



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 7 APRIL 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

Paul Vergotis	Chair
Marcus Sainsbury	Environmental Expert
Graham Brown	Town Planner
Nick Lawther	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 7 April 2021

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	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.	
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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 17 MARCH 2021

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 17 March 2021 were adopted by the Chairperson and have been posted on Council's website.

3.0 PUBLIC MEETING ITEMS

ITEM 3.1	DA2020/1758 - 11 LEWIS STREET, BALGOWLAH HEIGHTS - DEMOLITION WORKS AND CONSTRUCTION OF CENTREBASED CHILD CARE FACILITIES
AUTHORISING MANAGER	Rodney Piggott
TRIM FILE REF	2021/231621
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.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/1758 for demolition works and construction of centrebased child care facilities at Lot B DP 369977, 11 Lewis Street, Balgowlah Heights subject to the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1758
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Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot B DP 369977, 11 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Demolition works and construction of centre-based child care facilities
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	Guy Alexander Reardon Joanna Corrie Reardon
Applicant:	George Antoniou

Application Lodged:	07/01/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	05/02/2021 to 19/02/2021
Advertised:	05/02/2021
Submissions Received:	101
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 1,947,731.00
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EXECUTIVE SUMMARY

Council is in receipt of development application DA2020/1758 for demolition works and construction of centre-based child care facilities.

The site is zoned R2 Low Density Residential under the provisions of Manly Local Environmental Plan 2013 (MLEP 2013) and the proposed development is permissible with consent.

The application was notified in accordance with Council's Community Participation Plan and one hundred and one (101) submissions were received; one hundred (100) submissions oppose the application, whilst one (1) submission supported the application. The issues that were have been raised

in the submissions include: traffic and parking, pedestrian safety risks, streetscape, amenity impacts and built form non-compliances.

The application involves the construction of a three (3) level centre-based child care facility to accommodate 57 children, a total of 11 staff and has provision for 16 car parking spaces. The basement parking area will accommodate 12 of the spaces provided by 4 single car stackers and 1 with a dual platform. Six (6) drop-off/pick-up car spaces are provided, two located underneath the dual platform stacker. 10 staff spaces are provided within the remaining spaces of the car stackers.

Council is not satisfied with the reliance on mechanical car stackers, the number of drop-off/pick-up spaces, nor the design of the proposed car parking bays. The additional vehicular and pedestrian traffic generated by the childcare centre is also expected to adversely impact upon safety in Lewis Street.

The proposed childcare centre is seen to result in a poor urban design and built form outcome that is unsuitable within the surrounding low density residential streetscape. In particular, the breach to the front building line, wall height and side setback controls are seen to contribute towards the building appearing institutional with an unacceptable bulk and scale, whilst also impacting on the amenity of adjoining properties.

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), State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education SEPP) and Council policies.

As more than 10 unique submissions by way of objection were received, the application is referred to the Northern Beaches Local Planning Panel for determination.

For the reasons outlined above and within this assessment report, the proposed development is recommended for refusal due to the unacceptable impacts on the locality and neighbouring properties.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works and construction of centre-based child care facilities. In particular, the application includes:

- Demolition of the existing dwelling house, swimming pool and vegetation removal
- Construction of a centre-based child care facility to accommodate 57 children, a total of 11 staff including 9 core child care staff and 2 staff for administrative and cooking duties
- Hours of operation 7:00am to 7:00pm Monday to Friday (with staff on premises from 7:00am to 7:30pm to allow for afterhours cleaning and administration)
- The proposed centre-based child care building will comprise:

Basement Level

- Vehicle access from Lewis Street with parking area accommodating a total of 16 car spaces with 12 of the spaces provided by 4 single car stackers and 1 with a dual platform. Six (6) parent car spaces are provided, two located underneath the dual platform stacker. 10 staff spaces are provided within the remaining spaces of the car stackers.
- Pedestrian access via internal stairs and a lift
- Garbage area to the rear

Ground Floor

- Pedestrian entry walkway and steps from Lewis Street, Lift, 2 x internal stair access and a

- fire escape stairs to the rear
- Office and staff room,
- Accessible WC, WC/Nappy change area for 0-2 years,
- 0-2 years old room for 12 children
- Cot room
- Outdoor storage area
- 0-5 year old outdoor play area for 57 children

First Floor Level

- Lift, 1 x internal stair access and a fire escape stairs to the rear
 - Kitchen, Laundry and accessible WC
 - Accessible WC, WC/Nappy change area for 0-2 years,
 - 2-3 years old room for 15 children
 - Combined childrens bathroom and nappy change room
 - 3-5 year old room for 30 children
 - Plant area and a non-trafficable landscaped area
- Landscaping

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.1 Streetscapes and Townscapes
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 3.4 Amenities (Views, Overshadowing, Overlooking /Privacy, Noise)
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.6 Accessibility
Manly Development Control Plan - 3.10 Safety and Security
Manly Development Control Plan - 4.1 Residential Development Controls

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.4.6 Child Care Centres

SITE DESCRIPTION

Property Description:	Lot B DP 369977 , 11 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site is known as 11 Lewis Street, Balgowlah Heights and is legally referred to as Lot B in DP 369977.</p> <p>The site is regular in shape with a frontage of 15.09m along the western side of Lewis Street and a depth of 51.815m. The site has a surveyed area of 781.8m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two (2) storey dwelling house with an in-ground swimming pool located within the rear yard. Pedestrian and vehicular access is currently gained via the Lewis Street frontage.</p> <p>The slope of the site is measured at 7.1%, falling approximately 3.7m from the rear boundary to the road frontage.</p> <p>The site is of a modified landscape setting, with vegetation consisting of lawned areas, hedging, and palms. An established native Brush Box tree is located to the front of the site within Council's road reserve.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>The property immediately to the south of the site is Balgowlah Heights Public School. Balgowlah Heights Public School is divided by Lewis Street into the Eastern and Western campus.</p> <p>Adjoining properties to the north, east and west are characterised by dwelling houses of varying age and scale within landscaped settings.</p>

Map:



SITE HISTORY

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

1 April 2010

Development Application No. 20/10 for a swimming pool, deck and landscaping was granted consent.

10 June 2010

Complying Development Certificate No. CDC 2010/0370 issued for demolition of existing patio & construction of a new patio.

APPLICATION HISTORY

7 January 2021

The subject application was lodged with Council.

12 January 2021

Photo confirmation received by Council of the notification sign being erected on site at the beginning of the notification period.

28 January 2021

The assessing officer met with the property owner and a neighbour for an inspection at No. 13 Lewis Street, Balgowlah Heights.

29 January 2021

Photo confirmation received by Council of the notification sign being erected on site at the end of the notification period.

1 February 2021

The assessing officer met with the applicant for an inspection at No. 11 Lewis Street, Balgowlah Heights (Subject Site).

4 February 2021

Photo confirmation received by Council of the notification sign being erected on site at the start of the re-notification period.

5 February 2021

The development application was re-notified and advertised from 5 February 2021 to 19 February 2021 due to a clerical error associated with the advertisement of the application.

17 February 2021

The assessing officer met with the president and a member of the Balgowlah Heights Public School P&C. The principal of Balgowlah Heights Public School was also present at the start of the inspection. An inspection was undertaken at both the western and eastern school campuses along with the surrounding streets of Lewis Street and Radio Avenue.

23 February 2021

The Applicant files a Class 1 Appeal with the NSW Land and Environment Court.

8 March 2021

A letter was issued by Council to the applicant, advising that the development application was unable to be supported in its current form due to inconsistencies with State Environmental Planning Policy Educational Establishments and Child Care Facilities 2017, Manly Local Environment Plan 2013 and Manly Development Control Plan 2013.

12 March 2021

The applicant sent an email response to the assessing officer requesting an extension for amended documents to be submitted and for a meeting to be held with Council officers.

15 March 2021

Instructions are received that the applicant does not want to have a without prejudice meeting with Council to discuss an amended proposal.

16 March 2021

The assessing officer sends an email response to the applicant advising that the development application is to be determined as lodged (without amendment) at the 7 April 2021 meeting of the Northern Beaches Local Planning Panel.

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	<p>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 is for a childcare centre, and is not considered a contamination risk.</p> <p>The NSW Government is currently reviewing the Education SEPP. It is proposed to introduce provisions to prevent child-care centres within close proximity of each other in low density residential zones (R2). A separation distance of 200m between child-care centres is being considered. The amendment seeks to address concerns raised about amenity impacts, such as noise and traffic, arising from child-care centres being in close proximity to one another.</p> <p>Aside from the Arabanoo at Balgowlah Heights Public School which operates as a before and after school care, there are no other known childcare centres within 200m of the subject site.</p>
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the</p>

Section 4.15 Matters for Consideration'	Comments
	<p>consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is not considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the requirements of the Manly DCP and will result in a development which will create an undesirable precedent, an unreasonable impact to the surrounding lands with regard to built form, traffic and parking as well as being contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 05/02/2021 to 19/02/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 101 submission/s from:

Name:	Address:
Beatrice Jackson	5 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mr Timothy Macquarie Gapes	71 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mrs Kara Therese Kernahan	51 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr Livinus Lawira Ms Natividad Josefina Fernandez	77 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mrs Alexandra Maria Cowie	102 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mrs Jane Ann Davies	24 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Withheld	BALGOWLAH HEIGHTS NSW 2093
Jasmine Mullineaux	1 B Magarra Place SEAFORTH NSW 2092
Ms Deborah O'Sullivan	8 Scales Parade BALGOWLAH HEIGHTS NSW 2093
Mrs Catherine Jane Felsman	31 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Marie Colette Donn	22 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Christine Maree Atkins	8 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mr Mario Alfonso Contreras Roman	3 / 66 West Street BALGOWLAH NSW 2093
Ms Sarah Barlow	69 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mrs Joanne Lisa Davies	37 Lower Beach Street BALGOWLAH NSW 2093
Mrs Bridget Irene Cameron Mr John Stewart Cameron	49 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mrs Karen Lesley Moore	7 Hunter Street NORTH BALGOWLAH NSW 2093
Mr Vahan Batmanian	81 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mr Paul Donald Rintoule Mrs Gai Maree Rintoule	33 Jamieson Avenue FAIRLIGHT NSW 2094
Mrs Louise Mary Harvey	20 Scales Parade BALGOWLAH HEIGHTS NSW 2093
Mrs Jennifer Ann Apps	1 / 5 Griffin Street MANLY NSW 2095
Mrs Sevil Djaffer Cuthbert	4 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Osha Rudduck	Address Unknown
Ms Amanda Joy Phillips	55 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mrs Cherrise Valerie Skea	5 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Darren Richard Crichton- Browne	44 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mrs Patricia Joan Gordon Mr Rodney Stephen Gordon	43 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mrs Cecile Marie Herbert- Jones	1 Nield Avenue BALGOWLAH NSW 2093
Mrs Debra Anne Close	89 Gurney Crescent SEAFORTH NSW 2092

Name:	Address:
Mrs Deanna Louise Byrne	19 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Ms Camilla Margaret Galwey	118 Wanganella Street BALGOWLAH NSW 2093
Mrs Lisa Caroline Leigh Young	70 A Curban Street BALGOWLAH HEIGHTS NSW 2093
Mr John Louis Mills Mrs Leanne Carol Mills	17 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mr Paul Nicholas Poteris	44 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Peta Duff Mr Peter Gordon Duff	3 Abbott Street BALGOWLAH HEIGHTS NSW 2093
Justine Perry	Address Unknown
Mr William Alfred Templeman	22 Abbott Street BALGOWLAH HEIGHTS NSW 2093
Mr Ashley Stuart McPhee	72 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr Anthony William Halse	8 Condamine Street BALGOWLAH HEIGHTS NSW 2093
Ms Gai Cooper	1 / 73 Fairlight Street FAIRLIGHT NSW 2094
Ms Maxine Anne White	21 White Street BALGOWLAH NSW 2093
Mr Darren John Thorpe	1 / 105 A Woodland Street BALGOWLAH NSW 2093
Ms Jillian Lee Makaroff	9 Abbott Street BALGOWLAH HEIGHTS NSW 2093
Ms Katherine Jane Clarke	10 Scales Parade BALGOWLAH HEIGHTS NSW 2093
Ms Linda Jane Holliday	47 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Sylvan Rudduck	1 / 18 Edwin Street FAIRLIGHT NSW 2094
Jill Rudduck	73 Fairlight Street FAIRLIGHT NSW 2094
Mr David Alan Fletcher	41 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mrs Penelope Breadman	54 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mrs Justine Ruth Battersby	77 New Street CLONTARF NSW 2093
Mrs Vivienne Ruth McClean	67 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mrs Tara Nichole Auchterlonie	34 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Ms Bianca Dominique Fera	7 Abbott Street BALGOWLAH HEIGHTS NSW 2093
Mrs Alison Fay Gerber	27 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr Allan Robert Styner	9 Waterview Street MONA VALE NSW 2103
Mrs Heather Anne Bush	16 A Scales Parade BALGOWLAH HEIGHTS NSW 2093
Mr Grant Matthew Harrison	11 Bungalow Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Penelope Alice Coulter	15 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Ms Cheryl Ann Baker	6 A Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Craig Francis Edwards	23 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Diane Merle Cronin	39 Gurney Crescent SEAFORTH NSW 2092
Mr Trent Edward Larcombe Mrs Nicole Louise Larcombe	3 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Rebecca Demmery	23 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Grahame Thomas Coote	75 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Peter Coventry	41 Gurney Crescent SEAFORTH NSW 2092

Name:	Address:
Mrs Valerie Selina Sally Sobko	3 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Joseph Stewart Harvey	C/- Hobbs Jamieson Architecture 2/536 Sydney Road SEAFORTH NSW 2092
Anthony Paul Mehta Colleen Joy Mehta	28 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Withheld Withheld	BALGOWLAH HEIGHTS NSW 2093
Mrs Katja Irina Key	43 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Ms Diana Worman	7/7 Scales Parade BALGOWLAH HEIGHTS NSW 2093
Ms Sandra Sorenti	1 Scales Parade BALGOWLAH HEIGHTS NSW 2093
Mrs Angela Fong- Clark Mr Graeme Douglas Clark	15 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Ms Megan Barton Jones	73 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Colco Consulting Pty Ltd Mr James Michael Coventry Ms Alison Pignon	20 Amiens Road CLONTARF NSW 2093
Mr Garry McGregor	11 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr Kenneth Charles Ambler	PO Box 760 BALGOWLAH NSW 2093
Mr James Christian Iliffe	44 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr Chris King	40 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mr James Allister Lugsdin	25 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Neil Watson Cavill	30 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mr Timothy Ian Macleod	94 Clontarf Street NORTH BALGOWLAH NSW 2093
Mr Andrew David Farrell Ms Sasha Alexis Fegan	1 / 67 West Street BALGOWLAH NSW 2093
Mr Ryan Glen Hewlett Mrs Sarah Lynne Hewlett	22 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr Jaxon Kenny Rudduck Mrs Clare Jean Rudduck Perica & Associates Urban Planning	C/- Stephen Grech & Associates Suite 7 121-123 Military Road NEUTRAL BAY NSW 2089
Mr Eric Louis Serge Lalauze Ms Chandu Anushka Lalauze	79 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mrs Vivienne Kaye Shafto	1/105 Woodland Street South BALGOWLAH NSW 2093
Balgowlah Heights Public School P & C	9B/ Lewis Street BALGOWLAH HEIGHTS NSW 2093
Punchinello Kindergarten	118 Wanganella Street BALGOWLAH NSW 2093
Sinsw - Department Of Education - Narrabeen North Public School	PO Box 822 HORNSBY NSW 1630
Mr Maxwell Charles Cooper Mrs Patricia Jan Cooper	75 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Julie Gunning	Address Unknown

Name:	Address:
Mrs Susan Trathen	14 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Julian Alexander Bosman	29 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Elizabeth Anne Harding	3 / 7 Brighton Street BALGOWLAH NSW 2093
Amber Faye Howison	81 Gordon Street CLONTARF NSW 2093
Ms Vanessa Ann Davies	13 / 4 A Boyle Street FAIRLIGHT NSW 2094
Kirsty Robison	Address Unknown
Ms Sally Ruth Tomlinson	17 Kareema Street BALGOWLAH NSW 2093
Paul Andrew Grzanka	11 Seaview Street BALGOWLAH NSW 2093
Ms Annelies Hodge	20 Jackson Street BALGOWLAH NSW 2093

The Development Application was publicly exhibited in accordance with Council's Community Participation Plan. The Development Application was notified from 13 January 2021 to 27 January 2021. The application was re-notified and advertised from 5 February 2021 to 19 February 2021 due to a clerical error associated with the advertisement of the application. As a result of the public exhibition and advertising, 101 submissions were received; one hundred (100) submissions against the application and one (1) submission in support of the application.

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

- **Traffic impacts and insufficient off-street parking**

Comment:

A number of submissions were received with regards to the traffic impacts of the childcare centre on Lewis Street and surrounding streets. Neighbouring residents highlighted that existing traffic congestion led to long wait times at school drop off/pick up, associated dangers with increased traffic at the Lewis Street and Ernest Street intersection as well as alleged inconsistencies, errors and underestimations within the submitted *Traffic and Parking Impact Assessment*.

Concerns were also received with regards to an insufficient number of staff and drop-off/pick-up parking spaces. In particular, issues were raised with regards to the appropriateness and safety of utilising car stackers. Additional concerns were raised with regards to the access arrangements for vehicles entering and existing the car park as well as acceptability of the dimensions of the parking spaces. It was noted that there had been a recent scaling down of public bus routes in the area that may further impact upon the demand for parking.

Council's Traffic Engineer has considered the submitted *Traffic and Parking Impact Assessment* and has recommended the refusal of the development application. Detailed comments in this regard are provided in this report under the "Referrals" section. See also discussion under Clause 4.4.6 Child Care Centres of the MDCP for further discussion.

- **Pedestrian safety risks**

Comment:

Issues were raised with regards to risk of accident or injury to local residents, as well as Balgowlah Heights Public School students, who utilise the Lewis Street footpath directly in front of the site. Concerns were expressed as to the volume of vehicles crossing the pedestrian path

as well as the flow on implications as a result. Council's Traffic Engineer has considered the submitted *Traffic and Parking Impact Assessment* and has recommended the refusal of the development application. Detailed comments in this regard are provided in this report under the "Referrals" section.

- **Overdevelopment of the site**

Comment:

Concerns that a three (3) storey building would set an undesirable precedent and that the aesthetic of the childcare centre is not in harmony with the surrounding residential area. A detailed discussion concerning the appearance and built form of the development is undertaken later in this report. The proposal is considered to have an unacceptable impact and is therefore a reason for refusal.

- **Streetscape/Compatibility within a residential area**

Comment:

Numerous submissions were received concerning the design of the childcare centre being highly uncharacteristic of a residential area. References were made to the flat roof form, the development being of a commercial appearance, as well as the proposed bulk and scale being unsuitable, unattractive and confronting with the setting of the local area. The proposal also is not seen to maintain the low density residential streetscape character of Lewis Street and is recommended for refusal in this regard. Refer to the assessment under Clause 3.1 Streetscape and Townscapes, and Clause 3.1.1 Streetscape (Residential areas) of the MDCP for further discussion.

- **Non-compliance to wall height requirement**

Comment:

The breach to the wall height requirements lead to an unacceptable visual dominance, bulk and scale when viewed from the Lewis Street frontage and neighbouring properties and has been recommended for refusal in this regard. A detailed discussion of this non-compliance has been undertaken later in this report under Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the MDCP.

- **Non-compliance to the front, side and rear setback**

Comment:

Regarding the non-compliances to the front, side and rear setback concerns were expressed as to the resulting streetscape and amenity impacts on surrounding properties. Council's Urban Design Officer has raised particular concerns with these breaches, recommending that the development application be refused. A detailed discussion these non-compliances have been undertaken later in this report under Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the MDCP.

- **Privacy impacts**

Comment:

Concerns were raised as the privacy impacts (visually and acoustic) with regards to the operable windows, the proposed exit walkway and the non-trafficable on-slab landscaped roof

along the northern elevation. Non-compliance to the northern side setback further exacerbate these issues along with an intention for the windows and doors being operable. The proposed development is recommended for refusal in this regard. A detailed discussion these non-compliances have been undertaken later in this report under Clause 3.4.2 Privacy and Security of the MDCP.

- **Loss of solar access to classrooms at Balgowlah Heights Public School**

Comment:

Concerns as to additional shadowing impacts towards Balgowlah Heights Public School classroom buildings along the northern side of the western campus were raised. Whilst the proposal is not considered to result in a technical breach with the requirements of Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP, it is recognised that a reduced level of solar access is in part due to non-compliances with the prescribed wall height and setback along the southern side of the childcare centre. A detailed discussion in this regards has been undertaken later in this report.

- **Noise impacts**

Comment:

A number of concerns were raised with regards to the noise impacts associated with both the construction and operation of the proposed childcare centre on the amenity of the surrounding area. Aside from the acoustic privacy concerns raised above, the submitted *Environmental Noise Assessment* has been reviewed by Council's Environmental Health Officer who has considered the proposed development as acceptable subject to conditions.

- **Access and Emergency and Evacuation Plan**

Comment:

Concerns have been raised as to acceptability of the child care centre being designed to be accessible for all potential users. Of particular concern, is the appropriateness of the proposed walkway along the northern side boundary that includes two flights of stairs – one of 6 steps and the other with 10 steps as well as the reliance on fire stairs. Access in this regard would appear to be limited and difficult to negotiate for parents/guardians, young children and people with a disability. The Development Application was also not submitted with an *Emergency and Evacuation Plan* as required under Sections 97 and 168 of the *Education and Care Services National Regulations*. The proposed development is recommended for refusal in this regard. A detailed discussion these non-compliances have been undertaken later in this report under Clause 3.6 Accessibility of the MDCP.

- **Waste Management**

Comment:

Concerns were raised as to the waste/garbage management associated with the proposed childcare centre. In this regard, consideration has been given that conditions can be applied to *the Plan of Management* to ensure waste collection is appropriately managed by a private operator to limit amenity impacts as well as obstruction of footpaths and roads particularly at peak times.

- **Site Contamination and Asbestos**

Comment:

Appropriate conditions have been recommended by Council's Environmental Health Officer for a

site specific Environmental Management Plan (EMP) to address potential environmental contaminants on the land.

- **Construction Management**

Comment:

Consideration has been given that conditions are capable of being applied with regards to appropriate documentation being provided prior to the issue of any construction certificate for matters pertaining to construction traffic management plans and dilapidation surveys.

- **Building Code of Australia compliance**

Comment:

A review with respect to aspects relevant to building certification has been undertaken by Council's Building Assessment Officer, who has provided comments that the proposed development is acceptable subject to conditions.

- **Need/demand for a childcare centre**

Comment:

The proposed use as a childcare centre is permitted with consent within R2 Low Density Residential zone. Issues relating to the need, demand or financial viability of the proposed development are not a matter of consideration for the consent authority.

- **Impact upon neighbouring property values**

Comment:

The proposed use as a childcare centre is permitted with consent within R2 Low Density Residential zone. Concerns specifically relating to any resulting impact on the value of surrounding properties has been dismissed as a reason for this development application to be refused.

- **Non-compliance with SEPP (Educational Establishments and Child Care Facilities) 2017**

Comment:

The proposed childcare centre is found to be inconsistent with the provisions of Clause 23 of SEPP (Educational Establishments and Child Care Facilities) 2017 and has been recommended for refusal on this basis.

- **Non-compliance with Floor Space Ratio standard**

Comment:

The proposed floor space ratio has been measured at FSR: 0.44:1 (341m²) and is therefore compliant with the floor space ratio standard of FSR: 0.45:1 (352m²).

- **Stormwater details**

Comment:

The proposed stormwater arrangement has been reviewed by Council's Development Engineer as acceptable subject to conditions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><i>Supported, subject to conditions</i></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate stage.</p>
Environmental Health (Industrial)	<p><i>Supported, subject to conditions</i></p> <p>The development proposal is for the demolition of the existing dwelling and associated structures and construction of a purpose built childcare centre designed to accommodate 57 children, including basement parking for 16 vehicles, maximum hours 7am to 7pm. Environmental Health is to consider health impacts including:</p> <ul style="list-style-type: none"> • Food Premises • Asbestos from demolition • Noise from the site <p>The Food preparation kitchen will need to comply with Food standards including fit out (AS4674-2004) and the business registered with Council.</p> <p>A site assessment for asbestos for demolition of older buildings is a standard requirement but particularly relevant with a school adjacent. Noise from childcare facilities can be the source of noise complaints, usually from child play and particularly screaming.</p> <p>The applicant has submitted an Acoustic Assessment (Report 7102-1.1R) by Day Design Pty Ltd Consulting Acoustical Engineers and a Management Plan to deal with noise related issues including:</p> <ul style="list-style-type: none"> • Child play inside and outside area • Carpark • Mechanical plant • and building finishes (eg glazing) • Impact on children's sleep within the Centre <p>The building development has been designed to minimise noise exposure to 13 Lewis Street with the main affected sites being 9B Lewis Street (School) and the undeveloped rear yard of 54 Beatrice Street immediately to the rear.</p> <p>Noise control measures are significant, some prescriptive and others discretionary and some difficult to implement and enforce. eg Staff and</p>

Internal Referral Body	Comments
	<p>Parents being provided with a copy of the Noise Management Plan ; discourage loud activities; crying children being comforted and moved inside.</p> <p>Parents (potentially with other children) arriving at the Centre will be almost impossible to control particularly outside the Centre. There will then be implications for affected neighbours to complain to the Centre Management but after such a noise event.</p> <p>Sound barrier walls (up to 2.5m high) on the boundaries are proposed. The visual impact is not a matter for Environmental Health to comment on but appears to address the potential noise impact when taken into consideration with the other proposed measures .</p> <p>Enforcement of "people" noise nuisances is likely only through a breach of DA conditions so the Management Plan needs to be robust and a condition of any approval.</p> <p>A condition of acoustic review , when operating should determine if the theoretical assumptions are correct and then be verified by a suitably qualified person.</p> <p>NB. Environmental Health has not commented on noise in the public street area which needs to be noted with the theoretical potential for 57, 7am vehicle "drop-offs" in the Street and impact on adjoining residents in the residential area. An illuminated sign showing "current available parking" at all times could encourage parents to use the underground car park for drop off.</p>
Landscape Officer	<p><i>Supported, subject to conditions</i></p> <p>The Arborist's Report and Landscape Plans submitted with the application are noted.</p> <p>The application indicates that no significant landscape features are affected by the proposed works.</p> <p>No objections are raised to approval subject to conditions, including specific tree protection for trees adjacent to the site.</p>
NECC (Development Engineering)	<p><i>Approval subject to conditions</i></p> <p>Development Engineering has no objection to the application subject to the following conditions of consent.</p> <p>However, please refer to Council's Transport Network Team's comment in relation to the car parking.</p>
Strategic and Place Planning (Urban Design)	<p><i>Not supported</i></p> <p>The proposal in its current form cannot be supported for the following reasons:</p> <ol style="list-style-type: none"> 1. The proposal does not comply with the side setback at the southern elevation of the first floor level, providing a setback of 1 metre instead of the 2.3 metres (approx.) required. 2. The northern boundary setback should also be increased to 2.4m around the lift core area and provide more articulations on the generally flat building facade.

Internal Referral Body	Comments
	<p>3. The southern boundary of the subject site adjoins the Balgowlah Heights Public School and the proposal will result in greater visual building bulk and scale and increased solar impacts to the school compound and classrooms.</p> <p>4. In terms of Part 3 and Part 4 of the Child Care Planning Guideline, the general design and choice of material finishes of the building could have more of a residential house look to fit in contextually with the surrounding houses in a suburban neighbourhood. The current street elevation looks institutional with the flat parapet roof form, strong vertical elements of the lift and stair cores, and fully glazed front door area. Other considerations in suburban neighbourhood settings include relationships and interface with existing houses, appropriateness of roof forms, landscape setting, and the pattern of front and rear gardens.</p>
Traffic Engineer	<p><i>Not supported</i></p> <p>The development proposal (DA2020/1758) located at 11 Lewis Street, Balgowlah is for the demolition of the existing dwelling and associated structures; and construction of a purpose built childcare centre designed to accommodate 57 children and 11 staff (9 Educators and 2 administrative cooking staff), including basement parking for 16 vehicles.</p> <p><u>Traffic Generation:</u></p> <p>The proposed childcare centre is anticipated to generate the following trips in accordance with (3.11.3 Child Care Centres) TfNSW Guide to Traffic Generating Developments (2002) and recent supplements. Due to close proximity to Balgowlah Heights Public School, it has been considered by the applicants traffic consultant that 10% of the enrolled children will have a sibling attending the school and therefore some trips will be for a common purpose. Therefore, the peak trip rate will be reduced by 10%. The resultant children will be reduced to 52 (57- 5.7 = 51.3)</p> <p>AM Peak @ 0.8 per child for 52 children = 42 (41.6) trips (23 in and 23 out)</p> <p>PM Peak @ 0.7 per child for 52 children = 37 (36.4) trips (19 in and 19 out)</p> <p>The estimates of traffic generated by the development are considered valid however given the proximity of the site to Balgowlah Heights Public School and the intense drop off and pick up and pedestrian activity generated by the school at times when the childcare centre will also be experiencing heavy arrivals and departures there is concern with regard to the level of impact on pedestrian and vehicle safety at those times. It is noted that traffic data provided with the DA was collected at a time when traffic and pedestrian volumes were impacted by Covid-19 however the data</p>

Internal Referral Body	Comments
	<p>still reveals an am peak volume of 217 vehicles per hour and shows pedestrian volumes using the west side of Lewis Street of 100 or more per hour in peak periods (many of them children given the proximity of the school). Under such conditions the additional vehicular and pedestrian traffic generated by the childcare centre is likely to adversely impact upon safety in the street.</p> <p><u>Parking:</u></p> <p>With regard to the Manly DCP parking rates the proposed development requires a parking provision of 11 on site parking spaces for staff plus the provision of convenient on-site drop off and pick up facilities. The applicant intends to provide a total of 16 spaces including 1 Accessible Parking space. Ten (10) spaces dedicated for staff usage and only 5 spaces for parents & visitors. The RMS Guide to Traffic Generating Developments advises that parking must be provided a rate of 1 space for every 4 children. This would equate to 15 spaces. The RMS Guide also outlines that because of the short length of stay any parking must be conveniently located.</p> <p>While the number of parking spaces provided for the childcare centre is acceptable the parking area has an over reliance on the use of mechanical car stackers. While the use of a small percentage of space in a car stacker may be acceptable for all day staff parking, it is not considered acceptable for use for high turnover drop off pick up parking which must be easily accessible. Car stackers have poles and platforms and constrained headroom which would need to be negotiated even if on the lower level of a stacker. This would not be convenient for mothers seeking to load/unload prams, bags and children, ranging in age from newborns through to 5 years of age. It would also not be convenient for staff employed on a part time or casual basis which is often the case in a childcare centres. Further the number of drop off and pick spaces is considered unlikely to meet demand at peak times and that congested conditions within the carpark are likely to develop at peak times. A greater number of offstreet drop off and pick up spaces is considered necessary. If the developer considers that existing numbers of drop off and pick up spaces are adequate this should be demonstrated by occupancy surveys at other similarly located and sized childcare centres.</p> <p>It appears that additional at grade parking parking spaces cannot be accommodated on the site and it is therefore recommended that the number of children accommodated at the centre and staffing levels should be revised to reduce the parking requirement and the quantum of stacked parking reduced. The design of all car parking bays for use by parents and guests should allow for full opening of all doors and follow the dimensions set out in Table 1.1 of AS 2890.1:2004 with drop off/pick up spaces being no less than 2.6m in width.</p>

Internal Referral Body	Comments
	<p>It should be noted that council does not encourage the use of mechanical stacked parking facilities. If due to site constraint, mechanical stacked parking is provided, the number of mechanical stacked parking spaces should be minimised and allocated for long term (all day) staff parking only.</p> <p>Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.</p> <p><u>Bicycle Parking:</u></p> <p>The Manly DCP requires bicycle parking to be provided at a rate of one every three car parking spaces. It has been mentioned in the Traffic Report (prepared by McLaren Traffic Engineering & Road Safety Consultants) that bicycle parking will be provided prior to construction certificate. However, the location of bicycle parking should be indicated on the drawings.</p> <p><u>Servicing:</u></p> <p>Servicing and loading will be undertaken within the proposed car parking area outside peak drop off and pick up times. A standard B99 design vehicle or similar will be used for delivery and use the visitor parking spaces. This is considered acceptable.</p> <p>Waste Collection will occur from the Lewis Street frontage of the site which is acceptable.</p> <p><u>Driveway:</u></p> <p>The driveway width of 6.1m is considered satisfactory to cater for concurrent ingress and egress of cars and is graded acceptably.</p> <p>The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) should not to be obstructed by landscaping or signage and a pedestrian sightline triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 has been provided at the point where the driveway meets the footpath. The sight line triangle has been indicated on the plans and is acceptable.</p> <p>Given the above, the proposal in its current form is unsupported given the absence of bicycle parking, the over reliance on parking spaces in a mechanical stacker and the level of impact on pedestrian and vehicular safety in the street. It is considered that the development in its current form is an over development of the site in this location.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p><i>Decision not required</i></p> <p>The proposal was referred to Ausgrid. A response was received by Council from Augrid stating that "decision not required". Therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP Educational Establishments and Child Care Facilities 2017

Clause 23 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 stipulates that:

Before determining a development application for development for the purposes of a centre-based child-care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development.

As previously outlined this application is for the establishment of a centre-based child-care facility.

As per the provisions of Clause 23, the provisions of the SEPP and the *Child Care Planning Guideline* are applicable.

DESIGN QUALITY PRINCIPLES

Principle 1: Context

Good design responds and contributes to its context, including 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.

Well-designed child care facilities respond to and enhance the qualities and identity of the area including adjacent sites, streetscapes and neighbourhood.

Well-designed child care facilities take advantage of its context by optimising nearby transport, public facilities and centres, respecting local heritage, and being responsive to the demographic, cultural and socio-economic makeup of the facility users and surrounding communities.

Comment: **Inconsistent**

The proposed development is not considered to be of a design that responds to and contributes to its neighbourhood context, streetscape or adjacent sites. The design of the proposed childcare centre is inconsistent with the MDCP, in particular to the front and side setbacks, wall height and the total open space requirements. These breaches attribute to the institutional appearance, particularly with the strong vertical elements to the front façade. Further, breaches to the side setback and wall height controls contribute towards an unacceptable visual bulk and scale while also resulting in amenity impacts on surrounding properties. Whilst it is accepted that the proposed childcare facility takes advantage of being located adjoining to Balgowlah Heights Public School and is in relatively close to bus stops along Ernest Street (nearest cross street), the proposed development overall is considered unacceptable for its context, while also failing to respond to and enhance the streetscape.

Principle 2: Built Form

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the surrounding area.

Good design 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. Good design also uses a variety of materials, colours and textures.

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.

Contemporary facility design can be distinctive and unique to support innovative approaches to teaching and learning, while still achieving a visual appearance that is aesthetically pleasing, complements the surrounding areas, and contributes positively to the public realm.

Comment: **Inconsistent**

The overall scale, bulk and height of the proposed childcare centre is inconsistent with that of the largely low density residential character of Lewis Street. As highlighted above, the proposed seeks to breach a number of built form controls within the MDCP which result in the development appearing institutional, particularly when viewed from the public domain of Lewis Street. The design of the childcare centre is considered to dominate the streetscape without sensitively relating to the spatial characteristics of the existing built environment along Lewis Street.

Principle 3: Adaptive Learning Spaces

Good facility design delivers high quality learning spaces and achieves a high level of amenity for children and staff, resulting in buildings and associated infrastructure that are fit-for-purpose, enjoyable and easy to use. This is achieved through site layout, building design, and learning spaces fit-out.

Good design achieves a mix of inclusive learning spaces to cater for all students and different modes of learning. This includes appropriately designed physical spaces offering a variety of settings, technology and opportunities for interaction.

Comment: **Consistent**

The design of the proposed childcare centre appears to deliver learning spaces and an acceptable level of amenity for both children and staff when assessed against the applicable requirements of the *Child*

Care Planning Guideline. Concurrence to the NSW Department of Education – Early Childhood Education Directorate was not identified to be necessary at the time of lodgement, nevertheless the development would need to meet clauses 107 and 108 which relate to the indoor and outdoor space requirements of the *Education and Care Services National Regulations 2011*. Should the application be approved, conditions can be imposed in this regard.

Principle 4: Sustainability

Sustainable design combines positive environmental, social and economic outcomes.

This includes use of natural cross ventilation, sunlight and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and re-use of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

Well-designed facilities are durable and embed resource efficiency into building and site design, resulting in less energy and water consumption, less generation of waste and air emissions and reduced operational costs.

Comment: Consistent

The proposed development appears to be well ventilated through an open-style ground floor play area and is to be supplemented by air conditioning. In addition, adequate solar and daylight access is achieved through the provision of windows on all elevations as well skylights and glass block glazing. To both the front and rear of the proposed childcare centre are deep soil areas for vegetation and infiltration.

Principle 5: Landscape

Landscape and buildings should operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Well-designed landscapes make outdoor spaces assets for learning. This includes designing for diversity in function and use, age-appropriateness and amenity.

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.

Comment: Consistent

The breach to the open space requirement under Clause 4.1.5 MDCP results in a lesser overall area for landscaping on site. The non-compliance in this regard has been discussed in detail later in this report. Notwithstanding this breach, the overall landscape design as it relates to the outdoor learning environment for children is considered acceptable.

Principle 6: Amenity

Good design positively influences internal and external amenity for children, staff and neighbours. Achieving good amenity contributes to positive learning environments and the well-being of students and staff.

Good amenity combines appropriate and efficient indoor and outdoor learning spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, service areas and ease of access for all age groups and degrees of mobility.

Well-designed child care facilities provide comfortable, diverse and attractive spaces to learn, play and socialise.

Comment: Consistent

Whilst the proposed development does raises particular concern with regards to accessibility for parents/guardians, young children and those with lesser degrees of mobility, the non-compliance has been assessed under C17 of the *Child Care Planning Guideline* and Clause 3.6 Accessibility MDCP. Despite this, the design of the proposed childcare centre appears to deliver learning spaces and an acceptable level of amenity for both children and staff when assessed against the applicable requirements of the *Child Care Planning Guideline*.

Principle 7: Safety

Well-designed child care facilities optimise the use of the built and natural environment for learning and play, while utilising equipment, vegetation and landscaping that has a low health and safety risk, and can be checked and maintained efficiently and appropriately.

Good child care facility design balances safety and security with the need to create a welcoming and accessible environment. It provides for quality public and private spaces that are inviting, clearly defined and allow controlled access for members of the community. Well-designed child care facilities incorporate passive surveillance and Crime Prevention Through Environmental Design (CPTED).

Comment: Consistent

The proposed childcare centre is considered to achieve consistency with providing a safe and secure learning spaces as well as appropriate supervision of children. The entries and also clearly defined and allow for control access for members of the community.

The following table is an assessment against the criteria of the 'Child Care Planning Guideline' as required by State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

MATTERS FOR CONSIDERATION

Objectives	Criteria/Guidelines	Comments
3.1 Site selection and location		
C1 To ensure that appropriate zone considerations are assessed when selecting a site	For proposed developments in or adjacent to a residential zone, consider: <ul style="list-style-type: none"> • the acoustic and privacy impacts of the proposed development on the residential properties • the setbacks and siting of buildings within the residential context • traffic and parking impacts of the proposal on residential amenity. 	Inconsistent <p>The application is accompanied by an acoustic report to address the proposed childcare centre. The report makes recommendations regarding acoustic walls and treatments to mitigate adverse noise impacts to adjoining properties. The proposal is</p>

		<p>acceptable with regards to noise, subject to conditions.</p> <p>Along the northern elevation, two (2) cot room windows on the ground floor and two (2) 3-5 years room windows on the first floor have been raised as a privacy concern for the adjoining property owners to the north. Consideration has been given that these windows are capable of being setback further to restrict direct viewing and to mitigate impacts on privacy.</p> <p>The setbacks to the Lewis Street frontage and both the north and southern sides and rear are inconsistent with the MDCP and unacceptable for its surrounding residential context, particularly with regards to the resultant visual and amenity impacts.</p> <p>The additional vehicular and pedestrian traffic generated by the proposed childcare centre is likely to adversely impact upon safety in the street. Further, the proposal provides for insufficient off-street parking and an unacceptable parking arrangement. This is discussed in detail further in this report.</p>
<p>C2 To ensure that the site selected for a proposed child care facility is suitable for the use</p>	<p>When selecting a site, ensure that:</p> <ul style="list-style-type: none"> • the location and surrounding uses are compatible with the proposed development or use • the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards • there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed • the characteristics of the site are suitable for the scale and type of development 	<p>Inconsistent</p> <p>Preference is given to childcare centre sites which are adjacent to primary schools (see Clause 4.4.1 Child Care Centres MDCP).</p> <p>The site is considered safe from risks associated with natural hazards.</p>

	<p>proposed having regard to:</p> <ul style="list-style-type: none"> - size of street frontage, lot configuration, dimensions and overall size - number of shared boundaries with residential properties - the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas • where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use • there are suitable drop off and pick up areas, and off and on street parking • the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use • it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises. 	<p>Appropriate conditions have been recommended by Council's Environmental Health Officer for a site specific <i>Environmental Management Plan (EMP)</i> to address potential environmental contaminants on the land.</p> <p>The scale of the proposed childcare centre is not considered suitable with regards to the characteristics of the site.</p> <p>The additional vehicular and pedestrian traffic generated by the proposed childcare centre is likely to adversely impact upon safety in Lewis Street. Further, the proposal provides for insufficient off-street parking, in particular with drop-off/pick-up locations and an unacceptable parking arrangement. This is discussed in detail further in this report.</p> <p>The proposed childcare centre is not located closely to any known incompatible social activities/uses.</p>
C3 To ensure that sites for child care facilities are appropriately located	<p>A child care facility should be located:</p> <ul style="list-style-type: none"> • near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship • near or within employment areas, town centres, business centres, shops • with access to public transport including rail, buses, ferries • in areas with pedestrian connectivity to the local community, businesses, shops, services and the like. 	<p>Consistent</p> <p>The proposed child care facility is located adjoining to Balgowlah Heights Public School, but is not near to any employment areas, town centres, business centres or shops. The nearest shops are along New Street, Balgowlah Heights, some 600m towards the north of the site. Access to public transport (buses) are nearby at Ernest Street and pedestrian connectivity is available via existing footpaths.</p>
C4 To ensure that	<p>A child care facility should be located to</p>	<p>Consistent</p>

<p>sites for child care facilities do not incur risks from environmental, health or safety hazard</p>	<p>avoid risks to children, staff or visitors and adverse environmental conditions arising from:</p> <ul style="list-style-type: none"> • proximity to: <ul style="list-style-type: none"> - heavy or hazardous industry, waste transfer depots or landfill sites - LPG tanks or service stations - water cooling and water warming systems - odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses 	<p>The proposed childcare centre is not located in proximity to sites known to incur risks from environmental, health or safety hazards.</p>
<p>3.2 Local character, streetscape and the public domain</p>		
<p>C5 To ensure that the child care facility is compatible with the local character and surrounding streetscape</p>	<p>The proposed development should:</p> <ul style="list-style-type: none"> • contribute to the local area by being designed in character with the locality and existing streetscape • reflect the predominant form of surrounding land uses, particularly in low density residential areas • recognise predominant streetscape qualities, such as building form, scale, materials and colours • include design and architectural treatments that respond to and integrate with the existing streetscape • use landscaping to positively contribute to the streetscape and neighbouring amenity • integrate car parking into the building and site landscaping design in residential areas. 	<p>Inconsistent</p> <p>The proposed childcare centre has not been designed in character with the locality and existing streetscape, nor does it reflect the predominant form of the surrounding low density residential context. The built form and scale of the proposal is such that it reflects an overdevelopment of the site, breaching a number of built form controls within the MDCP such as those in relation to height and setbacks.</p> <p>The architectural design is considered to be appear institutional with strong vertical elements that does not integrate with the surrounding streetscape. The proposed landscape plan does include plantings within the front setback area to contribute towards the streetscape and neighbourhood amenity, however the breach to the open space control limits area available for landscaping.</p> <p>Car parking has been integrated into the building.</p>

C6, C7, C8 To ensure clear delineation between the child care facility and public spaces	Create a threshold with a clear transition between public and private realms, including: <ul style="list-style-type: none"> • fencing to ensure safety for children entering and leaving the facility • windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community • integrating existing and proposed landscaping with fencing. 	Consistent Fencing and windows towards Lewis Street have been proposed as part of childcare centre design. Consideration has been given that these requirements are capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to any childcare centre becoming operational.
	On sites with multiple buildings and/or entries, pedestrian entries and spaces associated with the child care facility should be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.	Consistent The proposed childcare centre is a single building with a primary entry point via the Lewis Street frontage. As previously mentioned, these requirements are capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.
	Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions: <ul style="list-style-type: none"> • clearly defined street access, pedestrian paths and building entries • low fences and planting which delineate communal/ private open space from adjoining public open space • minimal use of blank walls and high fences. 	N/A The Site does not adjoin any public parks, open space or bushland.
C9, C10 To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.	Front fences and walls within the front setback should be constructed of visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.	Consistent The proposal indicates 1.2m high fencing along the northern and southern boundaries of the front setback. Council's Traffic Engineer has also provided comments indicating that the

		sightlines at the vehicle driveway are acceptable. As previously mentioned, these requirements are capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.
	High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary	N/A Lewis Street is a local road and therefore would not require high fencing that would otherwise be necessary along a classified road.
3.3 Building orientation, envelope and design		
C11 To respond to the streetscape and site, while optimising solar access and opportunities for shade	<p>Orient a development on a site and design the building layout to:</p> <ul style="list-style-type: none"> • ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: <ul style="list-style-type: none"> - facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties - placing play equipment away from common boundaries with residential properties - locating outdoor play areas away from residential dwellings and other sensitive uses • optimise solar access to internal and external play areas • avoid overshadowing of adjoining residential properties • minimise cut and fill • ensure buildings along the street frontage define the street by facing it • ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions. 	<p>Inconsistent</p> <p>As discussed throughout this report, the four (4) windows and entry along the northern elevation are considered to result in privacy impacts for the adjoining neighbours at No. 13 Lewis Street, Balgowlah Heights.</p> <p>Consideration has been given that compliant setbacks and conditions pertaining to glazing details are capable to mitigate impacts on privacy. The northern side exit door is not supported in its current form due to noise anticipated and concerns over the suitability of two flights of stairs with regards to equitable and appropriate access.</p> <p>Consideration has been given that the internal and external play areas have been appropriately located away from residential dwellings and largely protected from wind</p>

		<p>and other climatic conditions.</p> <p>Whilst a significant amount of excavation is proposed, it is not considered to have a detrimental impact on environmental functions and processes, neighbouring uses or surrounding lands. Appropriate conditions can be placed to ensure appropriate measures and dilapidation surveys are undertaken to satisfactorily address this particular matter.</p>
<p>C12 To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised</p>	<p>The following matters may be considered to minimise the impacts of the proposal on local character:</p> <ul style="list-style-type: none"> • building height should be consistent with other buildings in the locality • building height should respond to the scale and character of the street • setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility • setbacks should provide adequate access for building maintenance • setbacks to the street should be consistent with the existing character. 	<p>Inconsistent</p> <p>Whilst it is accepted that the proposed childcare centre is compliant with the prescribed building height, the wall heights, roof form and scale of the development is inconsistent with other neighbouring buildings and the character of Lewis Street.</p> <p>The non-compliant northern and southern side setbacks do not appear to provide adequate access for building maintenance, nor does it allow for adequate privacy for neighbours.</p> <p>The proposed rear setback is also inconsistent with the prevailing rear building line and results to additional amenity impacts to adjoining properties.</p> <p>The proposed front setback breaches the prevailing building line and is therefore inconsistent with surrounding suburban neighbourhood character.</p>
<p>C13, C14 To ensure that setbacks from the boundary of a child</p>	<p>Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road</p>	<p>Inconsistent</p> <p>The subject site is not located</p>

<i>care facility are consistent with the predominant development within the immediate context</i>	frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use.	on a classified road and is therefore subject to front setback requirement that is to be taken from the average of the two closest buildings. In this regard, the setback should be 8.16m. The nearest point of the proposed childcare centre to the front boundary is measured at 5.3m and is therefore non-compliant.
	On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.	Inconsistent The proposed childcare centre is non-compliant with the northern side setback control requirement of 2.76m and the southern side setback of 2.6m. The breaches result in an unacceptable visual bulk and scale, whilst also contributing to amenity impacts on surrounding properties.
C15 To ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute to an area's character	The built form of the development should contribute to the character of the local area, including how it: <ul style="list-style-type: none"> • respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage • contributes to the identity of the place • retains and reinforces existing built form and vegetation where significant • considers heritage within the local neighbourhood including identified heritage items and conservation areas • responds to its natural environment including local landscape setting and climate • contributes to the identity of place. 	Inconsistent The built form of the proposed childcare centre is not seen to respect or respond to its adjacent built form, the character of the neighbourhood or streetscape. The subject site does not contain any significant landscape features, nor is it a heritage item, within a heritage conservation area or in the vicinity of a heritage item.
C16 To ensure that buildings are designed to create safe environments for all users	Entry to the facility should be limited to one secure point which is: <ul style="list-style-type: none"> • located to allow ease of access, particularly for pedestrians • directly accessible from the street where possible • directly visible from the street frontage • easily monitored through natural or camera surveillance • not accessed through an outdoor play area. • in a mixed-use development, clearly 	Consistent The entry to the childcare centre is limited to one secure point and is consistent with the requirements of this guideline.

	defined and separate from entrances to other uses in the building.	
C17 To ensure that child care facilities are designed to be accessible by all potential users	<p>Accessible design can be achieved by:</p> <ul style="list-style-type: none"> • providing accessibility to and within the building in accordance with all relevant legislation • linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry • providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible • minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath. <p>NOTE: The National Construction Code, the Discrimination Disability Act 1992 and the Disability (Access to Premises – Buildings) Standards 2010 set out the requirements for access to buildings for people with disabilities.</p>	<p>Inconsistent</p> <p>The proposal is reliant upon one internal lift and does not link all key areas of the site by ramped pathways that are accessible to prams and wheelchairs. In particular, the exit walkway along the northern side boundary includes two flights of stairs – one of 6 steps and the other with 10 steps, thus making access limited and difficult to negotiate for parents/guardians, young children and people with a disability.</p>
3.4 Landscaping		
C18, C19 To provide landscape design that contributes to the streetscape and amenity	<p>Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space.</p> <p>Use the existing landscape where feasible to provide a high quality landscaped area by:</p> <ul style="list-style-type: none"> • reflecting and reinforcing the local context • incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping. <p>Incorporate car parking into the landscape design of the site by:</p> <ul style="list-style-type: none"> • planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings • taking into account streetscape, local character and context when siting car parking areas within the front setback • using low level landscaping to soften and screen parking areas. 	<p>Consistent</p> <p>The proposed landscape arrangement includes perimeter native screen plantings along both side boundaries for the site. These plantings have not been included in calculations of unencumbered outdoor space.</p>
		<p>N/A</p> <p>The proposed car parking on site is to be located in the basement of the childcare centre. The incorporation of these landscaping requirements are therefore not considered applicable.</p>
3.5 Visual and acoustic privacy		

C20, C21 To protect the privacy and security of children attending the facility	Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.	N/A The proposal is not a mixed-use development.
	Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through: <ul style="list-style-type: none"> • appropriate site and building layout • suitably locating pathways, windows and doors • permanent screening and landscape design. 	Consistent The indoor rooms and outdoor play spaces of the proposed childcare centre are located away from public areas. This has been achieved through largely incorporated these areas internally and towards the rear of the site.
C22 To minimise impacts on privacy of adjoining properties	Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through: <ul style="list-style-type: none"> • appropriate site and building layout • suitable location of pathways, windows and doors • landscape design and screening. 	Inconsistent The proposed development does not incorporate appropriate setbacks, off-sets or glazing details along the Northern Elevation to mitigate overlooking towards the private open space areas of No. 13 Lewis Street, Balgowlah Heights.
C23, C24 To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments	A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should: <ul style="list-style-type: none"> • provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence). • ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure. 	Consistent Submitted with the Development Application, the <i>Environmental Noise Assessment</i> , (Ref. 7102-1.1R, dated 21 December 2020 prepared by Day Design Pty Ltd) details a 1.8m high solid boundary fence is to be constructed along the entire northern boundary of the outdoor play area to the front setback to Lewis Street. Along the rear boundary of the site, a 2.5m high fence is also indicated. The Environmental Noise Assessment goes onto state that an "Assumed 1.2m high parapet wall around the entire boundary of the Level 1 plant area". Subject to compliance with relevant recommendations and conditions placed by

