

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 21 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
Steve Kennedy	Urban Design Expert
Robert Hussey	Town Planner
Peter Cotton	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 21 April 2021

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 14 April 2021	Error! Bookmark not defined.
3.0	PUBLIC MEETING ITEMS	5
3.1	DA2020/1453 - 1 & 4 Alexander Street, Collaroy - Demolition works and construction of a shop-top housing development	5
3.2	DA2020/1351 - 1 Bilambee Lane, Bilgola Plateau - Demolition works and construction of shop-top housing	92
3.3	DA2020/1337 - 54 Pavilion Street, Queenscliff - Alterations and additions to a dwelling house including secondary dwelling	156
3.4	DA2020/1376 - 38 Carrington Parade, Curl Curl - Alterations and additions to a dwelling house	212
3.5	DA2019/1420 - 8 Wyatt Avenue, Belrose - Alterations and additions to an existing school	252
4.0	NON PUBLIC MEETING ITEMS	298
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.	
4.1	DA2020/1416 - 25 Palmerston Place, Seaforth - Subdivision of one lot into two including demolition works	298
4.2	DA2020/1518 - 1173 Barrenjoey Road, Palm Beach - Alterations and additions to an existing boat shed including decking, steps & skid ramp	332
4.3	DA2020/1294 - 18 Portions, Lovett Bay - Construction of a jetty ramp and pontoon and restoration of the boat shed	385

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 14 APRIL 2021

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 14 April 2021 were adopted by the Chairperson and have been posted on Council's website.

3.0 PUBLIC MEETING ITEMS

ITEM 3.1	DA2020/1453 - 1 ALEXANDER STREET & 4 COLLAROY STREET, COLLAROY - DEMOLITION WORKS AND CONSTRUCTION OF A SHOP-TOP HOUSING DEVELOPMENT
AUTHORISING MANAGER	Lashta Haidari
TRIM FILE REF	2021/261338
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as 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. DA2020/1453 for demolition works and construction of a shop-top housing development at Lot 1 DP 881326 & Lot CP, 1,2,3,4,5,6,7 SP 5367, 1 & 4 Alexander Street, Collaroy subject to the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1453
Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 1 DP 881326, 4 Collaroy Street COLLAROY NSW 2097 Lot CP SP 5367, 1 Alexander Street COLLAROY NSW 2097
Proposed Development:	Demolition works and construction of a shop-top housing development
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	Collaroy Street Pty Ltd
Applicant:	Collaroy Street Pty Ltd
Application Lodged:	16/11/2020
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Mixed
Notified:	27/11/2020 to 19/01/2021
Advertised:	27/11/2020
Submissions Received:	155
Clause 4.6 Variation:	4.3 Height of buildings: 54%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 18,363,774.00

Executive Summary

This report provides an assessment of a proposed mixed-use (shop top housing) development at No. 1 Alexander and 4 Collaroy Street (the site). The consolidated site has primary frontages to Collaroy Street (22m) and Alexander Street (70m) a secondary frontage to a laneway to the east (48m) and a site area of 2,570sqm.

The site is zoned B2 Local Centre under the provisions of Warringah Local Environmental Plan 2011 (WLEP 2011). The proposal involves the demolition of existing buildings and construction of a 4- 5 storey development containing retail premises (244m²), 39 residential apartments and basement and ground level car parking.

The proposal has a maximum building height of 12.2m to 17m, which exceeds the maximum building height of 11m permitted on the land under clause 4.3(2) of WLEP 2011. A request to vary the control under clause 4.6 of WLEP 2011 has been submitted and is discussed in detail below. It is considered that the written request does not satisfy the requirements of clause 4.6 of WLEP 2011 and that the variation sought to the building height control should not be approved.

The application is recommended for refusal because having regard to the design and character requirements embodied in the applicable planning controls, including the requirements of SEPP 65, the proposal is not considered to be an appropriate or suitable response in its current form. Further, the assessment of the proposal against the provisions of WDCP 2011 has identified that the development, as proposed, is not a successful built form in terms of how it relates to the desirable elements of the neighbourhood or how it transitions from low density residential locality.

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

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

It is important to acknowledge that the redevelopment of the subject site would be a significant improvement in comparison to the existing situation. However, while the redevelopment of the site is a positive feature of the development, the bulk and scale of the building has not been successfully resolved and is ultimately considered to be inconsistent with the character and context of the locality.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves the demolition of existing structures and construction of a mixed use development (shop top housing) and associated basement carpark and through site connection from Alexander Street to Collaroy Street to the laneway. Specifically, the development comprises:

- 4 retail units with a total GFA of 244sqm and frontage to both Collaroy and Alexander Streets,
- 39 residential apartments over 3 levels, with ground level communal games room, gymnasium, surfboard storage room and 2 x roof top communal open space areas, and
- Ground level and basement level carparking for 93 vehicles, comprising 71 residential, 8 visitor and 14 retail spaces with access from Collaroy Street.
- Residential and retail waste areas are serviced via a loading dock accessed from the laneway.

The figures below depicts the development as viewed from Pittwater Road towards Alexander Street (View 1) and from Pittwater Road towards Collaroy Street (View 2).



View 1: Proposed Development as view from Pittwater Road towards Alexander Street



View 2: Proposed Development as view from Pittwater Road towards Collaroy 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

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Development Control Plan - B2 Number of Storeys
Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - C4 Stormwater
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - F1 Local and Neighbourhood Centres

SITE DESCRIPTION

Property Description:	Lot 1 DP 881326 , 4 Collaroy Street COLLAROY NSW 2097 Lot CP SP 5367 , 1 Alexander Street COLLAROY NSW 2097
Detailed Site Description:	The development site comprises two individual Lots, being No. 1 Alexander Street, and No. 4 Collaroy Street, Collaroy. The consolidated site has primary frontages to Collaroy Street (22m) and Alexander Street (70m), a secondary frontage to a laneway to the east (48m) and a site area of 2,570sqm. No. 1 Alexander Street is currently occupied by a 3 storey apartment block comprising 5 residential units, 3 retail shops and 1 storage unit. No. 4 Collaroy Street is currently occupied by a 3 storey building providing <i>short term accommodation</i> operated as Sydney Beachouse YHA. The building contains 65 rooms, 226 beds and a swimming pool. The property has dual street access to Collaroy Street and Alexander Street. The subject site is zoned B2 Local Centre under the provisions of Warringah LEP 2011. Adjoining development located on the southern side of Collaroy Street includes a 4

storey shop top housing development at No. 1119 Pittwater Road and a Council carpark accessed from Collaroy Street. The balance of the properties to the west of the site, including those located on the southern side of Alexander Street, are occupied by detached style dwellings reflecting the R2 Low Density Residential zoning. Development to the east of the site has its frontage and address to Pittwater Road and comprises 1 and 2 storey retail and business premises.

Map:



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 is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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. <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. <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. <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. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent. <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. <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 matter may be addressed via a condition of consent.

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(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. In summary, the proposed development is capable of being constructed so as to not result in any adverse environmental impacts on the natural environment. However, the proposed development in its current form will have an adverse impact on the adjoining development and streetscape by virtue of its excessive size, bulk and scale. Therefore, the impacts of the proposal are unsatisfactory in its current form (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is suitable for the proposed development as the site is zoned for that purpose and the development will replace the existing development which does not provide a positive contribution to the character of the locality. The fact that the site is bordered by public roads, is elevated with ample opportunities for views and sunlight access, leads itself to a development of this type and configuration. However, the two street frontages and the configuration of the available land being located in between low density and medium density housing presents significant design challenges subject to the resolution of these design and height issues, the site is considered to be suitable for the proposed mixed use 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	The planning controls contained within WLEP 2011 and the WDCP 2011 provide the community with a level of certainty as to the scale and intensity of future development, and the form and character of development that is in keeping with the desired future character envisaged for the locality, as well as the guiding design principles under SEPP 65. It is acknowledged, and as evident by the number of support letters received from the community, that the development of the site could provide a much needed boost to the immediate and surrounding locality and streetscapes, certainly in comparison to the current situation. However, the benefits of new and modern uses on the site do not outweigh the fact that the proposal, in its current form, represents a scale of development that is excessive for the site and locality.

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

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 27/11/2020 to 19/01/2021 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 process council is in receipt of 155 submission/s from:

Name:	Address:
Anthony Hayer	4 Alexander Street COLLAROY NSW 2097
Mr Joseph Pino Fiori	6 Richmond Road SEAFORTH NSW 2092
Mr Geoffrey William Sparke	12 Collaroy Street COLLAROY NSW 2097
Karen Eileen Rolls	30 Alexander Street COLLAROY NSW 2097
Ms Tiga Joan Elizabeth Wallman	11 Alexander Street COLLAROY NSW 2097
Mr Niall Alastair Lindsay Johnston	11 Alexander Street COLLAROY NSW 2097
Araquem Paiva Ferreira Junior	12 / 119 Oaks Avenue DEE WHY NSW 2099
Mrs Natasha Rose Howell	7 Athene Place COLLAROY PLATEAU NSW 2097
Mr Bruce Davison	15 Alexander Street COLLAROY NSW 2097
Mr Mark Damian Donlan	3 / 40 Ocean Street NARRABEEN NSW 2101
Michael Hayer	Address Unknown
Aaron Johnstone	4 / 1 Alexander Street COLLAROY NSW 2097
Mr Bruce Ian Nicholas	18 James Wheeler Place WHEELER HEIGHTS NSW 2097
Mr Robert Jeffrey Robinson	114 Claudare Street COLLAROY PLATEAU NSW 2097
Ms Aimee Patricia Gundry	6 Waterview Street MONA VALE NSW 2103
Mr Jan Kacerovsky	7 / 1 Alexander Street COLLAROY NSW 2097

Name:	Address:
Mr Stephen Colin Crawford	6 Bushrangers Hill NEWPORT NSW 2106
Mr Patrick Charles O'Halloran	17/28 Barcoo Street ROSEVILLE NSW 2069
Richard John Trim	16 Bruzzano Place CROMER NSW 2099
Mr Kenyon Charles McKie	2 Athene Place COLLAROY PLATEAU NSW 2097
William Joseph Barden	67 Brighton Street CURL CURL NSW 2096
Anthony Onsley	22 Eastbank Avenue COLLAROY NSW 2097
Mr Christopher Mark Montgomery	10 Ocean Grove COLLAROY NSW 2097
Collaroy RSL Collaroy Beach Club	1058 Pittwater Road COLLAROY NSW 2097
Mr Brett Sandvoss	112 Sydney Road FAIRLIGHT NSW 2094
Eleanor Lamb	1 Alexander Street COLLAROY NSW 2097
Christopher Gordon	Address Unknown
Mr Geoffrey Wayne Davis	Po Box 900 MONA VALE NSW 1660
Mr Adam William Bate	9 / 27 Ocean Avenue NEWPORT NSW 2106
Daniel Stephen Saggus	4 / 121 Balgowlah Road FAIRLIGHT NSW 2094
Mr Damien Hatfield	Address Unknown
Annabelle Sue Chapman	15 Ralston Road PALM BEACH NSW 2108
David Bradley Hopper	18 Surrey Avenue COLLAROY NSW 2097
Mr Peter Gordon Jenkins	1 / 1135 - 1137 Pittwater Road COLLAROY NSW 2097
Jason Jenkins	20 / 1135 - 1137 Pittwater Road COLLAROY NSW 2097
Mr John Arthur McCann	8 Collaroy Street COLLAROY NSW 2097
Susannah Lee Barry	12 Alexander Street COLLAROY NSW 2097
Philip David Feltscheer	120 Anzac Avenue COLLAROY NSW 2097
Michael Healey	3 / 1 Alexander Street COLLAROY NSW 2097
Mr Brian Leslie Frederick Curtis	11 / 22 - 26 The Avenue COLLAROY NSW 2097
Rhett David Tregunna	1 Highview Avenue QUEENSCLIFF NSW 2096
Les Walden	66 Castle Circuit SEAFORTH NSW 2092
Mr Russell Dominic Pettit	23 Banksia Street DEE WHY NSW 2099
Barry John Muncke	36 Mactier Street NARRABEEN NSW 2101
Angus James	7 A Karloo Parade NEWPORT NSW 2106
Mr Glenville Paul Donegal	PO Box 300 COLLAROY BEACH NSW 2097
Mr Gareth Edward Grant	6 Homestead Avenue COLLAROY NSW 2097
Mr Timothy James Trelayne Brown	14 Pine Street MANLY NSW 2095
Mr David Hugh Macintosh	12 Beach Road COLLAROY NSW 2097
David Morgan	28 Mildred Avenue MANLY VALE NSW 2093
Stacy Lee Howell	118 Headland Road NORTH CURL CURL NSW 2099
Mr Simon Ibbetson	26 New Street BALGOWLAH NSW 2093
Ms Prudence Ann Casey-	4 Bushrangers Hill NEWPORT NSW 2106

Name:	Address:
Spark	
Mr Daniel Joseph Gallen	11 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Mr Timothy Frederick Maurice Spark	4 Bushrangers Hill NEWPORT NSW 2106
Mr Mark Geoffrey Spring	37 White Street BALGOWLAH NSW 2093
Michael Ernest Nicholson	34 Campbell Parade MANLY VALE NSW 2093
Mrs Rowena Louise McGilvray	41 Bellevue Avenue AVALON BEACH NSW 2107
Benjamin Peters	38 Austin Avenue NORTH CURL CURL NSW 2099
Mr Manus John McFadyen	8 / 4 Queens Parade NEWPORT NSW 2106
Mr Robert William Miller	18 The Serpentine BILGOLA BEACH NSW 2107
Mr Paul Justin Debieen	2 / 11 Fielding Street COLLAROY NSW 2097
Mr John Charles Wilson	13 Lancaster Crescent COLLAROY NSW 2097
Ms Carol Pamela Crawford	11 / 22 - 26 The Avenue COLLAROY NSW 2097
Mr Phillipe John De Gail	7 Seaview Parade COLLAROY NSW 2097
Tim Donlan	3 / 40 Ocean Street NARRABEEN NSW 2101
Mr Milford Mackay James	68 A Binburra Avenue AVALON BEACH NSW 2107
Mr Gregory Charles Marr	3 / 89 Dee Why Parade DEE WHY NSW 2099
Mr Sean Andrew Davies	12 / 4 - 10 The Avenue COLLAROY NSW 2097
Mr Mitchell Pax Trim	4 / 1172 Pittwater Road NARRABEEN NSW 2101
Mr Timothy Michael Parker	10 Cumberland Avenue COLLAROY NSW 2097
Mr Matthew Peter Considine	22 Claudare Street COLLAROY PLATEAU NSW 2097
Mr Richard Gillen Wall	1853 Pittwater Road BAYVIEW NSW 2104
Alan Horn	65 a Upper Beach Street BALGOWLAH NSW 2093
Mr Jack Peter Tomkins	3 Penrith Avenue WHEELER HEIGHTS NSW 2097
Mr Jordan Reid	14 / 7 Lauderdale Avenue FAIRLIGHT NSW 2094
Peter Barratt	4 Bennett Street DEE WHY NSW 2099
Mr Phillip John Parsons	4 / 116 Pacific Parade DEE WHY NSW 2099
Mr Tod Stephen McGrouther	11 Dendrobium Crescent ELANORA HEIGHTS NSW 2101
Ben Adams	2 A Boronia Street NORTH BALGOWLAH NSW 2093
Mr James Anthony Jennings	18 Austin Avenue NORTH CURL CURL NSW 2099
Mr Gregory John Macmahon	10 / 1030 - 1034 Pittwater Road COLLAROY NSW 2097
James Hayes	Address Unknown
James Muir	22 A Arthur Street DEE WHY NSW 2099
Mr Ricky Dean Kawulia	60 Hilltop Road AVALON BEACH NSW 2107
Mr Scott Charles Kelly	12 Serpentine Crescent NORTH BALGOWLAH NSW 2093
Scott Mcmurdo	Address Unknown
Mr Sam Jackson Nicholas	111 Woorarra Avenue ELANORA HEIGHTS NSW 2101
Bailey Dwyer	36 Lake Park Road NORTH NARRABEEN NSW 2101
Mr Craig Bannister	PO Box 321 AVALON BEACH NSW 2107
Mr Mark John Baker	16 Worcester Street COLLAROY NSW 2097

Name:	Address:
Mr David Eugene Gerber	29 / 7 - 11 Collaroy Street COLLAROY NSW 2097
Emily George	9 / 15 Jenkins Street COLLAROY NSW 2097
Kelly James	175 The Boulevarde MIRANDA NSW 2228
Elliott Green	19 Mirrabooka Street BILGOLA PLATEAU NSW 2107
Drew Fearn	Address Unknown
Michael Birch	18 / 4 8 Darley Road MANLY NSW 2095
Mrs Melanie Louise Thomas	88 Cutler Road CLONTARF NSW 2093
Nick Salerno & Pino Salerno	The Strand DEE WHY NSW 2099
Mr Matthew John Board	149 Harbord Road FRESHWATER NSW 2096
Kirsty Anne Macpherson	116 Fuller Street COLLAROY PLATEAU NSW 2097
Peter Thomson	1103 Pittwater Road COLLAROY NSW 2097
Irene Dalecki	70 Lantana Avenue NARRABEEN NSW 2101
Mr Gary Waters	254 Whale Beach Road WHALE BEACH NSW 2107
Lisa-Marie Moegle	Address Unknown
Mr Leslie George Galbraith	146 Barrenjoey Road MONA VALE NSW 2103
Mr Ronald Kenneth Griffiths	35 / 20 Bonner Avenue MANLY NSW 2095
Massimo Frollano	13 / 28 South Creek Road DEE WHY NSW 2099
Mr Travis Bruce Olifent	64 Aubreen Street COLLAROY PLATEAU NSW 2097
Nick Griffiths	Address Unknown
Mr Anthony Peter Macri	1 / 54 - 56 Darley Street MONA VALE NSW 2103
Mr Aaron Raco	1 / 104 - 106 Whistler Street MANLY NSW 2095
Dr Robert Alexander Orth	9 / 1150 Pittwater Road COLLAROY NSW 2097
Evolution Planning Pty Ltd	Po Box 309 FRENCHS FOREST NSW 1640
Ms Susan Jane Gerber	29 / 7 - 11 Collaroy Street COLLAROY NSW 2097
Mr John Joseph Briggs	C/- John J Briggs & Associates PO Box 807 NARRABEEN NSW 2101
Garry Fahey	Address Unknown
Mrs Christine Marie Pavitt	16 Alexander Street COLLAROY NSW 2097
Mr Ye Wang	16 The Strand DEE WHY NSW 2099
Olivia Edwards	Address Unknown
Michael McGinley	8 / 1731 Pittwater Road MONA VALE NSW 2103
Mr Miguel Angel Ranzetta Ms Jacquelyn Archer	7 Alexander Street COLLAROY NSW 2097
Mr David Joseph Phillips Roggiero	18 Collaroy Street COLLAROY NSW 2097
Mr Stephen Christopher Jones	50 Collaroy Street COLLAROY NSW 2097
Lisa Morrison	Address Unknown
Mr Kenneth Charles Talbot- Sapsford	7 Mariposa Road BILGOLA PLATEAU NSW 2107
Mr Kelly Redmond Mulvihill	18 / 21 - 23 Koorala Street MANLY VALE NSW 2093
Ziggy De Haan	111 / 5 Mooramba Road DEE WHY NSW 2099

Name:	Address:
Nicholas Albert	1 Tottenham Street NORTH BALGOWLAH NSW 2093
Mr Stephen Richard Doyle	19 Marine Parade AVALON BEACH NSW 2107
Andre De Ruyter	4 Loftus Street NARRABEEN NSW 2101
Brigitte Elasi	Address Unknown
Katarina Hubner	3 / 17 Whistler Street MANLY NSW 2095
Mr Phil Feseha	42 Lewis Street DEE WHY NSW 2099
Georgia Watkinson	1 / 208 Pittwater Road MANLY NSW 2095
Mark Hunter	5 / 228 Headland Road NORTH CURL CURL NSW 2099
Bernadette Mary Johnson	3 / 44 Rose Avenue WHEELER HEIGHTS NSW 2097
Ian Robert Dodd	11 Birinta Street NARRAWEENA NSW 2099
Christina O'Neill	1 / 15 Daintrey Street FAIRLIGHT NSW 2094
Lamaii Black	76 Tristram Road BEACON HILL NSW 2100
Miss Jessica Anne Howard	4 / 21 - 21 Pine Avenue BROOKVALE NSW 2100
Mr Peter James Macmahon	PO Box 386 COLLAROY BEACH NSW 2097
Vincent West	Address Unknown
Mr Graham Leslie Atkins	4 Whitney Street MONA VALE NSW 2103
Mr Gregory Peter Twemlow	2 / 13 Eustace Street MANLY NSW 2095
Randelle McDonald	2 / 56 Wyadra Avenue FRESHWATER NSW 2096
Mrs Kirsty Janet Hunter	1 / 60 - 62 Park Street MONA VALE NSW 2103
Ms Karen Elizabeth Flook	14 Beach Road COLLAROY NSW 2097
Ray Smith	1123 Pittwater Road COLLAROY NSW 2097
Mark Wieland	6 Meehan Road CROMER NSW 2099
Mr Paul Robert Peill Hutton	19 Alexander Street COLLAROY NSW 2097
Ms Giuliana Lina Gualdi	1 / 3 A Northcote Avenue FAIRLIGHT NSW 2094
Luke Preston	Address Unknown
DFP Planning Pty Ltd	PO Box 230 PENNANT HILLS NSW 1715
Tim Dalecki	Address Unknown

A total of 152 submissions were received by Council (not including multiple submissions from the same people). Out of the 152 submissions, 136 submissions were in support of the proposal and 16 objected to the proposal.

Assessment of Residents Issues

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

- **Non-compliant and excessive height**

The submissions raised concerns that the height of the proposal is unreasonable and would result in additional impact when viewed from the surrounding residential properties and streetscape.

Comment:

This matter has been addressed later in this report (refer to the section 'Detailed Assessment of the Variation to Clause 4.3 – Height of Buildings Development Standard' under Warringah Local

Environmental Plan 2011).

The development is assessed against the height of buildings development Standard under the WLEP 2011 and has been appropriately considered in relation to the requirements of Clause 4.6 of the WLEP 2011, wherein it was found that the development is inconsistent with the objectives of the Development Standard.

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

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

A number of submissions raised concerns regarding the additional traffic generated by the proposed development given insufficient parking provided by the development.

Comment:

The Traffic and Parking Assessment Report submitted with the application advises that the proposed parking and traffic generation for the development is considered to be acceptable and that the new traffic volumes would not substantially increase congestion on the surrounding road network.

Council's Traffic Engineer and Transport for NSW has reviewed the application and has raised no objection subject to conditions.

The proposal provides car parking for the shop top housing in accordance with the requirements of WDCP 2011.

Therefore, this issue should not be given determining weight.

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

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

- 30 Alexander Street
- 7 and 19 Collaroy Street

Comment:

As the proposal results in a significant breach in the height of the development, the applicant was not requested to erect height poles to accurately determine the impact on views.

If the proposal was amended to reduce the overall height to achieve compliance, the overall views and outlook of the adjoining property will also improve.

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

- **Construction impacts, including noise**

The following concerns have been raised in relation to construction related impacts:

- The proposed excavation hard up on the boundary against the footings of my building will undermine the footings of building causing severe structural damage. - 1119 Pittwater Road Collaroy;
- Structural damage to house - 6 Alexander Street ;
- Excavation on North Boundary Adjacent to 1119 Pittwater Road, and It should also be noted

that the sewer connection to 1119 Pittwater Road is near the south west corner of the building and connects to the sewer main which runs across the development site.

Comment

Construction of a major development on the site will undoubtedly lead to impacts during the period of construction. However, the construction can be managed to mitigate such impacts through a range of measures including the requirement of dilapidation report, restrictions on the hours of construction and the preparation and implementation of Construction and Traffic Management Plans.

Such matters can be addressed by conditions of consent.

- **Overshadowing**

Concerns have been raised that the height of the proposed development will cast shadow on properties from No. 6 - 12 Alexander street. In addition, concerns have also been raised that proposed development will block the windows of the southern boundary of 1119 Pittwater Road.

Comment:

It is agreed that the impact upon solar access on the adjoining development, while relatively minor, is a direct result of the non-compliance with the height of buildings development standard.

The issue of building separation is addressed under SEPP 65 section of this report. In summary, there is insufficient separation distance between the proposed development and the existing building at No.1119 Pittwater Road southern facing wall, which will impact the daylight and ventilation to the south facing windows at 1119 Pittwater Road.

Therefore, the associated impacts do form a reason for refusal in the recommendation.

- **Visual and Acoustic Privacy**

Concerns have been raised that the proposed development will cause adverse privacy impact on the adjoining development at No. 7 Alexander Street. Concerns have also been raised in relation to acoustic and visual privacy relating to the roof top terrace area.

Comment:

The proposed development, at present provides for insufficient setback and stepping back at upper levels of the building to the western boundary and does not ensure adequate transition between the B2 Local Centre and R2 -Low Density Residential zoned sites. Accordingly, the concern raised in relation to acoustic and visual privacy is concurrent with and included as a reason for refusal.

Submissions in Support

- Improve public amenity,
- Delivering much needed parking to the beach area
- Delivers a low-rise coastal built form that fits perfectly with its surrounds and in context of Collaroy's Town Centre
- Collaroy 'town' itself is in desperate need of considered modernisation

- Improving the retail offering and retail amenity
- Enhanced landscaping, green walls and rooftop gardens
- Revitalisation of the area
- Help surrounding business owners
- Removal of backpackers will be a positive

Comment:

The redevelopment of the site is generally supported. The existing building currently is out of character and does not make a positive contribution to the locality.

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

Therefore the development cannot be supported in its current form.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Supported (subject to conditions) 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. 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.
Environmental Health (Acid Sulphate)	Supported Acid sulphate soils were not encountered in the borehole sampling exercises, we concur that exposure is unlikely. No management procedures recommended.
Environmental Health (Contaminated Lands)	Supported (subject to conditions) Contaminated land investigation via boreholes found elevated levels of Cobalt, Copper and Zinc, as well as the presence of petrochemicals/hydrocarbons. According to the <i>Waste Classification Guidelines</i>, the excavated material may be disposed of as "general solid waste".
Environmental Health (Industrial)	Supported (subject to conditions) Noise report recommends 'a detailed review to be conducted prior to CC to comply with the noise emission guideline summary levels'. Specifically assessing: (a) rooftop mechanical plant, and (b) retail waste collections impact on residences facing the Laneway.

Internal Referral Body	Comments
Landscape Officer	Not supported The development application is for demolition of existing site structures and the construction of a shop top housing development located on land zoned B2 Local Centre, and associated works including landscape works. The application is assessed by Landscape Referral against State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65), and associated Apartment Design Guide (ADG), and Warringah Local Environmental Plan (WLEP) and Warringah Development Control Plan 2011 (WDGP), including but not limited to the following clauses: • Principle 5: Landscape, of SEPP65 requires " that ... landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance ... which contribute to the local context, ... micro-climate, tree canopy, ... and preserving green networks. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity ..." • ADG: Part 3E Deep Soil Zones - under the objective of 3E a minimum of 7% deep soil shall be provided with a minimum width of 6 metres; Part 4O Landscape Design - Table 4 of this section recommends tree planting at a rate of 1 large tree or 2 medium trees per 80m² of deep soil zones, and provides the following guidance - diverse planting, shade tree planting, areas for residents to plant vegetables and herbs, and use of green roofs or walls; and Part 4P Planting on Structures - medium size trees require 6m x 6m in 1m soil depth; small trees require 3m x 3m in 1m soil depth. • WLEP: no deep soil requirements exist under Warringah Local Environmental Plan for land zoned B2 Local Centre. • WDGP: the minimum soil depth of land that can be included as landscaped open space is 1 metre. Landscape Plans are provided with the development application and these require modifications to be acceptable and shall be the subject of amended landscape plans. Natural ground deep soil equals 90 square metres and is calculated as 3.5% of the site area and does not achieve the minimum width of 6 metres. The Apartment Design Guide (ADG) requires a minimum 7% deep soil zone to meet the design criteria of objective 3E-1 of the ADG and the current deep soil provisions do not meet the ADG objectives, and furthermore the ADG suggests a design guidance of

Internal Referral Body	Comments
	15% for sites greater than 1500m² such as this site. The remaining landscape areas occur as planting on structure with the minimum depth of 1 metre achieved in accordance with ADG, with various ground floor planters providing approximately 290 metres square area, various level 1 planters providing approximately 440 metres square area, various level 3 planters providing approximately 120 metres square area, and various level 4 planters providing approximately 150 metres square area. As such the total area of landscape area provided as planting on structure is capable of achieving of landscape outcome to provide an attractive residential landscape amenity, subject to variations to the current landscape scheme as documented. Concern is raised that planting densities are inadequate and/or sparse in areas to support mass planting that will provide the required landscape amenity outcome. The landscape plans require modification to ensure an appropriate landscape amenity outcome is achieved and shall additionally include the following design suggestions: Ground floor: - planters facing Alexander Street shall incorporate small tree planting in lieu of the proposed palm planting, - incorporate a mix of small tree planting and palms to the ground floor where open to the sky, and consider mature heights of planting underneath level 1 slabs. Level 1: - incorporate small trees to planters where the planter is at least 3m x 3m in area, - all planters located adjacent to terraces shall support shrub planting capable of attaining 1 metre in height for visual privacy, as well as groundcover planting, in lieu of the groundcover only planting proposed and documented in some areas, Level 3: - all planters located adjacent to terraces shall support shrub planting capable of attaining 1 metre in height for visual privacy, as well as groundcover planting, in lieu of the groundcover only planting proposed and documented in some areas, Level 4 - incorporate small trees to planters where the planter is at least 3m x 3m in area,

Internal Referral Body	Comments
	- all planters located adjacent to terraces shall support shrub planting capable of attaining 1 metre in height for visual privacy, as well as groundcover planting, in lieu of the groundcover only planting proposed and documented in some areas, All levels: - planting densities shall be documented as follows: i) screen shrubs - 1 per linear metre centre; ii) small shrubs - 700mm centres; iii) groundcovers - 450mm centres; iv) ferns - 450mm centres except for Cyathea and Dicksonia; v) succulents - 300mm centres. Amended landscape plans are required to accurately determine the appropriateness of the landscape proposals to achieve acceptance of the landscape scheme including the required deep soil zone areas, and at this stage the proposal does not warrant approval until amended landscape plans for review and approval by Council are submitted. With the complexity of the micro-climate and light levels for planting between the two buildings and the use of planters to undercroft areas, it is advised that a landscape architect may be utilised to further develop the scheme to ensure ongoing suitability of the proposed landscape design including selection of materials and planting. The selection of suitable planter soils and the installation of an automatic irrigation system is a key component to achieving successful landscape treatments within planters on slab. Additionally a landscape maintenance program will be required to establish ongoing landscape maintenance of the landscape planters, as well as all other landscape areas, requiring regular monitoring of soil conditions and any requirement for additional soil additives, fertilising program, monitoring of soil moisture, and general care and maintenance including replacement. Conditions of consent for this component is to be imposed as Ongoing Landscape Maintenance. A Arboricultural Impact Assessment report is provided with the development application, proposing the retention of two native trees within the site (Paperbark and Blueberry Ash), transplanting of native Cabbage Tree Palm, protection of adjoining property trees, removal of one native tree (Coast Banksia) within the site, and removal of Exempt Species within the site. The report recommendations raise no issues.
NECC (Coast and Catchments)	Supported The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011. Coastal Management Act 2016

Internal Referral Body	Comments
	The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016. • State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the 'Coastal Use Area' map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 14 and 15 of the CM SEPP apply for this DA. <u>Comment:</u> On internal assessment and as also assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Boston Blyth Fleming Pty. Ltd. dated November 2020, the DA satisfies requirements under clauses 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. • Warringah LEP 2011 and Warringah DCP 2011 No other coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.
NECC (Development Engineering)	Not supported The stormwater drainage plans have been reviewed detailing the provision of on site stormwater detention and the following information is required prior to further assessment: 1. The submission of the DRAINS model is required by Council to verify the site storage requirements and post development discharges. 2. The point of connection to the existing Council pit in Alexander street is not acceptable as this area is subject to minor/major flooding which impacts the property at 1097 Pittwater Road (Entrances in Alexander street). As such the stormwater discharge from the property is to be connected to the existing Council Inlet Pit on the opposite side of Alexander street. A pipe longsection is to be provided drawn at a suitable scale detailing clearances to gas, water and sewer services. The minimum pipe size is to be 375mm RCP. 3. The stormwater drainage plans are to make provision for

Internal Referral Body	Comments
	upstream overland flow entering the property.
NECC (Water Management)	Not Supported The applicant has proposed a Water Sensitive Urban Design strategy for stormwater management that includes a 20KL rainwater tank and 2 stormfilter cartridges located in the on-site detention tank. We generally only accept stormfilter cartridges of this form when there is evidence of complementary actions such as reducing the quantity of stormwater runoff through efficiency and reuse and addressing infiltration/evaporation where possible. To satisfy this requirement, the applicant simply needs to tell us how the water collected in the 20KL tank will be used, because the application has no information about this at all. Given there are planters throughout and potential for tree pits in the courtyard, there are also opportunities to connect stormwater downpipes via these planters to provide direct irrigation. The applicant should provide a statement addressing how the water in the 20KL tank will be used in and around the building. The applicant has not provided the MUSIC model file (.sqz) for our review, only a printout. This should be provided. These are simple requests and a response will be prioritised once the additional information is received.
Property Management and Commercial	Supported (subject to conditions) The proposal is for the demolition of existing structures on site and the construction of a shop top housing scheme. The site is adjacent to Council's public carpark located at 6 Collaroy St, which is classified as 'Community' land under the provisions of the <i>Local Government Act 1993</i>. It is noted that the western elevation of the proposal adjacent to Council's public carpark has a number of window elements comprising fixed glass bricks which are located on the property boundary. While this design element as proposed does not impact the adjacent public carpark, it is recommended that a condition be placed on the consent that these shall never be converted to openable windows. The location of the external wall of the building on the property boundary means that openable windows are likely to give rise to encroachments over the public carpark, which would require the landowner to enter into an legal agreement with Council. The Local Government Act strictly regulates the types of dealings Council can undertake on community classified land and dealings that are solely to benefit a private land owner are generally not permitted.
Road Reserve	supported No impact on existing road assets. It is noted the existing infrastructure (kerb, pram ramp and footpath) on the south west corner of the laneway is being damaged by the turning movements of heavy vehicles. The property boundary at this

Internal Referral Body	Comments
	corner is very close to the laneway kerb, preventing any future widening of the laneway kerb return. Council's Transport/Traffic Team to give consideration to the dedication of a splay corner to improve turning, sight distance and safety, and widening by the applicant. Also access to the loading bay is likely to be prevented by onstreet parking practices in the laneway and may require some form of parking restrictions. Urban Design and Development Engineering Teams to give consideration to extending the Collaroy Accessibility Shopping Precinct streetscape to the Alexander Street frontage (to ensure consistency with Collaroy Street frontage) thereby providing connectivity of the retail elements of the development with the Main Street. It is noted that the building is located on top of an existing sewer main (running through basement) which may require referral to Sydney Water.
Strategic and Place Planning (Heritage Officer)	Supported
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject site is located within the vicinity of two heritage items, listed in Schedule 5 of Warringah LEP 2011: Item I22 - Collaroy Cinema (facades and interiors) - 1097 Pittwater Road Item I23 - Former Westpac Bank - 1121 Pittwater Road
	Details of heritage items affected
	Details of the item as contained within the Northern Beaches Heritage Inventory are as follows: Item I22 - Collaroy Cinema (facades and interiors) <u>Statement of significance:</u> A rare surviving example of an inter-war art deco cinema. Displays high integrity of fabric & use. One of few operating art deco cinemas in Sydney. Historically provides evidence of the early recreational & social role of the Collaroy commercial area. <u>Physical description:</u> Constructed in 1926-1950. Smooth rendered masonry cinema building with high stepped parapet and "streamlined" decorative detailing. Building curves around the corner. Corrugated iron roof. Prominent cinema sign, similar to original. Item I23 - Former Westpac Bank <u>Statement of significance:</u> A locally rare example of a suburban bank in the Inter-war Georgian Revival style, representative of bank architecture at the time. Historically provides evidence of the development of

Internal Referral Body	Comments		
	commercial infrastructure to serve residential growth. Local landmark.		
	<u>Physical description:</u> Constructed in 1926-1950. Two storey face brick bank building designed to address corner site. Stone dressings as horizontal string courses and as carved motifs between ground & first floor windows. Tiled hipped roof. Art deco detailing in carved stone dressings. Multi-paned windows.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	The proposal is for the demolition of the existing buildings on the subject site and the construction of a 4 storey shop top housing development including a basement carparking and 4 retail units to the ground floor.		
	The heritage listed Collaroy Cinema building is located to the south-east of the proposal across Alexander Street and the heritage listed Former Westpac Bank site is located to the north-west of the subject site across Collaroy Street.		
New works within the vicinity of heritage items should respect and support the context, scale and character of the heritage items, and should not overpower them. Although, Heritage recommends to consider a further setback to level 3 of the proposal for a better design response, that respects and supports the significance of the heritage items, it is considered that, given the separation between the subject site and the heritage items, afforded by the roads, the adverse impact of the proposal upon the the heritage items within the vicinity will be manageable.			
Therefore, no objections are raised on heritage grounds and no conditions required.			
<u>Consider against the provisions of CL5.10 of WLEP 2011.</u> Is a Conservation Management Plan (CMP) Required? No			

Internal Referral Body	Comments
	Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? No - addressed in the SEE.
Strategic and Place Planning (Urban Design)	Not Supported WLEP 2011 <i>4.3 Height of Buildings</i> The site fronts both Alexander and Collaroy Streets set behind the Pittwater frontage of older tenancies in a B2 Local neighbourhood comprising mixed use, commercial and residential areas with a distinctive character fronting Collaroy Beach. Further back into the site is a distinct transition to the R2 low density zone. The height of the proposed development is 4 storeys including an additional smaller pop top roof element screening roof plant and lift overruns that assist to break down the expanse of roof form. This additional storey set back from the leading edge has the effect of a fifth storey which is not supported. Additionally the upper storey Level three plan is regarded as an over development of the site. The building is significantly over the Height of Buildings control and therefore cannot be supported. B2 Local Centre <i>Objectives of zone</i> • 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 provide an environment for pedestrians that is safe, comfortable and interesting. • To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment. • To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.

Internal Referral Body	Comments
	RESPONSE The form and bulk, including building line setbacks at ground and upper levels should relate favourably in scale and architecture to the adjoining context by the provision of a transitioning approach to the building bulk to both Alexander and Collaroy St frontages and particularly to the rear boundary adjoining the R2 zone where the transition is most critical. As the site is mediated by a row of commercial buildings on the Pittwater road frontage and is dissected by a service laneway, the development demonstrates potential for the relationship between the two sites to develop a more pedestrian friendly streetscape and laneway in future development of the area. As previously discussed the consideration of a wider footpath and circulation zone to the eastern boundary of the site would be recommended. The activation of this pedestrian edge fronting the laneway can be supported, however a more generous pedestrian path is highly encouraged. B2 - Number of Storeys <i>Objectives</i> • To ensure development does not visually dominate its surrounds. • To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes. • To provide equitable sharing of views to and from public and private properties. • To ensure a reasonable level of amenity is provided and maintained to adjoining and nearby properties. • To provide sufficient scope for innovative roof pitch and variation in roof design. • To complement the height of buildings control in the LEP with a number of storeys control. RESPONSE 3 Storeys height control The proposed development suggests five storeys to parts of the building. With a building height of approximately 2 storeys higher than the permitted 3 storeys and represents a significant breach of the storey control. This combined with the lack of setback at the upper storeys has the effect of the building reading as an overdevelopment. Additionally there are the smaller roofed elements over the rooftop terraces and similarly to the housing/screening of mechanical plant on the Alexander street building. WDCP 2011

Internal Referral Body	Comments
	SETBACKS GENERALLY Front Setback Control – Ground and First Floor Street Frontage Alignment As the development spans a full block with through site links it is assumed the length and extent of the Alexander Street frontage and the Collaroy Street Frontage could be assessed as front setbacks. With a built to line control for front setback is noted that through pre-lodgement the development of a significant pedestrian pathway was develop to address level of activation to this elevation and somewhat to the Collaroy Street elevation/frontage. Provision of a minimum 3.5 – 4 metre setback to the building lines to both Alexander and Collaroy street provides a far move activated and pedestrian friendly. The two 6m x 6m deep soil planting zones with understory landscape and large tree canopy to the Alexander street frontage assist with breaking up the bulk and scale of the building when viewed from the ground plane and surrounding street views. The strategy can be supported. At upper levels, Level 2 and up, the control steps the upper levels back 5 metres from the built line. A discussion as to the merit of this control could be has as to whether this is required given the bulk and scale breakdown resulting from the deep soil planting zones/stepping back of built form discussed above negates this control. Side Setback Control – Merit Whilst the side set back is merit based we would seek to ensure that sufficient setback and stepping back at upper levels of the building to the western boundary to ensure adequate transition between the B2 local Centre and R2 Residential. Similarly and as previously discussed the laneway considered as a side setback would benefit from and increased pedestrian circulation zone. Generally the development presents as an overdevelopment of the site and cannot be supported.
Traffic Engineer	Supported (subject to conditions) The proposed development to provide 39 residential units (1 bedroom - 4, 2 Bedroom - 20, and 3 Bedroom - 15) and 246 m² of retail space has been assessed against the relevant requirement in the Warringah LEP/DCP applicable to the site. It is supported subject to the conditions provided on traffic and transport grounds. Parking Provision Residential component of the development requires a minimum of 51 spaces to comply with 71 provided. Visitor parking provision is compliant with the DCP requirements with 8 spaces.

Internal Referral Body	Comments
	Retail parking provision is deficient one space when compared with the DCP requirements - 14 provided/15 required. The traffic assessment provided addresses this through the concept of dual and complementary use of the visitor and retail parking, where the peak demand for one use does not coincide with the peak demand for the other key use period. The shortfall of one space is deemed acceptable, given the number of spaces provided, proximity to public transport and nearby parking availability. Loading provision. The development has two loading options, with 2 dedicate bays in the parking area (limited to small van deliveries) and a separate loading dock for an SRV design vehicle accessed from the unnamed service lane to the east of the site. The accessibility of the loading dock has been demonstrated for the SRV design vehicle in line with AS2890. The serviceability of the site will be restricted to the use of Small Rigid Vehicles through the loading dock, with larger vehicles restricted by condition to access the site outside peak delivery times to minimise the impact on adjoining businesses using the service lane. Access to site. The car park layout complies with the requirements of AS 2890.1 Access to public transport The site is close to the Collaroy B-Line stop with approx. 125 m between the site and the main Collaroy bus stop. Traffic generation. The development traffic generation is acceptable given the impact on the adjoining road network, increasing the queue and delay at the Collaroy Street intersection signals within an acceptable level of tolerance. Therefore the development is supported from a traffic and transport perspective.
Waste Officer	Supported (subject to conditions) The size and location of the waste storage rooms (2 x binrooms & 1 x bulky goods room) comply with Council requirements. The access doors to the Collaroy Street binroom and bulky goods room both swing inwards instead of outwards.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Supported (Subject to conditions) The application was referred to Ausgrid pursuant to Clause45(2) of the State Environmental Planning Policy (Infrastructure) 2007. In their response, no objection was raised subject to requirements that the development must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

External Referral Body	Comments
	The requirements stipulated by Ausgrid can be included as a condition, should the application be worthy of approval.
NSW Roads and Maritime Services (Traffic Generating Development)	Supported (Subject to conditions) The Application which was referred to Transport for NSW (TfNSW) for comment. TfNSW has reviewed the development application and raises no objections to the Application subject to conditions.
Nominated Integrated Development – Natural Resources Access Regulator - Water Management Act 2000 (s91 Controlled Activity Approval for works within 40m of watercourse)	supported (subject to conditions) The application was referred to WaterNSW as integrated Development under section 91A (3) of the Environmental Planning and Assessment Act 1979 (EPA Act). WaterNSW reviewed the application and provided its general terms of approval to Council on 1 March 2021, which will form part of the consent should the application be worthy of approval.

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 indicated that the likelihood of encountering contaminated soils on the subject site is extremely low given the sites are currently being used for residential purposes (backpacker accommodation and shop top housing).

In this regard, Council's Environmental Health section is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out subject to the recommendations included in the investigation and the conditions imposed by Council's Environmental Health Department within the draft consent, should the application be worthy of approval.

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment

Development (SEPP 65) stipulates that:

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

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

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

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

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

As previously outlined, the proposed development is for the erection of a mixed use development plus basement car parking for the provision of four retail units and 39 residential apartments.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

DESIGN REVIEW PANEL

On 17 December 2020, the Northern Beaches Council Design and Sustainability Advisory Panel (DSAP), considered the application at their meeting and concluded that:

The Panel does not support the proposal in its current form while recognising that it has many positive design features and is generally in accord with the strategic directions for Collaroy.

Non compliance with heights and built form controls need to be justified. Most importantly the ground and first level common spaces and raised planters, interface and integration with the public domain and lane, retail ceiling heights, provision of deep soil, through site link will require re-design.

A redesign and investigation of alternative options that consider all of the recommendations set out above is required.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment:

The site is set behind the Pittwater Road retail strip and comprises older tenancies in the B2 Local Centre zone. There is a mix of older and newer mixed use developments which provide a low scale character opposite the Collaroy Beach and parkland reserve. Further westwards, the site marks a transition from B2 to the R2 low density zone.

The site has a maximum building height limit of 11 metres applying under Clause 4.3 of the LEP.

The portion of the building facing Alexander Street has an overall height of between 12.8m and 13.2m respectively, representing variations to the height control of 2.2m (20%).

The portion of the building facing Collaroy Street has an overall height of 12.2m to 17m respectively representing variations of up to 6 metres (54%). The height of the proposed development is 4 storeys, including an additional smaller "pop-top" roof element screening roof plant and lift overruns, that assist to break down the expanse of the roof form. This additional storey is set back from the leading edge and has the effect of a fifth storey.

Therefore, the non-compliance with the height of buildings development standard, which ultimately determines the contextual fit of the development with the surrounding locality, cannot be supported.

Accordingly, it is considered that the proposal does not satisfy this principle.

Principle 2: Built Form and Scale

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

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment:

The proposed development contains many examples of good design in terms of its architecture, including the levels of articulation, design of balconies, and strongly defined architectural elements

presenting to the two street frontages.

However, while the architectural design of the building is a positive feature of the development, the height and bulk of the structure is not consistent with the controls applicable to the site and the development will result in a built form and scale that does not meet the requirements of the current controls for the site and it is inconsistent with the scale of existing developments within the locality.

Accordingly, it is considered that the proposal does not satisfy this principle

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:

The planning controls under WLEP 2011 and the WDCP 2011 do not specify a maximum housing density for the zone. The appropriate density is determined by how the development responds to the Design Quality Principles of SEPP 65, and the relevant controls contained within the WLEP 2011 and the WDCP 2011.

This assessment has found that the development, as proposed, does not achieve a satisfactory level of compliance and consistency with these controls, in particular, the overall height of the building and the building separation.

In this regard, the proposed number of units and the density is considered to be excessive for this site.

Accordingly, it is considered that the proposal does not satisfy this principle

Principle 4: Sustainability

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

Comment:

The proposal includes demolition of all structures currently on the site and excavation works to accommodate the new development.

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

In addition, a BASIX Certificate for the residential component of the development has been submitted with the application. The certificate confirms that the development is capable of achieving the water and energy targets and has obtained a pass for thermal comfort.

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

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment:

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

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

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

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

Comment:

The development has been assessed against the various amenity requirements of the Apartment Design Guideline (ADG), where it has been found that the development does not comply with some of the requirements.

The assessment has found that there is insufficient separation provided between the proposed development and the existing building at No.1119 Pittwater Road southern facing wall. In addition, there is also insufficient setback and stepping back at upper levels of the building to the western boundary to ensure adequate transition between the B2 local Centre and R2 - Low Density Residential zoned sites.

Accordingly, it is considered that the proposal does not satisfy this principle.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

The development provides for acceptable levels of safety and security in accordance with the principles of Crime Prevention Through Environmental Design (CPTED).

The elevated and exposed nature of the development enables an improved degree of passive surveillance above what is already achievable from the site and which appropriately fits the intended higher density residential purpose.

The territorial spaces within the site are appropriately defined to identify communal and private areas and includes clearly defined secure and visible access points that could be easily maintained.

The development is considered to be consistent with this principle.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:

This principle essentially relates to design responding to the social context and needs of the local community in terms of lifestyles, affordability and access to social facilities and optimising the provision of housing to suit the social mix and provide for the desired future community.

