor areas of differing interpretation.

### 4.7 *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (‘Initial Action’), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and of the standard.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a “test” that a development which contravenes a development standard results in a “*better environmental planning outcome*” relative to a development that complies with the development standard. In fact, there is no provision in SILEP that gives substantive effect to the objectives of cl4.6 stated in cl4.6(1)(a) and (b). That is to say, neither cl4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “*achieve better outcomes for and from development*”.

Further, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

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### 4.8 Summary of the Case Law Methodology and Tests

The collective methodology and tests described above has been applied to the assessment at Section 5 and can be summarised in the following steps:

1. Step 1 - Is the planning control that the applicant seeks to contravene a development standard?
2. Step 2 - Is the consent authority satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required by cl 4.6(3) by demonstrating that:
  - (a) compliance is unreasonable or unnecessary; and
  - (b) there are sufficient environmental planning grounds to justify contravening the development standard?
3. Step 3 - Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out?
4. Step 4 - Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Step 5 - Where the consent authority is the Court, has the Court considered the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

## 6 Conclusion

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### 5.1 Step 1 - Is the planning control a development standard?

This question is the 1<sup>st</sup> 'test' in Winten. The HOB control in cl4.3 of the WLEP 2011 is a development standard, defined in Section 1.4 of the EP&A Act as follows:

*"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

*...(c) the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance of a building or work"*

The development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted pursuant to cl4.6.

### 5.2 Step 2 – Pursuant to cl4.6(4)(a), is the consent authority satisfied that the written request adequately addresses the matters in Clause 4.6(3)?

#### 5.2.1 Clause 4.6(3)(a) – compliance is unreasonable or unnecessary in the circumstances of the case

To demonstrate that compliance with the height of buildings development standard is unreasonable or unnecessary, this written request relies upon:

1. The 2<sup>nd</sup> 'test' in Winten and the 1<sup>st</sup> and 2<sup>nd</sup> 'ways' in Wehbe – i.e. the underlying objectives or purpose of the standard is satisfied or the objectives are not relevant; and
2. The 4<sup>th</sup> 'way' in Wehbe – the development standard has been virtually abandoned or destroyed by the consent authority's own actions.

These aspects are discussed in the following paragraphs.

#### The underlying objectives or purpose of the standard

Clause 4.3(1) of the LEP states the objectives of the Height development standard as follows:

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

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

*(c) to minimise any adverse impact of development on the scenic quality of*



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*Warringah's coastal and bush environments,*

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

**Objective (a)** is to ensure building is compatible with surrounding and nearby development.

The existing built form of the May Road neighbourhood centre is single storey. However, new residential development in the immediate area – fronting Oceana Street – are two storey townhouses with pitched roofs. There are also two storey older residences fronting Oceana Street with rear yards and outbuildings onto Poplar Lane.

To be compatible the development should be able to be constructed with undue 'conflict' with neighbouring buildings. In this case, the upper level has increased setbacks from the boundaries, creating a significant step and articulation of the development when viewed from various ground level positions around the site, particularly from the public car park on the southern side of the site, the side playground and the rear laneway. In each case the development appears as two-storeys (refer to elevation plans submitted with the DA plan which shows the public vantage points from each direction – extracts shown in Fig 5 and 6 below). There is no undue 'conflict' created between buildings in the immediate area.

The building does not draw attention to itself beyond that reasonably expected of a mixed-use development within a neighbourhood centre. It is three storeys above street level. The development is respectful of its locational context and surrounding development. There is no attempt to emulate the design, colours or materials of the existing, tired development in the precinct, rather it presents a modern, fresh street appearance that is complementary to the area. It is considered that this objective is achieved by the development.



Figure 5: Extract of South Elevation showing view of development from playground

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(Source: Benson McCormack Architecture, Project No. 1853A)

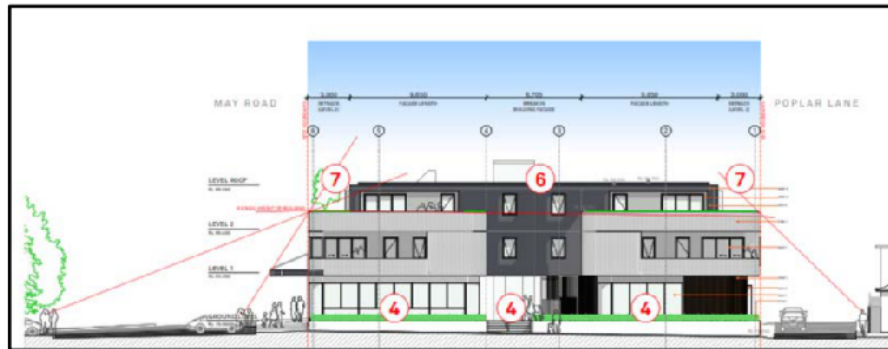


Figure 6: East Elevation showing recessed upper level and view of development from the front and rear of the development (Source: Benson McCormack Architecture, Project No. 1853A)

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

The design and layout of the building address each of these amenity considerations and achieves a development that respects the adjoining and surrounding development. The additional height does not create unreasonable adverse effects.