		Council's Environmental Health Officer, the relevant acoustic requirements are considered to be capable of being achieved.
	<p>A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters:</p> <ul style="list-style-type: none"> • identify an appropriate noise level for a child care facility located in residential and other zones • determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use • determine the appropriate height of any acoustic fence to enable the noise criteria to be met. 	<p>Consistent</p> <p>The submitted <i>Environmental Noise Assessment</i> details that for the development of child care centres in residential areas, the background noise level within these areas can at certain times, be low. Thus, a base criterion of a contributed: eq,15min 45 dB(A). The assessment of outdoor play areas is recommended in locations where the background noise level is less than 40dB(A). The <i>Environmental Noise Assessment</i> also details noise emission calculations for the indoor and outdoor play areas, car parks and mechanical plant which factor reductions provided by the fence heights.</p>
3.6 Noise and air pollution		
C25, C26	<p>Adopt design solutions to minimise the impacts of noise, such as:</p> <ul style="list-style-type: none"> • creating physical separation between buildings and the noise source • orienting the facility perpendicular to the noise source and where possible buffered by other uses • using landscaping to reduce the perception of noise • limiting the number and size of openings facing noise sources • using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens) • using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits • locating cot rooms, sleeping areas and play areas away from external noise sources 	<p>Consistent</p> <p>Submitted with the Development Application, the <i>Environmental Noise Assessment</i>, makes recommendations for measures to mitigate noise impacts. Subject to compliance with relevant recommendations and conditions placed by Council's Environmental Health Officer, the relevant acoustic requirements are considered to be capable of being achieved</p>
	An acoustic report should identify appropriate	Consistent

	<p>noise levels for sleeping areas and other non play areas and examine impacts and noise attenuation measures where a child care facility is proposed in any of the following locations:</p> <ul style="list-style-type: none"> • on industrial zoned land • where the ANEF contour is between 20 and 25, consistent with AS 2021 - 2000 • along a railway or mass transit corridor, as defined by State Environmental Planning Policy (Infrastructure) 2007 • on a major or busy road • other land that is impacted by substantial external noise. 	<p>Submitted with the Development Application, the <i>Environmental Noise Assessment</i>, consideration has been given that indoor play areas and sleeping areas, the internal noise levels will comply with the <i>Association of Australasian Acoustical Consultants' internal noise limit for Child Care Centres</i>. Subject to compliance with relevant recommendations and conditions placed by Council's Environmental Health Officer, the relevant acoustic requirements are considered to be capable of being achieved.</p>
<p>C27, C28 To ensure air quality is acceptable where child care facilities are proposed close to external sources of air pollution such as major roads and industrial development</p>	<p>Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.</p>	<p>N/A</p> <p>The proposed childcare centre is not located near external sources of air pollution such as major roads and industrial development.</p>
	<p>A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed child care facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines.</p> <p>The air quality assessment report should evaluate design considerations to minimise air pollution such as:</p> <ul style="list-style-type: none"> • creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution • using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway • incorporating ventilation design into the design of the facility. 	<p>N/A</p> <p>As above, the proposed childcare centre is not close to major roads or industrial developments.</p>
<p>3.7 Hours of operation</p>		

C29, C30 To minimise the impact of the child care facility on the amenity of neighbouring residential developments	Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.	Consistent The hours of operation for the proposed childcare centre are to be 7:00am to 7:00pm Monday to Friday. Staff will be on premises from 7:00am to 7:30pm to allow for afterhours cleaning and administration.
	Within mixed use areas or predominantly commercial areas, the hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.	N/A The proposed childcare centre is not located within a mixed use area or predominantly commercial area.
3.8 Traffic, parking and pedestrian circulation		
C31, C32, C33 To provide parking that satisfies the needs of users and demand generated by the centre	<p>Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land.</p> <p>Where a Development Control Plan does not specify car parking rates, off street car parking should be provided at the following rates:</p> <p>Within 400 metres of a metropolitan train station:</p> <ul style="list-style-type: none"> • 1 space per 10 children • 1 space per 2 staff. Staff parking may be stack or tandem parking with no more than 2 spaces in each tandem space. <p>In other areas:</p> <ul style="list-style-type: none"> • 1 space per 4 children. <p>A reduction in car parking rates may be considered where:</p> <ul style="list-style-type: none"> • the proposal is an adaptive re-use of a heritage item • the site is in a B8 Metropolitan Zone or other high density business or residential zone • the site is in proximity to high frequency and well connected public transport • the site is co-located or in proximity to other uses where parking is appropriately provided (for example business centres, schools, public open space, car parks) • there is sufficient on street parking available 	<p>Inconsistent</p> <p>The Manly DCP requires that 1 space per employee of the child care centre be provided on site and provision for drop off and pick up points.</p> <p>The proposed child care facility is to accommodate for 57 children and a total of 11 staff.</p> <p>The application provides for a total of 16 spaces, including 10 staff parking spaces and 6 drop off and pick up space, one of which is an Accessible Parking space.</p> <p>In accordance with the Manly DCP, the proposal seeks to vary the required number of staff parking by 1 parking space.</p>

	at appropriate times within proximity of the site.	<p>Council's Traffic Engineer has reviewed the <i>Traffic and Parking Impact Assessment</i> with regards parking, commenting that the proposed car stacker arrangement would not be convenient for parents or staff employed on a part time or casual basis. Further, the number of drop off and pick up spaces are unlikely to meet demands at peak times.</p> <p>See detailed comments earlier in this report.</p>
	In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high levels of vehicle movement or potential conflicts with trucks and large vehicles.	<p>N/A</p> <p>The proposed childcare centre is not located within a commercial or industrial zone and does not form part of a mixed use development.</p>
	<p>A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that:</p> <ul style="list-style-type: none"> • the amenity of the surrounding area will not be affected • there will be no impacts on the safe operation of the surrounding road network. 	<p>Inconsistent</p> <p>A <i>Traffic and Parking Impact Assessment</i> has been provided with the development application. Council's Traffic Engineer has reviewed this report and considers the development will impact on pedestrian and vehicle safety, in particular during the intense drop off and pick up times associated with Balgowlah Heights Public School.</p>
C34, C35 To provide vehicle access from the street in a safe environment that does not disrupt traffic flows	<p>Alternate vehicular access should be provided where child care facilities are on sites fronting:</p> <ul style="list-style-type: none"> • a classified road • roads which carry freight traffic or transport dangerous goods or hazardous materials. <p>The alternate access must have regard to:</p> <ul style="list-style-type: none"> • the prevailing traffic conditions • pedestrian and vehicle safety including bicycle movements • the likely impact of the development on traffic. 	<p>N/A</p> <p>The Site is not located on a classified road or a road which carries freight traffic or transport dangerous goods or hazardous materials.</p>
	Child care facilities proposed within cul-de-	N/A

	sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.	The Site is not located within a cul-de-sac.
C36, C37, C38 To provide a safe and connected environment for pedestrians both on and around the site	<p>The following design solutions may be incorporated into a development to help provide a safe pedestrian environment:</p> <ul style="list-style-type: none"> • separate pedestrian access from the car park to the facility • defined pedestrian crossings included within large car parking areas • separate pedestrian and vehicle entries from the street for parents, children and visitors • pedestrian paths that enable two prams to pass each other • delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities • in commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas • vehicles can enter and leave the site in a forward direction. 	<p>Inconsistent</p> <p>A <i>Traffic and Parking Impact Assessment</i> has been provided with the development application. Council's Traffic Engineer has reviewed this report and considers that the additional vehicle and pedestrian traffic generated by the childcare centre is likely to adversely impact upon safety in the street. The Development Application has not demonstrated pedestrian paths that enable two prams to pass each other, nor has it demonstrated vehicular manoeuvring paths to demonstrate that all vehicles can enter and depart the site in a forward direction.</p>
	<p>Mixed use developments should include:</p> <ul style="list-style-type: none"> • driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by trucks • drop off and pick up zones that are exclusively available for use during the facility's operating hours with spaces clearly marked accordingly, close to the main entrance and preferably at the same floor level. Alternatively, direct access should avoid crossing driveways or manoeuvring areas used by vehicles accessing other parts of the site • parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility. 	<p>N/A</p> <p>The proposed development does not form part of a mixed use development.</p>
	<p>Car parking design should:</p> <ul style="list-style-type: none"> • include a child safe fence to separate car parking areas from the building entrance and play areas • provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with 	<p>Inconsistent</p> <p>The Development Application has not demonstrated that the design of all car parking bays will allow for full opening of all doors, nor that drop</p>

	<p>appropriate Australian Standards</p> <ul style="list-style-type: none"> • include wheelchair and pram accessible parking. 	<p>off/pick up spaces are compliant in width against relevant Australian Standards. Council's Traffic Engineer has reviewed the submitted <i>Traffic and Parking Impact Assessment</i> considering that the proposed car stackers have constrained headroom's which would need to be negotiated even if on the lower level of a stacker. Such an arrangement would not be convenient for parents seeking to load/unload prams, bags and children.</p>
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APPLYING THE NATIONAL REGULATIONS TO DEVELOPMENT PROPOSALS

Regulation	Design Guidance	Comments
4.1 Indoor space requirements		
<p>Regulation 107 Education and Care Services National Regulation</p> <p>Every child being educated and cared for within a facility must have a minimum of 3.25m² of unencumbered indoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p> <p>Unencumbered indoor space excludes any of the following:</p> <ul style="list-style-type: none"> • passageway or thoroughfare (including door swings) used for circulation • toilet and hygiene facilities • nappy changing area or area for preparing bottles • area permanently set 	<p>The proposed development includes at least 3.25 square metres of unencumbered indoor space for each child.</p> <p>Verandahs as indoor space For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space.</p> <p>Storage Storage areas including joinery units are not to be included in the calculation of indoor space. To achieve a functional unencumbered area free of clutter, storage areas must be considered when designing and calculating the spatial requirements of the facility. It is recommended that a child care facility provide:</p> <ul style="list-style-type: none"> • a minimum of 0.3m³ per child of external storage space • a minimum of 0.2m³ per child of internal storage space. <p>Storage does not need to be in a separate room or screened, and there should be a mixture of safe shelving and storage that children can access independently.</p>	<p>Consistent</p> <p>The proposed development requires at least 185.25m² of indoor space.</p> <p>The proposal provides for 186.03m² of indoor space.</p> <p>The proposal requires 17.1m² of external storage space.</p> <p>The proposal provides for 18.8m² of external storage space.</p> <p>The proposal requires 11.4m² of internal storage space.</p> <p>The proposal provide for 13.1m² of internal storage space.</p> <p>The location of bicycle parking has not been indicated on submitted plans. The matter is addressed in further detail under Clause 4.1.6 MDCP of this report.</p>

<p>aside for the use or storage of cots</p> <ul style="list-style-type: none"> • area permanently set aside for storage • area or room for staff or administration • kitchens, unless the kitchen is designed to be used predominately by the children as part of an educational program e.g. a learning kitchen • on-site laundry • other space that is not suitable for children. <p>All unencumbered indoor spaces must be provided as a secure area for children. The design of these spaces should consider the safe supervision of children.</p> <p>When calculating indoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6) of the National Regulations.</p> <p>Applicants should also note that regulation 81 requires that the needs for sleep and rest of children at the service be met, having regard to their ages, development stages and individual needs.</p> <p>Development applications should</p>	<p>Storage of items such as prams, bikes and scooters should be located adjacent to the building entrance.</p> <p>Where an external laundry service is used, storage and collection points for soiled items should be in an area with separate external access, away from children. This will prevent clothes being carried through public areas and reduce danger to children during drop off and collection of laundry.</p>	<p>An internal laundry is accommodated on the first floor.</p>
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indicate how these needs will be accommodated.		
Verandahs may be included when calculating indoor space with the written approval from the regulatory authority.		
4.2 Laundry and hygiene facilities		
<p>Regulation 106 Education and Care Services National Regulation</p> <p>There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children.</p> <p>Child care facilities must also comply with the requirements for laundry facilities that are contained in the National Construction Code.</p>	<p><i>The proposed development includes laundry facilities or access to laundry facilities OR explain the other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage of soiled clothing, nappies and linen prior to their disposal or laundering.</i></p> <p>Laundry and hygiene facilities are a key consideration for education and care service premises. The type of laundry facilities provided must be appropriate to the age of children accommodated.</p> <p>On site laundry On site laundry facilities should contain:</p> <ul style="list-style-type: none"> • a washer or washers capable of dealing with the heavy requirements of the facility • a dryer • laundry sinks • adequate storage for soiled items prior to cleaning • an on site laundry cannot be calculated as usable unencumbered play space for children. <p>External laundry service A facility that does not contain on site laundry facilities must make external laundering arrangements. Any external laundry facility providing services to the facility needs to comply with any relevant Australian Standards.</p>	<p>Consistent</p> <p>The on-site laundry located on the first floor appears to contain the appropriate facilities required. Such requirements are considered to be capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.</p>
4.3 Toilet and hygiene facilities		
<p>Regulation 109 Education and Care Services National Regulation</p> <p>A service must ensure</p>	<p><i>The proposed development includes adequate, developmentally and age appropriate toilet, washing and drying facilities for use by children being educated and cared for by the service.</i></p>	<p>Consistent</p> <p>The proposed childcare centre appears to contain adequate toilet, washing and drying facilities inclusive of</p>

<p>that adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children.</p> <p>Child care facilities must comply with the requirements for sanitary facilities that are contained in the National Construction Code.</p>	<p>Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants. Design considerations could include:</p> <ul style="list-style-type: none"> • junior toilet pans, low level sinks and hand drying facilities for children • a sink and handwashing facilities in all bathrooms for adults • direct access from both activity rooms and outdoor play areas • windows into bathrooms and cubicles without doors to allow supervision by staff • external windows in locations that prevent observation from neighbouring properties or from side boundaries 	<p>the relevant design considerations. As previously highlighted, these requirements are considered to be capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.</p>
4.4 Ventilation and natural light		
<p>Regulation 110 Education and Care Services National Regulation</p> <p>Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children.</p> <p>Child care facilities must comply with the light and ventilation and minimum ceiling height requirements of the <i>National Construction Code</i>. Ceiling height requirements may be affected by the capacity of the facility.</p>	<p><i>The proposed development includes indoor spaces to be used by children that:</i></p> <ul style="list-style-type: none"> • <i>will be well ventilated; and</i> • <i>will have adequate natural light; and</i> • <i>can be maintained at a temperature that ensures the safety and well-being of children.</i> <p>Ventilation</p> <p>Good ventilation can be achieved through a mixture of natural cross ventilation and air conditioning. Encouraging natural ventilation is the basis of sustainable design; however, there will be circumstances where mechanical ventilation will be essential to creating ambient temperatures within a facility.</p> <p>To achieve adequate natural ventilation, the design of the child care facilities must address the orientation of the building, the configuration of rooms and the external building envelope, with natural air flow generally reducing the deeper a building becomes. It is recommended that child care facilities ensure natural ventilation is available to each indoor activity room.</p> <p>Natural light</p>	<p>Consistent</p> <p>The proposed childcare centre appears to be well ventilated through an open-style ground floor outdoor play area and air conditioning.</p> <p>Adequate solar and daylight access is considered to be achieved through the provision of openings, windows on all elevations, glass block glazing and the skylights.</p>

	<p>Solar and daylight access reduces reliance on artificial lighting and heating, improves energy efficiency and creates comfortable learning environments through pleasant conditions. Natural light contributes to a sense of well-being, is important to the development of children and improves service outcomes. Daylight and solar access changes with the time of day, seasons and weather conditions. When designing child care facilities consideration should be given to:</p> <ul style="list-style-type: none"> • providing windows facing different orientations • using skylights as appropriate • ceiling heights. <p>Designers should aim to minimise the need for artificial lighting during the day, especially in circumstances where room depth exceeds ceiling height by 2.5 times. It is recommended that ceiling heights be proportional to the room size, which can be achieved using raked ceilings and exposed trusses, creating a sense of space and visual interest.</p>	
4.5 Administrative space		
<p>Regulation 110 Education and Care Services National Regulation</p> <p>A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.</p>	<p><i>The proposed development includes an adequate area or areas for the purposes of conducting the administrative functions of the service; and consulting with parents of children; and conducting private conversations.</i></p> <p>Design considerations could include closing doors for privacy and glass partitions to ensure supervision.</p> <p>When designing administrative spaces, consideration should be given to functions which can share spaces and those which cannot. Sound proofing of meeting rooms may be appropriate where they are located adjacent to public areas, or in large rooms where sound can easily travel.</p> <p>Administrative spaces should be designed to ensure equitable use by parents and children at the facility. A reception desk may be designed to have a portion of it at a lower level for children or people in a wheel chair.</p>	<p>Consistent</p> <p>The proposed childcare centre appears to include adequate area or areas for the purposes of conducting the administrative functions of the service; and consulting with parents of children; and conducting private conversations.</p> <p>As previously highlighted, these requirements are considered to be capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.</p>

4.6 Nappy change facilities		
<p>Regulation 112 Education and Care Services National Regulations</p> <p>Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children.</p> <p>Child care facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the National Construction Code.</p>	<p><i>(To be completed only if the proposed development is for a service that will care for children who wear nappies).</i></p> <p><i>The proposed development includes an adequate area for construction of appropriate hygienic facilities for nappy changing including at least one properly constructed nappy changing bench and hand cleansing facilities for adults in the immediate vicinity of the nappy change area.</i></p> <p>In circumstances where nappy change facilities must be provided, design considerations could include:</p> <ul style="list-style-type: none"> • properly constructed nappy changing bench or benches • a bench type baby bath within one metre from the nappy change bench • the provision of hand cleansing facilities for adults in the immediate vicinity of the nappy change area • a space to store steps • positioning to enable supervision of the activity and play areas. 	<p>Consistent</p> <p>The proposed childcare centre indicates WC/Nappy rooms on both the ground floor and first floor. At least one change table has been indicated has been indicated on the ground floor level which is to accommodate for 0-2 year old children. Hand cleansing facilities for adults in the immediate vicinity of the nappy change area is provided.</p> <p>As previously highlighted, these requirements are considered to be capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.</p>
4.7 Premises designed to facilitate supervision		
<p>Regulation 115 Education and Care Services National Regulations</p> <p>A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity.</p> <p>Child care facilities must also comply with any requirements regarding</p>	<p><i>The proposed development (including toilets and nappy change facilities) are designed in a way that facilitates supervision of children at all times, having regard to the need to maintain the rights and dignity of the children.</i></p> <p>Design considerations should include:</p> <ul style="list-style-type: none"> • solid walls in children's toilet cubicles (but no doors) to provide dignity whilst enabling supervision • locating windows into bathrooms or nappy change areas away from view of visitors to the facility, the public or neighbouring properties • avoiding room layouts with hidden corners where supervision is poor, or multi room activity rooms for single groups of children • avoiding multi-level rooms which compromise, or require additional staffing, to ensure proper supervision. If multilevel spaces are proposed, consideration should be given to providing areas that can be 	<p>Consistent</p> <p>The proposed children's toilet and change facilities appear to contain windows in appropriate locations to ensure supervision, whilst being located away from view of visitors to the facility, the public or neighbouring properties. Solid walls have been indicated for children's toilet cubicles.</p> <p>As previously highlighted, these requirements are considered to be capable of being achieved, particularly when accounting for regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to</p>

the ability to facilitate supervision that are contained in the National Construction Code.	closed off and used only under supervision for controlled activities	childcare centre becoming operational.
4.8 Emergency and evacuation procedures		
<p>Regulations 97 and 168 Education and Care Services National Regulations</p> <p>Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation.</p> <p>Regulation 97 sets out the detail for what those procedures must cover including:</p> <ul style="list-style-type: none"> • instructions for what must be done in the event of an emergency • an emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit • a risk assessment to identify potential emergencies that are relevant to the service. 	<p>Facility design and features should provide for the safe and managed evacuation of children and staff from the facility in the event of a fire or other emergency.</p> <p>Multi-storey buildings with proposed child care facilities above ground level may consider providing additional measures to protect staff and children. For example:</p> <ul style="list-style-type: none"> • independent emergency escape routes from the facility to the ground level that would separate children from other building users to address child protection concerns during evacuations • a safe haven or separate emergency area where children and staff can muster during the initial stages of a fire alert or other emergency. This would enable staff to account for all children prior to evacuation. <p>An emergency and evaluation plan should be submitted with a DA and should consider:</p> <ul style="list-style-type: none"> • the mobility of children and how this is to be accommodated during an evacuation • the location of a safe congregation/assembly point, away from the evacuated building, busy roads and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings • how children will be supervised during the evacuation and at the congregation/assembly point, relative to the capacity of the facility and governing child-to-staff ratios. 	<p>Inconsistent</p> <p>The Development Application was not submitted with an emergency and evaluation plan.</p>
4.9 Outdoor space requirements		
<p>Regulation 108 Education and Care Services National Regulations</p> <p>An education and care service premises must provide for every child being educated and cared for within the</p>	<p><i>The proposed development includes at least 7.0 square metres of unencumbered outdoor space for each child.</i></p> <p>Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children's play.</p>	<p>Consistent</p> <p>The proposed childcare centre requires at least 399m² of outdoor open space.</p> <p>The proposed childcare centre provides for 401.58m² of unencumbered outdoor</p>

<p>facility to have a minimum of 7.0m² of unencumbered outdoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p> <p>Unencumbered outdoor space excludes any of the following:</p> <ul style="list-style-type: none"> • pathway or thoroughfare, except where used by children as part of the education and care program • car parking area • storage shed or other storage area • laundry • other space that is not suitable for children. <p>When calculating outdoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6) of the National Regulations.</p> <p>Applicants should also note that regulation 274 (Part 7.3 NSW Provisions) states that a centre-based service for children preschool age or under must ensure there is no swimming pool on the premises, unless the swimming</p>	<p>When new equipment or storage areas are added to existing services, the potential impact on unencumbered space calculations and service approvals must be considered.</p> <p>Verandahs as outdoor space Where a covered space such as a verandah is to be included in outdoor space it should:</p> <ul style="list-style-type: none"> • be open on at least one third of its perimeter • have a clear height of 2.1 metres • have a wall height of less than 1.4 metres where a wall with an opening forms the perimeter • have adequate flooring and roofing • be designed to provide adequate protection from the elements <p>Simulated outdoor environments Proponents should aim to provide the requisite amount of unencumbered outdoor space in all development applications.</p> <p>A service approval will only be granted in exceptional circumstances when outdoor space requirements are not met. For an exemption to be granted, the preferred alternate solution is that indoor space be designed as a simulated outdoor environment.</p> <p>Simulated outdoor space must be provided in addition to indoor space and cannot be counted twice when calculating areas.</p> <p>Simulated outdoor environments are internal spaces that have all the features and experiences and qualities of an outdoor space. They should promote the same learning outcomes that are developed during outdoor play. Simulated outdoor environments should have:</p> <ul style="list-style-type: none"> • more access to natural light and ventilation than required for an internal space through large windows, glass doors and panels to enable views of trees, views of the sky and clouds and movement outside the facility • skylights to give a sense of the external climate • a combination of different floor types and textures, including wooden decking, pebbles, mounds, ridges, grass, bark and artificial grass, to mimic the uneven surfaces of an 	<p>space.</p>
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<p>pool existed before 6 November 1996. Where there is an existing swimming pool, a water safety policy will be required.</p> <p>A verandah that is included within indoor space cannot be included when calculating outdoor space and vice versa.</p>	<p>outdoor environment</p> <ul style="list-style-type: none"> • sand pits and water play areas • furniture made of logs and stepping logs • dense indoor planting and green vegetated walls • climbing frames, walking and/or bike tracks • vegetable gardens and gardening tubs. 	
4.10 Natural Environment		
<p>Regulation 113 Education and Care Services National Regulations</p> <p>The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.</p>	<p><i>The proposed development includes outdoor spaces that will allow children to explore and experience the natural environment.</i></p> <p>Creating a natural environment to meet this regulation includes the use of natural features such as trees, sand and natural vegetation within the outdoor space.</p> <p>Shrubs and trees selected for the play space must be safe for children. Avoid plant species that risk the health, safety and welfare of the facility's occupants, such as those which:</p> <ul style="list-style-type: none"> • are known to be poisonous, produce toxins or have toxic leaves or berries • have seed pods or stone fruit, attract bees, have thorns, spikes or prickly foliage or drop branches <p>The outdoor space should be designed to:</p> <ul style="list-style-type: none"> • provide a variety of experiences that facilitate the development of cognitive and physical skills, provide opportunities for social interaction and appreciation of the natural environment • assist supervision and minimise opportunities for bullying and antisocial behaviour • enhance outdoor learning, socialisation and recreation by positioning outdoor urban furniture and play equipment in configurations that facilitate interaction. 	<p>Consistent</p> <p>The proposed landscape arrangement has been reviewed by Council's Landscape Officer as acceptable, subject to conditions. Consideration has been given that the specific species selection and their appropriateness within a childcare centre environment can be accounted for during the regulatory procedures that would need to be undertaken by the Early Childhood Education Directorate prior to childcare centre becoming operational.</p> <p>The outdoor space areas appear to have designed to comply with the relevant requirements of this criteria.</p>
4.11 Shade		
<p>Regulation 114 Education and Care</p>	<p><i>The proposed development includes adequate shaded areas to protect</i></p>	<p>Consistent</p>

<p>Services National Regulations</p> <p>The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</p>	<p><i>children from overexposure to ultraviolet radiation from the sun.</i></p> <p>Providing the correct balance of sunlight and shade to play areas is important for the health and well-being of children and staff. Combining built and natural shade will often be the best option.</p> <p>Solar access Controlled exposure to daylight for limited periods is essential as sunlight provides vitamin D which promotes healthy muscles, bones and overall well-being. Outdoor play areas should be provided with controlled solar access throughout the year. Outdoor play areas should:</p> <ul style="list-style-type: none"> • have year-round solar access to at least 30 per cent of the ground area, with no more than 60 per cent of the outdoor space covered. • provide shade in the form of trees or built shade structures giving protection from ultraviolet radiation to at least 30 per cent of the outdoor play area • have evenly distributed shade structures over different activity spaces. <p>Natural shade Natural shade should be a major element in outdoor play areas. Trees with dense foliage and wide-spreading canopies provide the best protection. Existing stands of trees, particularly in rear setbacks, should be retained to provide shaded play areas. Species that suit local soil and climatic conditions and the character of the environment are recommended.</p> <p>Dense shrubs can also provide shade. They should be planted around the site perimeter so they don't obstruct supervision. Pruning shrubs on the underside may create shaded play nooks underneath. Planting for shade and solar access is enhanced by:</p> <ul style="list-style-type: none"> • placing appropriately scaled trees near the eastern and western elevations • providing a balance of evergreen and deciduous trees to give shade in summer and sunlight access in winter. <p>Built shade structures Built structures providing effective shade</p>	<p>The proposed childcare centre provides for at least 30% of the outdoor open space as uncovered areas with solar access available during the day.</p> <p>The proposed childcare centre has less than 60% of the outdoor space covered.</p> <p>Council's Landscape Officer has recommended conditions for at least two (2) native trees to be planted within the rear yard (setback area). Consideration has been provided that these trees will provide sufficient shade overtime as they are to be capable of attaining a minimum height of 8m at maturity. The submitted Landscape Plan also indicates that proposed trees are to have a minimum 45L pot size and is therefore expected to relatively established at the time of planting.</p>
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	<p>include:</p> <ul style="list-style-type: none"> • permanent structures (pergolas, sails and verandahs) • demountable shade (marquees and tents) • adjustable systems (awnings) • shade sails. <p>Shade structures should not create safety hazards. Support systems such as upright posts should be clearly visible with rounded edges or padding. Vertical barriers at the sides of shade structures should be designed to prevent children using them for climbing. Shade structures should allow adults to view and access the children's play areas, with a recommended head clearance of 2.1 metres. The floor area underneath the structure should be of a sufficient size and shape to allow children to gather or play actively.</p>	
4.12 Fencing		
<p>Regulation 104 Education and Care Services National Regulations</p> <p>Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</p> <p>This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age. Child care facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the National Construction Code</p>	<p><i>Outdoor space that will be used by children will be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</i></p> <p>Fencing at child care facilities must provide a secure, safe environment for children and minimise access to dangerous areas. Fencing also needs to positively contribute to the visual amenity of the streetscape and surrounding area. In general, fencing around outdoor spaces should:</p> <ul style="list-style-type: none"> • prevent children climbing over, under or through fences • prevent people outside the facility from gaining access by climbing over, under or through the fence • not create a sense of enclosure. <p>Design considerations for side and rear boundary fences could include:</p> <ul style="list-style-type: none"> • being made from solid prefinished metal, timber or masonry • having a minimum height of 1.8 metres • having no rails or elements for climbing higher than 150mm from the ground. <p>Fencing and gates should be designed to ensure adequate sightlines for vehicles and pedestrian safety in accordance with Australian Standards and Roads and</p>	<p>Consistent</p> <p>The proposed outdoor space to be used by children will be enclosed with fencing of an appropriate height and design to ensure that children preschool age or under cannot go through, over or under it. It should be noted that regulatory procedures would need to be undertaken by the Early Childhood Education Directorate prior to the childcare centre becoming operational.</p>

	Maritime Services Traffic Management Guidelines. Gates should be designed to prevent children leaving/entering unsupervised by use of childproof locking systems.	
4.13 Soil Assessment		
<p>Regulation 25 Education and Care Services National Regulations</p> <p>Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval.</p> <p>With every service application one of the following is required:</p> <ul style="list-style-type: none"> • a soil assessment for the site of the proposed education and care service premises • if a soil assessment for the site of the proposed child care facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken • a statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children 	<p>To ensure consistency between the development consent and the service approval application, a soil assessment should be undertaken as part of the development application process.</p> <p>Where children will have access to soil the regulatory authority requires a preliminary investigation of the soil. This includes sites with or without buildings and existing approved children's services where:</p> <ul style="list-style-type: none"> • the application is to alter or extend the premises • the alteration or extension requires earthworks or deep excavations (exceeding a depth of one metre) • the works are going to take place in an area used for children's outdoor play or will be used for children's outdoor play after the work is completed • a soil assessment has not been undertaken at the children's service. <p>Minor landscaping, creation of sand pits, movement of play equipment and so on do not qualify as earthworks and do not require a soil assessment.</p> <p>An assessment of soil for a children's service approval application may require three levels of investigation:</p> <ul style="list-style-type: none"> • Stage 1 - Preliminary investigation (with or without soil sampling) • Stage 2 - Detailed site investigation • Stage 3 - Site specific human health risk assessment. 	<p>Consistent</p> <p>The <i>Statement of Environmental Effects</i> submitted with the Development Application states the following: "The subject site has been historically used for residential purpose and there is no evidence of potentially contaminating activities occurring on site". Council's Environmental Health Officer has also reviewed the Development Application in this regard placing a condition for an Environmental Management Plan (EMP) to be prepared prior to the issue of any Construction Certificate.</p>

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 a childcare centre.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. A response was received by Council from Ausgrid stating that "decision not required". Therefore, it is assumed that no objections are raised and no conditions are recommended.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.35m	-	Yes
Floor Space Ratio	FSR: 0.45:1 (352m ²)	FSR: 0.44:1 (341m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 781.8m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	Northern side: 6.8m (based on gradient 1:20)	8.3m	22% (1.5m)	No
	Southern side: 6.9m (based on gradient 1:15)	8.0m	33% (1.1m)	No
4.1.2.2 Number of Storeys	2	3 Storeys (inclusive of basement car park)	1 Storey	No
4.1.2.3 Roof Height	Height: 2.5m	Less than 2.5m	-	Yes
	Parapet Height: 0.6m	0.8m	33% (200mm)	No
	Pitch: maximum 35 degrees	Less than 25 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing Building Line: 7.4m	5.3m - Parapet 5.9m - Stairwell	20.1% (1.5m)	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	Northern side: 2.76m (based on wall height)	Lower Ground: 1.2m	57% (1.56m)	No
		Ground Floor: 1.2m	50.4% (1.39m)	No
		First Floor: 1.37-2m		No
	Southern side: 2.6m (based on wall height)	Lower Ground: 0.9m	65.4% (1.7m)	No
		Ground Floor: 0.9m	65.4% (1.7m)	No
		First Floor: 1m	61.5% (1.6m)	No
	Windows: 3m	North: 1.2m	60% (1.8m)	No
		South: 1m	67% (2m)	No
4.1.4.4 Rear Setbacks	Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity. In	Lower Ground: 8m	66% (15.4m)	No
		Ground Floor: 8.5m	64% (14.6m)	No

	this instance, the prevailing setback is taken to be: 23.4m	First Floor: 8.5m	64% (14.6m)	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (430m ²)	45% (352.1m ²)	18.2% (77.9m ²)	No
	Open space above ground 40% of total open space (172m ²)	40% (172m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (123.2m ²)	>35% (219.8m ²)	-	Yes
	3 native trees	2 trees	1 tree	No
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.5m	-	Yes
Schedule 3 Parking and Access (Child Care Centres)	1 parking space for each employee and provision of onsite drop off and pick up points	16 Total spaces (Including: 10 - staff parking spaces 6 drop off and pick up spaces)	1 space - staff parking (11 staff members)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	No	No
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	No	No
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	No	No
4.1 Residential Development Controls	No	No
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	No	No
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.6 Child Care Centres	No	No
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

The proposed childcare centre is considered to be contrary to the relevant streetscape objectives that aim at minimising the negative visual impact development and those which seek for any such development to complement the streetscape. The proposal is not seen to maintain the low density residential character of this area of Lewis Street. Further, the Development Application has not appropriately addressed potential pedestrian safety impacts along Lewis Street arising from the additional vehicular and pedestrian traffic generated by the childcare centre.

Based on the above, the proposed development is inconsistent with the streetscape and townscape objectives of this clause and is recommended for refusal on this basis.

3.1.1 Streetscape (Residential areas)

The proposal does not satisfy several controls within this clause. Particularly, the proposed childcare centre does not adequately demonstrate the following:

3.1.1.1 Complementary Design and Visual Improvement

a) Development in the streetscape (including buildings, fences and landscaping) should be designed to:

i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;
iii) maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;
vi) visually improve existing streetscapes through innovative design solutions; and
vii) incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.

As detailed throughout this report, the proposed childcare centre is seen to result in a poor urban design and built form outcome that is unsuitable within the R2 Low Density Residential Zone. Council's Urban Design Officer has provided comments in this regard, detailing that the eastern façade appears institutional, with strong vertical elements such as the lift and stair cores. The non-compliances to the front setback control and wall height controls also results in the built form of the childcare centre not achieving compatibility with adjacent developments. This is particularly evident when viewed from the Lewis Street frontage.

Based on the above, the proposed development is inconsistent with this clause and is recommended for refusal on this basis.

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

The proposed childcare centre is contrary to the objectives of this clause that seek to protect the amenity of the occupants of neighbouring properties. In particular, the proposal breaches a number of built form controls which exacerbate impacts such as those relating to privacy and solar access to adjoining properties. Further, the proposed development does not maximise the provision of open space, but rather seeks to breach this particular requirement resulting in reduced areas for landscaping and areas for outdoor recreation. The extensive use of white and light cream external finishes also raise concern in terms of reflectivity and glare impacts to neighbouring properties, while also increasing the visual prominence of the proposed childcare centre.

Based on the above, the proposed development is inconsistent with the amenity objectives and controls of this clause and is recommended for refusal on this basis.

3.4.1 Sunlight Access and Overshadowing

The proposal in its current form results in additional shadowing impacts towards Balgowlah Heights Public School classroom buildings along the northern side of the western campus. Whilst the proposal is not considered to result in a technical non-compliance with the requirements of this clause, it has been noted that the development results in a reduced level of solar access due to non-compliances with the prescribed wall height and setback along the southern side of the childcare centre. Consideration has been given that the proposed development is capable of reducing the extent of shadowing impacts to these classrooms through a redesign involving a compliant wall height and setbacks to the southern side and rear.

3.4.2 Privacy and Security

The requirements of this clause are that consideration is given to the protection of acoustic privacy in the design and management of development. In this regard, concerns are raised with regards to operable windows along the northern elevation, in particular for the cot room and 0-2 years room. Additional acoustic concerns are raised with regards to location of the proposed exit walkway along the northern side boundary, in particular its proximity to the dwelling house at No. 13 Lewis Street and the

gathering of parents/guardians and children within this area. Whilst the submitted *Environmental Noise Assessment* indicates the use of glazing with acoustic seals, concerns remain if these windows were required to remain open for the purposes of ventilation.

Based on the above, the proposed development is inconsistent with this clause and is recommended for refusal on this basis.

3.6 Accessibility

As discussed under C17 of the *Child Care Planning Guideline*, concerns have been raised as to acceptability of the childcare centre being designed to be accessible for all potential users. While compliance against accessibility standards is generally required following the determination of DA at the construction certificate stage, Clause 3.6 Accessibility of the MDCP recognises the importance of considering access issues from the beginning of the development process, whilst also aiming to provide equitable, dignified and non-discriminatory access for all people, regardless of abilities. The MDCP also speaks to a belief that all members of the community have a right to full access and participation in all aspects of community life.

The *Disability (Access to Premises – buildings) Standard 2010* requires that exits be provided from a building to allow occupants to evacuate safely while also being appropriate for the function or use of the building. Of particular concern, is the appropriateness of the proposed exit walkway along the northern side boundary includes two flights of stairs – one of 6 steps and the other with 10 steps as well as the reliance on fire stairs. Access in this regard would appear to be limited and difficult to negotiate for parents/guardians, young children and people with a disability.

In addition, the Development Application was not submitted with an Emergency and Evacuation Plan as required under Sections 97 and 168 of the *Education and Care Services National Regulations* which would have considered the following:

- the mobility of children and how this is to be accommodated during an evacuation
- the location of a safe congregation/assembly point, away from the evacuated building, busy roads and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings
- how children will be supervised during the evacuation and at the congregation/assembly point, relative to the capacity of the facility and governing child-to- staff ratios.

Based on the above, the proposed development is inconsistent with this clause and is recommended for refusal on this basis.

3.10 Safety and Security

The proposed childcare centre does not satisfy the requirements that seek to ensure the safety and security of all residents, occupants and visitors of various ages and abilities. A number of submissions including those received from neighbouring residents, School Infrastructure NSW and the Balgowlah Heights Public School Parents & Community, have raised concern that the Development Application had not addressed the pedestrian safety outcomes, in particular the risk to pedestrians who utilise the Lewis Street footpath. It should also be noted that there is no pedestrian footpath along eastern side of Lewis Street (adjacent the Site), which in turn results in a particularly high usage of the footpath directly in front of Site at the drop-off/pick-up periods associated with Balgowlah Heights Public School. Council's Traffic Engineer in reviewing the proposal has also raised concern with the level of impact on pedestrian and vehicular safety in the street, observing that the development in its current form is an over development of the site in this location.

Based on the above, the proposed development is inconsistent with this clause in relation the safety objectives and is recommended for refusal on this basis.

4.1 Residential Development Controls

Childcare centres must comply with the same standards for built form controls as other development permissible in the R2 Low Density Residential zone. The design and layout must also respond to the character of the existing neighbourhood and streetscape. As such the proposal has been considered against the relevant residential development controls under Clause 4.1 of the MDCP.

The proposed childcare centre is inconsistent with the objectives of this clause that require such developments to be compatible with the character of the locality as well as those that seek to ensure that building form does not degrade the amenity of surrounding residences. As highlighted throughout this report, the proposed development breaches a number of built form controls including those in relation to wall heights, front and side setbacks and open space. Further, Council's Urban Design Officer has not supported the proposal, raising a number of concerns in relation to the impacts of these breaches as well as the aesthetic appearance of the proposed child centre when viewed from the Lewis Street frontage and No. 13 Lewis Street, Balgowlah Heights.

Based on the above, the proposed development is inconsistent with the objectives of this clause and is recommended for refusal on this basis.

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

The proposed childcare centre is non-compliant with the wall height requirements as prescribed under Clause 4.1.2.1. The wall height is calculated based on the slope of the land under the proposed wall. On this basis, the northern side wall is to a maximum of 6.8m (based on gradient 1:20), with the southern side wall to be a maximum of 6.9m (based on gradient 1:15). The proposal seeks a wall height along the northern elevation up to 8.3m and with the southern elevation wall height proposed up to 8.0m. The breach is to the front portion of the child care centre and can be largely attributed to the lift shaft/lift overrun and kitchen areas located on the First Floor Level. The proposed development also breaches the two (2) storey maximum, being three (3) storeys inclusive of the Lower Ground basement car park and the roof parapet maximum of 0.6m, with a parapet of 0.8m indicated.

These non-compliances associated with proposed development are inconsistent with the relevant height objectives that include providing for building heights and roof forms which are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality. The breaches also contribute towards a proposal with an unacceptable visual dominance, bulk and scale when viewed from the Lewis Street frontage and neighbouring properties, whilst also contributing towards amenity impacts such as reduced solar access to the classrooms of Balgowlah Heights Public School.

Based on the above, the proposed development is inconsistent with this clause and is recommended for refusal on this basis.

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

Front Setback

Required Front Setback:
7.4m (Prevailing Building Line)

Proposed Front Setback:

5.3m - Parapet
5.9m - Stairwell

The non-compliance of the proposed childcare centre with the front setback requirement leads to a number of streetscape and local amenity impacts. The breach to the prevailing building line results in an incompatibility when compared against neighbouring properties within the immediate vicinity of the Site. As discussed earlier in this report, the breach to the prevailing building line results in a poor urban design and built form outcome when viewed from Lewis Street. Council's Urban Design Officer detailed that the eastern (front) façade appears institutional, with strong vertical elements such as the lift and stair cores. The breach to the wall height requirements towards this portion of the building further contributes towards the overall visual prominence of the proposed childcare centre.

The front setbacks of properties within the visual catchment of the site have been indicated below:

9B Lewis Street, Balgowlah Heights

8.6m – Single storey classroom at Balgowlah Heights Public School.

13 Lewis Street, Balgowlah Heights

5.8m – Lower Level garage with open balcony above.

15 Lewis Street, Balgowlah Heights

7.8m – Entry balcony to Dwelling House.

Eastern side of Lewis Street (adjacent the Site):

26 Lewis Street, Balgowlah Heights

28 Lewis Street, Balgowlah Heights

Both properties are measured at 7.6m from the front boundary to the Dwelling House. Note: Carports are located within the front setback area of both these properties.

Side Setback

Required Side Setback:

Northern side: 2.76m (based on wall height)

Southern side: 2.6m (based on wall height)

Proposed Side Setback:

Northern side -

Lower Ground: 1.2m

Ground Floor: 1.2m

First Floor: 1.37-2m

Southern side -

Lower Ground: 0.9m

Ground Floor: 0.9m

First Floor: 1m

The proposal is inconsistent with the both the northern and southern side setback requirements applicable to this site. Council's Urban Design Officer has raised particular concerns with these breaches, commenting that the design of the northern elevation is generally of a flat building façade that provides for minimal articulation. This breach also raises acoustic privacy concerns while also being inconsistent with the provision for adequate space between buildings. Further, the non-compliance to the southern boundary setback was regarded as contributing towards an unacceptable visual bulk and scale to whilst also impacting solar access towards classrooms at Balgowlah Heights Public School. In this regard, the breach does not ensure and enhance the amenity these classrooms by providing an equitable access to light and sunshine.

Rear Setback

Required Rear Setback:
23.4m*

Despite requirement (a) stating that the *distance between any part of a building and the rear boundary must not be less than 8m*, the proposed development does not comply with the following requirement under this clause:

d) Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy and view loss.

In this instance, the prevailing rear setback has taken into consideration the rear setbacks for No. 13 Lewis Street, Balgowlah Heights (22.3m) and No. 15 Lewis Street, Balgowlah Heights (24.5m).

Proposed Rear Setback:

Lower Ground: 8m
Ground Floor: 8.5m
First Floor: 8.5m

The proposed breach to the rear prevailing building line contributes towards a number of poor amenity and design outcomes. The visual dominance of a long and generally flat building façade with minimal articulation is particularly apparent along the northern elevation. Further, the breach towards the rear also leads to impacts such a overshadowing of classrooms at Balgowlah Heights Public School. The overall non-compliance is reflective of an overdevelopment of the site, which is also evident due to the open space breach.

Based on the above, the proposed development is inconsistent with this clause and is recommended for refusal on this basis.

4.1.5 Open Space and Landscaping

Open Space Requirement:

55% of site area (430m²)

Proposed Open Space:

45% (352.1m²)

The proposed breach to the open space requirement leads to a number of impacts that can be largely attributed to the overall building footprint. The breach further effects compliance with provision seeking

to maintain and enhance the amenity of the streetscape and surrounding properties that have been detailed earlier in this report. The result of a breach to the open space requirement is that a lesser area is now available for soft landscaping that could have otherwise been used for plantings and to minimise stormwater run-off through water infiltration on site. The submitted landscape plan does not indicate the planting of two (2) native trees within the rear yard, however it is accepted that compliance with this particular requirement is capable of being achieved through conditions.

Based on the above, the proposed development is inconsistent with the objectives of this clause and is recommended for refusal on this basis.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Parking requirement:

1 parking space for each employee and provision of onsite drop off and pick up points.

Parking proposed:

16 total spaces - including: 10 - staff parking spaces* and 6 drop off and pick up spaces.

*11 staff members

The proposed development provides ten (10) spaces dedicated for staff usage and only 6 spaces, inclusive of one accessible parking space, for parents & visitors. Though the overall number of parking spaces provided for the childcare centre is considered acceptable, the parking area has an over reliance on the use of mechanical car stackers. While the use of a small percentage of car spaces in a stacked arrangement may be acceptable for all day staff parking, it is not considered acceptable for use for high turnover drop-off/pick-up parking which must be easily accessible. In addition, the number of drop-off/pick-up spaces does not meet demand at peak times and congested conditions within the carpark are expected to develop at peak times. As no details have been provided as to whether additional car spaces would be feasible on this site, it is expected that the number of children accommodated at the centre and associated staff levels should be re-evaluated.

Further, the proposal has not demonstrated that the design of all car parking bays for use by parents and guests will allow for full opening of all doors and follow the dimensions set out in Table 1.1 of AS 2890.1:2004 with drop off/pick up spaces being no less than 2.6m in width. Vehicular manoeuvring paths have not been provided to demonstrate that all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces.

Clause 4.1.6 MDCP also details that bicycle parking is to be provided at a rate of one rack for every three car parking spaces. The submitted plans have not indicated the location or provision for bicycles parking on-site.

Council's Traffic Engineer has considered the submitted *Traffic and Parking Impact Assessment* and is not in supportive of the proposed development. Detailed comments in this regard are provided earlier in this report under the "Referrals" section.

Based on the above, the proposed development is inconsistent with this clause and is recommended for refusal on this basis.

4.4.6 Child Care Centres

The proposed childcare centre is inconsistent with the requirements of this clause, in particular those in relation to car parking and access (cl.4.4.6.2) and with regards to built form and building appearance (c.4.4.6.3).

Below are the relevant objectives with regards to car parking and access under this clause:

Objective 1) To provide adequate and safe on-site parking for staff vehicles, as well as suitable space for deliveries, service access and the setting down and picking up of children.

Objective 2) To reduce the incidence of on-street parking, which may be detrimental to road safety and amenity of residents.

Objective 3) To ensure pedestrian safety in vehicle entry and exit areas.

Traffic data provided with the Development Application was collected at a time when traffic and pedestrian volumes were impacted by Covid-19. Despite this, the data still reveals an AM peak volume of 217 vehicles per hour and shows pedestrian volumes using the west side of Lewis Street of 100 or more per hour in peak periods (many of whom are children). Council's Traffic Engineer has indicated that under such conditions the additional vehicular and pedestrian traffic generated by the childcare centre is likely to adversely impact upon safety in the street. The road reserve adjacent to the site contains a footpath that is heavily utilised by both Balgowlah Heights Public School students and parents, in addition to members of the wider community. The submitted *Traffic and Parking Impact Assessment* and *Plan of Management* do not address the pedestrian safety outcomes of the proposal, nor does it propose any mitigation measures or strategies. The Development Application should be refused having regard to the potential risk to pedestrians, the potential conflict between the proposed driveway and the high level of foot traffic that traverses the frontage of the site.

Below are the relevant objectives with regards to the built form and appearance:

Objective 1) To ensure child care centre is compatible with the scale of existing building in the vicinity.

Objective 2) To ensure that the appearance of the development is of high visual quality, enhances and complements the streetscape of the area.

As previously discussed within this report, the proposed childcare centre has not demonstrated compliance against the applicable built form controls of the MDCP. The breach to these built form controls contributes towards a development of a scale that is considered to be incompatible with the existing residential character of Lewis Street.

Based on the above, the proposed development is inconsistent with this clause and is recommended for refusal on this basis.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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 \$19,477 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,947,731.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/1758 for the Demolition works and construction of centre-based child care facilities on land at Lot B DP 369977,11 Lewis Street, BALGOWLAH HEIGHTS, for the reasons outlined as follows:

1. Character, Bulk and Scale

The proposed childcare centre results in an urban design and built form outcome that is unsuitable within the surrounding low density residential streetscape. In particular, the breach to the front building line, wall height, side and rear setback controls contribute to an unacceptable bulk and scale, inconsistent with the dominant character of the area.

- a. Clause 23 of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education SEPP)
- b. Clause 3.1 Streetscapes and Townscapes of the Manly Development Control Plan (MDCP)
- c. Clause 3.1.1 Streetscape (Residential areas) of the MDCP
- d. Clause 4.1 Residential Development Controls of the MDCP
- e. Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the MDCP
- f. Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the MDCP
- g. Clause 4.1.5 Open Space and Landscaping of the MDCP
- h. Clause 4.4.6 Child Care Centres of the MDCP

2. Amenity

The proposal is inconsistent with the requirements that seek to protect the amenity of occupants of neighbouring properties. In particular, the proposal breaches a number of built form controls which exacerbate privacy and solar impacts to adjoining properties. As such, the proposal is contrary to:

- a. Clause 23 of the Education SEPP
- b. Clause 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) of the MDCP
- c. Clause 3.4.2 Privacy and Security of the MDCP

3. Accessibility

Access to and from the proposed childcare centre is limited and difficult to negotiate for parents/guardians, young children and people with a disability. As such, the proposal is contrary to:

- a. Clause 23 of the Education SEPP
- b. Clause 3.6 Accessibility of the MDCP

4. Parking

The proposal fails to provide a sufficient number of drop-off/pick up spaces, bicycles spaces and is over reliant on mechanical car stackers. The proposal has not demonstrated that the design of all car parking bays are consistent with Australian Standards, or that vehicular manoeuvring paths allow for vehicles to enter and depart in a forward direction. As such, the proposal is contrary to:

- a. Clause 23 of the Education SEPP
- b. Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) of the MDCP
- c. Clause 4.4.6 Child Care Centres of the MDCP

5. Traffic

The proposed development will result in an increase to traffic generation that would have an unreasonable impact on the local road network and pedestrian safety. As such, the proposal is contrary to:

- a. Clause 23 of the Education SEPP
- b. Clause 3.10 Safety and Security of the MDCP
- c. Clause 4.4.6 Child Care Centres of the MDCP

6. Public Interest

The proposed development is not in the public interest.





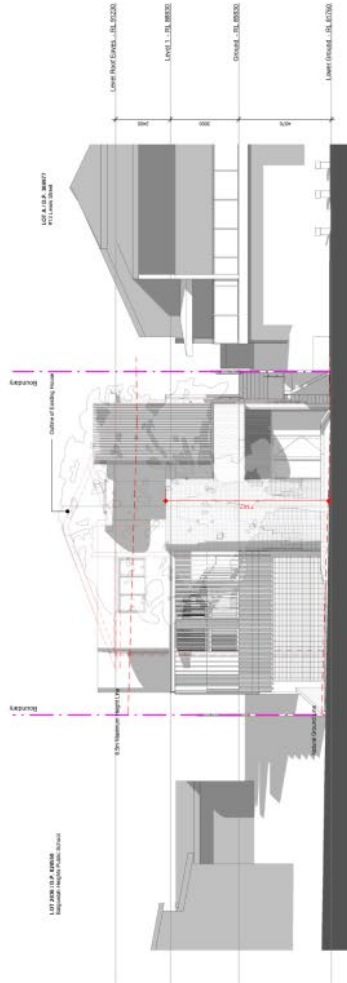
DA Applicant : George Antoniou Site Address : Lot B DP 369977 11 Lewis Street Balgowlah Heights NSW 2093	TITLE		DA300 A
	Proposed Elevations <small>Source: Lend Lease 2018; All other data was supplied by the applicant</small>		
	DATE	JOB No.	BY/REVISED
	SCALE	A1 @ 1:100	1:100

NOT For Construction

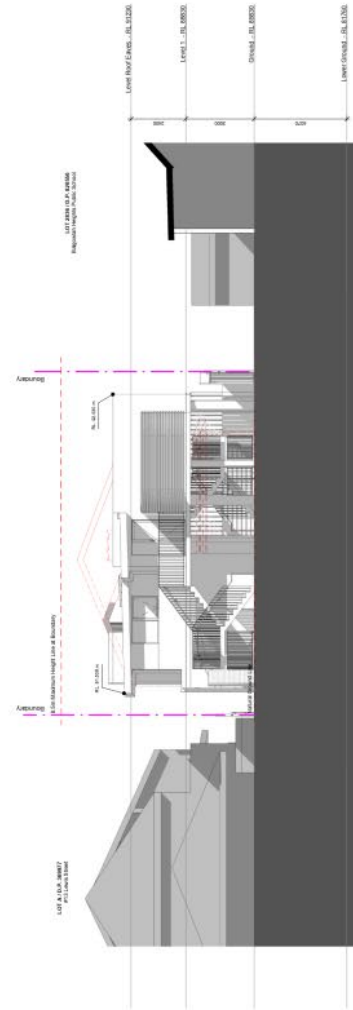
Development Application		Date
Rev	Description	
1	Initial Development Application	07/12/2020

NORDON • JAGO
ARCHITECTS

T. 01-934 4465 F. 01-934 4466
LEVEL 4, 1111 DEVOIGAN STREET, GARDEN HILLS, URBAN 2010
SHEPPARTON, NORDON (Registration No. 1599 - JDA) (MAY 2010)
JAGO (Registration No. 1600 - JDA) (MAY 2010)



1 Proposed Eastern Elevation
1:100



2 Proposed Western Elevation
1:100

General Notes:
1. All dimensions are in millimetres unless otherwise stated.
2. All dimensions are to the face of the work unless otherwise stated.
3. All dimensions are to the face of the work unless otherwise stated.
4. All dimensions are to the face of the work unless otherwise stated.
5. All dimensions are to the face of the work unless otherwise stated.
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10. All dimensions are to the face of the work unless otherwise stated.