The provision of a mix of apartment sizes in this location is considered desirable due to the site's close proximity to a major bus interchange, commercial facilities and other opportunities within the Collaroy Town Centre and other public amenities and facilities.

The development provides a reasonable mix of apartments and includes active street front uses on the ground floor level which is considered to contribute to the social context by encouraging and providing for social interaction and engagement.

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

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

The proposed development is considered to be appropriate in terms of the composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the resultant building. The aesthetics of the development respond positively to the environment and context, contributing in an appropriate manner to the desired future character of the area.

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

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Inconsistent The surrounding area consists of a large variety of development ranging from single dwellings to 4 storey residential and mixed use buildings. The excessive height of the proposal and the proposed upper storey combined with the lack of setback at the upper storeys has the effect of the building reading as excessive in scale and symptomatic of an overdevelopment of the site. Furthermore, the development provides insufficient setback and stepping to ensure adequate transition between the B2 Local Centre and adjoining R2 Residential zoned sites. Additionally, the development provides insufficient landscape setbacks with no meaningful planting along the front setback to maintain the lush green character of the area.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Inconsistent The development provides insufficient landscape setbacks with no

		meaningful planting along the front setback to maintain the lush green character of the area. The development has units facing north, east and west taking advantage of the available aspects and prevailing wind and solar patterns. The proposal breaks up the built form to allow for the units in the southern building to receive additional solar access. The proposal would allow sufficient solar access to adjoining neighbours						
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Consistent The development is considered to provide a satisfactory transition between the private and public domains without compromising safety and security.						
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	Inconsistent Insufficient communal open space is provided. The communal open space provided on the ground floor would not receive adequate solar access given its location and the design of the roof overhangs. The proposed communal open space on the northern block roof is not easily accessed for residents of the southern blocks that contain the majority of units.						
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum</th><th>Deep soil</th></tr> </thead> <tbody> <tr> <td></td><td></td><td></td></tr> </tbody> </table>	Site area	Minimum	Deep soil				Inconsistent The deep soil area is calculated as 3.5% of the site area, which does not
Site area	Minimum	Deep soil						

	<table> <tr> <th></th><th>dimensions</th><th>zone (% of site area)</th></tr> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </table>		dimensions	zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	comply with 7% requirement. In addition, the minimum dimensions for the deep soil zone does not achieve the minimum width of 6 metres. This matter is addressed within the Landscape referral comments.
	dimensions	zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms. Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	Inconsistent There is insufficient separation distance between the proposed development and the existing building at No.1119 Pittwater Road southern facing wall. In addition, there is also insufficient setback and stepping back at upper levels of the building to the western boundary to ensure adequate transition between the B2 Local Centre and R2 Residential zoned sites.
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	Consistent The development provides an accessible and legible building entry which defines the private property from the public domain.												
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Consistent The development includes a 6.0m wide driveway and crossover which facilitates adequate sightline distances along the adjacent footpath.												

		The driveway is ramped down slightly from the street such that visual impact is minimised
Bicycle and Car Parking	For development in the following locations: - On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	Consistent The site is not located within 80m of a railway station or light rail stop or on land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre. Therefore, the parking requirements of the Warringah Development Control Plan 2011 (WDCP) apply. The development provides car parking in accordance with the requirements of the WDCP (see Clause 'C3 - Parking Facilities' in the WDCP section of this report). <u>Bicycle parking</u> The ADG does not include any numerical requirement for the provision of bicycle parking. This is addressed under Clause C3(A) of the WDCP 2011. The parking is provided within a ground floor parking area which is (with exception to the entry) concealed from view from the street and adjoining properties.
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: Living rooms and private open spaces of at least 70% of apartments in a building	Inconsistent Insufficient information has been provided to verify if the proposal will meet Solar and Daylight

	are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.	Access requirements.												
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	As above												
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	Consistent 27 of 39 (69%) of apartments are naturally cross-ventilated												
	Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Consistent No apartments exceed the 18.0m requirement.												
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	Consistent The floor to ceiling heights of the apartments within the development meet the minimum 2.7m as required by the ADG.												
	<table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>		Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use
	Minimum ceiling height													
	Habitable rooms		2.7m											
	Non-habitable		2.4m											
	For 2 storey apartments		2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area											
	Attic spaces		1.8m at edge of room with a 30 degree minimum ceiling slope											
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
Apartment Size and Layout	Apartments are required to have the following minimum internal areas:	Inconsistent The following apartments within the development do not comply with the minimum area. - Unit 2 - Unit 34 - Unit 35 - Unit 37												
	<table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table>		Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²		
	Apartment type		Minimum internal area											
	Studio		35m ²											
	1 bedroom		50m ²											
	2 bedroom		70m ²											
	3 bedroom		90m ²											

	The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.																
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> The minimum balcony depth to be counted as contributing to the balcony area is 1m	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Consistent All apartments within the development comply with the minimum balcony area and depth.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m ²	-														
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.	Consistent All apartments within the development comply with the minimum balcony area and depth.															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent The maximum number of apartments off a circulation core on a single level is less than 8. The proposed development includes access to all floors via a lift.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not Applicable															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	Consistent (subject to condition) The proposed development includes resident storage areas for all units within the building and as well as within the basement levels. A condition of consent could be imposed if the application is to be approved to ensure the					
Dwelling Type	Storage size volume																
Studio apartments	4m ²																
1 bedroom apartments	6m ²																
2 bedroom apartments	8m ²																
3+ bedroom apartments	10m ²																

	At least 50% of the required storage is to be located within the apartment.	proposed storage areas are allocated in accordance with the size requirements of the ADG for the respective units.
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent All garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, private open spaces and circulation areas are located more than 3m away from bedrooms.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Satisfactory The development is designed to minimise acoustic impact from neighbouring development and the local road network as well as minimising noise transmission to neighbouring land uses.
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent The development provides the following mix: • 4 x 1 Bedroom (10%) • 20 x 2 bedroom (51%) • 15 x 3 bedroom (39%)
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Not Applicable The development does not have ground level apartments .
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent The facade treatment is appropriate for the site.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Consistent The development includes skillion roof forms which are considered to respond to the street and adjacent buildings.
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Not Consistent Landscape plans have been submitted with the application, providing

		detailed plans for the landscape treatment. The Landscape Design has been assessed by Council's Landscape officer and have been found to be unsatisfactory.																																			
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:	Not Consistent Refer to Principle 5 above and Landscape referral comments																																			
	<table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>		Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm	
	Plant type		Definition	Soil Volume	Soil Depth	Soil Area																															
	Large Trees		12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																															
	Medium Trees		8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent																															
	Small trees		6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent																															
	Shrubs				500-600mm																																
	Ground Cover				300-450mm																																
	Turf				200mm																																
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	Consistent The development satisfies all 7 core design elements (universal design features) for 100% of apartments.																																			
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Consistent The development has accessibility to regular public transport routes along Pittwater Road. The ground floor																																			

		accommodates retail and car parking only. All residential use is located on the levels above.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent The BASIX Certificate submitted with the application (see Certificate No. 1150877M dated 33 November 2020) indicates that the development will achieve above target scores for water (40) and energy (45) usage while Thermal Comfort will achieve a target pass.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Consistent The application includes Geotechnical Site Investigation which take into account water disposal measures and the impact of the development on any groundwater seepage.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Consistent The application includes a Schedule of Materials and Finishes which ensures the longevity and sustainability of the building.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent The application includes a Schedule of Materials and Finishes which ensures the longevity and sustainability of the building.

SEPP (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 application was referred to Ausgrid pursuant to Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007. In their response, no objection was raised subject to requirements that the development must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

The requirements stipulated by Ausgrid can be included as a condition, should the application be worthy of approval.

Transport for NSW (RMS)

Because the site is located approximately 30m from Pittwater Road, the application was referred to Transport for NSW for comment. In their response, Transport for NSW did not object to the proposal subject to conditions.

The requirements stipulated by Transport for NSW can be included as a condition, should the application be worthy of approval.

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
Height of Buildings:	11.0m	17.0m	54.54%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes

Clause	Compliance with Requirements
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	12.2m to 17m
Percentage variation to requirement:	up to 54%

The portion of the building facing Alexander Street has an overall height of between 12.8m and 13.2m respectively, representing variations to the height control of up to 2.2m (20%).

The portion of the building facing Collaroy Street has an overall height of 12.2m to 17m representing variations of up to 6 metres (54%).

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

Clause 4.6 (4)(a)(i) (Justification) assessment:

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has not demonstrated that the objectives of the development standard are achieved.

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:

In my opinion, there are sufficient environmental planning grounds to justify the variation. The additional height proposed facilitates a complimentary and compatible 4 storey form on this site consistent with the heights and form of recently approved and constructed shop top housing development within the Collaroy Beach B2 Local Centre zoned precinct. A better urban design and streetscape outcome is achieved.

The additional height proposed will ensure that the development maintains a complimentary and compatible streetscape height and form consistent with the heights and form of recently approved and constructed shop top housing development along this section of Pittwater Road and Collaroy Streets. We note that all floor levels are nearly identical to those established by the shop top housing developments to the north and south of the site.

Strict compliance would require the deletion of the entire upper floor of the development and result in a 3 storey form that would appear inconsistent with the height and cohesive streetscape established by recently approved and constructed shop top housing development adjacent to the site. The building is of exception design quality with the variation facilitating a height and floor space that provides for contextual built form compatibility and the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

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

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

The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the

development standard.

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

The written request solely relies on the fact that development is compatible with development in the area and this is not agreed with. In this regard, whilst there a four storey building along Collaroy Street, these buildings were approved under under a different planning instrument and are not designed to achieve strict compliance with ADG in terms of floor to ceiling height.

The applicant has not presented information to demonstrate that the variation to the development standard will achieve a better outcome compared to a compliant development. Furthermore, the variation to the building height development standard is a result of the fourth floor and “pop-top” roof element which causes substantial amenity impacts to the adjoining development (shadowing, privacy and view impacts). Therefore, the applicant's written request has not 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 not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3) and the application should be refused on these grounds.

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The height of the proposed development is 4 storeys, including an additional smaller “pop-top” roof element screening roof plant and lift overruns. This additional storey is set back from the leading edge and has the effect of a fifth storey. The proposal does not result in a scale and character that is compatible with the surrounding locality. whilst there are four storey building along Collaroy Street, these buildings were approved under under a different planning instrument and are not adjoining an R2 zone.

The proposed development is clearly incompatible with the character of the locality. A compliant

development would achieve a greater degree of compatibility.

In summary, the proposed breach of the building height control results in a development that does not satisfy this objective of the control

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

Comment:

The height and scale of the proposed development has potential impacts on views, outlooks and vistas from residential areas to the west and properties located across the road at Collaroy Street, which overlook the site.

The proposed development will also impact on solar access on the adjoining property at 1119 Pittwater Road and adverse impact on No. 7 Alexander Street.

In summary, the proposed breach of the building height control results in a development that does not satisfy this objective of the control

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

Comment:

The breach of the building height control does not have a significant impact on the scenic quality of Warringah's coastal and bush environments as the site is not in close proximity to those environments and development of the site does not have scenic impacts (as distinct from visual impacts related to bulk and scale and impacts on streetscape and character of the area).

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

Comment:

With regards to the streetscape presentation, it is considered that the presentation is clearly not compliant. The entire top level exceeds the building height control, is clearly visible from the street, and contributes to the jarring appearance when compared to the existing streetscape.

The other elements of the building that exceed the building height control also result in a negative impact when viewed from neighbouring streets and the public open space.

The change in level of the site does not present a significant constraint to the development of a compliant building. It is a gentle slope that can be used to provide a higher level of amenity for the shop top housing component by stepping dwellings up the slope of the land to obtain solar access, outlook and natural ventilation.

In summary, the proposed breach of the building height control results in a development that is inconsistent with this objective of the control.

Zone objectives

The underlying objectives of the B2 Local Centre zone are:

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

Comment

The proposal is consistent with this objective.

- *To encourage employment opportunities in accessible locations.*

Comment

The proposal is consistent with this objective.

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

Comment

The proposal is consistent with this objective.

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

Comment

The proposal is consistent with this objective as detailed .

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

Comment

For the reasons discussed in this assessment report the proposal is considered to have a bulk and scape that is greater than that which is anticipated by the planning controls and does not relate favourably to neighbouring residential land uses. The proposal is not consistent with this objective.

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

Comment

For the reasons discussed in this assessment report the proposed land uses give rise to impacts that have a negative impact on adjoining and nearby residential land uses. The proposal is not consistent with this objective.

Conclusion:

For the reasons detailed above, the proposal is inconsistent with the objectives of the B2 Local Centre zone.

Conclusion of Clause 4.6 variation request

It is considered that the written request to vary the building height standard has not demonstrated that compliance is unreasonable or unnecessary in the circumstances of the case. Nor does it demonstrate sufficient environmental planning grounds to justify a variation to the control. Furthermore, the proposal does not satisfy all of the objectives of the control and the zone.

In summary, the proposal fails to satisfy the relevant matters in Clause 4.6 of WLEP 2011 and it is recommended that this issue be given determining weight and the development application not be approved.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument.

In this regard, given the inconsistency of the variation to the objectives of the standard and the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard cannot be assumed.

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

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

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

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition could be included in the consent, should the application be worthy of approval requiring any fill to be of a suitable quality.

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. Condition could be included in the consent, should the application be worthy of approval requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

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

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	3	4 (+roof top terrace & associated structures)	25%	No
B5 Side Boundary Setbacks	East - Merit Assessment	Basement - Nil Ground - Nil to 8.8m First - Nil to 8.5m Second - Nil to 8.7m Third - Nil to 9.4m Fourth - Nil -9.1m	N/A	No
	West - Merit Assessment	Basement - Nil to 3.0m Ground - 0.4m to 4.7m First - Nil to 4.1m Second - Nil to 7.9m Third - Nil to 8.4m Fourth - 3.4m - 5.4m	N/A	No
B7 Front Boundary Setbacks - Collaroy Street (North)	Ground: Maintain street front First Floor: Maintain street front Second Floor: 5.0m	Basement - Nil Ground - 0.6m (Bin enclosure) to 3.0m (Retail) First - Nil to 1.9m Second - Nil to 1.9m Third - 0.3m to 1.9m Fourth - 7.0m to 13.9m	N/A	No
B7 Front Boundary Setbacks - Alexander Street (South)	Ground: Maintain street front First Floor: Maintain street front	Basement - Nil Ground - 0.6m (Bin enclosure) to 4.1m (Retail)		No

	Second Floor: 5.0m	First - Nil to 3.5m Second - Nil to 3.5m Third - 0.3m to 3.5m Fourth - 3.6m -3.9m (lift overrun)		
B9 Rear Boundary Setbacks	Merit Assessment	N/A	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B2 Number of Storeys	No	No
B6 Merit Assessment of Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	No	No
B10 Merit assessment of rear boundary setbacks	N/A	N/A
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	No	No
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	No
D7 Views	No	No
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
D23 Signs	N/A	N/A
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features		

Clause	Compliance with Requirements	Consistency Aims/Objectives
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	No	No

Detailed Assessment

B2 Number of Storeys

Description of non-compliance

The development does not comply with the control in that it proposes the construction of 4 storeys which exceeds the control by one storey.

Merit consideration:

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

- *To ensure development does not visually dominate its surrounds.*

Comment:

The subject site is zoned B2 Local Centre under the provisions of Warringah LEP 2011. Adjoining development located on the southern side of Collaroy Street includes a 3-4 storey shop top housing development at No. 1119 Pittwater Road and a Council carpark accessed from Collaroy Street. The balance of the properties to the west of the site, including those located on the southern side of Alexander Street, are occupied by detached style dwellings reflecting the R2 Low Density Residential zoning. Development to the east of the site has its frontage and address to Pittwater Road and comprises 1 and 2 storey retail and business premises.

The proposal is a large-scale development that provides no articulation to the side boundaries. In this context, the proposed scale of the development will not be commensurate to that of adjoining sites, the development will visually dominate its surrounds and will be noticeable from the streetscape.

The proposal does not satisfy 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 does not maintain the visual continuity and patterns of buildings nor protect and enhance the visual quality of the streetscape.

The development will not impact upon views from waterways or land zoned for public recreation purposes.

The proposal does not satisfy this Objective.

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

Comment:

The development will infill the site to achieve a height of 17m. The infilling of this site to that height will obstruct views from the afore-mentioned neighbouring residential properties to the west, which overlook the site.

The proposal does not satisfy this Objective.

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

Comment:

The development does not provide reasonable amenity level to the adjoining and nearby properties with regards to its visual impact.

The proposal does not satisfy this Objective.

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

Comment:

The development provides for a innovative roof pitch and variation in roof design.

The proposal satisfies this Objective.

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

Comment:

The development exceeds the permitted 11.0m overall building height as stipulated under the height of buildings development Standard in the WLEP 2011 by 6m. The non-compliant overall building height has been assessed against the provisions of Clause 4.6 under the WLEP and was found to be inconsistent with the Objectives of the Development Standard and the Objectives of the zone. In this respect, the non-compliance is not supported.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B6 Merit Assessment of Side Boundary Setbacks

Whilst the side setback control is merit based, at present there is insufficient setback and stepping back at upper levels of the building to the western boundary to ensure adequate transition between the B2 Local Centre and R2 - Low Density Residential zoned sites. There is also insufficient setback provided to the adjoining development at No.1119 Pittwater Road.

Similarly, and as previously discussed in relation to the laneway, the eastern boundary is considered as a side setback, which would benefit from an increased pedestrian circulation zone.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

The control stipulates the following requirements:

- Ground and first floors of the building: Aligned to street frontage.
- For any storey above the first floor: 5.0m.

The non-compliance relates to the 2nd Level both street frontages (as stipulated in the table below), which is required to be setback 5m:

B7 Front Boundary Setbacks - Collaroy Street (North)	Ground: Maintain street front First Floor: Maintain street front Second Floor: 5.0m	Basement - Nil Ground - 0.6m (Bin enclosure) to 3.0m (Retail) First - Nil to 1.9m Second - Nil to 1.9m Third -0.3m to 1.9m Fourth - 7.0m to 13.9m	N/A	No
B7 Front Boundary Setbacks - Alexander Street (South)	Ground: Maintain street front First Floor: Maintain street front Second Floor: 5.0m	Basement - Nil Ground -0.6m (Bin enclosure) to 4.1m (Retail) First - Nil to 3.5m Second -Nil to 3.5m Third -0.3m to 3.5m Fourth - 3.6m -3.9m (lift overrun)		No

The proposed development does satisfy the objectives of this control, as the development adds to unreasonable building bulk and scale to the street. The non-compliance is particularly noticeable due to the building height and number of storeys non-compliances.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C3 Parking Facilities

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference
<u>Residential</u> 1 Bedroom (4) 2 Bedroom (20) 3 Bedroom (15)	1 space/dwelling 1.2 spaces/dwelling 1.5 spaces/dwelling	4 space 24 spaces 22.5 spaces	63 spaces	+12
Visitors	1 space/5 dwellings	7.8 spaces	8 space	Nil
<u>Retail</u> Retail 01 (40.5m ²) Retail 02 (68.45m ²) Retail 03 (68.25m ²) Retail 04 (69.32m ²) Total (246.27m ²)	1 space/16.4m ² GLFA	15 spaces	14 spaces	-1 spaces
Total		65.5 spaces	85 spaces	A short fall 1 retail parking space

As demonstrated in the table above, the proposal is 1 space short for the retail component of the development when calculated against the WDCP requirement for car parking.

To address the non-compliance, the proposal is accompanied by a Parking and Traffic Impact Assessment report, prepared by Tarrific Pty Ltd, The report states that shortfall in retail parking is considered acceptable for the following reasons:

1. *The shortfall is only 1 retail parking space;*
2. *The existing 177m² of retail floor space on the site is served by only 3 off-street parking spaces (1 space per unit). Based on the DCP parking requirements, the existing retail would generate 11 parking representing a shortfall of 8 spaces*
3. *Adjoining the site off Collaroy Street is an 18 space public carpark with a 2 hour parking limit.*
4. *The 16 visitor and retail shopper parking spaces on the ground level will take into account dual and complementary use of parking spaces presented by the mixed-use development proposal*
5. *The site has convenient access to numerous bus services which will reduce the demand for car travel*

Council's Traffic Engineer supports the applicant's Traffic report's justification on the shortfall relating to

parking. Therefore, the development is acceptable with regards to the parking provided for the development.

C4 Stormwater

Council's Development Engineer has raised concerns with regards to the proposed arrangements for stormwater disposal from the site. These concerns have been given determining weight as a reason for refusal of the development application.

D6 Access to Sunlight

The Development Application includes certified shadow diagrams which indicate that the development will create additional overshadowing to the neighbouring properties to the south and west of the subject site. whilst it can be argued that the level of overshadowing is compliant with Clause D6– Access to Sunlight.

However, the level of overshadowing cast by the development can be reduced by lowering the building height, and increasing the side and front setback.

D9 Building Bulk

As discussed above with regards to the building height control in WLEP 2011, the proposed building height results in a bulk and scale of development that is considered to be excessive, having a negative impact on streetscapes and the character of the area. It is considered that the proposal does not satisfy the requirement of Clause D9 of WDCP 2011 that "*building height and scale needs to relate to topography and site conditions*" and this issue has been given determining weight as a reason for refusal of the development application.

F1 Local and Neighbourhood Centres

As discussed above with regards to the building height control in WLEP 2011 and within Urban Design referral comments, the proposed building height results in a bulk and scale of development that is considered to be excessive, having a negative impact on streetscapes and the character of the area. It is considered that the proposal does not satisfy the following requirements of Clause F1:

- *Buildings are to define the streets and public spaces and create environments that are appropriate to the human scale as well as being interesting, safe and comfortable.*
- *The design and arrangement of buildings are to recognise and preserve existing significant public views.*
- *Development that adjoins residential land is not to reduce amenity enjoyed by adjoining residents.*
- *The built form of development in the local or neighbourhood retail centre is to provide a transition to adjacent residential development, including reasonable setbacks from side and rear boundaries, particularly above ground floor level.*
- *Buildings greater than 2 storeys are to be designed so that the massing is substantially reduced on the top floors and stepped back from the street front to reduce bulk and ensure that new*

development does not dominate existing buildings and public spaces.

This issue has also been raised as a concern by Council's Urban Design Advisor in the comments detailed above. These concerns are concurred with and this issue has been given determining weight as a reason for refusal of the development application.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$183,638 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$18,363,774.

CONCLUSION

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

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

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

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

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

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 4.3 Height of Buildings has adequately addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

The proposed development involves a substantial breach of the building height control in clause 4.3 of WLEP 2011. At its maximum, the breach is up to 6m metres (54%). The breach of the building height control occurs over a large portion of the development. The applicant has submitted a written request to vary the control under clause 4.6 of WLEP 2011. It is considered that the proposal fails to satisfy the requirements of clause 4.6 of WLEP 2011 because compliance with the control is not unreasonable or unnecessary and because there are not sufficient environmental planning grounds to justify the variation that is sought.

The assessment of the application against the provisions of SEPP 65 found that the proposal is inconsistent with a number of the design principals and a number of relevant requirements as contained in the associated ADG, particularly as it relates to building separation.

The public notification resulted in 152 submissions, 136 of which supported the proposal. The objections raised a variety of issues, some of which have been given determining weight. These include the impacts of the proposal on the character of the area, the height, bulk and scale of the development, the impact of the development on the adjoining development. .

The breach of the controls and the impacts arising from those breaches are indicative of a proposal that is an overdevelopment of the site.

Accordingly, the application is recommended for refusal.

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 DA2020/1453 for the Demolition works and construction of a shop-top housing development on land at Lot 1 DP 881326,4 Collaroy Street, COLLAROY, Lot CP SP 5367,1 Alexander Street, COLLAROY, for the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development and its associated Apartment Design Guide.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone B2 Local Centre 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 4.3 (2) Height of Buildings of the Warringah Local Environmental Plan 2011.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the written request to vary the building height control pursuant to clause 4.6 of Warringah Local Environmental Plan 2011 is not well founded.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B2 Number of Storeys of the Warringah Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B6 Merit Assessment of Side Boundary Setbacks of the Warringah Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4 Stormwater of the Warringah Development Control Plan.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D6 Access to Sunlight of the Warringah Development Control Plan.
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D7 Views of the Warringah Development Control Plan.

12. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D8 Privacy of the Warringah Development Control Plan.
13. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.
14. 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 F1 local and Neighbourhood Centres of the Warringah Development Control Plan.



[illegible]

ANNEXURE 1

CLAUSE 4.6 VARIATION REQUEST – HEIGHT OF BUILDINGS

Clause 4.6 variation request

Height of Buildings

1.0 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 Warringah Local Environmental Plan 2011 (WLEP)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of Warringah Local Environmental Plan 2011 (WLEP) the height of a building on the subject land is not to exceed 11 metres in height. The objectives of this control are as follows:

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

Building height is defined as follows:

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

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

The Alexander Street facing building has a maximum height of 12.8 metres measured at its leading gutter line with the parapeted roof elements beyond extending to a maximum height of 13.2 metres. This represents building height variations of 1.8 metres (16%) and 2.2 metres (20%) respectively.

The Collaroy Street facing building has a maximum height of 12.2 metres measured at its leading gutter line with the roof terrace balustrade and lift overruns/ stair cores beyond extending to maximum heights of 14, 16 and 17 metres respectively representing variations of 3 metres (27%), 5 metres (45%) and 6 metres (54%) respectively. The building height breaching elements are depicted on the architectural plans extracts of which are at Figures 1, 2 and 3 below and over page.



Figure 1: Height breach diagram (south elevation)

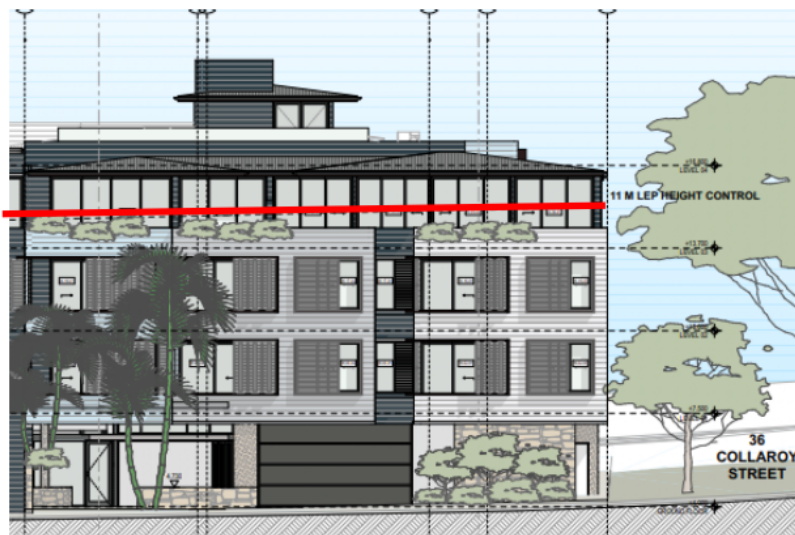


Figure 2: Height breach diagram (north elevation)

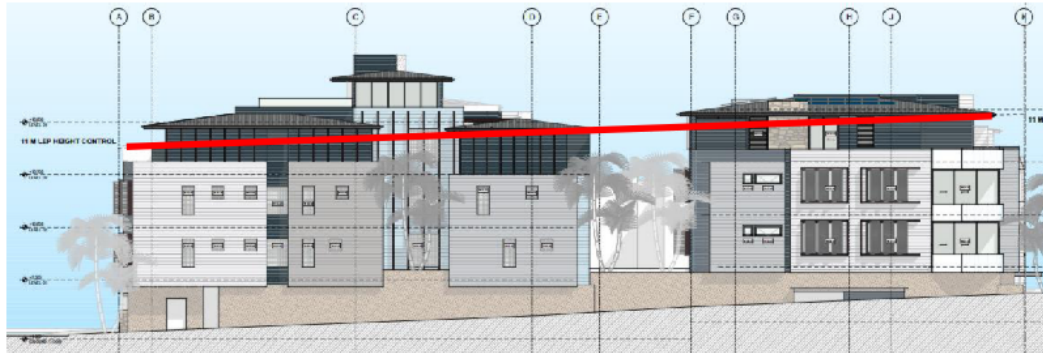


Figure 3: Height breach diagram (western elevation)

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of WLEP provides:

(1) *The objectives of this clause are:*

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

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

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

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

Clause 4.6(2) of WLEP provides:

- (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.*

This clause applies to the clause 4.3 WLEP Height of Buildings Development Standard.

Clause 4.6(3) of WLEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the height of buildings provision at 4.3 of WLEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of WLEP provides:

- (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 Director-General has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of WLEP provides:

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

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act.

Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of WLEP from the operation of clause 4.6.

3.0 Relevant Case Law

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

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

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

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

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of WLEP?

4.0 Request for variation

4.1 Is clause 4.3 of WLEP a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 WLEP prescribes a height provision that seeks to control the height of certain development. Accordingly, clause 4.3 WLEP is a development standard.

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

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

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

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

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

I note that the upper level building elements maintain an appropriate setback to both street frontages such that they will be recessive in a streetscape context consistent with that of other recently approved and constructed 4 storey shop top housing development located on the northern side of Collaroy Street and along Pittwater Road as depicted in Figures 4, 5, 6 and 7 below and over page.



Figure 4: View of adjoining 4 storey mixed use development at No. 1119 Pittwater Road

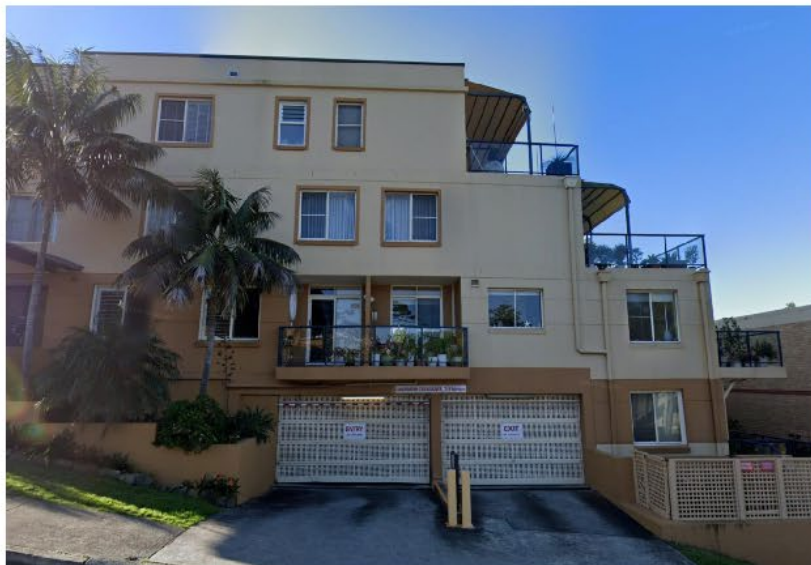


Figure 5: View of 4 storey shop top housing development located on northern side of Collaroy Street



Figure 6: View of 4 storey shop top housing development located on northern side of Collaroy Street



Figure 7: View towards 4 storey shop top housing development located along Pittwater Road within proximity of the site



Figure 8: Perspective image of the proposed development as viewed from Alexander Street

In this regard, I have formed the considered opinion that the non-compliant building element including its height, bulk and scale are entirely consistent with the height and scale of surrounding and nearby development.

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

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

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

In this regard, I note that the non-compliant upper level building elements have a more constrained footprint than that of the levels below with increased setbacks to each street frontage and to the R2 Low Density Residential zone boundary interface to the west minimising visual impact, disruption of views, loss of privacy and loss of solar access consistent with the objective of the standard. .

In relation to visual impact, I note that the increased setbacks proposed to the non-compliant building elements, together with the use of highly articulated characteristically pitched roof elements, ensure that the breaching elements are visual recessive as viewed from surrounding properties and in a streetscape context. Visual impacts have been minimised through adopting such design response. The non-compliant elements associated with the communal open space roof terraces and associated access are setback from all boundaries to the extent that they will not be readily discernible as viewed from any immediately adjoining property or from the opposite side of Collaroy Street when viewed from in front of the site.

In relation to view loss and the view sharing principles adopted in Tenacity Consulting v Warringah [2004] NSWLEC 140 I rely on the images at Figures 9 and 10 below and over page to demonstrate that as the site is located at the base of the escarpment, whereby the land rises steeply to the west, that the non-compliant height portions of the development will not give rise to any significant view affectation noting that the existing view corridors down Alexander and Collaroy Street will be retained with the Norfolk Island Pines along Collaroy Beach will remaining as prominent elements in the view. The view impact is appropriately described as minor.

I consider that view impacts have been minimised through the maintenance of view corridors down both street frontages through the provision of increased upper level setbacks to both streets and the provision of highly articulated roof forms which, when coupled with the courtyard design adopted, provide some additional view opportunities through the site above the 11 metre height standard. A view sharing outcome is achieved.

In terms of privacy, the non-compliant building elements have again been designed to minimise privacy impacts through the setbacks adopted to adjoining properties and provision of integrated privacy attenuation measures where necessary.

In relation to solar access, the shadow diagrams at Attachment 1 demonstrates that shadows from the non-compliant 4th floor building element fall predominantly onto Alexander Street and in any event do not preclude the maintenance of at least 3 hours of solar access to the north facing living areas and adjacent open space areas of surrounding residential properties on 21st June in strict accordance with the control.

The proposal achieves this objective.



Figure 9: Image showing streetscape outcome to Alexander Street



Figure 10: Image showing streetscape outcome to Collaroy Street

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

Comment: The non-compliant building height elements will not be readily discernible as viewed from any coastal or bushland environments. In the event that the non-compliant building height elements are visible from Collaroy Beach and its immediate environs I am satisfied that the height bulk and scale of the building will not be perceived as inappropriate or jarring have regard to the 4 storey nature of recently constructed shop top housing development located within the same visual catchment. This objective is achieved.

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

Comment: To the extent that the non-compliant building height elements are visible from public places including Collaroy Beach, Alexander Street, Collaroy Street and Pittwater Road, for the reasons previously expressed I am satisfied that the height bulk and scale of the building will not be perceived as inappropriate or jarring have regard to the 4 storey nature of recently constructed shop top housing development located within the same visual catchment.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context.

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

Consistency with zone objectives

The subject property is zoned B2 Local Centre pursuant to WLEP 2011. The developments consistency with the stated objectives of the B2 zone are as follows:

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

Response: The proposed mixed use development provides ground floor retail tenancies which activate both street frontages and which are able to accommodate a range of retail uses that serve the needs of people who live in, work in and visit the local area. The proposal achieves this objective

- *To encourage employment opportunities in accessible locations.*

Response: The proposed mixed use development provides ground floor retail tenancies which will provide employment opportunities in an accessible location being within immediate proximity of the B Line bus service. The proposal will also encourage employment in terms of strata management and property maintenance. The proposal achieves this objective.

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

Response: The development provides appropriately for vehicle and bicycle parking to achieve this objective. The area is also well serviced by public transport.

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

Response: The development provides for covered outdoor seating and pedestrian circulation space providing an environment for pedestrians that is safe, comfortable and interesting.

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

Response: The proposal building scale and landscape treatments proposed provide for an urban and landscape form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment. This objective is achieved.

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

Response: the subject property is located immediately adjacent to a R2 Low Density Residential zone to the west of the site. As previously indicated, having undertaken a detailed site and context analysis and identified available view lines over the site, I have formed the considered opinion that the height of the development, and in particular the non-compliant height components, will not give rise to unacceptable or unanticipated visual, view, privacy or solar access impacts with appropriate spatial separation maintained to property is located in the adjacent R2 Low Density Residential zone.

In this regard, the consent authority can be satisfied that the design and distribution of building height across the site minimises conflict between land uses in the zone and within adjoining zones and to that extent ensures the maintenance of appropriate amenity to adjoining and nearby residential land uses. This objective is achieved.

The proposed development, notwithstanding the height breaching elements, achieve the objectives of the zone.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

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

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

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

Sufficient environmental planning grounds

In my opinion, there are sufficient environmental planning grounds to justify the variation. The additional height proposed facilitates a complimentary and compatible 4 storey form on this site consistent with the heights and form of recently approved and constructed shop top housing development within the Collaroy Beach B2 Local Centre zoned precinct. A better urban design and streetscape outcome is achieved.

The additional height proposed will ensure that the development maintains a complimentary and compatible streetscape height and form consistent with the heights and form of recently approved and constructed shop top housing development along this section of Pittwater Road and Collaroy Streets. We note that all floor levels are nearly identical to those established by the shop top housing developments to the north and south of the site.

Strict compliance would require the deletion of the entire upper floor of the development and result in a 3 storey form that would appear inconsistent with the height and cohesive streetscape established by recently approved and constructed shop top housing development adjacent to the site. The building is of exception design quality with the variation facilitating a height and floor space that provides for contextual built form compatibility and the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

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

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

The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

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

4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the B2 Local Centre zone

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

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

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

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

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

4.5 Secretary’s concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a nonnumerical standard, because of the greater scrutiny that the LPP process and determinations are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

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

- (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.*

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

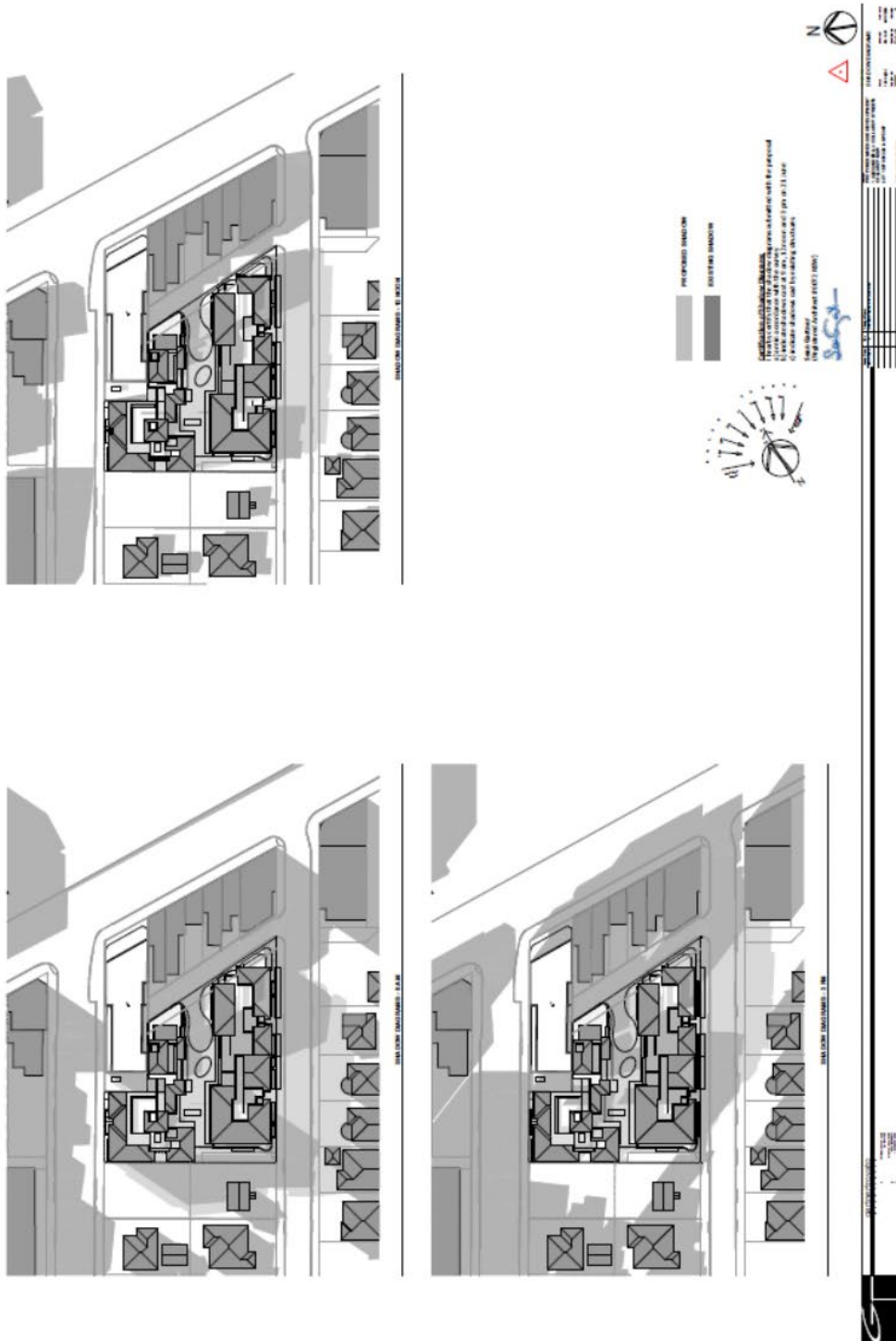
Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA

Director

Attachment 1 Shadow diagrams



ITEM 3.2**DA2020/1351 - 1 BILAMBEE LANE, BILGOLA PLATEAU -
DEMOLITION WORKS AND CONSTRUCTION OF SHOP-TOP
HOUSING****AUTHORISING MANAGER** Lashta Haidari**TRIM FILE REF** 2021/261398**ATTACHMENTS**
1 Assessment Report
2 Site Plans & Elevations
3 Clause 4.6**PURPOSE**

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/1351 for demolition works and construction of shop-top housing at Lot 5 DP 229309, 1 Bilambree Lane, Bilgola Plateau subject to the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1351
Responsible Officer:	Danielle Deegan, DM Planning Pty Ltd
Land to be developed (Address):	Lot 5 DP 229309, 1 Bilambee Lane BILGOLA PLATEAU NSW 2107
Proposed Development:	Demolition works and construction of shop top housing
Zoning:	B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	Yes
Owner:	The Boss NSW Pty Ltd
Applicant:	The Boss NSW Pty Ltd
Application Lodged:	27 October 2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	06/11/2020 to 27/11/2020
Advertised:	06/11/2020
Submissions Received:	52
Clause 4.6 Variation:	4.3 Height of buildings – Building 16% Plant room - 32% 4.5A Density Controls – 22.5%
Recommendation:	Refusal
Estimated Cost of Works:	\$6,810, 408

EXECUTIVE SUMMARY

This report provides an assessment of a proposed mixed-use (shop top housing) development at No. 1 Bilambee Lane, Bilgola Plateau (the site). The site is located with frontages to Bilambee Avenue, Bilambee Lane and Bilkurra Avenue and is situated within the B1 Neighbourhood Centre under Pittwater LEP 2014 (PLEP 2014).

The proposal involves the demolition of existing buildings and construction of a 3 storey development containing retail premises (436.8m²) at ground level, eight (8) residential apartments above and two levels of basement car parking (30 spaces).

The application is recommended for refusal due to the breach of building height and density development standards, inconsistency with character requirements embodied in the applicable planning controls and detrimental amenity impacts on surrounding residential dwellings. The proposal is not an appropriate or suitable response in its current form.



The application was referred to internal departments and external authorities. In the responses, there are issues raised in relation to the proposed development, which require further resolution before such a scheme can be fully supported by Council. It is noted that Council's Design and Sustainability Advisory Panel (DSAP) does not support the proposal in its current form.

The public exhibition of the DA resulted in a significant response from the community all objecting to the proposal. Concerns raised relate primarily to building height, bulk, scale and density and the consequent visual and amenity impacts. The proposal is inconsistent with the character and context of the locality.

While the redevelopment of the subject site would be a significant improvement in comparison to the existing situation (a disused vehicle repair station) and the proposal incorporates many features of good design, including a high level of articulation, landscaping treatments, and strongly defined architectural elements presenting to the retail frontage, the overall building bulk is inappropriate for the site's low-density context. The non-complying building height, density, building envelope and building setbacks are not supported. In addition, the relationship of the proposed development with its surrounding residential neighbours has not been successfully resolved.

On balance, the proposal (as lodged) is not sufficiently consistent with the applicable controls and the development will result in a height, density, bulk and scale of development that does not reflect the objectives and outcomes envisaged by the planning controls for the site. The design should be more respectful to its adjoining residential neighbours.

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

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent for the demolition of existing buildings and construction of a 3 storey development containing retail premises (436.8m²) at ground level, eight (8) residential apartments above and two levels of basement car parking (30 spaces). The proposed development also proposes associated site works, drainage and landscape within the road reserve.

ASSESSMENT INTRODUCTION

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

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



SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 – 4.3 Height of Buildings
Pittwater Local Environmental Plan 2014 – 4.5A Density Controls for certain residential development
Pittwater 21 Development Control Plan - A4.3 Bilgola Locality
Pittwater 21 Development Control Plan – C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan – C1.25 Plant, Equipment Boxes and Lift Over Run.
Pittwater 21 Development Control Plan – D3.6 Front building line
Pittwater 21 Development Control Plan – D3.9 Building envelope.

SITE DESCRIPTION

Property Description:	Lot 5 DP 229309 , 1 Bilambee Lane, Bilgola Plateau
Site Description:	The subject site consists of one (1) allotment which has three street frontages to Bilambee Avenue, Bilambee Lane and Bilkurra Avenue. The site is irregular in shape with a frontage of 19.86m to Bilambee Lane, 19.81m to Bilambee Avenue and 32.19m to Bilkurra Avenue. The site has a surveyed area of 930m². The site is currently occupied by a disused vehicle repair station. There are six (6) indented on-street spaces along the Bilambee Avenue frontage of the subject site. The site is part of the B1 Neighbourhood Centre zone under Pittwater LEP 2014 which currently accommodates several retail shops with one storey of residential and commercial uses above. The site is relatively flat with a slight cross-fall of 1.15m from the north-western corner to the south-eastern corner.
Detailed Description of Adjoining/Surrounding Development:	The neighbourhood centre includes a small grocery store, bottle shop, physiotherapist, beauty and massage, takeaway, cafe and a vacant premise. The main parking for the centre is 90-degree angled parking on Bilambee Avenue. The site shares a boundary is with 1 Bilambee Avenue, a mixed use development containing 7 strata units. Units 3 and 4 are residential units and have balconies facing the subject site. Development surrounding the neighbourhood centre comprises of predominately detached dwelling houses in landscaped settings.

Map:



SITE HISTORY

The subject site has been used for vehicle repair station from 1994 until recently and is now disused. Prior to 1994, the site was occupied by a BP service station.

Pre-Lodgement Meeting

A pre-lodgement meeting for the demolition works and construction of a shop top housing development was held between the applicant and Council on 11 June 2020.

DEVELOPMENT APPLICATION HISTORY

An opportunity was presented to the applicant to withdraw the application by letter dated 1 March 2021, with a view to addressing the specific concerns and preparing the required information, and resubmitting a new DA. The applicant was advised that failure to withdraw the application would result in Council reporting the application based upon the information provided at lodgement. The applicant has not responded to the above letter.

On 8 March 2021, an Appeal against the deemed refusal of the subject development application was lodged with the Land and Environment Court.



NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 06/11/2020 to 27/11/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition, Council received fifty-two (52) submissions from:

Name:	Address:
Mr David John Bracks	15 Bilambee Avenue BILGOLA PLATEAU NSW 2107
Mp Barrie Sutherland	3 / 1 Bilambee Avenue BILGOLA PLATEAU NSW 2107
Mr Bill Tulloch	9 Barrabooka Street CLONTARF NSW 2093
Ms Rosalind Anne Mulcahy	4 / 1 Bilambee Avenue BILGOLA PLATEAU NSW 2107
Mr John Andrew Garner	112 Plateau Road BILGOLA PLATEAU NSW 2107
Mrs Karin Bernice Wiese	106 Plateau Road BILGOLA PLATEAU NSW 2107
Ms Lisa Nicole Tyndall	2 Argyle Street BILGOLA PLATEAU NSW 2107
Mrs Gabrielle Anne Angles	12 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Ms Anna Arruzza	110 Irrubel Road NEWPORT NSW 2106
Mr Nicholas Clark	3 Mia Place CLAREVILLE NSW 2107
Mrs Amber Corin Marsh	104 Plateau Road BILGOLA PLATEAU NSW 2107
Mr Donald Vincent Radford	17 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Mrs Alexandra Louise Ellard	4 Bilberry Avenue BILGOLA PLATEAU NSW 2107
Mrs Chelsey Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107
Vita Carolin Eva Von Neumann-Cosel	10 Bilwara Avenue BILGOLA PLATEAU NSW 2107
David Adams	6 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Mrs Jane Angela Lean	20 Bilambee Avenue BILGOLA PLATEAU NSW 2107
Mr Stuart Carson Hipwell	131 Plateau Road BILGOLA PLATEAU NSW 2107
Mr Francis Roland Meier	30 Bilga Avenue BILGOLA PLATEAU NSW 2107
Jessica Lee Knight	3 Mariposa Road BILGOLA PLATEAU NSW 2107
Merryn Baker	24 Old Barrenjoey Road AVALON NSW 2107
Min Jane Freedman	47 The Outlook BILGOLA PLATEAU NSW 2107
Mrs Katherine Moss	20 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Peter Andrews	83 The Outlook BILGOLA PLATEAU NSW 2107
Ms Chantal Dray	26 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Mr David Noel Loxley	12 Terama Street BILGOLA PLATEAU NSW 2107
Mrs Florence Anne Radford	17 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Mrs Anna Louise Rudd	2 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Mr Warwick Mitchell Smith	74 The Outlook BILGOLA PLATEAU NSW 2107
Mr Nick Hart	Address Unknown
Ms Helen Anne Howie	71 The Outlook BILGOLA PLATEAU NSW 2107
Anne Rika-Heke	14 Bilambee Avenue BILGOLA PLATEAU NSW 2107
Chauntelle Maree Simpson Ready	19 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Mr Simon Leslie Carrington	26 Bilga Avenue BILGOLA PLATEAU NSW 2107
Mr Michael Fitchman	7 Bilwara Avenue BILGOLA PLATEAU NSW 2107
Claire Paula McCaffery	4 Bilga Avenue BILGOLA PLATEAU NSW 2107

Ms Nicole Elizabeth Johnson	34 Plateau Road BILGOLA PLATEAU NSW 2107
Ms Lorraine Joan Islaub	11 Bilga Avenue BILGOLA PLATEAU NSW 2107
Tilly Gray	4 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Ms Sorcha Nina Kaufmann	25 The Circle BILGOLA PLATEAU NSW 2107
Mrs Merinda Joan Gray	4 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Mrs Lisa Anne Evans	23 The Circle BILGOLA PLATEAU NSW 2107
Ms Melanie Jane Stancliffe	16 Bilga Avenue BILGOLA PLATEAU NSW 2107
Mrs Ellen Amy Couchman	86 Plateau Road BILGOLA PLATEAU NSW 2107
Ms Camilla Charlotte Florence Barklem	8 Bilberry Avenue BILGOLA PLATEAU NSW 2107
Ms Alison Louise Starr	61A Wandeen Road CLAREVILLE NSW 2107
Ms Marisa Alexis Kanthak	26 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Mr Benjamin Arnold Blundell	6 / 1 Bilambee Avenue BILGOLA PLATEAU NSW 2107
Mrs Penelope Jackson	38 Wandeen Road CLAREVILLE NSW 2107
Mr Steven Peter Koolloos	1 Bilkurra Avenue BILGOLA PLATEAU NSW 2107
Mr Peter George Ferguson	5 Bilga Avenue BILGOLA PLATEAU NSW 2107
Ms Claire Cardno	36 Heath Street MONA VALE NSW 2103

Assessment of Residents Issues

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

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

A large number of submissions received have raised concern that the development is out of character for the Bilgola Locality and the bulk and scale of the development is not appropriate for the site. Concerns have also been raised regarding inadequate boundary setbacks resulting in unacceptable visual privacy, overshadowing and amenity concerns.

Comment:

These issues are discussed in detail throughout this report. In summary, the assessment finds that the design of the proposed development is inconsistent with the character of the area, and the development in its current form is excessive in terms of bulk and scale. These issues are included as a reason for refusal.

- **The building height is excessive.**

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

Comment:

As discussed in detail in the Pittwater Local Environmental Plan 2014 section of this report, the proposed variation to the building height development standard is not supported. Non-compliance with building height is included as a reason for refusal.

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

A number of submissions raised concerns regarding the additional traffic generated by the proposed development given insufficient parking provided by the development, and the location of the basement entry exist in Bilambee Lane. Concern was also raised that the additional traffic and parking will jeopardise pedestrian safety.



Comment:

Council's Traffic Engineer has reviewed the proposed development and has raised not raised any concerns in relation to traffic and carparking impacts.

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

The concerns relate to view loss from the adjoining residential apartments at units 3 and 4, 1 Bilambee Avenue.

Comment:

These two residential units enjoy district views, including some distant water views, over the subject site, in a south-easterly direction, from their adjoining courtyards. The proposed development will present a brick wall to their courtyards and will completely block their views.

The impacts on the above properties have been assessed in accordance with the principles of *Tenacity Consulting v Warringah Council 2004*. As the view loss is a result of non-complying building height, the view loss is unacceptable.

Consequently, view loss is included as reason for refusal.

- **The extent of excavation is excessive**

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

Comment:

The application includes a Geotechnical Report (STS Geotechnics Pty Ltd). This report has addressed the potential impacts to surrounding buildings due to vibrations from excavation and includes recommendations to limit any risk in this regard. Subject to the recommendations of this report, the proposal is considered acceptable in this regard. If the application was to be approved, a condition of consent requiring all recommendations of this report to be carried out would be included.

- **The development will generate unacceptable noise**

Concerns have been raised that the development will generate unacceptable noise. In particular, concerns with the garbage collection for the proposed development.

Comment:

The proposal is accompanied by a Mechanical Plant Noise Assessment Report (prepared by Noise and Sound Services). While the report finds noise impacts generally acceptable, (subject to recommendations) the report has failed to identify the residential units in the adjoining mixed use development (units 3 & 4, 1 Bilambee Ave) as being the nearest neighbouring premises and therefore has not assessed noise impacts on these dwellings.

- **The development has insufficient landscaping**

Comment:

The issue of landscaping is addressed in detail within the landscape referral comments in this report. In summary, while the proposal lacks deep soil planting, there is adequate plantings proposed in planter boxes and the surrounding public domain to provide adequate vegetation.

- **Impacts on amenity of adjoining residential units at 3 & 4, 1 Bilambee Ave**

The residents of these two residential units have raised overshadowing, privacy and view loss concerns.



Comment:

As discussed throughout this report, the proposed development will result in unacceptable amenity impacts on the two directly adjoining residential units. The interface with the building at 1 Bilambee Avenue has not been adequately resolved.

- **Impacts on amenity of 1 Bilkurra Ave (overlooking)**

Comments:

This property has raised concerns regarding overlooking from the level 1 balconies and level 1 terrace which are on a nil setback to the laneway. Given there is a window in the southern wall of 1 Bilkurra Ave which is within the 9m required by P21 DCP, the proposed balcony setbacks are assessed as unsatisfactory.

Inappropriate vehicle entry point

Comment:

The owner of 1 Bilkurra Ave has claimed that the ingress/egress point in the Bilambee Lane is inappropriate. However, Council's Development Engineer has not raised issue with the location of the driveway.

- **Construction impacts on properties in the retail centre**

Comment:

The Construction Management Plan (CMP) submitted with the development application outlines site practice and safety measures during construction. In the event of an approval the recommendations of the CMP, along with other conditions of consent (including the requirement for a dilapidation report) will ensure impacts on adjoining properties are managed appropriately during the construction process.

- **Additional retail space is not required in the area**

Comment:

The amount of proposed retail floor space represents 35% of the total gross floor area proposed and therefore complies with the minimum of 25% required under Clause the P21 DCP. The amount of retail floor space proposed is assessed as satisfactory.

- **No architectural merit; the facade is not consistent with the environment, and is the wrong material and colouring**

Comment:

The proposed materials, colours and incorporation of planters are supported. However, the Design and Sustainability Advisory Panel have advised that the long continuous parapet, large commercial-scale vertical louvres and lack of articulation, are not consistent with a 'local centre' character and are not supported.

REFERRALS

Internal Referral Body	Comments
Building Assessment – Fire and Disability upgrades	Supported (subject to conditions) 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. 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.

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	Supported (subject to conditions) Demolition of a historic petrol station and existing auto service centre and construction of shop top housing requires significant excavation. Contamination report indicates sub-surface contamination to be unlikely, but further investigation is required once hard stands are removed. The Construction Management Plan describes the layered approach to removing soil; between each layer an assessment will be made. Approval is satisfactory with conditions. Recommendation APPROVAL - subject to conditions
Environmental Health (Industrial)	Supported (subject to conditions) Acoustic report provides "noise goals" and recommendations in sections 4 & 5 -these are to be the foundation for conditions. A private enclave in the adjoining building is perhaps the closest place where noise from mechanical plant may become an issue. Recommendation APPROVAL - subject to conditions
Landscape Officer	Supported (subject to conditions) The development application is for the demolition of existing structures on site and construction of a shop top housing development comprising of two retail shops at ground level and residential apartments above. Outdoor dining is proposed along the Bilkurra Avenue frontage with additional on street parking and landscaping proposed within the Bilambee Avenue and Bilkurra Avenue road reserves. The application is assessed by Landscape Referral against State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65), and associated Apartment Design Guide (ADG), and Pittwater Local Environmental Plan (PLEP) and Pittwater Development Control Plan (PDCP), including but not limited to the following clauses: • Principle 5: Landscape, of SEPP65 requires " that ... landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. ... well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity ..." • ADG: Part 3E Deep Soil Zones. • PDCP: clause C1.1 and C2.1 Landscaping and clause C2.20 Public Road Reserve - Landscaping and Infrastructure. No deep soil is proposed as part of this development to the ground floor area. On merit this can be supported as the development proposes accessible retail occupancy that includes outdoor dining and this will have social benefits for the community and as such satisfies the useability, equitable access and opportunities for social interaction that is a key principal objective of the SEPP65 policy. A Landscape Plan is provided that includes public domain works consisting of road works, ramps, street furniture, paving, and planting within the road reserve verge. Works within the road reserve verge is

Internal Referral Body	Comments
	not part of this application approval and is subject to a separate application to Council in the form of the following: Infrastructure Works on Council Roadway - Section 138A application, or any other application as advised, applicable for the approval to construct kerb & gutter, footpath, pavement and any other encroachment works on Council's road reserve. The works as shown within the public domain are generally acceptable subject to amendments to ensure compliance with Council's Draft Public Domain Design Guidelines, section C.3 Neighbourhood Centres, that provides a list of design materials for the public domain. This shall be demonstrated by the issue of a Public Domain Plan for the Section 138A application. Landscape planter works are proposed to level 2 consisting of 1.5 metre deep planters (as documented on the architectural plans) and the planting scheme as shown on the Landscape Plan is suitable to soften the development edge. An Arboricultural Impact Assessment is provided with the application. The existing site supports a small garden bed at the corner with shrub planting that is exempt from requiring Council Consent as the vegetation is less than 5 metres in height, and a street tree within the road verge is located along the Bilkurra Avenue road reserve. The Arboricultural Impact Assessment recommends the removal of the garden planting within the site for development works and removal of the street tree for public domain works as well as to replace with more appropriate street tree planting. No objectives are raised to the recommendations of the Arboricultural Impact Assessment. Additionally, any approval for the development application does not provide approval for outdoor dining, and this is a separate application to be submitted by the retail occupant under 'Outdoor Dining Area Approval Application 20/21'.
NECC (Bushland and Biodiversity)	Supported (subject to conditions) Council's biodiversity referrals team have assessed this development application for compliance against relevant biodiversity legislation and controls, including the following: Biodiversity Conservation Act 2016 (BC Act) Pittwater Local Environmental Plan (PLEP) 7.6 Biodiversity Protection Pittwater Development Control Plan (PDCP) - B4.6 Wildlife Corridors The application seeks to remove a single prescribed tree, <i>Callistemon salignus</i> (ref: Tree 1 ; Advanced Treescape Consulting 2020). To offset the removal of Tree 1, suitable replacement trees should be selected from the Pittwater Ward section of the Native Gardening Booklet available on Council's website https://www.northernbeaches.nsw.gov.au/node/34932. Subject to conditions, Council's biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Development Engineering)	Refusal The stormwater drainage plans have been reviewed and the following information is required to complete the assessment: 1) Submission of the DRAINS model for Council review to verify the detention volume and storage requirements. 2) Cross-section drawn to a suitable scale of the stormwater outlet pipe in relation to all services located within Council's footpath area.

Internal Referral Body	Comments
	3) Hydraulic Calculations are to be provided to demonstrate Hydraulic Grade Line of the outlet pipe connection to Councils existing pit in Bilkurra Avenue is not affected by tailwater conditions.
NECC (Water Management)	Refusal This applicant is not required to provide water quality treatment because the lot is under 1000sqm and is not increasing impervious area (the lot is currently 100 percent impervious). It is very disappointing that this development has chosen to not take any steps to reduce the impact of this development on the environment or increase its sustainability. Re-development of a lot is a perfect opportunity to reduce the impact a site is having on waterways, at the very least by removing coarse sediments and organic matter from stormwater prior to discharge from the lot. Equally disappointing is that an obvious opportunity has been missed in directing rainwater captured from the roof to the planters around the perimeter of the upper level. It is instead intended that these be irrigated with potable water. The applicant is strongly encouraged to consider incorporating Water Sensitive Urban Design and at the very least direct rainwater captured from the roof to the planter boxes, and install a sediment filter pit to remove coarse sediments prior to discharging stormwater from the property. Due to the low risk of groundwater contamination due to previous use of the site as a petrol station, any groundwater removed from excavations must be tested for the presence of hydrocarbons, and can only be discharged to Council's stormwater system if levels are lower than 5ppm and there is no visible sheen on the water.
Strategic and Place Planning (Urban Design)	Refusal The proposal has responded well to the issues brought up in the Pre-Lodgement Meeting held on July 2020 (reproduced below). The proposal could be further improved with more fine-grain architectural design recommendations that can be provided by Council's Design Sustainability Advisory Panel. Urban Design Comments: 1. The proposal exceeds the 8.5m building height control. Looking at the floor to floor height proposed, the retail component on the ground floor could be reduced to 3.7m (3.3m retail + 0.4m services) to minimise the overall height. The third storey component which is above the height limit should be setback away from the building edges by 6m to make it less visible when viewed from the surrounding streets especially from the far end of Plateau Road. The built form should present predominantly as a two-storey building surrounded by street trees and landscaping verges to fit into the verdant character of the surrounding low density residential area. Response: The overall building height has been reduced with the top storey breaching the 8.5m building height by about 1m and the rooftop plant by about 2.5m. The top storey has been set back from the building edge by about 3.6 to 3.72m. The overall impression of the building reads well as a two-storey built form with a well-recessed top storey and rooftop plant area. Perimeter planter boxes have been provided on the roof terraces as well as street trees and landscaped verges on the ground floor alfresco dining area/ footpath. Planter box width on the roof terraces, indicated on the architectural drawings, should be widened to the planter widths shown on the landscape drawings. 2. The 3.5m building setback required has not been provided at the Bilambree Avenue boundary. The footpath should also be widened to 3.5m and wider breakout spaces created for potential alfresco dining area taking advantage of the street trees and landscaped street verges. The entry to the residential lift lobby could also be made more

Internal Referral Body	Comments
	direct and welcoming from the public footpath instead of the narrow corridor proposed. The hydrant booster and chamber substation should also be located on the Bilambee Lane side to provide an uninterrupted shopfront address and clear footpath all the way to the laneway. The fire stairs (FS1) should be relocated into the retail area to free up the corner for alfresco dining and landscape area. Response: The footpath width has been widened to about 3.9m with wider areas provided for alfresco dining. The retail shop fronts is now continuous from the neighbouring shops and will activate the footpath area well. Entry to the residential lobby is now more direct and welcoming. The chamber sub-station, fire stairs and fire services area are now well tucked away towards the service laneway side. 3. The solar access for the residential units should comply with the two hour to living rooms and private open spaces as per Apartment Design Guide (ADG) requirement. Units with no solar access should be less than 15% of total unit count. The light-well proposed should be tested with the future northern neighbouring development being 10m tall as the proposal will set a precedent for building height breach. Response: The solar analysis submitted indicates adequate solar access have been provided. 4. Future refinement of the design should look at integrating the balcony design into the façade treatment with a rich material palette to help break up the bulk and scale of the building. The triangular shaped balconies should be made more functional and purposeful with planters and indents that will form part of the façade articulation. They should also be more generous in size as communal open space has not been provided for. The corner site location should be celebrated with a more iconic architectural response that is integrated with the landscaping concept creating a community gathering place to counter balance the issue of exceeding the building height control. Response: The suggested refinements have been incorporated. 5. The awning design should provide some street amenity/ shelter. They should form a unified element within the streetscape, respond to streetscape conditions and complement the architectural style of the host building. They should be uncomplicated, regular forms and constructed from high quality materials with simple detailing to reduce visual clutter in the streetscape and to provide visual continuity to the pedestrian realm. New awnings are to be setback minimum 1000mm from the face of the kerb to accommodate utility poles and traffic /parking in the kerbside lane. Where street trees are required, the minimum awning to setback is 1500mm. Response: The awning design can be supported.
Traffic Engineer	Supported (subject to conditions) <u>Proposal:</u> The development application is for demolition of the existing site structures and the construction of a mixed-use development. The mixed-use development is proposed to comprise the following: • Two retail tenancies on the ground floor comprising 119.1m² and 317.7m² of floor space; • Two storeys of residential apartments, comprising the following: - 5 two-bedroom dwellings; and - 3 three-bedroom dwellings. • Two levels of underground parking containing 30 parking spaces (including two accessible spaces) • Vehicular access to the two levels of basement parking is proposed via a single combined ingress / egress driveway connecting with Bilambee Lane adjacent to the northern corner of the site.

Internal Referral Body	Comments
	• Pedestrian access to the development is proposed via a footpath connecting Bilambee Avenue and Bilkurra Avenue adjoining the eastern, southern and southwestern facades of the proposed building. • Some public domain modifications are proposed facilitating the provision of an additional indented parking space situated within Bilambee Avenue and two indented parking spaces within Bilkurra Avenue (one of which is to double as a time limited loading bay) <u>Traffic Generation:</u> The subject development is projected to generate 25 peak hour vehicle trips to and from the site. This is considered to be a decline in comparison with existing traffic generation calculated in accordance with the RMS guide, therefore is supported. <u>Parking provision:</u> The parking requirements for the proposed shop top housing in accordance with Pittwater DCP is 34 parking spaces including 16 residential spaces, 3 visitor spaces and 15 retail spaces. There are the total of 30 parking spaces including 2 disabled parking spaces has been proposed. The parking offset against the availability of 90 degree parking spaces along the site frontage is considered acceptable. <u>Vehicular Access:</u> Vehicular access between the development site and Bilambee Lane is proposed to be provided via a single 6.5m combined ingress / egress driveway situated adjacent to the northern corner of the site. The pedestrian triangle measuring 2.0m x 2.5m clear of obstructions to visibility in accordance with aAS2890.1:2004 has been addressed by provision of delineated triangle on western side of the driveway, The clear Tran angle is to be confined via construction of kerb. <u>Bicycle parking:</u> The provision of 12 bicycle parking spaces within the site satisfies the parking requirements of 7 in accordance with Pittwater DCP. The proposal includes the provision of 4 on-street bicycle racks which is supported. <u>Motorcycle parking:</u> The proposed motorcycle parking provision of 4 spaces satisfies the Pittwater DCP requirements of 1 motorcycle space for the proposed use. <u>Waste Collection / Loading Zone:</u> The application includes the servicing activities to be accommodated within the time limited indented at-grade loading bay proposed to be provided as part of the application within Bilkurra Avenue. It is also proposed that the refuse collection activities associated with the development are to be undertaken via this bay whereby waste bins are to be wheeled to the road frontage for collection. The proposed bay is to be modified to accommodate the waste management trucks which are 10.8m long trucks and the swept path analysis is to be provided. The signposted time limit will be subject to Local Traffic Committee approval. This can be conditioned <u>Traffic Signal</u> The specific details of the internal traffic signal system are typically specified by traffic signal contractors at construction certificate stage, the requirement for which could reasonably be imposed by Council as a condition of development consent. Incorporating such an internal traffic signal system, the proposed single lane ramp connecting

Internal Referral Body	Comments
	Basement Levels 1 and 2 are envisaged to be satisfactory no parking on both sides of the laneway Mailbox to be relocated in consultation with Australia Post together with a mail zone parking restriction Mail zone to be provided Loading Zone to be provided within the site for small trucks within the site. Not more than one small bay to be allocated to visitor spaces. Public domain public design approval is subject to detail design to be submitted to Council for review and approval The width of proposed driveway has narrowed down to 4.5m does not comply. No Parking on both sides of the laneway.
Waste Officer	Refusal Council does not require a bulky goods store room for developments with less than 10 dwellings, however if a bulky goods storage room is provided, it must have its own entrance, separate from the communal bin store room. The residential communal bin store room is of adequate size, however the statement in the waste management plan that the bins will be moved to the footpath one day before collection day is not acceptable. Council staff will retrieve bins from the bin storage area on arrival and immediately replace them in the bin storage room once emptied to avoid bins being left on the footpath and impacting the local amenity and environment. The door to the bin room must be unlocked on bin collection day, accessible and able to be latched in the open position by waste collection staff. Although unclear, it appears that collection is intended from a roller door at the rear of the bin room, off Bilambree Lane and the main driveway into the building. If so there needs to be an indication that this is a pedestrian area (also for exit from the fire escape) from the fire exit door to the kerb, and no parking in this area.

External Referral Body	Comments
Ausgrid: (SEPP Infra)	Supported (subject to conditions) 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 in the event of an approval.

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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 a service station and a vehicle repair station for an extended period of time. The Preliminary Site Investigation concludes

Section 4.15 'Matters for Consideration'	Comments
	that the site to be suitable for the proposed land use without further environmental assessment.
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	Not applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<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, in the event of an approval. Clause 50(1A) 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. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in this case, however, it has not been supplied by the applicant. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent, in the event of an approval. <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 may be addressed via a condition of consent, in the event of an approval. <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 may be addressed via a condition of consent, in the event of an approval. <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 matter may be addressed via a condition of consent, in the event of an approval.
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	(i) Environmental Impact The proposed development is capable of being constructed so as to not result in any adverse environmental impacts on the natural environment. However, the proposed development in its current form will have an adverse impact on the visual and scenic quality of the site and locality and the streetscape by virtue of its excessive height, bulk and scale. Therefore, the impacts of the proposal are unsatisfactory in its current form. (ii) Social Impact The proposed development will not have a detrimental social impact on the broader locality considering the mixed use character of the proposal. (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.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is suitable for a mixed use development as the site is zoned for that purpose and the development will replace the existing development which is a prohibited use and does not provide a positive contribution to the character of the locality.

Section 4.15 'Matters for Consideration'	Comments
	However, a satisfactory interface with adjoining residential properties has not been achieved. Subject to the resolution of these challenges, the site is considered to be suitable for a proposed mixed use 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	The Desired Character statement for the Bilgola Plateau Locality as contained within Pittwater 21 DCP provides the community with a level of certainty as to the scale and intensity of future development and the form and character of development that is in keeping with the zoning of the site. While the redevelopment of the site could revitalise the centre, the proposal, in its current form, represents a scale of development that is excessive for the site and locality. This assessment has found the development to be inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and should be reduced to better reflect a sympathetic and sensitive scale of development in what is a low-density area. On balance, this assessment finds that the public benefits do not outweigh the need for the proposal to appropriately respond to the planning controls and the context and character of the locality.

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. The Preliminary Site Investigation (PSI), prepared by Canvas, submitted with the application notes that the site operated as a service station until 1994 and since then as a car mechanic's workshop. The report concludes that subject to the recommendations being satisfactorily implemented, the site is suitable for the proposed land use without further environmental assessment. It is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for mixed use development land use.

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

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

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

- (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined, the proposed development is for the erection of a shop top housing development plus basement car parking for the provisions of eight (8) self-contained dwellings and retail premises.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

DESIGN REVIEW PANEL

On 17 December 2020, the Northern Beaches Council Design and Sustainability Advisory Panel (DSAP), considered the application at their meeting and concluded that:

*The Panel does not support the proposal in its current form.
The Panel does not support the 3rd storey and notes that the additional floor space has a series of 'flow-on' effects for car parking, substation, excavation, embodied energy and carbon. A redesign and investigation of alternative options that consider all of the recommendations set out above is required.*



DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment:

The subject site is in the B1 Neighbourhood Centre zone and surrounded by low density residential development in the form of detached dwellings in landscaped settings. The specific controls (particularly the Desired Character statement) for the Bilgola Locality clearly indicate that development within the subject site should be similar in scale and appearance to that envisaged in the Locality, which is largely detached dwellings in landscaped settings. In this context, the proposed development (as lodged) is not consistent with the locality in that the scale and density of the development does not sufficiently integrate with the surrounding development.

The proposed variation of 32% (+2.7m) to the height of buildings development standard under PLEP 2014, has been found to be excessive in its own right and will result in adverse impacts on adjoining developments. Overall, there are insufficient environmental planning grounds provided by the applicant to justify contravening the development standard to such an extent.

Therefore, the non-compliance with the height of buildings development standard, which ultimately determines the contextual fit of the development with the surrounding locality, cannot be supported.

Accordingly, the proposed development is found to inconsistent with this principle.

Principle 2: Built Form and Scale

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

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment:

The site has three street frontages and shares a common boundary with a two storey mixed used development on its western boundary. Development surrounding the centre comprises of low density residential development on all sides.

This site is suitable for redevelopment with strong definition to the public roads and a built form that emphasizes its 'island' location, but this should be carried out in a manner which is sympathetic and sensitive to the low density environs.

The height of the proposed development is 11.2m which is inconsistent with the height of surrounding development and non-compliant with the required maximum building height. The height and bulk of the structure does not comply with the numerous controls applicable to the site, resulting in a built form and scale that does not achieve the required outcomes for the site.



As a result of its excessive bulk and scale, the development has not had sufficient regard to its nearest residential neighbours particularly those of the adjoining mixed use development to the west (1 Bilambee Avenue).

For these reasons, the proposed development is found to inconsistent with this principle.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:

The housing density for the site is stipulated within Clause 4.5A of Pittwater LEP 2014 as a maximum of 1 dwelling per 150m² of the site area, equating to a maximum of six (6) apartments for the subject site. The proposed development has eight (8) apartments equating to a density of 1 dwelling per 116.25m² of site area. The proposed density is inappropriate for the site and its context.

The proposed development is found to inconsistent with this principle.

Principle 4: Sustainability

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

Comment:

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

A BASIX certificate for development has been submitted with the application. The certificate confirms that the development is capable of achieving the water and energy targets and has obtained a pass for thermal comfort.

The Construction Management Plan (CMP) submitted with the development application details the disposal and recycling of demolition and excavation materials.

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

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.



Comment:

The landscape plans submitted with the application provide details of the proposed landscaping for the site, which has been reviewed by Council's Landscape Officer, who concludes, that while no deep soil zones are provided, the proposal satisfies for the objectives for landscape.

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

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment:

The development has been assessed against the various amenity requirements of the Apartment Design Guideline (ADG), where it has been found that the development does not comply with some of the requirements.

The assessment has found that the proposed development does not provide adequate building separation to the adjoining properties to the west and north and, as a result, the residential amenity of these dwellings will be compromised.

For this reason, the development does not meet the objectives of Design Quality Principle 2. This issue has been included as a reason for refusal.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

The development provides secure access, which is separated from all vehicular access points. All apartments provide balconies and windows which allow passive surveillance over the adjoining public domain.

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

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:

This principle essentially requires design to respond to the social context and needs of the local community in terms of lifestyles, affordability and access to social facilities and optimising the provision of housing to suit the social mix and provide for the desired future community.



The development provides a reasonable mix of apartments and includes active street front uses on the ground floor which will contribute to the social context by encouraging and providing for social interaction and engagement.

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

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

The proposed development is appropriate in terms of the composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the resultant building. Despite the concerns in relation to height, mass, bulk and scale, the development responds aesthetically to the environment and context, contributing in an appropriate manner to the character of the area.

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

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting of the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Not Consistent A context plan is provided to accompany the application. The building form does not reflect the current character as anticipated by the PLEP 2014 and P21 DCP for the site. The siting of the upper two levels as it relates to the adjoining dwellings to the west and north is not appropriate.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Not Consistent Whilst the development responds to the streetscape, the design of the development does not optimise solar access to some of the apartment within the development and results in overshadowing to neighbouring courtyards at unit 3 and 4, 1 Bilambee Ave.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Consistent The development has been found to be consistent with requirement of this Clause in that it provides an appropriate public domain interface.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	Not Consistent (acceptable on merit) The proposed development does not provide any communal open space for the residents of the development. However, given the site is located in close proximity to public open space and that the development provides larger balconies for each unit, the requirement of communal space is not considered critical.

Deep soil Zones	Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with Significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with Significant existing tree cover	6m	Not consistent (acceptable on merit) No deep soil provided. As the site is located within a Neighbourhood Centre the provision of deep soil planting is not a strict requirement. The proposal incorporates planting within planter boxes in balconies and courtyards. Additional plantings are proposed within the adjoining public domain.
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with Significant existing tree cover	6m													
Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5 m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5 m	Over 25m (9+ storeys)	12m	6m	Not consistent The control requires a 6m setback for habitable rooms and a 3m setback for non-habitable rooms up to four storeys. The proposed development provides a nil setback to the adjoining dwellings at units 3 & 4, 1 Bilambee Avenue. This is unacceptable. The issue of non-compliance with the building separation requirements in relation to the western boundary has been included as a reason for refusal.
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5 m												
Over 25m (9+ storeys)	12m	6m												
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	Consistent The development provides level pedestrian access to all floor levels from the basement car parking area.												
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Consistent The proposed vehicular access has been assessed as satisfactory by Council's Traffic Engineer.												
Bicycle and Car Parking	For development in the following locations: - On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking	Consistent An assessment of car parking provision, having regard to P21DCP and location of the site, has been undertaken. In summary, the amount of car parking is sufficient for the development, as addressed elsewhere in this report.												

	requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.															
Part 4 Designing the Building																
Amenity																
Solar and daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: - Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. - A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	Not consistent Units 102, 103, 104 do not receive 2 hours of sunlight to living areas. There is no natural light to the lift lobby on level 2 or 3.														
Natural ventilation	The number of apartments with natural cross ventilation is maximise to create a comfortable indoor environment for residents by: - At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. - Overall depth of a cross-over or cross through apartment must not exceed 18m, measured glass line to glass line.	Consistent Cross ventilation requirements are satisfied.														
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table><tr><td colspan="2">Minimum ceiling height</td></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable rooms</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor</td></tr><tr><td></td><td>2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed use areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable rooms	2.4m	For 2 storey apartments	2.7m for main living area floor		2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed use areas	3.3m for ground and first floor to promote future flexibility of use	Consistent The floor to ceiling heights of the apartments within the development meet the minimum 2.7m as required by the ADG.
Minimum ceiling height																
Habitable rooms	2.7m															
Non-habitable rooms	2.4m															
For 2 storey apartments	2.7m for main living area floor															
	2.4m for second floor, where its area does not exceed 50% of the apartment area															
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope															
If located in mixed use areas	3.3m for ground and first floor to promote future flexibility of use															
Apartment Size and Layout	Apartments are required to have the following minimum internal areas:	Consistent														

	<table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	All apartments within the development comply with the minimum area.					
Apartment type	Minimum internal area																
Studio	35m ²																
1 bedroom	50m ²																
2 bedroom	70m ²																
3 bedroom	90m ²																
Private open space and balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling type</th><th>Minimum Area</th><th>Minimum depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartment</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartment</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartment</td><td>12m²</td><td>2.4m</td></tr></table> The minimum balcony depth to be counted as contributing to the balcony area is 1m.	Dwelling type	Minimum Area	Minimum depth	Studio apartments	4m ²	-	1 bedroom apartment	8m ²	2m	2 bedroom apartment	10m ²	2m	3+ bedroom apartment	12m ²	2.4m	Consistent All apartments within the development comply with the minimum balcony area and depth.
Dwelling type	Minimum Area	Minimum depth															
Studio apartments	4m ²	-															
1 bedroom apartment	8m ²	2m															
2 bedroom apartment	10m ²	2m															
3+ bedroom apartment	12m ²	2.4m															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent The maximum number of apartments off a circulation core on a single level is 5. The proposed development includes access to all floors via a lift.															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m³</td></tr><tr><td>1 bedroom apartment</td><td>6m³</td></tr><tr><td>2 bedroom apartment</td><td>8m³</td></tr><tr><td>3+ bedroom apartment</td><td>10m³</td></tr></table> At least 50% of the required storage is to be located within the apartment.	Dwelling type	Storage size volume	Studio apartments	4m ³	1 bedroom apartment	6m ³	2 bedroom apartment	8m ³	3+ bedroom apartment	10m ³	Consistent All apartments comply with total storage volumes and internal storage requirements.					
Dwelling type	Storage size volume																
Studio apartments	4m ³																
1 bedroom apartment	6m ³																
2 bedroom apartment	8m ³																
3+ bedroom apartment	10m ³																
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent All garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, private open spaces and circulation areas are located more than 3m away from bedrooms.															
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent															

		The Acoustic report submitted with the development application provides "noise goals" and recommendations and Council's Environmental Health Officer recommended approval. However, impacts on the residential units 3 & 4, 1 Bilambee Avenue have not been assessed.
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable location within the building.	Consistent The development proposes a mix of one and two bedroom apartments.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Not Applicable The development does not have ground floor apartments.
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent The facade treatment is appropriate to enhance the streetscape and character of the area
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space?	Not consistent There is no communal open space incorporated into the roof design. As discussed throughout this report, the roof top plant is not supported as it results in excessive building height.
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent As previously discussed within this report, the proposed landscape design is generally acceptable.
Planting on Structures	When planting on structures minimum soil volumes and depths are recommended for a range of plant sizes.	Consistent Sufficient soil depths are provided.
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Consistent The apartment mix is satisfactory.
Awnings and signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	Consistent Proposed awnings to shops are satisfactory. There is no signage proposed with this application.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent

		A BASIX certificate report has been prepared for the development. The BASIX certificate confirms that required targets for water, thermal comfort and energy efficiency will be met.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Consistent Water management and conservation through the means of retention of stormwater for reuse has been assessed as compliant and further, compliance with the supplied BASIX Certificate can be conditioned, if the application is approved.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Consistent A Waste Management Plan has been provided with the development application.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent The application includes a Schedule of Materials and Finishes which ensures the longevity and sustainability of the building.

SEPP (Building Sustainability Index: BASIX) 2004

The application has been accompanied by a BASIX certificate that lists commitments by the applicant as to the manner in which the development will be carried out. The requirements outlined in the BASIX certificate have been satisfied in the design of the proposed development. Nonetheless, a condition could be imposed, in the event of approval to ensure such commitments are fulfilled during the construction of the development.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

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

Principal Development Standards

Clause	Requirement	Proposed	% Variation	Complies
4.3 Height of buildings	8.5m	9.85m (3 rd storey) 11.2m (rooftop plant)	16% 32%	No
4.5A Density controls for certain residential accommodation	1 dwelling per 150m ²	1 dwelling per 116.25m ²	22.5%	No

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

Detailed Assessment

Clause 4.6 – Exceptions to development standards

Description of non-compliance

Development standard	Height of buildings
Required	8.5m
Proposed	9.85m (3 rd storey) 11.2m (rooftop plant)
Percentage of variation	16% (building) 32% (rooftop plant)

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.



Clause 4.6 Exceptions to development standards:

- (1) *The objectives of this clause are as follows—*
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

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

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
- (a) *the consent authority is satisfied that—*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Planning 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.

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:

The roof top plant structure is located centrally within the building envelope – not readily discernible from ground level around the outside of the building or from the adjoining road reserves (as shown in the perspective drawings). The upper roof level of the building is set well back from each building alignment below making the upper level and variation not readily apparent or offensive on the streetscape when viewed from surrounding road network or public places or surrounding residential properties.

The consequence of strict compliance in the circumstances would necessitate the loss of an entire residential floor which would make the development economically unviable and be contrary to the Object of the Act at s1.3 which seeks to promote the orderly and economic development of the land. The success of the development is wholly dependent on the additional level (i.e the variation). See attached feasibility prepared by Dreambuild Pty Ltd. This is important in terms of the positive social and economic impacts that the overall development will have on the viability and sustainability of the neighbourhood centre, providing necessary active retail uses and additional residential population in the form of various housing mix contributing to the amenity and vitality of the area atmosphere and also providing additional security and surveillance.

The viability is the catalyst for the redevelopment of the site, allowing for the removal of the existing service centre which is an outdated eyesore with negative visual impacts on the amenity of the area. Further it will allow for the removal of a non-conforming use with



existing use rights and the conversion to a permissible land use consistent with the objectives of the zone and Council's strategic planning aims for the locality.

If the development is not viable, those community benefits will not be forthcoming.

The proposal is setback from the boundaries to create a generous wide verge and improved public domain and hence whilst there is an argument that some additional floorspace could be accommodated at ground floor level, it would be strictly limited to retail or business premises which would generate additional traffic impacts and parking demands and additional exaction for carparking. Further the first floor could have been cantilevered to extend to the boundaries. In lieu the building is setback so as to provide greater separation and buffer to surrounding residential properties. It also allows for outdoor dining opportunities, improved connectivity of the footpath and generous landscaped areas and additional on street parking.

The applicant's report relies on financial feasibility as a basis for exceeding building height. However, financial feasibility is not a valid justification under Clause 4.6. In any case, the underlying land value should reflect the development potential for the site achievable under the relevant planning controls.

In addition, the applicant's report states that that compliance is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. However, the applicant's clause 4.6 request fails to demonstrate:

- How the three-storey proposal is consistent with the desired character statement for the Bilgola Locality (Pittwater 21 DCP) which states:
 - *The Bilgola locality will remain primarily a low-density residential area with dwelling houses a maximum of **two storeys** in any one place in a landscaped setting, integrated with the landform and landscape.*
- How the building is compatible with the height and scale of surrounding development when the impacts on the adjoining residential apartments to the west will be severe.
- How the proposal minimises overshadowing of neighbouring properties when no regard has been given to the balconies of units 3 and 4, No 1 Bilambee Avenue.
- How the proposal allows for reasonable sharing of views when the views available from units 3 and 4, 1 Bilambee Avenue have not been recognised or addressed by the proposal.

Furthermore, the variation to the building height development standard is a result of the third floor and rooftop plant which causes substantial amenity impacts to the adjoining residential apartments at 1 Bilambee Ave (shadowing, privacy and view impacts). Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3) and the application should be refused on these grounds.

Clause 4.5A Density controls for certain residential accommodation

Clause 4.5A (4) provides a maximum density of 1 dwelling / 150m² of site area. This equates to a maximum density for the site of 6 dwellings. The proposal provides a density of 1 dwelling / 116.25m² (8 dwellings) and therefore does not comply with the density development standard.

As Council has not received a written request from the applicant that seeks to justify the contravention of the density development standard, Council does not have the authority to grant development consent for development.

PITTWATER DEVELOPMENT CONTROL PLAN

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	No	No
Section B General Controls		
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
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	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	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
	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 Design Criteria for Residential Development		
C1.1 Landscaping	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	No
C1.4 Solar Access	No	No
C1.5 Visual Privacy	No	No
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.14 Separately Accessible Structures	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C2 Design Criteria for Business Development		
C2.1 Landscaping	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.3 Awnings	Yes	Yes
C2.5 View Sharing	Yes	Yes
C2.6 Adaptable Housing and Accessibility	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.11 Signage	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D3 Bilgola Locality		
D3.1 Character as viewed from a public place	Yes	Yes
D3.2 Scenic protection - General	Yes	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	No	No
D3.7 Side and rear building line	Yes	Yes
D3.9 Building envelope	No	No
D3.10 Landscaped Area – General	Yes	Yes
D3.12 Fences - General	Yes	Yes

Detailed Assessment

A4.3 Bilgola Locality

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

Desired Future Character

The Bilgola locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

The three distinct areas within the Bilgola locality (as identified in Bilgola Locality Map 2) will, by their unique differences, require differing and distinct degrees of control to ensure the individual characteristics and essence of each area are maintained and enhanced:

The Plateau Area:



Will provide for some dual occupancies, on land that does not have tree canopy coverage, species and habitat diversity, or other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

Comment:

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

- The proposed density is inconsistent with a low-density residential area
- The proposal exceeds the two storey requirements with the proposal presenting as a 3 storey building when viewed from different vantage points.

C1.13 View Sharing

All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

Units 3 & 4, 1 Bilambee Ave currently enjoy district views and distant water views over the site. These will be lost as a direct result of the non-complying building height.

The proposed development does not achieve a reasonable sharing of views.

C1.4 Solar Access

The proposed development will result in the loss of sunlight to the east facing windows and private open space of units 3 & 4, 1 Bilambee Ave resulting in non-compliance with clause C1.4 which requires that private open space and living room windows receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

The proposed development does not achieve the stated outcome of maintaining a reasonable level of solar access to existing residential properties.

C1.5 Visual Privacy

Clause C1.5 requires that the private open space areas and living rooms of any existing adjoining dwellings are to be protected from direct overlooking within 9 metres, by building layout, landscaping, screening devices or greater spatial separation.

In this regard, the dwelling house located at 1 Bilkurra Ave will be overlooked by the proposed north-facing balconies on level 1 and the expansive terrace on level 2, all of which are on a nil setback. The distance between the proposed development and the southern boundary of 1 Bilkurra Avenue is 6m. Notably, there is a window in the southern elevation of 1 Bilkurra Ave which is within 9m of the proposed development and therefore the requirements of clause C1.5 are not satisfied. In addition, the proposed development does not achieve the stated outcome of optimising visual privacy though good design.

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

As well as exceeding the building height, the proposed rooftop plant area has not been designed to integrate internally into the design fabric of the built form of the building.

D.3.6 Front building line

The minimum front building line for land zoned B1 Neighbourhood Centre is 3.5m.

The proposal has a nil setback to all three street frontages. While this is appropriate for the commercial component on the ground floor, it is not appropriate for the residential component of the building. Non-compliance with the front building line contributes to excessive building bulk and scale.



D.3.9 Building envelope

The proposed development breaches the building envelope which is determined by planes projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height.

The breach of the building envelope contributes to excessive bulk and scale of the built form and unreasonable privacy, amenity and solar access impacts on the adjoining residential apartments at 1 Bilambee Ave.

D12.1 Character as view from a public place

The proposed development in terms of visual bulk and scale is not a considered response to the predominant scale of the existing development within the Palm Beach Locality. the proposed development is not consistent with the locality in that the scale of the development does not sufficiently reflect that envisaged for the area.

The scale of the development is uncharacteristic of the locality. The height, bulk, scale and density are not compatible with the character of the locality.

7.12 CONTRIBUTIONS

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 \$68,104 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$6,810,408.

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.

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

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

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

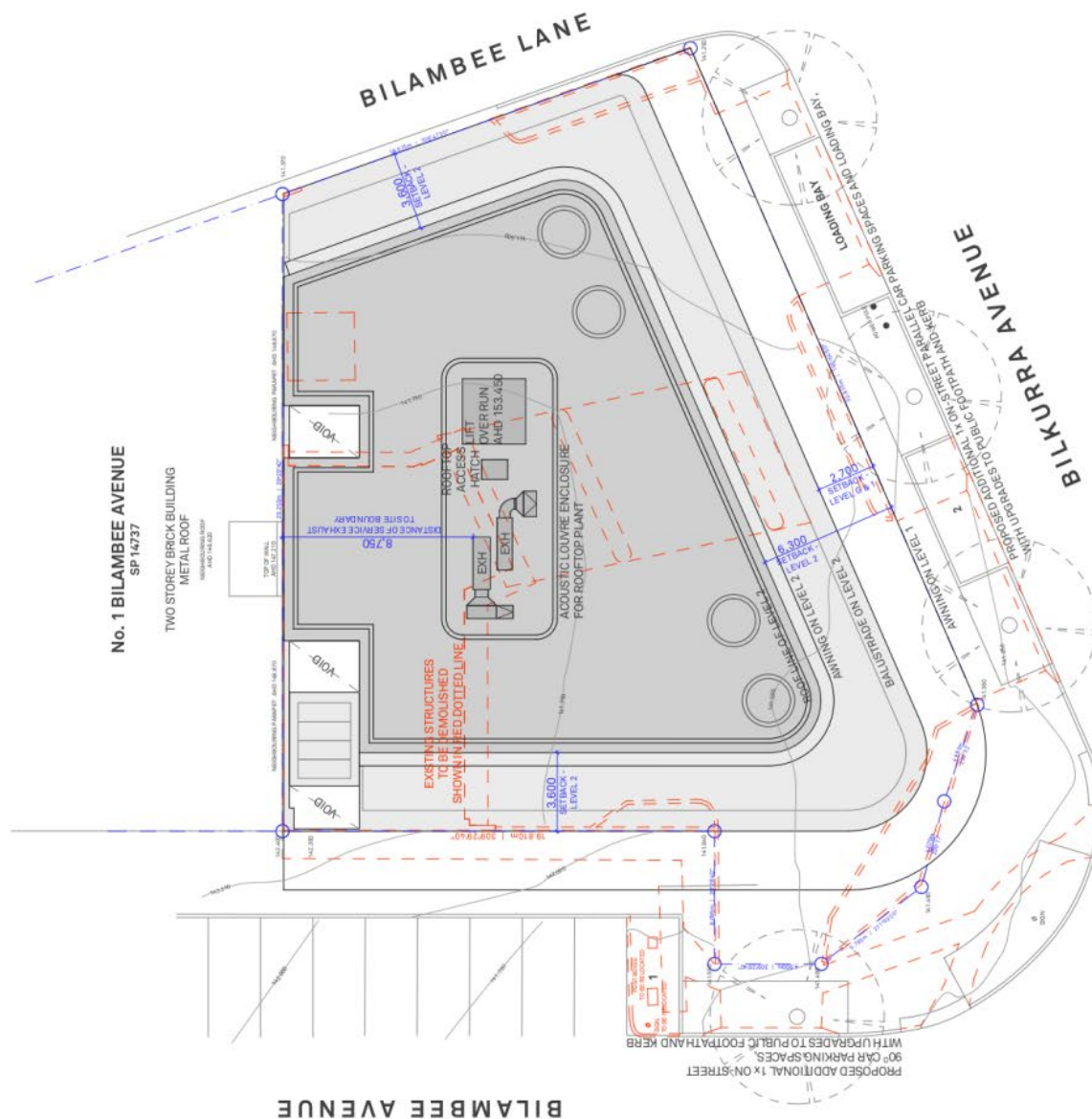
However, the proposed development, in terms of its built form and density, is not sufficiently sympathetic to its low density location and has a poor interface with the adjoining residential properties surrounding the site.



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 DA2020/1351 for demolition works and construction of a mixed use development comprising of shop top housing and retail premises, with associated carparking and landscaping on land at Lot 5, DP 229309, 1 Bilambee Lane BILGOLA PLATEAU, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development (Principles 1, 2 and 6) and its associated Apartment Design Guide.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not satisfy the provisions of Clause 1.2 Aims of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not satisfy the provisions of Clause 4.3 Height of Buildings of the Pittwater Local Environmental Plan 2014.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not satisfy the provisions of Clause 4.5A Density controls for certain residential accommodation of the Pittwater Local Environmental Plan 2014.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not satisfy the provisions of Clause 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014.
6. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with the Desired Future Character of the Bilgola Locality outlined in the Pittwater 21 Development Control Plan and is an over-development of the site.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 1.13 Views, Clause 1.4 Solar Access and Clause C1.5 Visual Privacy of the Pittwater 21 Development Control Plan, resulting in unacceptable amenity impacts on surrounding residential properties.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D3.6 Front Building Line and Clause 3.9 Building Envelope of the Pittwater 21 Development Control Plan resulting in a building with excessive bulk and scale.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed rooftop plant is inconsistent with the provisions of Clause C1.25 Plant, Equipment Boxes and Lift Over Run of the Pittwater 21 Development Control Plan.



**BENSON
McCORMACK
ARCHITECTURE**

STUDIO 5, 506 BALMAIN RD
JILFIELD NSW 2040
ABN: 76 129 130 285
BN 7536

P. + 61 2 9818 0777
F. + 61 2 9818 0778
E. enquiries@bensonmccormack.com
W. www.benmccm.com

[illegible]

Rev	Date	Description
A	May 20	Pre-DA
B	Sep 20	DA



STUDIO 5, 505 BALMAIN RD
JULYFIELD NSW 2040
ABN: 76 129 130 285
BRN: 7536
P. + 61 2 9818 0777
F. + 61 2 9818 0778
E. enquiries@benzoinc.com
W. www.benzoinc.com

SCALE	APPROVED	NORTH
1:100	DB	
STATUS	CHECKED	
CONCEPT	JSN	
PROJECT No	DRAWING No	REV
2012A	DA-0200	B

PROJECT DETAILS
1 BIL
1 Bliambee Avenue
Bilgola Plateau
NSW 2107

DREAM BUILD
6/37A King Road
Hornsby NSW 2077
+61 2 9482 3511
www.dreambuild.com.au

Private Open Space
Rube
Rainwater Tank
Screen
Sewer
Storage
Study
Stormwater Pt.
Stormwater
Structural floor level
Top of Fence
Top of Wall

- Garbage Chute
- Garbage Room
- Garbage Exhaust
- Gross Floor Area
- Gas Meter
- Hydraulic Services
- Laundry
- Meter Room
- Motorcycle Parking
- Main Switch Board
- Natural Ground Level
- Onsite Detention Tank

GB	Communal Open Space
GB	Carpark Exhaust
GB	Dining
GB	Dryer
GF	Down Pipe
GM	Dishwasher
H	Fridge
LY	Fire
M	Fire Extinguisher
MC	Finish floor level
MS	Fence
NG	Fire Stairs
OS	Floor Space Ratio

COS
 CEX
 DRY
 DP
 DW
 F
 FEX
 FFL
 FN
 FS
 FOR

LEGEND

A/C
ACC
ADP
AHD
B
BAL
BALC
BED
BT
COL
...