Shadow diagrams similarly confirm that no living areas or private open space areas of adjoining properties are unreasonably overshadowed by the non-compliant elements. In terms of visual impacts, these are minimized through physical separation, setting back the upper level and careful attention to articulation and selection materials and colours.

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

The subject site is located within a highly urbanized environment. There will be no impact on the coastal or bush environment. The proposal is neutral in terms of this objective.

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

The proposal is located adjacent to a busy arterial road within a designated neighbourhood centre. The development will be visible from the surrounding street system. The proposal is a fresh, contemporary building that will rejuvenate the small service centre. The addition of residential accommodation on this site is considered a positive outcome in terms of passive surveillance of the front car park, rear laneway and adjoining public park. The development

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activates the centres through the integration of residential activity during and outside of business hours. The external appearance of the new development is modern, varied and interesting. The palette of materials, colors and finishes, together with the strong podium and recessed upper level ensure that the visual impact when viewed from surrounding public places is not intrusive.

### 5.2.2 Clause 4.6(3)(b) – There are sufficient environmental planning grounds to justify contravening the development standard

As set out in Four2Five, when a development standard is sought to be varied, there is an onus on the Applicant to demonstrate that there are “*sufficient environmental planning grounds*” such that compliance with the development standard is unreasonable or unnecessary and these environmental planning grounds must be particular to the circumstances of the proposed development rather than grounds that could reasonably apply a similar development on any other land.

Preston J clarified in *Micaul* and *Initial Action*, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts. As outlined in Section 5.2.1, given its island characteristic adjacent to a laneway to the north, public park to the east and open carpark to the south, there is a clear absence of any adverse amenity impacts arising from the proposal's non-compliance. In particular, it will not result in adverse overshadowing, overlooking, view, acoustic, privacy, visual impact or traffic impacts.

The height variation to the top of the lift overrun is 11.93m and to the roof varies between 9.34m and 10.5m. The lift overrun is located in the central courtyard – barely discernible from ground level around the outside of the building. The upper level is well setback from the building alignment below making the upper level and variation not readily apparent or offensive on the streetscape or when viewed from surrounding road network or public places or surrounding residential properties.

The consequence of strict compliance in the circumstances would necessitate the loss of an entire residential floor which would make the development economically unviable (refer to feasibility analysis) and be contrary to object (c) of the Act at s1.3 which seeks to promote the orderly and economic development of land.

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In this regard, the success of the development which is dependent on the additional level (i.e the variation), is important in terms of the positive social and economic impacts that it will have on the viability and sustainability of the local centre which is tired and outdated and requires stimulation provided by a positive urban design based outcome, including providing necessary active retail uses with pleasant amenity and additional residential population in the form of various housing mix contributing to the village atmosphere, and also providing additional security and surveillance of the open carpark and also integrating with the public open space area to the east by providing both a visual and physical link and access.

A fundamental element of the design to achieve this by creating a large open courtyard and full height void by deletion of floor space at both ground and first floor levels, which is transferred to the upper level constituting the need for a height variation.

The development due to its financial feasibility (only attributable to the additional storey) allows for the creation of an attractive contemporary development to replace the existing outdated buildings, and provides increased passive surveillance and the opportunity for small businesses in the area to occupy new, fresh and modern premises to the benefit of the community.

Whilst there is argument that the additional floor space could be accommodated at ground floor, it would be strictly limited to retail or business premises which would generate additional traffic impacts and be counter to the village atmosphere advocated by the creation of smaller scale retail spaces. Further it would deprive the opportunity of the integral landscaped internal courtyard designed in collaboration with Council, which is a pleasant space active and passive space with a high quality amenity as a landscaped communal open space for the use of both residents and also patrons, facilitating outdoor dining and area for social interaction. The through site link, in particular to the park allows for parents to have a coffee whilst their children play in the park or for residents to have direct access to and facilitate the use of the park and improve its supervision and safety.

In addition the void (the volume of which is displaced to the upper level) through the building, allows for improved solar access and cross ventilation to the building interior and

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courtyard improving the environmental performance and amenity of the building.

In the circumstances, the environmental benefits outweigh any technical necessity or benefit of the deletion of an entire residential floor.