DA Applicant : George Antoniou Site Address : Lot B DP 369977 11 Lewis Street Balgowlah Heights NSW 2093		JOB NO.	100000000
NOT For Construction		DATE	December 2020
Development Application		SCALE	A1 QB 1:100
Title		Drawn By	DA.301 A

NOT For Construction

No.	Description	Quantity
1	100000000	100000000
2	100000000	100000000
3	100000000	100000000
4	100000000	100000000
5	100000000	100000000
6	100000000	100000000
7	100000000	100000000
8	100000000	100000000
9	100000000	100000000
10	100000000	100000000

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ARCHITECTS

LEVEL 4, 111-117 D'ARCY STREET, BALGOWLAH, NSW 2093 T 02 9378 8400 F 02 9378 8440
8 STEPHEN ST, BALGOWLAH, NSW 2093 G 02 9378 8400 P 02 9378 8440

ITEM 3.2

**DA2020/1172 - 54 BARDO ROAD, NEWPORT - DEMOLITION
WORKS AND CONSTRUCTION OF A SENIORS HOUSING
DEVELOPMENT TO ACCOMMODATE SIX UNITS INCLUDING
ASSOCIATED CAR PARKING AND LANDSCAPE WORKS**

AUTHORISING MANAGER Lashta Haidari
TRIM FILE REF 2021/231639
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.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/1172 for demolition works and construction of a senior's housing development to accommodate six units including associated car parking and landscape works at Lot 42 Sec 2 DP 4689, 54 Bardo Road, Newport subject to the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1172
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Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 42 DP 4689, 54 Bardo Road NEWPORT NSW 2106
Proposed Development:	Demolition works and construction of a seniors housing development to accommodate six units including associated car parking and landscape works
Zoning:	R2 Low Density Residential
Development Permissible:	Yes, under SEPP (Housing for Seniors or People with a Disability) 2004
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	BPG Holdings (No. 5) Pty Ltd
Applicant:	BPG Holdings (No. 5) Pty Ltd

Application Lodged:	26/10/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	30/10/2020 to 13/11/2020
Advertised:	30/10/2020
Submissions Received:	14
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 3,239,751.00
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EXECUTIVE SUMMARY

Development Application (DA2020/1172) has been made for demolition works and construction of a one-two storey development containing 2 buildings, with a total of 6 self-contained dwellings pursuant to State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004. The development includes basement car parking for 8 vehicles. The works also include removal of 8 native trees and construction of new vehicular access.

Public exhibition of the development resulted in 14 submissions objecting to the proposal and raising concerns relating to impact on trees, traffic, safety, impact on character, non-compliance with planning controls and non-compliance with SEPP HSPD.

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

Despite amendments made to the application, Council's Landscape officer and Biodiversity officer are not satisfied that the information addresses issues (particularly in regard to tree retention and environmental impact).

The assessment of the application has found that the proposal in its current form cannot be supported as it fails to satisfy the requirements of both SEPP HSPD in terms of Clause 29 and Clause 50 and P21 DCP including Landscaping, Biodiversity and character.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for demolition of existing structures and the construction of 6 seniors housing units with 8 car parking spaces. The development is split in to two separate modules with a two storey structure (with basement) at the front, and a single storey (with basement) at the rear. In detail, this includes the following:

Basement

- Car parking
- Storage
- Service areas
- Lifts

Ground Floor

- 2 units in the front building (a two bedroom unit and a three bedroom unit)
- 2 units in the rear building (a two bedroom unit and a three bedroom unit)

First Floor

- 2 units in the front building (a two bedroom unit and a three bedroom unit)

External

- Outdoor common space
- Bin storage
- Tree removal
- Landscaping
- Vehicular access and a waiting bay
- Stormwater system with OSD

Amended Plans

Amended plans were registered on 19 March 2021. These plans did not require re-notification in accordance with the Community Participation Plan. These plans included amendments to the basement layout and setbacks to provide greater opportunity for trees to be retained.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - B5.7 Stormwater Management - On-Site Stormwater Detention

Pittwater 21 Development Control Plan - C1.1 Landscaping

Pittwater 21 Development Control Plan - C1.21 Seniors Housing

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

SITE DESCRIPTION

Property Description:	Lot 42 DP 4689 , 54 Bardo Road NEWPORT NSW 2106
Detailed Site Description:	<p>The subject site consists of an allotment located on the northern side of Bardo Road.</p> <p>The site is regular in shape with a frontage of 20.11m along Bardo Road and a depth of 60.96m. The site has a surveyed area of 1226.3m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates dwelling house on the site.</p> <p>The site is relatively flat and contains relatively dense vegetation at the front and the rear.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by</p>

a mix of dwellings, residential flat buildings and multi-dwelling housing.

Map:



SITE HISTORY

Pre-lodgement meeting (PLM2020/0170)

A Pre-lodgement meeting was held on 13 August 2020 to discuss a proposal for "Construction of a Seniors Living development".

The following summary comment was provided on the plans which were dated 29 July 2020:

"The proposal is not acceptable and requires redesign prior to submission. Refinements to the building design must be made to ensure compliance with front setback, visual bulk and landscaping requirements. The proposed bin storage facility is required to be relocated to ensure compliance with Council's Waste Management Guidelines, and driveway redesign is required to accommodate a passing bay. It is strongly recommended that the overall scale and extent of the development be substantially reduced to address the issues identified throughout these notes."

In response to this, a reduction to the overall bulk and scale (including reduction to FSR) was made as part of the development application. The waste storage area was also relocated in accordance with advice from Council's Waste officer. However, a satisfactory design to address issues raised by the Landscape officer, Development engineer and Biodiversity officer has not been provided.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) –	See discussion on "Environmental Planning Instruments" in this

Section 4.15 Matters for Consideration'	Comments
Provisions of any environmental planning instrument	report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. / This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	<p>The suitability of the site in terms of likely impacts on the environment and character has been discussed in detail in the various section of this report. In summary, the suitability of the site for the development as proposed in its current form remains uncertain, due to fact that the proposal has not fully addressed the environmental impacts of the proposed development.</p> <p>In this regard, under the circumstances, the site is not considered to be suitable for this particular form and scale of development, given</p>

Section 4.15 Matters for Consideration'	Comments
	that Council's Landscape Team do not support the proposal due to the environmental impacts caused on high retention value trees. Therefore, a conclusive determination that the site is suitable cannot be made at this stage.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	The provision of Seniors housing in the locality is generally in the broader public interest. However, this assessment has found the proposal to be contrary to the relevant requirement(s) of the P21 DCP and SEPP HSPD and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the localised public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 30/10/2020 to 13/11/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 14 submission/s from:

Name:	Address:
Mr Scott William Ross Beggs	7 Princes Street NEWPORT NSW 2106
Mr Cameron Christopher Bryant	58 Bardo Road NEWPORT NSW 2106
Mr Roger Taylor Russell	52 Bardo Road NEWPORT NSW 2106
Mr Paul Stuart Harrison	50 Bardo Road NEWPORT NSW 2106
Mr Christopher Keith Brown	5 / 30 - 32 Bardo Road NEWPORT NSW 2106
Katherine Clarke	63 Palmgrove Road AVALON BEACH NSW 2107
Mr Lindsay Wellings	6 / 30 - 32 Bardo Road NEWPORT NSW 2106
Newport Residents Association	PO Box 1180 NEWPORT BEACH NSW 2106
Lauren Montague Mr Timothy Andrew	60 Bardo Road NEWPORT NSW 2106

Name:	Address:
Montague	
Mr Barry Peter Best	19 Brown Street FORESTVILLE NSW 2087
Ms Megan Katharine Kennedy	PO Box 179 NEWPORT BEACH NSW 2106
Mrs Stephanie Gai Brown	46 Bardo Road NEWPORT NSW 2106
Ms Eliza Jane Bryant	43 Bardo Road NEWPORT NSW 2106
Bardo Road Kindergarten	41 Bardo Road NEWPORT NSW 2106

The matters raised within the submissions are addressed as follows:

- Environmental impact, impact on biodiversity, impact of trees, and lack of appropriate landscaping.**
Comment:
Council's Landscape and Biodiversity Officer's have provided that the footprint of the building and design of the development does not provide for appropriate protection of existing trees, and has an unreasonable environmental impact. As such, there are recommended reasons of refusal are provided for these issues.
- Location and accessibility**
Comment:
An assessment under the SEPP HSPD in this report has found that the site is in an appropriate location with adequate access to bus stops (within 400m) and services.
- Amenity impact (including privacy loss, solar access loss and overshadowing); request for privacy screening and high sill windows**
Comment:
The compliant building height, articulation of the built form, and adequate physical separation between the building and neighbouring properties, provides a circumstance in which amenity impact is generally well mitigated. If the development were to be approved, conditions could be imposed for screening and window sill heights.
- Inappropriate character, lack of scenic protection, overbearing bulk and scale, and overdevelopment; Inappropriate building configuration and excessive extent of building footprint**
Comment:
The proposal provides a reasonable outcome for the built form on site due to sufficient articulation, and appropriate physical separation (from the street and neighbours). However, the proposal does not provide an appropriate integration of natural features with the built form shown by the concern raised by Council's Landscape and Biodiversity officer in regard to long term retention of the trees, and environmental impact.
- Non-compliance with planning controls and SEPP requirements**
Comment:
An assessment in this report is made against non-compliance to relevant planning controls and SEPP requirements. The proposed built form is generally acceptable in terms of visual presentation and amenity impact. However, variation to some controls such as landscaping and

character, is not acceptable for reasons outlined in this report.

- **A list of recommended conditions has been provided**

Comment:

Various conditions have been recommended including for various stages of the development (Construction Certificate, Occupation Certificate, during works and operations). These conditions include requests for engineering details, control on waste, arborist details, control on amenity, traffic control and other environmental impact mitigation measures. Conditions of this nature for control on environmental impact would be imposed.

- **Precedent**

Comment:

An assessment under C1.21 of the Pittwater DCP has found that the proposal would have a cumulative impact that is unreasonable due to impact on trees on site. This impact on trees would provide an undesirable outcome for landscaping in the area.

- **Urban Design; DSAP issues are not resolved**

Comment:

Council's Urban design officer does not have any objection to the development. It is agreed that the issues raised by DSAP have not been fully addressed. In particular, the panel raised concern with the extent of the building footprint and associated impact on Landscaping. Amendments to the design provided a reduction but this was not sufficient to alleviate concerns raised by Council's Landscape officer and Council's biodiversity officer.

- **A more skillful design could be provided**

Comment:

It is agreed that a more skillful design could be provided to alleviate concerns raised by Council's Landscape officer and Council's Biodiversity officer.

- **Area should be rezoned**

Comment:

This is not a submission that can be considered in the assessment of a single Development Application. Submissions in regard to zoning should be addressed to Council's Strategic Planning team at council@northernbeaches.nsw.gov.au

- **Traffic and Safety**

Comment:

Council's Traffic officer provides support for the development subject to conditions. Further conditions could be imposed for traffic and safety should the application be approved.

- **Bin location inadequate**

Comment:

The location of the bin storage area at the front of the site is supported by Council's Waste officer. The location of a bin storage area within a basement provides an unacceptable outcome for access for this type of development.

- **Trees previously cut down illegally**

Comment:

A site visit and search of Council's mapping did not reveal any evidence of illegal tree removal.

However, any evidence can be forwarded to council's Compliance team at council@northernbeaches.nsw.gov.au.

- **Lack of notification sign**

Comment:

A statutory declaration has been provided to state that the notification sign was in place during the notification period.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>APPROVAL - Subject to Conditions</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p>REFUSAL</p> <p>This application is for the demolition of an existing residential dwelling, and the construction of a seniors housing development comprising of six total units.</p> <p>Amended Proposal:</p> <p>Amended plans and reports have been issued including architectural and landscape plans and a root investigation report.</p> <p>The amended application proposes the retention of existing trees numbered 4 (Grey Gum), 7 (Turpentine), and 8 (Turpentine) within the front setback.</p> <p>The amended application also proposes the retention of existing trees numbered 12 (Swamp Mahogany) and 13 (Turpentine) within the central-rear courtyard area. The previously proposed retention of existing tree numbered 11 (Turpentine) is reported to be unfeasible based on a suppressed canopy from existing trees numbered 12 and 13. Additionally, based on the extent of basement excavation in proximity to tree 11 and the impact to future growth of existing trees 12 and 13, the recommendation for removal of remove tree 11 is accepted, should be the application be approved in its current form.</p> <p>Landscape Officer comments:</p> <p><u>General comments</u></p>

Internal Referral Body	Comments
	<p>Following review of the amended plans and reports, the Landscape officer is of the opinion that three (3) existing native trees can be preserved for the long term to achieve root, trunk and canopy growth typical of the species. The site contains eight (8) existing native trees reported with high retention value in the arboricultural impact assessment by Tree Survey.</p> <p>The loss of five (5) existing trees of high retention value can't be replaced by this proposal due to insufficient deep soil zones and landscape area remaining capable of allowing tree replacement.</p> <p>The available Landscaped Area within the site retains three (3) existing trees and otherwise landscaped areas are limited to the following landscape treatments:</p> <ul style="list-style-type: none"> • rear setback: small trees capable of attaining 5 to 10 metres in height and this treatment is acceptable, • side boundaries: tall shrub planting to 3 metres in height at maturity along the full extent of the side boundaries and small tree planting adjoining 56 Bardo Rd to the frontage portion of the site is proposed, • should a 2 metre wide side setback be acceptable based on planning merit, the side boundaries shall contain no encroachments upon the 2 metre wide Landscaped Area where at-ground structures / pavements are proposed such that the area is solely utilised for planting and maintenance access over natural ground, to allow for appropriate soil area for the nominated planting to achieve the heights of the selected species to provide privacy. To this extent all paving slabs within the 2 metre zone are to be deleted, and the basement walling adjacent to the property at 56 Bardo Rd is to be redesigned, • the elevated walkway along the side setback zone to the northern boundary adjacent property 52 Bardo Rd does not impact natural ground landscape area width and is supported. <p>A review of the stormwater design for impact to existing trees provides no issues for resolution, subject to the supervision of all excavation works near existing trees to be supervised by a qualified arborist.</p> <p><u>Existing tree numbered 4</u></p> <p>The retention of existing tree 4 (Grey Gum) is acceptable based on the amended plans and subject to the following requirements:</p> <ul style="list-style-type: none"> • existing ground levels must be retained, • front lawn to be deleted to reduce compaction impacts from use, and replaced with mass planted garden bed, • front fence shall be installed on isolate pier footings located by a qualified arborist, • walkway and letterbox to be an elevated structure with isolated pier footings located by a qualified arborist, and • G01 apartment terrace to be a suspended slab above natural ground, with isolated pier footings located by a qualified arborist. <p><u>Existing tree numbered 7</u></p>

Internal Referral Body	Comments
	<p>The reported capability to retain existing tree 7 (Turpentine) is assessed as a concern regarding the viable retention in the long term. It is acknowledged there is an existing concrete driveway beside this tree, however the new alignment closer to tree 7 will require excavation within the structural root zone.</p> <p>In the vicinity of tree 7, the architectural plans show the proposed driveway at a RL 14.39 with a 1:8 transition toward the street for 2000mm, equating to a finished RL 14.14. The existing levels as shown on the survey in close proximity to tree 7 are existing 14.37 and existing 14.77, thus the proposed driveway is lower and therefore requiring excavation for construction of the concrete slab.</p> <p>This reduced level is expected to result in the excavation below the current driveway where existing roots are anticipated to be close to the underside of the driveway surface, searching for moisture. Therefore, the total surface area exposed to excavation with the structural root zone and tree protection zone is a significant area. No information is provided on impacts to tree stability from this excavation below existing ground levels required to form and construct the proposed driveway.</p> <p>Such impact to the existing roots system does not provide any surety that existing tree 7 is able to be retained in the long term within such encroachment into the structural root zone and tree protection zone, and it is envisaged that tree 7 will decline eventually and require removal.</p> <p>Removal of tree 7 can't be compensated elsewhere on site as no sufficient natural ground is provided to support a canopy tree such as this.</p> <p>Council do not accept that existing tree 7 can be preserved, typical of the species form and health for the long term.</p> <p><u>Existing tree numbered 8</u></p> <p>Existing tree 8 (Turpentine) currently shows good vitality with an elevated canopy form. A root investigation (trench 1) was located approximately 2 metres from the trunk towards the basement alignment, but not along the basement alignment as suggested to be undertaken. The basement alignment is 4.2 metres from the tree 8 trunk.</p> <p>Eight (8) existing major tree stability roots belonging to tree 8 with diameter 50mm and over have been reported as follows: Root No 3 (60mm), No 5 (50mm), No 6 (120mm), No 7 (80mm), No 8 (120mm), No 9 (120mm), No 13 (80mm), and No 18 (70mm). It is expected that at the basement alignment these diameters may be reduced but will not vary greatly.</p>

Internal Referral Body	Comments
	<p>It is considered that this amount of existing tree roots to be severed within the SRZ is excessive and will most likely impact the tree's health. The impact to these roots is not discussed in the report under the title Discussion on Root Mapping should these roots be severed, but rather the discussion is that the roots at this distance would have tapered to less than 10mm. There is no evidence of this and this suggestion is not accepted, and the true extent of impact is not determined.</p> <p>The amended architectural plans with elevated walkway and the suspended terrace for apartment G01 above natural ground will assist with future root expansion, based on the selection of isolated pier footing by a qualified arborist, and based on appropriate air gap dimension between natural ground and the underside of the terrace slab, however this information is not provided.</p> <p>Of concern with this proposal is the distance separation to a dwelling that, regardless of any conditions of consent to retain a tree, will result in resident demands for pruning and or removal due to damage to property and persons. Should such a request be approved there is no opportunity for replacement tree planting elsewhere on site as no adequate natural ground area is provided to support a canopy tree such as this.</p> <p>Council do not accept that existing tree 8 can be preserved, typical of the species form and health for the long term.</p> <p><u>Existing trees numbered 12 and 13</u></p> <p>Existing trees 11, 13 and 15 (Turpentine) and existing tree 12 (Swamp Mahogany) are a clump of trees behind the existing building.</p> <p>Tree 11, 14 and 15 have suppressed form as a consequence of suppression by the dominant trees 12 and 13, and the recommendations for removal is accepted.</p> <p>It is noted that the proposed distance between the basement alignment and the structural root zone is between 4200mm and 5930mm and clear of the structural root zone, even when over excavation for waterproofing and drainage provision are considered.</p> <p>Additionally, based on the extent of basement excavation in proximity to tree 11 and the impact to future growth of existing trees 12 and 13, the recommendation for removal of remove tree 11 is accepted, should be the application be approved in its current form.</p> <p>A root investigation (trench 2) was located on the east side of Trees 11, 13, 14, and 15 at a distance of 1.8m centre line of Tree 13, without obviously determining which tree the roots belong to.</p> <p>Ten (10) existing major tree stability roots belonging to tree 8 with diameter 50mm and over have been reported as follows: Root No 2</p>

Internal Referral Body	Comments
	<p>(70mm), No 8 (110mm), No 10 (50mm), No 11 (60mm), No 14 (50mm), No 15 (40mm), No 19 (160mm), No 20 (150mm), No 21 (160mm), and No 23 (150mm). It is expected that at the basement alignment these diameters may be reduced but will not vary greatly.</p> <p>Across the existing trees the subject of the root investigations, the quantity of tree stability roots to be severed per tree is minimal, and given the amount of natural ground to be retained for tree root regrowth, the findings of the tree root investigation that the pruning of these roots will not have a long term impact on the tree's stability and longevity is accepted, subject to the following requirements:</p> <ul style="list-style-type: none"> • existing ground levels must be retained, • walkway to units are to be elevated above the natural ground level and shall be installed on isolated pier footings located by a qualified arborist, and • automatic irrigation is installed and managed by a qualified arborist for a period as advised. <p>Landscape Referral are unable to support the application at this stage based on the above discussions and concerns. End.</p> <p>Previous Officer comments:</p> <p>Councils Landscape Referral section has considered the application against the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • C1.21 Seniors Housing • D10.12 Landscaped Area - General <p>A Landscape Plan has been provided and proposed works include in ground planting of trees, shrubs, grasses and groundcovers, as well as on-slab planting of shrubs, grasses and groundcovers.</p> <p>The Statement of Environmental Effects and Arboricultural Impact Assessment provided with the application note that a total of seventeen trees are identified on site. It is noted that two of those seventeen trees are located on an adjoining property, and shall not be impacted under any circumstances.</p> <p>The Arboricultural Impact Assessment notes that a total of eight trees are to be removed due to the proposed works. Of these eight trees to be removed, two trees are exotic, with the remaining six trees being native. Majority of the tree removal will occur at the front of the property, with a total of five trees being removed as a result of existing trees being within the footprint of proposed works. The remaining</p>

Internal Referral Body	Comments
	<p>three trees are located towards the rear of the property and also are located within the footprint of proposed works and have subsequently been allocated for removal.</p> <p>Four trees, specifically Trees No. 1, 6, 14 and 15 are all deemed to have low tree significance and low priority for retention, as stated in the Arboricultural Impact Assessment. The remaining four trees to be removed, specifically Trees No. 5, 7, 8, and 9 are all native and significant canopy trees, with both a high tree significance and a high priority for removal. At minimum, four large canopy trees shall be proposed to compensate the loss of these significant trees.</p> <p>The Arboricultural Impact Assessment also indicates that of the seven trees to be retained (not including those on adjoining properties), three trees have no encroachment on the Tree Protection Zone (TPZ). These trees include Trees No. 2, 3 and 10. Of the remaining four trees to be retained, all have a major encroachment on the TPZ, ranging from 22% to 48% encroachment.</p> <p>Tree No. 4 is located at the front of the property, with proposed work encroaching on the TPZ by 22%. With appropriate mitigation measures as stated in the Arboricultural Impact Assessment, it is likely this tree shall survive and the proposed works are seen to have a negligible impact on TPZ and Structural Root Zones (SRZ). Trees No. 11, 12 and 13 are located centrally to the site, and are proposed to form part of a communal lawn area, each with a 48%, 22% and 45% TPZ encroachment respectively. With appropriate mitigation measures as stated in the Arboricultural Impact Assessment, as well as further design modifications such as greater basement floor setback, suspended slabs where the ground floor extends into the TPZ of effected trees, as well as tree-sensitive pathways, it is still likely these trees may fail as a result of the scale of works. A tree root investigation and tree root map is needed in order to fully comprehend the extent of works and to make a sound judgement, in accordance with AS4970-2009 Clause 3.3.3 - Major Encroachment.</p> <p>Due to the scale of tree loss, and the possible further loss of trees during construction, control B4.22 cannot be satisfied as the scenic value and character that the trees provide is not retained and protected.</p> <p>In its current design, the front setback to Bardo Road is inadequate to support the planting of trees to soften the built form. This is partly due to the presence of the bin storage, entry paving and walkways, walling and services, but also due to the loss of trees resulting from the proposed driveway positioning. A key component of controls C1.1, C1.21 and D10.12 is that landscape shall help mitigate and reduce the bulk and scale of the built form. Clause 33 (c-i) of the SEPP also indicates that sufficient building setbacks shall be provided to reduce the bulk and overshadowing of the built form. As a result of this tree removal and lack of adequate space to plant new canopy trees, these controls and clauses cannot be satisfied.</p>

Internal Referral Body	Comments
	<p>In summary, the application documents do not provide sufficient satisfaction of development controls and clauses outlined in the Pittwater DCP and Housing for Seniors SEPP. The proposed development intends to remove, and potentially damage a large number of significant canopy trees with high retention values, with limited compensation planting to replace those lost. The built form has also not been reduced satisfactorily due to tree removal in the front setback, but also the presence of structures in within the front setback which has reduced the ability for canopy tree planting. For this reason, the landscape component of this proposal is not accepted.</p>
NECC (Bushland and Biodiversity)	<p>REFUSAL</p> <p><u>Revised Comments</u></p> <p>Amended plans and reports have been issued including architectural and landscape plans and a root investigation report. The amended application proposes the retention of existing trees numbered 4 (Grey Gum), 7 (Turpentine), and 8 (Turpentine) within the front setback. The amended application also proposes the continued retention of existing trees numbered 12 (Swamp Mahogany) and 13 (Turpentine), although tree 11 (Turpentine) is now recommended for removal.</p> <p>The Council Landscape Referral has:-</p> <ul style="list-style-type: none"> • accepted the recommendation for removal of remove tree 11. • agreed that three (3) existing native trees can be preserved for the long term, and • five (5) existing trees of high retention value can't be replaced due to insufficient deep soil zones and landscape area remaining capable of allowing tree replacement. <p>As per the original assessment, the site is mapped as part of a terrestrial biodiversity area and is located within a wildlife corridor (high priority). The aims and objectives of Pittwater LEP 2014 cl.7.6 Biodiversity and P21 DCP B4.6 Wildlife Corridors are therefore relevant to the assessment. The development should be designed, sited and managed to avoid, minimise or appropriately manage any adverse environmental impact, and demonstrate the retention and enhancement of wildlife corridors ensuring/providing the connection of flora and fauna habitats.</p> <p>While the amended design results in some reduction in impacts to biodiversity values of the site, and with reference to the Landscape Referral, the previous comments are still applicable. Specifically the development should not directly impact or reduce habitat for locally native species, not result in a net loss in native canopy trees, and ensure that at least 60% of any new planting incorporates native vegetation (recommended species list contained within Appendix A of the Biodiversity Management Plan Narla October 2020).</p>

Internal Referral Body	Comments
	<p>Based on the information provided I am not satisfied that the development is designed, sited and will be managed to avoid, minimise or appropriately manage any adverse environmental impact.</p> <p><u>Original Comments</u></p> <p>The proposed development has been assessed against Pittwater LEP 2014 cl.7.6 Biodiversity and P21 DCP B4.6 Wildlife Corridors. The site is mapped as part of a Terrestrial Biodiversity area and is located within a wildlife corridor (high priority), and therefore the development is to be amended to satisfy the objective to provide wildlife corridors via creation, restoration, and / or regeneration. The proposal is to address the relevant controls, ensuring no net loss in native canopy trees.</p> <p>The Flora and Fauna Assessment has mapped 510 m2 of the site as native vegetation, albeit dominated by canopy species with sparse shrub and ground layer. While the report states that the development proposal will not significantly impact on threatened biodiversity or their habitats, the current design will directly remove more than 50% of the area mapped as native vegetation. The report has not specifically addressed the Wildlife Corridor DCP control, and should review the impacts of the proposal on the corridor, and should recommend additional impact minimisation and mitigation measures. The additional loss of trees 11 - 13 has been assumed based on the current design and the Landscape referral assessment.</p> <p>As identified within the Landscape Referral response, impacts of the development on trees, including trees proposed to be retained (trees 11-13), and the landscape treatment proposed is insufficient. The development is to ensure that at least 60% of any new planting incorporates native vegetation (as per species listed in Native Plant Species Guide available on the Council website and the species list contained within the Biodiversity Management Plan Narla Environmental Oct 2020), not include environmental weeds, and maximise linkages of the wildlife corridor. The Landscape Plan proposes replacement planting dominated by one native <i>Eleocarpus</i> species, with only one large Angophora tree and two medium sized Banksia species. Additional replacement plantings of larger canopy trees and additional canopy species diversity is recommended.</p> <p>Based on the information provided I am not satisfied that the development is designed, sited and will be managed to avoid, minimise or appropriately manage any adverse environmental impact.</p>
NECC (Development Engineering)	<p>REFUSAL - Insufficient Information</p> <p>Comments 24/3/2021</p> <p>The recently submitted drainage plans have not been amended to address the previous comments ie the location of the OSD/rainwater tank be relocated from below the habitable floor or an intermediate slab within the OSD Tank is to be created to</p>

Internal Referral Body	Comments
	<p>feature an air void and separation between the Detention /Rainwater tank and the habitable slab above.</p> <p>Previous comments The stormwater drainage plans have been reviewed and the location of the stormwater detention tank is not supported as its partly located under a habitable area . The tank therefore is to be relocated or incorporate a air void between the top of the tank and underside of the habitable floor slab.</p>
Strategic and Place Planning (Urban Design)	<p>APPROVAL - Subject to Conditions</p> <p>The proposal has addressed the Urban Design Comments brought up in the Pre-lodgement Meeting:</p> <p>1. Generally the proposal is an over-development in terms of bulk and scale comprising of six generously sized three-bedroom units. The proposed FSR of 0.617:1 is over the 0.5:1 control. Considering the 1200sqm site area is just over 200 sqm over the minimum requirement of 1000sqm, the 0.5:1 FSR should not be exceeded. Response: The proposed FSR has been reduced to 0.569:1 and the overall bulk and scale of the built form has been reduced.</p> <p>2. The front setback of 6.5m should be complied with strictly ie. no balcony encroachment as proposed. The front elevation treatment of long linear balconies should be broken up to make it fit contextually with the free-standing houses in the neighbourhood. Response: The proposal has complied with the front setback and the street elevation fits well contextually.</p> <p>3. The middle courtyard introduced to keep some existing trees is a good way to separate the two built forms proposed but it would be ideal if the narrow section of 4.12m can be increased to 6m. The Private Open Space (POS) of unit G02 would also benefit from that. The entrance to unit G03 should be moved to the existing trees side of the courtyard to give more privacy to the POS of unit G02. Response: The proposal has incorporated all the suggested recommendations.</p> <p>4. The landscape area of 31.8% (30% min.) site area should be increased to preserve the amenity to the next door neighbours by providing more landscape buffer. More articulation of the building façade especially on the rear west boundary should help to break up the 1.5m long linear landscape strip proposed with some wider spaces (3m min.) for decent canopy trees to be planted. Response: The proposed landscape area has been increased to 36.7% with width of 2m minimum introduced.</p> <p>5. The rear excavation of the proposed basement carpark is excessive being about 6m deep. Excavation should be kept to a minimum to allow more deep soil area for perimeter trees.</p>

Internal Referral Body	Comments
	<p>Response: The proposed rear excavation has been reduced to about 4.5m deep.</p> <p>6. Privacy screens should be incorporated into the upper balconies to minimise overlooking issues into the surrounding properties. Response: Privacy issues have been addressed.</p> <p>7. The proposal should look at reducing the bulk and scale especially the full double storey front building proposed with treatment of single storey elements to fit contextually with the character of the surrounding free-standing single and double storey houses. Response: The proposal has maintained a single storey built form for about 45% of the rear portion of the site to cater for the canopies of the existing trees retained.</p> <p>8. The built forms proposed should incorporate a great degree of building separation and articulation in order to achieve a character and design which is complementary and compatible to the adjoining residential development of free-standing houses located in a verdant area. Response: The separation distance between the single and double storey blocks has been increased and the building facades of the double storey block are better articulated.</p>
Traffic Engineer	<p>APPROVAL - Subject to conditions</p> <p>The proposal is for the demolition of an existing dwelling house and construction of 6 seniors living units:</p> <p>Parking: The proposed provision of 8 parking spaces satisfies the parking requirements.</p> <p>Traffic Impact: The proposal is projected to generate 4 peak hour vehicle trips. This is considered to have minimal impact on the surrounding road network and is acceptable.</p> <p>Driveway and car park design: No concerns are raised on the proposed car park and driveway design. The compliance with Australian Standards AS2890.1:2004 is required.</p> <p>Access to public transport: There are existing footpaths connecting the site to the nearest bus stops. However to provide a convenient and safe access for seniors and people with disabilities, the provision of a pedestrian crossing facility on Bardo Road will be required. Also, the designated bus stops are to be upgraded to DDA compliant bus stops.</p> <p>Conclusion: The proposal is supported subject to conditions.</p>
Waste Officer	APPROVAL - Subject to Conditions

Internal Referral Body	Comments
	<p>The proposal complies with the requirements contained within the Waste Management Design Guidelines.</p> <p><u>Amended Plans</u></p> <p>The bin room configuration has changed slightly but still complies with Council's requirements.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1130450M).

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

Commitment	Required Target	Proposed
Water	40	41

Thermal Comfort	Pass	Pass
Energy	45	45

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

SEPP (Housing for Seniors or People with a Disability) 2004

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for (6) self contained seniors housing apartments.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment: The proposed development is consistent with aim (a) of the Policy as the development for Seniors Housing will provide an increase supply of accommodation to meet the needs of seniors or people with a disability.

In relation to (b), the proposal provides efficient use of existing infrastructure and services as access is provided to and from the site via footpaths and close proximity to bus stops.

In relation to (c), the proposal involves a good design with respect to the provisions of local policies and the the SEPP HSPD in terms of the stepping and articulation of the built form, considerations of access, internal amenity and amenity impacts. However, the proposal does not provide a suitable design in terms of integration of natural features with the built form or suitable design for biodiversity or suitable stormwater design. In particular, Council's Landscape officer is not satisfied as to the retention of trees, Council's Biodiversity officer is not satisfied that the design minimises environmental impact, and Council's Engineer is not satisfied Stormwater design.

Chapter 2 – Key Concepts

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

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	The proposal provides appropriate access to the provisions through bus access which complies with the requirements under Clause 26(2), being within close proximity to bus stops and the Newport shopping centre.	Yes.
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400metres away.	The proposal is within 400m of two bus stops on Gladstone Street.	Yes.
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	N/A	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	Reticulated water and sewerage infrastructure is presently available to the site. The proposed seniors housing development is capable of connecting to a reticulated water system, in accordance with the provisions of Clause 28.	Yes
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25 (5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v): i) the natural environment and the existing uses and	The development is antipathetic to the requirements contained within Clause 25 (5) for the following reasons: i) The site is located within a low density residential area where there is a mix of historical building forms including detached dwellings, other residential development. There site is also in relatively close proximity to the Newport shopping area. Notwithstanding this, the site and the adjoining properties are screened and surrounded by natural features. The proposal	No

Development Criteria			
Clause	Requirement	Proposal	Complies
	approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	does not provide proper consideration through building design for the future retention and enhancement of environmental features to maintain this established natural character. iii) The Applicant has provided an Access Report to support the proposal and Council's Traffic officer supports the application subject to conditions. v) The proposed development includes 6 apartments constituting a total of 15 bedrooms and basement parking structure for 8 vehicles. The proposed bulk and scale of the development reasonable given the and substantial stepping, modulation, and articulation of building bulk. However, the proposal does not provide an appropriate response to surrounding character due to the lack of an appropriate design for tree retention, and design to reduce overall environmental impact.	
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	A Site Analysis Plan and Statement of Environmental Effects submitted with the application satisfactorily address the requirements of this clause.	Yes.

Clause 31 Design of in-fill self-care housing

Pursuant to Clause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form. Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that	The Desired Character for the Newport locality is identified as: <i>"The Newport locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape."</i>

Section	Requirements	Comment
	contribute to its unique character.	Given Council's Landscape officer cannot confirm suitable retention of the trees at the front of the site, and Council's Biodiversity officer cannot support overall environmental impact (with loss of trees), the proposed development does not sufficiently integrate into the landscaped setting.
2. Site Planning and design	Objectives of this section are to: -Minimise the impact of new development on neighbourhood character -Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.	The proposed development does not minimise the impact on the neighbourhood character which integrates substantial vegetation and built form. The undeveloped sections of the site provide limited potential to support existing trees on site.
3. Impacts on streetscape	Objectives of this section are to: -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape.	As identified above, the development does not provide a sympathetic presentation to the street or integration with the landform in a landscaped setting due to impact on trees provided by Council's Landscape officer.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	Subject to conditions including privacy screening, the proposal provides a sufficient design including physical separation and articulation of the built form to ensure there would be no unreasonable amenity impact.
5. Internal site amenity	Objectives of this section are to: -Provide safe and distinct pedestrian routes to all dwellings and communal facilities.	The site layout provides appropriate and safe access to each unit.

Clause 32 Design of residential development In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new	The Newport Locality statement provides the following identification of character:	Yes.

Control	Requirement	Proposed	Compliance
	buildings contribute to the quality and identity of the area.	<p><i>"The residential areas are of a diverse style and architecture, a common thread being the landscaped, treed frontages and subdued external finishes.</i></p> <p><i>Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development."</i></p> <p>The residential areas are of mixed style and architecture, with a commonality being landscaped boundaries and treed frontages.</p> <p>Although the proposed development will maintain a building height limit below the tree canopy and minimise bulk and scale. The impact on vegetation including two trees at the front, and overall tree removal on the site is unacceptable.</p>	
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.	N/A	N/A
	c. Maintain reasonable neighbour amenity and appropriate residential character by; (i) providing building setbacks to reduce bulk and overshadowing (ii) using building form and siting that relates to the site's land form,	The proposed development provides articulation at upper levels, and sufficient separation from neighbouring living spaces in order to minimise amenity impact. The built form has a compliant rear setback and steps down to be one storey at the rear. This provides a building height and bulk does not result in any unreasonable amenity impact	Yes.

Control	Requirement	Proposed	Compliance
	<p>and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, (iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors.</p> <p>d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,</p> <p>e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.</p> <p>f. retain , wherever reasonable, major existing trees, and</p> <p>g. be designed so that no building is constructed in a riparian zone.</p>	<p>such as overshadowing. Further, the building heights at the street frontages provide a open presentation (with balconies and private open space) to adequately reduce the presentation of built form in the streetscape.</p> <p>The proposed front setback complies with the control under the Pittwater DCP, and generally respects the established front building line in the street.</p> <p>Council's Landscape officer has provided that the retention of existing trees in the front setback is not tenable. As such, sufficient planting is not provided in the front setback area.</p> <p>The site contains 8 existing native trees reported with high retention value in the arboricultural impact assessment by Tree Survey.</p> <p>The loss of five existing trees of high retention value can't be replaced by this proposal due to insufficient deep soil zones and landscape area remaining capable of allowing tree replacement. This is an unreasonable environmental impact. The site is not within a riparian zone.</p>	<p>Yes.</p> <p>No</p> <p>Yes</p>
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy	The proposed side and rear elevations provide suitable design of openings and appropriate physical	Yes.

Control	Requirement	Proposed	Compliance
	of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	separation from neighbouring properties to ensure overlooking impact would be suitably minimised in these locations, subject to conditions which could be provided for screening and minor modifications to sill heights. A condition may also be applied in regard to the control on noise both during construction and operation.	
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	The solar diagrams submitted with the application indicate that apartments will receive adequate sunlight access for the whole of the year. Further, the sufficient openings are provided to the north of the buildings to take advantage of solar access.	Yes.
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	Council's Development Engineer has raised concern in relation to the proposed stormwater and OSD design. This is in regard to the OSD being below a habitable floor area.	No.
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime	The proposal involves six units with sufficient and separate ground level access. The proposal also involves various openings which provide opportunity for	Yes

Control	Requirement	Proposed	Compliance
	prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	passive surveillance.	
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	The proposed development has demonstrated that compliant access can be provided from the site to the closest public transport links to access essential services. These arrangements are subject to conditions and amendments required by Council's Traffic officer and development engineer.	Yes
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The proposed waste storage area satisfies requirements of Council's Waste Management Guidelines.	Yes.

Part 4 - Development standards to be complied with
Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	1226.3m	Yes
Site frontage	20 metres	20.115m	Yes
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	6m	Yes
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	Not more than 2 storeys	Yes
	A building located in the rear 25% of the site must not exceed 1 storey in height (development within 15.51 metres of the rear boundary).	Rear building is one storey in height	Yes

Clause 41 Standards for hostels and self contained dwellings

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

Control	Required	Proposed	Compliance
Wheelchair Access	If the whole site has a gradient less than 1:10, 100% of the dwellings must have wheelchair access by a continuous path of travel to an adjoining public road. If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the	Continuous path of travel with appropriate gradient provided	Yes.

Control	Required	Proposed	Compliance
	greater.		
Security	Pathway lighting (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	Lighting may be conditioned to ensure compliance with glare and reflection should the application be considered for approval.	Yes (subject to a condition)
Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel, and (b) must be lockable, and (c) must be located together in a central location adjacent to the street entry.	A condition may be provided to ensure an appropriate location for a letter box.	Yes (subject to a condition)
Private car accommodation	(a)Carparking space must comply with AS2890 (b)One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a power operated door to be installed at a later date.	Each apartment is provided with a space that is readily accessible. Council's Traffic officer is satisfied with the proposal.	Yes
Accessible entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	Complies	Yes
Interior general	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	Complies	Yes
Bedroom	At least one bedroom within each dwelling must have:	Complies in accordance with the Access Report	Yes

Control	Required	Proposed	Compliance
	<p>(a) An area sufficient to accommodate a wardrobe and a queen size bed</p> <p>(b) A clear area for the bed of at least 1200 mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction.</p> <p>(c) Power and telephone outlets and wiring described in Clause 8 of Schedule 3.</p>		
Bathroom	The bathroom is to comply with the requirements described in Clause 9 of Schedule 3.	Complies in accordance with the Access Report	Yes
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	Complies in accordance with the Access Report	Yes
Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	Complies in accordance with the Access Report	Yes
Door hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	Complies in accordance with the Access Report	Yes
Ancillary items	Switches and power points must be provided in accordance with AS4299.	Complies in accordance with the Access Report	Yes
Living & dining room	A living room must have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.	Complies in accordance with the Access Report	Yes
Kitchen	The kitchen must comply with the requirements of Clause	Complies in accordance with the Access Report	Yes

Control	Required	Proposed	Compliance
	16 of Schedule 3		
Access to kitchen, main bedroom, bathroom & toilet	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Complies in accordance with the Access Report	Yes
Laundry	The laundry must comply with the requirements of Clause 19 of Schedule 3.	Complies in accordance with the Access Report	Yes
Storage	A self-contained dwelling must be provided with a linen storage in accordance with Clause 4.11.5 of AS4299	Complies in accordance with the Access Report	Yes
Garbage	A garbage storage area must be provided in an accessible location.	Complies in accordance with the Access Report	Yes

Part 5 Development on land adjoining land zoned primarily for urban purposes
This part is not applicable to the subject site.

Part 6 Development for vertical villages
This part is not applicable to the proposed development.

Part 7 Development standards that cannot be used as grounds to refuse consent
Clause 46 Inter relationship of Part with design principles in Part 3
Clause 46 states that nothing in Part 7 permits the granting of consent pursuant to the Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings
In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.
The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	6m	Yes
Density and scale	0.5:1	0.569:1	No, given the articulation of the building and sufficient setback, the FSR does not contribute to an unreasonable

Control	Required	Proposed	Compliance
			building bulk. However, it is noted that a FSR which complies with the development standard could provide lesser environmental impact and greater potential for tree retention.
Landscaped area	30% of the site area is to be landscaped	36%	Yes
Deep soil zone	15% of the site area Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	15%	Yes
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	Complies	Yes
Private open space	(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor,	Complies	Yes

Control	Required	Proposed	Compliance
	and (ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area		
Parking	15 bedrooms proposed – 8 carparking spaces required	8 spaces	Yes
Visitor parking	None required if less than 8 dwellings	None required	Yes

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid 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 would be included as a condition of consent if the application was approved.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

Detailed Assessment

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	6.5m (balcony)- 8.7m (building)	N/A	Yes
Rear building line (multi-dwelling housing)	3.5m	6.5m	N/A	Yes
Side building line (multi-dwelling housing)	Front building (east): 4m	3m-3.71m	N/A	No (see comments)
	Front building (west): 4m	4m-5.35m	N/A	Yes
	Rear building (east): 3m	2m	N/A	No (see comments)
	Rear Building (west): 3m	2m	N/A	No (see comments)
Building envelope	4.2m	Within	N/A	Yes
	4.2m	Within	N/A	Yes
Landscaped area	50%	36.5% (448m ²)	N/A	No (see comments)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	No	No
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	No	No
B5.1 Water Management Plan	Yes	Yes
B5.3 Greywater Reuse	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	No	No
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	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
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.21 Seniors Housing	No	No
C1.23 Eaves	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 (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	No
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.12 Landscaped Area - General	No	No
D10.14 Fences - General	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B5.7 Stormwater Management - On-Site Stormwater Detention

Council's Development Engineer does not support the location of the OSD below habitable floor area.

C1.1 Landscaping

The proposed landscaping on the site has been assessed by Council's Landscape Architect as unacceptable. In particular, Council's Landscape officer has stated that Tree 7 and Tree 8 cannot be preserved. This provides a situation in which there is not an appropriate retention of existing trees on site, and there is not appropriate opportunity for landscaping and vegetation to soften the built form at the front of the site.

C1.21 Seniors Housing

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

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

Controls

Cumulative Impact

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

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

In terms of the development's response to the outcomes and controls of this requirement, it is noted that there are number of existing and historical seniors housing developments currently within this streetscape at No. 30-32 Bardo Road (7 dwellings), No. 24-26 Bardo Road (10 dwellings) and No 49 Bardo Road (5 dwellings). A further six dwellings on the subject site does not raise concerns in relation to the cumulative impact of these Seniors housing development within this street. The appearance of this development however, without an appropriate integration of landscaping, raises concern in terms of desired character, and visual bulk and scale.

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

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

Description of non-compliance

The proposal does not comply with the control side building line for the front building (4m) at the eastern elevation. In this regard, the proposal involves a side building line 3m-3.7m at the eastern elevation. It is noted that the proposal complies with the setback requirement at the western elevation.

The proposal also involves a building at the rear that provides side setbacks of 2m. This does not comply with the numerical requirement of 3m.

Merit consideration

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

To achieve the desired future character of the Locality.

Comment:

The proposal involves new building at the front of the site that is no more than two storeys at any one point and has articulation of walls at the side elevations. Along with this, the balcony at the front is generally open in nature. The proposed building at the rear of the site provides a compliant rear setback and is single storey. This design ensures that the proposed building would be consistent with the desired low density character within a landscaped setting. This achieve the desired future character of the locality.

The bulk and scale of the built form is minimised.

Comment:

The proposal involves a compliant front and rear building line and a compliant building height. Subject to appropriate landscaping being provided across the site, the reasonable stepping of the built form

down toward the rear provides a bulk and scale in built form that is adequately minimised.

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

Comment:

The proposal involves new buildings which maintain viewing corridors by providing articulation as well as a compliant front and rear setback.

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

Comment:

The proposal maintains open space to the front and rear of the site. This open space is positioned to ensure reasonable access to views through the site.

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

Comment:

The proposal involves a design that includes adequate modulation of building bulk and physical separation to ensure that there would be no unreasonable impact on amenity. Additionally, the design of openings at the side boundary is adequately minimised to prevent loss of privacy, and a privacy screen is provided to each side elevation of the deck (subject to conditions with minor amendments).

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

Comment:

The proposal provides landscaping across the site, however, Council's Landscape officer cannot support the landscaping and tree retention at the front of the site, and Council's Biodiversity cannot support the application due to overall environmental impact.

Flexibility in the siting of buildings and access.

Comment:

In this circumstance, flexibility is warranted for the siting of the the buildings (to not strictly comply with the numerical controls). This is a result of the reasonable presentation of bulk within the area and the lack of amenity impact on neighbouring properties.

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

Comment:

Council's Landscape officer does not support the proposal due to the lack of ability to retain trees at the front of the site. Council's Bi

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

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the PDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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 \$32,398 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,239,751.

NORTHERN BEACHES SECTION 7.12 CONTRIBUTIONS PLAN 2019

Were the application to be approved, the proposal would be subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

CONCLUSION

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

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

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

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

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP

- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

This report provides an assessment of the application for the redevelopment of the site as a seniors housing development containing 6 units.

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

Public Exhibition

The public exhibition of the DA resulted in a large response from the community. Objections to the proposed development include concerns relating to impact on trees, traffic, safety, impact on character, non-compliance with planning controls and non-compliance with SEPP HSPD.

The issues raised in the submissions have been addressed in the 'Public Exhibition & Submissions' section of this report.

While it is acknowledged that the Applicant has submitted some amended plans seeking to address the issues raised by Council in its referral comments and issues letter, the amendments were not sufficient to address issue raised by Council's Landscape Officer, Council's Development Engineer and Council's Biodiversity Officer.

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

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

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/1172 for the Demolition works and construction of a seniors housing development to accommodate six units including associated car parking and landscape works on land at Lot 42 DP 4689,54 Bardo Road, NEWPORT, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2014:

Clause 29 Character/Clause 31 Design of in-fill self-care housing/ Clause 32 Design of residential development/ Clause 33 Neighbourhood Amenity and streetscape

The proposal does not sufficiently show the retention of existing trees at the front of the site, and the overall impact on the wildlife corridor is unacceptable.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater

Local Environmental Plan 2014.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B4.6 Wildlife Corridors of the Pittwater 21 Development Control Plan.

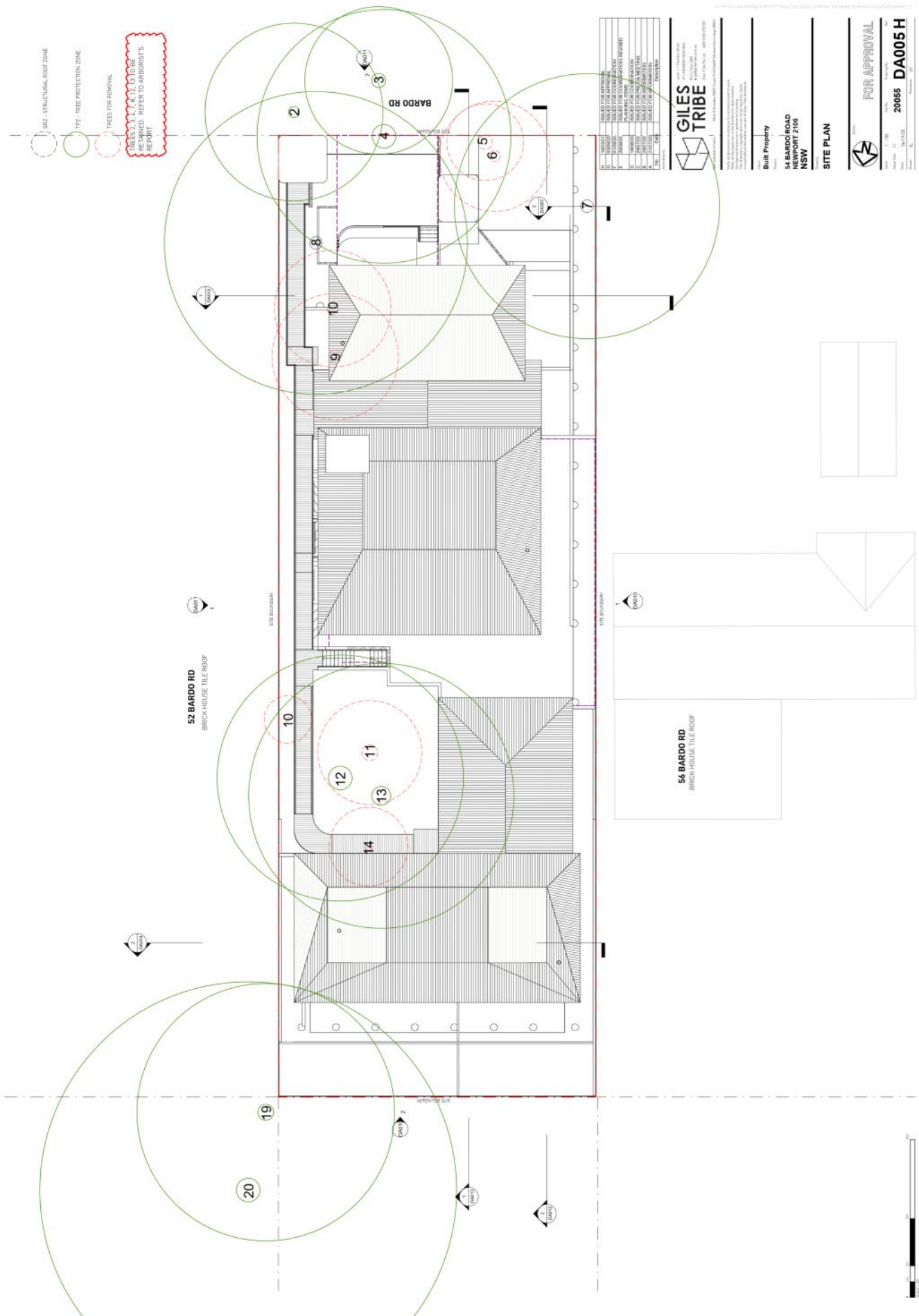
The overall environmental impact including removal of native species is unacceptable.