Rev	Date	Description
A	May 20	Pre-DA
B	Sep 20	DA

[illegible]

[illegible]

[illegible]



**Clause 4.6 Variation Request to the
Height of Buildings Development Standard under
Clause 4.3 of Pittwater LEP 2014**

**Shop top Housing comprising
2 retail shops, and 8 residential apartments**

1 Bilambee Lane, Bilgola Plateau

Prepared by: Joe Vescio

Dated: 19 October, 2020



2 The Relevant LEP Provisions

1.1 Commission

JVUrban Pty Ltd has been commissioned by the Applicant to prepare a written request ('Variation Request') pursuant to cl4.6 of *Pittwater Local Environmental Plan 2014* (the LEP) in respect of a proposed development for shop top housing development comprising ground floor retail and eight (8) residential apartments, at 1 Bilambee Lane, Bilgola Plateau (the Site).

The Proposal is described in detail in Section 3 of the Statement of Environmental Effects (SEE) prepared by *JVUrban Pty Ltd* and generally comprises construction of shop top housing above two basement levels containing car parking and services.

The Proposal exceeds the 8.5m maximum Height of Buildings (HOB) development standard under cl4.3 of the PLEP having a maximum building height of RL153mAHD to the top of the lift overrun and plant screen. The general roof level is RL151.55m AHD or 11.2m above existing ground level.

Notwithstanding the contravention of the development standard, the development is considered to be consistent with the objectives of the development standard and the objectives of the zone within which the development is to be carried out. There are sufficient environmental planning grounds to justify the contravention in this instance including the lack of adverse amenity impacts and positive social and economic considerations as a result of the development.

This written request has been prepared to provide a detailed assessment in accordance with the statutory requirements of cl4.6 so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the HOB development standard.

1.2 Material Relied Upon

This Variation Request has been prepared based on the Architectural Drawings prepared by Benson McCormack Architecture, Project No. 2012A.

This Variation Request should be read in conjunction with the detailed environmental planning assessments contained in the DA documentation submitted with the DA and documents appended thereto.

4 Case Law

2.1 Pittwater Local Environmental Plan 2014

2.1.1 Clauses 2.2-2.3 – Zoning and Permissibility

Clause 2.2 and the Land Zoning Map of the LEP provide that the entire Site is zoned B1 Neighbour Centre Zone and the Land Use Table in Part 2 of the LEP specifies the objectives of this zone as follows:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To provide healthy, attractive, vibrant and safe neighbourhood centres.*

The proposed land use is defined as a shop top housing which is permissible with development consent in the B1 Zone pursuant to the PLEP 2014.

2.1.2 Clause 4.3 – Height of Buildings (HOB)

Clause 4.3 of the PLEP 2014 sets out the HOB development standard as follows:

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

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.”*

The Height of Buildings Map designates a maximum 8.5m height limit for the Site (see **Figure 1**).

4 Case Law

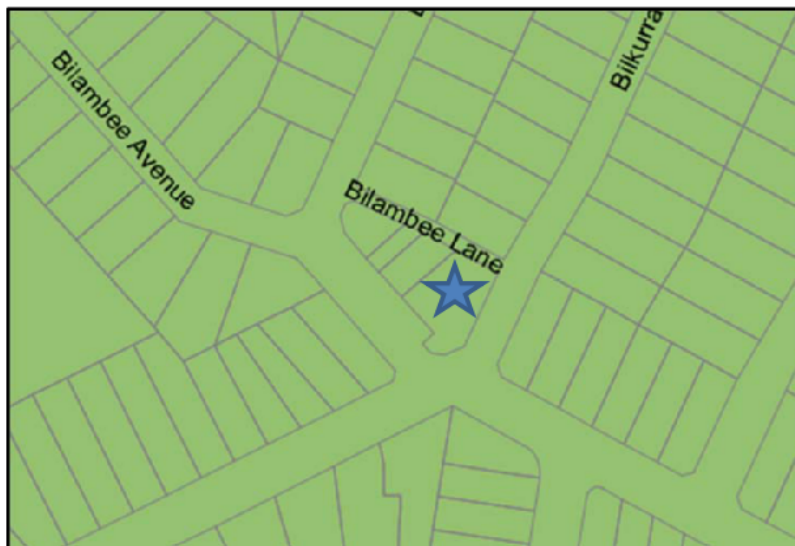


Figure 1: Extract of PLEP 2014 Map (HOB_16)

The PLEP Dictionary contains the following definitions:

Height of Buildings Map means the Pittwater Local Environmental Plan 2014 Height of Buildings Map.

building height (or **height of building**) means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

2.1.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of the LEP states the objectives of the clause as follows:

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

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) (see Section 4.7), Preston CJ ruled that there is no provision that requires the applicant to demonstrate compliance with these objectives for the consent authority to be satisfied that the development achieves these objectives. Furthermore, neither cl4.6(3) nor cl4.6(4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”.

4 Case Law

Accordingly, the remaining subclauses of cl4.6 provide the operable provisions and preconditions which must be satisfied before a consent authority may grant development consent to a development that contravenes a development standard imposed by an environmental planning instrument.

Clause 4.6(2) provides that:

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

The HOB development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the HOB development standard pursuant to cl4.3 of the PLEP 2014. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed in Section 5.1.

In addition, there are considered to be sufficient environmental planning grounds to justify contravening the development standard as detailed in Section 5.2.2.

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

4 Case Law

- (4) Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Secretary has been obtained.*

Sections 5.2 and 5.3 of this written request address the matters required under cl4.6(4)(a) of the LEP and Section 5.4 addresses cl4.6(4)(b).

Clause 4.6(5) provides that:

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

Section 5.5 of this written request addresses the matters required under cl4.6(5) of the LEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development and cl4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

The proposed shop top housing development will result in a maximum height (to the top of the roof plant screen) above existing ground level of 11.20m, constituting a non-compliance of up to 2.70m. The following **Figure 2**, **Figure 3** and **Figure 4** show the 8.5m LEP height line across the section plans of the building and the view of the building from the primary corner location.

4 Case Law



Figure 2: Extract of Section AA plan showing LEP 8.5m height line (Source: Benson McCormack Architecture, Project No. 2012A)



Figure 3: Extract of Section BB plan showing LEP 8.5m height line (Source: Benson McCormack Architecture, Project No. 2012A)

4 Case Law



*Figure 4: 3D view of proposed looking from Plateau Road, with Bilkurra Avenue on right
(Source: Benson McCormack Architecture, Project No. 2012A)*

4.1 Introduction

The proposed variation to the development standard has been considered in light of the evolving methodology and “tests” established by the NSW Land & Environment Court (the Court) and the following subsections provide a brief summary of key Judgments in regard to variations under the former SEPP 1 and cl4.6 of the SILEP.

4.2 *Winten Developments Pty Ltd v North Sydney Council* [2001]

Through the Judgment in *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46 (“Winten”) the Court established a ‘5-part test’ for considering whether strict compliance with a development standard is unreasonable or unnecessary in a particular case. The elements of this test can be summarised as:

- Is the planning control a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*?
- Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?
- Is the objection well founded?

The 1st ‘test’ continues to be relevant and is a precondition for the application of cl4.6 – see Section 5.1.

4 Case Law

The 2nd 'test' is required to be demonstrated under cl4.6(4)(a)(ii) – see Section 5.2.1.

The 3rd 'test' was specific to cl3 of SEPP 1 and has not been transferred to cl4.6 of the SILEP. Notwithstanding, in Initial Action (see below), Preston CJ indicated that it is reasonable to infer that “environmental planning grounds” as stated in under cl4.6(3)(b), means grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EP&A Act – see Section 5.2.2.

The 4th 'test' is required to be demonstrated under cl4.6(3)(a) - see Section 5.1. The 5th 'test' is analogous to cl4.6(4)(a) – see Section 5.3.

4.3 **Wehbe v Pittwater Council [2007]**

The 5-part test under Winten was later supplemented by the Judgment in *Wehbe v Pittwater Council [2007] LEC 827* (“Wehbe”) where Chief Justice Preston expressed the view that there are 5 different ways in which an objection to a development standard may be assessed as being well founded and that approval of the objection may be consistent with the aims of SEPP 1. These included:

1. Notwithstanding the non-compliance, is the proposal consistent with the relevant environmental or planning objectives?
2. Is the underlying objective or purpose of the development standard not relevant to the development with the consequence that compliance is unnecessary?
3. Would the underlying objective or purpose of the development standard be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable?
4. Has the development standard been virtually abandoned or destroyed by the consent authority's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable?
5. Is the zoning of the particular land unreasonable or inappropriate such that the development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and therefore, compliance with the standard would be unreasonable or unnecessary?

4 Case Law

4.4 **Four2Five Pty Ltd v Ashfield Council [2015]**

In the Judgment of *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* ("Four2Five") Pearson C expanded on the earlier Judgments of Winten and Wehbe, indicating that whilst consistency with zoning and standard objectives of the development standard is addressed specifically in cl4.6(4)(a)(ii), there remains an onus of also demonstrating that there are "sufficient environmental planning grounds" such that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

The environmental planning grounds that support the proposed variation to the HOB development standard in this circumstance are detailed in Section 5.2.2 of this variation request.

4.5 **Randwick City Council v Micaul Holdings Pty Ltd [2016]**

In his Judgment of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* ('Micaul') Preston CJ made it clear that development consent cannot be granted for a development that contravenes a development standard unless the consent authority:

- (a) has considered a written cl 4.6 objection seeking to vary the development standard as required by cl4.6(3) of the SILEP;
- (b) is satisfied that the cl4.6 objections adequately addressed the matters required to be demonstrated by cl4.6(3) (as required by cl4.6(4)(a)(i));
- (c) is satisfied that the development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out as required by cl4.6(4)(a)(ii).

In addition, Preston CJ elucidated that the consent authority does not have to be directly satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – only that it be indirectly satisfied that the applicant's written request adequately addresses the matters in cl4.6(3) that compliance with the development standard is unreasonable or unnecessary.

Furthermore, Preston CJ confirmed that an established means of demonstrating that compliance with a development standard is unreasonable or unnecessary is to establish that a development would not cause environmental harm and is consistent with the objectives of the development standard.

4 Case Law

4.6 **Moskovich v Waverley Council [2016]**

Providing further guidance on the interpretation of cl4.6 compared to its predecessor SEPP 1, the Judgment in *Moskovich v Waverley Council [2016] NSWLEC 1015* ('Moskovich') outlines that cl4.6(3)(a) is similar to cl 6 of SEPP 1 and the ways of establishing that contravention of a development standard is well founded expressed in *Wehbe* (e.g. "achieving" the objectives of the development standard) are equally appropriate for the consideration of cl4.6(3)(a).

However, cl4.6(4)(a)(ii) has different wording to SEPP 1 and requires the consent authority to be satisfied that the proposed development is in the public interest because it is "consistent" with objectives of the development standard and objectives for the zone rather than "achieving" the objectives. Consequently, the considerations of cl4.6(3)(a) and cl4.6(4)(a)(ii) are different with the achievement test being more onerous and requiring justification in 'ways' such as those expressed in *Wehbe*.

The methodology and reasoning expressed in those Judgments continues to be the accepted basis upon which to assess variation requests pursuant to cl 4.6 with minor areas of differing interpretation.

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

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and of the standard.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "better environmental planning outcome" relative to a development that complies with the development standard. In fact, there is no provision in SILEP that gives substantive effect to the objectives of cl4.6 stated in cl4.6(1)(a) and (b). That is to say, neither cl4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development".

4 Case Law

Further, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

4.8 Summary of the Case Law Methodology and Tests

The collective methodology and tests described above has been applied to the assessment at Section 5 and can be summarised in the following steps:

1. Step 1 - Is the planning control that the applicant seeks to contravene a development standard?
2. Step 2 - Is the consent authority satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required by cl 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard?
3. Step 3 - Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out?
4. Step 4 - Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Step 5 - Where the consent authority is the Court, has the Court considered the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

5 Assessment of the Variation

5.1 Step 1 - Is the planning control a development standard?

This question is the 1st 'test' in Winten. The HOB control in cl4.3 of the PLEP 2014 is a development standard, defined in Section 1.4 of the EP&A Act as follows:

"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

...(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work"

The development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted pursuant to cl4.6.

5.2 Step 2 – Pursuant to cl4.6(4)(a), is the consent authority satisfied that the written request adequately addresses the matters in Clause 4.6(3)?

5.2.1 Clause 4.6(3)(a) – compliance is unreasonable or unnecessary in the circumstances of the case

To demonstrate that compliance with the height of buildings development standard is unreasonable or unnecessary, this written request relies upon:

1. The 2nd 'test' in Winten and the 1st and 2nd 'ways' in Wehbe – i.e. the underlying objectives or purpose of the standard is satisfied or the objectives are not relevant; and
2. The 4th 'way' in Wehbe - the development standard has been virtually abandoned or destroyed by the consent authority's own actions.

The underlying objectives or purpose of the standard

Clause 4.3(1) of the LEP states the objectives of the HOB development standard as follows:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

5 Assessment of the Variation

Objective (a) *is to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Pittwater 21 DCP contains Section D Locality Specific Development Controls. Part D3 Bilgola Locality. The Bilgola Desired Future Character is described as:

“The Bilgola locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.”

The subject site and Bilgola Plateau Neighbourhood Centre are located within the Plateau Area (as identified in Bilgola Locality Map 2 of the DCP). It states the Plateau Area:

“Will provide for some dual occupancies, on land that does not have tree canopy coverage, species and habitat diversity, or other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.”

The desired future character of the Bilgola Locality is focused on its continued role as a residential area, primarily represented by a low-density residential typology with associated local services and infrastructure that support the local community. While it can be argued that a vehicle servicing centre supports the local community, it does not provide a sense of place or social meeting ground for the local community. The buildings are old, tired and generally at the end of their lifecycle. Only a portion of the community would use the service centre. The proposal on the other hand will provide the community with a local meeting place - a place for the whole community, no matter the age, stature or service need of the resident. An activated neighbourhood centre will appeal to a broad range of the community. The inclusion of the residential units on the upper levels will provide passive surveillance and sense of belonging to the community. This is consistent with the function of a modern day neighbourhood centre.

The height and scale of the development, in the context of its location and function within the Bilgola Locality is consistent and compatible with the established and likely future of character of the locality. The upper floor level is recessed and barely discernable from the

5 Assessment of the Variation

adjoining road reserves and nearby residences. The building retains a human scale that does not dominate the prominent corner site. In this way, it is our opinion that the objective is satisfied.

Objective (b) *is to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

The existing built form of the Bilgola Plateau Neighbourhood Centre is predominantly two storey with strong alignment to the street frontages. The surrounding area, containing low density residential development predominantly two storeys with pitched roofs.

The planning principle in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 provides guidance in the assessment of compatibility. It provides inter-alia in this respect as its foundation:

*There are many dictionary definitions of **compatible**. The most apposite meaning in an urban design context is **capable of existing together in harmony**. **Compatibility** is thus different from **sameness**. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.*

To be compatible the development should be able to be constructed with undue 'conflict' with neighbouring buildings. In this case, the upper level has increased setbacks from the boundaries, creating a significant step and articulation of the development when viewed from various ground level positions around the site, particularly from the adjoining road reserves along the two primary frontages. In each case the development appears as two-storeys (refer to elevation plans and perspectives submitted with the DA plan set which shows the public vantage points from each direction – extracts shown in **Figure 5**, **Figure 6** and **Figure 7** below). There is no undue 'conflict' created between buildings in the immediate area.

The building does not draw attention to itself beyond that reasonably expected of a mixed-use development, on a prominent corner site, within an established Neighbourhood Centre. The proposal is three storeys above street level. The development is respectful of its locational context and surrounding development. There is no attempt to emulate the design, colours or materials of the existing, tired development in the precinct, rather it presents a modern, fresh

5 Assessment of the Variation

street appearance that is complementary to the area. It is considered that this objective is achieved by the development.

The site itself is zoned primarily for commercial purposes and hence there is an underlying expectation that it will be different from its surrounding low density residential neighbours in terms of design, form, setbacks, density, intensity, landscaping and overall appearance.

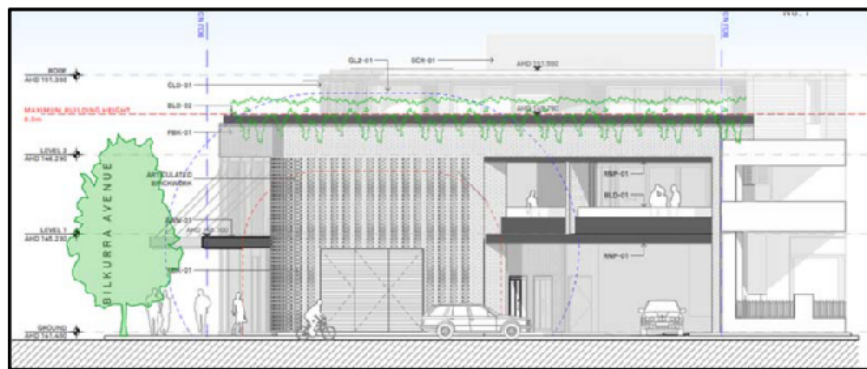


Figure 5: Extract of North Elevation showing view of development from Bilambee Lane
(Source: Benson McCormack Architecture, Project No. 2012A)



Figure 6: Extract of South Elevation showing view of development from Bilambee Avenue
(Source: Benson McCormack Architecture, Project No. 2012A)

5 Assessment of the Variation



Figure 7: Extract of East Elevation showing recessed upper level and view of development from Bilkurra Avenue (Source: Benson McCormack Architecture, Project No. 2012A)

The design and layout of the building address each of these amenity considerations and achieves a development that respects the adjoining and surrounding development. The additional height does not create unreasonable adverse effects.

In terms of visual impacts, these are minimized through physical separation, setting back the upper level so as to be beyond the general line of sight and careful attention to articulation and selection materials and colours makes the building a strongly defined two storey building with recessed and benign upper level. .

Objective (c) (c) to minimise any overshadowing of neighbouring properties,

The subject site has three road reserve frontages. The primary street frontages have 15-20m wide road reserves and the rear lane is 6m. This creates an 'island' effect for the proposed development – providing large building separation distances to adjacent residences.

Shadow Diagrams are provided within the DA plan set (Dwg No.s DA-1030-1033.) The closest residence – No. 1 Bilkurra Avenue - is on the north-eastern side of Bilambree Lane and will not be overshadowed by the development. No. 112 Bilkurra Ave – south-eastern side of Bilkurra Avenue will only receive shadow at 3pm midwinter. The remainder of the day (between 9am – 2pm) will not be impacted. The objective is achieved.

Objective (d) is to allow for the reasonable sharing of views.

There are no significant views to, from or across the site to be considered in this case. The development is neutral in relation to this objective.

5 Assessment of the Variation

Objective (e) *is to encourage buildings that are designed to respond sensitively to the natural topography*

The development site is generally flat for building purposes. There is specific topography, slope or site characteristic that need special design solutions in terms of topography. The development is neutral in relation to this objective.

Objective (f) *is to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

The subject site is not heritage listed, is not located within a heritage conservation area and is not with close proximity to any locally listed heritage item. The development site does not contain any trees that contribute to the natural environment. The one existing street tree on the Bilkurra Avenue frontage is in poor form due to the power lines and is to be replaced with an additional four (4) street trees planted within the road reserve area. The development is neutral in relation to any impact on the natural environment or heritage considerations. The objective is achieved.

5.2.2 **Clause 4.6(3)(b) – There are sufficient environmental planning grounds to justify contravening the development standard**

As set out in Four2Five, when a development standard is sought to be varied, there is an onus on the Applicant to demonstrate that there are “*sufficient environmental planning grounds*” such that compliance with the development standard is unreasonable or unnecessary and these environmental planning grounds must be particular to the circumstances of the proposed development rather than grounds that could reasonably apply to a similar development on any other land.

Preston J clarified in *Micaul and Initial Action*, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts. As outlined in Section 5.2.1, there is considered to be a lack of adverse amenity impacts arising from the proposal's non-compliance, as it will not result in adverse overshadowing, overlooking, view, acoustic, privacy or traffic impacts.

The height variation to the upper edge of the roof top plant screen is 2.70m (above the 8.5m HOB line) and 1.35m maximum variation from the roof of the upper floor level.

5 Assessment of the Variation

The roof top plant structure is located centrally within the building envelope – not readily discernible from ground level around the outside of the building or from the adjoining road reserves (as shown in the perspective drawings). The upper roof level of the building is set well back from each building alignment below making the upper level and variation not readily apparent or offensive on the streetscape when viewed from surrounding road network or public places or surrounding residential properties.

The consequence of strict compliance in the circumstances would necessitate the loss of an entire residential floor which would make the development economically unviable and be contrary to the Object of the Act at s1.3 which seeks to promote the orderly and economic development of the land. The success of the development is wholly dependent on the additional level (i.e the variation). See attached feasibility prepared by Dreambuild Pty Ltd. This is important in terms of the positive social and economic impacts that the overall development will have on the viability and sustainability of the neighbourhood centre, providing necessary active retail uses and additional residential population in the form of various housing mix contributing to the amenity and vitality of the area atmosphere and also providing additional security and surveillance.

The viability is the catalyst for the redevelopment of the site, allowing for the removal of the existing service centre which is an outdated eyesore with negative visual impacts on the amenity of the area. Further it will allow for the removal of a non conforming use with existing use rights and the conversion to a permissible land use consistent with the objectives of the zone and Council's strategic planning aims for the locality.

If the development is not viable, those community benefits will not be forthcoming.

The proposal is setback from the boundaries to create a generous wide verge and improved public domain and hence whilst there is an argument that some additional floor space could be accommodated at ground floor level, it would be strictly limited to retail or business premises which would generate additional traffic impacts and parking demands and additional exaction for carparking. Further the first floor could have been cantilevered to extend to the boundaries. In lieu the building is setback so as to provide greater separation and buffer to surrounding residential properties. It also allows for outdoor dining opportunities, improved connectivity of the footpath and generous landscaped areas and additional on street parking.

5 Assessment of the Variation

Importantly also there are negligible impacts from the additional height in terms of impacts on solar access, views. Privacy or visual impact on neighbouring properties.

In summary, the contravention of the HOB development standard is considered to have positive social and economic outcomes for the Site and the locality, together with positive amenity outcomes for existing residences and businesses in the immediate area, whilst not creating any adverse impacts to an acceptable level.

5.3 Step 3 - Pursuant to cl4.6(4)(b), is the consent authority satisfied that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone?

As outlined in Section 5.2.1, the Proposal achieves and is therefore consistent with the relevant objectives of the height of buildings development standard.

However, the consent authority must also be satisfied that the development will be consistent with the objectives of the B1 Neighbourhood Centre Zone which are expressed in the Land Use Table to cl2.3 of the LEP as follows:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

that serve the needs of people who live or work in the surrounding neighbourhood. The development includes 2 retail outlets – one large, one small. The floor plates are capable of further subdivision to create smaller tenancies to serve the needs of the local community. These could include butcher shop, take away food premises, restaurants; general stores, pharmacies, hairdresser/barbers; post shops, etc. The objective is satisfied.

- *To provide healthy, attractive, vibrant and safe neighbourhood centres.*

The second objective is to ensure that neighbourhood centres are healthy, attractive, vibrant and safe. The building is designed to wrap around the corner of the site, activate the ground level and provide passive surveillance of each of the road reserve frontages via the upper level units and glazed shopfronts.

5 Assessment of the Variation

The proposal seeks to develop both primary street frontages with a strong built form facing the main intersection of Bilambee and Bilkurra Avenue. Both street frontages are activated by the development, with improved pedestrian access around the corner and along the ground level frontages of the new building. This increases the passive surveillance around all areas of the site. There is a continuous awning is to be provided along the two primary street frontages for the comfort of pedestrians together with an improved public domain verge and landscaping (street tree planting within landscape planters). The upper level units will provide passive surveillance in three directions (east, south and west) achieving CPTED of the area. The activated ground floor corner and outdoor dining opportunity creates a pleasant village atmosphere for interaction of residents and customers.

The site will enhance the attractiveness, viability and health of the centre, particularly in marked contrast to the existing use.

The objective is achieved.

Accordingly, it follows that the proposed development is in the public interest because it is consistent with the objectives of the HOB development standard under the PLEP 2014 and the objectives of the B1 Neighbourhood Centre Zone under the PLEP 2014.

5.4 Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the SILEP or SEPP 1 subject to certain conditions.

As PLEP 2014 adopts cl4.6 of the SILEP and the conditions of the Notice are not relevant in this instance, the consent authority for the Proposal may assume concurrence in respect of the variation requested to the HOB development standard under the LEP.

In addition, the Court has power to grant development consent to the proposed development even though it contravenes the HOB development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

5 Assessment of the Variation

5.5 Step 5 - Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that 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.*

Furthermore, in Initial Action, Preston CJ clarified that, notwithstanding the Court's powers under s39(6) of the Court Act, the Court should still consider the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

Accordingly, the proposed contravention of the HOB development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular Site and this design is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 5.3, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. Accordingly, there would be no significant public benefit in maintaining the development standard in this instance; and
- It is considered that there are no other matters of relevance that need to be taken into consideration by the Court.

6 Conclusion

The proposed development contravenes the Height of Building development standard under cl4.3 of Pittwater LEP 2014.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the reasons outlined above and in summary:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.3 of the PLEP 2014 and is consistent with the relevant objectives of the B1 Neighbourhood Centre Zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposed shop top housing development will not result in significant adverse environmental harm in that the environmental amenity of neighbouring properties will be preserved and adverse impacts on the amenity of the locality will be minimised to a reasonable level;
- There are direct social and economic benefits for the property owner and the local residents with new shops replacing the old, tired premises, activation of the street frontages, an attractive contemporary development, increased passive surveillance and the opportunity for small businesses in the area to occupy new, fresh and modern premises.

The consent authority can assume the concurrence of the Secretary pursuant to the Notice issued on 21 February 2018. Alternatively, the Court can use its powers under s39(6) of the Court Act and be satisfied that contravention of the development standard does raise any matter of significance for State or regional environmental planning, there is no public benefit of maintaining the development standard and there are no other relevant matters required to be taken into consideration.

Accordingly, the consent authority can exercise its power pursuant to cl4.6(2) to grant development consent to the proposed development notwithstanding the contravention of the development standard.

ITEM 3.3**DA2020/1337 - 54 PAVILION STREET, QUEENSCLIFF -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING SECONDARY DWELLING**

AUTHORISING MANAGER Anna Williams
TRIM FILE REF 2021/261455
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. DA2020/1337 for alterations and additions to a dwelling house including secondary dwelling at Lot A DP 324284, 54 Pavilion Street, Queenscliff subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1337
----------------------------	-------------

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot A DP 324284, 54 Pavilion Street QUEENSCLIFF NSW 2096
Proposed Development:	Alterations and additions to a dwelling house including secondary dwelling
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Peter William Key Clare Josephine Kilgannon
Applicant:	Peter William Key

Application Lodged:	27/10/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/03/2021 to 05/04/2021
Advertised:	Not Advertised
Submissions Received:	18
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 589,270.00
---------------------------------	---------------

EXECUTIVE SUMMARY

The proposed development seeks consent for alterations and additions to the existing dwelling house, including a new secondary dwelling.

The proposed works include various works to the existing building and the construction of a new upper level addition.

Eighteen (18) submissions were received in response to the notification of the application. The concerns raised in the submissions relate to a range of issues including view loss impacts, privacy,

overshadowing, visual bulk and car parking.

The proposal has been amended to reduce the bulk of the roof form and associated view impacts, and consolidate the car parking at the eastern side of the frontage.

This assessment contains a detailed assessment of the visual, amenity and car parking impacts raised in the submissions, as well as consideration of the proposal's compliance with the applicable built form controls. The proposed works achieve compliance with the height of buildings development standard.

As the development attracted more than 10 submissions, the application is referred to the Northern Beaches Local Planning Panel for determination.

No further assessment issues are raised and the proposal is recommended for approval based on the assessment within this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing building, including a new secondary dwelling, as follows:

Level 1

Primary Dwelling:

- Living 3/Games Room
- 2 x Bedrooms
- Bathroom
- Laundry
- Store

Secondary Dwelling:

- Kitchen/Dining
- Study
- Living
- Bedroom
- Bathroom
- Western Verandah

Level 2

- Kitchen & Butler's Pantry
- Living & Dining Room
- 2 x Bedrooms
- Bathroom
- Rear Verandah
- Single carport, hardstand and pedestrian entry
- Bike & bin storage area

Level 3

- Living Room
- Bedroom with Ensuite and Robe
- Study
- Rear Balcony

External

- New driveway crossing
- New external stairs
- New turf, screen planting and landscaping, including retaining walls
- New hipped roof over Level 1 and new roof sheeting over Level 2

Amendment of the proposed development

The height poles erected and certified on the site reflect preliminary amendments to the upper floor roof line that replaced the rear gable with a hip and lowered the ridge height by 300mm.

Following the erection of the height poles the applicant was requested to further amend the roof design to reduce the resulting view impacts. The amended application retains a pitched roof over the north-eastern portion of the first floor, with a lower 5 degree pitched roof over the rear and western side of the first floor. The view loss assessment in this report is based on the amended roof design, and references the height pole locations and montages provided by the applicant.

The amended proposal did not require renotification as the revised roof form is considered to result in lesser environmental impacts.

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 - 5.4 Controls relating to miscellaneous permissible uses
Warringah Local Environmental Plan 2011 - 6.2 Earthworks

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk
 Warringah Development Control Plan - D11 Roofs
 Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation
 Warringah Development Control Plan - E2 Prescribed Vegetation
 Warringah Development Control Plan - E6 Retaining unique environmental features

SITE DESCRIPTION

Property Description:	Lot A DP 324284 , 54 Pavilion Street QUEENSCLIFF NSW 2096
Detailed Site Description:	The subject site consists of one allotment located on the southern side of Pavilion Street. The site is irregular in shape with a frontage of 15.24m along Pavilion Street and a depth of 24.995m. The site has a surveyed area of 379m². The site is located within the R3 Medium Density Residential zone and accommodates an existing dwelling. The site slopes approximately 3m from front (north) to rear (south). The site contains one tree and a variety of smaller vegetation. . Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a range of development including residential flat buildings, dual occupancies and dwelling houses.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration'	Comments
Regulation 2000 (EP&A Regulation 2000)	consent. <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. <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. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <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. <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. <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. <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.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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 24/03/2021 to 05/04/2021 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 18 submission/s from:

Name:	Address:
Mr Gregory Sydney Sullivan Mrs Margaret Ann Sullivan	5 / 61 - 63 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Martin Joseph Hartcher Mrs Bronwyn Beth Hartcher	8 / 61 - 63 Queenscliff Road QUEENSCLIFF NSW 2096
Chris Thomas	10 / 63 - 67 Pavilion Street QUEENSCLIFF NSW 2096
Peggy-Ann Denham Cal Joseph Arnesen	24 / 28 - 32 Crown Road QUEENSCLIFF NSW 2096
Mr Henry Alexander Harding Ms Alana Judith Harding Lawrence Winnacott & Associates Pty Ltd	1 / 61 Pavilion Street QUEENSCLIFF NSW 2096
Mr Ferdinand Kurt Puchner Mrs Anna Puchner	90 King Street MANLY VALE NSW 2093
Margaret Ann Donaghy	3 / 61 - 63 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Anthony Walter Trotter	16 Crown Road QUEENSCLIFF NSW 2096
Mrs Christine Elizabeth Trotter	1 / 16 Crown Road QUEENSCLIFF NSW 2096
Mr John Scott Willock Mrs Judy Graham	2 / 65 Queenscliff Road QUEENSCLIFF NSW 2096
Mr David Spears	55 Pavilion Street QUEENSCLIFF NSW 2096
Mrs Virginia Frances O'Dell	69 Pavilion Street QUEENSCLIFF NSW 2096
Mrs Vivian Jennifer Quinn	36 / 28 - 32 Crown Road QUEENSCLIFF NSW 2096
Mrs Verena Bridgette	11 / 63 - 67 Pavilion Street QUEENSCLIFF NSW 2096

Name:	Address:
Rawling	
Mrs Velella Maria Grazia Timmony	30 / 28 - 32 Crown Road QUEENSCLIFF NSW 2096
Neil White Michelle White	22/63 Pavilion Street QUEENSCLIFF NSW 2096
Sally Mills Glover	6 / 61 - 63 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Stephen Charles Dunstall	6 / 22 Crown Road QUEENSCLIFF NSW 2096

The matters raised within the submissions are addressed as follows:

- View loss impacts from various properties to the north and north-west.
Comment:
The amended roof design will largely retain the existing view corridors through the rear and western side setbacks, and will not result in an unacceptable level of impact to significant views from surrounding developments. A full view loss assessment is completed under D7 Views.
- Overshadowing impacts to 61-63 Queenscliff Road to the west.
Comment:
The proposal will result in only minor overshadowing of the driveway of 61-63 Queenscliff Road between 9am and 3pm. It is noted that the submissions from this property raised concerns with overshadowing prior to 9am. However the Warringah DCP controls only allow the assessment of overshadowing impacts between 9am and 3pm and it is unreasonable to expect the retention of sunlight access prior to this time, particularly in the context of the R3 zone where larger scale developments are permitted. A full assessment of overshadowing is completed under D6 Access to Sunlight.
- Privacy impacts to 61-63 Queenscliff Road to the west.
Comment:
The proposal, as conditioned, maintains a reasonable level of privacy to surrounding properties. The proposal is sensitively designed with the living areas and balconies orientated to the rear boundary, and appropriately screening provided to minimise opportunities for overlooking to the side boundaries. The privacy impacts to surrounding developments are considered to be acceptable, particularly with regard to 61-63 Queenscliff Road, which contains balconies and glazing orientated to the south-east and eastern side boundary. A full assessment of impacts is completed under D8 Privacy.
- Visual bulk impacts of the dwelling as viewed from adjoining properties and the street.
Comment:
The proposed dwelling includes several minor non-compliances with the front, side and rear setback controls. The side and rear setback breaches occur at the existing level 2 of the dwelling, and relate to the butler's pantry and rear verandah. The front setback breach relates to the central stair at the front of the dwelling, and maintains a minimum setback of 5.3m. These built form non-compliances do not result in excessive bulk, and the amended roof design is considered to be acceptable in reducing adverse visual and amenity impacts from surrounding properties and the street.
- Loss of on-street car parking.
Comment:
The amended proposal includes a consolidated carport and hardstand parking arrangement,

accessed via a single driveway crossing at the eastern side of the frontage. The proposal complies with the required two spaces for a dwelling house, and will result in the loss of only one on-street car park.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	Initial Engineering Comment The proposal includes the provision of two new driveway crossings with parking slabs on either side of the property. In accordance with Council's Vehicle Crossing Policy, only one crossing is permitted for this development. Also there are no levels provided for the driveway crossings and parking area which must be provided for assessment to ensure compliance with Council's requirements. The submitted drainage design proposes a charged system with a connection to the kerb via a charged line which is also contrary to Council's Water Management Policy. Council may permit the raising of the footpath area to permit gravity fall from the site to the kerb invert if the levels of the footpath on either side of the property can be maintained. Where this cannot be achieved, a level spreader in accordance with Council's Water Management Policy must be provided for assessment. Development Engineers cannot support the application due to insufficient information to address clause C2 and C4 of Warringah DCP. Amended plans received 7/4/21 The amended plans have deleted the second driveway crossing which is acceptable. Drainage is acceptable subject to conditions. No objection to approval, subject to conditions as recommended.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential 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 2: Secondary dwellings

Clause 19: Definition

Development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note: The standard instrument defines secondary dwelling as follows:

"secondary dwelling means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling."*

Comment:

The proposed use is defined under WLEP 2011 as alterations and additions to an existing dwelling with secondary dwelling.

Clause 20: Land to which this Division applies:

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land:	

(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	Consistent. The site is located within the R3 Medium Density Residential zone and, as such, the proposed use is permissible with consent under WLEP 2011.
--	---

Clause 21: Development to which this Division applies

Requirement	Comment
This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling.	Consistent. The development involves the construction of a secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies.

Clause 22: Development may be carried out with consent

Development to which this Division applies may be carried out with consent.

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The proposed development will result only in the principal dwelling and secondary dwelling on the land.
(3) A consent authority must not consent to development to which this Division applies unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and (b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	a) Warringah LEP does not have an FSR control. b) The total floor area of the secondary dwelling is less than 60m ² .
(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds: (a) site area if: (i) the secondary dwelling is located within, or is attached to, the principal dwelling, or (ii) the site area is at least 450 square metres. (b) parking if no additional parking is to be provided on the site.	a) The secondary dwelling is located within the principal dwelling. b) The site provides a compliant number of car parking spaces.

Note: A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).

Clause 24: No subdivision

Requirement	Comment
A consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division.	Consistent. This application does not propose any subdivision of the existing allotment.

Conclusion

The application is consistent with the above requirements and is supported by Council.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A374588 dated 18 May 2020).

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.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) *coastal environmental values and natural coastal processes,*
- (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Comment:

The proposed works are to an existing residential development and will not adversely impact the natural environment, coastal process, water quality, vegetation, foreshore access or Aboriginal cultural values.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposed additions are largely above ground level, with some additional impervious surfaces at ground level to accommodate the new car parking. The proposal is appropriately designed and sited to minimise impact to the above values in subclause (1).

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

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

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

Comment:

The proposal is unlikely to result in increased risk of coastal hazards on the site and surrounding land.

Warringah Local Environmental Plan 2011

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

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	9.6m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

5.4 Controls relating to miscellaneous permissible uses

The proposal complies with the provisions of the Clause 5.4(9).

6.2 Earthworks

The proposal does not include any significant earthworks.

6.4 Development on sloping land

The site is mapped as Landslip Risk Area B. A Geotechnical Report has been prepared in relation to the development, including suitable recommendations.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	N/A	N/A	N/A	N/A
B2 Number of Storeys	3	3	N/A	Yes
B3 Side Boundary Envelope	5m	Within envelope	N/A	Yes
		Within envelope	N/A	Yes
B5 Side Boundary Setbacks	4.5m	E: 4.5m	N/A	Yes
	4.5m	4.5m (L3)	N/A	Yes
		2.5m (L2 Pantry)	44.4%	No
B7 Front Boundary Setbacks	6.5m	Hardstand/Carport: 0m - 0.6m	100%	No
		Dwelling: min. 5.3m	18.5%	No

B9 Rear Boundary Setbacks	6m	3.6m - 4.4m	40%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	50% 189.5m ²	31.4% 119m ²	37.2%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The proposed 2.5m western side setback to the Level 2 butler's pantry is non-compliant with the 4.5m control.

Merit consideration

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

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

Comment:

The proposed L2 setback breach is above ground level and does not reduce opportunities for landscaping.

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

Comment:

The side setback breach is located at the street level of the existing dwelling and will not be visually dominant within the streetscape.

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

Comment:

The butler's pantry extends 450mm from the existing western wall for a length of approximately 4.2m, and will not result in excessive bulk or scale.

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

Comment:

The non-compliant wall maintains adequate separation from the adjoining building to the west and contains one small window. Given the use of this area and the retention of a 2.5m setback, the breach will maintain a reasonable level of amenity to the adjoining property.

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

Comment:

The non-compliance occurs at street level and will not adversely impact views.

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.

B7 Front Boundary Setbacks

Description of non-compliance

The required front setback for the development is 6.5m. The proposed 0m hardstand and minimum 0.4m setbacks to the carport breach the 6.5m control. The proposed pantry and stair additions at the front of the dwelling are also non-compliant, with setbacks of 5.5m and 5.3m, respectively.

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 front setback of the dwelling is generally maintained, with only minor additions at the front and western side of the existing facade. The proposed car parking is contained at the eastern side of the frontage with a landscaped courtyard provided at the western side.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposed carport extends forward of the prevailing building line. However, there is no alternative location for on-site car parking, and a sufficient area of landscaping is maintained within the front setback. The extension of the dwelling into the setback is minor and remains generally consistent with the existing dwelling siting.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposed carport is a low-profile design to minimise bulk, and the dwelling additions will enhance the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment:

The proposed front setback breaches will not result in any unreasonable impacts to view sharing.

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.

B9 Rear Boundary Setbacks

Description of non-compliance

The proposed rear setback of 3.6m-4.4m to the L2 verandah is non-compliant with the 6m control.

Merit consideration:

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

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

Comment:

The rear setback breach relates to the middle level of the dwelling. The proposal includes an overall increase to landscaping within the rear setback through the replacement of existing concrete with lawn.

- *To create a sense of openness in rear yards.*

Comment:

The proposed new lawn and screen planting will improve the sense of openness within the rear yard.

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

Comment:

The proposal incorporates suitable physical and vegetation screening to the side and rear boundaries. Further, the planter box conditioned to be integrated into the Level 2 verandah will further preserve the privacy and amenity of adjoining properties.

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

Comment:

The surrounding context does not exhibit a consistent subdivision pattern or prevailing rear building line. However, the proposal does maintain the rear building line of the existing dwelling, and will improve the landscape scheme within the rear garden.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

The proposal, as conditioned, will maintain privacy between the subject site and adjoining dwellings.

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

with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

C2 Traffic, Access and Safety

The amended proposal consolidates the proposed car parking at the eastern side of the street frontage, reducing the loss of on-street parking and opportunities for pedestrian conflict.

C3 Parking Facilities

Compliance with control

The existing development does not contain any off-street car parking. The proposal provides two new off-street car parking spaces in compliance with the requirement for a dwelling house. The Warringah DCP does not require any car parking spaces for a secondary dwelling, and the provision of additional spaces on the site would adversely impact the visual appearance of the development from the streetscape, and reduce opportunities for landscaping and planting.

The proposed car parking configuration is considered to be acceptable and is supported.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposed landscaped area of 31.4% is non-compliant with the 40% control, representing a shortfall of 70.5m². Despite the proposed non-compliance, the proposal includes an increase of 43.4m² to the existing landscaped area on the site through the removal of several concreted areas.

Merit consideration

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

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

Comment:

The proposed front courtyard provides adequate landscaped area to accommodate planting at the western side of the street frontage. It is noted that the paved car parking area is consistent with those of surrounding properties within the streetscape, and is necessary to achieve compliance with the parking requirements of the development and reduce demand for on-street parking.

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

Comment:

The subject site does not contain any existing high value vegetation or topographic features that will be impacted by the proposal.

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

to mitigate the height, bulk and scale of the building.

Comment:

The proposal includes landscaped area of sufficient dimensions to accommodate and maintain a variety of vegetation types to mitigate the perceived bulk and scale of the dwelling. The dimensions of the site and existing development do not allow for canopy planting.

- *To enhance privacy between buildings.*

Comment:

Screen planting is proposed along the rear and side setbacks to improve privacy between the subject site and adjoining properties. Conditions are imposed to ensure that this screening is maintained throughout the life of the development.

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

Comment:

The site contains suitable turfed and paved outdoor areas for recreational purposes to meet the needs of the occupants.

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

Comment:

The site retains turfed and hard-surfaced areas of sufficient proportions to accommodate service functions, including clothes drying.

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

Comment:

The site has adequate permeable surfaces, and is conditioned to ensure that water management and the natural infiltration of stormwater into the ground can occur in accordance with Council requirements.

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.

D6 Access to Sunlight

Compliance with control

61-63 Pavilion Street

At 9am the shadow impact of the proposal is limited to driveway of 61-63 Queenscliff Road. From the 3D shadow diagrams provided, it is evident that the sun angle and physical separation between the proposed Level 2 addition and the adjoining building that the impact to private open spaces within 61-63 will be negligible at 9am and will reduce throughout the morning. By 12pm there will be no impact to

this property. Several submissions were received from this property relating to overshadowing impacts (particularly prior to 9am), however, the Warringah DCP specifies that sunlight access is calculated between 9am and 3pm. Further, the eastern and south-eastern orientation of balconies and glazing within this property increase the vulnerability of these spaces to overshadowing.

59 Pavilion Street

There is overshadowing of the rear wall and bathroom windows of the building at 59 Pavilion Street from 9am until 12pm. The majority of the rear private open space area of 59 Pavilion Street is already overshadowed between 9am and 11am, and from 2pm until 3pm. There is some additional overshadowing of this rear yard from 11am until 1pm, but adequate sunlight access is maintained between 11am and 2pm given the context of the site and surrounding developments.

57 Queenscliff Road

At 3pm there is minor overshadowing of the western setback and garage wall of 57 Queenscliff Road. There is also minor impact to the western wall of the dwelling at 3pm, which is already largely in shadow cast by the existing dwelling.

Based on the compliance of the proposed Level 2 addition and the extent of shadow impacts to adjoining properties, the proposal is considered to be acceptable in relation to this control, particularly considering the topography of the area and the scale of surrounding developments within the R3 zone.

D7 Views

Merit consideration

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

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

Comment:

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

It should be noted that the height poles erected on the site reflect a minor initial amendment to the proposed roof form, which provided a hip at the rear (southern) end, and a reduction of 300mm to the ridge height. The proposal was further amended following the erection of the height poles, as reflected on the updated plan set.

1. Nature of the views affected

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

Comment to Principle 1:

63-67 Pavilion Street / 28-32 Crown Road (various units)

The affected views from units within this property are extensive water views of Manly Beach, including significant land-water interface views from North Steyne to Fairy Bower and Shelly

Beach. Further views available include district views of Manly and St. Patrick's Estate. The views are generally considered to be whole views, but only partial views in the vicinity of the subject property from some units due to being obscured by existing developments.

61 Pavilion Street (Units 1 & 2)

The affected views from within this property include water views of Manly Beach and land-water interface views from Fairy Bower to North Steyne. District views of Manly and St. Patrick's Estate are also available. The views are generally whole views, but are partially obscured by existing developments in the vicinity of the subject property.

22 Crown Road (various units)

The affected views from within this property are district views of Manly and Fairlight. The affected views are generally partial views obscured by existing developments in the vicinity of the subject site, particularly at the lower levels of the building. The available water views from the top floor of this property remain unaffected by the development based on the view angle in relation to the subject site.

16 Crown Road (Units 1 & 2)

The affected views from within this property are district views of Manly and Fairlight. The views are partial as they are obscured by the existing developments on the subject site and surrounding properties.

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

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

Comment to Principle 2:

63-67 Pavilion Street / 28-32 Crown Road (various units)

The affected views are available from the living areas and adjoining balconies, and bedrooms within some units. The views are obtained from a standing or sitting position across the front and eastern side boundaries.



Photo 1. View from Unit 16 balcony.



Photo 2. View from Unit 22 living room balcony.



Photo 3. View from Unit 22 bedroom balcony.



Photo 4. View from unit 24 living room balcony.



Photo 5. View from Unit 36 living room balcony.

61 Pavilion Street (Units 1 & 2)

The affected views are available from a standing or sitting position in the living areas and adjoining balconies, and from a standing position in the kitchens. The views are obtained across a front boundary.



Photo 6. View from Unit 1 kitchen.



Photo 7. Architectural render of view impact from Unit 1 kitchen.



Photo 8. View from Unit 1 living room balcony.



Photo 9. View from Unit 2 kitchen.



Photo 10. View from Unit 2 living room balcony.



Photo 11. Architectural render of view impact from Unit 2 living room balcony.

22 Crown Road (various units)

The affected views are available from a standing or sitting position in the living areas and adjoining balconies. The views are obtained across a front boundary.



Photo 12. View from Unit 3 balcony.



Photo 13. Architectural render of view impact from Unit 8 balcony.

16 Crown Road (Units 1 & 2)

The affected views are available from a standing or sitting position in the living areas, bedrooms and adjoining balconies. The views are obtained across a front boundary.



Photo 14. View from first floor balcony.



Photo 15. View from second floor balcony.

3. Extent of impact

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

Comment to Principle 3:

63-67 Pavilion Street / 28-32 Crown Road (various units)

The impact from the property varies based on the location of the unit and available views from within the building, as assessed below:

Unit 16 - There will be negligible impact to water views or land-water interface from the living room or adjoining balcony.

Unit 22 - There will be negligible impact to water views or land-water interface from the living

room, bedroom and balconies.

Unit 24 - The impact is limited to a small portion of water views in the vicinity of the rear (lower) height poles. There may also be impact to a small area of water views available at the rear of the roof ridge of 55 Queenscliff Road. The impact from a sitting position will be marginally greater, but still is not unreasonable. Regardless, the available land-water interface views remain unaffected and the extent of the impact is considered to be minor.