Further, it is noted that the transferred floor space is also compensation for the lost floor space at ground floor with the proponent providing a setback to the rear lane to widen the existing deficient footpath for the betterment of the local community without any need or benefit for the development itself.

The existing buildings are extremely tired and at the end of their useful life requiring substantial capital to provide lettable area of necessary minimum standards to comply with the BCA and other occupational and health standards. The rebuilding based on land value and necessity to provide a basement carpark to accommodate any additional floor space can only be viable and possible with the addition of the third level. Absent this, the development is unviable as is any upgrade of the centre which will fall into disrepair and decay which would be contrary to the public interest. An appraisal from Laing + Simmons Dee Why is attached which confirms that the proposal is not viable without the upper level, a relevant consideration under s1.3 of the Act.

The upper level variation which has positive social and economic impacts can be accommodated without being readily discernible as being a non compliant element and is accommodated within a building that sits comfortably within its physical and suburban context providing a building of high quality and bench mark for future development.

In summary, the contravention of the HOB development standard is considered to have positive social and economic outcomes for the Site and the locality and positive amenity outcomes for existing residences and businesses in the immediate area.

### 5.3 Step 3 - Pursuant to cl4.6(4)(b), is the consent authority satisfied that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone?

As outlined in Section 5.2.1, the Proposal achieves and is therefore consistent with the relevant objectives of the height of buildings development standard. The consent authority



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must also be satisfied that the development will be consistent with the objectives of the B1 Neighbourhood Centre Zone which are expressed in the Land Use Table to cl2.3 of the LEP as follows:

The Proposal is consistent with the objectives of the B1 Zone for the following reasons:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

The first objective is to provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood. The development includes 6 retail outlets and 3 commercial premises. Each is sized to focus on small community services and the needs of locals. The objective is achieved.

- *To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*

The second objective is to ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians. The building is designed with a strong two storey podium with recessed upper level which maintains a human scale.

The proposal seeks to maintain and improve the activation of the May Road Neighbourhood Centre. Both the car park and Poplar Lane frontages are activated by the development, with improved pedestrian access through the site and passive surveillance of all areas within and around the site. There is a continuous awning to be provided along the car park frontage for the comfort of pedestrians and landscaping (including decorative larger shrubs and trees) to be planted. The upper level units will provide passive surveillance in three directions (north, south and east) achieving CPTED of the area. An internal courtyard provides a pleasant village atmosphere attractive for interaction of both residents and customers. The objective is achieved.

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

The third objective is minimise conflict between land uses in the zone and adjoining zones

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and ensure the amenity of any adjoining or nearby residential land uses. The design, layout, materials and finishes of the building have taken into account the adjoining and adjacent landuses, addressing each element of amenity – privacy, overlooking, overshadowing to a satisfactory level.

Accordingly, it follows that the proposed development is in the public interest because it is consistent with the objectives of the HOB development standard under the WLEP 2011 and the objectives of the B1 Neighbourhood Centre Zone under the WLEP 2011.

### 5.4 Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the SILEP or SEPP 1 subject to certain conditions.

As WLEP 2011 adopts cl4.6 of the SILEP and the conditions of the Notice are not relevant in this instance, the consent authority for the Proposal may assume concurrence in respect of the variation requested to the HOB development standard under the LEP.

In addition, the Court has power to grant development consent to the proposed development even though it contravenes the HOB development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

### 5.5 Step 5 - Clause 4.6(5) - Concurrence Considerations

In deciding whether to grant concurrence, the Secretary must consider:

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

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Furthermore, in Initial Action, Preston CJ clarified that, notwithstanding the Court's powers under s39(6) of the Court Act, the Court should still consider the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

Accordingly, the proposed contravention of the HOB development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular Site and this design is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 5.3, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. Accordingly, there would be no significant public benefit in maintaining the development standard in this instance; and
- It is considered that there are no other matters of relevance that need to be taken into consideration by the Consent authority.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for reasons outlined above. Further, the request outlines sufficient environmental planning grounds to justify the contravention of the HOB development standard as outlined in s5.2.2 above.

Accordingly, this written request can be relied upon by the consent authority in accordance with cl4.6(4) of the LEP and can assume the concurrence of the Secretary pursuant to the Notice issued on 21 February 2018. Alternatively, the Court can use its powers under s39(6) of the Court Act and be satisfied that contravention of the development standard does raise

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any matter of significance for State or regional environmental planning, there is no public benefit of maintaining the development standard and there are no other relevant matters required to be taken into consideration.

In the circumstances, the consent authority can exercise its power pursuant to cl4.6 (2) to grant development consent to the proposed development notwithstanding the contravention of the development standard.