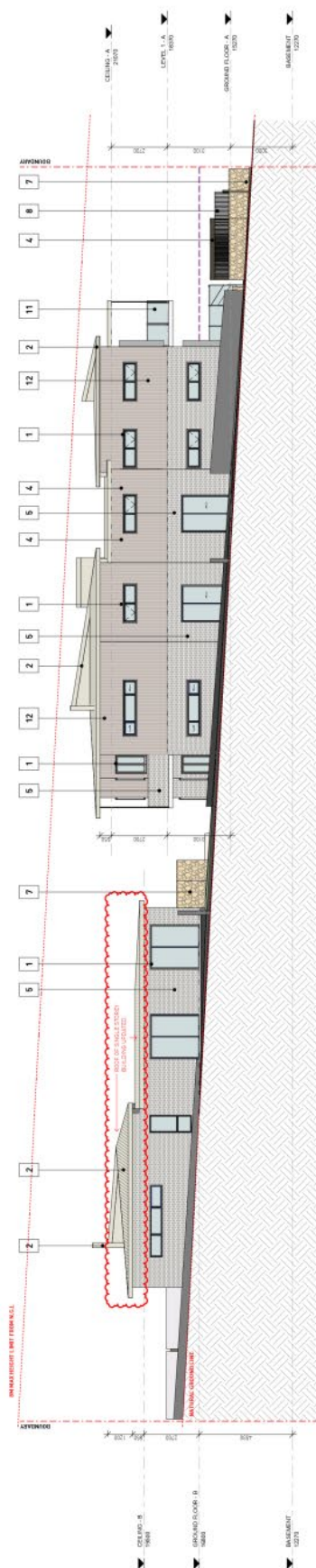
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5.7 Stormwater Management - On-Site Stormwater Detention of the Pittwater 21 Development Control Plan.

The proposal for OSD below habitable floor area is unacceptable.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.21 Seniors Housing of the Pittwater 21 Development Control Plan.

There is insufficient information in regard to the landscape plan to show integration of landscaped features with built form to complement character of the area.





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Received 10 October 2002; accepted 12 November 2002

Built Property

54 BARDON ROAD
NEWPORT 2106
NSW

NORTH & WEST ELEVATIONS



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Head Office	2-3				
Branch					
Order	On 11/9/28				
Scale	1/4"	Revised		By	



ITEM 3.3

DA2020/1027 - STUART STREET, MANLY - ALTERATIONS AND ADDITIONS TO THE EXISTING CAFE AND THE ADDITION OF A COOL ROOM, FREEZER ROOM AND BIN STORAGE AREA

AUTHORISING MANAGER Lashta Haidari

TRIM FILE REF 2021/231673

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 the council.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, grants **deferred commencement approval** Application No. DA2020/1027 for alterations and additions to the existing cafe and the addition of a cool room, freezer room and bin storage area at Lot 1 DP 1129384 & Lot 1 DP 1159168, Stuart Street, Manly subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1027
Responsible officer:	Geoff Goodyer, planning consultant, Symons Goodyer Pty Ltd
Land to be developed (address):	Lot 1 DP 1129384 and Lot 1 DP 1159168, Stuart Street, MANLY NSW 2095
Proposed development:	Alterations and additions to the existing café, use of cool room, freezer room and bin storage area, and signage.
Zoning:	Manly LEP 2013 – Land zoned RE1 Public Recreation
Development permissible:	Yes
Existing use rights:	No
Consent authority:	Northern Beaches Council
Delegation level:	Northern Beaches Local Planning Panel
Land and Environment Court action:	No
Owner:	Northern Beaches Council
Applicant:	Prophetable Hospitality Pty Ltd
Application lodged:	8 September 2020
Integrated development:	No
Designated development:	No
State reporting category:	commercial/retail/office
Notified:	Original proposal: 15/9/2020 – 29/9/2020. Amended information: 21/12/2020 – 25/1/2021.
Advertised:	No
Submissions received:	Original proposal: Eight (8), none in support. Amended information: Twenty-three (23), including four (4) in support.
Recommendation:	Approval (deferred commencement)
Estimated cost of works:	\$495,000



EXECUTIVE SUMMARY

The proposal involves alterations and additions to the existing café including the addition of a take away / kiosk and a kitchen fit-out.

Additional seating for 12 patrons is proposed outside and to the north of the current seating area, bringing the total seating capacity of the premises to 32 persons. PVC roller blinds around the existing seating area are proposed to be replaced with glass windows.

The original proposal included a cool room and bin storage area which have been previously constructed without approval. The application has been amended to remove these works from the proposal and a separate Building Information Certificate ("BIC") application has been lodged with Council in this regard. The BIC application has not yet been determined. The proposed café expansion includes the use of the buildings that have not yet been approved by the BIC. It is considered that the use of these buildings cannot be approved until the BIC is approved and it is recommended that a deferred commencement condition be imposed in this regard.

The original proposal included extended hours of operation. The application has been amended such that the hours of operation are unchanged from that which was previously approved by Council, ie: Monday and Tuesday 7.00am to 5.00pm, Wednesday to Saturday 7.00am to 10.00pm, and Sunday 7.00am to 7.00pm, with take-away only available until 6.00pm. Meal service ceases 30 minutes prior to closing time and the site is fully vacated an hour after closing time.

Up to six people will be employed on site at any time. The venue is not proposed to be licenced and no amplified music is proposed.

A number of community objections relate to the traffic and parking impacts of the proposal. The applicant has submitted a Traffic Report. The report acknowledges that on-street parking in the vicinity of the site is in high demand, particularly in summer. The report does not comment on existing road widths in the vicinity of the site, but it is to be noted that these are narrow particularly when on-street parking is under high use. The Traffic Report has been prepared on the basis that the proposed expanded café is used by people who are visiting the area for other purposes, particularly to visit the beach; however, no evidence is provided to support this assumption and it is not concurred with. As a result, the conclusions drawn in the Traffic Report are not concurred with and it is recommended that the additional seating that is proposed (being the outdoor seating for 12 patrons) not be approved.

Council's Biodiversity Officer has recommended that the hours of operation of the premises be reduced from a 10pm closing time on Wednesday to Saturday to a 7pm closing time to offset impacts resulting from the intensification of the use of the premises, including noise and traffic impacts. However, if the additional outdoor seating is not approved, as described in the previous paragraph, the use of the café is not intensified and it is not necessary to limit the hours of operation beyond those which are currently approved.

The development site is in the vicinity of aboriginal heritage. Further archaeological investigation is required to determine the likelihood of aboriginal heritage within the area of the proposed works and those investigations require an Aboriginal Heritage Impact Permit ("AHIP") from the NSW Office of Environment and Heritage. It may be that those investigations disclose the need for a further AHIP to undertake the development. It is recommended that a deferred commencement condition be imposed requiring that such permit/s be obtained prior to the consent becoming operative.

DA2020/1027



Eight submissions were received as a result of the notification of the original proposal, all of which raised concerns regarding the proposal. The issues raised in the submissions include noise, traffic, parking, development creep, adequacy of toilets and adequacy of storage areas. These issues have been addressed in the Submissions section of this report.

Twenty-three submissions were received as a result of the notification of the amended proposal, including four submission in support of the proposal. The remaining nineteen submissions raised issues including the lack of solar panels, noise, potential future development, the desire for toilets or a kiosk instead of a restaurant, inadequate storage areas, alienation of public open space, hours of operation, odours, waste management, consumption of alcohol, and impacts on pedestrian access. An assessment of these submissions is included in this report and concludes that none of these issues warrant refusal of the application, but that the intensification of the use (increased seating capacity and separate take away area) not be approved due to concerns relating to traffic and parking.

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), Plans of Management and Council policies. The outcome of this assessment is detailed within this report.

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

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 (ie: this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- An inspection of the subject site and neighbouring sites 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 and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Community Participation Plan;
- A review and consideration of all submissions made by the public in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination); review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

- Manly Development Control Plan 2013 – 3.2 Heritage Considerations
- Manly Development Control Plan 2013 – 3.4.2.3 Acoustical Privacy (Noise Nuisance)



- Manly Development Control Plan 2013 – 5.4.2 Threatened Species and Critical Habitat Lands
- Manly Development Control Plan 2013 – Schedule 3 Parking and Access

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979
- b) Environmental Planning and Assessment Regulation 2000
- c) Manly Local Environmental Plan 2013
- d) Manly Development Control Plan 2013
- e) Little Manly Coastline Plan of Management 2004
- f) State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- g) State Environmental Planning Policy No. 55 – Remediation of Land and Draft SEPP
- h) State Environmental Planning Policy No. 64 – Advertising and Signage
- i) State Environmental Planning Policy (Coastal Management) 2018
- j) Draft State Environmental Planning Policy – Environment
- k) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

SITE DESCRIPTION

Property description:	Lot 1 DP 1129384 and Lot 1 DP 1159168, Stuart Street, MANLY NSW 2095
Detailed site description:	<p>The site is located in Little Manly Reserve on the south-western side of Stuart Street opposite the intersection with Marshall Street.</p> <p>The existing café is located between Little Manly Beach and Stuart Street. It is owned by Council and leased to a private operator. It is a single-storey structure and includes public toilets and shower facilities.</p> <p>Little Manly Reserve has a fenced swimming area and playground equipment.</p> <p>Surrounding development comprises a mix of residential housing types including dwelling houses and apartment buildings up to 4-storeys in height.</p>



LOCALITY PLAN (not to scale)



Figure 1 – Location of Site (source: <https://maps.six.nsw.gov.au>)



Photo 1 – Existing building (note: external seating and umbrellas have not previously received development consent)

SITE HISTORY

Development Consent DA493/07 was issued on 20 May 2008 for “*alterations and additions to an existing kiosk*”. There were no conditions attached to the consent relating to operating hours or maximum number of patron seating.

Development Consent DA493/07 was modified on 12 March 2010. Relevantly, the following condition was added to the approval:

ANS015

The hours of operation of the premises are not to exceed the following:

Winter Opening Hours (1 June to 31 August)

Sunday, Monday, Tuesday, Wednesday and Thursday	9:00am to 5:00pm,
Friday and Saturday	9:00am to 9:00pm

Summer Opening Hours (1 September to 31 May)

Monday and Tuesday	7:00am to 5:00pm,
Wednesday and Thursday	7:00am to 9:00pm,
Friday and Saturday	7:00am to 10:00pm,
Sunday	7:00am to 7:00pm.



Note: The serving of meals is to cease thirty (30) minutes prior to closing time on each day and the premises are to be fully vacated outside these times (including patrons, staff and operator / manager).

Development Consent DA439/07 was further modified on 22 July 2010. Relevantly, Condition ANS015 was modified to read:

ANS015 (Modification)

The hours of operation of the premises are not to exceed the following:

<i>Monday and Tuesday</i>	<i>7:00am to 5:00pm</i>
<i>Wednesday to Saturday</i>	<i>7:00am to 10:00pm</i>
<i>Sunday</i>	<i>7:00am to 7:00pm</i>

Note: The serving of meals is to cease thirty (30) minutes prior to closing time on each day and the premises is to be fully vacated by staff and management one (1) hour after closing time.

Reason: To control the operation of the kiosk and preserve the amenity of the locality.

Complying Development Certificate CDC2019/0610 was issued in 2019 for "Change of use to food and drink premises at Little Manly Reserve from Kiosk to Café".

The current development application (DA2020/1027) was lodged on 8 September 2020 and was publicly notified from 15 September 2020 to 29 September 2020. The application was amended and the amended proposal was notified from 21 December 2020 to 25 January 2021.

It is noted that the application is being independently assessed because the land is owned by Council.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to carry out alterations and additions to the existing café.

- Addition of a take-away food / kiosk on the northern side of the building.
- Construction of a waiters' station.
- Replacement of existing PVC blinds with sashless glass windows.
- Addition of seating for 12 patrons on the paved area to the north of the building together with removable umbrellas. The total capacity of the café is proposed to be seating for 32 patrons.
- Installation of security screens for night time lock-up.
- Relocation of grease trap to under the paved area to the north of the building.
- Kitchen fit-out.
- Use of cool room and bin store (structures subject to a separate Building Information Certificate application)

The proposal states that the hours of operation are unchanged from that which were previously approved by Council (DA493/07, condition ANS015, as amended 22 July 2010), ie:

- *Monday and Tuesday 7:00am to 5:00pm*
- *Wednesday to Saturday 7:00am to 10:00pm*
- *Sunday 7:00am to 7:00pm*

DA2020/1027



Note: The serving of meals is to cease thirty (30) minutes prior to closing time on each day and the premises is to be fully vacated by staff and management one (1) hour after closing time.

Take-away service is proposed to cease at 6.00pm.

Up to six people will employed on site at any time (3 kitchen staff, 1 café staff and 1 server/table clearer). Supplier deliveries are proposed between 7am and 12pm by small van with 1-2 deliveries per day. The venue is not proposed to be licenced and no amplified music will be played.

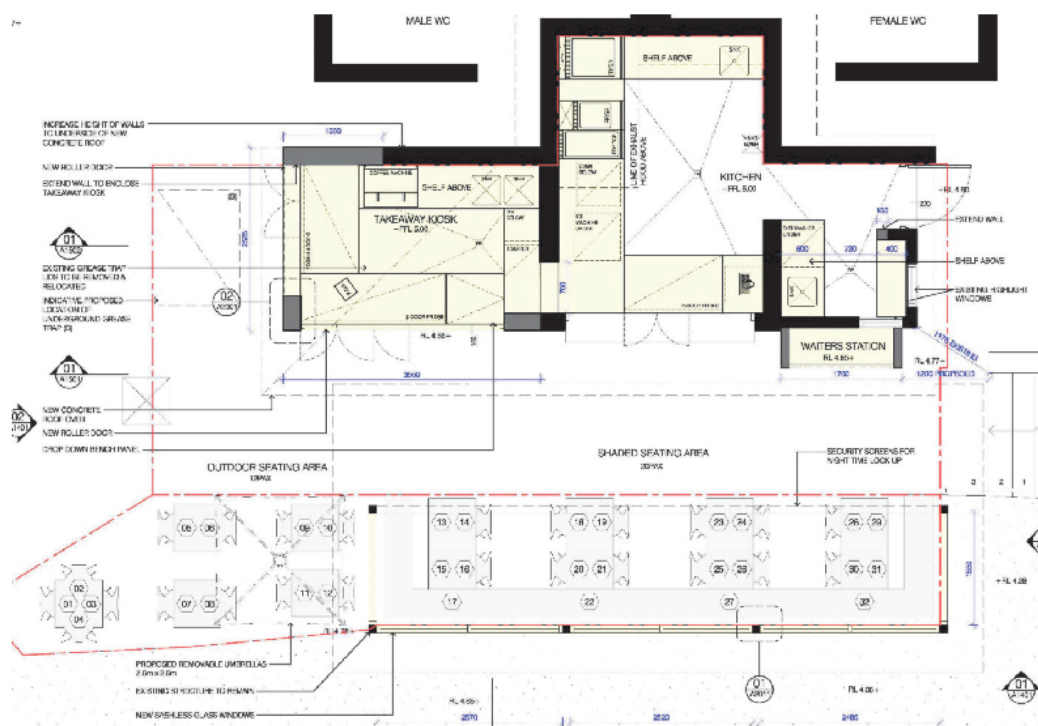


Figure 2: Proposed floor plan

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 4.15 of the EPAA 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	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	See discussion on “Manly Development Control Plan 2013” in this report.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, enable Council to request additional information in relation to a development application. Additional information was requested on 13/11/2020. Amended information was received on 4/12/2020 comprising amended plans, updated Statement of Environmental Effects, Plan of Management, and amended hours of operation.</p> <p>Further additional information was requested on 7/12/2020 and 12/1/2021.</p> <p>Additional information was submitted on 21/12/2020 comprising an amended Plan of Management. Further additional information was submitted on 15/1/2021 comprising a Biodiversity Report and an Aboriginal Due Diligence Report. A draft Contamination Report was submitted on 4/2/2021. A Traffic Report was submitted on 2/3/2021.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>development). This matter can be addressed via a condition of consent.</p> <p><u>Clause 98(1)(b)</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98(1)(a)</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<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>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the proposed works.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered to be suitable for use as a café. However, the intensification of the use of the café arising from the additional seating capacity that is proposed and the lack of car parking in the vicinity of the site is such that the site is not considered to be suitable for the proposal. The site is not subject to natural constraints such as landslip, flooding, acid sulfate soils or bushfire risk that would</p>



Section 4.15 'Matters for Consideration'	Comments
	make it unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 4.15 (1) (e) – the public interest	The public interest is considered to be served by upgrading the food and drink premises on the site to enhance the amenity of the public open space.

LOCAL GOVERNMENT ACT 1993

The site is classified as “community land” under the *Local Government Act 1993* (“LG Act”).

Section 36(1) of the LG Act requires the preparation of a Plan of Management for all community land. The Little Manly Coastline Management Plan (“LMCMP”) applies to the land.

Section 36(3)(a) of the LG Act provides that the LMCMP must categorise the land. The area the subject of this development application has been categorised by the LMCMP as a park.

Section 35 of the LG Act requires that the land be used and managed in accordance with the relevant Plan of Management. However, legal advice obtained by Council in relation to the redevelopment of Brookvale Oval (DA2019/1190) was that, whilst the Plan of Management was a relevant consideration under s. 4.15(e) of the EPA Act (ie: “public interest”), it was not necessary that a proposal forming a development application made under the EPA Act had to be “in accordance with” the Plan of Management as required by s. 35 of the LG Act.

The legal advice continued:

In our view the proper approach for the Panel, in its weighing up task of considering the POM, is to take a more general approach on the basis that the POM is to be treated as a policy of the Council (which would also cover the objects of the EPA Act referred to above).

The LMCMP does not make specific reference to development of the café but acknowledges the continued operation of what was then a kiosk (and has since been lawfully changed to a café pursuant to CDC2019/0610).

The proposed development is not considered to substantially change the nature of the use of the building as a café with attached public facilities. In this regard it is considered that the proposed development is not antithetical to the LMCMP and satisfies the requirements of the LG Act as they apply to the development application.

EXISTING USE RIGHTS

Existing use rights are not applicable to this application.

INTEGRATED DEVELOPMENT



Section 4.46(1) of the EP&A Act 1979 prescribes certain development to be "Integrated Development". Integrated Development requires consultation with relevant authorities to obtain general terms of approval prior to the granting of consent.

Development that requires an activity approval under Section 91 of the *Water Management Act 2000* is identified as integrated development. The site is "*waterfront land*" under the *Water Management Act 2000* and the proposed works within the waterfront land are a "*controlled activity*" that require an activity approval. However, clause 36 of Schedule 4 of the *Water Management (General) Regulation 2018* provide an exemption for controlled activity on certain land, including land mapped on Sydney Harbour including the subject site.

Development that requires an Aboriginal heritage impact permit ("AHIP") under s. 90 of the *National Parks and Wildlife Act 1974* is identified as integrated development. The Aboriginal Due Diligence report submitted as part of the development application identifies that further site investigations are required which includes sub-surface investigations that require an AHIP. Depending on what those investigations reveal it may be necessary to apply for a further AHIP. However, s. 4.46(2)(a) provides that development requiring an AHIP is not integrated development unless:

- (a) *an Aboriginal object referred to in that Part is known, immediately before the development application is made, to exist on the land to which the development application applies, or*
- (b) *the land to which the development application applies is an Aboriginal place within the meaning of that Act immediately before the development application is made.*

The site does not satisfy either (a) or (b) above.

Consequently, the proposal is not Integrated Development.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS

The subject application was notified to surrounding and nearby properties in accordance with the EPA Regulation 2000 and the Northern Beaches Community Participation Plan from 15 September 2020 to 29 September 2020.

In response, Council received 8 submissions, none of which supported the proposal, from the following people:

Name:	Address;
Ms Julie Bakalor	1/2 Stuart St, MANLY NSW 2095
Mr Nicolas Ewald	3/57 Stuart St, MANLY NSW 2095
Mr Allan Fisk	16 / 11-15 Spring Cove Ave, MANLY NSW 2095
Mrs Catherine Griffin	65-67 Stuart St, MANLY NSW 2095
Mr Ian Macfarlane	No address supplied
Mr Ray Mathieson	1/28A Addison Rd, MANLY NSW 2095
Dr Susan Rice	3/57 Stuart St, MANLY NSW 2095
Miss Katja Thies	71/1 Addison Rd, MANLY NSW 2095



The amended proposal was notified from 21 December 2020 to 25 January 2021. In response, Council received 23 submissions, of which 4 supported the proposal, from the following people:

Ms Wendy Allpress	No address supplied
Mr Roger Amos	No address supplied
Ms Julie Bakalor	1/2 Stuart St, MANLY NSW 2095
Doug and Lee Carruthers	2/57 Stuart St, MANLY NSW 2095
John and Adrianne Chatterton	No address supplied
Mr Reginald Gibson	1 / 2-4 Stuart St, MANLY NSW 2095
Mrs Catherine Griffin	65-67 Stuart St, MANLY NSW 2095
Mr Terry Harris	63 Stuart St, MANLY NSW 2095
Pam and Martin Kirwan	No address supplied
Kim Lee	59 Stuart St, MANLY NSW 2095
Ms Judy LeVine	39 Osborne Rd, MANLY NSW 2095
Mr Ian Macfarlane	12/59 Stuart St, MANLY NSW 2095
Mr Robert Manson	51 Stuart St, MANLY NSW 2095
Mr Paul Nelson	1/34 Addison Rd, MANLY NSW 2095
Dr Susan Rice	3/57 Stuart St, MANLY NSW 2095
Ms Sue Sacker	78 Alexander St, MANLY NSW 2095
Ms Janne Seletto	3/22 Cliff St, MANLY NSW 2095
Mrs Ann Vindin	59 Stuart St, MANLY NSW 2095
Mrs Frances White	83 Wood St, MANLY NSW 2095
Mr Tony White	83 Wood St, MANLY NSW 2095
Ms Carol Young	57 Stuart St, MANLY NSW 2095
Mr Alan Young	6 Oyama Ave, MANLY NSW 2095
Mr Philip Zillman	69 Stuart St, MANLY NSW 2095

The submissions that did not support the proposal raised the following issues:

Noise

The proposal does not extend the hours of operation, does not involve amplified music and does not involve the service of alcohol. Whilst there will be an additional 12 patrons seated outside there is sufficient separation distance from the nearest residential receivers (approximately 40 metres) to mitigate the impacts of noise arising from the use of the outdoor seating area.

The Plan of Management submitted by the applicant provides further controls on patron management, deliveries and waste management that mitigate potential noise impacts.

With regards to the use of the existing cool room, which has been constructed without approval, Council's Environmental Health Officer recommends that an Acoustic Report be provided prior to the issue of a Construction Certificate associated with this development application, with recommended measures to be implemented prior to the release of the Occupation Certificate.



In summary, this issue has not been given determining weight.

Traffic and Parking

The proposal involves an intensification of the use of the premises, through the additional patron seating and the introduction of a separate take-away section.

The Traffic Report submitted by the Applicant acknowledges the high demand for on-street car parking in the vicinity of the site. The author of this assessment report has observed that the streets in the vicinity of the site are relatively narrow when on-street parking is occupied.

The Traffic Report has been prepared on the basis that patrons of the premises will be visiting the site for other reasons (ie: to use the beach). However, no information has been submitted to justify this assumption.

It is considered that the intensification of the use of the café, through the provision of seating for 12 additional patrons (bringing the total capacity to 32 seated patrons) will have negative impacts on the availability of on-street car parking and local traffic conditions and that these will also have a negative impact on the amenity of local residents.

Consequently, it is recommended that the outdoor seating not be approved and that the existing approved capacity of the café for 20 seated patrons be retained.

Scale of development

The proposal will not increase the scale of the building in a significant way. The minor increase as a result of the construction of the take-away area, an area measuring approximately 2.2m x 2.4m, will not have a negative impact in terms of the scale of the building and complements the existing built form.

In summary, this issue has not been given determining weight.

Adequacy of toilet facilities

The proposal retains the existing toilet facilities within the building which are also available to members of the public using the adjacent beach and park.

In summary, this issue has not been given determining weight.

Lack of solar panels

It has been suggested in submissions that solar panels should be incorporated into the development. There is no requirement in the planning controls for the provision of solar panels and, whilst they would improve the environmental sustainability of the development, the lack of solar panels is not considered to be a reason to refuse development consent.

Potential future development

Concern is raised that approval of this development could lead to further development proposals in the future. However, this development application must be considered on its individual merits. It does not set a precedent for future development proposals and this concern has not been given determining weight.



Desire for toilets or a kiosk instead of a restaurant

A number of submissions expressed a desire for the retention of the building as toilets or as a kiosk. This desire is noted but the proposed development has been assessed on its merits and this desire is not considered to be a reason for refusal of the development application.

Inadequate storage areas

Concern has been raised that the proposal provides inadequate storage areas. There is room within the building for the storage of foodstuffs, etc. in association with the café and take-away areas. There is also room for the storage of tables, chairs and umbrellas associated with the outdoor seating area when the premises are closed. The recommendation of this assessment report includes appropriate conditions of consent requiring all goods and materials associated with the use to be stored within the building and, consequently, this objection has not been given determining weight.

Alienation of public open space

Concern is raised that the proposal will result in the alienation of public open space. In this regard, the proposal includes additional built form measuring approximately 2.2m x 2.4m for the take-away area as well as an area for 5 x tables and 12 chairs plus umbrellas for the outdoor eating area. These areas are available to the public and are considered to be complementary to the use of the public open space and, in this regard, there are many such facilities providing food and public amenities in public open spaces in the northern beaches area. The scale of the facilities is not considered to be excessive.

This issue has not been given determining weight.

Hours of operation

Concern is raised with regards to the proposed hours of operation, with people making submissions under the impression that the proposal involves extending the approved hours of operation. This impression is incorrect and the proposal retains the existing approved hours of operation.

This issue has not been given determining weight.

Odours

Concern is raised that the proposal will result in odours. The proposal has been reviewed by Council's Health Officer who has raised no objections in this regard. The kitchen fit-out includes extractor fans capable of minimising the impact of odours. This objection may be addressed through the imposition of appropriate conditions of consent.

Waste management

Concern is raised regarding the management of waste from the site. In this regard waste is stored in bins at the rear of the building in the bin storage enclosure (subject to a separate Building Information Certificate) such that visual and odour impacts are minimised. Waste is removed by contractors. The Plan of Management specifies that waste is removed three times per week with collection occurring between 7am and 9am.



The management of waste is considered to be satisfactory and this issue has not been given determining weight.

Consumption of alcohol

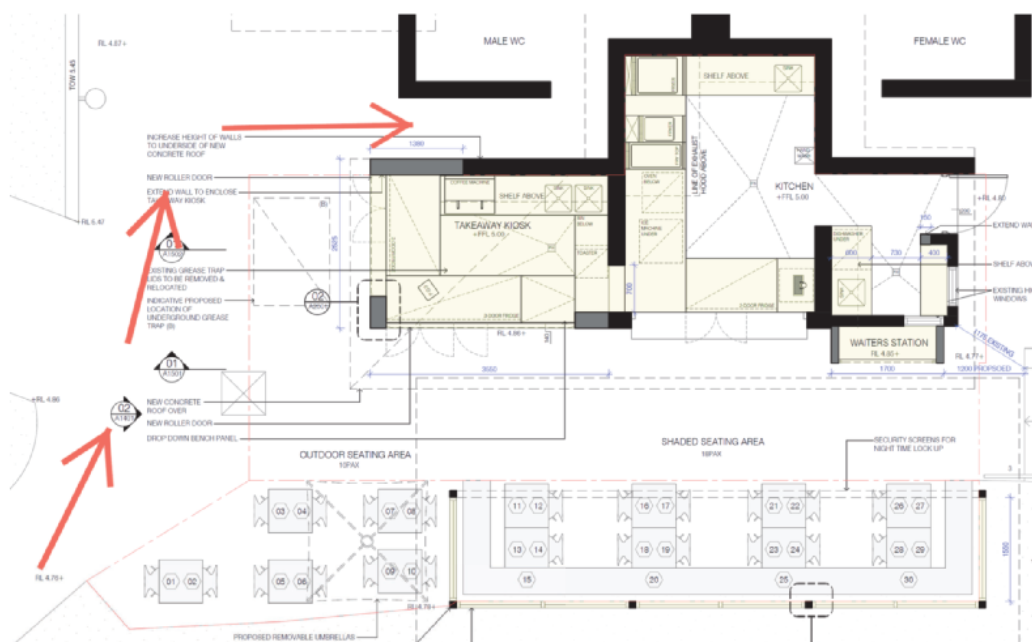
Concern is raised regarding the potential impacts that would arise from the consumption of alcohol on the premises.

The Statement of Environmental Effects and Plan of Management specify that the premises are not proposed to be licensed. This issue has not been given determining weight.

Pedestrian access

Concern is raised that the proposed outdoor seating will impede pedestrian access through the site and to the existing men's public toilets.

In this regard it is considered that sufficient access area is retained to the men's toilets, as shown in the following diagram:



This issue has not been given determining weight.

Previous unauthorised works

The applicant has amended the application to remove from it all previous unauthorised works which are the subject of a separate Building Information Certificate that is being assessed by Council.

At the time of preparation of this assessment report the Building Information Certificate has not been issued. It is recommended that a deferred commencement condition be imposed



requiring the Building Information Certificate to be issued prior to the consent becoming operative.

Master-planning for Little Manly Beach

Submissions have been made requesting further master planning of the Little Manly Beach area prior to the approval of changes to the café.

The applicant has lodged the development application which must be assessed pursuant to the planning controls and relevant legislation as it applies as this point in time.

In summary, this issue has not been given determining weight.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal referrals

Referral officer	Comments	Consent recommended
Aboriginal Heritage Office	<p>The Aboriginal Heritage Office has reviewed the additional information and does not object to the deferred commencement proposal, subject to any Heritage NSW, Northern Beaches Council or other relevant authority that may have an alternate recommendation.</p> <p>Just to confirm, the Aboriginal Heritage Office is a partnership of Councils and provides advice to those partners in relation to Aboriginal heritage matters. It has no legislative authority and is an advisory service only. Heritage NSW is the agency responsible for the legislation protecting Aboriginal heritage in NSW and is the agency responsible for issuing an Aboriginal Heritage Impact Permit for archaeological testing for this proposed development. It is the AHO's view that if development planning can identify Aboriginal heritage constraints as early in the planning process as possible and then avoid any Aboriginal sites or areas of potential, then there would be no requirement for an AHIP. In those cases where avoidance isn't possible, and an AHIP is necessary, then Heritage NSW must be contacted and its procedures followed. Whether this is prior to making an AHIP application for advice or at the time of application is up to the relevant parties.</p> <p><i>[Assessing Officer's comment: The context of the above referral comments is that the AHO originally requested that an AHIP be obtained prior to consent or the proposal be otherwise refused. However, subsequent discussions resulted in the AHO</i></p>	Yes, subject to conditions

Referral officer	Comments	Consent recommended
	<i>accepting that a deferred commencement condition could address this concern. A suitable condition is included in the recommendation of this assessment report requiring the carrying out of further archaeological investigations which themselves require an AHIP and, if identified as appropriate by those investigations, that an AHIP be obtained for the development.]</i>	
Environmental Health – Commercial Use	<p>Application is for the alterations and additions to the existing café Stuart Street, Little Manly Reserve, Manly.</p> <p>SEE advises the following:</p> <p>The development proposes a small rear extension including cold storage and freezer rooms and a bin storage area, as well as a reorganisation of the existing interior of the café and an addition to the outdoor seating area.</p> <p>The proposed works include condenser units for the cold storage that will be located externally on a slab adjacent to the northern side of the building. Despite the nearest residential receptors being located across the road as the condenser units would be required to run 24/7, without any adequate acoustic treatment there could be potential noise concerns for the residents. This could particularly be an issue during the night when background noise is typically lower.</p> <p>An acoustic assessment in accordance with NSW EPA Noise Policy for Industry will be required prior to the construction certificate being issued in order to evaluate the design of the mechanical plant including the condensers and to recommend any acoustic treatment.</p>	Yes, subject to conditions
Environmental Health – Contaminated Lands	<p>New Information – Additional Review 9 February 2021</p> <p>The applicant has submitted a Preliminary Site Investigation by Martens and Associates dated 14 January 2021 (reference: P208072JR01V01). The report concluded/recommended the following:</p> <p><i>Based on the site history, no significant risk to current or future receptors is expected at the site. No further investigation for contamination is warranted. If any unexpected finds (such as fibro material, odours or soil staining) are encountered at a later date, the unexpected find will require assessment by MA to determine requirements for additional investigation and / or remedial action.</i></p> <p>The proposal is therefore supported.</p>	Yes, subject to conditions

Referral officer	Comments	Consent recommended
Engineering	No objections subject to conditions	Yes, subject to conditions
Heritage	<p>The site contains a heritage item (Item I1 Harbour Foreshores). The Little Manly Tidal Pool is listed as a heritage item in Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and is on the register of the National Trust.</p> <p>The proposal seeks consent for alterations and additions to the existing kiosk/cafe at Little Manly. Some of the larger components of the proposal include a new takeaway kiosk area and the creation of new bin, freezer and cool rooms to the rear. The heritage items are located to the south of the cafe, with I1 running along the mean high water mark and the tidal pool located further south into the harbour itself. Given the separation between the site of the building and the heritage items, the proposal is considered to not impact upon them or their significance.</p> <p>Therefore, Heritage raises no objections and requires no conditions.</p>	Yes
Landscape	The proposed works are largely confined to existing disturbed or built areas. No objections are raised to approval subject to conditions as recommended.	Yes, subject to conditions
Natural Environment – Biodiversity	<p>Council's Biodiversity referrals team have assessed the development application against the following provisions:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 (BC Act) • NSW SEPP (Coastal Management) - Coastal Environment Area • Manly LEP Clause 6.5 (Terrestrial Biodiversity) • Manly DCP Clause 5.3.2.1 (Threatened Species and Critical Habitat Lands) • Manly DCP Clause Manly DCP Clause 3.3.1.iv (Landscaping in Bandicoot Habitat) <p>Whilst the amended Terrestrial Biodiversity Report (GIS Environmental Consultants 12 January 2021) has made reference to risks associated with increased traffic and noise generation, it has not provided mitigation measures to reduce potential impacts on the endangered Long-Nosed Bandicoot or Little Penguin populations. In light of this, Council's Biodiversity referrals team have proposed conditions of consent to mitigate potential impacts resulting from noise and disturbance associated with operation of the restaurant. This includes a proposed reduction in approved operating hours on some evenings to offset a likely intensification of use and additional traffic as a result of the increased capacity. This restriction will mitigate any potential increase in bandicoot road mortality during dusk/evening hours (when</p>	Yes, subject to conditions

Referral officer	Comments	Consent recommended
	<p>bandicoots are most active), as well as managing disturbance to penguins attempting to come ashore to nests after dusk.</p> <p>Any increase in noise associated with operation of the condenser unit will be managed via conditions provided by Council's Environmental Health referral body, which will require preparation of an acoustic report and no increase in noise above background levels at the nearest residential receptors.</p> <p>Subject to the recommended conditions of consent, it is considered that the proposal can be managed to avoid adverse impacts to the endangered populations of Little Penguins and Long-Nosed Bandicoots.</p> <p><i>[Assessing officer's comment: The conditions recommend that the closing time for the premises be 7pm Wednesday to Saturday instead of the currently approved 10pm. The closing time on Sunday is unchanged at 7pm and unchanged on Monday and Tuesday at 5pm. The Biodiversity Officer's comments identify a nexus between the development that is proposed and the condition that is recommended. However, instead of limiting the hours of operation the recommendation of this assessment report is that the intensification of the use of the premises (ie: the additional seating for 12 patrons) not be approved for reasons relating to traffic and parking impacts. The proposal includes the replacement of existing PVC blinds around the seating area with glass louvres which will further mitigate potential impacts on local wildlife.]</i></p> <p>Additional Comments from Biodiversity Officer 29/03/2021</p> <p>The Biodiversity referral body considers that the proposal to increase seating capacity will result in an intensification of use, greater traffic and increased human presence within the area during dusk and evening when penguins and bandicoots are most active in the area and vulnerable to disturbance. Given that the existing approved hours allow for operation up to 10pm on some nights, a condition was proposed to mitigate potential impacts to bandicoots and nesting penguins by limiting operating hours to no later than 7pm each night. However, the assessment report's recommendation to not approve the</p>	

Referral officer	Comments	Consent recommended
	<p>increase in capacity would also satisfactorily address this concern.</p> <p>Should the panel determine to approve the proposed capacity increase, the Biodiversity referral body's support for the proposal would be contingent upon a condition or other mechanism to limit the café's operating hours such that trading during dusk and evening hours is minimised.</p>	
Natural Environment – Coastal	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The application has also been assessed using Northern Beaches SREP assessment template.</p> <p>The proposal is therefore supported.</p>	Yes
Parks and Reserves	No objections are raised to approval subject to conditions to protect the public and Council assets.	Yes, subject to conditions
Traffic Engineer	<p>The proposal is supported on Traffic and Transport grounds, with all parking for the cafe to be provided on street as the premises is located wholly within Council reserve land. The existing seating area increase would require 1 additional parking space to be provided to comply with the DCP requirement, however this is not possible given the site location. The nearby "No Parking" zone can be utilised for delivery purposes subject to signage change approval for the Northern Beaches Council Local Traffic Committee to formalise this use.</p> <p>The pedestrian access is to be improved to the cafe by removal of the existing gate and replacing with a suitable removable bollard solution.</p> <p>All access work is to comply with the accessibility standards and Council Standards of construction. The application is therefore supported.</p> <p>The proposal is therefore supported.</p> <p><i>[Assessing officer's comment: The issue of traffic and parking is discussed in detail below under the heading "Schedule 3: Parking and Access".]</i></p>	Yes, subject to conditions



Referral officer	Comments	Consent recommended
Waste	The proposal is acceptable. The proposal is therefore supported.	Yes, subject to conditions

External referrals

Referral Body External	Comments	Consent Recommended
Ausgrid	<p>Ausgrid has no objection to this development application, however the design submission must comply with relevant Ausgrid Network Standards and Safe Work NSW Codes of Practice for construction works near existing electrical assets.</p> <p>The “as constructed” minimum clearances to Ausgrid’s infrastructure must not be encroached by the building development. It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.</p>	Yes, subject to condition

ENVIRONMENTAL PLANNING INSTRUMENTS

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

SEPP 55 – Remediation of Land and draft Remediation of Land SEPP

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. The applicant has submitted a draft Preliminary Site Investigation (Martens Consulting Engineers, 14/1/2021). The report relevantly concludes:

Based on the lines of evidence outlined above, the Investigation Area is considered to generally have a low risk of contamination and is considered suitable for continued commercial use as a café following the recent completion of development work.

The report has been reviewed by Council’s Environmental Health Officer who has raised no objections subject to conditions.

The draft SEPP proposes to rationalise the existing controls for remediation of land and update the relevant guidelines. The proposal is consistent with these requirements.

SEPP 64 – Advertising and Signage

The proposal includes the erection of three (3) non-illuminated wall signs, each reading “Ripples little manly”, as follows:

1. North-west elevation measuring 1.8m x 0.5m.
2. South-west elevation measuring 1.8m x 0.5m.
3. South-west elevation measuring 1.4m x 0.4m.



The signs fall within the definition of “*business identification signs*”. Under clause 8(1) of SEPP 64 Council must be satisfied that the proposal is consistent with the aims in clause 3(1)(a) of SEPP 64 and the assessment criteria in Schedule 1.

The proposal is considered to be consistent with the aims of SEPP 64 in that the signs are compatible with the desired amenity and visual character of an area, provide effective communication of the use of the building as a café, are in suitable locations, and are of high quality design and finish.

The signs are considered to satisfy the assessment criteria in Schedule 1 of the policy:

- *Character of the area*: The signs are consistent with the character of the area.
- *Special areas*: The signs do not detract from the open space area that they are located in.
- *Views and vistas*: The signs are considered to be of an appropriate scale proportion and form and contribute to the visual interest of the area. They do not result in visual clutter or protrude above the building. They do not require ongoing vegetation management.
- *Site and building*: The signs are in scale with the building to which they are attached.
- *Associated devices and logos with advertisements and advertising structures*: The logos, where applicable, are designed as an integral part of the signs.
- *Illumination*: The signs are not proposed to be illuminated.
- *Safety*: The signs do not reduce safety of any public road, pedestrians or bicyclists.

In summary, the proposed signs satisfy the requirements of SEPP 64.

SEPP (Infrastructure) 2007

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.

The proposal was referred to Ausgrid who raised no objections.

SEPP (Vegetation in Non-Rural Areas) 2017

The proposal does not involve the removal of any vegetation.

SEPP (Coastal Management) 2018



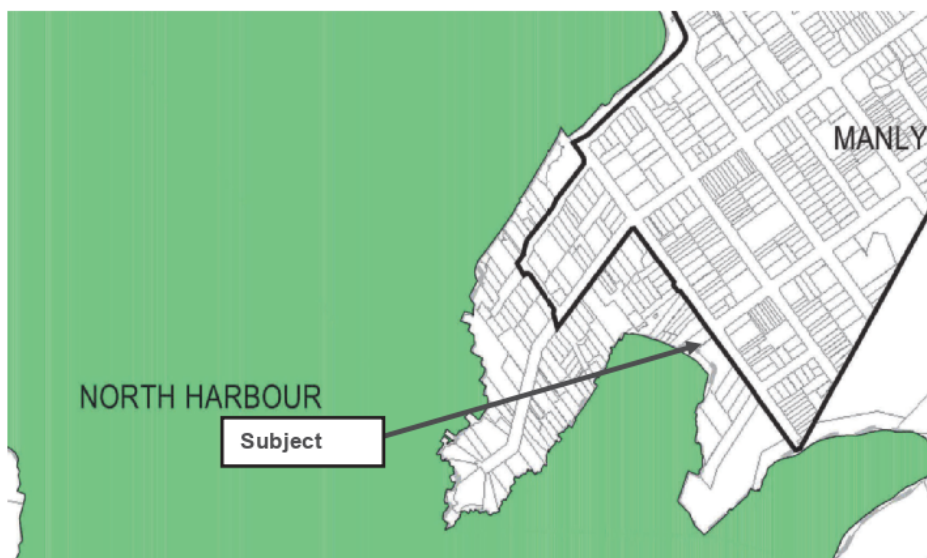
The site is located within the Coastal Environment Area and the Coastal Use Area as identified in SEPP (Coastal Management) 2018. Clauses 13 and 14 of SEPP (Coastal Management) 2018 contain a list of matters for consideration with regards to development in these areas. However, clauses 13(3) and 14(2) provide that these are not applicable to land within the Foreshores and Waterways Area within the meaning of REP (Sydney Harbour Catchment) 2005. As discussed below, the site is within the Foreshores and Waterways Area.

Clause 15 of SEPP (Coastal Management) 2018 requires that Council be satisfied that development is not likely to increase the risk of coastal hazards. Given the minor nature of the works proposed and the existing presence of the café the proposed development is unlikely to increase the risk of coastal hazards.

Clause 16 of SEPP (Coastal Management) 2018 requires that Council consider the relevant provisions of any coastal management program when assessing this development application. The site is not subject to any coastal management programs.

SREP (Sydney Harbour Catchment) 2005

SREP (Sydney Harbour Catchment) 2005 applies to all land within the Sydney Harbour Catchment. However, the matters for consideration in relation to development applications apply only to land within the Foreshores and Waterways Area. The following extract from the Zoning Map shows that the subject site is affected by the provisions of SREP (Sydney Harbour Catchment) 2005.



Map 1 - SREP (Sydney Harbour Catchment) 2005 Zoning Map (Sheet 16). The site is within the boundary of the Foreshore Area which is indicated by the black line.

Part 3 - Foreshores and Waterways Area

Division 1 - Development Control



The land is unzoned under SREP (Sydney Harbour Catchment) 2005 and is adjacent to land zoned *W2 Environment Protection* under the SREP. The proposal is considered to be consistent with the objectives of the zone in that:

- a) The proposal will have no impact on the natural and cultural values of the waterway subject to appropriate and standard erosion, sedimentation and pollution management and controls.
- b) Subject to compliance with appropriate conditions the application there will be no long-term detrimental impacts on the waterway or adjoining foreshores.
- c) The proposal does not present opportunities for enhancing or rehabilitating the waterway or foreshore.
- d) The proposal is consistent with the long-term management of the waterway and foreshore.

Division 2 - Matters for Consideration

These considerations are summarised in the following Table:

Biodiversity, ecology and environment protection	
(a) development should have a neutral or beneficial effect on the quality of water entering the waterways	No impact, subject to conditions regarding erosion and siltation during construction.
(b) development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities)	No impact, subject to compliance with the Terrestrial Biodiversity Impact Assessment by GIS Consultants and conditions as recommended by Council's Biodiversity Officer.
(c) development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities)	
(d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access	
(e) development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation	The proposal will retain the existing intertidal area.
(f) development should retain, rehabilitate and restore riparian land	No impact.
(g) development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands	No impact, subject to conditions regarding erosion and siltation during construction.
(h) the cumulative environmental impact of development	

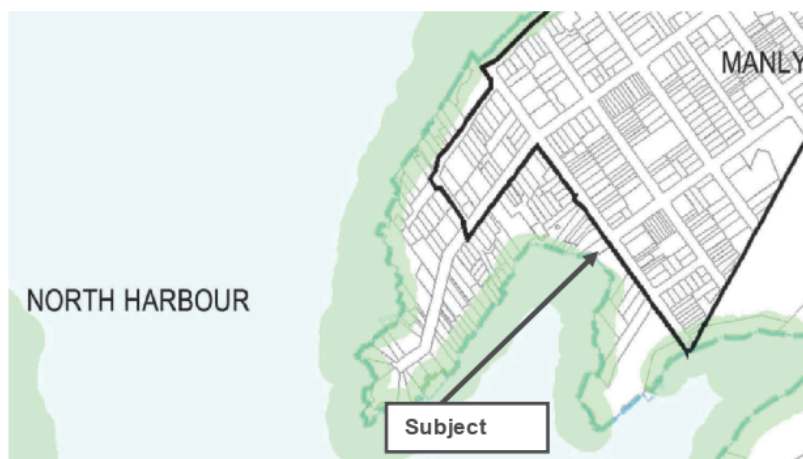
(i) whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise their disturbance	
Public access to, and use of, foreshores and waterways	
(a) development should maintain and improve public access to and along the foreshore, without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation	Existing public access to and along the foreshore is maintained.
(b) development should maintain and improve public access to and from the waterways for recreational purposes (such as swimming, fishing and boating), without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation	
(c) if foreshore land made available for public access is not in public ownership, development should provide appropriate tenure and management mechanisms to safeguard public access to, and public use of, that land	The land is owned by Council.
(d) the undesirability of boardwalks as a means of access across or along land below the mean high water mark if adequate alternative public access can otherwise be provided	Not relevant.
(e) the need to minimise disturbance of contaminated sediments	No impact.
Maintenance of a working harbour	
(a) foreshore sites should be retained so as to preserve the character and functions of a working harbour, in relation to both current and future demand	Not relevant.
(b) consideration should be given to integrating facilities for maritime activities in any development	
(c) in the case of development on land that adjoins land used for industrial and commercial maritime purposes, development should be compatible with the use of the adjoining land for those purposes	
(d) in the case of development for industrial and commercial maritime purposes, development should provide and maintain public access to and along the foreshore where such access does not interfere with the use of the land for those purposes	
Interrelationship of waterway and foreshore uses	
(a) development should promote equitable use of the waterway, including use by passive recreation craft	No impact.
(b) development on foreshore land should minimise any adverse impact on the use of the waterway, including the use of the waterway for commercial and recreational uses	

(c) development on foreshore land should minimise excessive congestion of traffic in the waterways or along the foreshore	
(d) water-dependent land uses should have priority over other uses	Not relevant.
(e) development should avoid conflict between the various uses in the waterways and along the foreshores	
Foreshore and waterways scenic quality	
(a) the scale, form, design and siting of any building should be based on an analysis of: (i) the land on which it is to be erected, and (ii) the adjoining land, and (iii) the likely future character of the locality	Proposal is consistent with the existing building bulk and scale and character of the locality.
(b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries	Minimal impact.
(c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores	Not relevant.
Maintenance, protection and enhancement of views	
(a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour	The proposal will not have a significant impact on views from the harbour or on heritage items.
(b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items	
(c) the cumulative impact of development on views should be minimised	
Boat storage facilities	
(a) development should increase the number of public boat storage facilities and encourage the use of such facilities	Not relevant.
(b) development should avoid the proliferation of boat sheds and other related buildings and structures below the mean high water mark	
(c) development should provide for the shared use of private boat storage facilities	
(d) development should avoid the proliferation of private boat storage facilities in and over the waterways by ensuring that all such facilities satisfy a demonstrated demand	
(e) boat storage facilities should be as visually unobtrusive as possible	
(f) in the case of permanent boat storage, the safety and utility of the development should not be adversely affected by the wave environment, and the development should avoid adverse impacts on safe navigation and single moorings	



Part 6 - Wetlands Protection

The site is within proximity to wetlands protection areas identified on the Wetland Protection Area Map:



Map 2 - SREP (Sydney Harbour Catchment) 2005 Wetlands Protection Area Map (Sheet 12). The wetlands protection areas are shown in green.

The proposed development is considered to be consistent with the objectives of this designation at Clause 61 of the SREP in that it will not impact on the health, viability, natural ecological functions or scenic quality of wetlands. Appropriate management during construction will ensure no impact in terms of erosion or siltation.

The matters for consideration under Clause 63 of the SREP are summarised in the following table:

Matter for consideration	Response
(a) the development should have a neutral or beneficial effect on the quality of water entering the waterways,	No impact, subject to conditions regarding erosion and siltation during construction and the implementation of the recommendations of the Terrestrial Biodiversity Impact Assessment by GIS Consultants and conditions recommended by Council's Biodiversity Officer.
(b) the environmental effects of the development, including effects on: <ul style="list-style-type: none"> (i) the growth of native plant communities, (ii) the survival of native wildlife populations, (iii) the provision and quality of habitats for both indigenous and migratory species, (iv) the surface and groundwater characteristics of the site on which the development is proposed to be carried out and of the surrounding areas, including salinity and water quality and whether the wetland ecosystems are groundwater dependent, 	

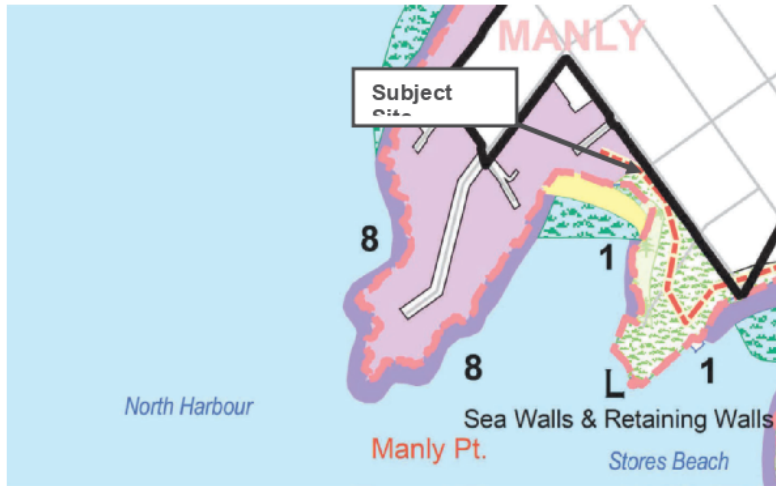


Matter for consideration	Response
(c) whether adequate safeguards and rehabilitation measures have been, or will be, made to protect the environment,	
(d) whether carrying out the development would be consistent with the principles set out in <i>The NSW Wetlands Management Policy</i> (as published in March 1996 by the then Department of Land and Water Conservation),	
(e) whether the development adequately preserves and enhances local native vegetation,	No vegetation is affected by the proposal.
(f) whether the development application adequately demonstrates: <ul style="list-style-type: none"> (i) how the direct and indirect impacts of the development will preserve and enhance wetlands, and (ii) how the development will preserve and enhance the continuity and integrity of the wetlands, and (iii) how soil erosion and siltation will be minimised both while the development is being carried out and after it is completed, and (iv) how appropriate on-site measures are to be implemented to ensure that the intertidal zone is kept free from pollutants arising from the development, and (v) that the nutrient levels in the wetlands do not increase as a consequence of the development, and (vi) that stands of vegetation (both terrestrial and aquatic) are protected or rehabilitated, and (vii) that the development minimises physical damage to aquatic ecological communities, and (viii) that the development does not cause physical damage to aquatic ecological communities, 	No impact, subject to conditions regarding erosion and siltation during construction.
(g) whether conditions should be imposed on the carrying out of the development requiring the carrying out of works to preserve or enhance the value of any surrounding wetlands.	No impact, subject to conditions regarding erosion and siltation during construction.

Sydney Harbour Foreshores and Waterways Area DCP 2005

The Sydney Harbour Foreshores and Waterways Area DCP 2005 ("the Harbour DCP") contains provisions in terms of Ecological Assessment, Landscape Assessment, Design Guidelines, and Other Matters for Consideration.

In terms of Ecological Assessment, the site of the proposed development is identified on the Harbour DCP Map as being "Grassland" (see extract of map below):



Map 3 – Extract from SHFWA DCP Ecological Assessment Map.