Unit 36 - There will be negligible impact to water views or land-water interface from the living room or adjoining balcony.

Units 10, 11 & 30 were not available to inspect. An assessment of these units is completed based on their locations within the building, and the relative impact to other units that were inspected (as indicated in the above photos).

Unit 10 is located immediately below Unit 16. The potential impact to views from this unit is limited to a water view is limited to a corridor to the south of 53 Queenscliff Road, visible in Photo 1 taken from Unit 16. Given the size of the view corridor the impact is considered to be minor-moderate.

Unit 11 is located on the same level as Unit 16, at the southern end of the building. Based on the view angle from this unit, no significant views are anticipated to be obtained over the subject site, and the impact negligible.

Unit 30 is located immediately above Unit 24. Given the elevation of this unit, it is anticipated that there will be negligible-minor impact to water views or land-water interface from the living room or adjoining balcony.

61 Pavilion Street (Units 1 & 2)

Unit 1 (first floor) - The impact is to approximately half of the available water views and a small portion of land-water interface at Fairy Bower. The majority of the land-water interface is likely to be retained from Marine Parade to Manly Beach, as indicated in Photo 7, provided by the applicant. The impact is considered to be moderate.

Unit 2 (second floor) - There is unlikely to be any material impact to water views or land-water interface from the kitchen, living area or adjoining balcony. The lower pitched roof over the rear and western side of the addition is anticipated to retain the existing view corridor, as indicated in Photo 11, provided by the applicant.

22 Crown Road (various units)

One submission was received from Unit 6 within this property, however, no inspection was able to be undertaken in the timeframe following receipt of the submission. An inspection of Unit 3 (ground floor) was carried out and the applicant provided a photo montage from Unit 8 on the third floor (Photo 13). The impact from the property varies based on the location of the unit and available views from within the building, as assessed below:

Units 2 & 3 (first floor) - The impact is limited to distant district views that are filtered by the subject dwelling and nearby developments and vegetation. No significant views are affected and the impact is negligible.

Units 5 & 6 (second floor) - This unit is located immediately below Unit 8 (Photo 13 above), and will experience a similar or greater level of impact to district views of Manly/North Steyne. Based on the value of the available views the impact is considered to be minor.

Unit 8 (third floor) - The impact is limited to district views of Manly/North Steyne as indicated in Photo 13 above. Based on the value of the available views the impact is considered to be minor.

Units 1, 4 & 7 are orientated to the north away from the subject site, and do not obtain any views in the vicinity of the subject site.

16 Crown Road (Units 1 & 2)

Units 1 & 2 - The impact is to sky views and district views to Manly and Fairlight from the upper level. The affected views are obtained over the centre of the subject site, with portions of district views retained through the eastern and western side setbacks, and over the lower pitched roof at the western side of the addition. Based on the vulnerability and value of the available views, the impact is considered to be minor-moderate.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposal includes minor non-compliances in relation to the front, side and rear setback built form controls, which occur at the middle level of the dwelling. The proposed first floor addition breaches the front setback control by 1.2m, but is fully compliant in relation to building height, number of storeys, building envelope, and side and rear setbacks. No views are obtained through/across the front of the dwelling and as such the front setback non-compliance is not relevant to view loss. Therefore, the level of impact resulting from the built form non-compliances is negligible.

The proposal as submitted included a pitched roof over the first floor with a gable at the rear (southern end). Despite complying with the building height and built form controls, the pitched roof design blocked significant views from surrounding properties, including water views and land-water interface, district views and St. Patrick's Estate. Due to the level of impact, the roof form was amended to reduce the bulk of the pitched roof element, which is now limited the north-eastern portion of the first floor, with a lower-pitched roof over the rear and west of the first floor. The amended proposal exhibits a more skilful design that will maintain the same development potential while significantly reducing the impact to view corridors through the rear and western side of the site.

The overall level of impact resulting from the development is considered to be minor. As such, the impact to view are acceptable and are supported.

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

Comment:

The proposed roof form is considered to be an innovative design solution that reduces view impacts and improves the urban environment.

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

Comment:

No canopy trees are located in the vicinity of the subject site or available view corridors.

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

Compliance with control

The proposed east and west-facing L3 windows are to a bedroom, ensuite and hallway, and are set back 4.5m from the side boundaries. The rear L3 balcony is designed to access views and air with a maximum depth of 900mm. The limited dimensions and access to the balcony via the upper floor master suite do not promote use as an entertaining area, limiting the potential for privacy impacts. Full height privacy screens are provided to the side boundaries of the balcony to restrict view angles to nearby dwellings. The design of the balcony and the physical separation to adjoining properties are considered to result in an acceptable privacy outcome in the surrounding context.

The L2 verandah is the principal private open space area accessed from the main living level of the dwelling. The verandah is contained within the roof space of the new L1 pitched roof and is also sufficiently screened to the side boundaries by the proposed 1.75m privacy screens. It is noted that new landscape screening is proposed to the rear boundary, however this alone cannot be relied upon for privacy mitigation, particularly given the non-compliant 3.6m setback to the elevated verandah. As such, a condition is included requiring the provision of a planter box along the southern extent of the L2 verandah to increase the setback to the trafficable area, reduce usability and downward overlooking from the verandah, and allow for additional screen planting.

Based on the above assessment, the proposal is considered to be acceptable in relation to privacy, subject to conditions.

D9 Building Bulk

Compliance with control

The proposed development maintains a two-storey presentation to the street and sits well below the 11m building height control, with a maximum height of 9.6m. The first floor addition is stepped in from the side and rear boundaries to achieve full compliance with the side setback and boundary envelope controls. The amended roof form maintains an appropriate visual relationship with the existing dwelling and surrounding streetscape, while minimising the overall bulk of the development and allowing for the retention of view corridors through the rear and western side setbacks of the site.

D11 Roofs

Compliance with control

The proposed amended roof design solution provides an appropriate balance between consistency with the pitched roof of the existing dwelling and articulation of the roof form to minimise visual bulk and impact to views.

E1 Preservation of Trees or Bushland Vegetation

No significant native vegetation is proposed or approved for removal.

E2 Prescribed Vegetation

Native vegetation screening is conditioned to be provided on the site.

E6 Retaining unique environmental features

The proposal will not adversely impact any unique environmental features on the site.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS**Northern Beaches Section 7.12 Contributions Plan 2019**

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

A monetary contribution of \$5,893 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$589,270.

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 development seeks consent for alterations and additions to the existing dwelling house, including a new secondary dwelling.

Eighteen (18) submissions were received in response to the notification of the application, and have been addressed in this report.

The key planning issues considered within the assessment are the view loss, privacy, visual bulk, overshadowing and parking impacts resulting from the development.

Assessment of the application against the Warringah LEP and DCP finds that the development is suitable in the context of the site, 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/1337 for Alterations and additions to a dwelling house including secondary dwelling on land at Lot A DP 324284, 54 Pavilion Street, QUEENSCLIFF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA05 Site Plan	Rev. 2, 7 April 2021	Stewart Design Studio
DA06 Level 1 Floor Plan	Rev. 6, 7 April 2021	Stewart Design Studio
DA07 Level 2 Floor Plan	Rev. 3, 7 April 2021	Stewart Design Studio
DA08 Level 3 Floor Plan	7 April 2021	Stewart Design Studio
DA09 Roof Plan	Rev. 1, 30 March 2021	Stewart Design Studio
DA10 Sections	Rev. 5, 30 March 2021	Stewart Design Studio
DA11 Elevations Sheet 1	Rev. 5, 30 March 2021	Stewart Design Studio
DA12 Elevations Sheet 2	Rev. 5, 30 March 2021	Stewart Design Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Assessment	7 May 2020	Ascent Geotechnical Consulting

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:

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
Ausgrid	Response Ausgrid Referral	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. **Approved Land Use**

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

A dwelling house is defined as:

"dwelling house means a building containing only one dwelling"

(development is defined by the Warringah Environment Plan 2011 (as amended) Dictionary)

A secondary dwelling is defined as:

"secondary dwelling means a self-contained dwelling that—

- (a) is established in conjunction with another dwelling (the principal dwelling), and
- (b) is on the same lot of land as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling."

(development is defined by the Warringah Environment Plan 2011 (as amended) Dictionary)

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

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

4. **Prescribed Conditions**

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

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

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

Reason: Legislative requirement.

5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the

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

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

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 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.

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$5,892.70 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 \$589,270.00.

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.

7. **Security Bond**

A bond (determined from cost of works) of \$2,000 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.

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

The applicant is to lodge a Bond of \$5,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

9. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the roofed area on the site to the kerb in Pavillion St via a charged system to the boundary and gravity system to the kerb.

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

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

10. **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.

11. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

12. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

13. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the stormwater outlet pipe from the site to the kerb in Pavillion Street which is to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.s

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

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

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

14. **Soil and Water Management Program**

A Soil and Water Management Plan prepared in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and implemented on site until the works are completed.

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

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

15. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

16. **Planter Box**

A planter box is to extend along the southern extent of the Level 2 Verandah. The balustrade may be positioned on either the north and south of the new planter.

The planter box is to have a minimum internal width of 500mm and a height of 600mm, and is to contain plantings with a minimum height of 400mm. The plantings are to be maintained for the life of the development.

Details including species, mature height, planting, pot size and spacing to provide continuous screening are to be submitted to Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain visual privacy between the subject site and adjoining property.

17. **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

18. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

19. **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:

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

20. **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.

21. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.5 metres wide at the kerb to 4.8 metres wide at the boundary in accordance with Northern Beaches Council Drawing No A4-3330/3 NL and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain

concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

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

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

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

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

23. **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.

24. **Screen Planting**

The nominated screen planting at the rear boundary is to consist of native species capable of attaining a height of 3 metres at maturity.

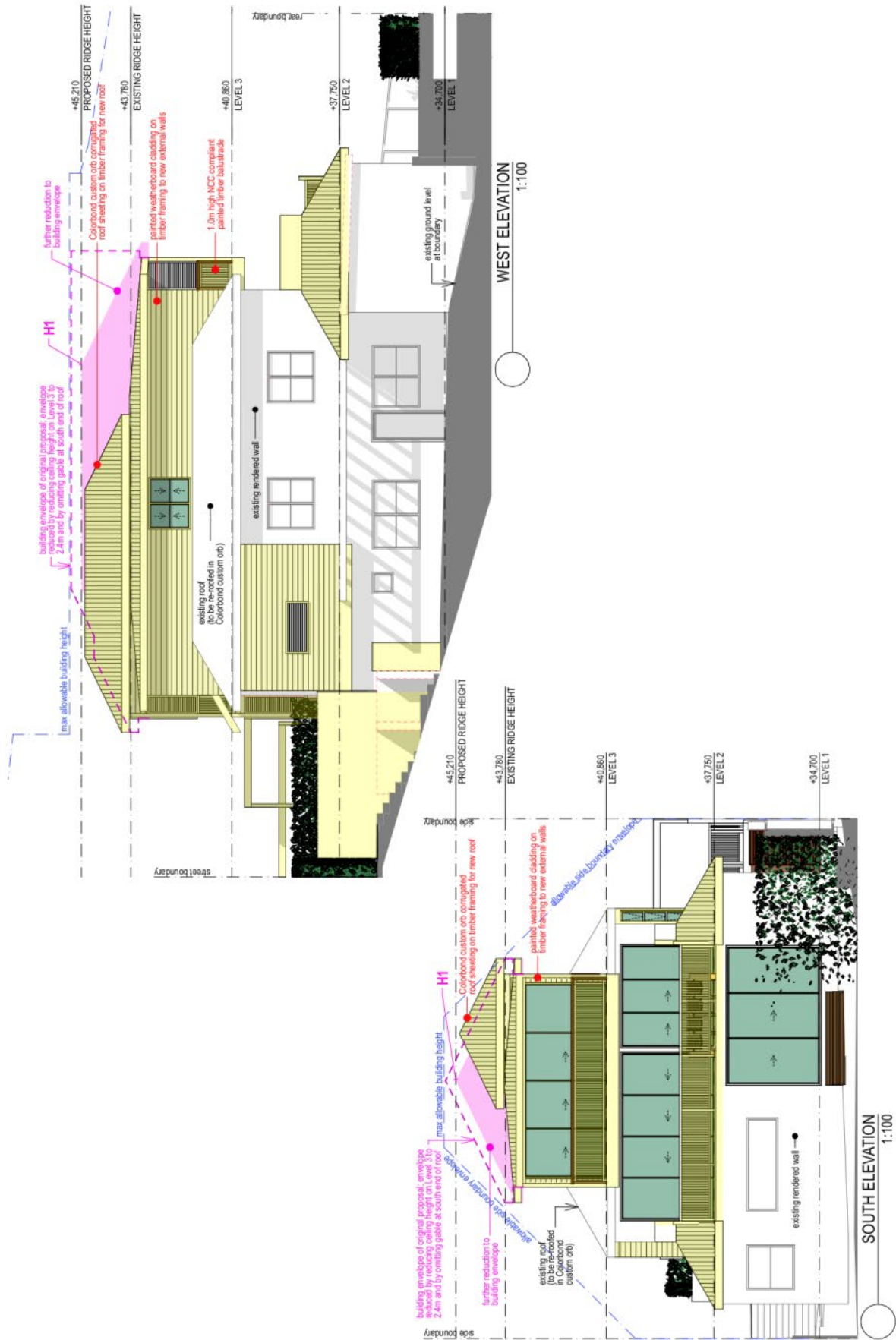
Plants are to be installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

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

Reason: To maintain environmental amenity.







DEVELOPMENT APPLICATION : ELEVATIONS SHEET 2

PROPOSED ALTERATIONS AND ADDITIONS TO EXISTING DWELLING AT 54 PAVILION STREET, QUEENSClIFF

1 LAKESIDE ROAD, MARRABEE, NSW, 2101 • TELEPHONE 02 9954 9836/0430 089206 • EMAIL jas@gspond.net.au

gspond
DESIGN STUDIO

Date: Oct 2020

Scale: 1:100

Drawing No: 1812/ DA12Rev5

Plot Date: 7/4/21

ITEM 3.4	DA2020/1376 - 38 CARRINGTON PARADE, CURL CURL - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
AUTHORISING MANAGER	Anna Williams
TRIM FILE REF	2021/261507
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. DA2020/1376 for alterations and additions to a dwelling house at Lot 25 DP 14040, 38 Carrington Parade, Curl Curl subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1376
----------------------------	-------------

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 25 DP 14040, 38 Carrington Parade CURL CURL NSW 2096
Proposed Development:	Alterations and additions to a dwelling house
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:	David William Jones Katherine Mary Jones
Applicant:	Luke Trovato

Application Lodged:	04/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/11/2020 to 03/12/2020
Advertised:	Not Advertised
Submissions Received:	14
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 170,000.00
---------------------------------	---------------

EXECUTIVE SUMMARY

The proposed development seeks consent for alterations and additions to the existing dwelling house.

The proposed works include various minor works at the existing first floor level and a new upper level addition at the southern frontage to Beach Street.

Fourteen (14) submissions were received in response to the notification of the application. The concerns raised in the submissions largely related to the view loss impacts and visual bulk of the proposed additions.

As the proposal attracted more than 10 submissions, the application is referred to the Northern Beaches Local Planning Panel for determination.

This assessment contains a detailed assessment of the view loss and visual bulk impacts raised in the submissions, and consideration of the proposed wall height and building envelope breaches. No variation is proposed to the height of buildings development standard.

No further assessment issues are raised and the proposal is recommended for approval based on the assessment within this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent for alterations and additions as follows:

First floor:

- Internal reconfiguration to provide a new stair
- Replace existing Garage window with sliding door

Second floor addition consisting of:

- Bedroom 5 with walk in robe
- Bedroom 6
- Bathroom

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.2 Earthworks

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation
Warringah Development Control Plan - E4 Wildlife Corridors

SITE DESCRIPTION

Property Description:	Lot 25 DP 14040 , 38 Carrington Parade CURL CURL NSW 2096
Detailed Site Description:	The subject site consists of one allotment located on the south-western side of Carrington Parade. The site is regular in shape with a frontage of 13.41m along Beach Street, a depth of 34.745m and a frontage of 3.315m to Carrington Parade. The site has a surveyed area of 461.7m². The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling house. The site slopes 5.87m from south to north. The site consists of lawn areas and smaller planting, and contains no significant vegetation. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a range of residential development including dwelling houses, dual occupancies, residential flat buildings and multi-dwelling housing.

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:

DA2011/0979 - Demolition works and construction of a dwelling house - Approved 28 September 2011.

Mod2012/0168 - Modification of Development Consent DA2011/0979 granted for Demolition Works and Construction of a Dwelling House - Approved 18 September 2012.

Mod2013/0031 - Modification of Development Consent DA2011/0979 granted for Demolition of an existing house and construction of a new dwelling - Approved 20 March 2013.

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	Warringah Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration'	Comments
control plan	
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)	<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. <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. <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. <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.. <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. <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. <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. <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.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.

Section 4.15 Matters for Consideration'	Comments
	(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.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/11/2020 to 03/12/2020 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 14 submission/s from:

Name:	Address:
Mark Bernard Greive	1 / 16 - 18 Beach Street CURL CURL NSW 2096
Ms Deborah Leah Moore	4 Rushall Street PYMBLE NSW 2073
Genevieve Alyson Gloor	174 Edgcliff Road WOOLLAHRA NSW 2025
Michael William Walpole	13 Undula Place BELROSE NSW 2085
Nicholas Livanos	Po Box 397 GLENORIE NSW 2157
Ms Marilyn Diane Murphy	15 / 16 - 18 Beach Street CURL CURL NSW 2096
Mr Michael Jon Rennie	34 / 16 - 18 Beach Street CURL CURL NSW 2096
Mr Russell Henry Beardmore	8 Beach Street CURL CURL NSW 2096
Miss Jacqueline Kit Sun Yun Miss Frances Marjorie Dargaville	41 / 16 - 18 Beach Street CURL CURL NSW 2096
Mr Jeroen Van Meenen	13 / 16 - 18 Beach Street CURL CURL NSW 2096
Mrs Marjorie Boddy	12 / 16 - 18 Beach Street CURL CURL NSW 2096
James Raphael Saunders	31 / 16 - 18 Beach Street CURL CURL NSW 2096
Reginald John Forster	28 Beach Street CURL CURL NSW 2096

Name:	Address:
Ms Belinda Jane Zoeller Mr Joshua James Robert Zoeller	35 / 4 Beach Street CURL CURL NSW 2096

The matters raised within the submissions are addressed as follows:

- View loss impacts
Comment:
A detailed assessment of view loss is completed under D7 Views, and the resulting view loss impacts are considered to be acceptable.

This matter does not warrant refusal of the application.
- Wall height/side boundary envelope non-compliance
Comment:
The proposed wall height and envelope breaches are assessed in detail under Part B Built Form Controls, and are not considered to give rise to any unreasonable amenity or visual impacts.

This matter does not warrant refusal of the application.
- Building bulk/visual impact
Comment:
The proposal presents as a one and two-storey presentation to the Beach Street frontage, and will be largely obscured from Carrington Parade. The addition is of an appropriate scale and is sufficiently articulated to minimise bulk and visual impact.

This matter does not warrant refusal of the application.

REFERRALS

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

application hereunder.

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential 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. A391828 dated 24 October 2020).

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.

SEPP (Coastal Management) 2018

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

14 Development on land within the coastal use area

(1)

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
- (iv) Aboriginal cultural heritage, practices and places,
- (v) cultural and built environment heritage, and
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed works are located within the existing building footprint and will not adversely impact the above matters.

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

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

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

Comment:

The proposal is unlikely to result in increased risk of coastal hazards on the site or surrounding land.

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	8.5m	Yes

Compliance Assessment

Clause	Compliance with Requirements

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

Detailed Assessment

6.2 Earthworks

No earthworks are proposed.

6.4 Development on sloping land

A preliminary geotechnical assessment has been prepared in relation to the development, with no further assessment or recommendations required.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.1m	12.5%	No
B3 Side Boundary Envelope	5m - East	Two encroachments on the second floor addition: - Length 2.4m varying between nil and 0.5m - Length 5.7m varying between nil and 1.2m	10% - 24%	No
	5m - West	No encroachment	N/A	Yes
B5 Side Boundary Setbacks	0.9m - East	1.0m	N/A	Yes
	0.9m - West	7.2m	N/A	Yes
B7 Front Boundary Setbacks	6.5m (Carrington Parade)	5.0m	N/A	Yes (Existing)
B7 Secondary Front Boundary Setbacks	3.5m (Beach street)	4.1m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	No additional hard surfaces proposed	N/A	No (Existing)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The eastern wall of the proposed addition exceeds the 7.2m wall height control for a length of 3.5m. The maximum height of 8.1m represents a variation of 12.5%.

Merit consideration:

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

- *To minimise the visual impact of development when viewed from adjoining properties, streets,*

waterways and land zoned for public recreation purposes.

Comment:

The extent of the proposed non-compliance will not result in unreasonable visual impact as viewed from adjoining properties and the public domain.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

The site and surrounds do not have an established canopy level, however, the proposal remains below the height of nearby street trees and complies with the building height control.

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

Comment:

The proposed wall height breach does not contribute to any unreasonable view impacts from surrounding properties or public spaces. A full assessment of view loss is completed under D7 Views.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The subject site is located below the level of Beach Street and the proposed addition does not result in any unreasonable overshadowing or visual dominance.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The proposed addition is suitably located on the site to maintain compliance with the building height control.

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

Comment:

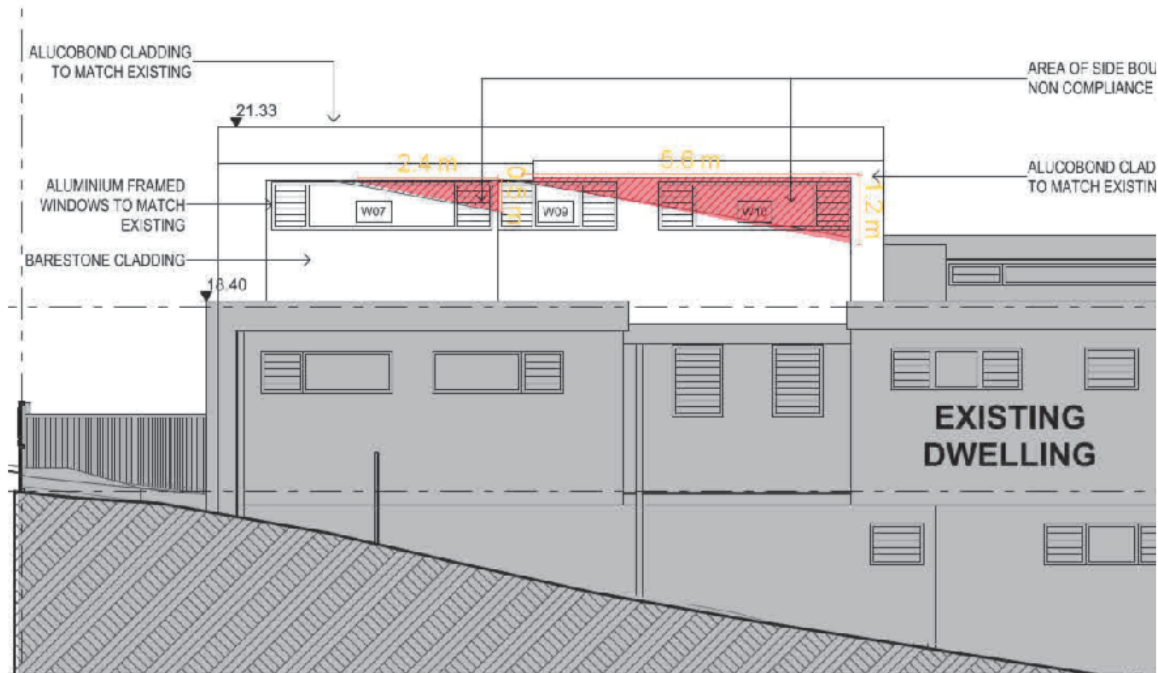
The proposed roof design is consistent with that of the existing dwelling.

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

B3 Side Boundary Envelope

Description of non-compliance

The proposed Bed 5 wall breaches the eastern building envelope by a maximum of 0.5m for a length of 2.4m and the Bed 4/Bath wall breaches the envelope by a maximum of 1.2m for a length of 5.6m.



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 development does not become visually dominant by virtue of its height and bulk.*

Comment:

The proposed upper level addition is relatively modest in scale and is contained within the south-eastern portion of the existing dwelling footprint. The addition will be largely obscured by the existing dwelling from the Carrington Parade frontage and maintains a partial single-storey presentation at the western side of the Beach Street frontage. The proposal achieves compliance with the building height control and the envelope breaches will not result in a visually dominant development.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The proposal maintains adequate sunlight and privacy to adjoining properties. It is noted that the proposed east-facing windows are partially beyond the building envelope, however, these windows are to bedrooms and do not provide direct site lines into windows or private open spaces of the adjoining dwelling.

- *To ensure that development responds to the topography of the site.*

Comment:

The proposed addition responds appropriately to the topography and complies with the building height control.

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

D1 Landscaped Open Space and Bushland Setting

The proposed works are contained within the existing building footprint and do not alter the approved landscaped area.

D6 Access to Sunlight

The additional overshadowing resulting from the proposed addition is minor and is limited to the Beach Street road reserve.

D7 Views

Merit consideration

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

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

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

35 & 37/ 2-4 Beach Street

The affected views from 2-4 Beach Street include extensive water views of Curl Curl Beach, including uninterrupted land-water interface from South Curl Curl to Dee Why Head. The views are whole views. It is noted that Unit 37/2-4 Beach Street was not available to inspect. The likely view impact is anticipated to be consistent with that of Unit 35 given the close proximity and similar layouts of the units.

8 Beach Street

The affected views from 8 Beach Street include relatively substantial water views of Curl Curl Beach, including land-water interface from South Curl Curl to Dee Why Head. The views are generally considered to be whole, but are only partial views in the vicinity of the subject property due to being obscured by existing vegetation within the road reserve.

16-18 Beach Street (various units)

The affected views from 16-18 Beach Street are generally limited to water views that are considered to be partial views as they are filtered through existing developments and vegetation within the road reserve. The land-water interface views available from 16-18 Beach Street are generally unaffected by the development. It is noted that several attempts were made to access all units within the building, but this was not possible. The assessment of view loss for this property is based on the completed inspections of unit Nos. 1, 12, 15, 23 and 32.

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

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

Comment to Principle 2:

35 & 37/ 2-4 Beach Street

The affected views from 2-4 Beach Street are available from the lower floor living room and upper floor bedroom (and adjoining balconies). The views are obtained across a front boundary from a standing or sitting position.



Photo 1. Available views from 35/2-4 Beach Street.

8 Beach Street

The affected views from 8 Beach Street are available from the upper floor kitchen/dining/living room and adjoining balcony. The views are obtained across a front boundary from a standing or sitting position.



Photo 2. Available views from 8 Beach Street dining room.



Photo 3. Available views from 8 Beach Street balcony.

16-18 Beach Street

The affected views from units within 16-18 Beach Street are available from the living areas and adjoining balconies. The views are obtained across either the front or eastern side boundary (depending on the unit location), generally from a standing position.



Photo 4. Available views from 1/16-18 Beach Street.



Photo 5. Available views from 12/16-18 Beach Street.



Photo 6. Available views from 15/16-18 Beach Street.



Photo 7. Available views from 23/16-18 Beach Street.



Photo 8. Available views from 32/16-18 Beach Street.

3. Extent of impact

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

Comment to Principle 3:

35 & 37/ 2-4 Beach Street

The impact from 35/2-4 Beach Street is limited to a minor loss of beach views and the adjacent surf life saving club. The impact is marginally increased from a sitting position, but is minor in the context of the available views. The impact to views from unit 37 is also expected to be minor.

8 Beach Street

The impact from 8 Beach Street is limited to a small portion of the available water views immediately above the existing subject dwelling and the adjoining dwelling at 37 Carrington Parade. As discussed above, the affected views from 8 Beach Street are partial views as they are obscured by existing developments and vegetation. As such, the impact is considered to be minor.

16-18 Beach Street

The impact from 16-18 Beach Street varies based on the location of the unit and available views from within the building, as assessed below:

Unit 1 - The impact is to a portion of the available water views over the existing subject dwelling and the adjoining dwelling at 37 Carrington Parade. The affected view is partially obscured and the less filtered portion of the view, including land-water interface at Dee Why Head, remains unaffected. As such, the impact is considered to be minor.

Unit 12 - The available view corridor includes land-water interface at Curl Curl Beach. This view is unaffected.

Unit 15 - The impact is limited to a small portion of the available water views immediately above the existing subject dwelling and the adjoining dwelling at 37 Carrington Parade. The affected view is partially obscured by existing development, vegetation and power lines/poles. The less filtered portion of the view looking further to the east along Beach Street remains unaffected. As such, the impact is considered to be minor.

Unit 23 - The available views, including beach views to the north and water views to the north-east, remain unaffected.

Unit 32 - The impact is limited to a small portion of the available water views immediately above the existing subject dwelling. The impact is considered to be negligible in the context of the extensive water and land-water interface views that remain largely unaffected.

Units 11, 13, 22, 31, 34 & 41 were not available to inspect. An assessment of these units is completed based on their locations within the building, and the relative impact to other units that were inspected (as demonstrated in the above photos).

Unit 11 is located immediately to the east of Unit 15 and likely obtains similar or somewhat more substantial views. The impact to those views is expected to be minor, consistent with the impact to Unit 15.

Unit 13 is located at the rear of the first floor, below Unit 23. Given the available views from Unit 23, the subject site is unlikely to be visible from Unit 13, and therefore the impact is expected to be negligible-minor.

Unit 22 is located immediately below Unit 32 and forward of Unit 23. Given the height of the adjoining building at 8 Beach Street, any available water views over the subject site are anticipated to be significantly obscured. The impact to any views is expected to be minor.

Unit 31 is located at the north-eastern corner of the building. Given the elevation of the level 3 units and the level of impact to Unit 32 to the rear, the impact to Unit 31 is expected to be negligible-minor.

Unit 34 is located at the south-western corner of the building and is not thought to obtain any water views in the vicinity of the subject site. As such, the impact to views is expected to be negligible.

Unit 41 is located at the front of level 4 and benefits from significant elevation above the subject site. Based on this elevation the impact to views is expected to be negligible.

Based on the above consideration, the overall impact to views resulting from the development is deemed to be **minor-moderate**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposed development is compliant in relation to the building height, setbacks and western boundary building envelope controls. The proposal is non-compliant with the eastern wall height and building envelope. The majority of the affected views are achieved in an easterly direction across the site and therefore the central roof ridge, which is wholly within the developable envelope of the site, is the main offending element in relation to views. The views to the north from 35 & 37/2-4 Beach Street are elevated above the subject site and do not rely primarily on the eastern setback corridor to maintain views through the site. The level of impact that results from the built form non-compliances is minor, the views that are affected are generally partial water views, and there is little or no impact to land-water interface views.

As such, the view impacts resulting from the development are acceptable and supported.

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

Comment:

The proposed addition exhibits an appropriate scale and level of articulation to minimise the resulting impact to views.

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

Comment:

The proposal maintains a height below surrounding canopy trees.

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

Compliance with control

The proposed upper floor windows are to bedrooms and a bathroom, and are appropriately designed and sited to maintain privacy between the subject site and adjoining properties.

D9 Building Bulk

Merit consideration

The development is considered to comply with the relevant controls under D9, and is assessed against

the underlying Objectives of the Control as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The addition is confined to the southern end of the site to ensure compliance with the building height control and the eastern wall setbacks are varied to provide articulation. The development is appropriately orientated to Beach Street and uses colours and materials consistent with the existing dwelling.

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

Comment:

The proposed addition is contained within the eastern side of the Beach Street frontage, with the western side of the dwelling maintaining a single storey presentation to the street. The proposal is suitably designed to minimise visual impact from surrounding land.

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.

E1 Preservation of Trees or Bushland Vegetation

No trees will be removed or impacted as a result of the development.

E4 Wildlife Corridors

The works are wholly contained within the building footprint and will not impact the existing landscaped area on the site.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$ 850 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 170,000.

CONCLUSION

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

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

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

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

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

The proposed development seeks consent for alterations and additions to the existing dwelling house.

Fourteen (14) submissions were received in response to the notification of the application, and have been addressed in this report.

The key planning issues considered within the assessment are the visual bulk and view loss impacts resulting from the development.

Assessment of the application against the Warringah LEP and DCP finds that the development is suitable in the context of the site, 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/1376 for Alterations and additions to a dwelling house on land at Lot 25 DP 14040, 38 Carrington Parade, CURL CURL, 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.01 Site Plan	Rev. A, 28 September 2020	Gartner Trovato Architects
DA.03 First Floor Plan	Rev. A, 28 September 2020	Gartner Trovato Architects
DA.04 Second Floor Plan	Rev. A, 28 September 2020	Gartner Trovato Architects
DA.05 North Elevation	Rev. A, 28 September 2020	Gartner Trovato Architects
DA.06 South Elevation	Rev. A, 28 September 2020	Gartner Trovato Architects
DA.07 East Elevation	Rev. A, 28 September 2020	Gartner Trovato Architects
DA.08 West Elevation	Rev. A, 28 September 2020	Gartner Trovato Architects
DA.09 Section A	Rev. A, 28 September 2020	Gartner Trovato Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Assessment	2 November 2020	White Geotechnical Group

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:

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
Ausgrid	Response Ausgrid Referral	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 sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$850.00 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 \$170,000.00.

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.

6. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. Stormwater Disposal

Engineering Plans certified by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to an existing/approved system.

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

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

8. External Finishes to Roof

The external finish to the roof shall match the existing roof finish or have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

9. 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

10. **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.

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

11. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

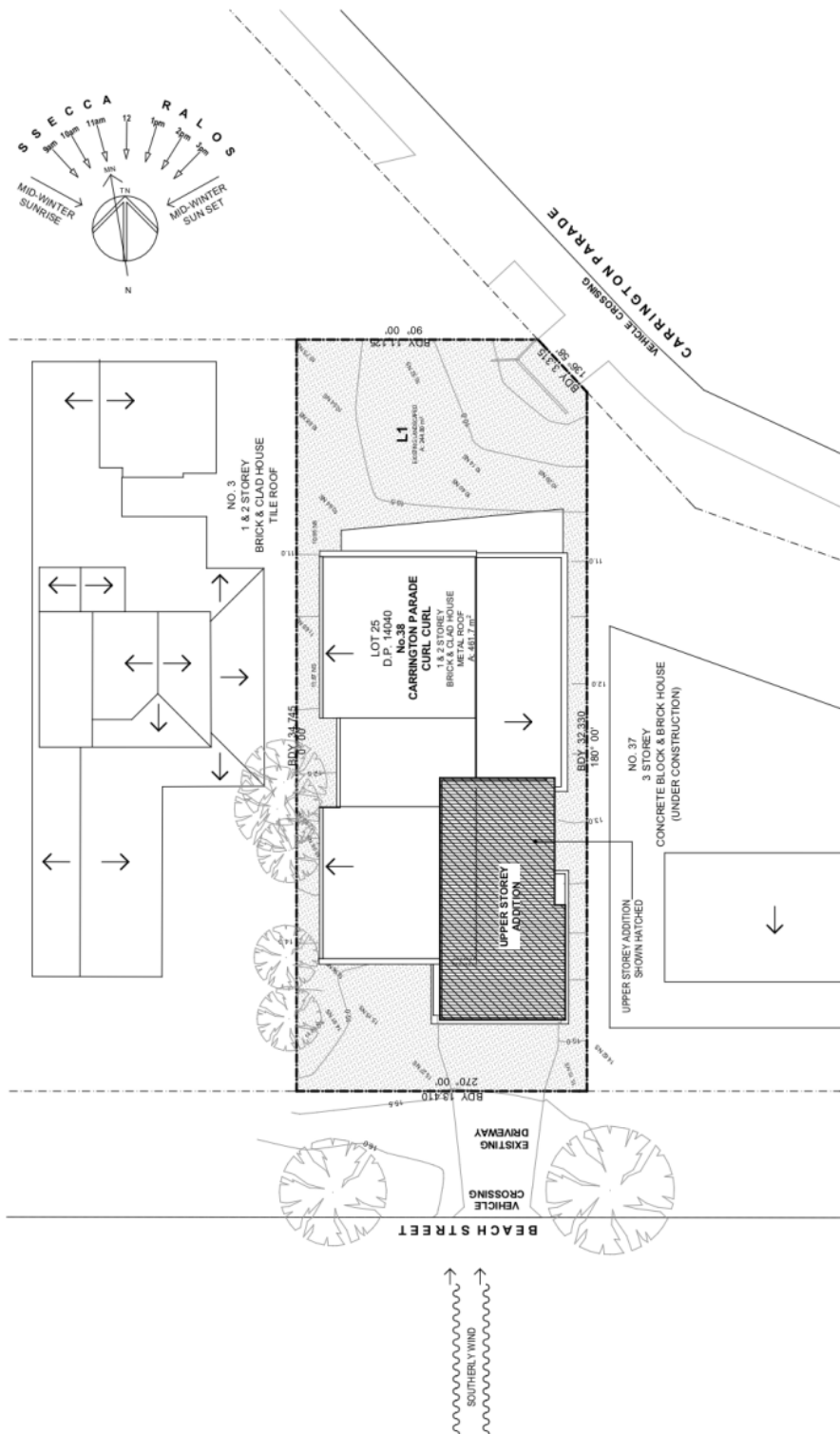
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Note: The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

CALCULATIONS		
SITE AREA:	461.7 m ²	UNCHANGED
EXISTING LANDSCAPE AREA:	244.80 m ²	UNCHANGED
PROPOSED LANDSCAPE AREA:	244.80 m ²	UNCHANGED



GARNIERIROVATO
A R C T I C
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100



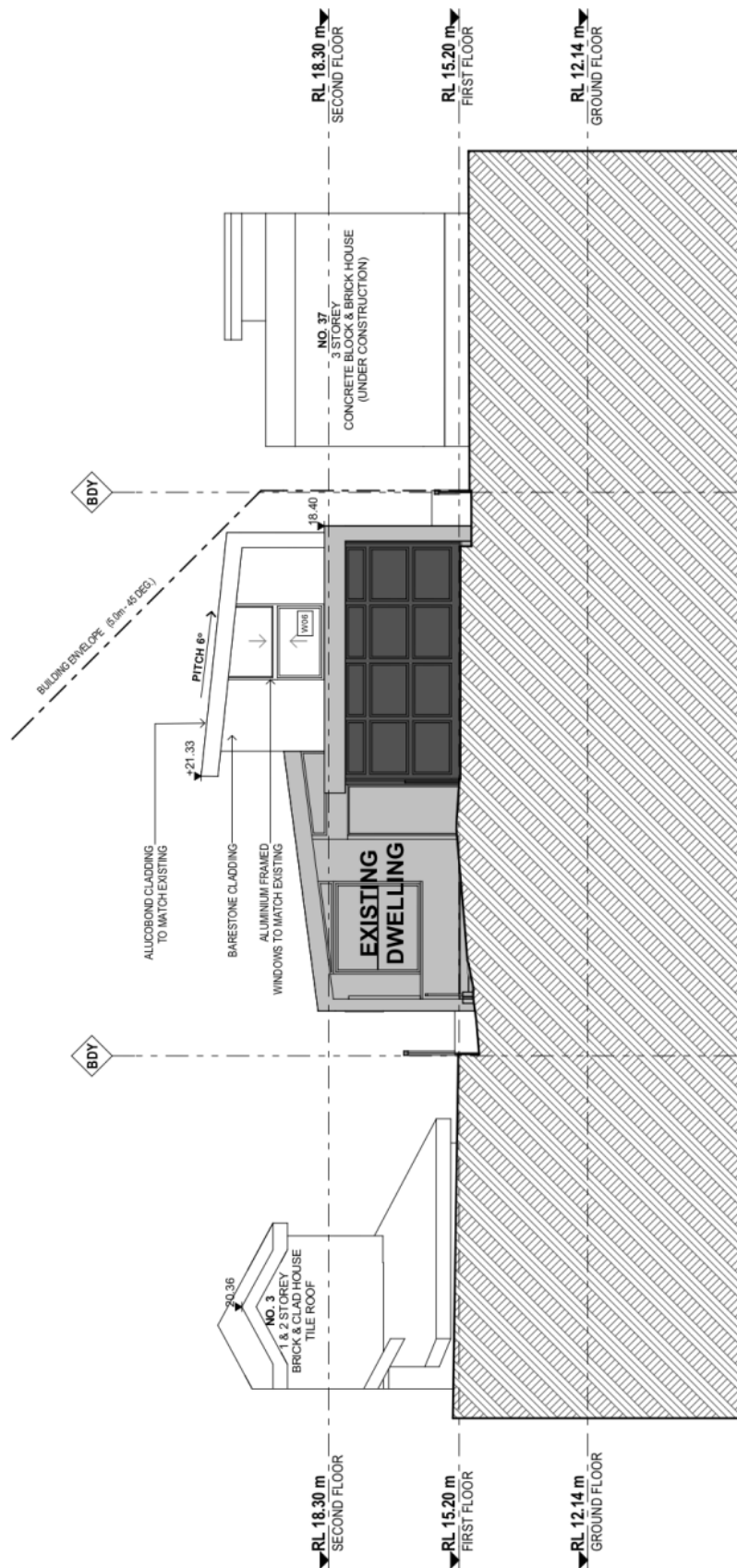
ISSUE DATE	REV	DESCRIPTION
28/09/2020	A	DEVELOPMENT APPLICATION

PROJECT	CLIENT	DATE	REVISION	BY	CHKD	APPD
UPPER STOREY ADDITION	38 CARRINGTON PARADE CURL CURL, NSW	2020	DA.01	FOR BILL JONES		

PROJECT	CLIENT	DATE	REVISION	BY	CHKD	APPD
UPPER STOREY ADDITION	38 CARRINGTON PARADE CURL CURL, NSW	2020	DA.01	FOR BILL JONES		



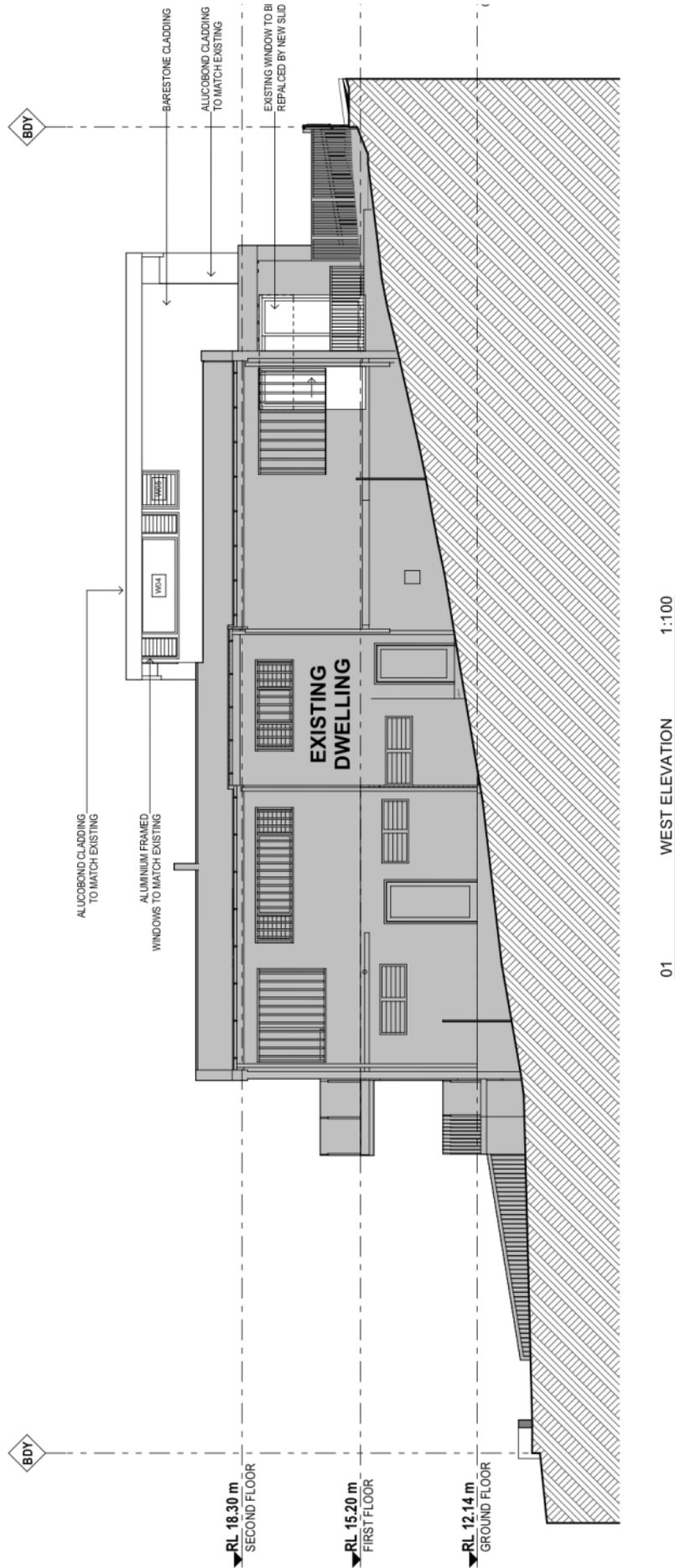
 GARNERTROVATO ARCHITECTS 1000 15th Street, Suite 1000 San Francisco, CA 94103 Tel: 415.774.2513 Fax: 415.774.2514 Email: info@garnertrovato.com	PROJECT: UPPER STOREY ADDITION 38 CARLETON PARK DRIVE, CURLEW NSW LOT 25 DP 14040		NORTH ELEVATION SCALE: 1:100 @ A3 DRAWN BY: L. COLE DATE: 2020 DRAWN: DA.05 CHECKED: A.
	ISSUE DATE: 28/09/2020 REV: A DESCRIPTION: DEVELOPMENT APPLICATION		



	GARTNERIROVATO				UPPER STOREY ADDITION				SOUTH ELEVATION			
	A	21	04	2021	28/09/2020	A	DESCRIPTION	DEVELOPMENT APPLICATION	38 CARRINGTON PARADE CURL CURL, NSW	2026	DA.06	A
	A	21	04	2021	28/09/2020	A	REVISION	REVISION	REVISION	REVISION	REVISION	REVISION
	A	21	04	2021	28/09/2020	A	DATE	DATE	DATE	DATE	DATE	DATE



GARTNERTROVATO										PLANET									
A R C H I T E C T S										UPPER STOREY ADDITION									
A S T Y D M O N A T A R D O										38 CARRINGTON PARADE CURL NSW									
P O S T M A N S T R E E T S I D E										EAST ELEVATION									
P L A N 1 3 2 0 1 5 1 5 0										WALL									
P L A N 1 3 2 0 1 5 1 5 0										LUMBER									
P L A N 1 3 2 0 1 5 1 5 0										2026									
P L A N 1 3 2 0 1 5 1 5 0										DA.07									
P L A N 1 3 2 0 1 5 1 5 0										FOR #CHART FIVE									



	GARTNERIROVATO										UPPER STOREY ADDITION										WEST ELEVATION									
	A R C H I T E C T S																													
	A. 4/10/2019 04:20:30 1710										A. 4/10/2019 04:20:30 1710										A. 4/10/2019 04:20:30 1710									
	B. 4/10/2019 04:20:30 1710										B. 4/10/2019 04:20:30 1710										B. 4/10/2019 04:20:30 1710									
	C. 4/10/2019 04:20:30 1710										C. 4/10/2019 04:20:30 1710										C. 4/10/2019 04:20:30 1710									
	D. 4/10/2019 04:20:30 1710										D. 4/10/2019 04:20:30 1710										D. 4/10/2019 04:20:30 1710									
	E. 4/10/2019 04:20:30 1710										E. 4/10/2019 04:20:30 1710										E. 4/10/2019 04:20:30 1710									
	F. 4/10/2019 04:20:30 1710										F. 4/10/2019 04:20:30 1710										F. 4/10/2019 04:20:30 1710									
	G. 4/10/2019 04:20:30 1710										G. 4/10/2019 04:20:30 1710										G. 4/10/2019 04:20:30 1710									
	H. 4/10/2019 04:20:30 1710										H. 4/10/2019 04:20:30 1710										H. 4/10/2019 04:20:30 1710									

ITEM 3.5	DA2019/1420 - 8 WYATT AVENUE, BELROSE - ALTERATIONS AND ADDITIONS TO AN EXISTING SCHOOL
AUTHORISING MANAGER	Anna Williams
TRIM FILE REF	2021/268451
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. DA2019/1420 for alterations and additions to an existing school at Lot 1 DP 601101 & Lot 101 DP 874509, 8 Wyatt Avenue, Belrose subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1420
Responsible Officer:	Nicholas England
Land to be developed (Address):	Lot 1 DP 601101 8 Wyatt Avenue, Belrose
Proposed Development:	Alterations and additions to existing school (John Colet School) as part of Staged Development consent for new classrooms and ancillary works and staged increase in student numbers at John Colet School
Locality:	C8 Belrose North
Category:	Category 3
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	John Colet Schools Inc.
Applicant:	Templum Design Architects
Application Lodged:	11 December 2019
Integrated Development:	No
Designated Development:	No
Notified:	11 January 2020 to 8 February 2020 21 April 2020 to 23 May 2020
Advertised:	Yes
Submissions Received:	10
Clause 4.6 Variation:	No
Recommendation:	Approval
Estimate Cost of Works:	\$2,088,897.00

EXECUTIVE SUMMARY

This application seeks consent for Stage "Q" of staged development consent DA2015/0558 issued by the Joint Regional Planning Panel for new classrooms and ancillary works and a staged increase in student numbers.