This area is identified at Table 1 as having low conservation value. The character of this area is maintained by this proposal.

The site is within the vicinity of the “Sandy Beaches” Terrestrial Ecological Community and, subject to appropriate conditions regarding construction management, soil erosion and sediment control, will have no impacts.

The proposal is considered to be consistent with the performance criteria for the identified ecological communities.

In terms of Landscape Assessment, the Harbour DCP identifies sixteen different landscape character types and provides assessment criteria for each type. The subject site is within Landscape Character Type 1. This area applies to undeveloped headlands and shorelines. The intent is to ensure the key features which contribute to the visual character of the area are protected.

The proposal is considered to be consistent with the landscape performance criteria. The natural elements of the area around the building are maintained and protected. The visual continuity of the beach is retained and unbroken.

In terms of Design Guidelines, Part 5.3 of the Harbour DCP relates to the siting of buildings and structures. The proposal is generally consistent with the criteria listed in Part 5.3. Part 5.4 contains guidelines in terms of the built form of development. The proposal maintains the scale of the existing development in the locality. The cumulative visual impact of the proposed building in the locality is considered to be acceptable in that it will maintain the existing visual character.

In summary, it is considered that the proposal is consistent with the provisions of the Harbour DCP.

Draft SEPP Environment 2017

This draft SEPP proposes to integrate the provisions of seven (7) SEPPs/SREPs including SREP (Sydney Harbour Catchment) 2005. The majority of the current provisions of SREP



(Sydney Harbour Catchment) 2005 would be transferred to the draft SEPP with necessary updates and some amendments. The proposal would not offend the relevant provisions of the draft SEPP due to the nature of the proposed development.

Local Environment Plans (LEP's)

Manly Local Environmental Plan 2013 (MLEP 2013)

Consideration of proposal against Manly Local Environment Plan 2013:

Definition of proposed development: (ref. MLEP 2013 Dictionary)	Restaurants or cafes
Zone:	RE1 Public Recreation
Permitted with Consent or Prohibited:	Permissible with consent

Objectives of the Zone

- 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 protect, manage and restore areas visually exposed to the waters of Middle Harbour, North Harbour, Burnt Bridge Creek and the Pacific Ocean.
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

The development is considered to be consistent with the relevant objectives of the zone for the following reasons:

- The proposal is compatible with the recreational setting.
- The natural environment around the building is maintained for recreational purposes.
- The proposal has minimal visual impact.
- The proposal maintains the existing height and bulk of the building.

Principal Development Standards:

Standard	Permitted	Proposed	Complies
None applicable			N/A

Compliance Assessment

Clause	Compliance with Requirements
2.7 Development requires consent	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

Zone RE1 Public Recreation



The proposed works to the café are permissible with development consent as it falls within the definition of “restaurants or cafes”. The take-away sales area and the proposed signage are considered to be ancillary to the café use.

5.10 Heritage conservation

The site is within the vicinity of item I1 – Harbour Foreshores. The proposed works have no impact on the heritage significance of that heritage item. Council’s Heritage Officer has raised no objections to the proposal.

6.1 Acid sulfate soils

The site is partly within an area identified as Class 5 on the Acid Sulfate Soils map. The proposal involves the disturbance of less than 1 tonne of soil and will not lower the water table and, pursuant to clause 51(6) of MLEP 2013, the provisions relating to acid sulfate soils are not applicable to this development.

6.5 Terrestrial biodiversity

The site is identified on the Terrestrial Biodiversity map. The impact of the proposal on terrestrial biodiversity, in particular the Little Penguin and the Long-nosed Bandicoot, is examined in the Biodiversity Report by GIS Consultants. This report has been reviewed by Council’s Biodiversity Officer who has raised no objections subject to conditions.

The comments from Council’s Biodiversity Officer are discussed above under the heading “Internal Referrals”. Those comments identify a nexus between the intensification of the use of the site and its impact on local biodiversity and that the hours of operation of the premises should be limited to less than the currently approved hours (ie: 7pm instead of 10pm Wednesday to Saturday) to mitigate those impacts. This assessment report recommends, instead, that the intensification of the use of the site (ie: the additional seating for 12 patrons) not be approved and, in these circumstances, restricting the hours of operation to less than currently approved is considered to be unnecessary.

6.8 Landslide risk

The site is identified on the Landslide Risk map.

Under clause 6.8(3) Council must consider the following matters in deciding whether or not the proposal takes into account the risk of landslide:

- (a) *site layout, including access,*
- (b) *the development’s design and construction methods,*
- (c) *the amount of cut and fill that will be required for the development,*
- (d) *waste water management, stormwater and drainage across the land,*
- (e) *the geotechnical constraints of the site,*
- (f) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

It is considered that the proposal, which involves minor building additions on an area that is already paved, satisfies the above criteria.



Under clause 6.8(4) development consent must not be granted to development on land to which this clause applies unless Council 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 that:

- (a) *the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or*
- (b) *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*
- (c) *if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.*

The proposal will not increase stormwater run-off from the site as it does not increase the paved area. The proposal will not be subject to landslide risk considering the minor nature of the additions and the existing built structures.

6.9 Foreshore scenic protection area

The site is located within the foreshore scenic protection area. Under clause 6.9(3) Council must consider the following matters:

- (a) *impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) *measures to protect and improve scenic qualities of the coastline,*
- (c) *suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) *measures to reduce the potential for conflict between land-based and water-based coastal activities.*

The proposal is form minor additions to an existing building. It is considered that the development will not have a significant impact on the visual amenity of the harbour or the scenic qualities of the area. It will not create conflict between land-based and water-based activities and is considered to satisfy the matters for consideration in clause 6.9 of MLEP 2013.

Manly Development Control Plan 2013 (MDCP 2013)

Detailed Assessment

Part 3.2 Heritage Considerations

The site contains a heritage item (Item I1 Harbour Foreshores). The Little Manly Tidal Pool is listed as a heritage item in Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and is on the register of the National Trust (noting that National Trust listing is not a matter for consideration in terms of the force given to environmental planning instruments such as the LEP and SREP).

Council's Heritage Officer has reviewed the proposal and has raised no objections. The comments and conclusions of Council's Heritage Officer are concurred with.



The site has also been reviewed with regards to its impact on Aboriginal heritage and an Aboriginal Due Diligence Assessment has been submitted. The authors of that report carried out a non-invasive site inspection which did not record any Aboriginal objects or sites. However, approximately 70 metres to the west of the report's study area there is a site recorded on the Aboriginal Heritage Inventory Management System, being the burial of the partial remains of an Aboriginal female in foreshore sand dunes.

The report notes:

Aboriginal sites including burials, rock shelters, art, middens or stone artefacts could be expected within the study area. The study area does not contain any outcropping of sandstone suitable for habitation structures such as rock shelters, however it is possible that sandstone bedrock located below the sand could contain rock engravings or grinding grooves created by sharpening ground edged implements. The surface of the sand dune on which the kiosk building sits has been modified to create a flatter surface above the sandstone beach wall. The sand dune behind the kiosk has also been truncated during its construction, however it is anticipated that any burials or subsurface archaeological deposits could remain.

The report makes three recommendations:

- 1. Aboriginal consultation should be undertaken in accordance with OEH's Aboriginal cultural heritage consultation requirements for proponents 2010. The results of that consultation must be detailed in an Aboriginal Cultural Heritage Assessment Report (ACHAR);*
- 2. Archaeological testing in accordance with OEH's Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW cannot be undertaken due to the possibility of a burial within the study area and the proximity to a registered Aboriginal burial. Therefore, it will be necessary to apply for an Aboriginal Heritage Impact Permit (AHIP) to undertake test excavations to determine the nature and extent of the archaeological deposit;*
- 3. Following test excavations, it may be necessary to apply for a subsequent AHIP for harm, including relevant mitigation, which could include salvage excavations, depending on the results of the test excavations, prior to the proposed development.*

The proposal was referred to the Aboriginal Heritage Office, a non-statutory advisory body, for comment. Initial feedback was that the application should be refused until an investigatory AHIP was obtained and further investigations carried out to determine if the proposal would have any impacts on Aboriginal heritage. Following further representations from the applicant were made to the Aboriginal Heritage Office, which provided the following comments:

The Aboriginal Heritage Office has reviewed the additional information and does not object to the deferred commencement proposal, subject to any Heritage NSW, Northern Beaches Council or other relevant authority that may have an alternate recommendation.

Just to confirm, the Aboriginal Heritage Office is a partnership of Councils and provides advice to those partners in relation to Aboriginal heritage matters. It has no legislative authority and is an advisory service only. Heritage NSW is the agency responsible for the legislation protecting Aboriginal heritage in NSW and is the agency responsible for issuing an Aboriginal Heritage Impact Permit for archaeological testing for this proposed development. It is the AHO's view that if development planning can identify Aboriginal heritage constraints as

DA2020/1027



early in the planning process as possible and then avoid any Aboriginal sites or areas of potential, then there would be no requirement for an AHIP. In those cases where avoidance isn't possible, and an AHIP is necessary, then Heritage NSW must be contacted and its procedures followed. Whether this is prior to making an AHIP application for advice or at the time of application is up to the relevant parties.

Having reviewed the Aboriginal Due Diligence report and the comments from the Aboriginal Heritage Office it is considered that this issue may be addressed by an appropriate deferred consent condition. The condition would require that an AHIP be obtained to complete site investigations and that if those investigations determine that there is no likelihood of damage to objects or places of Aboriginal heritage that the development consent be issued. If, however, the further site investigations identify that a further AHIP is required for the development then the consent not become operative until a further AHIP is obtained. The process of obtaining that further AHIP would enable the NSW Heritage Office to determine if impacts on Aboriginal heritage were reasonable under the relevant legislation (*National Parks and Wildlife Act*, etc).

Part 3.4.2.3 Acoustical Privacy (Noise Nuisance)

The original proposal included the construction of a cool room. However, this element of the proposal was removed from the application as it has already been constructed and is the subject of a separate Building Information Certificate, although the use of the cool room remains a part of the proposal. Council's Environmental Health Officer has reviewed the proposal, noted the separation distance to the nearest residential premises, and recommended that the potential for noise arising from the operation of the cool room could be addressed by the submission of an acoustic report prior to the release of the Construction Certification associated with this development application and the implementation of the recommendations of such a study. Such conditions are considered to be an appropriate and practical way of addressing potential noise from the operation of the cool room.

The proposal does not seek to extend the currently approved hours of operation. However, the proposal does seek to increase patron seating. The replacement of p.v.c. blinds with fixed glazing around the existing seating area will mitigate noise from patrons, but the proposed additional external seating area may generate noise. The applicant was requested to submit a Plan of Management addressing patron behaviour (amongst other things). The PoM submitted in response to this request was considered to be inadequate but an amended PoM was submitted and is considered to be satisfactory, including that staff take reasonable steps to control patron behaviour and that no amplified music is to be played.

Part 4.4.3 Signage

The proposal includes three non-illuminated wall signs that read "Ripples little manly". The signs are considered to satisfy the controls applicable to all development types (Part 4.4.3.1), with the signage not considered to be excessive, the content relating to the use of the building, the design integrated with the building, and with no illumination proposed.

The signs satisfy the requirements to flush wall signs (Part 4.4.3.3, paragraphs (f), (g) and (h)), in that they are not on a wall adjoining residential premises or hard on the common boundary and are appropriately located on the wall of the building. The area of the signs is less than the maximum permitted in the MDCP 2013 (ie: 4.6 times the distance of the signs from ground level).



Part 5.4.2 Threatened Species and Critical Habitat Lands

The site is identified on the Terrestrial Biodiversity map. The impact of the proposal on terrestrial biodiversity, in particular the Little Penguin and the Long-nosed Bandicoot, is examined in the Biodiversity Report by GIS Consultants. This report has been reviewed by Council's Biodiversity Officer who has raised no objections subject to conditions.

The comments from Council's Biodiversity Officer are discussed above under the heading "Internal Referrals". Those comments identify a nexus between the intensification of the use of the site and its impact on local biodiversity and that the hours of operation of the premises should be limited to less than the currently approved hours (ie: 7pm instead of 10pm Wednesday to Saturday) to mitigate those impacts. Instead, this issue has been addressed in the recommendation of this assessment report with a condition that restricts patron seating to that which has previously been approved (ie: 20 patrons) to address traffic and parking impacts. This condition also addresses the concerns raised by Council's Biodiversity Officer.

Schedule 3 Parking and Access

The proposal involves the addition of approximately 9.0sqm of serviced area, being the outdoor seating for 12 patrons. The existing seating area of 14.0sqm with seating for 20 patrons is to be retained but will be enclosed by fixed windows rather than the existing p.v.c. roller blinds.

Schedule 3 of the MDCP 2013 requires car parking to be provided at a rate of 1 parking space for every 40sqm of gross floor area of serviced area. In this regard the additional external seating area does not comprise "gross floor area" because it is not enclosed by walls, but the existing seating will become "gross floor area" by virtue of the proposed fixed glazing which will enclose the area.

Strict application of the requirements of the DCP 2013 with regards to the provision of car parking would be that no spaces are currently required because the existing seating area is not gross floor area. The development will generate the need for one car space as a result of the existing seating area becoming enclosed but none for the external seating area.

No additional car parking is proposed.

The applicant has submitted a Traffic and Parking Study. The study acknowledges that on-street parking is in high demand, particularly in summer. It has been observed that the local roads are narrow when on-street parking is occupied.

The Traffic and Parking Study has been prepared on the assumption that all patrons of the café will be visiting the site for other reasons, ie: to utilise the beach, but provides no evidence in this regard. It is considered that this assumption is incorrect and that the café will, to an extent, have patrons that visit the site specifically to use the café.

Consequently, the conclusions in the Traffic and Parking Study (ie: that the proposal will have no traffic and parking impacts) are not concurred with. It is considered that the proposed intensification of the use of the café, through the increase in patron seating from 20 patrons to 32 patrons, will result in a reduction in the availability of on-street parking (which is in high demand) and generate additional traffic that has not been adequately addressed in the Traffic and Parking Study. These impacts will also have an impact on the amenity of local residents.



To address these concerns, it is recommended that the proposed additional seating for 12 patrons not be approved. A suitable condition is included in the recommendation of this assessment report.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The site is identified on the Terrestrial Biodiversity map. The impact of the proposal on terrestrial biodiversity, in particular the Little Penguin and the Long-nosed Bandicoot, is examined in the Biodiversity Report by GIS Consultants. This report has been reviewed by Council's Biodiversity Officer who has raised no objections subject to conditions.

The comments from Council's Biodiversity Officer are discussed above under the heading "Internal Referrals". Those comments identify a nexus between the intensification of the use of the site and its impact on local biodiversity and that the hours of operation of the premises should be limited to less than the currently approved hours (ie: 7pm instead of 10pm Wednesday to Saturday) to mitigate those impacts. However, this assessment report recommends that the intensification of the use of the site not be approved and that the patron capacity of the café remain as currently approved to address parking and traffic impacts. Consequently, it is considered unnecessary to further limit the hours of operation beyond the currently approved hours.

POLICY CONTROLS

Northern Beaches Section 7.12 Contribution Plan 2019

A contribution of \$4,950.00 is payable under the Northern Beaches Section 7.12 Contributions Plan 2019. An appropriate condition of consent is included in the recommendation of this report.

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;
- Manly Local Environmental Plan 2013
- Manly Development Control Plan 2013
- Little Manly Coastline Plan of Management 2004
- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- State Environmental Planning Policy No. 55 – Remediation of Land and Draft SEPP
- State Environmental Planning Policy (Coastal Management) 2018
- Draft State Environmental Planning Policy – Environment
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposal has been assessed against the relevant matters for consideration under Sections 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 public submissions.

The proposal was notified on two occasions, with the first notification generating 8 objections and the second notification generating 23 submissions, of which 4 supported the proposal.



Many objections related to the hours of operation of the café and the consumption of alcohol on the premises. However, the proposal does not seek to extend the approved hours of operation or include the consumption of alcohol so those objections have not been given determining weight.

The applicant submitted a Plan of Management in response to a request for additional information but this was considered to be deficient. An amended Plan of Management was subsequently provided which would adequately address issues related to patron behaviour, delivery times, waste management, etc.

The proposal as originally submitted included the construction of a cool room and bin storage area. However, those structures have already been constructed (without approval) and are the subject of a separate Building Information Certificate application which has not yet been determined. The proposal is therefore concerned only with the use of those structures. It is recommended that a deferred commencement condition be imposed such that the development consent not become operative until the BIC has been determined.

An Aboriginal Due Diligence report has been submitted that reviews the potential for impacts on objects or places of Aboriginal heritage. It identifies that further sub-surface investigations are necessary and that an Aboriginal Heritage Impact Permit (AHIP) is required to enable those investigations to be undertaken. Those investigations may identify the need for a further AHIP in relation to the proposed development. This matter has been addressed by a deferred commencement condition that, in effect, ensures that all necessary AHIP's are obtained prior to any consent becoming operative.

The recommended deferred commencement conditions relating to the need to obtain a Building Information Certificate and necessary Aboriginal Heritage Impact Permits are considered to be appropriate under the relevant legislation (section 4.16(3) of the EPA Act and clause 95 of the EPA Regulation) and to satisfy the requirements for deferred commencement conditions as identified in the relevant caselaw, ie: that they be final and not defer essential matters for later consideration (ie: *Young & Anor v Gosford City Council* [2001] NSWLEC 191 at [48]; and *Farah v Warringah Council & Ors* [2006] NSWLEC 191 at paragraphs [59],[61], and [66], *Weal v Bathurst City Council & Anor* [2000] NSWCA 88, *Opera Properties v Northern Beaches Council & anor* [2017] NSWLEC 1507).

The site is identified as containing habitat for the Little Penguin and the Long-Nosed Bandicoot, which are threatened species. A Biodiversity Impact Assessment report has been submitted and reviewed by Council's Biodiversity Officer who recommends that the hours of operation of the café be further limited to mitigate impacts on those animals arising from the intensification of the use of the site. However, it is instead recommended that the intensification of the use of the café (ie: the proposed external seating for 12 patrons) not be approved.

Many of the public submissions raised the issue of traffic and parking. The applicant has submitted a Traffic and Parking Study that bases its recommendations on the assumption that the intensification of the use of the site will not generate additional traffic because additional patrons will be already at the site to visit the beach. This assumption is not concurred with and it is recommended that the proposed additional external seating for 12 patrons not be approved.

Accordingly, the application is recommended for approval.



RECOMMENDATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, grant Development Consent to DA2020/1027 for alterations and additions to the existing café at Lot 1 DP 1129384 and Lot 1 DP 1159168, Stuart Street, MANLY NSW 2095 subject to the conditions printed below:

DEFERRED COMMENCEMENT CONDITIONS

1. Building Information Certificate

A Building Information Certificate is to be issued for the cool room, freezer room and bin store room located on the eastern side of the building.

Reason: To ensure that all buildings associated with the proposed use have appropriate approvals.

2. Aboriginal Investigations

The recommendations of the Aboriginal Due Diligence Assessment by Unearthed Archaeology and Heritage dated January 2021 are to be completed to the satisfaction of the Aboriginal Heritage Office:

- i. Aboriginal consultation should be undertaken in accordance with OEH's *Aboriginal cultural heritage consultation requirements for proponents 2010*. The results of that consultation must be detailed in an Aboriginal Cultural Heritage Assessment Report (ACHAR);
- ii. Archaeological testing in accordance with OEH's *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW* cannot be undertaken due to the possibility of a burial within the study area and the proximity to a registered Aboriginal burial. Therefore, it will be necessary to apply for an Aboriginal Heritage Impact Permit (AHIP) to undertake test excavations to determine the nature and extent of the archaeological deposit;
- iii. Following test excavations, it may be necessary to apply for a subsequent AHIP for harm, including relevant mitigation, which could include salvage excavations, depending on the results of the test excavations, prior to the proposed development.

Reason: To protect and conserve the aboriginal heritage of the area.

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

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

3. Existing Bus Stop

Location of existing community bus stop on the Stuart Street along frontage of the site must remain in its current location. Approval of Council is required to relocate the Bus Stop.

Reason: To ensure certain services are not relocated at any stage during the project.

4. 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.

5. Plans of kitchen design, construction and fit out

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Certifying Authority. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Reason: To ensure that the Food premise complies with the design construction and fit-out requirements.



6. Plans of mechanical ventilation

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with the Australian Standard (AS) 1668.2 "The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings", must be approved by the Certifying Authority for any cooking equipment with an individual or combined power rating level that triggers the requirement for mechanical ventilation under AS1668.2 including any deep frying equipment.

Reason: To ensure that the design, construction and installation requirement for mechanical ventilation complies with the Australian Standard 1668.2.

7. Noise - Design of Mechanical Plant

Prior to the issuing of any Construction Certificate, an acoustic assessment from a suitably qualified professional such as an acoustic engineer is to be undertaken in accordance with NSW EPA Noise Policy for Industry.

The assessment is to determine if acoustic treatments are required in order to control noise emissions from the mechanical plant so that:

- Any noise emitted will not cause "Offensive Noise" as defined by the Protection of the Environment Operations Act 1997;
- Any noise emitted complies with recommendations within NSW EPA Noise Policy for Industry; and
- The sound contribution of any mechanical plant does not exceed background noise levels at the nearest residential receptors for the day, evening and night time periods.

Any design recommendations made by the consultant must be implemented into the plans prior to issuing the Construction Certificate in order to achieve compliance with noted conditions of this consent.

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

Reason: To protect surrounding residence from any noise generated by mechanical plant.

8. 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.

9. Amend Landscape Drawings – Bandicoot Habitat



The Landscape drawings, submitted in conjunction with the approved Development Application and as amended by these conditions of consent, are to be amended to include native plant species with a low dense clumping habit to provide Long-nosed Bandicoot habitat. The plantingschedule must comprise species including Lomandra sp., Dianella sp. Banksia spinulosa, Westringia fruticosa, Caustis sp., Xanthorrhoea sp., Isolepis sp., Juncus sp., Adiantum sp., Callistemon sp., Grevillea sp., and tussocky native grasses (e.g. Themeda spp.).

Plans are to be amended and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To compensate for bandicoot habitat impacted/removed as a result of the proposal.

10. 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
A1002 - Issue E	24/11/2020	BJB Architects
A1003 - Issue E	24/11/2020	BJB Architects
A1011 - Issue E	24/11/2020	BJB Architects
A1101 - Issue E	24/11/2020	BJB Architects
A1101 - Issue E	24/11/2020	BJB Architects
A1201 - Issue E	24/11/2020	BJB Architects
A1202 - Issue E	24/11/2020	BJB Architects
A1301 - Issue E	24/11/2020	BJB Architects
A1302 - Issue E	24/11/2020	BJB Architects
A1401 - Issue E	24/11/2020	BJB Architects
A1402 - Issue E	24/11/2020	BJB Architects
A1501 - Issue E	24/11/2020	BJB Architects
A1502 - Issue E	24/11/2020	BJB Architects
A2001 - Issue E	24/11/2020	BJB Architects
A2011 - Issue E	24/11/2020	BJB Architects
A2021 - Issue E	24/11/2020	BJB Architects
A4001 - Signage Plan - Issue D	13/07/2020	BJB Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By

DA2020/1027



Terrestrial Biodiversity Report	12/01/2021	GIS Environmental Consultants
Aboriginal Due Diligence Assessment, B.2021.1037	12/01/2021	Unearthed Archaeology and Heritage
Plan of Management	18/12/2021	Ben Cummings

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
A1601 - Issue E	24/11/2021	BJB Architects

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	18/05/2020	Bill Drakopoulos

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.

11. 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 commitment 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.

12. General Requirements

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- (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 on site 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.

13. 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%20rights%20/buildings/good.htm. <www.hreoc.gov.au/disability%20rights%20/buildings/good.htm>

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure



compliance with this condition and that the relevant Australian Standards are adhered to.)

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

14. Compliance with Standards

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

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

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

15. Approval of on-street parking changes by the Northern Beaches Council Local Traffic Committee

Prior to the issue of any Construction Certificate, plans showing the change in parking restrictions on Stuart Street allowing use of the "No Parking" zone as a Loading Zone for the cafe shall be submitted to and approved by the Northern Beaches Council Local Traffic Committee.

Reason: Maintain traffic flow by controlling the use of road space for the purpose of delivery vehicle use. (DACTRCPC1)

16. Policy Controls - Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$4,950.00 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 \$495,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.



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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. 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 protect native wildlife.

20. Protection of Habitat Features

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

21. Tree protection

(a) Existing trees which must be retained

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

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with 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.

22. Site Induction Required – Penguin and Bandicoot Habitat

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species and endangered ecological communities through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site manager.

Evidence of the site induction is to be documented and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

23. Fauna Protection Fencing – Penguin and Bandicoot Habitat

Temporary chain wire fencing is to be installed around all work areas (including demolition, storage and construction areas) prior to the commencement of works. The fencing is to be designed to minimise the possibility of ground-dwelling native fauna (including relevant threatened species) accessing the work areas. Fencing is to be maintained for the duration of works.

Reason: To prevent impacts to ground-dwelling native fauna, including relevant threatened species.

24. Ecologist to Induct Site Manager – Penguin and Bandicoot Habitat

Prior to commencement of construction works, the project ecologist is to meet with the site manager to:

- a) advise of conditions to be implemented for protection of relevant threatened species and endangered ecological communities;
- b) ensure that all workers are appropriately briefed on required protective measures; and
- c) inspect protective measures to confirm their adequacy and advise the proponent and site manager of the inspection results and their implications.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK****25. Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

26. Ongoing Management

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

27. Requirement to Notify about New Contamination Evidence

Any new information revealed during 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.

28. Protection 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.

Reason: to protect and/or restore any damaged public asset.

29. Existing Landscaped Gardens

The existing gardens and landscaped areas are to be retained and protected from any construction damage. All areas adjacent to the approved building works are to



be reinstated to have the same character and style. The existing, soft landscaped areas are not to be substituted for paving, unless shown in the approved plans.

Reason: Landscape protection

30. Construction Hours – Manly LEP Clause 6.5

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:00am and 5:00pm.

Reason: Noise and vibration can disturb local native fauna (including threatened species) and prevent access to their natural habitats.

31. Pre-clearance Survey Required – Bandicoot Habitat

A pre-clearance survey for Long-nosed Bandicoot and Little Penguin presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no wildlife are present within the area to be cleared. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to the Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots or Little Penguins which may be sheltering in stockpiles.

32. Daily Inspections Required – Bandicoot Habitat

An inspection register log-book must be kept on site recording daily inspections of all holes, machinery and construction material stockpiles, checking for Long-nosed Bandicoots. Inspections are to be undertaken each work day prior to commencement of works and works may only proceed once any bandicoot has safely vacated any holes, machinery or stockpiles. The log-book is to be made available to Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

33. Works to be Undertaken Outside of Penguin Breeding Season

Demolition and construction works may only be undertaken outside of the formal Little Penguin breeding season (i.e. between 1st March and 31st May) except with written approval of Northern Beaches Council's Biodiversity & Planning Group.

Reason: To mitigate potential construction-related impacts to nearby Little Penguin nesting habitat.

34. Report Dead or Injured Bandicoots – Bandicoot Habitat



Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

Reason: To prevent impacts to Long-nosed Bandicoots in accordance with the Biodiversity Conservation Act 2016.

35. 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 COMPLETION

36. Stormwater Disposal

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

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

37. Certification of Landscape Plan

Landscaping is to be implemented in accordance with the amended Landscape Plans (BJB Architects 2020) and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

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

38. No Weeds Imported On To The Site

No Priority or environmental weeds (as specified on the NSW WeedWise website) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds



39. Acoustic Report

Prior to the issuing of any interim / final occupation certificate an Acoustic Compliance Report, prepared by a suitably qualified professional such as an acoustic engineer, must be submitted certifying that:

- The noise emitted from mechanical plant when operational will not cause "Offensive Noise" as defined by the Protection of the Environment Operations Act 1997;
- The mechanical plant complies with recommendations within NSW EPA Noise Policy for Industry; and
- The sound contribution of any plant does not exceed background noise levels at the nearest residential receptors for the day, evening and night time periods.

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent.

Certification is to be submitted to the satisfaction of the Principal Certifying

Authority. Reason: To protect surrounding residence from any noise generated by mechanical plant.

40. Registration of Food Business

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

41. Kitchen Design, construction and fit out of food premises certification

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a suitably qualified and experienced person that the design, construction and fit out of food premises kitchen is compliant with the requirements of Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises'.

Details demonstrating compliance are to be submitted to the Principal

Certifying Authority. Reason: To ensure that the kitchen complies with the design requirements.

42. 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.

43. Removal of All Temporary Structures/Materials and Construction Rubbish

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.

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.

44. Completion of Landscape Works

Prior to the issue of a Whole Occupation Certificate, any approved landscape works shall be consistent with the approved design, completed to a professional standard, consistent with industry best practice and published standards.
(Reason: Landscape amenity)

45. Bright lighting

No bright lighting or motion detectors are to be installed to illuminate lawn or garden areas. A modest amount of low lighting may be used for safety purposes only. No lighting to be directed toward or to illuminate the water and foreshore at any time both during construction or post construction phase.

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

Reason: To reduce disturbance to Long-nosed Bandicoots and Little Penguins, particularly penguin breeding activities including coming ashore to tend to eggs and chicks.

46. Upgrade of pedestrian access from footpath network

To provide the fully accessible path of travel from the footpath network to the subject development the applicant shall remove the existing gate and install a suitable removable bollard solution to achieve an accessible path of travel of 1.5 metres minimum clearance, prior to the issue of any Occupation Certificate.

Reason: Equity in access to the development.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**47. Delivery Hours**

No deliveries, loading or unloading associated with the premises are to take place prior to 7am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

48. Commercial Waste Collection

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

49. Maximum number of seated patrons

A maximum of twenty (20) seated patrons are permitted on the premises. The patrons are to be seated within the premises in accordance with the seating as shown on the approved plans. The external seating area and umbrellas are not approved.

Reason: to limit the capacity of the café in recognition of traffic and parking impacts associated with the land use and to mitigate potential impacts on local fauna including the Little Penguin and the Long-nosed Bandicoot.

50. Hours of Operation

The hours of operation of the premises are not to exceed the following:

- Monday and Tuesday 7:00am to 5:00pm
- Wednesday to Saturday 7:00am to 10:00pm
- Sunday 7:00am to 7:00pm

Note: The serving of meals is to cease thirty (30) minutes prior to closing time on each day and the premises is to be fully vacated by staff and management one (1) hour after closing time.

Reason: To control the operation of the cafe and preserve the amenity of the locality.

51. All equipment to be stored within the premises overnight

All equipment associated with the use of the premises are to be stored within the premises during times outside the approved hours of operation.

Reason: To maintain the amenity of the surrounding public open space.

52. All goods to be stored within the premises at all times

All goods associated with the use of the premises are to be stored within the premises at all times.

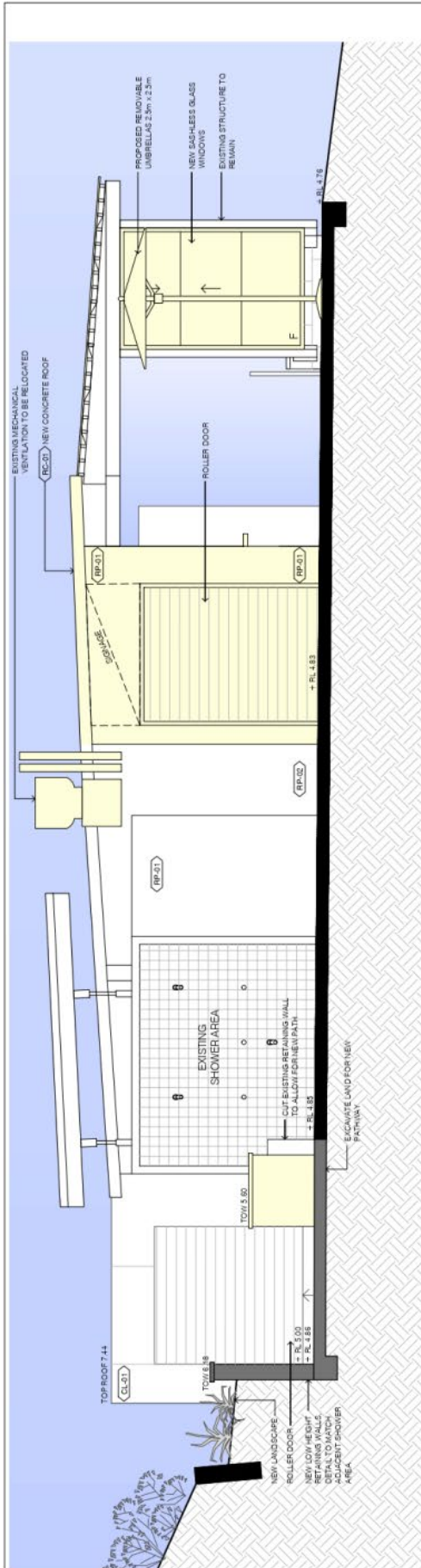
Reason: To maintain the amenity of the surrounding public open space.

53. Consumption of alcohol not permitted

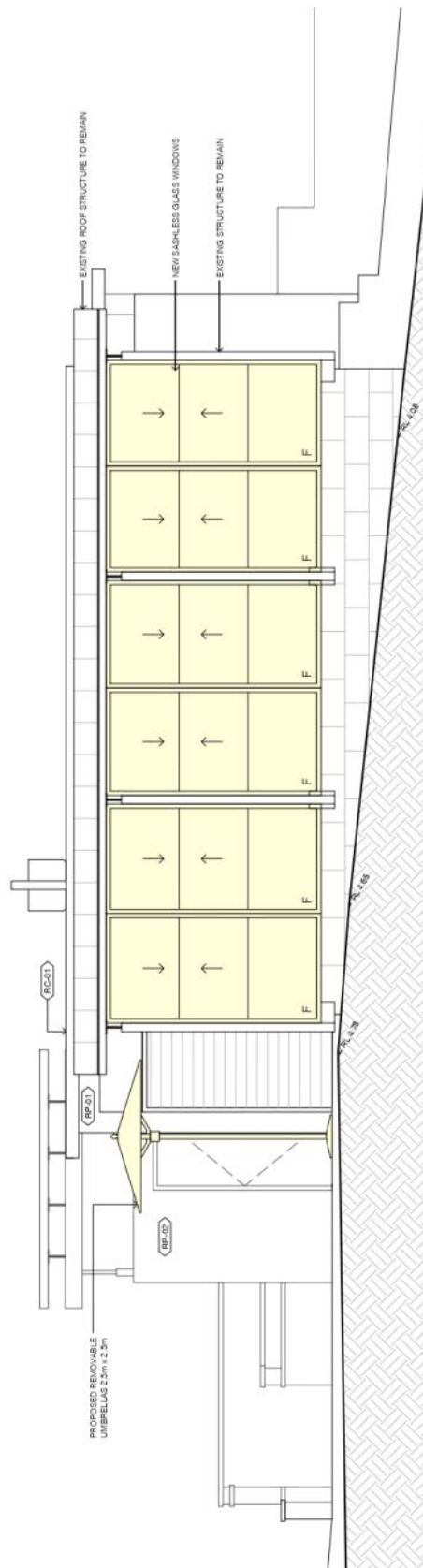
The consumption of alcohol on the premises is not permitted.

Reason: To confirm the details of the application and to maintain the amenity of the surrounding area.





2 NORTH WEST ELEVATION
1401 SCALE 1:50 @ A3



1 SOUTH WEST ELEVATION
1401 SCALE 1:50 @ A3

ARCHITECT

**BJB
ARCHITECTS**

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BJB Architects Pty Ltd | Nominees Architect Barry Babikian NSW Reg No 8806

LEGEND
EXISTING STRUCTURE
PROPOSED STRUCTURE
BUILT WORKS REQUIRING CONSENT
EXISTING STRUCTURE TO BE REPLACED
PROPOSED AREA OF WORKS
LEASE BOUNDARY

EXTERNAL FINISHES/LEGEND
RP-01 RENDER AND PAINT DULUX COLOUR
RP-02 RENDER AND PAINT DULUX COLOUR
RC-01 PAINT DULUX COLOUR
CL-01 COOL ROOM PANEL WHITE

ISSUE	AMENDMENT	DATE
A	Preliminary	14.01.2020
B	Preliminary	03.03.2020
C	Development Application	11.03.2020
D	Development Application	13.07.2020
E	Development Application	24.11.2020

PROJECT
STUART STREET,
MANLY
ALTERATIONS & ADDITIONS
SYDNEY RESTAURANT GROUP

ELEVATIONS - CAFÉ
SCALE: 1:50 @ A3
DATE: 24.11.2020
ISSUE: E - DEVELOPMENT APPLICATION
2019-028
A1401

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ITEM 3.4 **DA2020/1684 - 89 WYADRA AVENUE, NORTH MANLY -
ALTERATIONS AND ADDITIONS TO A GROUP HOME****AUTHORISING MANAGER** **Rondey Piggott****TRIM FILE REF** **2021/231682****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.

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. DA2020/1684 for alterations and additions to a group home at Lot 46 DP 21576, 89 Wyadra Avenue, North Manly subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1684
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 46 DP 21576, 89 Wyadra Avenue NORTH MANLY NSW 2100
Proposed Development:	Alterations and additions to a group home
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Tom Michael Oates
Applicant:	Tom Michael Oates
Application Lodged:	05/01/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/01/2021 to 01/02/2021
Advertised:	Not Advertised
Submissions Received:	13
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 5,000.00

The proposal involves the alterations and additions to an existing Group Home. The works include increasing the size of the balcony areas adjoining Units 2, 3, 4, & 5, additional planter boxes adjoining the balustrades and an irrigation system for the planter boxes.

The Group Home is located within the R2 Low Density Residential zone and was approved via a Complying Development Certificate in accordance with the State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH). The Complying Development Certificate (CDC) for the group home has been finalised by the Private Accredited Certifier, with a final occupation certificate issued.

The public exhibition of the application resulted in thirteen (13) individual submissions being received. Twelve submissions raised concerns with the proposed development, with one (1) submission in

support of the proposed development. The primary issues raised related to the privacy impacts of the balcony areas.

The issues raised in the submissions have been addressed in the "Public Notification" section of this report and in summary they do not warrant refusal of the proposal as suitable conditions have been imposed where required.

The requirements of the Warringah Local Environment Plan 2011 and the Warringah Development Control Plan apply, with the proposal demonstrating compliance with the building height, and required setbacks. The assessment has found that the proposed development was not satisfactory in relation to the internal and external residential amenity (Clause D2 Private Open Space and D8 Privacy), and as a result suitable conditions have been recommended to address these issues.

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

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks the approval to increase the size of the balcony areas of Units 2, 3, 4, & 5 located on the first floor and second floor of the existing Group Home.

The proposed works also include the following:

- New privacy screen on the eastern elevation of Level 2
- New planter boxes, with an irrigation system, along the western elevation of Level 1 and Level 2

During the assessment process amended plans were received from the applicant that reduced the size the balcony servicing Unit 2. In accordance with North Beaches Councils Community Participation Plan the amended plans were not notified due to a reduction of environmental impacts, and have been utilised in the assessment report below.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D3 Noise
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 46 DP 21576 , 89 Wyadra Avenue NORTH MANLY NSW 2100
Detailed Site Description:	<p>The subject site consists of a corner allotment located on the northern side of Wyadra Avenue and on the eastern side of Quilpie Street.</p> <p>The site is irregular in shape, with a size area of 543sqm. The frontage to Wyadra Avenue measures 13.005 metres, with 30.29m along Quilpie Street and a splay of 5.18m between Wyadra and Quilpie Street.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a three (3) storey permanent Group Home with vehicle access from Quilpie Street.</p> <p>The site has a slight slope being from the front of the site down to the rear.</p> <p>The site has a small amount of landscaping area to the front, and sides boundaries including newly planted Olive trees in the north-eastern area of the subject site.</p> <p>Adjoining and surrounding development is characterised by one and two storey dwelling houses, of varying ages, along Wyadra Avenue, Quilpie Street and Thomas Street.</p>

Map:



SITE HISTORY

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

- Final occupation certificate for the **CDC2019/0461** for the construction of a three (3) storey dwellings for use as group home was issued on the 9 December 2020.
- Complying Development Certificate **CDC2019/0461** for the construction of a three (3) storey dwellings for use as group home was received by Council on the 12 July 2019.
- Complying Development Certificate **CDC2019/0406** for the demolition of the existing dwelling house and ancillary structures was received by Council on the 24 June 2019.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.

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

Section 4.15 Matters for Consideration'	Comments
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 18/01/2021 to 01/02/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 13 submission/s from:

Name:	Address:
Mr Joseph John Esposito Mrs Josephine Esposito Georgia Esposito	33 Thomas Street NORTH MANLY NSW 2100
Dr Gunninder Bir Singh Soin Mr Amenpal Soin	85 Wyadra Avenue NORTH MANLY NSW 2100
Mr Timothy John Cutler	37 Thomas Street NORTH MANLY NSW 2100
Mr Jason Robert Toshack Mrs Angela Letitia Toshack	91 Wyadra Avenue NORTH MANLY NSW 2100
Mr Louis John Cooper Mrs Charlotte Louise Cooper	142 Wyadra Avenue NORTH MANLY NSW 2100
David John Leslie	138 Wyadra Avenue NORTH MANLY NSW 2100
Withheld	LIVERPOOL NSW 1871
George John Youhanna	Po Box 323 LIVERPOOL NSW 1871
Phillip Roseware Hooper	93 Wyadra Avenue NORTH MANLY NSW 2100
Sandra Loncar	Address Unknown
Mrs Sarah Alison Mandalinic Mr Maurice Denis Mandalinic	87 Wyadra Avenue NORTH MANLY NSW 2100
Chris Kinsela	31 Thomas Street NORTH MANLY NSW 2100
Royal Rehabilitation Centre Sydney	PO Box 6 RYDE NSW 1680

As a result of the public notification of the application thirteen (13) submissions were received. Twelve

(12) submissions did not support the proposal and one (1) submission was in support of the application.

The following issues were raised in the twelve submissions that did not support the application and each have been addressed below:

- **Amenity Impact - Noise and Privacy**
- **Alleged Illegal works**
- **Bulk and Scale/Character of the area**
- **Parking**
- **Maintenance of Planter Boxes**
- **Insufficient Plans**

The matters raised within the submissions are addressed as follows:

- **Amenity Impact - Noise and Privacy**
Concern has been raised that the existing balconies of Unit 2, 3, 4 & 5 look directly over properties such as No. 87 and 85 Wyadra and No. 33 and 35 Thomas Street and surrounding neighbours. The proposed increase in balcony area, along with the usage, elevation and sound projection from these areas will result in reduced amenity and privacy for these and other neighbouring properties and is inadequately addressed in proponent's reports and proposed design.

This area of Wyadra Street consists of one and two storey low density residential dwelling houses. This makes the inclusion of the proposed open space areas in an elevated position, with the potential to accommodate multiple people at one time within the balcony areas, directly facing numerous residential dwellings a significant concern. It is agreed that the increase in size of these balcony spaces, in this location is considered likely to result in detrimental adverse impacts on the adjoining properties.

However, further design amendments, via applied conditions, will provide improved amenity outcome for the directly adjoining and surrounding sites and the occupants. For the upper storey the proposal will be conditioned to provide fixed privacy screens, and opaque/or solid balustrades to a height of 1.2m to minimise any overlooking opportunities and ensure no unreasonable impact.

The addition of the planter boxes, and the conditioned height of the plant plant species within the planter boxes will provide a soften and visual interest to the built form adjoining these balcony areas.

As a result, the conditioned proposal is not considered to create further unreasonable privacy impacts for adjacent land in the context of urban living within a residential area.

Therefore, this issue has been addressed by the building design response and conditions and does not warrant refusal of the application.

- **Alleged Illegal works**
Concern has been raised that the existing built form is not in accordance with the approved Complying Development Certificate plans, particularly the concrete roof areas adjoining Level 2.

Comment:

The Complying Development Certificate (CDC) for the group home has been finalised by the

Private Accredited Certifier, with a final occupation certificate issued. As a result, the Private Accredited Certifier was satisfied that the works are in accordance with their approval.

If public notice of the granting of a consent or a complying development certificate is given in accordance with the regulations by a consent authority or a certifier, the validity of the consent or certificate cannot be questioned in any legal proceedings except those commenced in the Court.

The CDC plans do note a sheet metal roof above the balconies servicing Bedrooms 2 and 3. However, it was identified from a site visit that the existing structure onsite is a concrete slab, not a sheet metal roof.

The proposed works under this development application require concrete slabs in order to facilitate the increase in balcony size for Level 1 and Level 2. The existing concrete slabs servicing both Level 1 and Level 2 are compliant with the 8.5m Building Height requirement of the Warringah Local Environment Plan 2011, as well as Clause B5 Side Boundary Setbacks (0.9m), and Clause B7 Secondary Front Boundary Setbacks (3.5m) of the Warringah Development Control Plan 2011. As a result, the proposed works relate to the alleged unauthorised areas and are being considered under this application.

It is considered this concern does not warrant refusal of the application.

- **Bulk & Scale/ Character of the area**

Concern is raised that the increase in balcony size will contribute to the existing bulky built form that is out of place with the surrounding low density residential dwelling houses.

Comment:

The proposed group home is permissible within the R2 Low Density Residential Zone pursuant to the SEPP ARH. There are no exclusions applied to the location of group homes in areas where this form of development is permissible. Notwithstanding, these types of developments are required to provide a design which is compatible with the Schedule 2 SEPP requirements which dictates the bulk and scale. A final occupational certificate was issued on the 9 December 2020. As a result, the Private Accredited Certifier was satisfied that the works are in accordance with the required legislation.

This Development Application relies on the relevant Warringah Local Environment Plan 2011 (WLEP) and Warringah Development Control Plan 2011 (WDCP) in order to inform an appropriate built form.

The proposed development with complying setbacks will result in a built form which does not contribute to an unreasonable built form when compared to the existing built form on the subject site. The proposal does however result in significant non-compliance with Clause D2 Private Open Space and D8 Privacy of the WDCP which have been assessed in the report.

The proposal does not protect the amenity of adjoining developments or the streetscape, and creates further inconsistencies with the surrounding residential character. However, specific conditions have been applied to the balcony areas to mitigate and improve the amenity and visual appearance of the built form to the occupants and neighbouring sites.

In summary the conditioned proposal is not considered to create unreasonable privacy or bulk and scale impacts for adjacent land in the context of urban living within a residential area.

Therefore, this issue has been addressed by specific conditions and does not warrant refusal of

the application.

- **Parking**

Concern has been raised in regards to the lack of parking spaces available on the subject site.

Comment:

While changes to the previously approved car parking spaces do not form part of the proposal, it is worth noting that the development provides adequate parking in accordance with the requirements of SEPP (ARH) in the form of two (2) spaces and no visitor parking. It is understandable that concerns relating to parking have been raised given how limited Quiple Street is in relation to on-street parking. As the development complies with the requirements of SEPP ARH in this regard, and there is no proposed change to the parking arrangement this issue cannot form a reason for refusal.

- **Maintenance of Planter Boxes**

Concern has been raised that the plants in the planter boxes will not be maintained, and therefore will not provide any kind of screening to maintain privacy.

Comment:

A irrigation system has been proposed as part of the works to ensure water is provided to the landscape plants within the planter boxes.

It is agreed however that the planter boxes alone do not provide a sufficient level of screening to minimise the amenity impacts to the neighbouring and surrounding sites. Additional design elements, such as privacy screens, and new balustrades will reduce the privacy impacts for adjacent land in the context of urban living within a residential area, with the planter boxes providing additional softening element for the built form.

Therefore, this issue has been addressed by specific conditions and does not warrant refusal of the application.

- **Insufficient Plans**

Concerns have been raised that the plans submitted do not allow correct assessment of the proposed development.

Comment:

During the assessment period, additional plans were submitted by the applicant. The architectural plans accompanying the development application are of a standard which allowed Council to undertake a full detailed assessment of the application.

As a result, it is considered this concern does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the minor alterations to an existing group home. Proposed alterations revolve around the moving of balustrades to provide improved internal circulation, and to provide greater privacy.</p> <p>Councils Landscape Referral section raises no objection to the proposal, subject to all proposed plant species being capable of</p>

Internal Referral Body	Comments
	reaching a minimum height of 1m at maturity.

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 (Affordable Rental Housing) 2009

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

Division 7 Group homes

'42 Definitions

(1) In this Division:

group home means a permanent group home or a transitional group home.

permanent group home means a dwelling:

- (a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and*
 - (b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged,*
- but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.'*

Comment:

The Group Home was approved via a Complying Development Certificate as per the requirements of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) with a final occupational certificate being issued on the 9 December 2020.

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	Complies
Height of Buildings:	8.5m	6.7m Second Floor (including balustrade) 3.7m First Floor (including balustrade)	Yes Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	No walls proposed	-	-
B3 Side Boundary Envelope	5m	No encroachment	-	-
	5m	No encroachment	-	-
B5 Side Boundary Setbacks	0.9m - North	<u>First Floor</u>		
		4.0m Planter boxes	-	Yes
		4.6m Balcony	-	Yes
		<u>Second Floor</u>		
		6.0m Planter boxes	-	Yes
		6.6m Balcony	-	Yes
	0.9m - East	<u>First Floor</u>		
		2.1m Planter Boxes	-	Yes
		2.7m Balcony	-	Yes
		<u>Second Floor</u>		
		2.1m Planter Boxes	-	Yes
		2.1m Privacy Screen	-	Yes
		2.7m Balcony	-	Yes

B7 Front Boundary Setbacks - Wyadra Ave	6.5m	No works proposed	-	-
B7 Secondary Front Boundary Setbacks - Quilpie Street	3.5m	<u>First Floor</u> 5.6m Planter Box 6.2m Balcony <u>Second Floor</u> 6.2m Planter Box 6.8m Balcony	- - - -	Yes Yes Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	23.5% Existing (No Change)	-	-

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	No	Yes
D3 Noise	No	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D20 Safety and Security	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B7 Front Boundary Setbacks

The control requires development to be setback 6.5m from the front boundary to all public roads. Variations are permitted to the secondary front setback (3.5m) on a merit consideration to the character, and prevailing secondary setback.

In this case, the proposal complies with 6.5m to Wyadra Avenue and to the secondary frontage to Quilpie Street. However, a merit assessment has been completed below to ensure the works are consistent with the character, and prevailing secondary setback of Quilpie Street.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The additional balcony areas are to be located over the existing concrete slab roofing, with the balcony areas compliant with the numerics of the front setback control. Due to the elevation of the balcony areas, and location over the existing concrete roof slab, the additional balcony areas have no significant impact on the existing sense of openness created along the site frontage. The site is on a corner location and with the inclusion of landscaping elements (planter boxes) assist in achieving a sense of openness.

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

Comment:

The front setback for the increased balcony area will be visually improved with the addition of landscaped planter boxes in order to soften and screen the balcony areas proposed. Therefore, the additional balcony building elements do not have an unreasonable impact with regard to maintaining the existing visual continuity and pattern of buildings and landscape elements in the street.

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

Comment:

The area in which the balconies are to be located over are currently roofing area, as a result the additional balconies do not detrimentally detract from the existing visual quality of the streetscape. The proposed works include additional landscape planter boxes, and conditioned privacy screens with opaque glazed balustrades. These elements will provide an improved visual quality, and greater integration with the surrounding urban environment.

In this regard, the proposed landscape planter boxes, combined with the conditioned opaque balustrading and privacy screens will ensure the development does not have a further adverse impact on the visual quality of Quilpie streetscape and adjacent public space along the road reserve.

- *To achieve reasonable view sharing.*

Comment:

The site is within a built up area and there are no coastal or district views are affected by the increase in the balcony areas within the secondary front setback to Quilpie Street.

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

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

D2 Private Open Space

Description of non-compliance

The proposal includes the increase in size of the allocated private open space areas for Unit 2, 3, 4, & 5 in the form of first and second floor balconies. The private open space areas are oriented toward rear yards of No. 33 and No. 35 Thomas Street. Concerns are raised with the lack of protection incorporated by visually and aurally for the surrounding neighbours from this area.

Merit consideration

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

- *To ensure that all residential development is provided with functional, well located areas of private open space.*

Comment:

While individual private open space allocations are not required under SEPP ARH, the group home design has provided a number of areas for this purpose. However, the current balcony area size is not fit for purposes for the required needs of the clientele of the group home.

As a result, the primary open space area for the occupants of Units 2, 3, 4, & 5 on the first and second floor are to be increased in size. These larger private open space areas are located off the private living areas of each unit, and are currently orientated towards the No. 33 and No. 35 Thomas Street. However, the proposal includes conditioned privacy screens and solid/opaque glazed balustrading to a minimum height of 1.2m to minimise privacy impacts, and the incorporation of additional landscaping planter boxes to soften the additional built form of the Group Home. Therefore, the amenity impact to surrounding sites in terms of the privacy impacts are minimised.

- *To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings.*

Comment:

There is not change to the existing location of the private open space areas are adjoining the main living areas of each Unit.

- *To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces.*

Comment:

The existing situation creates adverse impact on the privacy levels, via direct overlooking from the elevated balconies to the adjoining and surrounding neighbours private open space areas.

As a result of the proposal, even though the size of the balcony areas are to be increased, appropriate private mitigation elements such as privacy screening, and 1.2m height

solid/opaque glazed balustrading has been conditioned to improve and minimise the amenity impact of direct overlooking into the neighbouring and surrounding sites. The incorporation of additional landscaping planter boxes provide softening landscaping and visual interest around the additional built form of the Group Home. As a result, the amenity impacts are improved via the proposed works.

- *To ensure that private open space receives sufficient solar access and privacy.*

Comment:

The elevated private open space areas are orientated towards the north, and will continue to receive adequate solar access. Issues associated with privacy from the balconies have been detailed in other sections of this report.

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

D3 Noise

Merit consideration

The proposed development for an increase in the size of the balconies of Units 2, 3, 4, & 5 raise significant privacy concerns. The design includes a substantial increase in the units private open space. Concerns are raised with the lack of protection incorporated by visually and aurally for the surrounding neighbours from this area.

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

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

Comment:

The proposed design of the increased private open space is considered unsatisfactory resulting in adverse impacts on the urban environment. As such, conditions have been imposed to provide additional privacy screening and solid/opaque glazed balustrading to ensure the proposal is consistent with the requirements and objectives of this clause, which aim to ensure design solutions are incorporated to improve the urban environment.

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

Comment:

The site falls within a residential area, and is surrounded on all sides by low density housing. The elevated balconies service an individual unit of the group home and are of a proposed size that the potential for unreasonable noise levels from larger gatherings via visitors and friends) could be expected.

However, these balcony areas are elevated above existing ground and are sited in close proximity to adjoining dwellings. The application does not provide sufficient details on how these

areas are to be managed to ensure that noise levels associated with the increase in the size of these balconies will not result in unreasonable impacts upon the amenity of adjoining dwellings.

As such, conditions have been imposed to provide additional privacy screening and solid/opaque glazed balustrading to ensure the proposal is consistent with the requirements and objectives of this clause, which aim 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.

Therefore, the proposal as condition will satisfy the objectives of the control.

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

D8 Privacy

Merit consideration

Clause D8 requires building layout to be designed to optimise privacy for the occupants and adjoining properties

The development includes an increase in the footprint of the existing balcony areas of Units 2, 3, 4, & 5. The balconies service the main living areas of each unit of the group home. However, given the elevation and distance from the side boundaries the existing balconies directly overlook the neighbouring dwelling houses and their sensitive private open space areas as demonstrated in the photos below.



Photo 1: View lines from No. 87 Wyadra Avenue private open space to the existing balconies.



Photo 2: View lines from No. 35 Thomas Street private open space to the existing balconies.



Photo 3: View lines from No. 33 Thomas Street private open space to the existing balconies.



Photo 3: View lines from No. 37 Thomas Street private open space to the existing balconies.



Photo 4: *Overlooking from the existing balconies of Unit 5 into No. 87 Wyadra Ave private open space.*



Photo 5: *Overlooking from the existing balcony of Unit 5 into No. 33 & No. 35 Thomas Street private open space.*

As a result, the proposed increase in size of the balconies has the potential to create even greater unreasonable overlooking and amenity impacts.

It is acknowledged that planter boxes have been proposed as part of the application, however these do little to alleviate the significant privacy impacts created by proposal. However, the planter boxes provide a softening of the built form essential to assist in breaking up the built form of the proposed works and are essential feature in providing an improved overall design outcome.

It is also recognised that the applicant has planted Olive trees in the north east corner of the subject site. Whilst these trees will eventually provide screening for the proposed works, this will take a significant amount of time, and is not considered an appropriate mitigation measure to alleviate the significant privacy impacts created by the proposal.

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

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

Comment:

As discussed above, the development includes an increase in the size of the elevated balconies which will overlook the principal private open space area of the directly adjoining and surrounding neighbouring properties.

Although servicing bedrooms, the balcony is designed to be used as an principal private open space area for each Unit of the group home in which to actively stand and/or sit and for their visitors to actively stand and/or sit.

Therefore, it is considered appropriate to require screening to be installed along the entire eastern and western side edge of the balconies to mitigate further overlooking opportunity (and the perception of being overlooked) into the private open space areas of the direct and surrounding neighbouring sites to the east and west. The screening is to be louvred, spaced and angled such that downward viewing is not achievable but permits a distant horizontal line of sight across the neighbouring properties.

The proposal includes an increase the size of the balcony areas closer to the northern boundary of the subject site. No significant features have been included to address privacy and overlooking to and from these areas.

As a result, a condition has been included to require a minimum of 1.2m in height solid/obscured glazing to minimise further overlooking into the sensitive private open spaces areas of the neighbouring sites at the rear. The conditioned solid/opaque balustrade glazing will also ensure that the line of site upwards from the adjoining properties to the group home balconies is obscured, improving the privacy for the occupants of the group home.

Therefore, the addition of privacy screens and 1.2m solid/opaque glass balustrades minimise potential privacy impacts and is considered to satisfactorily provide privacy for the occupants and adjoining neighbours.

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

Comment:

The conditioned proposal will reduce the level of direct overlooking from the elevated balconies to the neighbouring dwelling houses and their private open space areas, as well as obscuring the line of site from the directly adjoining and surrounding neighbours up to the balconies. As a result, subject to conditions, the design of the balcony areas have been assessed as acceptable in the urban environment.

- *To provide personal and property security for occupants and visitors.*

Comment:

The landscape planter boxes, combined with conditioned privacy screens, increase in balustrade height, and solid/opaque glazed balustrading will improve the security and privacy for the group home occupants and their visitors.

The conditioned design changes also continues to allow for passive surveillance from the balcony areas to the public areas of the site. The proposal is satisfactory having regard to Crime Prevention Through Environmental Design considerations to ensure reasonable personal and property security for occupants and visitors.

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

with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D9 Building Bulk

Description of Non-compliance

Clause D9 requires side and rear boundary setbacks of new developments to be progressively increased as wall height increases. The proposed amendments in the balconies will actually improve the design of the development via additional articulation, a more step look and landscape elements.

It is acknowledged that the existing building provides little variation in regards to materiality, particularly as viewed from the streetscape and neighbouring sites. The three levels, and large continuous sections of wall consisting of only face brickwork results in visual bulk and scale that is not consistent with the surrounding development nor the character of the local area.



Photo 6: View of the Group home from the north west.



Photo 7: View of the group home from the south-west.

However, the amendments to the balconies sizes, incorporation of landscaping planter boxes and conditioned privacy screens with new balustrading will provided a more stepped look and varied materials to assist in softening the built form. This will result in the an improved design that demonstrates a more reasonable bulk and scale.

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

While the street presence of the proposal does not provide an adequate form of design which is representative of the character of the streetscape.

The development as proposed will create additional overlooking of adjoining properties and fails to provide an adequate level of internal amenity for the future occupants of the development.

As a result, applied conditions provide a more balanced design, via improving the articulation to break up the bulk of the building, whilst minimising the amenity impacts to the occupants and neighbouring sites. Conditioned, the proposal is considered to achieve this objective.

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

Comment:

The proposed development, as conditioned, improves visual bulk. The built form presents improvements to the facades to provide greater articulation and relief. As a result, the visual impact to adjoining and surrounding properties is improved via the conditioned proposal.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

CONCLUSION

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

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

- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

The proposed additions (as conditioned) to the existing Group Home are considered to be a more suitable and appropriate form of development for the site, with the conditioned changes providing greater consistency with the amenity expectations of the built form within a R2 Low Density Residential zone.

The requirements of the Warringah LEP and DCP apply and in this regard matters relating to setbacks, building envelope, bulk and scale, private open space, noise and privacy have been addressed. In the case of Clause D2 Private Open Space and D8 Privacy appropriate conditions were imposed to address the significant overlooking identified.

The twelve (12) public submissions received against the proposal have been considered and are addressed within this report.

The issues raised by submissions received have been considered in the context of the proposal and specific conditions have been recommended to resolve the privacy concerns raised. The conditioned proposal will ensure a design response that does not create unreasonable additional impacts on adjacent land while providing acceptable standards of internal amenity for the occupants of the Group Home.

It is acknowledged that planter boxes have been proposed as part of the application, however these do little to alleviate the significant privacy impacts created by proposal. However, the planter boxes provide a softening of the built form essential to assist in breaking up the built form of the proposed works and are essential feature in providing an improved overall design outcome.

The conditioned change in the height and materials of the balcony balustrading, along with the inclusion of privacy screens, assist in alleviating existing and potential privacy/overlooking impacts from the balcony areas to the neighbouring sites.

On balance, the proposal (as conditioned) does not create unreasonable additional amenity impacts and has appropriate merit for the type of alterations proposed.

The application as conditioned has adequately addressed the concerns raised and is therefore recommended for approval subject to conditions.

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 DA2020/1684 for Alterations and additions to a group home on land at Lot 46 DP 21576, 89 Wyadra Avenue, NORTH MANLY, subject to the conditions printed below:

DEFERRED COMMENCEMENT CONDITIONS

1. **Deferred Commencement - Certification of the Existing Concrete Slabs (Northern elevation of Level 1 and Level 2)**

The Applicant shall submit a certificate from a suitably qualified practicing Structural Engineer with corporate membership of the Institute of Engineers Australia (M.I.E.), or equivalent and has appropriate experience and competence in the related field, that the existing concrete slabs on the northern elevation of Level 1 and Level 2 have been constructed in accordance with the intended balcony use of this development consent and are certified as compliant with all relevant Australian Standards and Codes.

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

Reason: To ensure the structural adequacy of proposal is managed appropriately.

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
Site Plan Ground Floor	12 February 2021	Unauthored
Site Plan First Floor	12 February 2021	Unauthored
Site Plan Second Floor	12 February 2021	Unauthored
North Elevation	30 January 2021	Unauthored
East Elevation	30 January 2021	Unauthored

West Elevation	30 January 2021	Unauthored
First Floor	30 January 2021	Unauthored
Second Floor	30 January 2021	Unauthored

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.

3. Prescribed Conditions

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

\$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

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

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

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

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

5. Amendments to the approved plans

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

- o The balcony balustrades servicing Units 2, 3, 4 & 5 are to be a minimum height of 1.2m (measured from the finished floor level) and are to be of a solid or a opaque glazed materials.
- o A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost eastern edge of the Level 1 and Level 2 balcony as shown on the approved plans. The privacy screens shall be of fixed panels or louver style

construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

- A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the western edge of the Level 2 balcony as shown on the approved plans. The privacy screens shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the western edge of the Level 1 balcony, on the inside edge of the planter box as shown on the approved plans. The privacy screens shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

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

6. 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.

7. Waste Management Plan

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

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

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

8. Survey Certificate

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

9. 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

10. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:

i) all proposed plant species in planter boxes is required to be capable of reaching a minimum height of 1m at maturity.

Prior to the issue of an Occupation Certificate, details 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.

11. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

12. **Landscape Maintenance**

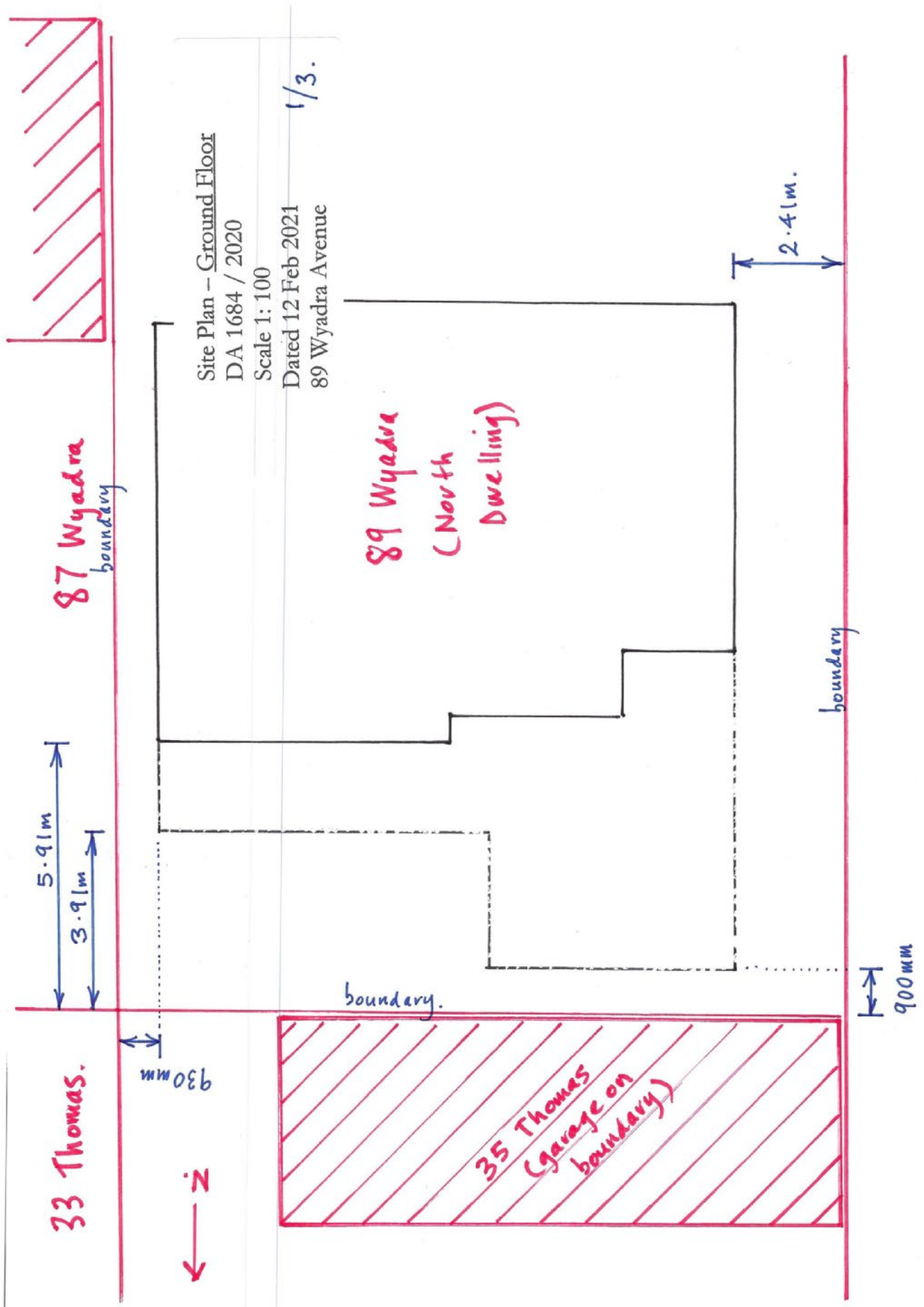
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

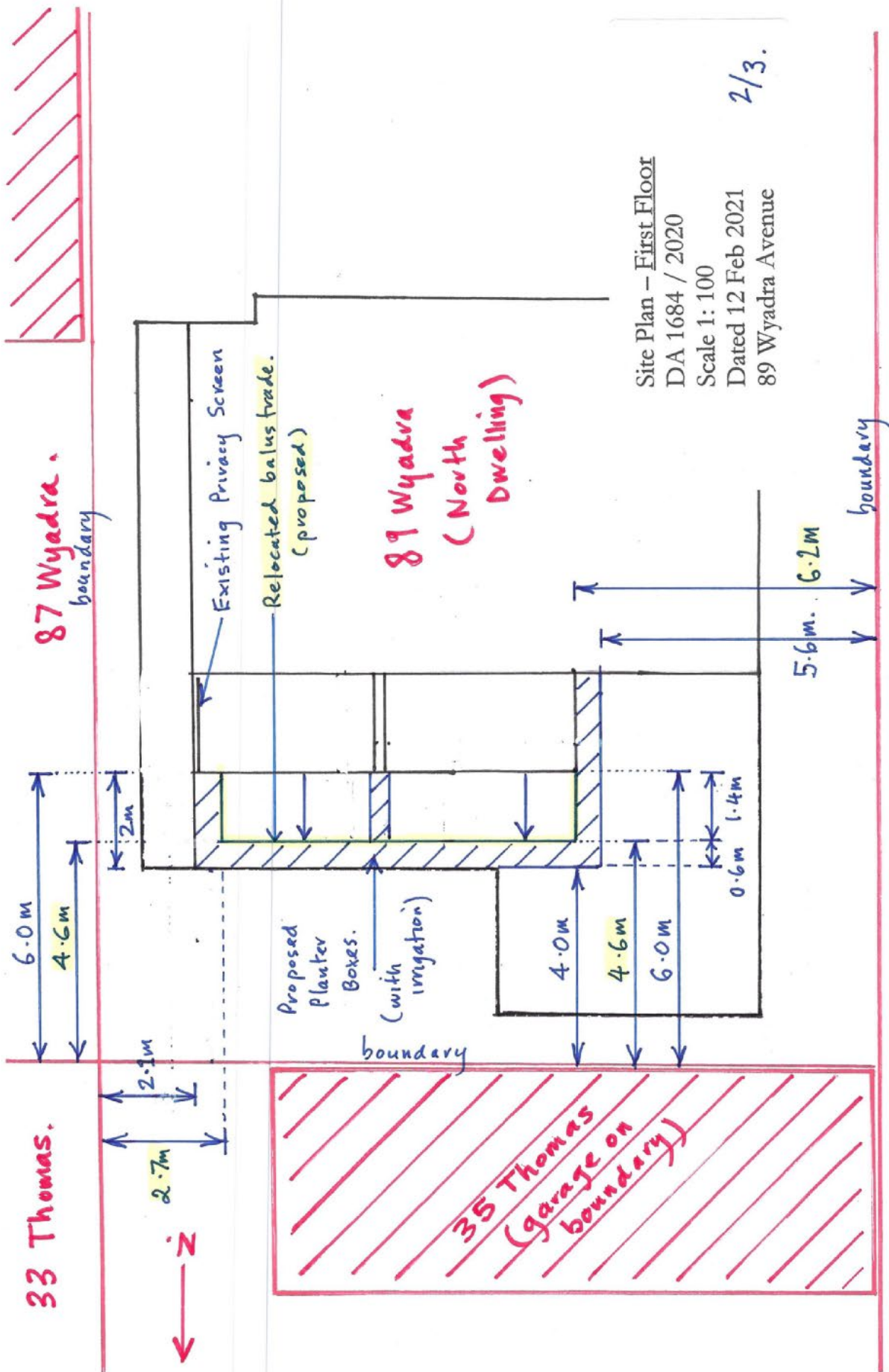
If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

For all new on slab landscape works, establish an on-going landscape maintenance plan that shall be submitted to the Certifying Authority that aims to monitor and replenish soil levels annually as a result of soil shrinkage over time.

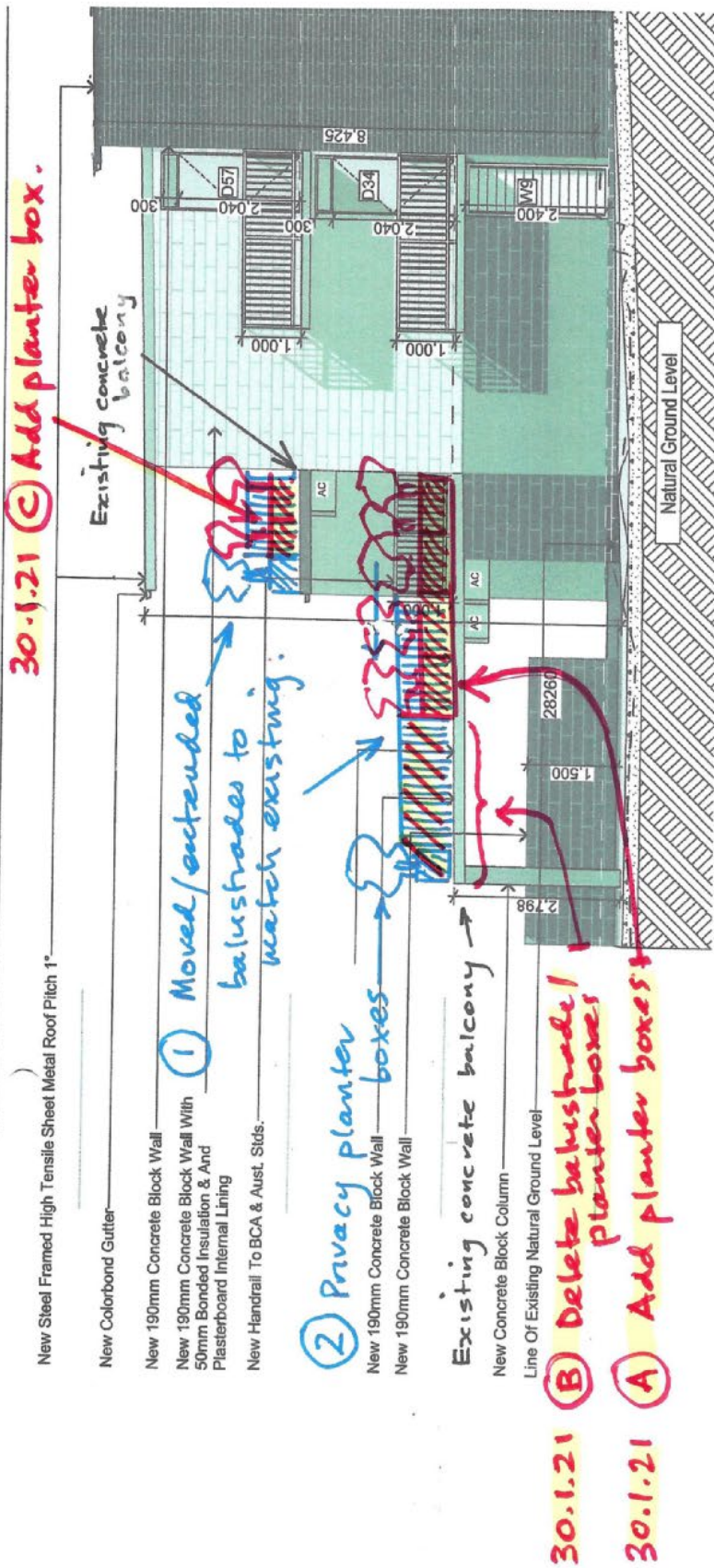
All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

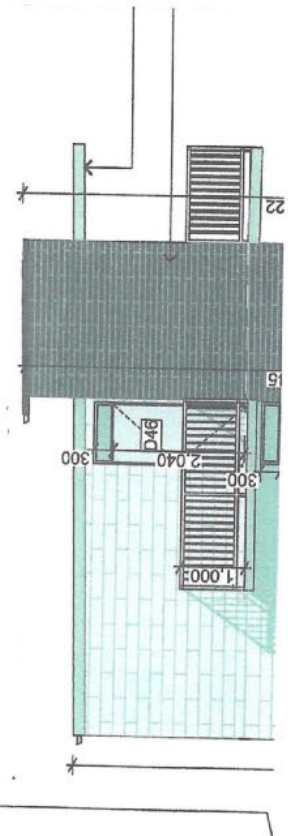




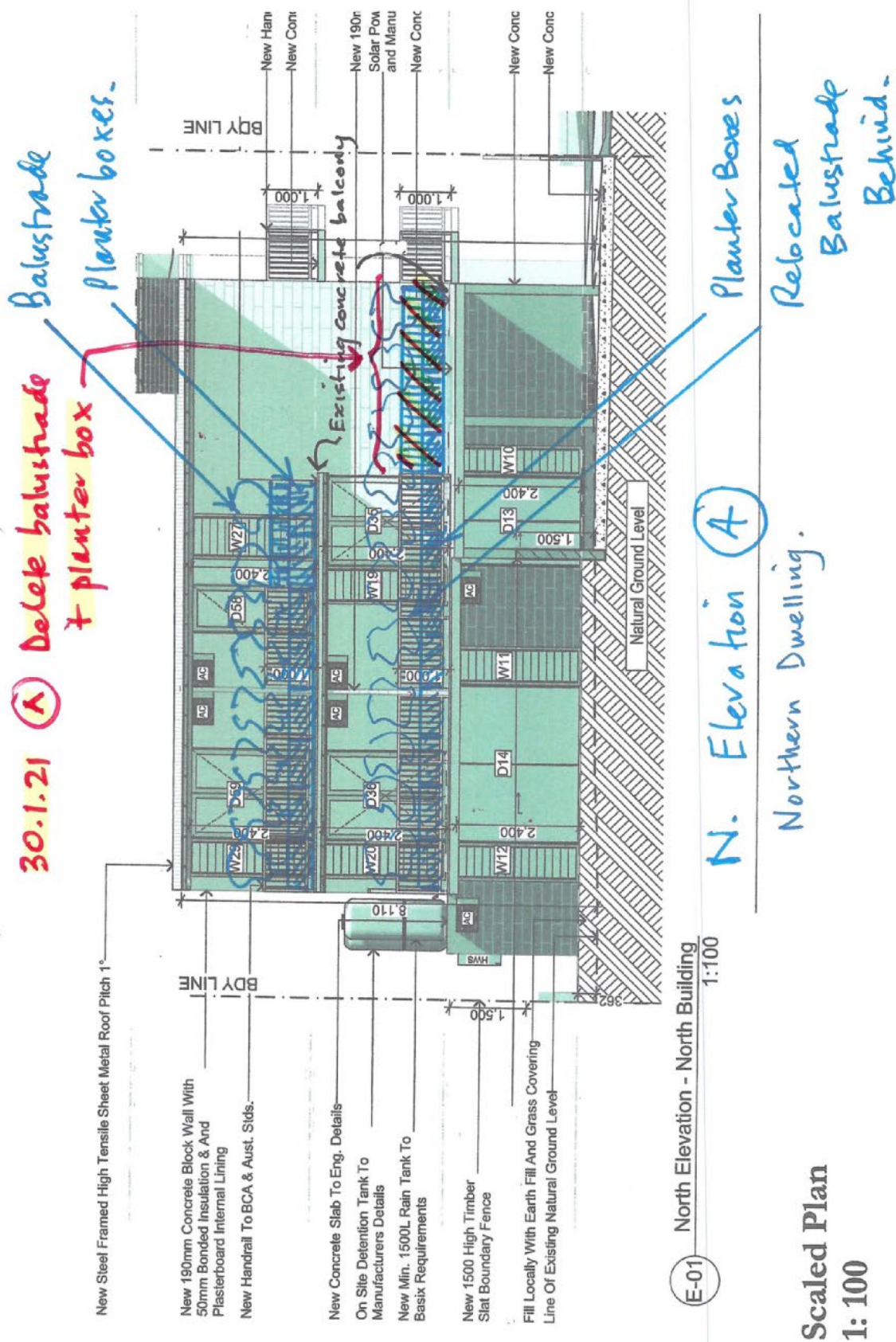


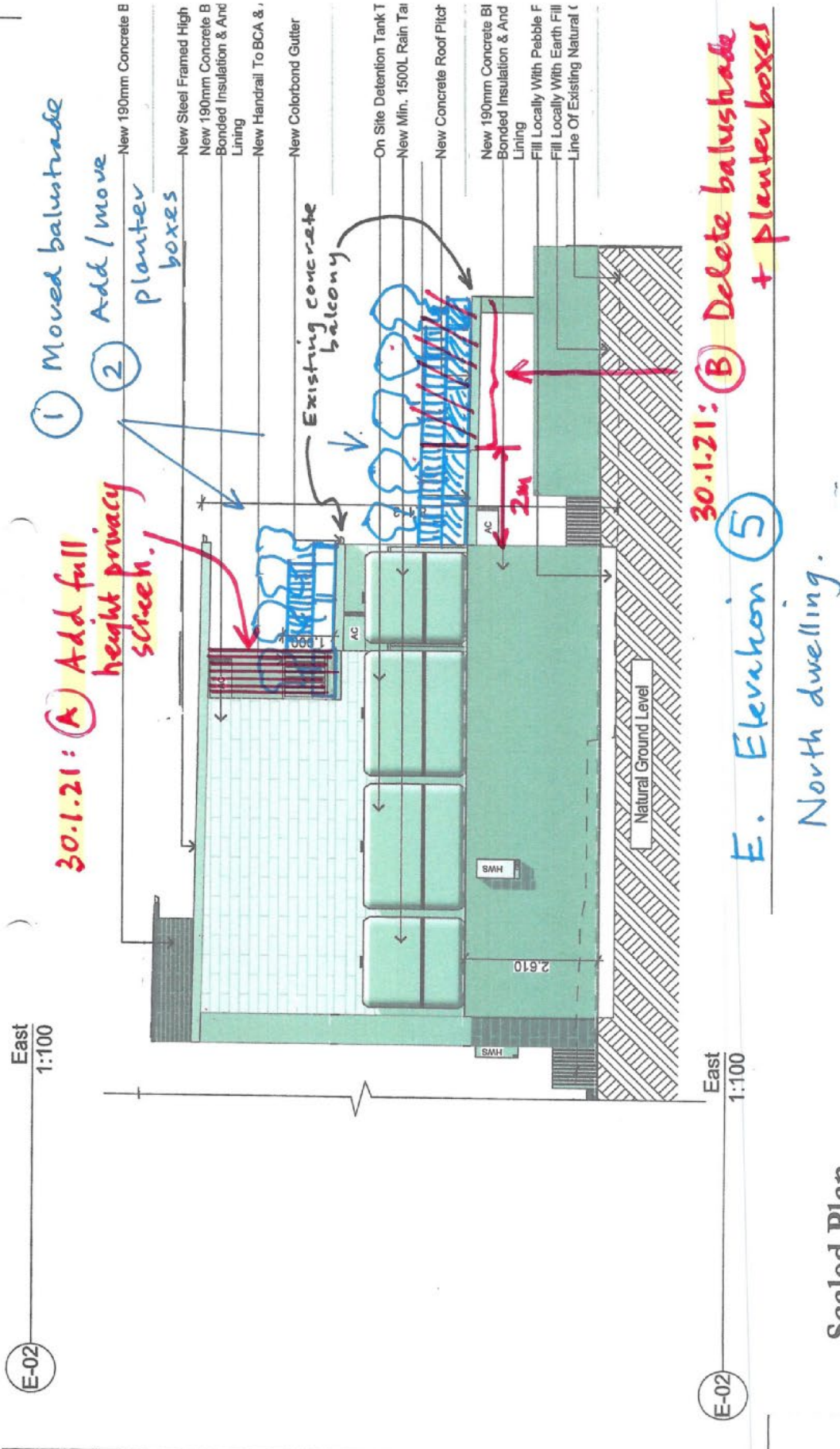


W. Elevation. ③
Northern Dwelling.



Scaled Plan
1:100





ITEM 3.5**DA2020/1429 - 1 BIBBENLUKE AVENUE, DUFFYS FOREST -
SUBDIVISION OF LAND AND CHANGE OF USE OF PREMISES
FROM AN ANIMAL BOARDING ESTABLISHMENT TO A
DWELLING HOUSE**

AUTHORISING MANAGER	Lashta Haidari
TRIM FILE REF	2021/231728
ATTACHMENTS	1 Assessment Report
	2 Subdivision Plan
	3 Report - Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/1429 for subdivision of land and change of use of premises from an animal boarding establishment to a dwelling house at Lot 392 DP 752017, 1 Bibbenluke Avenue, Duffys Forest subject to the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1429
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Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 392 DP 752017, 1 Bibbenluke Avenue DUFFYS FOREST NSW 2084
Proposed Development:	Subdivision of land and change of use of premises from an animal boarding establishment to a dwelling house
Zoning:	Warringah LEP2011 - Land Zoned RU4 Primary Production Small Lots
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Robyn Annette Anschau Brian Terence Anschau
Applicant:	Brooke Minto

Application Lodged:	17/11/2020
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Other
Notified:	27/11/2020 to 11/12/2020
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 62%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 27,500.00
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Executive Summary

The application seeks the subdivision of land into two (2) allotments and the change of use from an animal boarding and training facility to a residential dwelling. The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as the application seeks a contravention of the development standard in excess of 10%.

The application was notified for a period of 14 days and three (3) submissions were received. Two (2) submissions are in support of the application and one (1) of those submission is in support on the proviso that the existing land use as an 'animal boarding and training facility' be surrendered and the

existing structures associated with this land use be demolished. The applicant has proposed the demolition of the structures associated with the existing use and has proposed the surrender of all development consents in relation to an animal boarding and training facility.

The applicant seeks contravention of the minimum lot size development standard of 46% (Lot 1) and 62% (Lot 2) and the applicant relies upon a written request under Clause 4.6 Exceptions to Development Standards. However, Clause 4.6(6) is also relevant to the application as the proposal seeks to create two (2) undersized allotments within the RU4 Primary Production Small Lot zone and this clause is considered to prevent the grant of development consent to the two (2) undersized allotments. Notwithstanding this, Council has considered the written request from the applicant to vary the development standard should the NBLPP have a different approach to Clause 4.6(6). For the reasons outlined in this report, the assessment concludes that there are not sufficient environmental planning ground to support the variation and that the development is not in the public interests because it is inconsistent with the objectives of the minimum lot size development standard and the objectives of the RU4 Primary Production Small Lot zone.

Therefore, the application is recommended for refusal to the NBLPP for the reasons outlined in this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for the subdivision of one (1) lot into two (2) lots, change of use from an animal boarding and training establishment to a dwelling house including removal of structures associated with the animal boarding and training establishment and surrender of the development consent for the existing use.

Specifically, the proposal includes:

- Demolition of the existing structures associated with the animal boarding and training establishment, apart from the single storey brick building within proposed Lot 2;
- Surrender of the development consents for the land use 'animal boarding and training establishment';
- Subdivision of the land into two (2) lots;
- Internal alterations to the existing brick building on proposed lot 2 to change the use from the existing office, to a residential dwelling.

ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.1 Minimum subdivision lot size

SITE DESCRIPTION

Property Description:	Lot 392 DP 752017 , 1 Bibbenluke Avenue DUFFYS FOREST NSW 2084
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north-western side of Bibbenluke Avenue. The site also has a street frontage to Wyong Road.</p> <p>The site is triangular in shape with a frontage of 177m along Bibbenluke Avenue, a frontage of 256.4m to Wyong Road and shared common boundary to the south-west of 199.7m. The site has a surveyed area of 18,400m².</p> <p>The site is located within the RU4 Primary Production zone and accommodates a single storey residential dwelling upon the western portion of the site. The eastern portion of the site consists of various structures, sheds, cages, fencing, an office space and structures to support the use as an animal boarding and training facility.</p> <p>The site has a moderate fall from the south to the north with a fall of approximately 6m.</p> <p>Located on the site there are a number of medium height canopy trees, low lying shrubs and vegetation throughout the site. There is established vegetation consisting of canopy trees along the Wyong Road boundary which screens the site from the street. The existing dwelling has access off Wyong Road and the animal boarding and training facility has access off Bibbenluke Road.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached residential dwellings with ancillary structures such as sheds, horse arenas, horse stables and swimming pools.</p> <p>The area is characterised by rural and residential land uses within a landscaped setting.</p>

Map:



SITE HISTORY

The land has been used for both a residential and an animal boarding and training establishment an extended period of time. A search of Council's records has revealed the following relevant history:

- **DA No67/47** - 'Poodle Breeding and boarding kennels' approved by Warringah Council on 17 March 1967.
- **Consent 81A/285** - Erect a new carport, garage and grooming room for dogs and use of the premises for dog boarding and breeding kennels approved by Warringah Council on 7 October 1981.
- **DA1996/368** - Construction of a new residential dwelling and conversion of the existing dwelling/office into a office/cattery, approved by Warringah Council on 10 February 1997.

The site has been subject to noise complaints from time to time which has been investigated by Council's Environmental Health Team and Compliance Team.

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public

Section 4.15 Matters for Consideration'	Comments
environmental planning instrument	consultation on the draft policy was completed on 13 April 2018. The application is accompanied by a Stage 1 and Stage 2 Contamination Assessment report which makes an assessment of the proposed development with regards to contamination. The Stage 2 Assessment report undertook further investigation to identify areas of potential contamination within the site, including soil testing. Following analysis of the soil samples, the report concludes that the site is suitable for the change to use to a residential landuse, as proposed in this application.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This is capable of being addressed as a condition, should consent be granted.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p>

Section 4.15 Matters for Consideration'	Comments
the natural and built environment and social and economic impacts in the locality	<p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for a residential land use. However, the proposed subdivision pattern, size and configuration is not considered a suitable outcome for the site and locality and for this reason, the proposal is not supported
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Warringah LEP 2011 with regard to subdivision and the RU4 Primary Production Small Lot Zone and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land and the proposed development is for a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes / a special fire protection purpose under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service.

The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety authority, would be included as consent conditions, should development consent be granted.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/11/2020 to 11/12/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mr Brent Lawson	383 Wyong Road DUFFYS FOREST NSW 2084
Dale Guy Rubinstein	4 Bibbenluke Avenue DUFFYS FOREST NSW 2084
Mr Miles James Sandy	6 Bibbenluke Avenue DUFFYS FOREST NSW 2084

The application received three (3) letters of support, which support the residential land use of the site rather than the use as an animal boarding and training establishment. The following items were raised in the submissions and each have been addressed below:

- Support for the proposal
- Request that should consent be granted, a condition be imposed requiring the surrender of all consents applying to the existing site which relate to the use as an animal boarding and training facility.
- Request that should consent be granted, a condition which requires the demolition of all structures/building that are associated with the animal boarding and training facility use to prevent future use for this purpose.

The matters raised within the submissions are addressed as follows:

- *Support for the proposal*
Comment:
The three submissions in support are noted.
- *Request that should consent be granted, a condition be imposed requiring the surrender of all consents applying to the existing site which relate to the use as an animal boarding and training facility.*
Comment:
The applicant has proposed the surrender of the existing consent as part of the proposed development. If consent is granted an appropriate condition would be imposed requiring this.
- *Request that should consent be granted, a condition which requires the demolition of all structures/building that are associated with the animal boarding and training facility use to prevent future use for this purpose, with the exception of the existing office which is to be converted to dwelling within proposed lot 2.*
Comment:
The applicant has provided Council with an amended plan proposing the demolition of all structures associated with the existing animal boarding and training use within proposed lot 2, with the exception of the existing office that is to be converted back to a dwelling.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Support subject to conditions</p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no</p>

Internal Referral Body	Comments
	<p>objections to approval of the development.</p> <p>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.</p>
Environmental Health (Contaminated Lands)	<p>Support subject to conditions</p> <p>General Comments</p> <p>a review of the contamination reports has been undertaken, recommendation of adding conditions to comply with those reports.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Environmental Health (Industrial)	<p>Support subject to conditions</p> <p>General Comments</p> <p>Removal of the pet hotel should minimise the acoustic impacts on the surrounding neighbours.</p> <p>Recommendation</p> <p>APPROVAL - no conditions</p>
Environmental Health (unsewered lands)	<p>Not supported due to insufficient information</p> <p>General Comments</p> <p>The SEE states that two Wastewater Maintenance reports are attached, However these do not appear on Council database</p> <p>To accurately assess this DA Council requires the above information and:</p> <p>A Wastewater Management Report prepared by a suitably qualified professional is required for alteration of an Onsite Wastewater Management System change of use to dwelling</p> <ul style="list-style-type: none"> • Details of the proposed wastewater treatment and effluent disposal system, including location of the effluent management area. supplemented by a site plan (scale 1:200), demonstrating: <ul style="list-style-type: none"> o All existing and proposed structures, including stormwater and wastewater management structures, and effluent management area buffer distances to the new boundaries. • Appropriateness of the system considering frequency of use, wastewater load and other relevant site constraints.

Internal Referral Body	Comments
	<p>• An action plan in the event of a breakdown in, or other interference with, operation of the wastewater system.</p> <p>Recommendation</p> <p>REFUSAL</p>
Landscape Officer	<p>Support subject to conditions</p> <p>The plans indicate that no significant landscape features are affected by the proposed works.</p> <p>No objections are raised to approval subject to conditions as recommended.</p>
NECC (Bushland and Biodiversity)	<p>Support subject to conditions</p> <p>Council's Bushland and Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) Warringah Development Control Plan (WDCP)</p> <ul style="list-style-type: none"> • Clause E1 Preservation of Trees or Bushland Vegetation • Clause E2 Prescribed Vegetation • Clause E6 Retaining unique environmental features <p>The application seeks to subdivide the single lot into two lots, including the removal of several buildings and animal pens. The application also seeks to establish an Asset Protection Zone (APZ) to the standards of an Inner Protection Zone (IPA) over the entirety of the site.</p> <p>Council's Biodiversity Officer inspected the site to establish the extent of existing native vegetation, and found that an APZ could be established largely by clearing only exotic and non-locally indigenous native vegetation.</p> <p>Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Development Engineering)	<p>Support subject to conditions</p> <p>The minimum lot area for the development for subdivision can not be satisfied. Planner to assess the variation requested by the SEE. Should the subdivision be approved the following Development Engineering conditions are recommended.</p>

Internal Referral Body	Comments
NECC (Water Management)	<p>Support subject to conditions</p> <p>No objections to the subdivision of this lot into two lots on the basis of water quality management, as the lots intend to retain existing arrangements for draining stormwater onto each proposed lot, and will not be connected to a Council stormwater system.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations could be included as a condition of consent, should consent be granted.</p>
Integrated Development – NSW Rural Fire Service - Rural Fires Act (s100B Subdivisions and Special Fire Protection Purposes under)	<p>Supported subject to conditions</p> <p>The site is classified as bush fire prone land and the proposed development is for a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes / a special fire protection purpose under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service.</p> <p>The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions. The recommendations of the Bush Fire Report , along with the conditions from the NSW RFS as part of the bush fire safety authority, would be included as consent conditions, should consent be granted.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated.

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary Environmental Site Investigation dated 15/07/2020 and prepared by Construction Sciences. In its conclusion, the investigation states:

- > *There is a potential for unacceptable contamination to be present at the site, arising from past and present land use activities.*
 - > *In the context of land contamination, the site is considered to be not yet suitable for the proposed land use scenario.*
 - > *Further investigation is needed.*
- Based on these conclusions, CS makes the following recommendations:*
- > *A stage 2 detailed site investigation (DSI) should be undertaken to address the identified areas of environmental concern (AEC).*
 - > *The stage 2 DSI should assess whether the identified contaminants of potential concern in those AEC pose an unacceptable exposure risk to human health and/or the environment; and*
 - > *The stage 2 DSI should be undertaken by a suitably experienced environmental consultant.*

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, Clauses 7(1)(b) and 7(1)(c) of the SEPP must be considered.

Clause 7(1)(b) stipulates that "*if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out*".

Given the claimed potential of contamination on the site as noted in the Phase 1 Investigation, a Phase 2 Environmental Site Assessment should be provided to confirm whether contamination is actually present, at what levels and at what locations. A Phase 2 Environmental Site Assessment has been provided (dated 7/10/2020 and prepared by Construction Sciences) which confirms the location and type of contaminants on the site. Following soil testing of the identified areas of concern, the report concludes that all areas are below the quantities outlined in the NEPM 2013 guidelines and therefore, do not pose an unacceptable risk to human health. In this regard, Council is satisfied that the land is suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation could be included as condition, should consent be issued.

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. Ausgrid raised no objections subject to their usual safety requirements being included as conditions in any consent issued.

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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	Lot 1: 20,000sqm	10,080sqm	46%	No
	Lot 2: 20,000sqm	7588sqm	62%	

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Clause 4.6(6)

Pursuant to Clause 4.6(6), development consent must not be granted for a subdivision of land in the RU4 Primary Production Small Lots if:

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

The proposed development seeks a subdivision that will result in two (2) lots of less than the minimum 20,000sqm lot size and both lots will not be at least 90% of the minimum lot size of 20,000sqm.

The above clause is considered to be a prohibition contained within Clause 4.6, rather than a development standard contained within Clause 4.1 Minimum Subdivision Lot Size and therefore there is no ability to grant development consent based on the resultant lot sizes and non-compliance with Clause 4.6(6). Furthermore, it is considered there is no ability to vary Clause 4.6(6) by way of a written

request.

If the NBLPP has an alternate view of Clause 4.6(6) and that it is a clause that can be varied through the use of Clause 4.6, an assessment of the applicant's Clause 4.6 variation request is carried out below.

Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	20,000sqm
Proposed:	Lot 1: 10,080sqm Lot 2: 7588sqm
Percentage variation to requirement:	Lot 1: 46% Lot 2: 62%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard, has taken into consideration the 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 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the operation of this clause.

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:

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

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 not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,

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

The applicants written request argues, in part:

Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.

It is my opinion that compliance with the requirements of Clause 4.1 is both unreasonable and unnecessary in the circumstances of this case for the following reasons:

- *Each dwelling is provided with a frontage to a separate street.*
- *The property currently supports the existing dwelling structures.*
- *The proposed non-compliance will not in my opinion result in any amenity impacts upon adjoining properties including unreasonable overshadowing or a loss of privacy.*
- *The proposal in my opinion will not result in any unreasonable visual impacts upon either adjoining properties or the streetscape as a result of the non-compliance.*
- *The proposal will not result in an intensification of the use of land.*
- *The proposal will facilitate the removal of a land use (animal boarding establishment) which is typically the subject of complaint and its replacement with a more sympathetic land use (residential).*

On this basis it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

Are there sufficient environmental planning grounds to justify contravening the development standard.

It is considered that a contravention of the development standard is justified in this instance on environmental planning grounds given that the existing animal boarding establishment use is generally regarded as an unsympathetic land use relative to its neighbours. The proposed Torrens title subdivision will provide the owners of the site with sufficient financial incentive to cease the existing animal boarding establishment use and to provide for a more suitable land use (residential) upon the site.

Absent the proposed subdivision the existing animal boarding establishment use will remain.

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

The proposed development is in my opinion in the public interest because it will provide a financial incentive for the owners to cease the existing animal boarding establishment use. The proposed change of use to a dwelling will make a positive contribution to the locality in a manner which is otherwise compliant with the requirements of the LEP, the applicable zone objectives and the objectives

of the particular standard.

In relation to the objectives of Clause 4.1 of the LEP the following review is provided:

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,

Comment

The area surrounding the subject site comprises of a subdivision pattern which contains a varying range of allotment shapes.

In relation to allotment sizes whilst it is agreed that the majority of allotments satisfy the minimum 2ha requirement, it is noted that there are examples of smaller allotments comparable in size with the proposal.

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,

Comment

Notwithstanding the proposed allotment sizes it is considered that the allotments could be used for a range of permissible uses.

(c) to protect the integrity of land holding patterns in rural localities against fragmentation,

Comment

Given that the subject site has two street frontages and that each dwelling will present to a separate street frontage that the proposal will not result in fragmentation.

(d) to achieve low intensity of land use in localities of environmental significance,

Comment

It is considered that the intended use of each allotment for residential purposes is considered to provide for a low intensity use of land.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,

Comment

Based upon the accompanying Bushfire Assessment Report it is considered that there will not be any unreasonable bushfire impacts resulting from the proposed subdivision and residential use.

(f) to protect and enhance existing remnant bushland,

Comment

The proposal will not result in any impacts upon remnant bushland.

(g) to retain and protect existing significant natural landscape features,

Comment

The proposal will not impact upon any significant natural landscape features.

(h) to manage biodiversity,

Comment

It is not considered that there are any biodiversity issues associated with the subject site.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Comment

All stormwater and wastewater associated with the proposal and the existing/proposed dwellings will be disposed of on-site utilising the existing stormwater and wastewater disposal systems.

Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

It is my opinion that contravention of the standard does not raise any matters of significance for State or

Regional environmental planning.

What is the public benefit of maintaining the development standard.

It is my opinion that there is no public benefit in maintaining the development standard in this instance given the proposed subdivision incorporates existing structures and the absence of any unreasonable detrimental impacts.

It is also considered that the proposal will allow for the replacement of the existing animal boarding establishment use with a use (residential)) more suitable for the site and locality.

Council Assessment/Comment

Firstly, the applicant has not provided an updated Clause 4.6 Variation with the amended set of plans submitted to Council which included a revised boundary alignment and lot sizing (previously Lot 1-11,600sqm and Lot 2-6,722sqm). Although only a minor amendment to the lot sizing proposed, the applicant's Clause 4.6 variation does not currently reflect the lot sizing proposed in the latest issue of plans.

Although the applicant proposes to surrender the existing development consent relating to the animal boarding and training facility and remove all related structures, there is no assurance that in the future another animal boarding and training facility could be proposed upon the land given that 'animal boarding and training facilities' are currently permitted with consent within the RU4 Zone. Although it is acknowledged that the existing operation has historically been subject to noise and odour complaints, the subdivision of the land should not be the solution to the problem, rather, the existing use should be managed in a way to maintain the amenity of the surrounding properties and amenity impacts be mitigated by the operator. The granting of consent would result in an unwanted precedent being set for such circumstances within Duffy's Forest and more widely in the Northern Beaches.

The applicant has provided a written request has seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

The applicant's environmental planning ground that the subdivision will remove the existing land use and provide for a more compatible residential land use going forward and therefore results in an improved environmental outcome for the locality. However, Council does not accept this reasoning as there is still opportunity for future lands uses, other than residential dwellings, to be established upon the site including 'animal boarding and training facilities' which remain permitted in the RU4 Zone. Further, Council is not of the opinion that the proposal achieves the objectives of the development standard being varied and RU4 Zone Objectives, as discussed in below.

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 Minimum Subdivision Lot Size development standard and the objectives of the RU4 Primary Production Small Lot zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the WLEP 2011 are:

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

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality.

Comment:

The proposed lot sizing is not reflective of the predominant lot sizes within the locality, with the resulting Lot 2 being less than half the size of development standard and well below the lot sizing in the locality. Although it is acknowledged there are lots in the vicinity of the site that are less than 2ha (including the subject site at present), the proposal will result in a much greater non-compliance and inconsistent with the sizing in the locality.

The area is characterised by generous portions of land which allow for various agricultural and rural pursuits/hobbies which are permitted within the RU4 zone and activities that are synonymous with a rural lifestyle (i.e keeping of horses and other animals). The further subdivision of the land restricts the ability for appropriately sized lots that are suitable for these kinds of activities which support the the rural/residential character of the area.

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development.

Comment:

The 2ha lot size is intended to allow and support various rural/agricultural uses in conjunction with dwelling houses. Although residential development is proposed upon the site, the resultant lot sizing does not promote future varied uses permitted within the zone by diminishing the available land area for each individual site.

(c) to protect the integrity of land holding patterns in rural localities against fragmentation.

Comment:

The subdivision goes against the nature and pattern of land holdings within the area and results in further fragmentation of rural land. The minimum 2ha lot size enables flexibility and opportunity for different styles of rural/residential land uses and the creation of undersized lots does not maintain the integrity of the rural area.

(d) to achieve low intensity of land use in localities of environmental significance.

Comment:

The site is not in an environmentally significant area.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland.

Comment:

The proposal is capable of achieving this objective.

(f) to protect and enhance existing remnant bushland.

Comment:

The proposal is capable of achieving this objective.

(g) to retain and protect existing significant natural landscape features.

Comment:

The proposal is capable of achieving this objective.

(h) to manage biodiversity.

Comment:

The proposal is capable of achieving this objective.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Comment:

The proposal is capable of achieving this objective.

Zone objectives

The underlying objectives of the RU4 Primary Production Small Lot zone are:

- *To enable sustainable primary industry and other compatible land uses.*

Comment: The proposed lots will result in smaller lots that diminish opportunity for to provide for a variety of primary industry and compatible land uses that require large lots to effectively operate. The proposed development would still enable uses that are currently permitted within the RU4 Zone including 'animal boarding and training facilities' which are still permitted within the zone.

- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

Comment: The lot sizing does not encourage diversity of future employment opportunities, with the smaller lot sizes diminishing opportunity for a variety of land uses permitted within the RU4 Zone.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

Comment: The proposal is capable of achieving this objective.

- *To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.*

Comment: The proposal is capable of achieving this objective.

- *To maintain and enhance the natural landscape including landform and vegetation.*

Comment: The proposal is capable of achieving this objective.

- *To ensure low intensity of land use other than land uses that are primary industry enterprises.*

Comment: The proposal is capable of achieving this objective.

- *To maintain the rural and scenic character of the land.*

Comment: The surrounding area is characterised by large, generous portions of land that facilitate a variety of land uses permitted within the zone and are synonymous with an agricultural and rural lifestyle that is unique to Duffy's Forest. The creation of undersized allotments goes against the rural/agricultural character of Duffy's Forest and restricts the ability to allow for development to support the maintenance of the rural character of Duffy's Forest.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the RU4 Primary Production Small Lot 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, the concurrence of the Secretary for the variation to the Minimum Subdivision Lot Size Development Standard is assumed by the Local Planning Panel.

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D8 Privacy	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
E10 Landslip Risk	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

CONCLUSION

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

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

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

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

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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.1 Minimum Subdivision Lot Size 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.

In summary, a detailed assessment has been required for the following specific issues:

- Minimum lot size development standard and Clause 4.6 Variation Request
- Water Management for the Development.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2020/1429 for the Subdivision of land and change of use of premises from an animal boarding establishment to a dwelling house on land at Lot 392 DP 752017, 1 Bibbenluke Avenue, DUFFYS FOREST, for the reasons outlined as follows:

1. The application is not accompanied by a Waste Water Management Report to demonstrate how wastewater can be managed for the two proposed allotments and proposed conversion of the existing building to a dwelling.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1 Minimum Subdivision Lot Size of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.

Council is not satisfied that the development will be in the public interest as the development is inconsistent with the objectives of the minimum subdivision lot size development standard and the objectives of the RU4 Primary Production Small Lot Zone.

Council is not satisfied that there have been sufficient environmental planning grounds to justify contravening the development standard for minimum lot size.