As the proposal is a Category 3 development under the provisions of Warringah Local Environmental Plan 2000 (**WLEP 2000**), this application was presented to an Independent Public Hearing Panel on 4 November 2020 with a recommendation of approval. As per the minutes of meeting (**Attachment 1**), the Independent Public Hearing endorsed the recommendation of approval subject to the approval by the Sydney North Planning Panel of the pending modification of the staged development consent DA2015/0558 [Mod2019/0627], and the following:

1. The addition of the following condition:

Parking

- a. *Sufficient parking shall be provided within the school grounds for one car for each staff member in attendance at the school*
- b. *During school hours, staff members shall not use the 90 degree parking spaces directly adjoining Wyatt Reserve in Wyatt Avenue and Cotentin Road.*
- c. *The school is to manage the parking of staff members in regards to point b) above*

2. *The deletion of condition 14 [being a duplication of Condition 5 in relations to development contributions]*

Modification Application Mod2019/0627 to amend the staged development approval was approved by the Sydney North Planning Panel on 23 December 2020 (**Attachment 2**) to incorporate the changes proposed in this application. The proposed works within this application are consistent with the modified staged consent. The amendments nominated by the Independent Public Hearing have been included in the draft conditions attached.

As the subject application received 10 submissions, the application is referred to the Northern Beaches Local Planning Panel, on behalf of Council, for consideration of the findings and recommendation of the Independent Public Hearing and determination. It is recommended that the NBLPP approve DA2019/1420 in accordance with the recommendation of the Independent Public Hearing.

LOCALITY PLAN (not to scale)



SITE DESCRIPTION

The land subject to the application is located on the northern side of Wyatt Avenue, known as Lot 101 in DP 8747509, No. 8 Wyatt Avenue, Belrose.

The land is used for the purposes of a primary school, known as the "John Colet School". The school occupies a total of seven (7) buildings, with parking for 19 vehicles. The school currently has approval for a maximum of 225 students.

The site possesses significant areas of vegetation, particularly adjoining the northern rear boundary, where approximately 400m² of remnant vegetation is situated.

Development adjoining the site consists of the following:

- Undeveloped Crown land to the north of the site;
- Unformed road reserve immediately adjacent the western boundary;
- Residential dwellings to the east and west; and
- Public open space (Wyatt Reserve and sportsfields) to the south of the site on the opposite side of Wyatt Avenue.

SITE HISTORY / BACKGROUND

A search of Council records reveals that the site has been the subject of numerous applications since approval was granted on 15 March 1995 under Consent No. 95/135 for the occupation of the existing premises as an educational establishment.

Applications/ consents of most relevance to the subject application include the following:

DA2015/0558: consent for "Staged Development for new classrooms and ancillary works and staged increase in student numbers at John Colet School" which was approved by the then Sydney East Joint Regional Planning Panel on 18 May 2016. This consent is the subject of the proposed modification.

The consent was issued under the Staged development provisions of the then Section 83B of the Environmental Planning & Assessment Act 1979. It gave conceptual consent to future upgrades and further intensification of the school land use, over eleven (11) stages, "A" to "Q".

Specifically, this consent permitted Stage "1" (A and B), for 2 new classrooms and various site works and an increase in students from 225 to 285. This is the maximum number of students currently permitted on the land.

The consent allowed a further 350 students and 30 staff, which was to be subject of future application/s.

This consent is proposed to modified, by MOD2019/0627, and reported to the Sydney North Planning Panel on 28 October 2020 for determination, to accommodate the works proposed in this application.

PLM2019/0056: A pre-lodgement meeting was held on 16 April 2019, to discuss proposed modifications to the existing Staged consent.

The proposal included non-compliances to the front, side setbacks and floor-to-ceiling heights.

The Notes provided to the applicant following the meeting concluded that the proposed modifications could be supported subject to design amendments being made on the recommendation of Council's Urban Designer, specifically in regard to issues of the treatment of the western façade which is subject to the non-compliance with the western (side) setback. Specific comments in relation to this façade include:

"The drawings submitted for the pre-lodgement meeting show little detail and articulation to the treatment of the western façade. Acknowledging that there are constraints in that this elevation faces west and has the height compounded / exaggerated by the fall in topography at this point the design development requires a careful articulation of materials and through modulation softening or layering of materiality; open/closed, transparent/opaque strategies to reduce the impacts of the bulk and form of the end of the new building."

Strategies that comprise layering of material; glazing, battening or other such treatments that engage in a dialogue with the surrounding neighbourhood and context is highly encouraged"

DESCRIPTION OF THE DEVELOPMENT

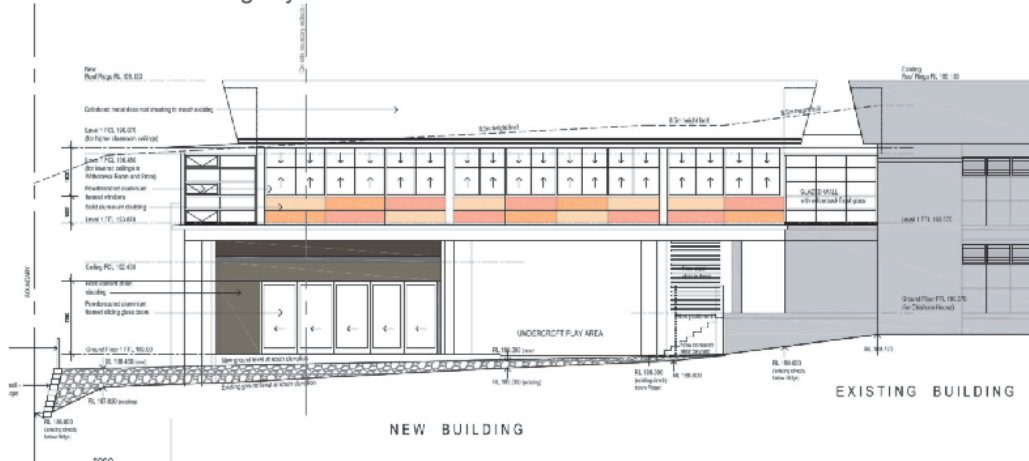
The application is made as a component stage "Q" of Staged Development consent DA2015/0558 and will comprise of an extension to the western portion of Chisholm House.

In detail, the works consist of:

- ground level works for a 145m² art room;
- 1st floor additions for two (2) classrooms with a total floor area of 210m²; and
- detailed landscaping works adjacent the western boundary adjoining the revised building.

An excerpt of the plans provided below demonstrates the elevations and floor plans.

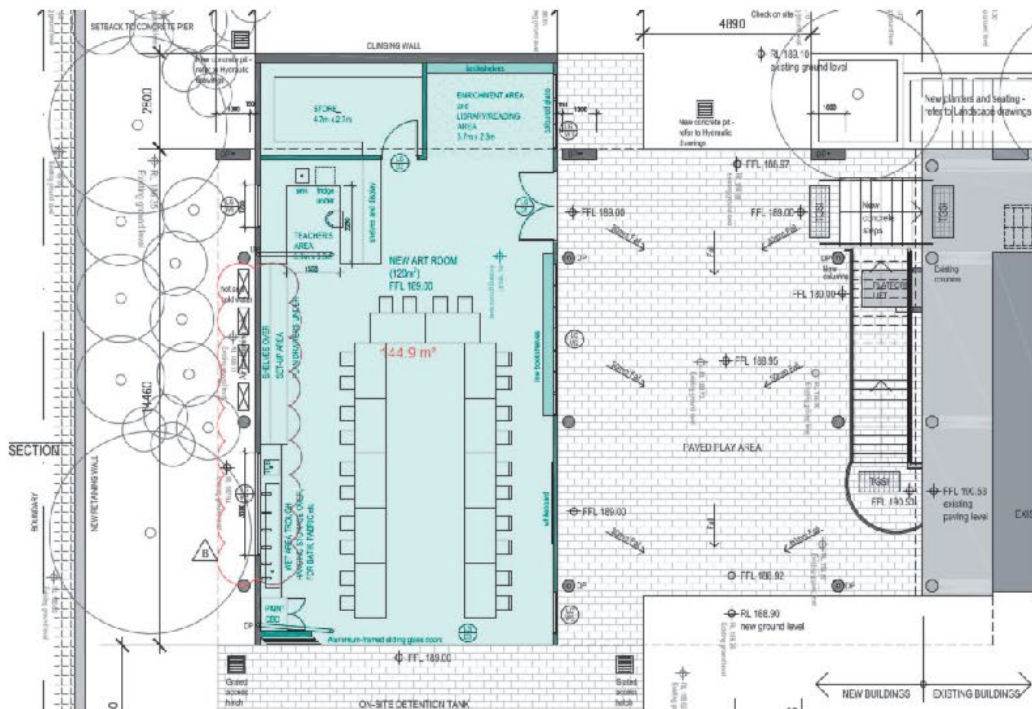
South elevation facing Wyatt Avenue:



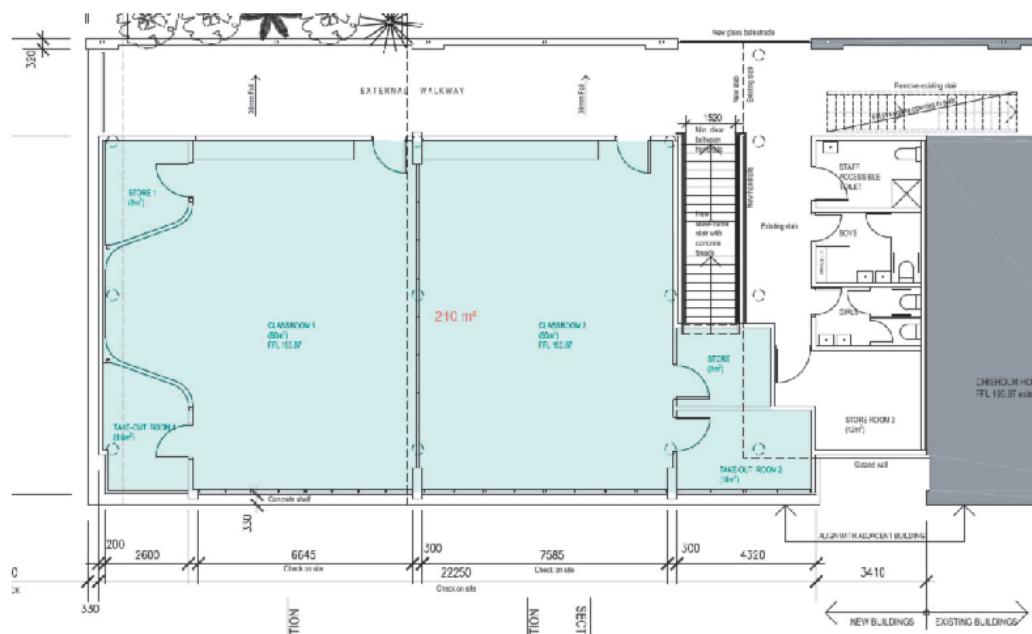
West Elevation:



Ground floor art room:



1st floor classrooms:



The proposal does not involve any increase to staff and/or student numbers, beyond the maximum permitted (350) in DA2015/0558.

AMENDMENTS TO THE SUBJECT APPLICATION

The proposal was amended, via plans received by Council on 21 April 2020. The plans were amended to include an additional window on the west elevation of the ground floor art room. The amendments were re-notified.

STATUTORY CONTROLS

- Environmental Planning and Assessment Act 1979;*
- Environmental Planning and Assessment Regulations 2000;*
- Local Government Act 1993;*
- Disability Discrimination Act 1992;*
- Rural Fires Act 1997;*
- State Environmental Planning Policy No. 55 – Remediation;*
- State Environmental Planning Policy 2007 – (Infrastructure);*
- Warringah Local Environment Plan 2000; and*
- Warringah Development Control Plan.*

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan.

As a result, the application was notified to 137 surrounding land owners and occupiers (and objectors to the original submission) for a period of not less than 21 days commencing on 11 January 2020 and ending on 8 February 2020. The application was also advertised in the

Manly Daily for the same period. A second notification was undertaken between 21 April 2020 and ending on 23 May 2020, as result of the amended plans.

Furthermore, a notice was placed upon the site.

A total of ten (10) submissions were received in response to the public exhibition of the application:

Name	Address:
Ronald John Patton Cynthia Joy Patton	19 Wyatt Avenue BELROSE NSW 2085
Phillip Bloom	C/- PO Box 159 KELLYVILLE 2155
Clare Mcelroy	Address Unknown
Marc Blake	Address Unknown
Kenneth Ernest Small	19 Stratford Drive BELROSE NSW 2085
Belrose Rural Community Association Inc	PO Box 224 BELROSE NSW 2085
Barry Yeomans Beverly Yeomans	15 Wyatt Avenue BELROSE NSW 2085
Ian Berry	14 Stratford Drive BELROSE NSW 2085
Anna-Louise Ainsworth	10 Patrick Street BELROSE NSW 2085
Merrilee Brown	1-3 Linden Avenue BELROSE NSW 2085

The issues raised in the submissions have been summarised and are addressed below:

- *The application should be is refused as it not complete as required by Condition No.5 of the Staged consent DA2015/0558.*

Comment: The intent of condition No.5 was that applications were to be lodged for any works for the remaining Stages F to Q. The condition did not specify any limit to the numbers of application that could be lodged, as the intent was to provide the school with the flexibility of seeking consent as the demand arose. The condition does not require a singular application for Stages F to Q and hence this is not a relevant reason to refuse the application.

- *There is not a sufficient kerb and gutter on the northern side of Wyatt Avenue, and during school functions cars park on the road reserve and hinder access to No.24 Wyatt Avenue. Approval should be conditional upon the provision of this infrastructure.*

Comment: The proposal relates to a component of an existing overall Staged consent. The Staged consent required no upgrades to the surrounding areas infrastructure, specifically the surrounding road network and drainage system. Based on the application being a component of an existing Staged consent, any condition to this application is not required.

- *Any application on the land would increase the level of traffic generated from the school, which would diminish the efficiency and safety of the local road network.*

Comment: The proposal is within the framework of an existing staged consent and substantially retains the nature of the original consent and no increase to students or staff

beyond what is already approved, is proposed. Hence, there will be adverse impact on the safety and efficiency of the surrounding road network.

- *The proposal would result in an adverse reduction in building setbacks and a loss of landscaped open space on the site.*

Comment: A discussion of the proposed application in regard to the Built Form controls of WLEP 2000 is provided elsewhere in this report. In summary, the proposed setbacks will provide an adequate response to the existing character of the built form in the locality and there will remain adequate landscaped open space on the site to achieve the objectives of the control.

- *Traffic management measures and a traffic report required by condition 6 of the Staged consent have not been provided with the application.*

Comment: The requirements of Condition No.6 in effect require that: all parking spaces be consistent with the Australian Standard and that the internal access road be a one-way movement. A report has been provided from a qualified traffic engineer to demonstrate that the application will comply with this condition.

- *There is insufficient parking in the school to accommodate for the demands of staff parking, based on other independent sources of information relating to the level of staffing in the school.*

Comment: The development as approved provides adequate car parking spaces to accommodate the demands of students and staff. The proposed works will not change this aspect of the approved development, hence there is adequate parking on the site to cater for the traffic generated.

- *The proposed works are not consistent with the Desired Future Character of the locality and is not a low impact, low intensity land use.*

Comment: A detailed consideration of the proposed application in regard to the Desired Future Character of the C8 locality is provided elsewhere in this report. In summary, the proposed works will retain the intensity of the approved land use and hence no adverse impact is caused in this regard. The consideration of whether the Staged Development was consistent with low impact low intensity was considered in the determination of the staged consent and will be considered as part of the current modification due to be determined on 28 October 2020 by the Sydney North Planning Panel. The works under this consent do not change the school population and therefore it is not considered to change the intensity of impact of the school on the locality.

- *The bulk and scale of the proposed development is not consistent with the locality or the objectives of the WLEP 2000.*

Comment: The Desired Future Character of the C8 Locality specifies that the character of the locality will remain unchanged, by preserving the natural environment and limiting new development to detached style housing or low intensity, low impact land uses. The proposed works will not result in any disturbance of the existing natural environment and will not result in any substantive change to the existing character by virtue of the works being an extension to an existing school. The application is in effect operating within existing intensity and impact parameters established by the Staged consent

DA2015/0558. Hence, the application is considered to be a low intensity, low impact land use and in turn is consistent with the Desired Future Character of the locality.

- *Insufficient measures to protect the existing natural environment have been provided with the application.*

Comment: The proposed works will have a very minor impact on the natural environment of the site as the area of landscaped open space that will be removed adjoining the western boundary is heavily modified and contains no significant area of habitat.

- *The application is not in the public interest as the proposal is motivated by profit and will result in adverse impacts on the adjoining built and natural environments.*

Comment: The impact of the proposed works on the natural environment is not adverse and the commercial viability of the existing land use is not a relevant matter of consideration in the assessment of the proposal.

- *The application will result in adverse levels of illumination in evening periods to the adjoining dwelling at No.9 Wyatt Avenue.*

Comment: The existing school operates predominantly during the day and evening activities are infrequent. The proposed works are situated at least 50m from the adjoining residence at No.9 Wyatt Avenue and no adverse level of light spill is likely from this part of the site.

- *The application will not comply with the Front Setback built form control and adopting the same setback as the existing building is not adequate to justify the non-compliance.*

Comment: A complete discussion of the compliance with the Front Setback built form control is provided elsewhere in this report. In summary, the adoption of the existing front setback of Chisholm House for the "Q" extension provides a unified built form response to the existing streetscape and the context of the surrounding area is adequate to justify the non-compliance.

- *The application will not comply with the Building Height built form controls of WLEP 2000.*

Comment: A detailed consideration of the variation to the Building Height control is provided elsewhere in this report. In summary, the variation in the height is justified based on the existing built form of Chisholm House, the surrounding context of the streetscape and the absence of any adverse amenity impact on any adjoining residence.

- *There is insufficient stormwater management provided.*

Comment: Council's Development Engineers have advised that the existing stormwater management system on the land is adequate to accommodate the proposed works.

REFERRALS

External Referrals

Ausgrid

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

NSW Rural Fire Service (RFS)

The application involves works to an existing school within a bushfire prone area and as such is 'Integrated Development' pursuant to section 4.47 of the Environmental Planning and Assessment Act 1979. In this regard, a bushfire safety authority is required from the RFS under Section 100B of the Rural Fire Services Act 1997.

The application was referred to the NSW Rural Fire Service (RFS) for comment and concurrence. The RFS raised no objection to the proposed works, subject to conditions which will be applied to this consent.

Internal Referrals

Building Assessment

The application was referred to Council's Building Assessment division for consideration. The following comments have been provided:

"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.

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.

The proposal is therefore supported."

Development Engineering

The application was referred to Council's Development Engineer for consideration. The following comments have been provided:

"The application has been investigated with respects to aspects relevant to the Development Engineering and Certification Section. No objections are raised to the proposed development, subject to conditions. The proposal is therefore supported."

Landscape Officer

The application was referred to Council's Landscape Officer for consideration. The following comments have been provided:

"The Landscape Plans and Arborist's Report submitted with the application are noted.

The Landscape Plans indicate regrading of grassed areas around the proposed building with retaining walls and proposed tree, shrub and ground-cover planting. The Arborist's Report indicates that four native trees are required to be removed to accommodate the works. Two of the trees are rated in the Arborist's Report as being of Low retention value and two are rated as Medium retention value. The Landscape Plan proposes replanting of nine native trees and four deciduous exotic trees. (Thirteen trees in total). In view of the above, no objections are raised to approval with regard to landscape issues subject to tree protection and replanting conditions as indicated below. The proposal is therefore supported."

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

Section 4.15 Assessment

The relevant matters for consideration under Section 4.15 of 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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Part A7 (Notification) of the Warringah Development Control Plan applied at the time the proposal was notified. The proposal has been notified and advertised in accordance with the DCP.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 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. Clause 92 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. Clauses 93 and/or 94 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. 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.

Section 4.15 'Matters for Consideration'	Comments
	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.
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	i) The environmental impacts of the proposal on the natural and built environment are addressed under the General Principles of Development Control in this report. In summary, the proposal is satisfactory with conditions, having regard to environmental impacts. (ii) The proposal will not have a detrimental social impact on the locality considering the educational character of the proposal. (iii) The proposal will not have a detrimental economic impact on the locality considering the mixed semi-rural uses within the surrounding locality and the existing and ongoing use of the site for educational purposes.
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	Refer to the previous discussion in Public Exhibition.
Section 4.15 (1) (e) – the public interest	Issues raised in the public interest have been addressed in this assessment and conditions of development consent. No matters have arisen that would justify the refusal of the application in the public interest. The wider public interest is served by ensuring that the proposal is consistent with the relevant planning controls under WLEP 2000.

Local Government Act 1993

Council is empowered under the *Local Government Act 1993* to be the approval authority for this proposal and grant any works or permits required in accordance with Section 68 of that Act as part of the development assessment process. This includes the management of stormwater, waste handling and access or works to a local public road.

Disability Discrimination Act 1992

Under Section 23 of the *Disability Discrimination Act 1992* provision must be made to ensure equitable and convenient access to the public and semi-public space within the development.

Accessibility design standards are defined within Australian Standard (AS) 1428.2 for construction work. In this case, all student and staff areas must permit adequate ease of access including AS 1428.2 compliant parking spaces, toilet facilities and accessibility to staff rooms.

The proposed works have demonstrated compliance with these standards.

ENVIRONMENTAL PLANNING INSTRUMENTS

State Environmental Planning Policies

State Environmental Planning Policy No 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 part of the subject site has been used continuously for educational purposes for a significant period of time.

Therefore, no further consideration is required under Clause 7(1) (b) and (c) of SEPP 55 and the site is considered to be suitable for the proposed extension to the existing land use.

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 of SEPP Infrastructure 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 5m 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 5m of an overhead electricity power line.

The proposal is not within or immediately adjacent to any of the above electricity infrastructure and does not include a proposal for a new swimming pool. In this regard, the subject application is considered to satisfy the provisions of Clause 45.

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

Regional Environment Plans

None applicable.

Local Environment Plans

Warringah Local Environment Plan 2000 (WLEP 2000)

The property is subject to Clause 1.3(1A) of the Warringah Local Environmental Plan 2011 and is classified as 'Deferred Land'. The development is therefore guided by the provisions of the Warringah Local Environment Plan 2000 and is located within the C8 Belrose North locality.

C8 Belrose North

The Desired Future Character Statement for Locality C8 states:

"The present character of Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

Development will be limited to new houses conforming with the housing density standards set out below and low intensity, low impact uses.

A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Middle Harbour."

The proposed development is defined as "primary schools" under the WLEP 2000 dictionary. "Primary schools" are identified as Category 3 development in this locality.

Clause 12(3)(a) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Locality's DFC statement.

Accordingly, an assessment of consistency of the proposed development against the locality's DFC is provided hereunder:

"The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.

Comment: The application is a component of a Staged consent to an existing school, which has taken effect on the subject land. In this regard, the existing character of the locality will remain unchanged and the proposal is consistent with this requirement of the DFC.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

Comment: The proposed works will result in no loss of existing natural habitat, vegetation or landforms. The area of existing landscaped space is modified and possesses no remnant native vegetation. Adequate colours and materials have been selected to compliment the local environment. The proposal is hence consistent with this requirement of the DFC.

Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses

Comment: As the proposal is not detached style housing, the proposal will need to demonstrate that it is a low intensity, low impact use to demonstrate consistency with the DFC.

The matter of 'low-intensity, low-impact' uses was adequately considered in the assessment of the original application consistent with the NSW Land and Environment Court (LEC)

judgement in *Vigor Master Pty Ltd v Warringah Council* [2008] NSWLEC 1128. In this judgement, the following was established that “intensity” and “impact” were as follows:

“Intensity – is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore “low intensity” would constitute a development which has a low level of activities associated with it” and;

“Impact – is commonly used in planning to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape, privacy, solar access etc. Therefore “low impact” would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to change the amenity of the locality.”

A discussion in respect of these two (2) terms within the DFC is provided below:

“Intensity”

As stated before, the application is a component of an existing Staged consent, DA2015/0558. In the consideration of this application, it was determined that the intensity of the use was in effect “low” after a detailed consideration of other similar land uses in the locality, in particular the nearby Christian Covenant and Belrose Primary Schools. Following on from this conclusion, and as the application represents no change to the existing Staged consent, therefore the proposal satisfies the “intensity” test of the DFC.

“Impact”

Consistent with the aforementioned LEC judgement, a consideration of the impacts highlights two (2) broad areas of impact that are pertinent in an assessment of the proposal against the DFC. These are:

- Impact on native vegetation / habitat / threatened species; and
- The potential impact of additional traffic on the local road network.

As stated previously, there will no loss of existing native vegetation or any area of significant habitat for threatened species. In regard to traffic generation, there will be no increase in existing approved number of students / staff at the school, resulting in no increase in traffic generation beyond that already approved.

Therefore the proposal satisfies the “impact” test of the DFC.

Based on the discussion provided above, the proposal is consistent with this requirement of the DFC.

A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.

Comment: Not applicable to the proposed development.

Development in the locality will not create siltation or pollution of Middle Harbour.”

Comment: Not applicable to the proposed development.

As detailed above the proposed development is considered to be consistent with the Locality's DFC statement.

Built Form Controls (Development Standards)

The following table outlines compliance with the Built form Controls of the above locality statement:

Built Form Control	Required	Proposed	Compliance
Housing Density	1 dwelling per 20 hectares	The proposal does not involve housing	N/A
Building Height	8.5 metres 7.2m (floor to ceiling)	10.2m Not specified	No No See discussion under Clause 20 below.
Front Building Setback	Wyatt Avenue: 20m	17.2m	No
Rear and Side Building Setback	10m	Rear: No change Side (west): 5m	No change No See discussion under Clause 20 below.
Bushland Setting	50% (5,895m ²)	56% (6,560m ²)	Complies
Extractive Industry	Applies to quarry sites	Not applicable	N/A
National Park Setback	N/A	N/A	N/A

CLAUSE 20

Clause 20(1) stipulates:

"Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy."

Building Height

Description of non-compliance

The non-compliance occurs relates to an overall building height of 10.2m.

This represents a variation of 17%.

Merit consideration

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

- *Ensure that development does not become visually dominant by virtue of its height and bulk.*

The overall height of the proposed works have been predicated on the existing height of the Chisholm House building. By adopting this height, the extension integrates with the existing built form and hence when viewed from Wyatt Avenue is not considered to become visually dominant by virtue of its height and bulk.

The development is considered to satisfy this objective.

- *Preserve the amenity of surrounding land.*

As noted elsewhere in this report, the extension is located adjacent to non-residential uses (i.e. predominantly open space and bushland areas) with the only exception being a residential property which is located approximately 50m to the south-east across Wyatt Avenue.

In this regard, the increased building height would not create any adverse or unreasonable amenity impact to surrounding land.

The development is considered to satisfy this objective.

- *Ensure that development responds to site topography and minimises excavation of the natural landform.*

The extension occurs at the front and side of the existing building and does not involve any significant excavation works, apart from the minor terracing works for the landscaping.

The development is considered to satisfy this objective.

- *Provide sufficient area for roof pitch and variation in roof design rather than a flat roof.*

The development includes a pitched roof form which is considered to provide sufficient variation to complement the existing school which predominantly consists of traditional pitched roof forms.

The development is considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2000 and the objectives specified in s.5(a)(i) and (ii) of the *Environmental Planning and Assessment Act, 1979*.

Accordingly, this assessment finds that the variation to the Building Height built form control is supported, in this particular circumstance.

Front Building Setback

Description of non-compliance

The non-compliance occurs at the front of the building facing Wyatt Avenue and results in a front setback of 17.2m.

The control permits a front setback of 20m resulting in a variation of 14%.

Merit consideration

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

- *Create a sense of openness.*

The frontage of the extension is setback to generally align with the facade of the existing school buildings facing Wyatt Avenue.

The proposed front setback of 17.2m is considered sufficient to maintain a sense of openness to the street.

The development is considered to satisfy this objective.

- *Provide opportunities for landscaping.*

The proposed front setback is considered sufficient to allow for the continued level of landscaping currently evident within the front setback area.

The development is considered to satisfy this objective

- *Minimise the impact of development on the streetscape.*

The proposed front setback will align the development to the existing building frontage while maintaining a sufficient level of landscaping to soften the built form.

The development is considered to satisfy this objective.

- *Maintain the visual continuity and pattern of buildings, front gardens and landscape elements.*

The proposed front setback will align the development to the existing building frontage while maintaining a sufficient level of landscaping to soften the built form.

As such, the development will maintain the visual continuity and pattern of buildings, front gardens and landscape elements of the site when viewed from the street.

The development is considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2000 and the objectives specified in s.5(a)(i) and (ii) of the *Environmental Planning and Assessment Act, 1979*.

Accordingly, this assessment finds that the variation to the Front Building Setback built form control is supported, in this particular circumstance.

Rear and Side Building Setback

Description of non-compliance

The non-compliance at the eastern side of the building and results in a side setback of 5m.

The control permits a side setback of 10m resulting in a variation of 50%.

Merit consideration

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

- *Create a sense of openness in rear yards.*

The non-compliance does not occur within the rear area of the site.

This objective is not relevant to the proposal.

- *Preserve the amenity of adjacent land.*

The western facade of the proposed extension faces an unformed road reserve, 20m in width. Beyond that, is an access handle, also 20m in width, for an adjoining property which is also undeveloped. Hence, the proposed works will not have any adverse impact upon the amenity of that land.

The development is considered to satisfy this objective.

- *Maintain the visual continuity and pattern of buildings, rear gardens and landscape elements.*

The proposed side setback will align the development to the side setback of the existing building while maintaining a sufficient level of landscaping to soften the built form.

As such, the development will maintain the visual continuity and pattern of buildings, front gardens and landscape elements of the site when viewed from the neighbouring bushland.

The development is considered to satisfy this objective.

- *Provide opportunities to maintain privacy between dwellings.*

As stated previously, western façade of the proposed extension faces vacant public and private land and will not have any adverse impact upon the privacy of that land.

The development is considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2000 and the objectives specified in s.5(a)(i) and (ii) of the *Environmental Planning and Assessment Act, 1979*.

Accordingly, this assessment finds that the variation to the Rear and Side Building Setback built form control is supported, in this particular circumstance

General Principles Of Development Control

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed application:

General Principles	Applies	Comments	Complies
CL38 Glare and reflections	YES	The extent of area of proposed windows are not significant and a further condition can apply to ensure that there is no adverse level of glare and reflection emitted.	Yes
CL39 Local retail centres	NO	No comment required	N/A
CL40 Housing for Older People and People with Disabilities	NO	No comment required	N/A
CL41 Brothels	NO	No comment required	N/A
CL42 Construction Sites	YES	Complies, subject to condition.	Yes
CL43 Noise	YES	Whilst the proposal will result in an increase in the floor area of the existing building, there is no increase in student numbers or staff. Therefore, it is considered that the development would not have any adverse acoustic impact on neighbouring land.	Yes
CL44 Pollutants	NO	No comment required	N/A
CL45 Hazardous Uses	NO	No comment required	N/A
CL46 Radiation Emission Levels	NO	No comment required	N/A
CL47 Flood Affected Land	NO	No comment required	N/A
CL48 Potentially Contaminated Land and CL49 Remediation of Contaminated Land	YES	Council records indicate that part of the subject site has been used continuously for educational purposes for a significant period of time. Therefore, no further consideration is required under Clauses 48 and 49 and the site is considered to be suitable for the extension to the existing educational land use.	Yes
CL49a Acid Sulphate Soils	NO	No comment required	N/A
CL50 Safety and Security	YES	The following safety design features are already incorporated into the premises: - Controlled access to the school grounds is achieved from the street by a gate from the subject site; - Entrance to the building is clearly identifiable from the street; and - Casual surveillance is provided over the carparking facilities. The proposal will not change these existing arrangements.	YES
CL51 Front Fences and Walls	NO	No comment required	N/A
CL52 Development Near Parks, Bushland Reserves and other public Open Spaces	NO	No comment required	N/A

General Principles	Applies	Comments	Complies
CL53 Signs	NO	No comment required	N/A
CL54 Provision and Location of Utility Services	YES	Water and electricity services are available to the site.	Yes
CL55 Site Consolidation in 'Medium Density Areas'	NO	No comment required	N/A
CL56 Retaining Unique Environmental Features on Site; and CL58 Protection of Existing Flora	YES	The area of open space that will be lost as a result of the increased footprint of the building does not contain any significant habitat or fauna. Council's Landscape Officer has no objection to the removal of the existing trees and is satisfied that the revised landscape plan for the side setback on the western boundary is adequate to ensure future propagation of beneficial vegetation.	Yes
CL57 Development on Sloping Land	NO	No comment required	N/A
CL59 Koala Habitat Protection	NO	No comment required	N/A
CL60 Watercourses and Aquatic Habitats	NO	No comment required	N/A
CL61 Views	NO	No comment required	N/A
CL62 Access to sunlight	NO	No comment required	N/A
CL63 Landscaped Open Space	YES	The will not unreasonably decrease the existing provision of landscaped open space currently on the site such that it will conflict with the objective the Landscaped Open Space built form control.	Yes
CL63A Rear Building Setback	NO	No comment required	N/A
CL64 Private open space	NO	No comment required	N/A
CL65 Privacy	YES	The non-residential use of the development is not located adjacent to any dwellings (the nearest dwelling is located approximately 50m south-east and across Wyatt Avenue).	Yes
CL66 Building bulk	YES	The proposal maintains the built form and scale of the existing building to which it is attached. The resulting bulk and scale is therefore visually consistent with the overall school development.	Yes
CL67 Roofs	YES	The proposal will retain the existing roof form of the existing Chisholm House building and provide a unified and consistent built form to the streetscape.	Yes
CL68 Conservation of Energy and Water	N/A	No comment required	N/A
CL69 Accessibility – Public and Semi-Public Buildings	YES	The proposal has demonstrated that it will achieve compliance with the appropriate standards for provision of Access/Egress and Essential Services as provided for under Part D and Part E of the BCA.	Yes, subject existing to condition
CL70 Site facilities	YES	Existing site facilities are adequate to cater for the proposed application.	Yes
CL71 Parking facilities (visual impact)	YES	No change is proposed to the approved parking facilities.	Yes

General Principles	Applies	Comments	Complies
CL72 Traffic access and safety	YES	No change is proposed to the existing traffic access/egress arrangements and, because the proposal does not involve any increase to staff and/or student numbers, will not generate additional traffic volume. A condition of consent is recommended to ensure that purpose of Condition 6 of the Staged Masterplan (DA2015/0558) is maintained.	Yes
CL73 On-site Loading and Unloading	YES	Adequate access for the loading and unloading of construction materials is available from Wyatt Avenue. No change is required for student pick-up/set-down areas or for supplies and delivery parking.	Yes
CL74 Provision of Carparking	YES	The applicant confirms that the development does not increase in staff and/or student numbers. Therefore, the development will not generate a need for additional carparking beyond what is already approved, and provided for, at the school.	Yes
CL75 Design of Carparking Areas	YES	No change is proposed to the provision of on-site carparking.	Yes
CL76 Management of Stormwater	YES	The application has been reviewed by Council's Development Engineer who advises that no objection is raised and no additional conditions are required to be imposed.	Yes
CL77 Landfill	NO	No comment required	N/A
CL78 Erosion and Sedimentation	NO	No comment required	N/A
CL79 Heritage Control	NO	No comment required	N/A
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	NO	No comment required	N/A
CL82 Development in the Vicinity of Heritage Items	NO	No comment required	N/A
CL83 Development of Known or Potential Archaeological Sites	NO	No comment required	N/A

Other Relevant WLEP 2000 Clauses

Schedule 5 - State Policies

Bushland In Urban Areas	The proposed development is consistent with the aims and objectives of Schedule 5.
--------------------------------	--

Schedule 8 - Site Analysis

Site Analysis	A formal site analysis plan was submitted with the original development application and additional site information is contained in the Statement of Environmental Effects, the survey, tree survey and the architectural plans, which satisfy the site analysis requirements of Schedule 8.
----------------------	--

Schedule 11 - Koala Feed Tree Species and Plans of Management

Koala Feed Tree Species and Plans of Management	The site is not identified as containing any Koala population or Koala habitat. The proposal is consistent with the requirements for the protection of koala habitat.
--	---

Schedule 15 - Statement of Environmental Effects

Statement of Environmental Effects	A Statement of Environmental Effects was submitted with the development application which satisfies the requirements of Schedule 15.
---	--

Clause 15(1) of Warringah Local Environmental Plan 2000 requires that the consent authority must consider a Statement of Environmental Effects (SEE) prepared in accordance with the criteria listed in Schedule 15. The applicant has submitted a Statement of Environmental Effects, prepared by City Plan Associates, which addresses Schedule 15 of WLEP 2000. The following is provided having regard to these provisions:

In addition, Clause 15(2) requires the consent authority to consider the findings of an independent public hearing prior to the determination of the application. Reporting of this application to the Northern Beaches Planning Panel is considered to satisfy this clause. A summary of the Schedule 15 Statement is provided below:

Consideration	Proposed
(1) Summary of the Statement of Environmental Effects (SEE)	The applicant has provided a summary within the the Statement of Environmental Effects provided with the application that is sufficient to satisfy this requirement of Schedule 15.
(2) Consistency of the proposal with the desired future character statement and general principles of development control established by the plan.	The applicant has provided a detailed discussion and justification to demonstrate the proposal's compliance with the C8 Belrose North locality and the General Principles of Development Control.
(3) Objectives of the proposed development.	With regard to Point 3 of Schedule 15 the applicant has established that the objectives of the proposal are as follows: The objectives of the proposed development are as follows: To seek approval for a Stage 2 DA relating to the extension of Chisholm House involving a ground floor art room, undercroft play area, two (2) first floor

Consideration	Proposed
	classrooms, associated amenities and landscaping. To ensure that the proposal is consistent with the desired future character of the C8 Belrose North locality and to ensure that there is no adverse environmental impact (internally within the site and externally). Comment: The objectives of the proposal have been adequately described and no fundamental objection is raised with the objectives of the proposal. The proposal has satisfied this requirement of Schedule 15.
(4) An analysis of feasible alternatives. (including (a) Consequences of not carrying out the development and (b) Justification for the development)	The applicant has provided a detailed analysis within the SEE in regards to this requirement. This was also undertaken in the assessment of the Staged consent. In summary, the Masterplan presents as the best outcome on the site given the opportunities and constraints of the site. It is also acknowledged that not carrying out the development would restrict the options for educational services in north-eastern Sydney.
(5) Development and context analysis.	The applicant has provided sufficient information to demonstrate compliance with this requirement of Schedule 15.
(6) Biophysical, economic and social considerations and the principles of ecologically sustainable development.	The applicant has provided sufficient information to demonstrate compliance with this requirement of Schedule 15.
(7) Measures to mitigate any adverse effects of the development on the environment	The extent of Stage 2 works are not such as to require any specific measures to mitigate any adverse impacts of the proposal. Future applications that relate to the stages of the Masterplan closer to the vegetated north-west boundary, may require further information of such mitigation measures.
(8) Other approvals required	As the land relates to a school in a bushfire prone area, the development is Integrated development (Bushfire Safety Authority required under Section 100B of the Rural Fires Act 1997). Concurrence has been provided by the NSW Rural Fire Service in this regard.

It is considered that the submitted Statement of Environmental Effects prepared by City Plan Services dated December 2019 and in response to the provisions of Clause 15/Schedule 15 adequately addresses the compatibility of the of the development with the Locality and the DFC.

Schedule 17 - Carparking Provision

Carparking Provision	The proposal does not include any increase to the current enrolment for the School. Parking requirements are addressed under the heading "General Principles" – Clause 71 to 75 previously in this report. The approved provision of carparking on the existing school site is satisfactory in accordance with Schedule 17.
-----------------------------	---

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The land is located in an area subject to Council's Contributions Plan. A previous modification to the Staged consent DA2015/0558 (condition No.8) specified a contribution for separate stages of works to the subject application.

The contribution to this application will be as follows:

\$20,888.97 (based on a cost of works of \$2,088,897).

CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979, the provisions of relevant Environmental Planning Instruments, including the WLEP 2000, and the relevant codes and policies of Council.

The proposed works relate to the existing Chisholm House building, with the built form of the extension predicated on this existing character. The works are consistent with the current amended Stage "Q" of the staged consent DA2015/0558.

The proposal does not involve any increase to staff and/or student numbers, beyond that maximum already approved in Condition No.7 of DA2015/0558, which was 350 students.

The proposed development has been considered against the provisions of Clause 15 of WLEP 2000, as the proposal relates to Category 3 development. The Desired Future Character of the C8 Locality specifies that the character of the locality will remain unchanged, by preserving the natural environment and limiting new development to detached style housing or low intensity, low impact land uses.

The proposed works will not result in any disturbance of the existing natural environment and will not result in any substantive change to the existing character by virtue of the works being an extension to an existing school. The application is in effect operating within existing intensity and impact parameters established by the Staged consent DA2015/0558. Hence, the application is considered to be a low intensity, low impact land use and in turn is consistent with the Desired Future Character of the locality.

Non-compliances were considered in relation to the Building Height, Front Building Setback and Rear and Side Building Setback built form controls. These non-compliances were also assessed and accepted as part of the amended staged consent. In each instance, the non-compliances were found to be relatively minor, consistent with the objectives of each control and subsequently supported.

The application has been publicly exhibited in accordance with the WLEP 2000 and the Northern Beaches Community Participation Plan. A total of 10 submissions were received during public notification. Upon consideration of the issues raised in these submissions, none were considered to warrant the refusal of the application.

Hence, the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

As a result of the application and the consideration of the matters detailed within this report it is considered that Council as the consent authority grant approval.

RECOMMENDATION - APPROVAL

THAT Council as the consent authority grant approval to Development Application No. DA2019/1427 for alterations and additions to an existing school on land at Lot 1 DP 601101,8 Wyatt Avenue, Belrose, 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-1001 Rev B	12 November 2019	Templum Design
DA-1100 Rev B	2 April 2020	Templum Design
DA-1101 Rev A	12 November 2019	Templum Design
DA-1102 Rev B	2 April 2020	Templum Design
DA-2000 Rev A	12 November 2019	Templum Design
DA-2001 Rev A	12 November 2019	Templum Design
DA-2002 Rev B	2 April 2020	Templum Design
DA-3001 Rev A	12 November 2019	Templum Design
DA-3002 Rev A	12 November 2019	Templum Design
DA-3003 Rev A	12 November 2019	Templum Design
DA-3004 Rev A	12 November 2019	Templum Design
DA-4002 Rev A	12 November 2019	Templum Design
DA-4003 Rev A	12 November 2019	Templum Design

Engineering Plans		
Drawing No.	Dated	Prepared By
Sheet 1 of 1	27 November 2019	CPM

Reports / Documentation – All recommendations and requirements contained within:		
Report Title / No.	Dated	Prepared By
Bushfire Protection Assessment B193386- 2	27 August 2019	Australian Bushfire Protection Planners Pty Limited
Building Code of Australia Capability Statement	29 November 2019	Mark Stone

Aboriginal Impact Assessment	November 2019	Accurate Tree Assessment
Design Compliance and Swept Path Analysis No.200110.01FA	15 April 2019	McLaren Traffic Engineering

- b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
38 / 1 Rev F	29 November 2019	Concept Landscapes
38 / 2 Rev F	5 December 2019	Concept Landscapes
38 / 3 Rev D	21 November 2019	Concept Landscapes
38 / 4 Rev E	21 November 2019	Concept Landscapes
38 / 5 Rev A	24 September 2019	Concept Landscapes

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	12 November 2020	Templum 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 Rural Fire Service	Referral - RFS - 8 Wyatt Avenue Belrose	28 April 2019

(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.

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 \$20,888.97 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 \$2,088,897.00.

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. Traffic Management and Control

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

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

8. BCA Report (Class 2-9)

A 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' from an appropriately qualified Accredited Certifier* will need to be submitted with the Construction Certificate application addressing the following:

The report is to detail the extent to which the proposed building does or does not comply with the deemed-to satisfy provisions of Sections C, D, E and F of the Building Code of Australia. The report is to also provide recommendations with respect to the building works required to ensure that the specified measures and facilities for the proposed development are appropriate for its intended use to:

- i) restrict the spread of fire from the building to other buildings nearby, and
- ii) protect persons using the building, and to facilitate their egress from the building in the event of fire, and
- iii) where appropriate, provide access for persons with a disability, and
- iv) provide facilities and services appropriate for the development

*To be regarded as an "appropriately qualified accredited certifier" the certifier must hold the relevant level of accreditation that would enable the certifier to issue a construction certificate for the subject building.

The 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' is to be submitted to the Certifying Authority with the Construction Certificate application.

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

9. On-site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Warringah Water Management Policy PL850, and generally in accordance with the concept drainage plans prepared by cpm Engineering, job reference number 16058-C02, Sheet 1, dated 27/11/19. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. PSD is to be calculated on the maximum allowable impervious fraction of 0% for the areas considered for the proposed alterations and additions only.
- ii. PSD does not exceed 20 litres per second per outlet per 15m run of kerb and gutter for storms up to and including the 100 year ARI.

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

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

10. Bushland Management - Existing Positive Covenant

Bushland is to be protected, conserved, rehabilitated and managed in accordance with the existing Positive Covenant under Section 88B of the Conveyancing Act 1919. This instrument is written and registered on the title so that the owners are bound to manage and protect the area in perpetuity in accordance with the Bushland Management Plan as defined in the instrument.

Reason: Management and protection of bushland.

11. Amend Landscape Drawings

The submitted Landscape Plan is to be amended in accordance with the requirements of the 2015 staged development consent and the following:

- i. Prevention of the use of grevillea species in landscaping and rehabilitation to limit the likelihood of hybridisation;
- ii. Replacement of non-local plant species with native plants grown from local provenance seed and cuttings
- iii. Provision of a native plant schedule based on characteristic species of the Duffys Forest vegetation community and local species listed in current and previous ecological assessments.

The amended Landscape Plan is to be certified by a qualified landscape architect prior to issue of the Construction Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls and previous consent conditions.

12. 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.

13. Sydney Water "Tap In"

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

Please refer to the website www.sydneywater.com.au for:

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. 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. For clarity, Trees Numbered 37a, 37b, 38b and 39 as identified in the Arboricultural Impact Assessment dated November 2019 prepared by Accurate Tree Assessment are approved for removal.
 - 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 the Project Arborist on site.
 - ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by the Project Arborist on site.
 - iii) All tree protection to be in accordance with the Arboricultural Impact Assessment dated November 2019 prepared by Accurate Tree Assessment and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
 - iv) All tree pruning within the subject site is to be in accordance with relevant local planning controls and AS 4373 Pruning of amenity trees
 - v) All tree protection measures, including fencing, are to be in

place prior to commencement of works.

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

15. Project Arborist

- i) A Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works.
- ii) The Project Arborist is to oversee all tree protection measures, removals, inspection hold points and works adjacent to protected trees as outlined in the Arboricultural Impact Assessment dated November 2019 prepared by Accurate Tree Assessment and AS4970-2009 Protection of trees on development sites.
- iii) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

Reason: to ensure protection of vegetation proposed for retention on the site.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. Road Reserve

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

17. 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:

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

18. Survey Certificate

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

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

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

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

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

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

19. Traffic Control During Road Works

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

Reason: Public Safety.

20. 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.

21. Stockpiling of Topsoil

During site excavation, topsoil which is to be used in later landscape works is to be stockpiled on site and stabilised during construction works. Stockpiles are to be stored outside of hazard areas and not located within the dripline of existing trees which are to be retained.

Reason: To ensure protection and retention of the Urban Forest/Natural Environment.

22. Native Vegetation Protection

Guards or fences are to be provided around native vegetation as identified/nominated on the approved plans. The guards or fences are to be installed prior to the commencement of any work on the site. No works, including utility installations (eg water, sewer, telephone, drainage), are to be undertaken within 4 metres of the trunk of any such trees. The tree guards shall be a minimum 1200mm high at least four (4) metres from the base of the nominated tree/s and constructed from timber posts and rails or posts and suitable plywood panels.