5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 (6) Exceptions to Development Standards of the Warringah Local Environmental Plan 2011 as the proposed development will result in two (2) allotments that are less than the minimum lot size development standard and the subdivision will result in at least one lot that is less than 90% of the minimum lot size development standard within the RU4 Primary Production Small Lot Zone.
6. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.





Clause 4.6 - Exceptions to Development Standards
Clause 4.1 - Minimum Allotment Size
1 Bibbenluke Avenue, Duffy's Forest

The proposed Torrens title subdivision of one lot into two results in a non-compliance with the minimum allotment size controls as required by Clause 4.1 of the Warringah Local Environmental Plan 2011.

The proposal is to provide for the following lot sizes:

Lot 1 - 1.16 ha
Lot 2 - 6,772m²

The proposed lot sizes for Lots 1 and 2 do not comply with the minimum allotment size requirements of Clause 4.1 of the LEP and which requires a minimum allotment size of 2ha per allotment.

Given that the proposal does not comply with the minimum subdivision lot size and in order for consent to be granted to the proposal a variation pursuant to Clause 4.6 of the LEP is required.

This Clause 4.6 variation has been prepared having regard to the recent decisions of the Land & Environment Court.

It is submitted that the variation is well founded and is worthy of the support of the Council.

The following is an assessment of the proposed variation against the requirements of Clause 4.6.

1. What are the objectives of Clause 4.6 and is the proposal consistent with them.

The objectives of Clause 4.6 of the LEP are:

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

It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this clause.

2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.

Clause 4.1 is contained within Part 4 of the LEP and which is titled Principal Development Standards. It is also considered that the wording of the Clause is consistent with previous decisions of the Land & Environment Court of NSW in relation to matters which constitute development standards.

It is also noted that Clause 4.1 does not contain a provision which specifically excludes the application of Clause 4.6.

On this basis it is considered that Clause 4.1 is a development standard for which Clause 4.6 applies.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.

It is my opinion that compliance with the requirements of Clause 4.1 is both unreasonable and unnecessary in the circumstances of this case for the following reasons:

- Each dwelling is provided with a frontage to a separate street.
- The property currently supports the existing dwelling structures.
- The proposed non-compliance will not in my opinion result in any amenity impacts upon adjoining properties including unreasonable overshadowing or a loss of privacy.
- The proposal in my opinion will not result in any unreasonable visual impacts upon either adjoining properties or the streetscape as a result of the non-compliance.
- The proposal will not result in an intensification of the use of land.
- The proposal will facilitate the removal of a land use (animal boarding establishment) which is typically the subject of complaint and its replacement with a more sympathetic land use (residential).

On this basis it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

4. Are there sufficient environmental planning grounds to justify contravening the development standard.

It is considered that a contravention of the development standard is justified in this instance on environmental planning grounds given that the existing animal boarding establishment use is generally regarded as an unsympathetic land use relative to its neighbours. The proposed Torrens title subdivision will provide the owners of the site with sufficient financial incentive to cease the existing animal boarding establishment use and to provide for a more suitable land use (residential) upon the site.

Absent the proposed subdivision the existing animal boarding establishment use will remain.

5. Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed development is in my opinion in the public interest because it will provide a financial incentive for the owners to cease the existing animal boarding establishment use. The proposed change of use to a dwelling will make a positive contribution to the locality in a manner which is otherwise compliant with the requirements of the LEP, the applicable zone objectives and the objectives of the particular standard.

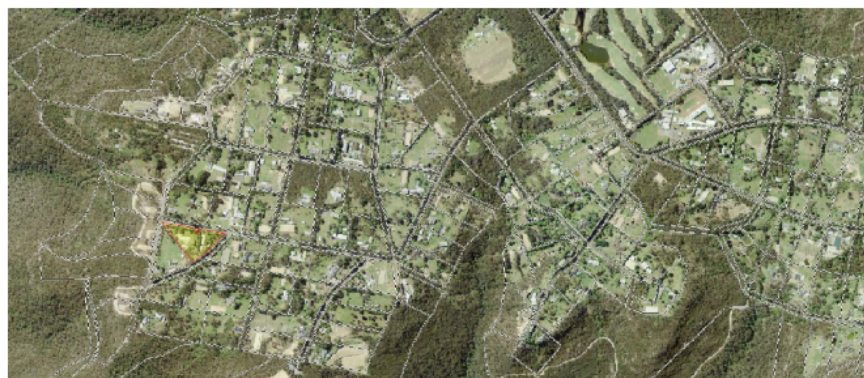
In relation to the objectives of Clause 4.1 of the LEP the following review is provided:

- (a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,*

Comment

The area surrounding the subject site comprises of a subdivision pattern which contains a varying range of allotment shapes.

In relation to allotment sizes whilst it is agreed that the majority of allotments satisfy the minimum 2ha requirement, it is noted that there are examples of smaller allotments comparable in size with the proposal.



An aerial view of the surrounding area and subdivision pattern

Minto Planning Services P/L

- (b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,*

Comment

Notwithstanding the proposed allotment sizes it is considered that the allotments could be used for a range of permissible uses.

- (c) to protect the integrity of land holding patterns in rural localities against fragmentation,*

Comment

Given that the subject site has two street frontages and that each dwelling will present to a separate street frontage that the proposal will not result in fragmentation.

- (d) to achieve low intensity of land use in localities of environmental significance,*

Comment

It is considered that the intended use of each allotment for residential purposes is considered to provide for a low intensity use of land.

- (e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,*

Comment

Based upon the accompanying Bushfire Assessment Report it is considered that there will not be any unreasonable bushfire impacts resulting from the proposed subdivision and residential use.

- (f) to protect and enhance existing remnant bushland,*

Comment

The proposal will not result in any impacts upon remnant bushland.

- (g) to retain and protect existing significant natural landscape features,*

Comment

The proposal will not impact upon any significant natural landscape features.

Minto Planning Services P/L

(h) to manage biodiversity,

Comment

It is not considered that there are any biodiversity issues associated with the subject site.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Comment

All stormwater and wastewater associated with the proposal and the existing/proposed dwellings will be disposed of on-site utilising the existing stormwater and wastewater disposal systems.

6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning.

7. What is the public benefit of maintaining the development standard.

It is my opinion that there is no public benefit in maintaining the development standard in this instance given the proposed subdivision incorporates existing structures and the absence of any unreasonable detrimental impacts.

It is also considered that the proposal will allow for the replacement of the existing animal boarding establishment use with a use (residential) more suitable for the site and locality.

Conclusion

It is therefore my opinion based upon the content of this submission that a variation of the minimum lot size requirements of Clause 4.1 of the Warringah LEP 2011 is appropriate in this instance.



Andrew Minto
Graduate Diploma (Urban & Regional Planning), Associate Diploma (Health & Building Surveying). MPIA.
MINTO PLANNING SERVICES PTY LTD
November 2020

4.0 NON PUBLIC MEETING ITEMS

ITEM 4.1 **DA2020/1711 - 19-23 THE CORSO, MANLY - ALTERATIONS
AND ADDITIONS TO AN EXISTING SHOP TOP HOUSING
DEVELOPMENT**

AUTHORISING MANAGER Anna Williams

TRIM FILE REF **2021/231763**

ATTACHMENTS	1 Assessment Report
	2 Site Plan & Elevations
	3 Report - Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 & Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/1711 for alterations and additions to an existing shop top housing development at Lot CP SP 12989 & Lot 1-13 SP 12989, 19-23 The Corso, Manly subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1711
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 1 SP 12989, 1 / 21 - 23 The Corso MANLY NSW 2095 Lot 2 SP 12989, 2 / 21 - 23 The Corso MANLY NSW 2095 Lot 3 SP 12989, 3 / 21 - 23 The Corso MANLY NSW 2095 Lot 4 SP 12989, 4 / 21 - 23 The Corso MANLY NSW 2095 Lot 5 SP 12989, 5 / 21 - 23 The Corso MANLY NSW 2095 Lot 6 SP 12989, 6 / 21 - 23 The Corso MANLY NSW 2095 Lot 7 SP 12989, 7 / 21 - 23 The Corso MANLY NSW 2095 Lot 8 SP 12989, 8 / 21 - 23 The Corso MANLY NSW 2095 Lot 9 SP 12989, 9 / 21 - 23 The Corso MANLY NSW 2095 Lot 10 SP 12989, 10 / 21 - 23 The Corso MANLY NSW 2095 Lot 11 SP 12989, 11 / 21 - 23 The Corso MANLY NSW 2095 Lot 12 SP 12989, 12 / 21 - 23 The Corso MANLY NSW 2095 Lot 13 SP 12989, 13 / 21 - 23 The Corso MANLY NSW 2095 Lot CP SP 12989, 19 - 23 The Corso MANLY NSW 2095
Proposed Development:	Alterations and additions to an existing shop top housing development
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 12989
Applicant:	Hilrok Properties Pty Ltd

Application Lodged:	29/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	14/01/2021 to 28/01/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 48.2% 4.4 Floor space ratio: 4.3%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,721,675.00
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EXECUTIVE SUMMARY

Council is in receipt of development application DA2020/1711 for alterations and additions to the existing shop top housing development.

The site is zoned B2 Local Centre under the provisions of Manly Local Environmental Plan 2013 (MLEP 2013) and the proposed development is permissible with consent.

The application was notified in accordance with Council's Community Participation Plan and no (0) submissions were received.

The existing building is nominated as an item of local heritage significance, and is located within a heritage conservation area (The Town Centre Heritage Conservation Area). Whilst the application seeks consent for the demolition of minor structures on the ground floor and changes to the ground floor layout, the majority of the works proposed could ordinarily be carried out without consent, if not for the heritage listing of the building.

The application involves the replacement of structures above the height plane. Whilst the height of the building remains unchanged, the proposal will result in a technical breach of the height of buildings development standards prescribed by clause 4.3 of MLEP 2013, with a variation of 48.2%. The proposal also seeks consent to demolish a secondary/redundant internal staircase, which results in an increase to the gross floor area and intensification of the existing non-compliance with the FSR development standard prescribed by clause 4.4 of MLEP 2013 by 4.3%. The applicant's written requests to vary these development standards satisfactorily address the matters required, and overall, the consent authority can be satisfied of the relevant matters of clause 4.6 of MLEP 2013.

In light of the extent of the building height development standard, the application is referred to the Northern Beaches Local Planning Panel for determination. Subject to conditions of consent, the consent authority can be satisfied that the proposal is consistent with the aims and objectives of the relevant plans and policies, and the application is recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to the existing shop top housing development, including:

- Exterior conservation works to side elevations and The Corso frontage, including the replacement of the existing awning,
- Modifications to the Market Place frontage, including a new awning,
- Replacement of the top floor roof,
- Repairs to the Level 3 roof terrace,
- Upgrade of the residential entrance from The Corso through to the central stair,
- Incorporation of a new garbage store room on the ground floor,
- Provision of an accessible toilet on the ground floor,
- Conservation works to central stair, landings and to original fabric within units,
- New kitchen joinery and bathroom fit-out to each residential unit,
- Demolition of internal stairs connecting The Corso to Level 1 residences and closure of opening to 23 The Corso,
- Replacement of doors and windows (restoration of existing, where possible), and
- Paint and new floor coverings throughout.

It is noted that if not for the local heritage listing of the building, the majority of the works proposed would ordinarily be exempt development under the provisions of *SEPP (Exempt and Complying Development Codes) 2008*.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone B2 Local Centre
 Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.11 Active street frontages
 Manly Local Environmental Plan 2013 - 6.16 Gross floor area in Zone B2
 Manly Development Control Plan - 4.4.4.1 Awnings in LEP B1 and B2 Business Zones

SITE DESCRIPTION

Property Description:	Lot 1 SP 12989 , 1 / 21 - 23 The Corso MANLY NSW 2095 Lot 2 SP 12989 , 2 / 21 - 23 The Corso MANLY NSW 2095 Lot 3 SP 12989 , 3 / 21 - 23 The Corso MANLY NSW 2095 Lot 4 SP 12989 , 4 / 21 - 23 The Corso MANLY NSW 2095 Lot 5 SP 12989 , 5 / 21 - 23 The Corso MANLY NSW 2095 Lot 6 SP 12989 , 6 / 21 - 23 The Corso MANLY NSW 2095 Lot 7 SP 12989 , 7 / 21 - 23 The Corso MANLY NSW 2095 Lot 8 SP 12989 , 8 / 21 - 23 The Corso MANLY NSW 2095 Lot 9 SP 12989 , 9 / 21 - 23 The Corso MANLY NSW 2095 Lot 10 SP 12989 , 10 / 21 - 23 The Corso MANLY NSW 2095 Lot 11 SP 12989 , 11 / 21 - 23 The Corso MANLY NSW 2095 Lot 12 SP 12989 , 12 / 21 - 23 The Corso MANLY NSW
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	<p>2095 Lot 13 SP 12989 , 13 / 21 - 23 The Corso MANLY NSW 2095 Lot CP SP 12989 , 19 - 23 The Corso MANLY NSW 2095</p>
Detailed Site Description:	<p>The site is trapezoidal in shape, with a 16.835m wide frontage to The Corso, a 16.76m wide frontage to Market Place, a depth of 31.2m and a total area of 523.9m². The site is situated on the northern side of The Corso, opposite its intersection with Darley Road. The site currently contains an existing four storey shop top housing development (19-21 The Corso) and a two storey retail/commercial building (23 The Corso). The works the subject of this application are limited to the existing four storey shop top housing development at 19-21 The Corso.</p> <p>The existing four storey shop top housing development comprises:</p> <ul style="list-style-type: none"> • Ground floor retail presenting to The Corso, • Ground floor office space presenting to Market Place, • Residential access from both The Corso and Market Place, • 4 x 1 bedroom units and 6 x 2 bedroom units across Levels 1-3 • Communal laundry facilities on Level 3 • Communal open space (roof terrace) on Level 3 <p>The existing building is identified as an item of local heritage significance, and is located within a heritage conservation area. A small portion of the northern corner of the site is identified as being prone to flooding.</p>

Map:



SITE HISTORY

On 23 May 2019, Development Application DA2019/0512 was lodged with Council, seeking consent for alterations and additions to the existing shop top housing development at 19-21 The Corso. Whilst the proposal sought consent for the works the subject of the current application, DA2019/0512 also sought consent for:

- The reduction/enclosure of the existing light wells on both side elevations, resulting in additional floor space and an increase to the existing non-conforming FSR.
- The incorporation of a lift.
- The incorporation of a new, additional unit in the area currently occupied by the communal roof terrace (wholly above the 10m height limit).
- Demolition of internal walls within all units to create open plan living areas.
- Removal of ground floor office space.
- Removal of residential access to The Corso.

On 1 April 2020, Development Application DA2019/0512 was refused by the NBLPP for the following reasons:

1. *The application fails to meet the provision of the SEPP 65 Design Quality of Residential Apartment Development together with the Apartment Design Guide in relation to the provision of communal open space.*
2. *The proposal fails to satisfactorily address good design and amenity as specified in section 1.3 (a), (c) and (g) of the Environmental Planning and Assessment Act 1979.*
3. *The proposal fails to achieve the particular aims of Manly Local Environmental Plan 2013 section 1.2(2)(a)(iv) to ensure all development appropriately responds to environmental constraints and does not adversely affect the character, amenity or heritage of Manly or its existing permanent residential population.*

On 10 September 2020, a prelodgement meeting was held with respect to the works the subject of this

application.

On 26 November 2020, Council issued an Order with respect to the property to require the upgrading of the existing building with regard to Fire Safety.

On 29 December 2020, the subject development application was lodged with Council.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial & residential purposes for an extended period of time. The proposed development does not disturb the substrate of the site and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of</p>

Section 4.15 Matters for Consideration'	Comments
	Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received.
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 14/01/2021 to 28/01/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation 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>Supported, with conditions.</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p>

Internal Referral Body	Comments
	<p><i>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate stage.</i></p> <p><i>THE APPROVAL RELATES TO 19-21 THE CORSO ONLY. PART OF THE PROPERTY KNOWN AS 23 IS SUBJECT TO APPROVED DA2019/0574.</i></p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Supported, no conditions.</p> <p>The property is not affected by the 1% AEP flood event, but the Market Place entrance is just within the Medium Flood Risk Precinct with a Flood Planning Level of 5.7m AHD. With a floor level of 6.06m AHD, the proposed alterations are generally above the FPL. No flood related objections.</p>
Road Reserve	<p>Supported, no conditions.</p> <p>No impact on existing road infrastructure. Any new shop awnings to be conditioned if necessary by Development Engineering. Historical encroachments above street level are not considered significant.</p>
Strategic and Place Planning (Heritage Officer)	<p>Supported, no conditions.</p> <p><u>Reason for referral</u></p> <p>The proposal has been referred to Heritage as the subject property is part of group heritage item, being Item I106 - Group of commercial buildings - All numbers, The Corso. The property is also located in C2 - Town Centre Conservation Area and within the vicinity of a number of heritage items as listed in Schedule 5 of Manly LEP 2013.</p> <p><u>Details of Heritage Items</u></p> <p>Item I106 - Group of commercial buildings</p> <ul style="list-style-type: none"> Statement of significance: The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort. Physical description: The Corso is the NE-SW link between Manly Beach and Manly Cove. It acts as a low scale horizontal corridor which steps down from the harbour to the ocean. It has a cohesive character resulting from generally low scale of development on its principle streets, Construction to the property boundaries, slightly higher and distinctive corner buildings and a good level of pedestrian protection and

Internal Referral Body	Comments
	<p>amenity generated by footpath awnings and through-block arcades has produced strongly defined and comfortable urban spaces.</p> <p>Item C2 - Town Centre Heritage Conservation Area</p> <ul style="list-style-type: none"> The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings. <p>Item I107 - Commercial building</p> <ul style="list-style-type: none"> Statement of significance: One of the most elaborate facades featured in The Corso, contributes aesthetically and historically to The Corso streetscape. Physical description: 2 storey rendered brick building of late Victorian period with elaborate Italianate rendered decoration above ground floor. Architectural significance in intricacy and detailing of pediment and in general abundance of motif and ornament including garlands, globes, acanthus leaf, palmate and intaglio decoration. 21/7/99 Community Aid Abroad shop. Some glass survives, however has been painted. Original form of shop survives beneath modern building. <p>Item I113 - St Matthews Church and church hall</p> <ul style="list-style-type: none"> Statement of Significance: The church is a well consistently detailed but sombre example of Interwar Gothic style. The interior detailing and fittings are of a high quality of design, exhibiting a contrasting lightness to the exterior. As this building is seen in the round, the spatial effect on the north eastern side is of significance and it makes an important landmark and identifies the junction of the Corso with Darley Road. It makes a major contribution to the Corso. Physical Description: The building is Inter-War Gothic style with set back buttresses. The walls are dark purple/brown face brick on coursed rubble sandstone base. Window sills heads

Internal Referral Body	Comments
	<p>and tracery, door architraves, copings and parapets are in ashlar sandstone. The main windows are in figurative stained glass by John Radecki set in mullions of sandstone in bas tracery style. The smaller windows are in patterned coloured glass. The roofs are slate with copper rainwater heads and downpipes. The front garden beds flanking the sandstone entrance steps are bordered with brick and wrought iron ornate rail fences. These are thought to date from the 1864 church.</p> <p>Item I104 - Street trees</p> <ul style="list-style-type: none"> • Statement of significance: Part of earliest planting on The Corso c.1850's by H.G. Smith. Historic and aesthetic importance to the streetscape. • Physical description: Centre planting of Ficus Macrophylla (Moreton Bay Fig) Remnant Palm planting (Phoenix Canariensis) of 1928. <p><u>Consideration of Application</u></p> <p>The proposal seeks consent for alterations and refurbishment works to the existing building and external conservation works to the front façade facing The Corso. The proposed works do not involve any additions to the bulk and scale of the existing building. The existing building at 19-21 The Corso, is in a very prominent location and is visible from various angles and distances; from The Corso, Market Place, Whistler Street and Sydney Road.</p> <p>It is noted that the front façade (above the awning level) has been proposed to be restored without any change, other than the "like for like" replacement of the existing windows. Proposed internal alterations are considered acceptable from a heritage perspective.</p> <p>It is considered that the proposed works are mainly for refurbishment and conservation purposes and will not have an adverse impact upon the significance of the heritage item and the Manly Town Centre Conservation Area.</p> <p>Therefore, no objections are raised to this application on heritage grounds.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u></p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>
Strategic and Place Planning	

Internal Referral Body	Comments
(Urban Design)	<p>Supported, no conditions.</p> <p>The proposal generally proposes no change to the overall form and scale of the building. The proposed alterations to the rear façade will improve the presentation of the building to Market Place and the amenity of the rear units. The responses to the previous Urban Design Comments are as follows:</p> <p>1. There is no proposed increase of building bulk except the glass balustrades on the roof terrace which is over the 10m building height control. The balustrades should be set-backed from the building edges to create a non-trafficable area to minimise overlooking/ privacy issues into neighbouring developments and also to be less visible from street level. Response: No change is proposed to the existing roof terrace.</p> <p>2. The light wells are not proposed to be reduced in size but there will be new windows altered and added in the light wells and on the party walls at the common boundaries. Fire engineered solutions using sprinklers are proposed to be used. As such, there should be no exposed pipes or building services/elements on the heritage building facades. Response: No exposed pipes will be located on the heritage facades.</p> <p>3. Compliance with the Disability access code should be demonstrated as there is no lift proposed for the four storey building. Response: Accessibility Review report has been provided.</p>
Waste Officer	Supported, with conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential and retail/office purposes for a significant period of time with no prior land uses. Furthermore, the application does not involve any works that will disturb the substrate. In this regard it is considered that the site poses no risk of

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

SEPP 65 - Design Quality of Residential Apartment Development

In accordance with clause 4(1) of SEPP 65, the policy applies to shop top housing development is the development relates to the "substantial redevelopment or the substantial refurbishment of an existing building". As noted earlier, the majority of the works proposed would ordinarily be classified as exempt development if it were not for the local heritage listing of the building. The works proposed, which are primarily maintenance of a deteriorating older building, are not considered to be substantial, and as such, the provisions of SEPP 65 are not considered to be applicable.

SEPP (Building Sustainability Index: BASIX) 2004

BASIX certificates have been submitted with the application in relation to each individual unit. A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificates.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	10m	15.858m (existing) 14.82m (proposed new works)	4.82m or 48.2%	No
Floor Space Ratio	2.5:1	2.61:1	46.84m ² or 4.3%	No
Gross floor area in Zone B2	Maximum 1000m ²	159.4m ²	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes

Clause	Compliance with Requirements
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.16 Gross floor area in Zone B2	Yes

Detailed Assessment

Zone B2 Local Centre

The proposed development is consistent with the objectives of the B2 Local Centre zone, as follows:

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

Comment: The ground floor of the development provides retail and business floor space that contribute to the range of uses along The Corso and the wider Manly Town Centre locality.

- *To encourage employment opportunities in accessible locations.*

Comment: The building contributes to employment generation with both business and retail tenancies on the ground floor presenting to The Corso and Market Place.

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

Comment: The site is located in a highly accessible area, in close proximity to public transport, including the main bus stops and ferry services at Manly Wharf. The site is also centrally located on The Corso, surrounded by a range of retail premises, restaurants and services, such that residents of the development have easy and direct access the services they require.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment: The resultant shop top housing development is anticipated in the zone and has been in existence for a number of years. The works proposed will improve the amenity of the dwellings and tenancies, and provide a greater contribution to the public domain.

4.3 Height of buildings

and clause 4.6 Exceptions to development standards

With a maximum height of 14.82m, the proposed works are non-compliant with the 10m maximum building height prescribed by clause 4.3 of MLEP 2013. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of MLEP 2013 can be applied.

Pursuant to clause 4.6(2) of MLEP 2013, consent may be granted for development even though the development contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause not not apply to those standards expressly excluded, the maximum building height is not expressly excluded and thus the clause can be applied in this instance.

Extent of height breach

The proposed works reach a maximum height of 14.82m, representative of a 48.2% variation of the 10m development standard. Whilst not numerically insignificant, the breach is more of a technicality, where by the proposal seeks consent to replace the existing roof structure and other structural elements that are above the 10m height limit. The application does not seek consent to increase the height of any part of the existing building, and the current maximum height of 15.585m (to the top of the parapet fronting The Corso) remains unchanged.

Has the Applicant's submission addressed the relevant criteria?

Pursuant to clause 4.6(4) of MLEP 2013, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of MLEP 2013. The application was supported by a detailed submission (attached) addressing the provisions of clauses 4.3 and 4.6 of MLEP 2013. The submission is considered with regard to the criteria of clause 4.6(3) of MLEP 2013, as follows:

- a. *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,*

Comment: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission relies upon this method.

The applicant's submission satisfactorily demonstrates that compliance with the building height development standard is both unreasonable and unnecessary in this instance, as the objectives of the control are otherwise achieved.

- 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, "environmental planning grounds" were found to be grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act. The environmental planning grounds put forward by the applicant include:

- The works do not increase the existing height or scale of the development,
- The new works are maintained below the maximum height of the existing building,
- The works facilitate the refurbishment and retention of the locally heritage listed development,
- The works do not attribute to any unreasonable impacts upon the amenity of the locality, and
- The development is consistent with the underlying objectives of the standard and the B2 zone.

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed replacement of ageing structural elements of a heritage listed building is an orderly response to the development of the site,
- The development promotes the sustainable management of built and cultural heritage, in so far as the proposed non-compliance facilitates the refurbishment and preservation of a locally listed heritage building, and
- The development promotes the proper construction and maintenance of buildings, in so far as the proposed non-compliance wholly relates to necessary maintenance of the ageing development and the application facilitated

Therefore, the consent authority can be satisfied that the applicant's request has satisfactorily addressed the matters prescribed by clause 4.6(3) of MLEP 2013.

Is the proposal in the public's interest?

Under the provisions of clause 4.6(4)(a) of MLEP 2013, consent must not be granted to a proposal that contravenes a development standard unless the proposed development (as a whole) will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

The proposed development is consistent with the relevant objectives of the height of buildings development standard, as follows:

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

Comment: Despite replacement of existing structures above the height plane, the height and roof form of the development remains unchanged. The existing building is identified as an item of local heritage significance within a heritage conservation area, and as such, it is reasonable to say that the retention and refurbishment of the existing building is consistent with the desired character of the area, which aims to retain and preserve contributory items.

- b. to control the bulk and scale of buildings,*

Comment: Despite technical non-compliance with the 10m height limit, the bulk and scale of the development remains unchanged.

- c. to minimise disruption to the following—*
- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*

Comment: As the height and bulk of the development remains unchanged, the proposal will not result in any disruption of views.

- d. to provide solar access to public and private open spaces and maintain adequate sunlight access*

to private open spaces and to habitable rooms of adjacent dwellings,

Comment: As the height and bulk of the development remains unchanged, the proposal will not result in any disruption of solar access to adjoining public and private places. The proposal seeks consent for minor modifications to openings on the Market Lane facade, which will facilitate additional solar access and ventilation into the associated dwellings and the ground floor business premises.

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

Comment: N/A - the site is not within a recreation or environmental protection zone.

As discussed with regard to the B2 Local Centre Zone of MLEP 2013, the proposal is consistent with the objectives of the B2 zone.

As such, the proposal is considered to be in the public's interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4)(b) of MLEP 2013, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Planning Circular PS 18-003 (dated 21 February 2018) issued by the NSW Department of Planning and Environment, the Secretary's concurrence may be assumed in this instance as the application is to be determined by the Northern Beaches Local Planning Panel.

Conclusion

Overall, the consent authority can be satisfied of the matters prescribed by clause 4.6 of MLEP 2013, and the proposal can be supported, despite contravention of the building height development standard.

4.4 Floor space ratio

and clause 4.6 Exceptions to development standards

With a FSR of 2.61:1, the proposed works are non-compliant with the 2.5:1 maximum FSR prescribed by clause 4.4 of MLEP 2013. The maximum FSR is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of MLEP 2013 can be applied.

Pursuant to clause 4.6(2) of MLEP 2013, consent may be granted for development even though the development contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause not not apply to those standards expressly excluded, the maximum FSR is not expressly excluded and thus the clause can be applied in this instance.

Extent of FSR breach

The existing building has a FSR of 2.59:1 (1356.84m² GFA). The application does not propose any additional floor space beyond the existing external walls of the building, but rather proposes the deletion of an internal staircase that was previously excluded from the FSR calculation. The deletion of the internal stair results in an additional 9m² of GFA, or 2% of the existing GFA.

As such, the proposed development will result in a FSR calculation of 2.61:1 (1365.84m² GFA), representative of a 55.84m² or 4.3% variation to the maximum FSR (1310m²).

Has the Applicant's submission addressed the relevant criteria?

Pursuant to clause 4.6(4) of MLEP 2013, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of MLEP 2013. The application was supported by a detailed submission (attached) addressing the provisions of clauses 4.4 and 4.6 of MLEP 2013. The submission is considered with regard to the criteria of clause 4.6(3) of MLEP 2013, as follows:

- a. *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,*

Comment: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission relies upon this method.

The applicant's submission satisfactorily demonstrates that compliance with the FSR development standard is both unreasonable and unnecessary in this instance, as the objectives of the control are otherwise achieved.

- 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, "environmental planning grounds" were found to be grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act. The environmental planning grounds put forward by the applicant include:

- The additional GFA is minor,
- The development does not alter the bulk or scale of the existing building, which is the primary function of the FSR control,
- The works do not attribute to any unreasonable impacts upon the amenity of the locality, and
- The development is consistent with the underlying objectives of the standard and the B2 zone.

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically that the requested variation will facilitate the orderly and economic development (refurbishment) of the existing heritage listed building.

- The proposed development promotes orderly development, in so far as the non-compliance arises from the removal of a redundant internal staircase and the additional floor space is more appropriately included within the ground floor retail tenancy, and
- The proposed development promotes the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, in so far as the redundant stairway is to be removed to achieve appropriate fire separation between the two adjoining buildings.

Therefore, the consent authority can be satisfied that the applicant's request has satisfactorily addressed the matters prescribed by clause 4.6(3) of MLEP 2013.

Is the proposal in the public's interest?

Under the provisions of clause 4.6(4)(a) of MLEP 2013, consent must not be granted to a proposal that contravenes a development standard unless the proposed development (as a whole) will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

The proposed development is consistent with the relevant objectives of the FSR development standard, as follows:

- a. *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment: The proposed additional floor space is a result of the proposed demolition of an existing internal staircase. The proposal does not seek consent for additional floor space beyond the external walls of the existing building, and as such, the bulk and scale of the building remains unchanged. The proposed refurbishment of the existing locally listed heritage item is consistent with the desired streetscape character of the area, in so far as it is located within a local heritage conservation area which aims to preserve contributory items.

- b. *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment: The proposed development does not alter the bulk or density of the existing development, and as the built form of the development remains unchanged, the proposal will not obscure important landscape and townscape features.

- c. *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment: Whilst the proposal seeks to improve the aesthetic appearance of an ageing development, the proposal will not alter the form of the development or the visual relationship between the development and the character of the area.

- d. *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment: The proposal does not give rise to any adverse environmental impacts.

- e. *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment: The demolition of the existing internal staircase will facilitate a minor increase to the frontage of the ground floor retail premises, which is consistent with this objective to encourage development and expansion of business activities in local centres.

As discussed with regard to the B2 Local Centre Zone of MLEP 2013, the proposal is consistent with the objectives of the B2 zone.

As such, the proposal is considered to be in the public's interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4)(b) of MLEP 2013, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Planning Circular PS 18-003 (dated 21 February 2018) issued by the NSW Department of Planning and Environment, the Secretary's concurrence may be assumed in this instance as the application is to be determined by the Northern Beaches Local Planning Panel.

Conclusion

Overall, the consent authority can be satisfied of the matters prescribed by clause 4.6 of MLEP 2013, and the proposal can be supported, despite contravention of the FSR development standard.

6.4 Stormwater management

The application proposes the refurbishment of the existing development, with no change to the existing area/footprint of the development or the stormwater management regime. In this respect, the consent authority can be satisfied of the matters prescribed by clause 6.5 of MLEP 2013, as follows:

- a. *is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*

Comment: Not applicable - The existing building covers the entire site, and no changes are proposed in this regard.

- b. *includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*

Comment: Stormwater retention is not practicable on this site and is not required under the provisions of Council's Water Management Policy, as the proposal does not seek to increase hard surfaces on the site.

- c. *avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

Comment: The existing building drains into Council's stormwater infrastructure system, and this arrangement is to be retained in the proposed development. The proposed development will not result in any adverse impacts of stormwater runoff on adjoining properties.

6.9 Foreshore scenic protection area

The consent authority can be satisfied that the matters listed by clause 6.9 of MLEP 2013 have been considered, as follows:

- a. *impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*

Comment: Noting that the built form of the building remains unchanged, the proposed

development will not result in any adverse impacts upon the visual amenity of the harbour or coastal foreshore, particularly with respect to overshadowing or views.

b. measures to protect and improve scenic qualities of the coastline,

Comment: The proposal seeks to refurbish the locally heritage listed building, which includes restoration of the facades of the building, improving the aesthetic appearance of the development and in turn, the scenic quality of The Corso.

c. suitability of development given its type, location and design and its relationship with and impact on the foreshore,

Comment: The existing building remains suitable for its location, being a contributory item to the heritage significance of The Corso.

d. measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment: The proposed development does not result in any conflict between land-based and water-based activities.

6.11 Active street frontages

The site is on land identified as "Active street frontages" on the Active Street Frontages Map and is subject to the provisions of 6.11 of MLEP 2013. In accordance with clause 6.11(3), development consent must not be granted to the erection of a building or the change of use of a building unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use. Despite minor changes to the allocation of uses on the ground floor, the proposed development maintains business premises to Market Place and retail premises to The Corso, such that both street frontages are appropriately activated.

6.16 Gross floor area in Zone B2

Clause 6.16(3) of MLEP 2013 prescribes that development consent must not be granted to the erection of a building [emphasis added] on land in Zone B2 Local Centre unless the consent authority is satisfied that at least 25% of the gross floor area of the building will be used as commercial premises. It is noted that the language used in clause 6.16(3) differs from that used in clause 6.16(4), which relates to development on land to which this clause applies. Clause 6.16(3) of MLEP 2013 is not considered to be applicable in relation to the proposal, which seeks consent for alterations and additions to an existing building, as opposed to the erection of a building.

With a retail floor space of 159.4m², the proposal is consistent with the provisions of 6.16(4) of MLEP 2013, which limit the amount of retail floor space within a development to 1000m².

Manly Development Control Plan

Built Form Controls

With the exception of a minor change to the gross floor area calculation (as a result of the removal of secondary internal stairs and the incorporation of additional service/plant areas), the application does not propose to alter the built form of the existing building. The proposed development is appropriately categorised as alterations and additions and assessment of the existing built form against the MDCP

2013 built form controls is not required.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.4.4.1 Awnings in LEP B1 and B2 Business Zones

The application proposes to rebuild the existing awning along The Corso frontage and proposes a new awning along the Market Place frontage. The two proposed awnings are considered separately, as follows:

The Corso

The proposed replacement awning is to align with the existing awning which sits 3.1m above the pavement. Whilst inconsistent with the 3.5m minimum dimension prescribed by this control, the proposal is consistent with the requirement for awnings to be aligned with the height and width of adjoining awnings, which is considered to be more important in the streetscape context. Conditions of consent are recommended to require appropriate lighting and to prevent the incorporation of under awning signage.

Market Place

The application proposes a new awning along the frontage presenting to Market Place. Whilst consistent with the 3.5m minimum height prescribed by this control (with a height of 3.7m), the proposed awning would be an anomaly in the streetscape, noting a distinct absence of awnings along Market Place. Further, the proposed awning may interrupt service access and maintenance of the sewer mains located along the footpath adjacent to the building, which has not been addressed in the application. As such, the awning to Market Place is not supported and a condition is recommended to delete the proposed awning from the proposal.

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 \$27,217 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,721,675.

CONCLUSION

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

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

- Codes and Policies of Council.

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

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

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

Council is satisfied that:

1) The Applicant's written requests under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

The proposed development provides for the retention/preservation of the existing heritage item, improving the amenity for both residents/tenants of the development and the buildings aesthetic contribution to the wider town centre.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary the building height and FSR development standards prescribed by clause 4.3 Height of Building and clause 4.4 Floor Space Ratio pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/1711 for Alterations and additions to an existing shop top housing development on land at Lot 1 SP 12989, 1 / 21 - 23 The Corso, MANLY, Lot 2 SP 12989, 2 / 21 - 23 The Corso, MANLY, Lot 3 SP 12989, 3 / 21 - 23 The Corso, MANLY, Lot 4 SP 12989, 4 / 21 - 23 The Corso, MANLY, Lot 5 SP 12989, 5 / 21 - 23 The Corso, MANLY, Lot 6 SP 12989, 6 / 21 - 23 The Corso, MANLY, Lot 7 SP 12989, 7 / 21 - 23 The Corso, MANLY, Lot 8 SP 12989, 8 / 21 - 23 The Corso, MANLY, Lot 9 SP 12989, 9 / 21 - 23 The Corso, MANLY, Lot 10 SP 12989, 10 / 21 - 23 The Corso, MANLY, Lot 11 SP 12989, 11 / 21 - 23 The Corso, MANLY, Lot 12 SP 12989, 12 / 21 - 23 The Corso, MANLY, Lot 13 SP 12989, 13 / 21 - 23 The Corso, MANLY, Lot CP SP 12989, 19 - 23 The Corso, MANLY, 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
Existing and Demolition Ground Floor Plan, revision A	11 December 2020	NBRS Architecture
Existing and Demolition First Floor, revision A	11 December 2020	NBRS Architecture
Existing and Demolition Second Plan, revision A	11 December 2020	NBRS Architecture
Existing and Demolition Third Plan, revision A	11 December 2020	NBRS Architecture
Proposed Ground Floor Plan, revision A	11 December 2020	NBRS Architecture
Proposed First Floor Plan, revision B	3 March 2021	NBRS Architecture
Proposed Second Floor Plan, revision A	11 December 2020	NBRS Architecture
Proposed Third Floor Plan, revision A	11 December 2020	NBRS Architecture
Elevation - The Corso, revision A	11 December 2020	NBRS Architecture
Elevation - Market Lane, revision A	11 December 2020	NBRS Architecture
Elevation - East, revision A	11 December 2020	NBRS Architecture
Elevation - West, revision A	11 December 2020	NBRS Architecture
Lightwell - Long Section A, revision A	11 December 2020	NBRS Architecture

Lightwell - Long Section B, revision A	11 December 2020	NBRS Architecture
Lightwell - Cross Section A, revision A	11 December 2020	NBRS Architecture
Lightwell - Cross Section B, revision A	11 December 2020	NBRS Architecture
Schedule of Colours and Materials, revision A	11 December 2020	NBRS Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Building Code of Australia - Fire Safety Upgrade Report	25 May 2020	City Plan
BASIX Certificate A401570, A402015, A401786, A401805, A402019, A402020, A402021, A402022, A402024 and A402025	17 December 2020	JN Consulting

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. **Approved Land Use**

This consent authorises the use of the building at 19-21 The Corso, Manly for the purpose of a shop top housing development.

In particular, this consent authorises the use of the small tenancy in the northern corner of the ground floor (fronting Market Place) for business premises and the larger tenancy in the eastern corner of the ground floor (fronting The Corso) for retail premises.

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

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

3. **Prescribed Conditions**

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 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 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

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$27,216.75 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,721,675.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **Amendments to the approved plans**

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

- The awning proposed on the Market Place elevation is not authorised by this consent and is to be removed from all plans.

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

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

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. **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.

10. **BCA Compliance**

Necessary measures to achieve compliance with the Building Code of Australia shall not compromise the heritage significance of the development. With the exception of down pipes, no services or conduits shall be visible from the public domain, or should result in any damage to the heritage fabric of the development.

Reason: To preserve the heritage significance of the development.

11. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, 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 the Northern Beaches Waste Management Guidelines, 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

13. **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.

14. **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.

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

15. **External lighting**

Suitable lighting is to be incorporated into the underside of the new awning to The Corso.

Details demonstrating consistency with this requirement are to be provided to the Principal Certifying Authority prior to the issuance of the occupation certificate.

Reason: To ensure pedestrian safety.

16. **Garbage and Recycling Facilities**

All internal walls of the waste rooms 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.
Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

17. **Colours and Materials**

The as-built development is to be finished in accordance with the Approved Schedule of Colours and Materials referenced in Condition 1 of this consent.

Details demonstrating consistency with this requirement are to be submitted to the Principal Certifying Authority prior to the issuance of the occupation certificate.

Reason: To ensure that the finishes of the development are consistent with that anticipated by this consent.

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

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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.

19. **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.

20. **Positive Covenant for Council and Contractor Indemnity**

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

Reason: To ensure ongoing access for servicing of waste facilities.

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

The original completed request form (NSW Land Registry Services 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.

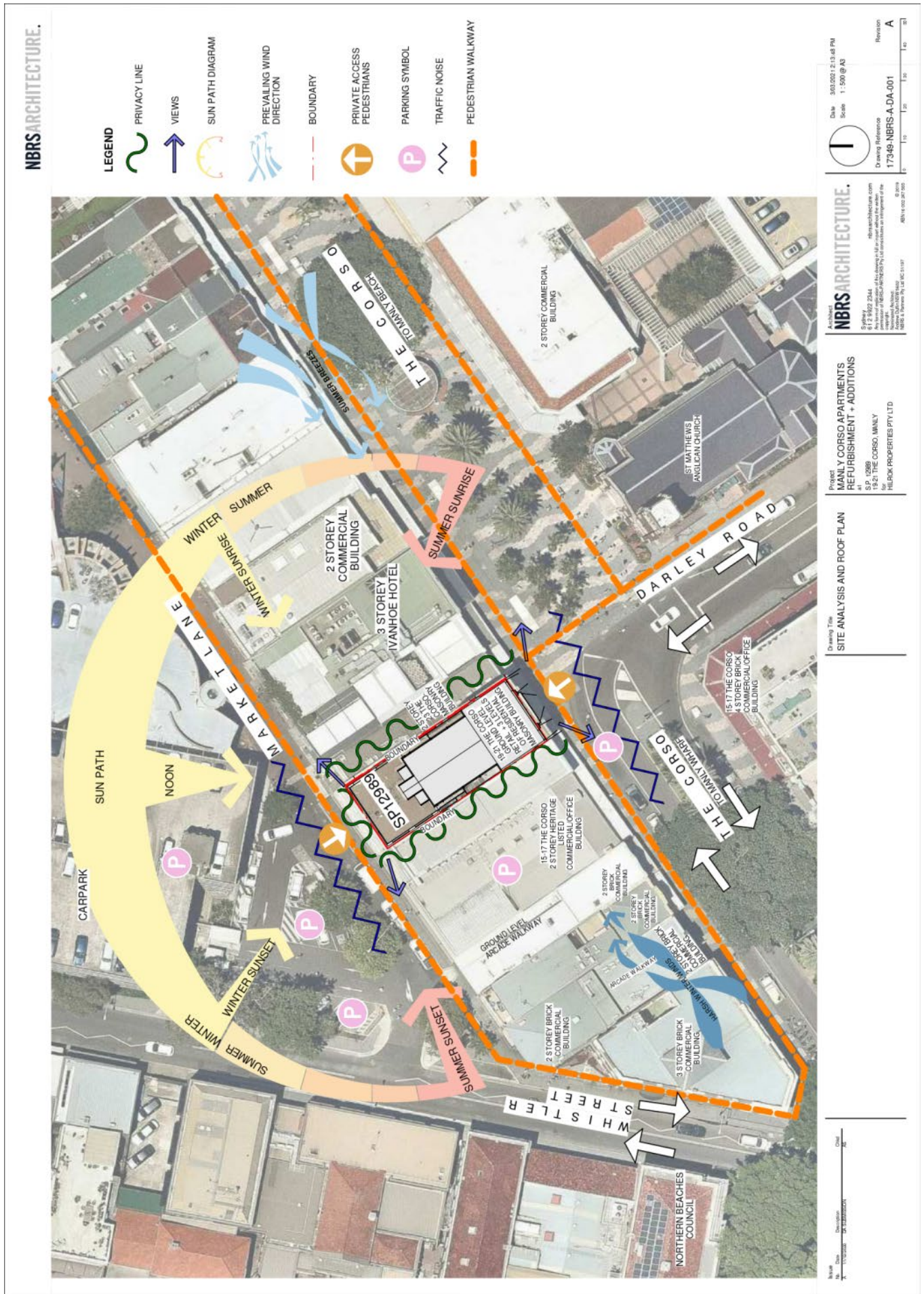
Reason: To create encumbrances on the land.

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

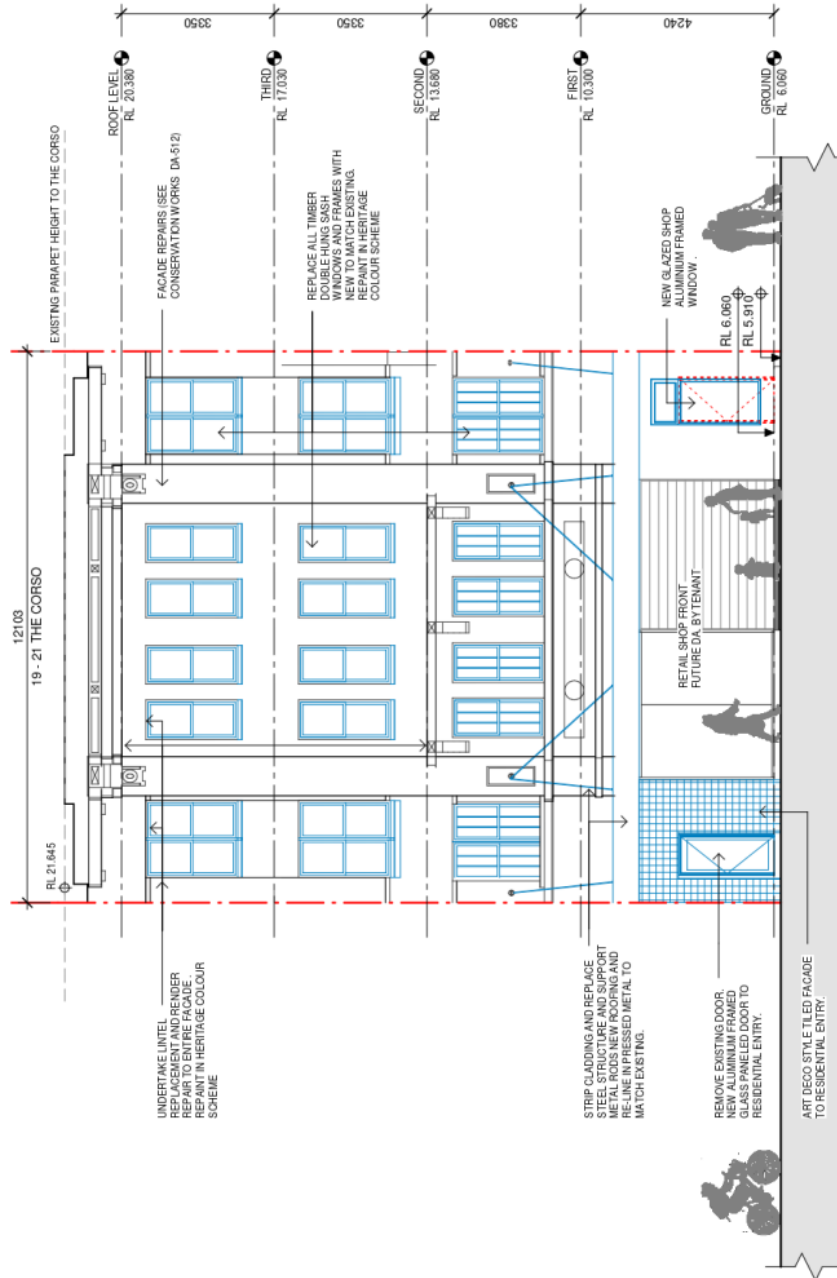
22. **Commercial Waste and Recycling Storage**

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.



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1 ELEVATION - THE CORSO
1:100

Revised
By: 15/05/2020
Date: 15/05/2020
Drawn: 15/05/2020
Checked: 15/05/2020

- EXISTING WALLS
- NEW WORKS
- WASTE MANAGEMENT
- WORKS AS PART OF FIRE & SAFETY UPGRADE
- TO BE DEMOLISHED
- BOUNDARY LINE

Drawing Title
THE CORSO ELEVATION

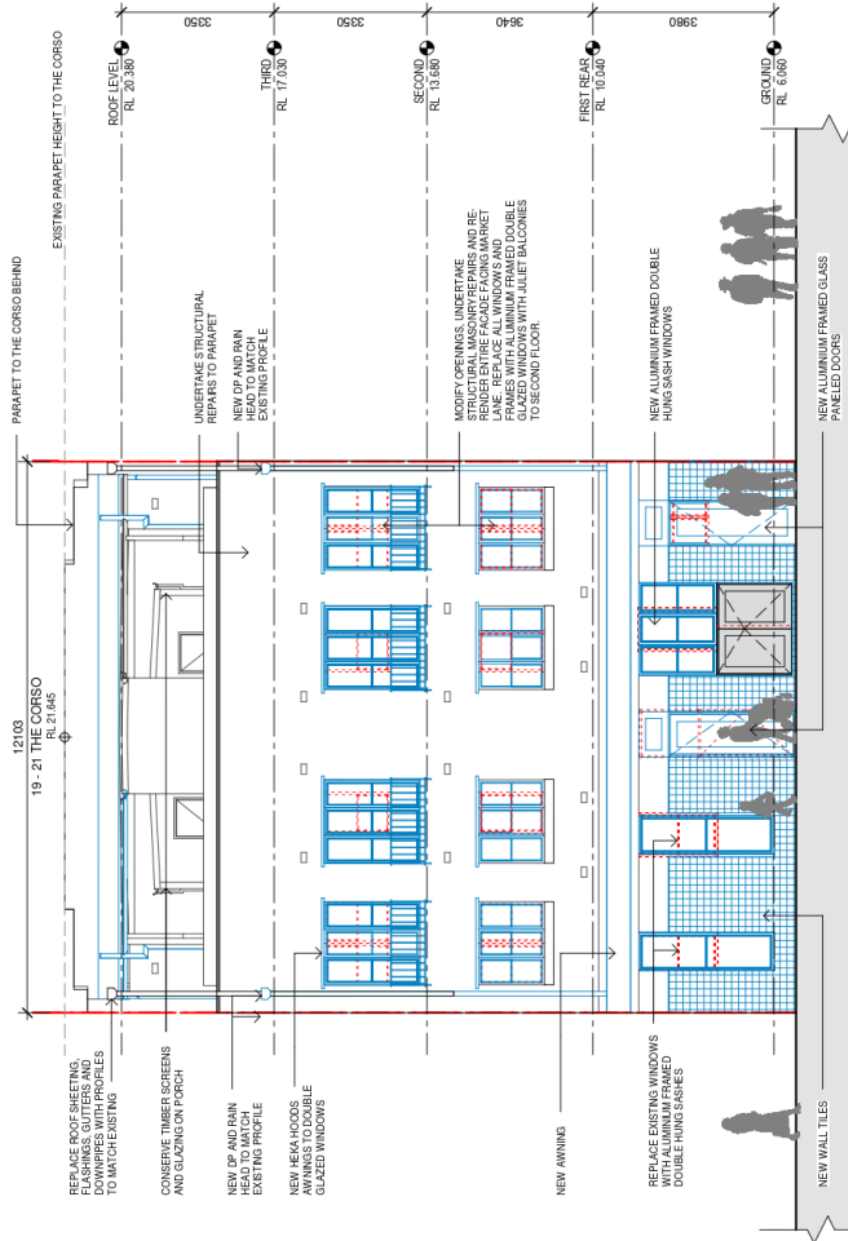
Project
**MANLY CORSO APARTMENTS
REFURBISHMENT + ADDITIONS**
S.P. 12089
19-21 THE CORSO, MANLY
HURON PROPERTIES PTY LTD

Architect
NBRSARCHITECTURE.
S.P. 12089
19-21 THE CORSO, MANLY
HURON PROPERTIES PTY LTD
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Drawing Reference: 17345-NBRS-A-DA-300
Revision: A



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1 ELEVATION - MARKET LANE
1:100

Revised
By: 15/05/2020
Date: 15/05/2020
Drawn: 15/05/2020
Checked: 15/05/2020



Drawing Title
MARKET LANE ELEVATION

Project
MAINLY CORSO APARTMENTS
REFURBISHMENT + ADDITIONS
S.P. 12089
19-21 THE CORSO, MAINLY
HURON PROPERTIES PTY LTD

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Drawing Reference
17349-NBRS-A-DA-310
Revision
A







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WRITTEN REQUEST PROVIDING GROUNDS FOR VARIATION TO FSR DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6 OF MANLY LEP 2013

PART OF 19-23 THE CORSO, MANLY

ALTERATIONS AND ADDITIONS TO THE EXISTING SHOP TOP HOUSING BUILDING AT 19-21 THE CORSO, MANLY

Context – Clause 4.6 of Manly LEP 2013

This written request has been prepared in respect of Clause 4.6 of Manly LEP 2013 (the LEP) to accompany a Development Application for alterations and additions to the existing shop top housing and ground floor retail building at 19-21 The Corso, Manly which forms part of the site at 19-23 The Corso.