Reason: To protect and retain trees/the natural environment proposed for retention.

23. Installation and Maintenance of Sediment Control

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

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

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

24. Landscape completion certification

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

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

25. Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Certifying Authority assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

- a) Compliance to Arborist recommendations for tree protection and excavation works.
- b) Extent of damage sustained by vegetation as a result of the construction works.
- c) Any subsequent remedial works required to ensure the long term retention of the vegetation.

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

26. 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.

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

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

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

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for on-site storm water detention/disposal is to be submitted to the Certifying Authority prior to the issue of final Occupation Certificate.

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

28. Required Planting

Trees shall be planted in accordance with the following schedule:

Minimum No. of Trees Required.	Species	Location	Pot Size
All trees	As indicated on Landscape Plan Dwg No. LPDA20-38/1 Rev. F dated 29.11.19 prepared by Conzept Landscape Architects	As indicated on the Landscape Plan	As indicated on the Landscape Plan

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

Reason: To maintain environmental amenity.

29. Weed Removal and Management

No weeds are to be imported on to the site. All invasive and priority weeds on the site are to be removed and managed continuously, in accordance with the Biosecurity Act 2015.

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

Reason: Weed management and biosecurity

30. Removal of All Temporary Structures/Material and Construction Rubbish

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

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

Reason: To ensure bushland management.

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.

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

32. Landscape maintenance

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

Reason: To maintain local environmental amenity.

33. Control of Weeds

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds

Reason: Weed management.

34. No Planting Environmental Weeds

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

35. Dead or Injured Wildlife

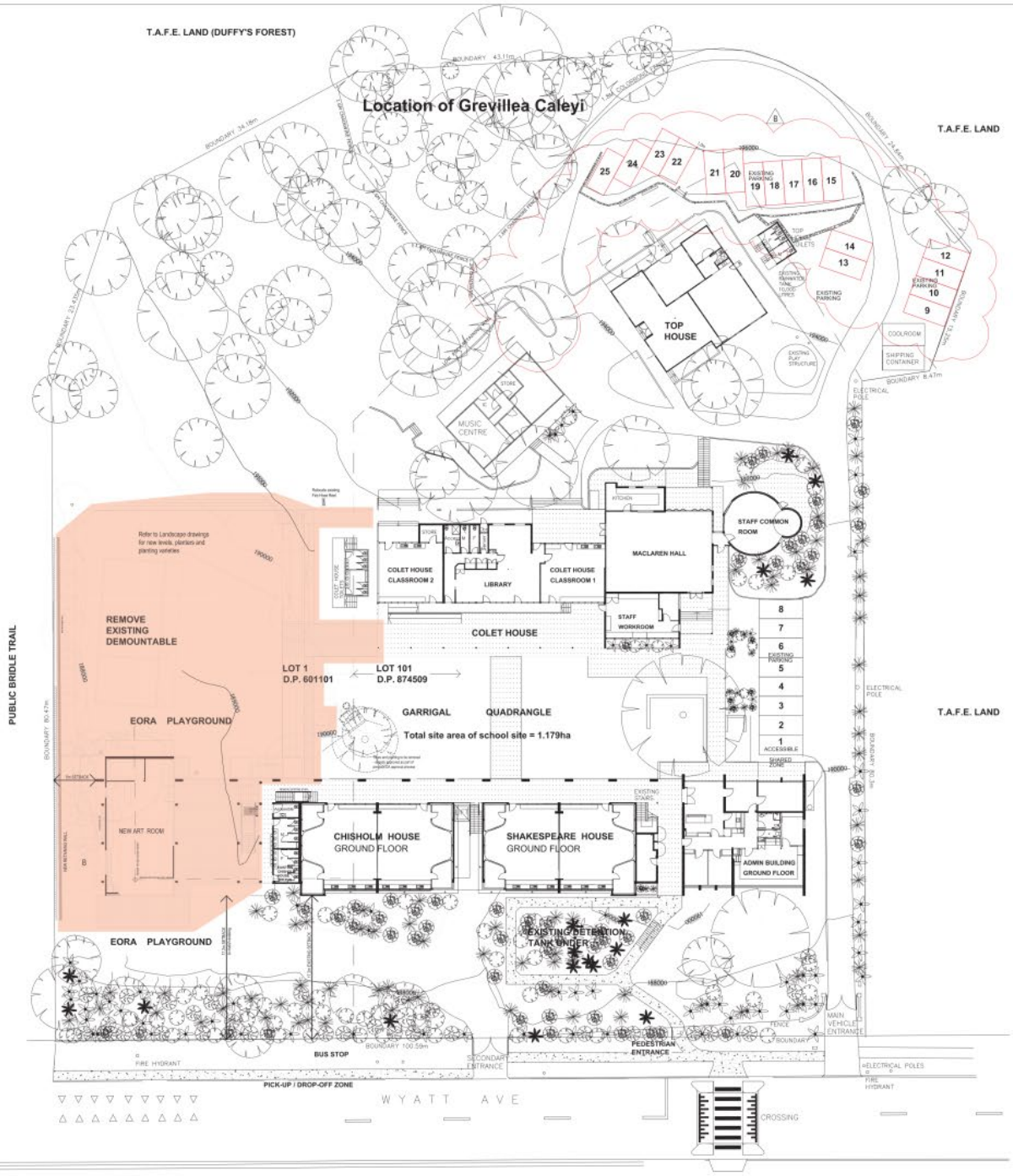
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

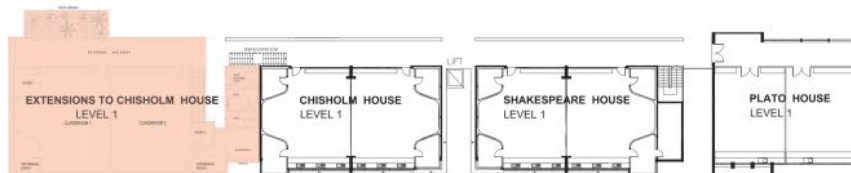
36. Parking

- a) Sufficient parking shall be provided within the school grounds for one car for each staff member in attendance at the school
- b) During school hours, staff members shall not use the 90 degree parking spaces directly adjoining Wyatt Reserve in Wyatt Avenue and Cotentin Road.
- c) The school is to manage the parking of staff members in regards to point b) above

Reason: To minimise impacts upon on-street parking.



GROUND FLOOR PLAN



LEVEL 1 PLAN

templum design architects
21 Rosebery Street, Mosman NSW
nominated architect: Demetrius Condos reg.no. 5395
abr: 65 101 221 698



Issues:
"A" - 12/11/2019 - Original DA submission for Extensions to Chisholm House
"B" - 15/04/2020 - Amended parking and access plan to satisfy Condition 6 of DA2815058
- window to Art Room on western elevation moved further south to next bay

**John Colet School
Extension to Chisholm House**

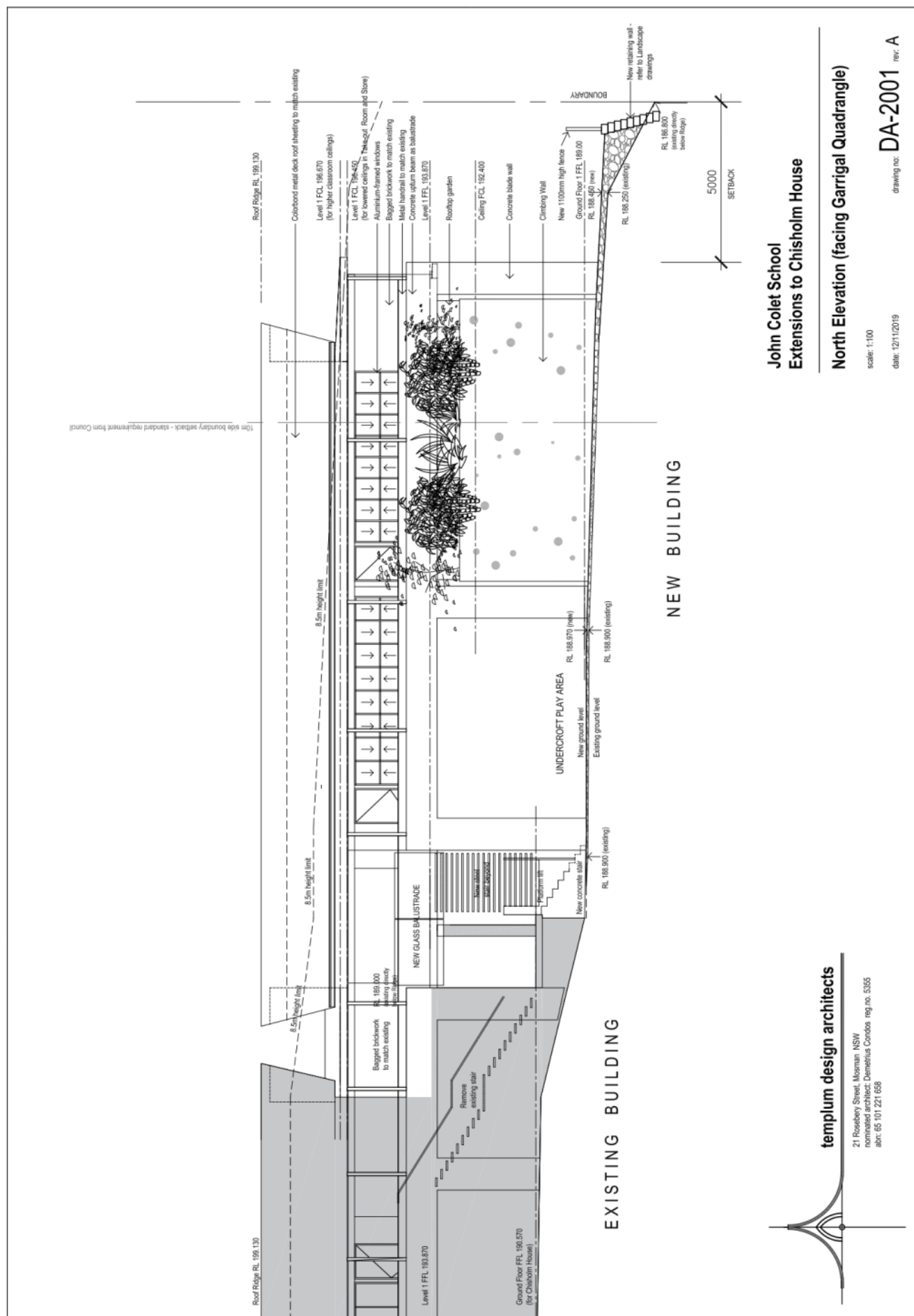
Site Plan - Ground Floor and Level 1 Plans

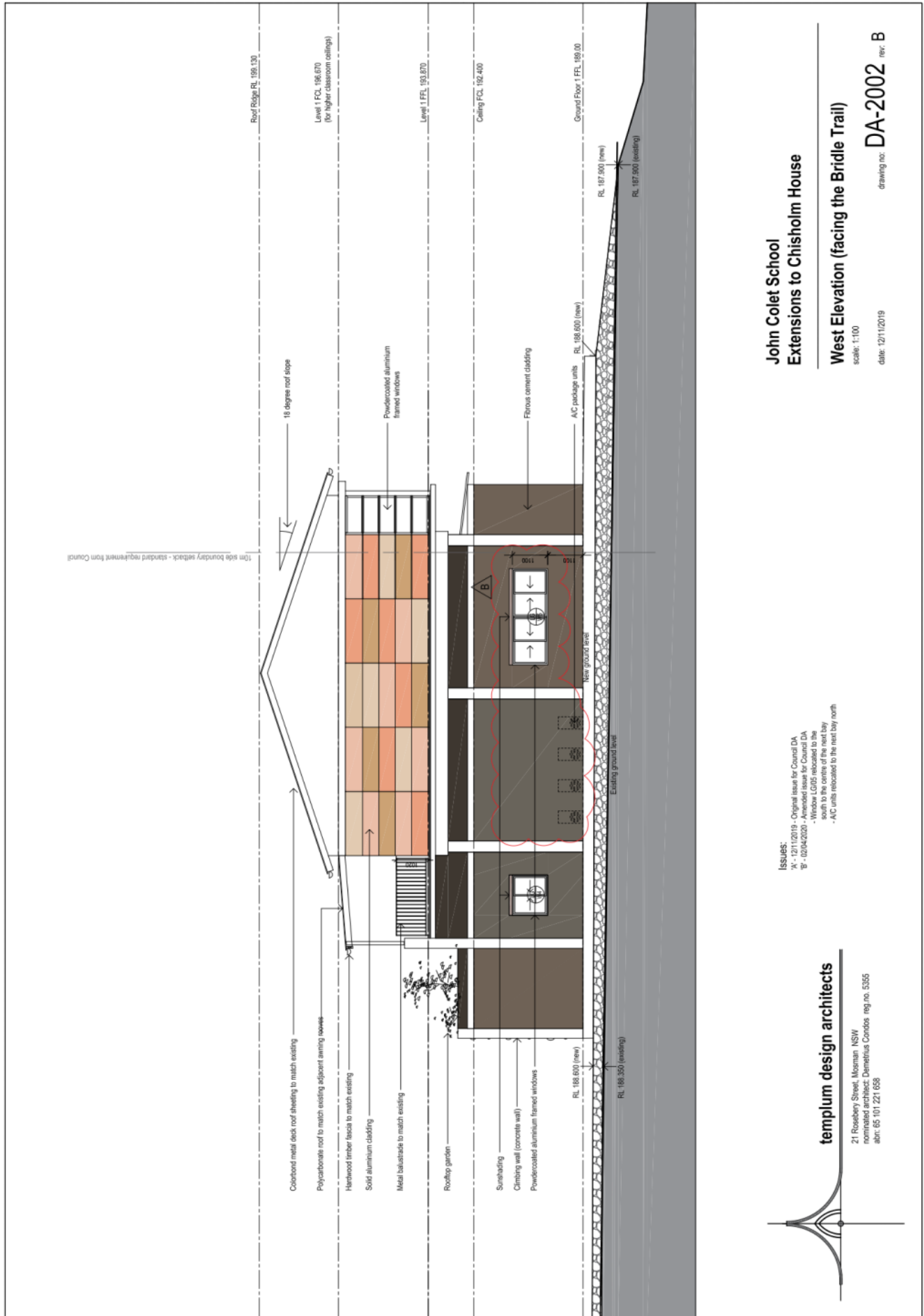
scale: 1:200 @ B1, 1:500 @ A3

date: 12/11/2019

drawing no: **DA-1001** rev: B









Western boundary Future Stage 'Q' – Upper level extensions to western end of Chisholm House Existing Chisholm House Lift and secondary driveway Existing Shakespeare House Pedestrian entry Admin. Building with 2 Classrooms over Main driveway entrance to Staff parking

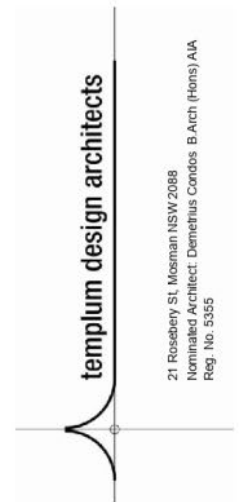
Full site elevation from Wyatt Avenue (South Elevation)



Perspective view looking up at Extensions to Chisholm House (southwest corner) with Art Room and covered playground under



Perspective view through undercroft / covered play area between buildings



EXTENSIONS TO CHISHOLM HOUSE

for John Colet School, No.6 to 8 Wyatt Avenue, Belrose 2085
Lot 1, DP 601101 and Lot 101 DP 874509

PERSPECTIVES FROM WYATT AVENUE

DA - 6001 rev: A

Scale: N.T.S. at A3
Date: 12/11/2019

4.0 NON PUBLIC MEETING ITEMS

ITEM 4.1	DA2020/1416 - 25 PALMERSTON PLACE, SEAFORTH - SUBDIVISION OF ONE LOT INTO TWO INCLUDING DEMOLITION WORKS
AUTHORISING MANAGER	Anna Williams
TRIM FILE REF	2021/261538
ATTACHMENTS	1 Assessment Report 2 Subdivision Plan 3 Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/1416 for Subdivision of one lot into two including demolition works at Lot 333 DP 4889, 25 Palmerston Place, Seaforth subject to the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1416
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 333 DP 4889, 25 Palmerston Place SEAFORTH NSW 2092
Proposed Development:	Subdivision of one lot into two including demolition works
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:	No
Owner:	Daniel Peter Ward Anne-Marie Joan Ward
Applicant:	Metro Planning Services
Application Lodged:	09/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	16/11/2020 to 30/11/2020
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 19.9%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 5,000.00

EXECUTIVE SUMMARY

This report has been submitted to the Northern Beaches Local Planning Panel (NBLPP) for consideration of Development Application DA2020/1416 for demolition works and subdivision of one lot into two. The proposal does not involve construction of dwelling houses on proposed Lots 1 and 2, with the existing house to remain on lot 1.

The application proposes variations to the Minimum subdivision lot size Development Standard, which prescribes a 600sqm minimum lot size. Lot 1 is 539sqm and Lot 2 is 481sqm. This represents respective variations from the Development Standard of 10.2% and 19.9% for Lots 1 and 2. Given the variations to the Minimum lot size standard are greater than 10%, the application is referred to the NBLPP for determination.

The applicant has submitted a written request pursuant to Clause 4.6 of the *Manly Local Environmental Plan 2013* (MLEP 2013) requesting a variation to the Minimum subdivision lot size Development Standard. However, the submission does not demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of this application, nor does it provide sufficient environmental planning grounds to justify non-compliance with the Minimum subdivision lot size development standard.

The application was exhibited in accordance with the Northern Beaches Community Participation Plan with one (1) submission received raising concern with the lot size non-compliance and increase in density.

When assessed on its merits, the proposed subdivision arrangement is found to be inconsistent with the existing subdivision pattern within the nearby vicinity. Therefore, it is recommended that the NBLPP refuse the application.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for demolition works and Torrens title subdivision of one allotment into two allotments:

The proposed lot sizes are as follows:

Lot 1 (lot with existing dwelling house): 539m²

Lot 2: 481m²

The application does not involve the construction of dwelling houses on the proposed new lot. The existing dwelling house is to remain, with new off-street parking via Palmerston Place.

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 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.7 Stormwater Management
 Manly Development Control Plan - 3.8 Waste Management
 Manly Development Control Plan - 4.1.1 Dwelling Density, Dwelling Size and Subdivision
 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 - 4.4.8 Subdivision

SITE DESCRIPTION

Property Description:	Lot 333 DP 4889 , 25 Palmerston Place SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Palmerston Place at the corner of Ponsonby Parade. The property is a corner allotment. The site is regular in shape with a frontage of 25m to Palmerston Place and secondary frontage 41.76m to Ponsonby Parade and an overall site area of 1020m². The site is located within the R2 Low Density Residential zone and accommodates a dwelling house. The property is oriented from east to west and currently contains a single storey dwelling with vehicular access via an existing driveway from Ponsonby Parade to an existing carport and area of hard stand to the rear of the existing dwelling. A sewerline bisects the rear yard of the property running from North to South. There are no Council easements across the property. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by single and two storey dwelling houses.

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:

DA22/2012 - Alterations and additions to an existing dwelling including a first floor addition, carport extension with new storage area to rear, ground floor rear addition with pergola, deck, and demolish shed. (Approved 19 July 2012)

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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to stormwater management and of-street parking. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. If approved, this matter will be addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. If approved, this matter will be addressed via a condition of consent. 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.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the MLEP 2013 and MDCP 2013 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 16/11/2020 to 30/11/2020 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 1 submission/s from:

Name:	Address:
Mr Michael John Day	56 Ponsonby Parade SEAFORTH NSW 2092

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

- **Minimum subdivision lot size**

The matters raised within the submissions are addressed as follows:

- **Minimum subdivision lot size**
Comment:
Concern is raised in regards to the non-compliance with the Minimum subdivision lot size requirement under clause 4.1 of the Manly LEP 2013. The non-compliance has been addressed within this report (Refer to Cl. 4.6 within this report). In summary, the non-compliance is not supported as Council is not satisfied that that compliance with the development standard is unreasonable or unnecessary and that there are sufficient planning grounds to grant the exception.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	This application is for the subdivision of one lot into two lots, comprising of the demolition of an existing pool and shed in order to create two suitable lots. The existing dwelling on Lot 31 has been noted for retention. Councils Landscape Referral section has considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls: • 4.1.1 Dwelling Density, Dwelling Size and Subdivision

Internal Referral Body	Comments
	4.4.8 Subdivision An indicative building layout and proposed walling is shown for Lot 32. This assessment applies only to the subdivision works, as development works upon Lot 32 are subject to a separate application, including assessment of impacts to existing vegetation. No existing trees protected by Council's DCP are proposed for removal under the subdivision works, and all such trees shall be retained and protected. The landscape component of this application is therefore acceptable subject to the protection of existing vegetation.
NECC (Development Engineering)	Additional information submitted 12/02/2021 The submitted plans appear to be inconsistent with respect to the proposed parking area and as such it is considered that the drainage plan must be amended and provide OSD as the impervious area will exceed 50 square metres. In terms of the proposed parking area, there is a considerable drop between the front boundary and the proposed location of the parking hardstand. There are insufficient details to demonstrate compliance with AS/NZS 2890.1:2004 in terms of the required grade and any kerbs or barriers that may be required due to the elevation of the structure with respect to the natural ground level. Development Engineers cannot support the application due to insufficient information to address Clause 3.7 and Schedule 3 of Manly DCP.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

(SREPs)

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

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
Minimum subdivision lot size:	600sqm	Lot 1: 539m ²	10.2%	No
		Lot 2: 481m ²	19.9%	No
Floor Space Ratio	Lot 1 0.45:1 (242.55m ²)	0.4:1 (218.93m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
2.7 Demolition requires development consent	Yes
4.1 Minimum subdivision lot size	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	No
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	No
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	600m ²
Proposed:	Proposed Lot 1: 539m ² Proposed Lot 2: 481m ²
Percentage variation to requirement:	Proposed Lot 1: 10.2% Proposed Lot 2: 19.9%

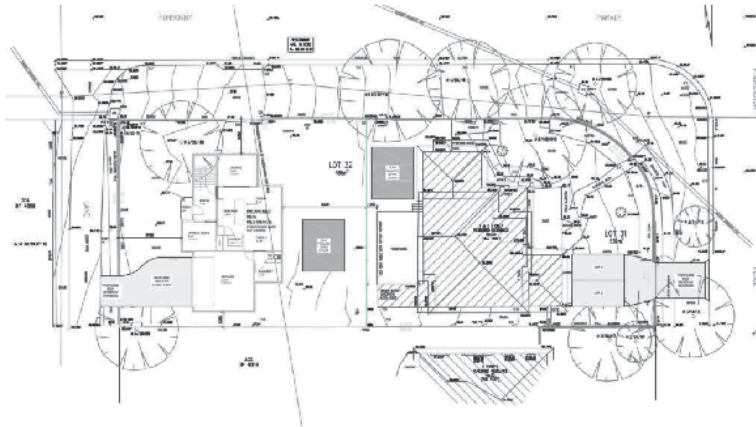


Image 1 - Plan of Subdivision

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *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:

- *The existing subdivision pattern in the general vicinity of the site is characterised by a mixture of lot sizes ranging from larger lots (1000m²+) to smaller lots that are similar in size to what is proposed. There is no established uniformity in lot sizes in the area.*
- *The subdivision does demonstrate that each proposed allotment can suitably accommodate a useable area for the retention of the existing dwelling on proposed lot 31 and also the construction of a future dwelling and associated landscaping on proposed lot 32.*
- *The proposed subdivision for the purposes of typical low density detached dwellings will maintain the low density character of the locality and streetscape. We submit that there is no uniform or established subdivision pattern in the surrounding area which comprises a mixture of larger lots and smaller sized lots that are similar in size to what is proposed.*
- *In our opinion, the requirement to comply with the minimum subdivision lot size development standard is unnecessary in this circumstance of the case, as there is no established subdivision pattern. The surrounding lot sizes are highly varied and there is no consistent size in the area. Importantly, each proposed allotment can accommodate a built form that is in keeping with the established character and streetscape of the locality.*
- *The non-compliance with the minimum lot size requirement will not thwart the proposal's ability to meet the relevant zone objectives. Rather, it is considered that adhering to strict compliance would reduce the proposal from maximising the potential of the site. Accordingly, it is in our opinion that the non-compliance will not result in inconsistency with existing and future planning objectives for the locality.*

Planner's Comment:

It is noted that there are examples of undersized lots within the Seaforth locality. However, the overwhelming majority of existing lots exceed the minimum subdivision lot size and have a consistent subdivision pattern. There have been no recent concessions to the minimum lot size requirement.

Council does not accept that there is no established subdivision pattern. The majority of lots along the western side of Palmerston Place and eastern side of Salisbury Square are consistent with the minimum lot size requirement.

The concept plan lodged with the application indicates that a new dwelling on lot 2 that will generally comply with built form controls. However, the applicant proposes that the existing dwelling on proposed Lot 1 is to be retained. Retaining the existing dwelling house will result in unreasonable privacy and general amenity impacts with the existing dwelling having a 1m setback to the rear boundary adjoining the proposed new lot.

Given the proposed undersized lots and retention of the existing dwelling house, the development as proposed and request to vary the Minimum subdivision lot size development standard is not supported.

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment. The request does not satisfy cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has not 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 Minimum subdivision lot size development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the MLEP 2013 are:

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

(a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping.

Comment:

The overall prevalent subdivision pattern of properties in the Seaforth locality is largely consistent with compliant lot sizes. It is noted that most subdivisions resulting in undersized lots in the locality occurred under planning instruments that are no longer in force.

(b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns.

Comment:

The proposed subdivision would not be in keeping the subdivision pattern of the area. The

majority of the neighbouring properties along Palmerston Place are consistent with the size and scale of the existing allotment. The anomaly's within the street are approved under a previous scheme. Therefore, the proposed subdivision does not complement the prevailing subdivision pattern.

(c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential.

Comment:

The subdivision in this circumstance will not have any unreasonable impacts upon vegetation, topography and the foreshore. Whilst within the foreshore scenic protection area, the separation between the subject site and the foreshore would protect views and visual amenity from adjoining properties, despite the subdivision.

(d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.

Comment:

The proposed allotments are in vicinity of the public transport (Sydney bus routes) as well as local facilities such as the Seaforth shopping village.

Zone objectives

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

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

Comment:

The development will result in unreasonable amenity and visual impact to neighbouring properties.

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

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

Comment:

The proposal will not prevent other sites from providing facilities or services to meet the day to day needs of residents.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Minimum Subdivision Lot Size Development Standard can not be assumed.

6.4 Stormwater management

As detailed by Council's Development Engineer the application has provided inadequate information in respect to stormwater management. The proposed stormwater provisions as unsatisfactory.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1020sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: 600sqm	539sqm	10.2%	No
		481sqm	19.9%	No
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Carport/Garage (Lot 1) - 3m	50%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	Insufficient information provided to calculate setbacks.	South side setback - 1.8m (Carport/ Garage)	-	N/A
4.1.4.4 Rear Setbacks	8m	Lot 1 - 1m	87.5%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55% of site area Lot 1 - 296.45sqm	50% (269.6sqm)	9.1%	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space Lot 1 - 94.36sqm	75% (203sqm)	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.5m	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	Lot 1 - 2 spaces Lot 2 - 2 spaces	-	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	No	No
3.8 Waste Management	No	No
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	No	No
4.1.1.2 Residential Land Subdivision	No	No
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
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	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	No	No

Detailed Assessment

3.4.2 Privacy and Security

Merit consideration:

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and
- mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.

Comment:

The existing dwelling comprises an elevated deck off the ground floor living room on the rear elevation

of the ground floor. The deck is setback 1m from the proposed rear property boundary, non-compliant with the relevant control. The limited separation in conjunction with the topography of the site will result direct overlooking the allocated private open space of the new lot.

Any increase in density will inevitably result in a decreased level of privacy between properties and this is anticipated and accepted in the assessment of any development application involving the Torrens title subdivision. However, the proposed development will result in unreasonable privacy impacts that are not acceptable the area.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

As above, the proposed development does not increase privacy, and does not suitably balance access to light and air for the subject site with amenity of adjacent sites

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development maximises casual surveillance of the street.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP 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.

3.7 Stormwater Management

As detailed by Council's Development Engineer the application has provided inadequate information in respect to stormwater management. The proposed stormwater provisions as unsatisfactory.

3.8 Waste Management

A detailed waste management plan has not been submitted with the application. If this application is to be approved a condition may be included in the consent requiring details prior to the issue of a construction certificate.

4.1.1 Dwelling Density, Dwelling Size and Subdivision

Description of Non-compliance

Clause 4.1.1.2 requires a subdivision involving a new lot for residential development less than 600sqm must identify on the subdivision plan that a dwelling can be successfully accommodated on each allotment, in compliance with this Plan.

The dwelling footprint lodged with the application (see image below) is inadequate and does not illustrate that a dwelling can be successfully accommodated on site.

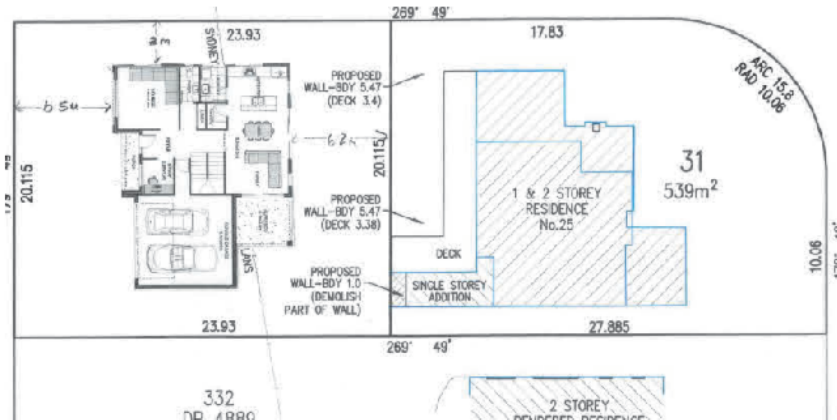


Image 2 - Dwelling footprint

Merit Consideration

With regard to the consideration for the variation the development is considered under the objectives of the control below.

Objective 1) To promote a variety of dwelling types, allotment sizes and residential environments in Manly.

Comment:

The proposal will result in a greater variety of lot sizes within the locality.

Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.

Comment:

The proposal is located on an existing developed site. The proposed development does not require the removal of significant vegetation and will not have a significant impact on waterways riparian land or topography.

Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.

Comment:

The additional lot will not be capable of having a suitable dwelling house on site. If approved the new lot and future dwelling will be impacted significantly from the existing house on Lot 1 in regards to the privacy. The existing dwelling house would directly overlook indoor and outdoor living areas of the new lot and future dwelling. The dwelling footprint (see above) does not show any bedrooms or suitable outdoor living areas for the site. Further, as noted by Council's Development Engineer the application has not demonstrated that there is suitable vehicular access from the rear lane.

Objective 4) To maintain the character of the locality and streetscape.

Comment:

The proposed subdivision will not be in keeping with the established pattern of subdivision. If approved, the application is likely to create a precedent of other lots of similar size being subdivided. The

established subdivision pattern will be thwarted.

Objective 5) To maximise the use of existing infrastructure.

Comment:

The development will maximise the use of the existing infrastructure.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP and the objectives specified in 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.

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

Description of non-compliance

Clause 4.1.4.1 of the Manly DCP requires development be setback 6m from the front boundary.

Clause 4.1.4.4 of the Manly DCP requires development be setback at least 8m from the rear boundary.

Clause 4.1.4 of the MDCP 2013 requires development to be setback at least 1/3 of the proposed wall height from side boundaries. No plans (elevations) have been provided as part of the application to assess wall height of the proposed parking structure on Lot 1. Therefore, no further assessment can be undertaken.

The development proposes the following:

Front setback- 3m measured from new parking structure (50% variation to the numeric control).

South side setback- 1.8m measured from new parking structure.

Rear setback- 1m measured from existing deck. (87.5% variation to the numeric control)

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The rear setback non-compliance will be inconsistent with the desired character of the street. The proposed lack of physical separation between the dwelling and proposed boundary will be readily visible from the secondary street frontage (Ponsonby Parade).

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*

- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The existing elevated deck will be setback 1m from the proposed western boundary of lot 1. As discussed previously, the proposed deck and living room of the existing dwelling will directly overlook the private open space of the newly proposed lot. The privacy impact is excessive and illustrates that the subdivision with the existing dwelling retained to be unreasonable.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

Flexibility is not provided in this circumstance as the proposed rear setback non-compliance will directly contribute to a unreasonable privacy impact to the adjoining new lot.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

Suitable landscaping is provided across the site. Subject to conditions imposed by Council's Landscape Architect the proposal complies with this clause.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

The subject site is not located in bush fire prone land.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP 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.

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.1 of the Manly DCP requires at least 55% (296.45sqm) of the site area be total open space for Lot 1. The proposed total open space for Lot 1 is 50% (269.6sqm), non-compliant with the numeric control. This represents a 9.1% variation to the numeric control.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

Subject to conditions imposed by Council's Landscape Architect and the proposal will ensure significant landscaping and vegetation across both lots of the subject site.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The new lot proposes a suitable level of landscaped open space, compliant with the landscaped open space control under Clause 4.1.5.2 of the Manly DCP.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

Increased open space will not enhance amenity. The established streetscape character is not likely to be impacted by the shortfall of open space.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

Significant levels of deep soil areas are proposed around the site to ensure no unreasonable stormwater runoff, subject to conditions.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposed planting on site is suitable for the site, so as not to contribute to the spread of weeds and the degradation of nearby public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The proposed development does not compromise any wildlife habitats or potential wildlife corridors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the

proposal is supported, in this particular circumstance.

4.4.8 Subdivision

Merit Consideration

The development has been assessed under the relevant objectives below:

Objective 1) To maintain characteristic and established subdivision patterns

Comment:

As previously noted the proposed subdivision is inconsistent the prevailing subdivision pattern of the area and as such is not supported. While it is noted that there examples of smaller lots within the close vicinity of the subject site, these lots where approved under previous planning scheme. There is no evidence on Council record that consent have been provided for an undersized since the introduction of the existing planning instrument (Manly LEP 2013).

Objective 2) To maintain the visual scale of development when viewed from the street level

Comment:

Insufficient information is provided to determine if a suitable dwelling could be provided on the newly created lot.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP and the objectives specified in 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

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

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;
- 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:

- 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 not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.1 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.

Conclusion

The Minimum subdivision lot size non-compliance was supported by a clause 4.6 submission. However, the submission is not considered to demonstrate that compliance with 600sqm minimum lot size is unreasonable or unnecessary in the circumstances of this application or that there are sufficient environmental planning grounds to justify departure from the development standard.

Further, the resulting amenity impacts and built form non-compliance that would result from the subdivision are considered to warrant the refusal of this application. 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 DA2020/1416 for the Subdivision of one lot into two including demolition works on land at Lot 333 DP 4889,25 Palmerston Place, SEAFORTH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Stormwater Management of the Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan .
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.1 Dwelling Density, Dwelling Size and Subdivision of the Manly Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.4.8 Subdivision of the Manly Development Control Plan.



APPENDIX 1

SECTION 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS

Applicant: Metro Planning Services

Site Address: No. 25 Palmerston Place, Seaforth

Proposal: Two (2) lot torrens title subdivision

Introduction

This request seeks a variation to Clause 4.1 of Manly Local Environmental Plan 2013, which relates to a 'Minimum Subdivision lot size' development standard.

The submission has been prepared in support of a development application which proposes a two (2) lot torrens title subdivision of a site described as No.25 Palmerston Place, Seaforth.

Clause 4.6 (Exceptions to Development Standards) of Manly Local Environmental Plan 2013 is the mechanism available to applicants to seek a variation to a development standard. Clause 4.6 states the following:

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.

(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 Planning Secretary has been obtained.

- (5) *In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Planning Instrument

The Environmental Planning Instrument to which this variation relates is Manly Local Environmental Plan 2013, as amended.

The subject site is zoned R2 Low Density Residential under MLEP 2013.

Development Standard

The requirements of Clause 4.1-‘Minimum subdivision lot size’ is as follows:

4.1 Minimum subdivision lot size

- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

The site is mapped with a minimum allotment size requirement of 600m² under Clause 4.1 of MLEP 2013. The proposed subdivision involves the creation of two (2) allotments with areas of 539m² and 481m² which are 119m² (19.8%) and 61m² (10%) respectively less than the mapped minimum allotment size requirement.

Justification for Variation of the Standard

Justification for the variation of the ‘minimum subdivision lot size’ development standard contained under Clause 4.1 is established against the provisions of Clause 4.6, as follows:

1) The objectives of this clause are:

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

This submission seeks an exception to a development standard.

METROPLANNING SERVICES 24

The site is mapped with a 'minimum lot size' standard of 600m². The proposed subdivision involves the creation of lots with areas of 481m² (Lot 32) and 539m² (Lot 31). The proposed lots are 119m² (19.8%) and 61m² (10 %) respectively less than the mapped minimum lot size requirement of 600m².

It is noted that the objectives of Clause 4.6 seek to recognise that in particular circumstances, strict application of development standards may be unreasonable or unnecessary. The clause provides a means by which a variation to the standard can be achieved.

Strict compliance would prove unreasonable in this case as the non-compliance with the minimum lot size standard will not impact upon the low density character of the area which has no established or uniform subdivision pattern. We note that the surrounding area comprises a mixture of larger conventional lots and also smaller sized lots that are similar in size to what is proposed.

Therefore, it is in our opinion, that the extent of variation is appropriate in this instance.

In our opinion, given the above-mentioned reasons, the proposal is not likely to result in significant impacts on the surrounding area and flexibility with the development standard is considered reasonable.

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

The exception is sought under subclause (3) to the mapped 'Minimum Subdivision lot size' requirement of 600m² under Clause 4.1 of Manly Local Environmental Plan 2013. Clause 4.1 is not excluded from the operation of this clause.

- 3) 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.**

This submission forms the written request to Northern Beaches Council which justifies the contravention of the development standard for a minimum subdivision lot size requirement of 600m² on the mapped site that the subject land falls within under Clause 4.1. Clause 4.6(3)(a) requires the applicant to provide justification that strict compliance with the mapped 'minimum subdivision lot size' requirement is unnecessary and unreasonable in the particular circumstances of the case.

We have considered *Wehbe v Pittwater Council* (2007) NSWLEC 827, *Preston CJ* which established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. The Court's recent decision in *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90 has altered the way the five tests ought be applied, requiring justification beyond compliance with the objectives of the development standard and the zone. That is, more than one of those five grounds is now arguably required to be made out.

It is our opinion that the proposal satisfies a number of the five tests established in *Wehbe* and for that reason the development standard is unreasonable and unnecessary in this instance.

The relevant tests are considered below:

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard

As indicated, this request seeks to vary the application of Clause 4.1 to the subject development. It is our opinion that the objectives of the Minimum Subdivision lot size development standard are satisfied, notwithstanding the non-compliance. In considering the variation we have given consideration to the objectives of Clause 4.1.

(a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,

Comment: The existing subdivision pattern in the general vicinity of the site is characterised by a mixture of lot sizes ranging from larger lots (1000m²+) to smaller lots that are similar in size to what is proposed. There is no established uniformity in lot sizes in the area.

The subdivision does demonstrate that each proposed allotment can suitably accommodate a useable area for the retention of the existing dwelling on proposed lot 31 and also the construction of a future dwelling and associated landscaping on proposed lot 32.

On this basis, it is considered that the proposal is consistent with the low density character of the area which comprises varied lot sizes.

(b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,

Comment: The proposed subdivision for the purposes of typical low density detached dwellings will maintain the low density character of the locality and streetscape. We submit that there is no uniform or established subdivision pattern in the surrounding area which comprises a mixture of larger lots and smaller sized lots that are similar in size to what is proposed.

(c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,

Comment: The site is not constrained by any vegetation, topography, public views or natural features that limit subdivision potential.

(d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.

Comment: The site is suitably located to maximise the use of existing infrastructure in the area and allow access to public transport access and pedestrian access to local facilities and services.

Test 2 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

In our opinion, the underlying purpose of the development standard is to create allotments that are in keeping with the low density character of the area and capable of accommodating dwellings that are in keeping with the character and streetscape of the locality.

In our opinion, the requirement to comply with the minimum subdivision lot size development standard is unnecessary in this circumstance of the case, as there is no established subdivision pattern. The surrounding lot sizes are highly varied and there is no consistent size in the area. Importantly, each

METROPLANNING SERVICES 26

proposed allotment can accommodate a built form that is in keeping with the established character and streetscape of the locality.

Test 3 - The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The non-compliance with the development standard will not be inconsistent with any planning objectives for the locality. The proposed subdivision is permissible with consent and facilitates future low density residential development which is consistent with the objectives of the R2 Low Density Residential zone which are stated, inter alia:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Based on the objectives of the zone, it is in our opinion that the underlying purpose of the development standard is to create development that is of a low density character, which preserves the natural features of the locality and is compatible with the context and character of the neighbouring properties. As discussed in this report and the accompanying SEE, the proposed subdivision has been designed to maintain the amenity and desired future character of the area and be sympathetic to the natural features of the area.

Therefore, it is considered unreasonable to adhere to strict compliance for this part of the building.

The non-compliance with the minimum lot size requirement will not thwart the proposal's ability to meet the relevant zone objectives. Rather, it is considered that adhering to strict compliance would reduce the proposal from maximising the potential of the site. Accordingly, it is in our opinion that the non-compliance will not result in inconsistency with existing and future planning objectives for the locality.

On this basis, we consider that to apply the development standard would thwart the underlying standard.

Test 4 - The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

The Standard has not been virtually abandoned or destroyed, and we are aware of other similar cases on similar sized sites within Northern Beaches Council LGA boundaries where the development standard has been varied.

It is recognised that each development is assessed on its own merits and each site has different characteristics. However, it is a relevant consideration to understand if the Council has accepted breaches to the mapped 'Minimum subdivision lot size' standard in the past and under what circumstances the breach was supported and if indeed there are any comparable principles to the subject DA.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard.

In our opinion, the proposal satisfies the requirements of the 'unreasonable and unnecessary' tests established by the Court in *Wehbe*.

4) 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 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*

Again, it is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under subclause 3.

The applicant submits that the consent authority can and should be satisfied of each of these requirements for Clause 4.6(4), for all of the reasons set out in this request, and also having regard to the context of this particular site.

It is noted that there are a number of examples of similar sized lots in the surrounding area containing single free standing dwellings that are consistent with the streetscape and desired character of the locality as listed below:

- Nos.17 & 17A
- Nos.18A & 20 Palmerston Place
- Nos.9 & 11 Palmerston Place
- Nos.2, 4 & 6 & 11 Salisbury Square
- No.4 Allan Avenue

As indicated, it is in our opinion that the proposal is in the public interest. In accordance with Test 1 in Wehbe and Clause 4.6(4)(a)(ii) an assessment of the proposal against both the objectives of the standard and the zone is undertaken. The consideration of the objectives of the standard is set out in this submission and in our opinion, the proposal is consistent.

5) In deciding whether to grant concurrence, the Director-General must consider:

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

It is considered that the variation sought raises no matters of significance for State or regional environmental planning.

In our opinion, the proposal is appropriate for the locality and strict compliance would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the Environmental Planning and Assessment Act 1979.

For the reasons contained in the SEE and this submission, in our opinion, there are sufficient environmental planning grounds to justify varying the development standard. It is considered that there is no benefit to the public or the community in maintaining the development standard. The proposed subdivision will allow for the creation of future residential development and as stated above meet the desired objectives of the standard.

METROPLANNING SERVICES 28

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

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

Non-applicable. On this basis, the variation sought is not contrary to subclause (6).

7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

8) This clause does not allow consent to be granted for development that would contravene any of the following:

- a. A development standard for complying development,**
 - b. A development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,**
- c. Clause 5.4. ca. Clause 6.4, 6.5, 6.6, 6.7, 7.22, 7.23, 7.24, 7.25, 7.26, 7.27, 7.28, 7.29, or 7.36."**

This proposed development is not complying development.

The proposal does not require a BASIX Certificate.

The development is not affected by clauses 6.4, 6.4, 6.5, 6.6, 7.22, 7.23, 7.24, 7.25, 7.26, 7.27, 7.28, 7.29 or 7.30.

Conclusion

In summary, it is our opinion that the variation request hereby submitted should be supported and the minimum subdivision lot size development standard under Clause 4.1 of MLEP 2013 varied, as the proposed development is consistent with the objectives of the 'Minimum subdivision lot size' development standard.

Further, the development will result in no detrimental impacts upon the natural environment or amenity of adjoining properties.

We have considered the proposal in accordance with the various tests established in *Wehbe v Pittwater Council* (2007) NSWLEC 827, *Preston CJ* and have demonstrated that maintaining the development standard is unreasonable and unnecessary in the circumstances.

METROPLANNING SERVICES 29

We have also given consideration to Paragraph 3 of Circular No. B1 from the former Department of Planning which states -

"As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard."

It is our opinion that the variation to the standard prescribed by Manly Local Environmental Plan 2013, as amended, has been shown to be consistent with the aims of Clause 4.6 and is consistent with the objectives of the standard. As such, strict adherence to the standard is unreasonable and unnecessary in the circumstances of the case.

For these reasons, it is in our opinion that the variation is appropriate, consistent with the intent of Clause 4.6 and should be supported.

ITEM 4.2	DA2020/1518 - 1173 BARRENJOEY ROAD, PALM BEACH - ALTERATIONS AND ADDITIONS TO AN EXISTING BOAT SHED INCLUDING DECKING, STEPS & SKID RAMP
AUTHORISING MANAGER	Rodney Piggott
TRIM FILE REF	2021/261689
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 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. DA2020/1518 for alterations and additions to an existing boat shed including decking, steps & skid ramp at Lot N DP 375577, 1173 Barrenjoey Road, Palm Beach, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1518
----------------------------	-------------

Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot N DP 375577, 1173 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Alterations and additions to an existing boat shed including decking, steps & skid ramp
Zoning:	E4 Environmental Living
Development Permissible:	Yes - Zone E4 Environmental Living No - Zone W1 Natural Waterways
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Robert Ian Jeffress Luxury Home Investments Pty Ltd
Applicant:	Stephen Crosby & Associates

Application Lodged:	27/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/12/2020 to 12/01/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 38.25%
Recommendation:	Approval

Estimated Cost of Works:	\$ 115,000.00
---------------------------------	---------------

The proposal is for the reconstruction of a boat shed and associated works. The application is referred to the Northern Beaches Local Planning Panel for review and determination due to the contravention of the Height of Buildings development standard exceeding 10%.

The proposed works are not permitted within the W1 Natural Waterways Zone, however the applicant has demonstrated that existing use rights apply to a boat shed and slip rails on this site under the Environmental Planning and Assessment Act 1979.

As a result of the public exhibition of the application, Council received no submissions.

The proposed variation to the Height of Buildings development standard of the Pittwater Local Environmental Plan 2014 (PLEP 2014) for the boat shed is 38.25% (5.53m).

Despite the building height numeric non-compliance, the proposal is not considered to result in unreasonable bulk, scale or amenity impacts as viewed from the adjoining Pittwater Waterway or adjoining properties.

The proposed development is generally compliant with the numeric controls under the Pittwater 21 Development Control Plan (P21DCP) with minor variations to D15.12 Development seaward of mean high water mark and D15.15 Waterfront development.

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

PROPOSED DEVELOPMENT IN DETAIL

The works include the following:

- Reconstruction of a boat shed with associated timber decking and slip rail, concrete pylons and skid ramp
- Construction of new access stairs at the southern end of the jetty.

The majority of work is to be located below the mean high water mark. As a result, while the subject site is wholly located within the E4 Environmental Living Zone, the works proposed under this application will be undertaken within the Zone W1 Natural Waterways under the Land Use Table of the Pittwater Local Environment Plan 2014 (PLEP 2014). See Figure 1 below.

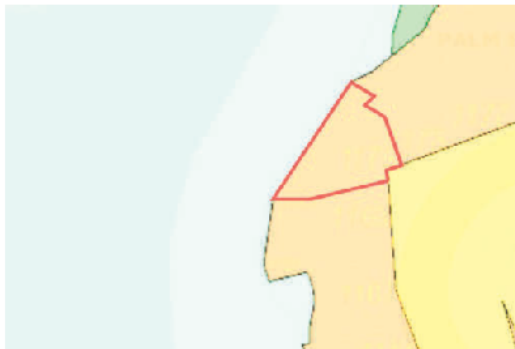


Figure 1: Subject site outlined in red within the E4 Environmental Living Zone, with the large majority of works being located in the adjoining W1 Natural Waterways Zone (light blue).