The Development Application seeks a variation to the development standard provided at Clause 4.4 of the LEP, being Floor Space Ratio (FSR). Under Clause 4.4 of the LEP, the FSR development standard for the site is 2.5:1.

The existing building on the site already exceeds the 2.5:1 FSR standard under the LEP with a FSR of 2.59:1 (1356.84 sqm GFA), an exceedance of 0.09:1 (46.84 sqm GFA) (see Drawing 17349-A-DA-514 A prepared by NBRs, attached).

The proposed development results in an increase in the existing FSR to 2.61:1 (1365.84 sqm GFA), an increase of 9 sqm GFA (0.02:1) compared with the existing situation.

The proposal therefore involves an overall exceedance of the standard by 0.11:1 (55.84sqm GFA).

The increase in the FSR of the proposed development results from the removal of the stairs at the Ground and First Floors.

The proposed FSR of 2.61:1 represents a variation to the controls provided by Clause 4.4 of 0.11:1, or 4.4%.

Clause 4.6 of the LEP provides:

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

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- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the Development Application's proposed variation to the FSR development standard.

It is noted that the NSW Department of Planning and Environment provides guidance on how to prepare clause 4.6 variations in the form of *Varying development standards: A Guide* (August 2011). This written request to vary the FSR development standard is based on the DP&E's Guide.

This written request has also been prepared having regard to the recent judgment of the Chief Justice of the Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action). At paragraphs 17 – 21 of *Initial Action*, Preston CJ confirmed the findings in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe), regarding the available avenues to establish that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case (in

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accordance with the test provided by cl 4.6(3)(a) of the LEP) including establishing that the objectives of the development standard are achieved notwithstanding non-compliance with the standard (*Initial Action* at [17]).

Further, Preston CJ found in *Initial Action*, at paragraphs 87 and 88, in the context of Clauses 4.6(3)(a) and (b) that:

“...Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...”

...The requirement in Clause 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard...”

Written Request

As stated above, when measured in accordance with the definition in the LEP, the existing building on the site already exceeds the 2.5:1 FSR standard under the LEP with a FSR of 2.59:1 (1356.84sqm GFA), an exceedance of 0.09:1 (46.84 sqm GFA) (see Drawing 17349-A-DA-514 A prepared by NBRS, attached).

The proposed development results in an increase in the existing FSR to 2.61:1 (1365.84 sqm GFA), an increase of 9 sqm GFA (0.02:1) compared with the existing situation.

The proposal therefore involves an overall exceedance of the standard by 0.11:1 (55.84sqm GFA).

The increase in the FSR of the proposed development results from the removal of the stairs at the Ground and First Floors.

The questions set out in the DP&E's Guide are addressed below.

1. What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013 (the LEP).

2. What is the zoning of the land?

The zoning of the land is B2 Local Centre.

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3. *What are the objectives of the zone?*

The objectives of the B2 zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

4. *What is the development standard being varied?*

The development standard being varied is the FSR development standard.

5. *Under what Clause is the development standard listed in the environmental planning instrument?*

The development standard is listed under clause 4.4 of the LEP.

6. *What are the objectives of the development standard?*

The objectives of clause 4.4 are:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

7. *What is the numeric value of the development standard in the environmental planning instrument?*

The numeric value of the FSR development standard is 2.5:1.

8. *What is the proposed numeric value of the development standard in your development application?*

The maximum numeric value proposed is 2.61:1, equating to an additional FSR of 0.11:1.

9. *What is the percentage variation (between your proposal and the environmental planning instrument)?*

The percentage variation is 4.4%.

10. *How is strict compliance with the development standard unreasonable or unnecessary in this particular case?*

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In the circumstances of the case, it is considered that strict compliance the FSR development standard applicable to the site is unreasonable and unnecessary for the following reasons:

A. The objectives of the development standard are achieved notwithstanding non-compliance with the standard (cl 4.6(3)(a), cl 4.6(4)(ii) and *Initial Action* at [17])

Objective 4.4(1)(a) - to ensure the bulk and scale of development is consistent with the existing and desired streetscape character

Objective 4.4(1)(b) - to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features

Objective 4.4(1)(c) - to maintain an appropriate visual relationship between new development and the existing character and landscape of the area

Assessment:

The bulk and scale of the proposed development, including the proposed FSR variation, is considered to be acceptable in its context and would not give rise to unacceptable impacts on the existing streetscape, townscape or character of the area as it reflects the existing situation in terms of the existing building bulk, scale and density on the site.

As noted above, the existing building already exceeds the FSR standard with a FSR of 2.59:1. The proposal represents a very minor increase (9 sqm GFA) from the existing situation with a FSR of 2.61:1.

The change in the GFA/FSR compared with the existing building results from internal alterations within the building, being the removal of stairs at the Ground and First Floors. There is no change in the external built form or its bulk and scale compared with the existing situation.

The proposal, including the FSR variation, does not involve any change to the existing bulk and scale of the building as viewed from the street as the existing built form is maintained and the existing relationship of building forms in the streetscape. The proposed development will therefore be compatible with the adjoining development, the streetscapes of The Corso and Market Place and will maintain the amenity of the public domain.

There is no change to the visibility and visual prominence of the parts of the building in excess of the FSR standard when viewed from the public domain and there is no change to the existing streetscape/townscape character of the building as viewed from The Corso and Market Place.

Desired Future Streetscape Character

The desired future streetscape character of the subject building is set out in Manly DCP 2013 which contains townscape objectives and provisions for local and neighbourhood centres in Section 3.1, townscape provisions for Manly Town Centre in Section 4.2.5.1 and character provisions for Manly Town Centre Heritage Conservation Area and The Corso in Section 5.1. The proposed development, including the proposed FSR variation, is considered to be consistent with these provisions, as follows.

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Manly DCP Townscape Objectives and Provisions

The townscape objectives of the DCP are as follows:

- Objective 4) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*
- Objective 5) To assist in maintaining the character of the locality.*
- Objective 6) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*
- Objective 7) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.*

The proposal is consistent with the above objectives, in that:

- no parking exists on the site and none is now proposed;
- the proposed development maintains the character of the locality by proposing conservation works, refurbishment and alterations to the existing building, including the height variation, which:
 - maintain the existing built form, bulk and scale of the existing building as viewed from the public domain;
 - do not exceed the existing maximum building height or other existing heights of parts of the building;
 - do not change the visual prominence of the building when viewed from the public domain to maintain the existing streetscape character; and
 - include the retention and upgrade of the existing building, including its façades to The Corso and Market Place, in a manner consistent with its heritage significance.
- it recognises the importance of pedestrian movement and townscape design in strengthening and promoting Manly Town Centre by:
 - maintaining and increasing the active frontage to The Corso and increasing the level of activation to Market Place;
 - by refurbishing the existing awning to The Corso and providing a new awning to Market Place to improve pedestrian amenity; and
 - by improving the appearance of the existing building from both streets through the upgrade and refurbishment of the street front façades;
- it minimises negative visual impacts to promote townscape qualities with improvements in the appearance and condition of the building as a result of the proposed works with no change in the existing built form.

The proposal, including the FSR variation, is consistent with the applicable townscape provisions of the DCP, as follows.

Local role of the site

The proposal maintains the local role of the site as no changes are proposed to the overall form and scale of the building as viewed from The Corso and Market Place. The proposal maintains the existing built form relationship with adjoining development and public spaces.

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No changes are proposed to the street frontage façade to The Corso which is to be retained and conserved in accordance with the HIS (see **Appendix 4** in the SEE) which will enhance the appearance of the building within the heritage item of The Corso. The proposed modifications to the rear façade will contribute to the presentation of the building to Market Place, will improve the amenity of the rear units and will have a satisfactory heritage impact.

Townscape Principles Map

The proposed development is consistent with the Townscape Principles map as it relates to the subject site by maintaining and improving the existing important vistas along The Corso and from Darley Road towards the site.

Design Details

The proposal is consistent with the relevant design details controls in that:

The proposal is consistent with the relevant design details controls in that:

- as set out in the HIS (see **Appendix 4**) the proposal is complementary to adjacent buildings and the wider conservation area in terms of the design detailing of the façades. As noted above, no changes are proposed to the façade to The Corso which is to be conserved and refurbished;
- no change is proposed to the height of the building and no change is proposed to floor levels within the building, apart from the provision of ramps within the rear Ground Floor;
- the materials, textures and original colours of the existing building are to be retained or reinstated where there is sufficient available evidence;
- the proposal maintains the architectural style of the existing building fabric;
- no change is proposed to the existing building footprint;
- the proposal will not give rise to any additional overshadowing or adverse wind effects as no change is proposed to the height and form of the building;
- the proposal will improve the appearance of the side walls of the building, to the extent that they are visible, through the proposed refurbishment and removal of external services;
- the Ground Floor has level access from The Corso and Market Place with internal ramps within the entry from Market Place;
- retail space occupies the majority of the width of the building frontage to The Corso, with the remainder occupied by the residential entry;
- street numbering will be provided as required; and
- the proposal includes internal ducting for water supply, waste and mechanical exhaust to the existing units. The retail area air-conditioning plant will be housed within a re-purposed terrace level communal laundry rather than reinstated on the roof.

Manly DCP Character Provisions for Manly Town Centre Heritage Conservation Area and The Corso

General Character

The proposal, including the FSR variation is consistent with the general character of the Town Centre Conservation Area as set out in the DCP (see also **Appendix 4** to the SEE) in that it involves alterations and additions to an existing building which:

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- maintain the existing scale of the street frontage façades;
- is built to the property boundaries to The Corso and Market Place;
- provides a good level of pedestrian amenity afforded by the existing and proposed footpath awnings; and
- contributes to the range of architectural styles in the area.

The Corso

The proposed development is consistent with the guidelines for The Corso (see also **Appendix 4** in the SEE), in that:

- the existing building at 19-21 The Corso, which is part of the group heritage item on The Corso, is to be conserved, not redeveloped;
- the importance of internal changes is recognised in the approach to the design of the proposed development as detailed in the submitted HIS (see **Appendix 4**);
- no change is proposed to the existing building height or built form;
- the parapet to The Corso will continue to be read against the sky;
- there are no critical views to be kept open to or through the site;
- no change is proposed to the existing subdivision pattern;
- a new building is not proposed;
- windows and balconies open to the street;
- there is no existing arcade through the site;
- the existing footpath awning to The Corso façade is to be refurbished. A new awning is proposed to the Market Place façade as required;
- the shopfront to The Corso occupies most of the width of the frontage to maximise activity. Roller shutters are not proposed;
- the shop front is existing on the site;
- the proposal will utilise external colours that are appropriate for the type and age of the building. The original external colours will be re-instated if there is sufficient evidence on-site;
- transmission of noise into the dwellings will be controlled through the use of appropriate glazing within replacement windows and doors to the existing units;
- external details for plant, exhausts, ducts etc. are designed to be part of the overall building structure;
- the proposal will contribute to the presentation of the building to Market Place through the upgrade of the rear façade and will improve casual surveillance of Market Place through the proposed changes to the rear façade; and
- the site specific controls in Schedule 6 to the DCP state in relation to 21 The Corso *redesign the two ground level entrance doors to the upper floors to give a more substantial appearance, with transparent glazing (to increase connection with street) and solid returns*. The proposed development removes the eastern ground level door to the upper floors from the front elevation as that access is redundant due to the separation of the subject building from No. 23, adjoining. That door is converted to a shop window and forms part of the retail frontage of the building. The proposal upgrades the second, western door to the residential lobby with a new glass panelled door with hood over and tiled entry surround consistent with the requirements.

In addition, the proposed FSR variation is an appropriate response to the heritage significance of the site and the streetscape of The Corso (see **Appendix 4** to the SEE).

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Accordingly, despite the FSR variation of the proposed development, the bulk and scale of development is consistent with the existing and desired streetscape character, will not obscure important landscape and townscape features and maintains an appropriate visual relationship between new development and the existing character and landscape of the area.

Objective 4.4(1)(d) - to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain

Assessment:

The proposed FSR variation will not result in significant adverse impacts on the amenity of surrounding properties or the public domain in terms of privacy, overshadowing/solar access or view loss/disruption.

Sunlight Access and Overshadowing

The proposed FSR variation will not result in any significant adverse impacts on the public domain or residential properties in terms of overshadowing/solar access.

The proposal does not give rise to any additional overshadowing as no change is proposed to the bulk, scale or form of the building.

Privacy

The proposed FSR variation will not result in a loss of visual privacy to any neighbouring developments. The units have their primary outlook over The Corso and Market Place. Where they also have windows facing the side boundaries, these either face the side wall enclosing the lightwell or, for those at the Third Floor, are over the roofs of the neighbouring buildings.

Views

The proposed FSR variation will not result in any significant impact on views. As noted above, there is no increase in the height of the existing building and no change to the existing built form.

Accordingly, the FSR variation will not result in adverse environmental impacts on the use or enjoyment of adjoining land and the public domain by way of loss of privacy, overshadowing or loss of views.

Objective 4.4(1)(e) - to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres

Assessment:

The proposed FSR variation will have no effect on the viability of the business zone.

The proposed development provides for continued retail activity at the ground floor level within a refurbished and upgraded retail space that will enable the proposal to contribute to the economic growth, retention of local services and employment opportunities in the

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centre. The quantum of non-residential floor space proposed on the site exceeds Council's minimum floor space for such uses.

B. Consistency with the objectives of the B2 Local Centre zone (cl 4.6(4)(a)(ii))

Assessment:

As well as achieving the objectives of clause 4.3 as demonstrated above, the proposal is also in the public interest as it is consistent with the relevant objectives of the B2 Local Centre zone in that:

- it contributes to the range of retail uses in the zone that serve the needs of people who live in, work in and visit the local area, including existing and future residents of the subject building;
- it provides for employment opportunities in a highly accessible location through the non-residential floor space which exceeds Council's minimum floor space for such uses;
- it maximises public transport patronage and encourages walking and cycling with residential development in a highly accessible, walkable location without private car parking; and
- it minimises conflict between land uses in the zone and adjoining zones and ensures amenity for the people who live in the local centre by maintaining the existing land use mix on the site.

It is therefore considered that the proposed FSR variation does not compromise the ability of the Development Application to satisfy the relevant B2 Local Centre zone objectives. The Development Application must therefore be considered to be in the public interest.

11. *How would strict compliance hinder the attainment of the objects specified in Section 1.3(a) and (c) of the Act?*

The proposal satisfies the zone and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives. The proposal will result in a better outcome and contribute to a better environment by providing for the upgrade and refurbishment of the existing building already exceeding the applicable FSR standard in a manner which responds appropriately to existing surrounding development, the heritage significance of the building and neighbouring development and which will make a positive contribution to the character of the streetscape and the locality.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development and therefore a better planning outcome overall.

In this regard, the proposal also meets the object of the Act with respect to good design and amenity of the built environment.

It is also noted that there is no public interest in requiring compliance with the relevant FSR standard on the basis that doing so would hinder the attainment of the objects of section 1.3(a) and (c) of the Act, which are to promote the social and economic welfare of the community and to provide a better environment by the proper management, development and conservation of the State's natural and other resources, in addition to promoting and coordinating orderly and economic use and development of land.

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The development as proposed, including the FSR variation is consistent with the provisions of orderly and economic development.

12. *Is the development standard a performance based control? Give Details.*

The FSR development standard is a performance based control as the control contains objectives which the standard is targeted to achieve.

13. *Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?*

This matter is addressed in detail above in the answer to Question 10. Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development.

The development is consistent with the provisions of orderly and economic development and good design and amenity of the built environment.

14. *Are there sufficient environmental planning grounds to justify contravening the development standard? Give details. (cl 4.6(3)(b) and Initial Action at [24])*

There are sufficient environmental planning grounds to support the variation to the FSR development standard applicable to the site, being:

- The existing development on the site involves a breach of the FSR standard. The additional breach now proposed is very minor at 0.02:1 (10 sqm GFA).
- There is no change in the form, bulk and scale of the existing building associated with the breach of the FSR standard.
- The bulk and scale of the proposed development, including the proposed FSR variation, are consistent with the existing and desired streetscape character, will not obscure important landscape and townscape features and maintain an appropriate visual relationship between new development and the existing character and landscape of the area.
- The proposed development, including the FSR variation, is consistent with the townscape objectives and design principles for the Manly Town Centre and The Corso.
- The proposed development, including the FSR variation, is consistent with the heritage significance of the site, as part of The Corso heritage item, and the wider Manly Town Centre Conservation Area as detailed in the submitted HIS (see **Appendix 4** to the SEE).
- The FSR variation will not give rise to any adverse amenity impacts on surrounding development in terms of overshadowing, loss of solar access or loss of views as no change in building height, bulk or form is proposed.
- The proposed development, including the FSR variation, achieves compliance with the relevant underlying objectives of the standard and the objectives of the zone.

The above factors confirm that there are sufficient environmental planning grounds to justify the variation and that the Clause 4.6 variation request is well-founded.

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Summary

Accordingly, it is considered that there are more than sufficient environmental planning grounds to justify the variation on the basis that compliance with the FSR standard would be unreasonable and unnecessary in the circumstances of this particular case. As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the FSR standard and the objectives of the B2 zone.

In the context of the other requirements of Clause 4.6, it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

The proposal also meets the objects of the EP&A Act with respect to good design and amenity of the built environment and will contribute to a better environment by providing a built form which respects the scale and definition of the existing streetscape and townscape qualities.

This request is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case.

Despite the proposal's non-compliance with the FSR development standard, the proposed development is considered to meet the relevant objectives of the standard and the objectives of the B2 zone.

ITEM 4.2	DA2020/1703 - 2 & 4 HAYES STREET, BALGOWLAH - USE OF PREMISES AS A BULKY GOODS PREMISES AND CAFE
AUTHORISING MANAGER	Anna Williams
TRIM FILE REF	2021/231797
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Report - Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/1703 for Use of premises as a Bulky Goods Premises and Café at Lot 1 DP 598670 & Lot 1 DP 701462, 2 & 4 Hayes Street, Balgowlah subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1703
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 1 DP 701462, 4 Hayes Street BALGOWLAH NSW 2093 Lot 1 DP 598670, 2 Hayes Street BALGOWLAH NSW 2093
Proposed Development:	Use of premises as a Bulky Goods Premises and Cafe
Zoning:	Manly LEP2013 - Land zoned B6 Enterprise Corridor
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Mangraviti Investments Pty Ltd
Applicant:	Mangraviti Investments Pty Ltd

Application Lodged:	29/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	14/01/2021 to 28/01/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 27.8%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,169,763.00
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Executive Summary

The proposed development seeks consent for alterations and additions to the existing building and the use as a specialised retail premises, including a cafe.

The proposed external works include refurbishment of the existing building facades and installation of new signage. The proposal also includes substantial changes to the internal layout of the building and subsequent redistribution of gross floor area across the ground and first floor levels.

The proposal represents an overall reduction of 34.7m² to the gross floor area approved under the previous consent for the site, DA0182/2015, which consented to the consolidation and connection of the existing buildings at No. 2 and No. 4 Hayes Street with a total floor space ratio variation of 29.2%.

The proposed internal redistribution of floor area will result in a technical variation to the floor space ratio development standard of 27.8%.

An assessment of the proposed floor space ratio non-compliance and the accompanying Clause 4.6 written request is undertaken within this report and is found to be satisfactory.

As the variation exceeds 10%, the application is referred to the Local Planning Panel for determination.

No submissions were received in response to the notification/advertising of the application.

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, including the applicable planning controls.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks approval for use as a specialised retail premises with an ancillary licensed cafe, and physical works as follows:

External works

- Cladding and paint works
- Awnings to the southern and western facades
- Illuminated signage to the Condamine Street, Hayes Street and eastern facades
- New glazed shopfront to cafe
- Increased loading dock width to Hayes Street
- Demolish existing driveway to provide new outdoor dining area for cafe
- Landscaping to Condamine Street planters and eastern facade

Internal works

- Cafe and kitchen fit out
- New sanitary facilities, fire services, lighting, stairs and ramp for cafe
- No showroom fit out including walling, flooring, paint work, joinery and lighting

Signage

The proposal includes a total of nine signs to the southern, eastern and western building facades. The proposed signage includes a range of illuminated and non-illuminated wall and awning signs.

Hours of operation

The proposed hours of operation of the specialised retail premises (Coco Republic) are 10am to 5pm, 7 days a week.

The proposed hours of operation of the ancillary cafe (L'Americano Cafe) are as follows:

Monday to Thursday 7:30am to 3pm

Friday 7:30am to 4pm

Saturday & Sunday 9am to 4pm

Staff numbers

The specialised retail use proposes a total of 20 staff and the licensed cafe proposes a further 6-8 staff.

Car parking

A total of 38 car parking spaces and one loading bay are allocated to the subject unit.

Note: The proposal excludes the second floor and the eastern portion of the first floor of 4 Hayes Street.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.3 Flood planning
 Manly Local Environmental Plan 2013 - 6.21 Noise impacts—licensed premises
 Manly Development Control Plan - 3.4.4 Other Nuisance (Odour, Fumes etc.)
 Manly Development Control Plan - 3.6 Accessibility
 Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor
 Manly Development Control Plan - 4.3.2 FSR and Height
 Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

Property Description:	Lot 1 DP 701462 , 4 Hayes Street BALGOWLAH NSW 2093 Lot 1 DP 598670 , 2 Hayes Street BALGOWLAH NSW 2093

Detailed Site Description:

The subject site consists of two allotments, 2 Hayes Street (Lot 1, DP598670) and 4 Hayes Street (Lot 1, DP701462). The site is located on the northern-eastern Corner of Hayes Street and Condamine Street.

The site is irregular in shape with a frontage of 57.74m to Hayes Street, a frontage of 44.11m and a corner splay of 3.115m. The site has a surveyed area of 2550m².

The site is located within the B6 Enterprise Corridor zone and accommodates two and three-storey commercial developments.

The site slopes approximately 2m from west to east.

The site does not contain any significant vegetation.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a range of commercial and light industrial uses.

Map:



SITE HISTORY

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

DA0078/2013 - Demolition of existing structures, construction of a two (2) storey bulky goods retail building including car park with twenty-six (26) spaces, retail tenancy, loading dock, driveway and landscaping - Approved 5 February 2014.

DA0182/2015 - Alterations and additions to existing and approved building to consolidate them into one (1) building including an extension to connect the buildings, modification to façade, internal modifications, signage and consolidation of the lots - Approved 19 November 2015.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. The proposed development retains the commercial use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received.
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 14/01/2021 to 28/01/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation 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>Proposal supported, subject to conditions.</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Food Premises, Skin Pen.)	<p>Proposal supported, subject to conditions.</p> <p>General Comments</p> <p>Essentially proposal involves from Environmental Health's perspective:</p> <p>It is proposed that the L'Americano Café hours of operation will be as follows:</p> <p>Monday to Thursday 7.30 am to 3.00 pm Friday 7.30 am to 4.00 pm. Saturday and Sunday 9.00 am to 4.00 pm.</p> <p>The proposed licenced café will employ approximately 6-8 staff overall.</p> <p>The Licenced Café has been design with a patron capacity of 70 people</p> <p>Sanitary facilities proposed:</p> <ul style="list-style-type: none"> – Demolish existing sanitary facilities and construct ○ 1 x Accessible WC ○ 1 x Male Ambulant WC ○ 1 x Female WC <p>As 2 female WC's are required, the Accessible WC is required to be a Unisex (which can count as 2) but a Male urinal is required and not proposed.</p> <p>No other objections to the proposal are raised.</p> <p>No residential premises are impacted.</p> <p>Conditions will be added to allow the matter to proceed without refusal</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
NECC (Development Engineering)	<p>Proposal supported, subject to conditions.</p> <p>Development Engineering has no objection to the application subject to the following conditions of consent.</p>
NECC (Stormwater and Floodplain Engineering –	<p>Proposal supported, subject to conditions.</p>

Internal Referral Body	Comments
Flood risk)	The proposed development generally complies with the flood requirements of the DCP and LEP.
Traffic Engineer	<p>Proposal supported, subject to conditions.</p> <p>The proposed development is for reuse of most of the ground floor and 1st floor of the existing building for the purpose of a bulky goods retail outlet and ancillary licensed café. The existing development approval for the site is for warehouse & light industrial uses with a small bulky goods retail outlet of some 793sqm.</p> <p>The bulky goods retail component of the proposed DA has a GFA of 2162sqm while the café has a GFA of 306 sqm.</p> <p>Parking:</p> <p>The existing site has 52 carparking spaces including 3 x disabled parking spaces and has a parking shortfall in terms of DCP requirements of 5 spaces. No changes to the level of parking provision are proposed under the development application.</p> <p>The proposed development increases the size of the bulky goods retail floor space from 793 sqm to 2162 sqm, an increase in floor area allocated to this use of some 1369sqm. The café component of the development has also been added. There is a corresponding decrease in the quantum of floor space allocated to warehouse and light industry.</p> <p>The DCP parking requirement for bulky goods retail is 1 space per 50 sqm of GFA. This would equate to 43 spaces for the bulky goods component. The DCP requires parking for the café component of the proposed development at a rate of 1 space for every 40 sqm of GFA i.e a requirement of 8 spaces. The total parking requirement under the DCP for these uses is therefore 51 spaces. The developer proposes to allocate 38 spaces for the bulky goods and café components of the development, the balance of the 52 available spaces will remain available for existing light industrial units on the site.</p> <p>While the quantum of parking allocated to the proposed uses does not meet DCP requirements, the RMS Guide to Traffic Generating Developments advises that parking demands associated with bulky goods retail vary widely between 0.3 to 5.1 vehicles /100sqm of GLFA and rather than proposing a parking rate suggests that comparisons be drawn with similar development. It is noted that the applicant's traffic consultant has referenced an RMS parking demand survey undertaken for the nearby Freedom Furniture store which found a peak parking demand of 39 parked vehicles for their bulky goods retail outlet with a GFA of 4300 sqm i.e a parking demand of 0.91/100sqm of GFA. Applying this rate to the proposed 2162sqm of bulky goods retail would equate to a parking demand of 19.6 spaces, rounded up to 20.</p> <p>Applying this rate to the proposed development would result in a total</p>

Internal Referral Body	Comments
	<p>parking demand generated by the development of 28 spaces (20 + 8).</p> <p>It is also noted that the site is well served by public transport being sited within easy walking distance of the Manly vale B-Line bus stop and many other bus routes which utilise Pittwater Road. This would tend to result in a proportion of customers and staff choosing to access the site via public transport rather than private motor vehicle which will help reduce parking demands. The proposed allocation of 38 spaces for the bulky goods and retail uses is therefore considered adequate and there is no objection to the quantum of parking provided on site.</p> <p>The carparking layout has already been approved under a previous DA and, although noting that circulation aisles in the ground floor carpark are not fully compliant in terms of width with AS 2890.1 the departures are considered acceptable given the proposed one way circulation through the carpark.</p> <p>Bicycle Parking</p> <p>There is currently no bicycle parking on the site and there is a DCP parking requirement for 1 bicycle parking space for every 3 carparking spaces. For the proposed uses, if 38 spaces are allocated, this would equate to a requirement for 13 bicycle parking spaces. These should be provided.</p> <p>Disabled Parking</p> <p>There are 3 disabled parking spaces within the existing parking areas. This is considered adequate and meets the requirements in terms of the building Code of Australia. The disabled spaces are not however marked in a fashion which is consistent with the requirements of AS2890.6 and this should be rectified.</p> <p>Traffic Generation:</p> <p>The existing development on the site has been estimated to generate peak hour 27 trips. The proposed development on the site has been estimated to generate 33 peak hour trips. The increase in generated traffic of 6 peak hour trips is considered unlikely to have a significant impact upon traffic conditions on the surrounding road network.</p> <p>Servicing:</p> <p>The existing site is served by a loading bay on the Condamine Street frontage of the site and 3 loading docks on the Hayes street frontage of the site. It is proposed to close the Condamine Street loading dock and two of the loading docks fronting Hayes Street. The remaining loading dock fronting Hayes Street will have the clearance height increased from 3.6m to 4.0m (to the level of the floor slab above).</p> <p>Deletion of the loading dock on the Condamine Street frontage is supported as vehicle access points to State Roads are discouraged,</p>

Internal Referral Body	Comments
	<p>particularly ones that require reversing from the site.</p> <p>The deletion of the Loading Docks from the Hayes Street frontage is also not opposed as it will allow kerb side parking to be reinstated in their place and will reduce vehicle movements across the footpath.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
NSW Police – Licensing (Clubs, Hotels, Pubs)	NSW Police commented that the proposed licensed cafe premises is generally acceptable and raised no objection to the development, subject to the recommended 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 commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

SEPP 64 - Advertising and Signage

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

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

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

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed land use is permissible in the zone and the proposed signage is considered to be appropriate for the premises. As such, the proposal is considered to be compatible with the desired future character of the locality.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposal is consistent with the existing outdoor advertising of retail premises within the B6 zone.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The subject site is not in close proximity to any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas. Regardless, the proposed signage will not result in any adverse amenity or visual impact to the surrounding area.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The proposed signage is attached to the existing structures and will not obscure or compromise any important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage is attached to the existing structures and will not dominate the skyline or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposal does not result impinge on the viewing rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion and form of the proposed signage is considered to be appropriate given the scale and frontages of the site/building.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage is of high quality design and contributes positively to visual the interest of the surrounding area.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The existing advertising does not require simplification and the proposal does not result in visual clutter.	YES
Does the proposal screen unsightliness?	The proposal includes substantial refurbishment and visual improvement of the facade of the premises.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is	The proposal is considered compatible with the scale, proportion and characteristics of the site and building.	YES

to be located?		
Does the proposal respect important features of the site or building, or both?	The proposal has suitable regard for the features of the building and site.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage provides an appropriate response to the refurbished building.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	Lighting devices are integrated into the signage.	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	The physical separation to residential development and the location of signage ensures that the illumination will not result in any unacceptable impacts to safety or amenity.	YES
Can the intensity of the illumination be adjusted, if necessary?	The Applicant advises that the illumination can be adjusted where necessary.	YES
Is the illumination subject to a curfew?	No.	YES
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposed signage is appropriately located to avoid safety impacts to roads, pedestrians and bicyclists.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No.	YES

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid with suitable conditions recommended.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	14.3m (existing building) 8.89m (proposed works)	N/A	Yes
Floor Space Ratio	1:1 2550m ²	1.28:1 3259.8m ² (existing/approved 1.29:1)	27.8%	No (as approved)

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes
6.21 Noise impacts—licensed premises	Yes

Detailed Assessment

4.3 Height of buildings

The proposal maintains the existing building heights and the external works are generally limited to aesthetic upgrades to existing structures.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
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Requirement:	1:1 (2550m ²)
Proposed:	1.28:1 (3259.8m ²)
Percentage variation to requirement:	27.8%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) *the consent authority is satisfied that:*

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

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

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters

required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *"There are particular constraints that affect the subject site which justify a contravention to the maximum Floor Space standard, primarily the fact that the proposal relates to an existing approved building. The proposal does not seek to alter the existing bulk and scale of the existing building; and in fact will result in a 34.7m² reduction in Gross Floor Area from that previously approved on site.*
- *The presentation to the street is improved as the proposal incorporates an articulated and visually appealing façade at 4 Hayes Street to integrate its appearance and cohesion with 2 Hayes Street.*
- *The proposed development seeks the use of the existing building at No. 2 and 4 Hayes Street, Balgowlah for the purpose of Specialised Retail Premises and an ancillary Licenced Café. The proposed works are limited to external alterations to the building façade and the internal reconfiguration of approved floor space. The proposal will not result in any change to the approved bulk and scale of the existing building."*

The physical works included in the application are internal alterations that result in the reallocation of gross floor area within the building footprint and external refurbishment of the existing building facade. The proposal results in a reduction of 34.7m² to the previously approved gross floor area (under DA0182/2015), as calculated in accordance with the Manly LEP definition and relevant case law. The proposal involves the re-use and visual improvement of the existing building, and will not give rise to additional visual bulk as viewed from adjoining sites or the streetscape.

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 building 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 B6 Enterprise Corridor zone. An assessment against these objectives is provided below.

Objectives of development standard

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The proposal results in an overall reduction to gross floor area and will maintain the existing bulk and scale. The external works to the building facades achieve consistency with the desired streetscape character.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The proposed development will not increase building bulk or unreasonably obscure any important landscape or townscape features.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

The proposal will improve the visual relationship between Nos. 2 and 4 Hayes Street, and between the subject site and surrounding locality.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

The proposed development will not adversely impact the use or enjoyment of adjoining land and the public domain.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The proposed use is permissible within the zone and achieves the zone objectives.

Zone objectives

The underlying objectives of the B6 Enterprise Corridor zone are:

- *To promote businesses along main roads and to encourage a mix of compatible uses.*

Comment:

The proposed specialised retail use is compatible with the site and surrounding uses.

- *To provide a range of employment uses (including business, office, retail and light industrial uses).*

Comment:

The proposed development will provide an increased range of uses and employment opportunities.

- *To maintain the economic strength of centres by limiting retailing activity.*

Comment:

The proposed retail use is considered to be appropriate in the context.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B6 Enterprise Corridor zone.

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

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

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

The consent authority can be satisfied of the matters prescribed by Clause 4.6.

6.2 Earthworks

The proposed excavation and fill works are minor in depth and extent, and are supported.

6.3 Flood planning

Council's Flood Officer raised no objection to the proposal.

6.21 Noise impacts—licensed premises

The proposal includes an ancillary licensed cafe within the development. The subject site is located within the B6 zone and surrounding premises generally contain commercial and industrial uses. The site is sufficiently separated from the nearest residential receivers to the west and southwest, and the cafe is not expected to generate excessive noise levels based on the proposed hours of operation and the primary retail land use. Further, NSW Police raised no objection to the proposal, subject to recommended conditions of consent.

Mainly Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
4.3.4 Access, Loading & Parking	1 loading bay per unit	1	Yes
4.3.5 Setbacks	0m, subject to impact	0m	Yes
4.4.3 Signage	2 signs per frontage	9 signs	No
Schedule 3 - Part A1 - Vehicle Parking	51 spaces	38 spaces	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.2 Streetscape Improvement in LEP Zone B6 Enterprise Corridor	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.3 Development in LEP Zone B6 Enterprise Corridor	Yes	Yes
4.3.2 FSR and Height	Yes	Yes
4.3.4 Access, Loading and Parking	Yes	Yes
4.3.5 Setbacks	Yes	Yes
4.3.6 Drainage	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.3 Signage	No	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.3 Flood Prone Land	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

Detailed Assessment

3.4.4 Other Nuisance (Odour, Fumes etc.)

Council's Environmental Health Officer has included appropriate conditions regarding the cafe kitchen fit out and mechanical ventilation.

3.6 Accessibility

The premises provides internal lift and ramp access and includes accessible toilet facilities.

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

Car Parking

The provision of 38 car spaces is non-compliant with the required 51 spaces for the development. This non-compliance is considered to be acceptable in this case for the reasons outlined in Council's Traffic Engineer referral comments.

Loading Bay

The proposal maintains one loading bay on the Hayes Street frontage. The provision of one loading dock is sufficient and complies with the DCP requirement.

4.3.2 FSR and Height

The development provides appropriate loading dock and car parking facilities and the roof top plant equipment is existing. The proposed external works are largely aesthetic in nature and do not materially alter the bulk and scale of the buildings.

4.4.3 Signage

4.4.3.1(a) permits a maximum of 2 identification signs per frontage, providing for a total of four signs at the subject site. A total of nine signs are proposed, including a variety of wall and awning signs. Given the scale of the building and the length of the site frontages, the proposed signage is considered to be consistent with the objectives of the control and is supported. An assessment of the proposal against SEPP 64 Advertising and Signage has also been completed.

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 \$21,698 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,169,763.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

The proposed development is considered to be a suitable and appropriate development in the context of the site.

The key planning issues considered within the assessment are the proposed floor space ratio non-compliance and the visual impacts of the development. Notwithstanding the proposed floor space ratio variation, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

No submissions were received in response to the notification/advertising of the application.

The application has been assessed against the Manly LEP and DCP and is recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/1703 for Use of premises as a Bulky Goods Premises and Cafe on land at Lot 1 DP 701462, 4 Hayes Street, BALGOWLAH, Lot 1 DP 598670, 2 Hayes Street, BALGOWLAH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-DXX-001 Proposed Site & Roof Plan	Rev. A, 14 December 2020	A & Co.
DA-D00-011 Ground Floor - Showroom & Cafe - General Arrangement Plan	Rev. A, 14 December 2020	A & Co.
DA-D01-011 First Floor - Showroom - General Arrangement Plan	Rev. A, 14 December 2020	A & Co.
DA-EXX-011 External Elevations 01 & 02	Rev. A, 14 December 2020	A & Co.
DA-EXX-011 External Elevations 03 & 04	Rev. A, 14 December 2020	A & Co.
DA-GXX-001 External Signage Details - Southern Facade	Rev. A, 14 December 2020	A & Co.
DA-GXX-002 External Signage Details - Western Facade	Rev. A, 14 December 2020	A & Co.
DA-GXX-003 External Signage Details - Eastern Facade	Rev. A, 14 December 2020	A & Co.
DA-GXX-004 Proposed Material Palette	Rev. A, 14 December 2020	A & Co.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
NCC 2019 Design Specification	Issue 2, 11 December 2020	Trevor R Howse

Traffic Management Plan	1 December 2020	PW Traffic Plans
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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:

Landscape Plans		
Drawing No.	Dated	Prepared By
Schematic Plan	8 December 2020	Sod Design
Planting Plan A - Podium Bed #2	7 December 2020	Sod Design
Planting Plan B - Podium Bed # 1	8 December 2020	Sod Design

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
NSW Police	NSW Police Referral Response	4 March 2021
Ausgrid	Ausgrid Referral Response	Undated

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

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

3. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or

demolition work is being carried out, but must be removed when the work has been completed.

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 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 sewer areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

5. **Ausgrid Overhead Powerlines**

Safe work NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The "as constructed" minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website, www.ausgrid.com.au

It remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

"Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost.

It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site."

Underground Cables

Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables

were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables. Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

6. NSW Police Licensing

The licensed cafe element of the development must operate at all times in compliance with the conditions recommended by NSW Police.

Reason: To ensure consistency with the NSW Police requirements.

FEES / CHARGES / CONTRIBUTIONS

7. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$21,697.63 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,169,763.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

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

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

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

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

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).

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

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

9. **Construction Traffic Management Plan**

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

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available

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

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

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

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

10. **Building Code of Australia Upgrade requirements and Fire Safety Upgrade**

The Building Code of Australia works and fire upgrading measures to upgrade the building as detailed and recommended in the Building Code of Australia Audit Report prepared by Trevor R Howse P/L, dated 11 December 2020, Report Ref No. J20137 are to be carried out in full 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 Health, Amenity, access and Fire safety for building occupant health and safety.

11. 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, footpath and associated works 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 m wide driveway crossing to serve the loading dock in accordance with Council's Normal crossing profile
- 2) reinstate the existing driveway and layback into grass and kerb and gutter
- 3) a concrete area on footpath area to serve the proposed outdoor dining area

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.

12. 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.

13. Plans of Kitchen Design, construction and fit out

Prior to any Construction Certificate (CC) being issued, detailed plans that demonstrate compliance with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises', must be submitted to and approved by the Certifying Authority. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Reason: To ensure that the Food premise complies with the design construction and fit-out requirements.

14. Provision of a Male Urinal to Sanitary Facilities

A male urinal is to be provided as part of the sanitary facilities due to the number of staff and customers proposed.

Reason: To comply with the Building code of Australia.

15. **Flooding**

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

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 8.8m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

Storage of Goods – D1

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level of 8.8m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

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

16. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall also be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

- i) 300mm for lawn
- ii) 600mm for shrubs
- iii) 1m for small trees

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

17. **Signage/Planters**

All wall signage and trellis mesh is to be attached flush to the building and contained wholly within the subject site.

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

Reason: To ensure that all structures are located within the development site.

18. **Revised Parking Plan**

A revised carparking plan is to be prepared detailing:

- the marking and signposting of the basement carpark for 38 car parking spaces.
- the marking and signposting of the 3 x disabled parking spaces to demonstrate that they will be remarked in accordance with the requirements of AS2890.6
- the location of at least 13 bicycle parking spaces on site. Such spaces to be located in convenient and accessible locations

Reason: to ensure compliance with standards and provide parking facilities for all road users.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **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. A Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

21. **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.

22. Road Occupancy Licence (ROL) from Roads and Maritime Services

The developer shall apply for a Road Occupancy Licence (ROL) from the RMS Transport Management Centre (TMC) prior to commencing work within the classified road reserve or within 100m of traffic signals. The application will require a Traffic Management Plan (TMP) to be prepared by a person who is certified with 'Prepare a Work Zone Traffic Management' accreditation or equivalent. Should the TMP require a reduction of the speed limit, a Direction to Restrict will also be required from the TMC.

Reason: To inform the relevant Roads Authority of proposed disruption to traffic flows.

23. Staff and Contractor Parking

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement/rooftop parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

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

24. Signage and Linemarking - Internal

A work as executed plan demonstrating appropriate signage and markings for disabled parking spaces and installation of bicycle parking facilities is to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: to ensure disabled and bicycle parking is provided as per standards.

25. 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.

26. Shared Zone Bollard

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

27. Registration of Food Business

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

28. **Kitchen Design, construction and fit out of food premises certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a person who suitably qualified that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

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

Reason: To ensure that the kitchen complies with the design requirements.

29. **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.

30. **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.

31. **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.

32. **Removal of Redundant Driveways**

Redundant driveways on both the Condamine Street and Hayes Street frontage of the site are to be removed and kerb and gutter reinstated in their place in accordance with Council's and RMS requirements and satisfaction.

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

to the issue of any Occupation Certificate.

Reason: To ensure appropriate use of kerb space and satisfactory reinstatement of Council/RMS assets.

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

33. **Service Vehicle Area**

The area designated as manoeuvring areas must be kept clear of obstructions at all times. Vehicles must not be required to queue/unload on public roads at any time.

Reason: To ensure compliance with Australian Standards and prevent obstructions to traffic flows.

34. **Parking Enclosure**

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

Reason: To ensure accessibility is maintained.

35. **Hours of Operation**

The hours of operation are to be restricted to:

Retail Premises

10am to 5pm, 7 days a week

Licensed Cafe

- Monday to Thursday– 7:30am to 3pm
- Friday – 7:30am to 4pm
- Saturday, Sunday and Public Holidays – 9am to 4pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

36. **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 fertilised as required at the time of planting.

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

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

Reason: To maintain local environmental amenity.

37. **Deliveries and Garbage Collection**

Deliveries and garbage collection must not occur between the hours of 7pm and 7am.

Reason: To maintain the amenity.









ETHOS URBAN

19 March 2021

7200278

The General Manager
Northern Beaches Council
PO Box 82
Manly, NSW, 1655

Attention: Adam Croft

Dear Adam,

DA2020/1703 2-4 Hayes Street, Balgowlah: Clause 4.6 Variation to Development Standard – Floor Space Ratio

Introduction

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of the Applicant (Loan Resnekov – Coco Republic). It is submitted to Northern Beaches Council (Council) in support of a Development Application (DA) for the proposed use of the existing building for Specialised Retail Premises and Licenced Café at 2-4 Hayes Street, Balgowlah (DA2020/1703).

This variation has been formulated to respond to Council's request for the submission of a Clause 4.6 written request issued via email correspondence dated 15 March 2021.

Clause 4.6 of the *Manly Local Environmental Plan 2013* (Manly LEP 2013) enables the consent authority to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6 (3) and (4)(a)(ii) requires the consent authority to consider a written request from the Applicant that seeks to justify the contravention of the development standard. Clause 4.6(4)(a) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied:

- that the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction in respect of those matters must be informed by the objectives of Clause 4.6, which are to provide an appropriate degree of flexibility in the application of the relevant controls and to achieve better outcomes for and from the development in question by allowing flexibility in particular circumstances.

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under State Environmental Planning Policy 1 – Development Standards (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

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While these cases referred to the former SEPP 1, the analysis remains relevant to the application of clause 4.6(3)(a). Further guidance on clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;*
- *Turland v Wingecarribee Shire Council [2018] NSWLEC 1511;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
- *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386; and*
- *Moskovich v Waverley Council [2016] NSWLEC 1015.*

Project Background

A DA was lodged for the use of the existing building for Specialised Retail Premises and Licenced Café at 2-4 Hayes Street, Balgowlah (DA2020/1703) on 29 December 2020.

The proposed works follow recent approvals over the site:

- DA-78/2013 was approved at 2 Hayes Street, Balgowlah (Lot 1, DP 598670) by the former Manly Council (now Northern Beaches Council) on 5 February 2014 for “*Demolition of existing structures, construction of a two (2) storey bulky goods retail building including car park with twenty-six (26) spaces, retail tenancy, loading dock, driveway and landscaping*”.
- DA-182/2015 was approved at 2 and 4 Hayes Street, Balgowlah (Lot 1, DP 598670 and Lot 1, 701462) by Council on 19 November 2015 for “*Alterations and additions to existing and approved buildings to consolidate them into one (1) building including an extension to connect the buildings, modifications to façade, internal modifications, signage and consolidation of the Lots*”.

Northern Beaches Council has advised that DA-182/2015 was approved with a total Gross Floor Area of 3,294.5m² resulting in a building with a Floor Space Ratio of 1.29:1 and representing a 29% variation to the Floor Space Ratio development standard of 1:1.

A Pre-Lodgement Meeting was held with Northern Beaches Council on 27 October 2020 (PLM2020/0238) in relation to the proposed use of the existing building for specialised retail premises.

Council identified:

“The correct pathway to apply for the proposed works is a development application (DA), rather than a modification to the existing development consent DA18/2015. This is most relevant in the context of the proposed land use, being a “specialised retail premises”, as the existing consent remains only for the purposes of the physical works. Adding a land use to this consent would not be substantially the same development. Hence a DA is required”.

Council's did not request a Clause 4.6 Variation Request at the Pre-Lodgement Meeting held on 27 October 2020.

Development Standard to be Varied

The development standard that is sought to be varied as part of this application is Clause 4.4 of the Manly LEP 2013 relating to the Floor Space Ratio. Under the Manly LEP 2013 a maximum floor space ratio building height of 1:1 applies to the site.

Clause 4.4 of the Manly LEP 2013 is provided below and an extract of the Floor Space Ratio Map, to which that clause applies, is provided in **Figure 1**.

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4.4 Floor space ratio

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

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

(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.

(2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.



Figure 1: Manly LEP 2013 maximum floor space ratio map extract

Source: Manly LEP 2013 with additions

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Nature of the Variation Sought

The Manly LEP 2012 maximum floor space ratio development standard for the site is 1:1.

The site comprises two allotments:

- 2 Hayes Street – Lot 1, DP 598670, with an area of 1,082m².
- 4 Hayes Street – Lot 1, DP 701462, with an area of 1,468m².

The consolidated site area is 2,550m².

Northern Beaches Council has advised that DA-182/2015 was approved with a total Gross Floor Area of 3,294.5m² resulting in a building with a Floor Space Ratio of 1.29:1 and representing a 29% variation to the Floor Space Ratio development standard of 1:1.

Council's Development Assessment Unit Report prepared in relation to the development on site approved 19 November 2015 (DA-182/2015) states:

Due to the retention of the existing building, the FSR exceeds the local control. However, this is not due to the addition of floor space, it is solely the result of the physical linkage of the two buildings. Accordingly, due to the approved scale of development to both sites and reliance on existing built forms, this level of variation is supported. This level of variation is considered to be an anomaly which would not be supported in most other cases or circumstances and particularly not in regard to residential development. However, in this case, the proposal will not result in any new adverse local negative environmental impacts.

The proposed development seeks the use of the existing building at No. 2 and 4 Hayes Street, Balgowlah for the purpose of Specialised Retail Premises and an ancillary Licenced Café. The proposed works are limited to external alterations to the building façade and the internal reconfiguration of approved floor space. The proposal will not result in any change to the approved bulk and scale of the existing building.

However, given the proposal represents a new Development Application rather than the modification of DA-182/2015, the Applicant has been advised that a variation to the Floor Space Ratio development standard is required.

Based on Northern Beaches Council's review of the proposed development subject to this application (DA-2020/1703), Council have calculated the total Gross Floor Area at 3259.8m².

It is noted that that this calculation incorporates GFA across the entire site and is not limited to the floor space associated with the Specialised retail premises (Coco Republic) or Licenced Café (Americano).

Based on Council's calculations of the Gross Floor Area, the proposal will result in an overall reduction of 34.7m² from that previously approved over the site.

The proposal therefore seeks approval for a Floor Space Ratio of 1.28:1 and a total variation of 27.8%.

Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In Wehbe, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five ways in which it could be shown that a variation to a development standard was unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

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While Wehbe related to objections made pursuant to State Environmental Planning Policy No. 1 - Development Standards (SEPP 1), the analysis may be of assistance in applying clause 4.6 given that subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]; *Initial Action* at [16]).

The five methods outlined in Wehbe are:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

In this instance, the First Method is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)

The objectives of the Floor Space Ratio development standard contained in Clause 4.4 of the Manly LEP 2013 are outlined above and an assessment of the proposal against the objectives of the Floor Space Ratio development standard is provided below.

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character.*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features.*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area.*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

The proposal will not result in any change to the existing bulk and scale of the approved development at 2-4 Hayes Street, Balgowlah.

The presentation to the street is improved as the proposal incorporates an articulated and visually appealing façade at 4 Hayes Street to integrate its appearance and cohesion with 2 Hayes Street.

The development does not obscure important landscape and townscape features and maintains an appropriate visual relationship with the existing character and landscape of the area.

The proposal achieves the zone objectives through the delivery of Specialised retail premises and an ancillary Licenced Café to enhance economic growth and employment opportunities.

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The proposed alterations to the existing building will not result in adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as demonstrated within the Statement of Environmental Effects and will directly provide for the viability of the B6 Enterprise Corridor via the proposed use of the existing building for the purpose of Specialised Retail and Licenced Café will provide greater convenience and offerings to the customers within the locality and is entirely consistent with the objectives of the zone.

The proposed Coco Republic will reinvigorate the site and for the reasons above is entirely consistent with the objectives of the Clause 4.4 of the Manly LEP 2013.

Clause 4.6(3)(b): There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the Manly LEP 2013 requires the consent authority to be satisfied that the Applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating:

"that there are sufficient environmental planning grounds to justify contravening the development standard".

There are considered to be sufficient environmental planning grounds to justify contravention of the maximum Floor Space Ratio development standard in this specific instance.

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a clause 4.6 variation request must be particular to the circumstances of the proposed development on that site, and must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.

There are particular constraints that affect the subject site which justify a contravention to the maximum Floor Space standard, primarily the fact that the proposal relates to an existing approved building. The proposal does not seek to alter the existing bulk and scale of the existing building; and in fact will result in a 34.7m² reduction in Gross Floor Area from that previously approved on site.

Clause 4.6(4)(A)(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

In *Initial Action* it is established that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. Accordingly, it is demonstrated throughout this Clause 4.6 that the proposal is in the public interest as it is entirely consistent with the objectives of the development standard and the objectives of the zone.

As demonstrated above, the proposal is consistent with the objectives of the Floor Space Ratio development standards and consistent with the objectives of the B6 Enterprise Corridor under the provisions of the Manly LEP 2013.

Secretary's Concurrence

Under Clause 4.6(5) of Manly LEP 2013, the Secretary's concurrence is required prior to any variation being granted. Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018 to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. We note that none of the conditions in the table apply to the proposed development, therefore the Secretary's concurrence is assumed. Nevertheless, the following section provides a response to those matters set out in Clause 4.6(5) of the Sydney LEP 2012 which must be considered by the Secretary.

ETHOS URBAN

The variation does not raise any matters of significance for State or regional environmental planning. The variation to the maximum Floor Space Ratio development standard will not contravene any overarching State or regional objectives or standards or have any effect outside the site's immediate area.

Maintaining the development standard would not result in any public benefit in this situation.

We are not aware of any other matters that the Secretary (or the consent authority, under delegation) is required to consider before granting concurrence.

Conclusion

This Clause 4.6 variation request adequately addresses the matters in Clause 4.6(3) by demonstrating that compliance with the Floor Space Ratio development standard contained in Clause 4.4 of the Manly LEP 2013 is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify the contravention.

It also demonstrates that the proposed development will be in the public interest because it is consistent with the objectives of the Floor Space Ratio standard and the objectives of the B6 Enterprise Corridor Zone.

This Clause 4.6 variation demonstrates that, notwithstanding the proposed variation to the Floor Space Ratio development standard, the proposed floor space is acceptable as:

- The proposal does not seek to alter the bulk and scale of the existing building approved under DA-182/2015; and in fact, will result in a 34.7m² reduction in Gross Floor Area from that previously approved on site;
- It is consistent with the objectives of the zone and also the Floor Space Ratio development standard in the Manly LEP 2013;
- It is compatible with the scale characterising of the area;
- It will not adversely impact on the amenity of surrounding land uses or development;
- It will facilitate the orderly and economic redevelopment of an underutilised site; and
- It is in the public interest as it remains consistent with the objectives of the applicable land use zone and development standards and will support the commercial viability of the locality.

For the reasons set out in this variation request the development should be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the Manly LEP 2013.

Yours sincerely,



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