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral

to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area

Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark

Pittwater 21 Development Control Plan - D15.13 Lateral limits to development seaward of mean high water mark

Pittwater 21 Development Control Plan - D15.14 Minimum frontage for waterfront development

Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot N DP 375577 , 1173 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	The site is legally identified as Lot N in Deposited Plan 375577 and known as 1173 Barrenjoey Road, Palm Beach. The site is located within the E4 Environmental Living zone, with the works below the Mean High Water Mark (MHW) located within the W1 Natural Waterways zone as mapped within the Pittwater Local Environment Plan 2014. The site is located at Observation Point on the eastern side of Pittwater north of the Palm Beach Public Wharf at Snapperman Beach. The site is irregular in shape with a total site area of 524.8m². The eastern front boundary measures approximately 7.185m with northern and southern side boundaries of 25.64m & 20.98m respectively, the rear western frontage along the Mean High Water Mark (MHW) by Title is approximately 36.59m. Access to the site is gained via a Right of Carriageway easement that extends across the northern adjoining properties connecting to Waratah Road. The eastern half of the site contains a steep rock slope and a 8.0m high cliff line, partly formed via excavation, that drops down to the west and the existing house/boatshed level.

Existing on the site is a detached single storey dwelling and swimming pool, with a detached boat shed towards the north, and a recently renovated sea wall.

Map:



SITE HISTORY

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

- Pre-lodgement Meeting **PLM2019/0079** was held on 9 May 2021 for the demolition works and construction of a boat shed and associated works.
- Application **N0396/17** for the construction of a deck extension, window replacement and roof reinstatement to the existing dwelling and boatshed was approved by Council on the 16 November 2017. It was recommended that design amendments and additional information for the area below the mean high water mark are addressed prior to any future submission.

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

Section 4.15 Matters for Consideration'	Comments
	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)	<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. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the establishment of the existing use rights for the proposed works. <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. <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. <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. <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.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
Section 4.15 (1) (c) – the suitability	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration'	Comments
of the site for the development	
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Development for the purpose of the replacement of the existing jetty, construction of a boat shed, skid ramp, slip rail, associated timber decking, and new access stairs is prohibited within Zone W1 Natural Waterways pursuant to the Land Use Table of the Pittwater Local Environment Plan 2014 (PLEP 2014).

Notwithstanding such a prohibition, if "Existing Use Rights" (EUR) can be satisfactorily established for the land affected by the proposed development, then the consent authority may approve a development application.

However, the proposal must meet the relevant requirements applying to existing uses under the Environmental Planning and Assessment Act 1979, the Environmental Planning and Assessment Regulation 2000, and considering the impacts of the proposal through a merit assessment.

- **Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?**

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

A search of Council's historical records has provided evidence in the form of two aerial dated photos from 1961 and 1972 from the Northern Beaches Council Library Archives, which show the boat house and slip rails. The aerial photos from the 1961 and 1972 reveal that the use of the boatshed and slip

rails commenced as a lawful purpose, prior to the coming into force of Pittwater Local Environmental Plan in 2014.

The applicant also provided an undated photo that demonstrates the boathouse and slip rails, along with a Crown Lands license dated 27 June 2013 (with a schedule 3 diagram showing part of the boat shed and slip rail below the MHWM). The Crozier Geotechnical report dated 12 November 2020 also states, due to the conditions of the boatshed they estimate the boatshed to be greater than 40 years old.

The general architecture and arrangement of the boatshed and slip rail is atypical of a standard surrounding boatsheds. There are no records available to suggest that the boat shed has been used as anything but a boat shed, and nor can it be a reasonable request to require the applicant to provide a copy of original plans or details which would be over 50 years old.

2. Was the use of the boatshed and slip rails granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

A search of Council's historical records and an examination of the information submitted by the applicant indicates that the existing boat shed and slip rails has occupied the site since at least 1961, as indicated by two dated photos that show the existing boat house and the associated slip rails.

The applicant also provided an undated photo that demonstrates the boathouse and slip rails, along with a Crown Lands license dated 27 June 2013 (with a schedule 3 diagram showing part of the boat shed and slip rail below the MHWM). The Crozier Geotechnical report dated 12 November 2020 also states, due to the conditions of the boatshed they estimate the boatshed to be greater than 40 years old.

The consent authority can therefore be suitably satisfied that whilst no form of consent from the inception of the boat shed and slip rail has been provided, it would precede requirements for consent.

3. Has the use of the boat shed and slip rails been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

A search of Council's historical records and an examination of the information submitted by the applicant indicates that the boat shed and associated slip rails has occupied the site since at least 1961.

Based on the above history, Council can be satisfied that the site has continued to be used as an boat shed from at least 1961 to the present day without abandonment, which is within one year from the date on which the provision having the effect of prohibiting the use commenced. thereby satisfying Section 4.65 and 4.66 of the EP&A Act 1979.

- What is "the land on which the existing use was carried out" for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: "if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose".

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the area in which the boatshed and slip rails are to be proposed adjoining within the N1 Natural Waterways zone adjoining the subject site.

Status of Prescriptive Provisions under Section 79C

In accordance with the judgments and Planning Principles established by the Land and Environment Court, it is clear that prescriptive requirements of environmental planning instruments and development control plans cannot be applied to the assessment of the application as they would derogate from the existing use rights. In the absence of the usual considerations which apply by virtue of the application of a local environment plan or development control plan, the merit assessment of the development application which must be undertaken under s 4.15 of the EP&A Act must apply well recognised town planning principles.

Planning principles are designed to assist in reaching a decision in a particular case relating to issues which arise in merit cases. Planning principles are not legally binding, but provide an appropriate approach to a merits review of a development application for development relying on existing use rights.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights. Accordingly, the merits of the subject development application are assessed in accordance with the planning principles relating to existing use rights applications established in *Fodor Investments* and *Stomness Pty Ltd* below.

MERIT ASSESSMENT

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

Planning Principle 1 makes it clear that, whilst an existing use rights development cannot be assessed against numerical controls governing bulk and scale, such controls still need to be taken into account in order to gain an informed understanding of the future context of the character of surrounding development. The judgement indicates that care must be taken in this assessment to avoid any de facto application of these standards and that failure to comply with these standards cannot be a consideration in the assessment. The focus of the assessment therefore, is to draw a comparison between the bulk and scale of the development and the bulk and scale of development in the surrounding area and what is likely to occur in the vicinity in the future, based on the applicable planning controls.

Surrounding Development

The proposed works will not contribute to an adverse bulk and scale. Boatsheds are common development within the Palm Beach foreshore locality and proposed height and scale is satisfies with the outcomes within clause D15.15 Water Front Development of P21DCP. In turn, the proposed development is considered to be consistent with the desired character of the locality.

Building Height

When viewed from the Pittwater waterway, the height difference and the disparity of height, bulk and scale between the existing building and the immediately adjoining boat shed is marked to the extent that there is no clear visual congruence between them. The proposal involves a new boat shed that has a similar footprint in comparison to the existing building, making it consistent and compatible when viewed from the street and distant areas.

The maximum height control for the W1 Natural Waterways zone is 4m, which is measured from 1.17m AHD. The maximum building height of the proposed development is 5.53m for the boatshed. This is addressed within Clause 4.6 Exceptions to Development Standards in the assessment report below.

It should be recognised that the proposed boat shed has demonstrated compliance with the relevant height criteria under Clause D15.15 (Waterfront development) of the Pittwater 21 DCP at 3.9m where the requirement is 4.5m.

In summary, the building height is consistent with surrounding development, does not create any unreasonable overshadowing of surrounding properties and is consistent with the current and future characteristics of the Natural Waterways zone. As a result the building height is supported.

Side Setback

The north-east side boundary setback for the boatshed maintains the existing nil setback and the new deck displays a north-east setback of 1.4m, new deck and 3.6m to the new skid ramp to the lateral limits.

The setbacks resulting from the proposed boatshed and associated works are considered to be adequate as it will result in reasonable and acceptable visual impact on the immediately adjoining properties and from the Pittwater waterway.

Building Envelope

In this circumstance the new encroachment of the boat shed is 0.4m for a length of 7.9m. This variation is both above and below the MHWL.

The works proposed are generally atop of the existing boatshed footprint. The non-compliance is to

avoid the water level rise and the number and size of vessels passing in front of the boat shed creating significant wakes.

The north-eastern side of the proposed works displays a varied side setback of nil to 3.6m in order to ensure the development does not over-dominate the side setback and to offset impacts of height and bulk.

The extent of non-compliance with the side boundary envelope does not contribute to any unreasonable loss of amenity or to impacts to the neighbouring sites, and is consistent with other developments in the immediate area.

Relationship of Proposal to Existing and Likely Future Development

When viewed from Pittwater waterway or neighbouring sites of Barrenjoey Road, the height and the consistency of height, bulk and scale between the existing building and the immediately adjoining buildings displays clear visual congruence between them.

The proposal involves a new building areas that is consistent with the existing footprint and side boundary setbacks. There is additional building building envelope created via the boat shed however, this does not create a more visually prominent or dominate built form when viewed from the street and distant areas.

The height of the proposed building on the site is comparable and consistent with adjoining development, and is adequately softened by landscaping. The restrictions that apply to the site and its surroundings are such that it would be extremely likely for any future development to occur of a similar bulk and scale in the surrounding area.

Consequently, the proposed increase in the size and scale of the building beyond the existing building envelope is supported.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The development application seeks to demolish the existing boatshed. It seeks consent to construct a new boat shed, slip rail and associated works.

Where a change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists.

No change of use is proposed as the building will remain a attached boat shed.

Therefore the established EUR benefit is being maintained and remains relevant.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The planning concept of accepting EUR on this site does not in itself impact on adjoining land, as the intensity of the land for which the EUR seeks to demonstrate has been occurring for a prolonged period of time.

An analysis of the impacts of the alterations and additions to the existing dual occupancy is provided below:

Views

A site inspection has determined that there is no view loss on private properties as a result of the proposed works to the boat shed.

Overshadowing

In summary, the additional shadow created by the proposed development is found to be acceptable.

Privacy and Visual Impacts

The proposed works to the boat shed includes a new slip rail, decking area and access stairs. The proposed works do not result in unreasonable overlooking opportunities to adjoining neighbours private open space.

As a result the privacy impacts of the proposal for the boat shed are reasonable.

In summary, the impacts to adjoining land is considered satisfactory with regard to view loss, overshadowing, privacy and visual impacts.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The numerical requirements for sunlight access and private open space under the PDCP do not apply, but these and other aspects must be assessed as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development where the controls do apply.

The development will provide an enhanced internal amenity for future occupiers by way of providing a boat shed and access stairs which is more compatible with contemporary needs and requirements. In summary, the internal amenity is considered satisfactory with regard to solar access, natural ventilation and acoustic quality.

The use has been existed prior to the coming into force of the Country of Cumberland Planning Scheme Ordinance and, therefore, is a lawful use.

Subsequently, the use can be retained under the current environmental planning instrument (Pittwater Local Environmental Plan 2014).

Conclusion

The use has been approved under a previous environmental planning instrument and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (Pittwater Local Environment Plan 2014).

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 07/12/2020 to 12/01/2021 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
NECC (Bushland and Biodiversity)	The marine habitat survey concludes that the potential impacts on the aquatic ecology are expected to be minimal, temporary and unlikely to cause damage to any marine life, including seagrass beds, the estuarine habitat and coastal environment area. The proposed development therefore complies with the relevant biodiversity planning controls and is designed, sited and will be managed to avoid an adverse environmental impact.
NECC (Coast and Catchments)	The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. The application has been assessed in consideration approval/support of: - Land Owners Consent from the Department of Crown Lands under the NSW Planning, Industries & Environment dated 2 September 2020 - No navigational Concerns from the Transport for NSW-Maritime Division dated 26 June 2020 enclosing dated and signed maps

Internal Referral Body	Comments
	No Objection from the DPI-Fisheries under the Department of Primary Industries dated 22 July 2020 Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016. Further, the applicant has proposed construction/modification of a seawall. Hence the proposed development has been assessed also against the requirements of the Section 27 of the Coastal Management Act 2016. As required, the impact & risk associated with the construction/modification of the seawall has been assessed in an Coastal Engineering Assessment Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 18 November 2020. Based on the impact and risk identified, Council applies maintenance condition as per Section 27(b)(ii) in approving this DA. State Environmental Planning Policy (Coastal Management) 2018 The proposed development site has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA. <u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stephen Crosby & Associates Pty. Ltd. dated 18 November 2020, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. Pittwater LEP 2014 and Pittwater 21 DCP The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.

Internal Referral Body	Comments
	Estuarine Risk Management In accordance with the Coastal Engineering Assessment Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 18 November 2020 , a base estuarine planning level (EPL) of RL 2.7m AHD has been recommended and Council accepted the recommended EPL for the proposed boatshed development. On internal assessment and as assessed in the submitted Coastal Engineering Assessment Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 18 November 2020, the finished floor level of the proposed boatshed (2.5m AHD) is below the recommended EPL. The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP. Development on Foreshore Area A large section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. The DA proposes works as boatshed, slip rails, sea stairs. All these proposed works are consistent with Clause 7.8(2)(b). On internal assessment, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014. Development seaward of mean high water mark Some of the proposed development works are located on crown land below the Mean High Water Mark. Hence, Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP applies to proposed development. <u>Comment:</u> On internal assessment, the DA satisfies requirements under the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP. An analysis of the proposal demonstrated that the proposed development will not adversely impact on the visual amenity of the foreshore or water quality or estuarine habitat of the Pittwater waterway. The applicant has also submitted a Marine Habitat Survey prepared by the Waterfront Surveys dated 12 October 2020. As such, it is considered that the application does comply with the requirements of the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP.

Internal Referral Body	Comments
Engineering)	The submitted Geotechnical report certifies that an acceptable risk is achievable for the development. There is no objection to the proposed works, subject to conditions of the consent.
NECC (Riparian Lands and Creeks)	The proposed works are approved subject to applied conditions.

External Referral Body	Comments
Aboriginal Heritage Office	The subject site is mapped as an Aboriginal Potential Area and was referred to Aboriginal Heritage for comment. The following comments were provided on 2 December 2020: <i>Reference is made to the proposed development at the above area and Aboriginal heritage.</i> <i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i> <i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i> <i>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</i> These comments have been included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential 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 (Coastal Management) 2018

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

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The assessment undertaken by Council's Coast and Catchments Officer has determine that subject to conditions, the proposed development is unlikely to cause an adverse impact on the characteristics of the coastal environment area as listed above and therefore satisfies this requirement. Council planning officers agree that the proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed alterations and additions do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause.

14 Development on land within the coastal use area

(1)

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The assessment, including an assessment undertaken by Council referral bodies has determined that subject to conditions, the development is unlikely to have an adverse impact on that listed under (a) and Council is therefore satisfied the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a).

The proposal does not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected and the surrounding area consists of examples of similar developments.

The assessment has also taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development. As discussed throughout this report, the development is considered to be considered with this and the desired future character of the locality.

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

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

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

Comment:

Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone E4 : Yes Zone W1 : No
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	Yes
zone objectives of the LEP?	Zone E4 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	E3 zone: 8.5m W1 zone: 4m*	5.0m 5.53m	- 38.25%	Yes No

*Pittwater Local Environment Plan 2014, Clause 4.3 (2) Height Of Buildings states "*The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map*". Part of the boatshed is to be constructed within the land area that dictates a maximum building height of 4.0m. As a result, the propose boatshed does not comply with the maximum building height requirements of the Pittwater Local Environment Plan 2014.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes

Detailed Assessment

Zone W1 Natural Waterways

The proposed boat shed and water recreational structures forward of the MHWL are prohibited in the Zone W1 Natural Waterways under the Land Use Table of the Pittwater Local Environment Plan 2014 (PLEP 2014).

While Clause 2.5 of the PLEP 2014 allows for additional permitted uses on particular land, as outlined in Schedule 1 of the PLEP 2014, Schedule 1 Clause 23 (Uses of certain land in Zone W1 Natural Waterways) does not identify the subject land as "Area 23" on the Additional Permitted Uses Map.

However, the works proposed seaward of the MHWL are subject to existing use rights provisions.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	4m
Proposed:	5.53m
Percentage variation to requirement:	38.25%

Assessment of request to vary a development standard:

As per the judgment contained within *Made Property Group Pty Limited v North Sydney Council [2020] NSWLEC 1332*, a written clause 4.6 request must be submitted even when an application is relying on existing use rights.

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3 - Height of Buildings 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:

- *The nominated Highest Astronomical Tide (HAT) of 1.17m AHD has been in the Council's LEP documents unchanged for over 30 years. As such it takes no account of sea level rise, or the Council's more recent (Cardno 2015) report into sea levels in Pittwater. This Cardno report puts a sea level rise of 0.42m at 2078 (relative to 2010), giving a tide level of 1.59m AHD, with the 1 in 100 year ARI still water level at 1.94m AHD. For these reasons the boat shed floor level has been raised to 2.50m AHD.*
- *The proposed boat shed floor level is entirely consistent in form and height with the guidelines for boat sheds as set down in PDCP21 D15.15, with the ridge level similar to many of these structures built over that last 30 years in Pittwater.*
- *The proposal will not result in any overshadowing of neighbouring properties due to the location of the boat shed and the rising slope of the adjoining sites where dwellings are located.*
- *The proposed development has been designed to respond sensitively to the natural topography, which slopes steeply away from a level area just behind the Mean High Water Mark.*
- *There are no heritage items affected by the proposal, and the building will have a similar visual impact on the existing environment being entirely consistent with waterfront boat sheds in this area of Pittwater.*

It is agreed that the development is visually consistent in terms of height, bulk and scale of surrounding waterfront development, and that the breach of the height limit (located towards to the north-east and north-west portion of the boatshed) will not result in any unreasonable impacts to neighbouring properties.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the N1 Natural Waterway zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the PLEP 2014 are:

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

a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment:

The proposal seeks a maximum building height of 5.53m, thereby contravening the development standard by 38.25%, see Figure 2 & 3 below.

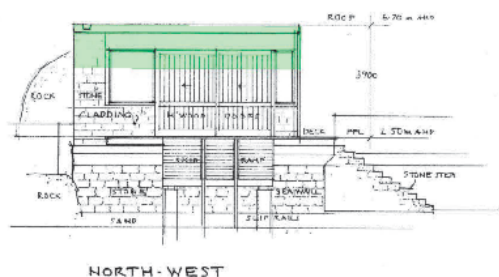


Figure 2: Building Height non-compliance on the north-west elevation shown in green.

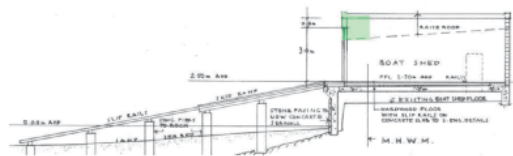


Figure 3: Building Height non-compliance below the MHWL shown in green.

It should be recognised that the proposed boat shed has demonstrated compliance with the relevant height criteria under Clause D15.15 (Waterfront development) of the Pittwater 21 DCP. Whilst the overall footprint of boat shed is non-compliant with this criteria (being marginally larger in width below the MHWL), consideration has been given that it will occupy the same location as the existing boat shed. This variation has been supported on merit and is discussed in further

detail further in this assessment report.

The development minimises site disturbance and is not seen to impact upon surrounding native vegetation. The proposed boatshed will continue to be screened by existing rock boulders and vegetation.

Further the architectural design and external finishes ensure that the boat shed will be in harmony with the natural environment of the Palm Beach foreshore. It is therefore considered that the development achieves consistency with the desired future character of the Palm Beach Locality.

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

Comment:

The proposed development is considered compatible in height and scale to surrounding boat sheds in the vicinity of the site and other nearby on the Palm Beach Foreshore. The proposed boatshed will also continue to be screened from the Governor Philip Park Beach by existing rock faces, and sandstone, see photo 1 below.



Photo 1: Photo of existing boat shed from beach adjoining Governor Philip Park.



Photo 2: Existing Boatshed from the Pittwater waterway
Source: Site Photographs James De Soyres + Associates

The height departure is no more than 3.9m from the platform on which the existing boat shed is built, with a design that is consistent to what is currently existing on the site, i.e a flat roof form and earthy finishes, see photo 2.

In this regard, the proposed boat shed is seen to achieve a high degree of consistency with those surrounding.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed boat shed provides is not of an excessive height that would result in unacceptable overshadowing. This is demonstrated by the compliance of the development with the numerical controls under the Pittwater 21 DCP as they relate to solar access.

d) to allow for the reasonable sharing of views,

Comment:

The proposal allows for the reasonable sharing of views towards the waterways from surrounding and nearby properties. Whilst it is not seen that views will be obstructed, the boat shed has been sited in the same location as the existing boat shed and is compliant height in accordance with the relevant P21 DCP criteria.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment:

As discussed previously within this report, the proposed boat shed does not require any unreasonable excavation of the rear steeply slope. Further, the application has been submitted with a Geotechnical Report, which has been subsequently reviewed by Council's Development Engineer, who is supportive of the proposal in this regard. The proposed development is therefore seen to be designed to respond sensitively to the natural topography.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,

Comment:

The subject site is not located in the vicinity of any heritage conservation areas or heritage items.

Zone objectives

The underlying objectives of the W1 Natural Waterway zone are:

- *To protect the ecological and scenic values of natural waterways.*

Comment:

The development is appropriately sited and designed so as to protect the ecological and scenic values of natural waterways.

- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*

Comment:

The proposal has been reviewed by Council's Biodiversity, Riparian and Coastal Officers, having regard to the management of the natural environment and have raised no objection to the development subject to conditions. Further, the proposal has also been reviewed by DPI Fisheries who are also satisfied with the proposal. It is considered no unreasonable effects will be inflicted on the natural values of the waterway.

- *To provide for sustainable fishing industries and recreational fishing.*

Comment:

The proposal will not impact on fish passages or recreational fishing areas.

- *To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.*

Comment:

The proposal has been reviewed by DPI Fisheries who have raised no objection to the proposal. Further, the RMS have confirmed via their letter of correspondence dated 26 June 2020, that there are no navigational concerns regarding the designed proposal.

- *To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.*

Comment:

The proposal demonstrates public access to and along the foreshore will be maintained.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the W1 Natural Waterways 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 Height of buildings Development Standard is assumed by the Local Planning Panel.

7.8 Limited development on foreshore area

Based on the plans provided, part of the proposed works are located entirely within the foreshore area.

Subclause 7.7(2) permits only the following types of development on land in the foreshore area:

(2) *Development consent must not be granted for development on land in the foreshore area except (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*

(b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

The proposed works fall within the above categories, being limited to a boat shed, slip rails, decking and to waterway access stairs.

Based on the above, the development proposed as part of this application is considered permissible within the foreshore.

Pittwater 21 Development Control Plan

Built Form Controls

The Land and Environment Court Planning Principle established in the judgement by Senior Commissioner *Roseth in Fodor Investments v Hornsby Shore Council [2005] NSWLEC 71*, confirms that the provisions of environmental planning instruments (and DCPs) that derogate or detract from the benefit endowed on a site by existing use rights do not apply to the assessment of applications on sites where existing use rights apply.

As a result, zone objectives and planning controls that limit the size of a proposal (i.e. floor space ratio, height setbacks etc) have no effect on any site that enjoys the benefit of existing use rights. This includes qualitative provisions as well as quantitative provisions.

In view of the above, the built form controls contained within the WDCP 2011 compliance table are not specifically relevant to the assessment of the application and are only included as a record to identify how the proposal measures up against the applicable controls that would apply to the site in the absence of existing use rights.

Accordingly, the merits of the subject development application are assessed in accordance with the planning principles relating to existing use rights applications established in *Fodor Investments and Stomness Pty Ltd*, and are detailed within the "Existing Use Rights" section of the assessment report.

Built Form Control	Requirement	Proposed	% Variation*	Complies
Side building line *D15.13 Lateral limits to development seaward of the mean high water mark applies	North-East Lateral limit line 2m	0.0m Boatshed existing 1.4m New Deck 3.6m Skid Ramp	- 30% -	Yes No Yes
	South-West Lateral Limit	29m Boatshed existing	-	Yes
Building envelope	North East 3.5m	Encroachment 0.4m for a length of 7.9m	11.4%	No
	South 3.5m	No encroachment	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	No	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	No	Yes

Detailed Assessment

D15.12 Development seaward of mean high water mark

The proposal includes the construction of various waterway structures with a portion of the works located seaward of the mean high water mark which rely on EUR for permissibility within the W1 Natural Waterways Zone.

The proposed works do not extend further seaward than the existing structures, see photo 3 below.

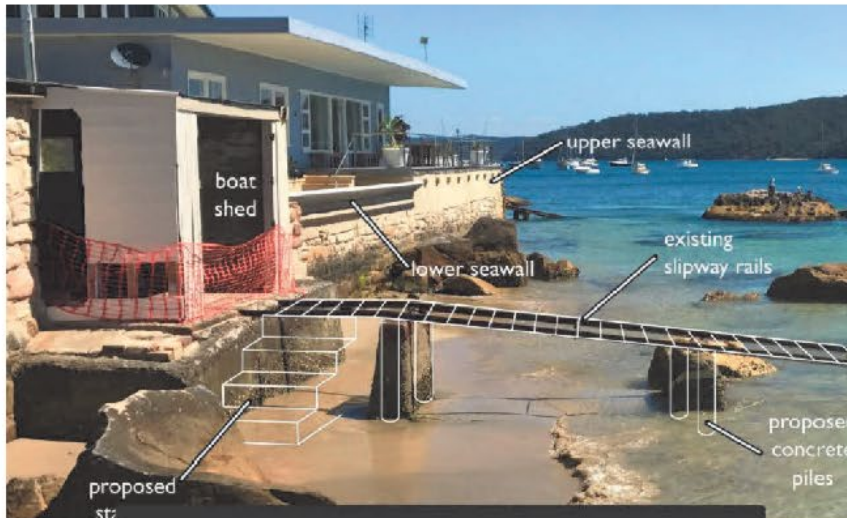


Photo 3: New works overlaid to existing structures on the site.
Source: Report on Geotechnical Assessment November 2020

Where new structures are proposed including the boat shed and skid ramp, the encroachment of these structures into the waterway has been minimised through siting and design and remain consistent with the location of adjoining and surrounding development of this type. The proposed development has also been designed to facilitate satisfactory public access along the foreshore.

The application has been reviewed by Council's Natural Environment Team who subject conditions, are satisfied that the structures will not harm marine vegetation. A referral response by the Department of Primary Industries (Fisheries) has also been provided with the application, raising no objections subject to conditions.

It is therefore considered the outcomes and controls of this clause are achieved.

D15.13 Lateral limits to development seaward of mean high water mark

Description of non-compliance

The Control stipulates that waterfront development shall be setback a minimum of 2.0 metres along the full length of the lateral limit lines to minimise conflict and to maximise equitable access to the waterway.

The boat house, decking and skid ramp display the following setback to the north-eastern lateral limit.

- 0.0m Boatshed existing
- 1.4m New Deck
- 3.6m Skid Ramp

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

Merit Consideration

- *To ensure that fair and equitable enjoyment of the waterway is achieved between neighbouring waterfront landowners through restricting unreasonable encroachment of waterfront development in front of adjoining properties.*

Comment:

The proposed boatshed, deck, and skid ramp will continue to allow for the fair and equitable enjoyment of the waterway. The boat house and slip rails are a continuation of an existing arrangement, with the skid ramp improving the usability of the structure. The existing location of the boat house onsite, with a nil setback contributes to the non-compliance to the north-eastern lateral limit.

The application is accompanied by a letter of correspondence from Transport for NSW, dated 13 April 2019, which states that the proposed development will not cause any navigational issues.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP 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.

D15.14 Minimum frontage for waterfront development

Description of Non-compliance

The Control stipulates that allotments with a water frontage of less than 15.0m metres are generally only permitted to contain waterfront development such as a jetty, ramp and pontoon. Multiple facilities including boatsheds will not be permitted. The mean high water mark adjoining the Pittwater Waterway is 36.59m. As a result, multiple facilities below the mean high water mark can be considered.

However, the Control furthermore states that waterfront facilities should be shared with neighbouring waterfront properties to minimise the density and visual impact of foreshore development.

The proposal consists of a boat shed and associated decking and slip rail and skid ramp for the individual use of the occupants of the subject site. It should be noted that the adjoining property No.1169 Barrenjoey Road contain boat shed and skid rail. Therefore, it is not considered necessary or practical to require such structures to be used communally between neighbouring properties.

Merit consideration

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

- *To minimise the individual and cumulative visual impact of waterfront development.*

Comment:

The adjoining property to the west contains existing boat house, and skid ramp thus the proposed works are not considered likely to inflict a negative visual impact upon the existing waterfront development. Boatsheds are common development within the Palm Beach foreshore locality and proposed height and scale is consistent with the design outcomes of clause D15.15 of P21DCP. In turn, the proposed

development is considered to be generally consistent with the desired character of the locality.

As such, it is considered the control and outcomes of this clause are achieved.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP 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.

D15.15 Waterfront development

Description of non-compliance

The proposal presents the following non-compliances with the design criteria outlined within this clause:

c) Boatsheds

i. Boatsheds shall be located above mean high water mark on freehold land, where practicable. Where this cannot realistically be achieved, as much of the proposed boatshed as is practical must be located above mean high water mark to minimise encroachment onto the littoral zone below mean high water mark.

Comment:

The proposed boatshed and associated works are located partly seaward of the MHW. However, the development is permitted with consent below the mean high water mark via EUR.

Full compliance is also considered unreasonable in this instance, due to the significant excavation that would be required due to the steep slope of the site immediately above the mean high water mark.

ii. Boatsheds shall be one storey and no greater than 4.5 metres in building height above the platform on which it is built, 4.0 metres in width and 6.0 metres in length, as illustrated in Diagram 4. The use of lofts or similar design concepts shall not be permitted.

Comment:

The proposal seeks a maximum height of 5.53m resulting in a variation of 38.25%.

As detailed within PLEP 2014 Clause 4.6 Exceptions to development standards of this assessment report, the applicant has submitted a written request under Clause 4.6 of the PLEP 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings (4m building height) and 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.

The development is visually consistent in terms of height, bulk and scale of surrounding waterfront development, and that the breach of the height limit (located towards to the north-east and south-west portion of the boatshed) will not result in any unreasonable impacts to neighbouring properties.

It is considered the building height variation will not contribute to an adverse bulk and scale. Boatsheds are common development within the Palm Beach foreshore area and proposed height and scale is satisfies with the outcomes within clause D15.15 of P21DCP. In turn, the proposed development is considered to be consistent with the desired character of the locality.

The relevant criteria of this clause also stipulates that boat sheds are to be no greater than in building height above the platform on which it is built. Based on the plans submitted, the proposed boat shed is measured at 3.9m in height above the platform, therefore complying with this control.

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3) and the variation to the building height standard of the PLEP 2014 (4m) and P21DCP (4.5m) is supported.

The proposed boat shed has dimensions of 7.3 meters wide by 9.0 meters long, presenting a minor non-compliance (3.3m in width and 3.0m in length) to the dimensions specified above. However, the length and width of the boat shed is existing and whilst the boatshed has additional footprint below the MHWM, the footprint mimics the existing dimensions and the design does not seek to demonstrate further non-compliance with the proposed width and length. While the proposed boat shed does not comply with the specified dimensions, the design is of acceptable bulk and scale and consistent with the character of adjoining and surrounding boat sheds.

d) Slipways and launching ramps
Slipways and Launching Ramps are generally not favoured.

Comment:

The application proposes the construction of a skid ramp adjoining the northern elevation of the proposed boat shed. While skid ramps are generally not favored, the clause allows for a variation to this requirement, stating that Council may consider skid ramps where structures are unlikely to detract from the visual character of the foreshore, will not affect marine vegetation and will not restrict public foreshore access. In such instances, the following criteria shall apply:

Innovative design which incorporates slipping facilities with other existing or proposed structures is encouraged (Diagram 5).

Comment:

The proposal is generally consistent with diagram 5 and public foreshore access continues to be facilitated around the structure by a new timber deck around the proposed boat shed.

Structures, the storage of lightweight boats, and any winch equipment shall be entirely on private freehold land and shall not obstruct public foreshore access.

Comment:

The proposed skid ramp, slip rails and decking structures are located entirely seaward of the MHWM and therefore not within private freehold land. However, it is important to note that all proposed works are permitted with consent via EUR. It is also considered that the design of the structures ensure that the storage of any equipment will not obstruct public foreshore access.

Structures shall be at ground level, where possible. Slipways from boatsheds, or reclamation must be recessed into the subject structure or work to minimise the height of the sliprails or boat ramp above the bed of the Pittwater Waterway. (Diagram 6).

Comment:

The proposed skid ramp is not recessed into the subject structure as the existing slip rails are sited

above existing piles. Despite this, the skid ramp has a maximum height of 2.5m - 1.8m above existing ground level and is therefore not considered to have an adverse or unreasonable visual impact when viewed from the Pittwater Waterway. The skid ramp is consistent with adjoining and surrounding skid ramp development, and the character of the locality, despite failure to be recessed into the subject structure.

Sliprails are to be in the form of two parallel rails, no more than 2 metres width apart, with either locking spreaders between the rails or bolted directly to the surface of the concrete without the use of spreaders or embedded in concrete to facilitate free access. (Diagram 7).

Comment:

The replacement slip rails are compliant with the control.

Timber construction is preferred for proposed boat ramps. Concrete ramps may be considered at bed level in certain locations such as at Crystal Bay, Winji Jimmi Bay, Palm Beach and Careel Bay or where it can be shown, to the satisfaction of Council, that the aims of this clause are not compromised. Other materials such as steel with bonded rust proof coating will also be considered.

Comment:

As indicated on the architectural plans, the proposed construction material for the skid ramp is timber, providing satisfaction with the clause.

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

Merit Consideration

- *Waterfront development does not have an adverse impact on the water quality and estuarine habitat of Pittwater.*

Comment:

The development application was referred to Department of Primary Industries (Fisheries) with no objection raised subject to conditions. The application provided an Estuarine Risk Management Report, and a Geotechnical Assessment Report and which supported the proposed works. An Estuarine Risk Management Report prepared for the site was assessed against the Pittwater LEP 2014 and Pittwater 21 DCP and was supported by Council's Natural Environment - Coastal Section subject to conditions.

The application is supported with a Marine Habitat Survey (prepared by Waterfront Surveys October 2020) which denotes the proposed works is not expected to have a negative impact on any threatened or endangered species or communities in the area.

Council's Bushland and Biodiversity, and Coast and Catchments Officers have also reviewed the proposal having regard to water quality and habitat and have raised no objections subject to conditions included in the recommendation of the report. In turn, it is considered the proposal will not have an adverse impact on the water quality or estuarine habitat of Pittwater.

As a result, the proposal (subject to conditions) has been designed and sited to avoid an unreasonable or adverse impact on this and the development therefore achieves this outcome.

- *Public access along the foreshore is not restricted.*

Comment:

Notwithstanding the location and dimensions of the boat shed, public access along the foreshore will not be restricted as the development incorporates a decking area around the structure, providing safe and level public access along the foreshore.

- *Waterfront development does not encroach on navigation channels or adversely affect the use of ferries and service vessels or use of the waterway by adjoining landowners.*

Comment:

Correspondence submitted with application from Roads and Maritime Services, dated 26 June 2020, advises that an inspection/ assessment has been conducted by the local Boasting Safety Officer and that there are no navigational concerns regarding the designated proposal.

- *Structures blend with the natural environment.*

Comment:

The proposed waterfront structures will blend with the surrounding natural environment as a result of the site specific design and the conditioned use of dark and earthy external finishes.

- *Structures are not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway.*

Comment:

The proposed development will be visually consistent and comparable with existing, adjoining and surrounding waterfront development. It is considered the proposed development will not be detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway, subject to conditions included in the recommendation of this report.

- *To promote a mix of commercial waterfront development for the accommodation of boats, their repair and maintenance, and for organised waterfront development.*

Comment:

The proposal is not a commercial waterfront development. This outcome is therefore not applicable.

- *Waterfront development which does not comply with the outcomes of this clause are removed.*

Comment:

As demonstrated above, the proposed waterfront development complies with the outcomes of this clause and is considered to be both appropriate and acceptable.

Having regard to the above assessments, it is concluded that the proposed development is consistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$ 575 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 115,000.

CONCLUSION

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

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

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

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

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

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 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.

In summary, a detailed assessment has been required for the following specific issues:

- 1) The proposed works are not permitted within the W1 Natural Waterways Zone, however the applicant has demonstrated that existing use rights apply to a boat shed and slip rails on this site under Section 106 of the Environmental Planning and Assessment Act 1979.
- and,
- 2) The proposal includes a numeric non-compliance with the following PLEP 2014 Clause:

- 4.3 Height of Buildings

The proposal includes a non-compliance in relation to the 4m Building Height. The proposed height breach has been considered in relation to the provisions of Clause 4.6 of the Pittwater LEP 2014 and the context of the site and surrounding locale, which includes a number of approvals inclusive of variations to the Height of Buildings development standard. While it is acknowledged that the proposed height contravention represents a moderate breach, the resulting impacts of the development on the amenity of the adjoining properties and the Pittwater Waterway has been assessed as reasonable.

Zone objectives and planning controls that limit the size of a proposal (i.e. floor space ratio, height setbacks etc) have no effect on any site that enjoys the benefit of existing use rights. This includes qualitative provisions as well as quantitative provisions. However, in view of the above, the built form controls contained within the WDCP 2011 compliance table are not specifically relevant to the assessment of the application and are only included as a record to identify how the proposal measures up against the applicable controls that would apply to the site in the absence of existing use rights.

As a result, the proposal includes minor non-compliances with the following P21DCP Clauses:

- D15.12 - Development seaward of mean high water mark; and
- D15.15 - Waterfront development.

The aforementioned non-compliances are considered to result in minimal material impact to adjoining properties and the surrounding Pittwater Waterway, and are considered reasonable when assessed against the relevant objectives of each control.

Based on the above discussion and the full assessment undertaken, the proposal is considered to be acceptable having regard to all relevant Pittwater LEP 2013 and P21DCP controls, and is therefore recommended for approval, subject to applied conditions.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 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 DA2020/1518 for Alterations and additions to an existing boat shed including decking, steps & skid ramp on land at Lot N DP 375577, 1173 Barrenjoey Road, PALM BEACH, 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
Site Plan DA10	March 2020	Stephen Crosby and Associates Pty Ltd
Section DA11	March 2020	Stephen Crosby and Associates Pty Ltd
Elevations DA12	March 2020	Stephen Crosby and Associates Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment	12 November 2020	Crozier Geotechnical Consultants
Coastal Engineering Risk Report	18 November 2020	Cardno
Marine Habitat Survey	12 October 2020	Waterfront Surveys Australia
Seawall and Boatshed Coastal Engineering Assessment for 1173 Barrenjoey Road, Palm Beach	14 February 2017	UNSW Water Research Laboratory

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. **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
Aboriginal Heritage	Referral Response	2 December 2020

(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.

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 \$575.00 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 \$115,000.00.

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.

6. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier geotechnical consultants dated 12th November 2020 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

8. Estuarine Hazard Design Requirements

The following applies to all development:

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

9. Estuarine Planning Level Requirements

An Estuarine Planning Level (EPL) of 2.7m AHD has been recommended through the Coastal Engineering Assessment Report prepared by Cardno (NSW/ACT) Pty. Ltd. and accepted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below 2.7m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.7m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.7m AHD.
- All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.7m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.7m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure aspect of the development are built at the appropriate level

10. Compliance with Estuarine Risk Management Report

The development is to comply with all recommendations of the approved Coastal Engineering Assessment Report prepared by Cardno (NSW/ACT) Pty. Ltd., dated 18 November 2020 and these recommendations are to be incorporated into construction plans.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

11. Structural Engineering for Estuarine Risk

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to

ensure that for its design life (taken to be 100 years unless otherwise justified and accepted by Council) the development is able to withstand the wave impact forces and loadings identified in the approved Estuarine Risk Management Report prepared by (INSERT) dated (INSERT).
Note: The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

12. **Engineers Certification of Plans**

The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

13. **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.

14. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

15. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The plan must comply with the Northern Beaches Council Waste Management guidelines. Details demonstrating compliance must be provided to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure that any demolition and construction of waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **Road Reserve**
The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.
18. **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.
19. **Waste Management During Works**
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

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

Reason: To ensure geotechnical risk is mitigated appropriately.
21. **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.

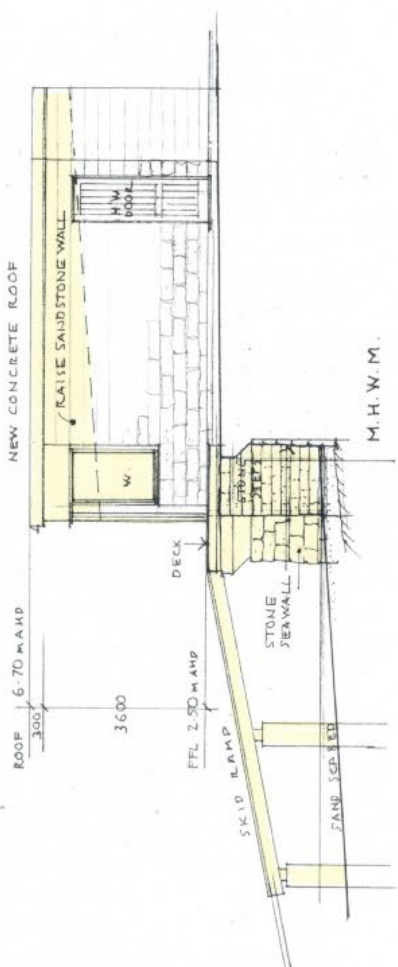
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

22. **Compliance with Estuarine Risk Management Report**
The development is to comply with all recommendations of the approved Coastal Engineering Assessment Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 18 November 2020 and

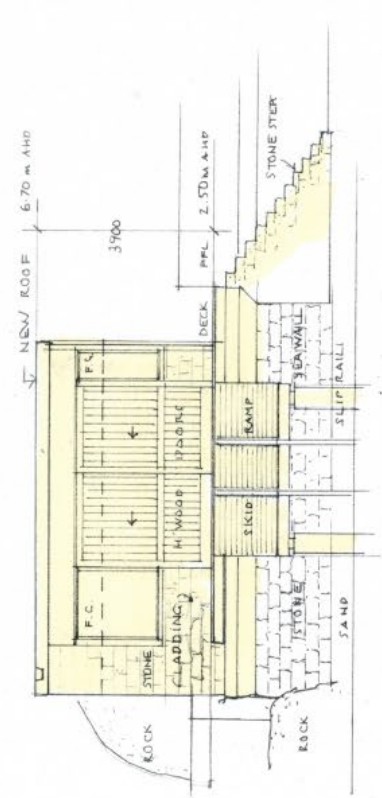
these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment and to ensure compliance with section 27 of Coastal Management Act 2016

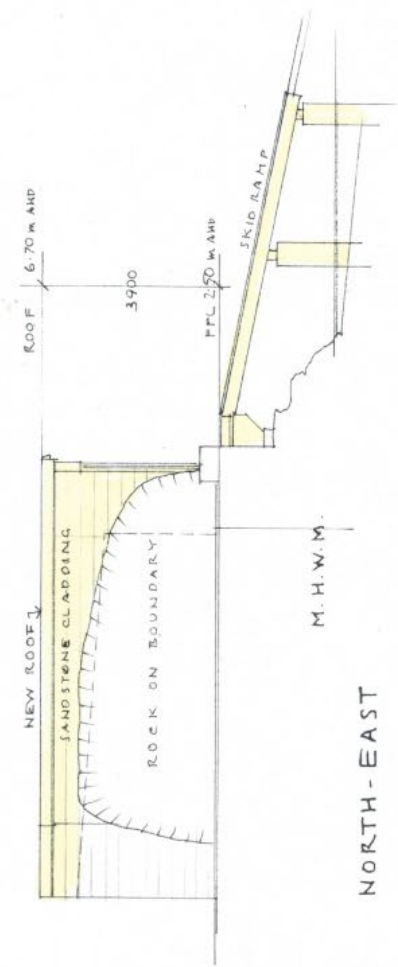




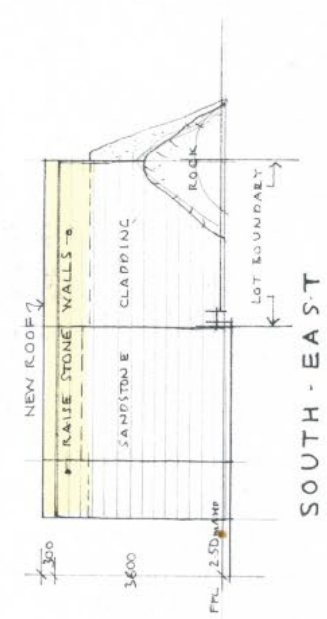
SOUTH - WEST



NORTH - WEST



NORTH - EAST



SOUTH - EAST

Stephen Crosby & Assoc.
Pty. Ltd.
SCOTLAND ISLAND
PO Box 204 Church Pt. NSW 2105
M:040047513 E:scrosby@stephencrosby.com.au

**BOAT SHED,
DECKING & STEPS,
SLIP RAILS & SKID**

No. 1173
BARRENJOEY RD.
PALM BEACH, NSW
Lot NP 375577

For: R. JEFFREY
Drawing: ELEVATIONS

Scale: 1:100 AT A3
Date: NOVEMBER 2020
Drawn: S.C.
Drawing Number: 2077 - DA 12

Clause 4.6 Variation Request Clause 4.3 Height of Buildings

1173 BARRENJOEY RD. PALM BEACH
Lot N DP 375557

Date: 17th November 2020

Prepared By: Stephen Crosby & Associates Pty. Ltd.
PO Box 204, Church Point, NSW 2105

For: R. Jefress

Introduction

Concurrent with the above Development Application we submit this letter addressing the provisions of Pittwater Council **LEP 2014**, specifically **cl. 4.3– Height of buildings** regarding development that exceeds the maximum height on Council's Heights of Buildings Map under the provisions of **LEP 2014 cl.4.6 Exceptions to development standards**.

This document shall demonstrate compliance with the outcomes of **LEP control 4.3 Height of buildings** with regard to the proposed boat shed to supplement the existing water access only family dwelling.

Clause 4.6 of the Pittwater Local Environmental Plan 2014 enables Northern Beaches Council to grant consent to the development even though a small part of the boat shed contravenes a development standard. The clause aims to provide flexibility in applying certain development standards to achieve better outcomes for and from the development.

This clause 4.6 variation request demonstrates that compliance with the height standard is unreasonable and unnecessary in the circumstances of this case, and there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that the proposed development:

- Satisfies the objectives for development standard clause 4.3 PLEP 2014 Building Height,
- Satisfies the objectives of the W1 Waterways zone under PLEP 2014,
- Is consistent with applicable state and regional planning policies,
- Provides for a better planning outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

The DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.3 of the Pittwater LEP 2014.

VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

The finished floor level of the proposed boat shed is nominated at 2.50m AHD and the ridge is 6.70m AHD. From the LEP Heights of buildings map the maximum height of the boat shed should be no more than 4.0m above astronomical height tide (1.17m AHD), giving a total of 5.17m AHD. The proposed boat shed ridge exceeds this height by 1.53m.

The location of the boat shed is in accordance with Pittwater Council's DCP P21 Section D15.15 Waterfront Development, Clause c) Boat sheds part i. "Boat sheds shall be located above the MHWL on freehold land, **where practicable**." The boat shed has

been in existence in this location for many decades. Over 80% of the boat shed is on freehold land with a small section on reclamation below the MHWL.

The height of the boat shed is entirely in accordance with Pittwater Council's DCP P21 Section D15.15 Waterfront Development, Clause c) Boat sheds part ii. "Boat sheds shall be no greater than 4.5m in building height above the platform on which it is built..." In regard to height limits the DCP makes no distinction as to the location of the boat shed.

The nominated Highest Astronomical Tide (HAT) of 1.17m AHD has been in the Council's LEP documents unchanged for over 30 years. As such it takes no account of sea level rise, or the Council's more recent (Cardno 2015) report into sea levels in Pittwater. This Cardno report puts a sea level rise of 0.42m at 2078 (relative to 2010), giving a tide level of 1.59m AHD, with the 1 in 100 year ARI still water level at 1.94m AHD. For these reasons the boat shed floor level has been raised to 2.50m AHD.

JUSTIFICATION FOR CONTRAVENTION OF THE DEVELOPMENT STANDARD

Clause 4.6(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 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) there are sufficient environmental planning grounds to justify contravening the development standard.

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

- (a) the consent authority is satisfied that:
 - (i) the applicants 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(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

The objectives of the standard are achieved notwithstanding non-compliance with the standard. The objectives of the standard are:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Objective (a): to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality.

The proposed boat shed floor level is entirely consistent in form and height with the guidelines for boat sheds as set down in PDCP21 D15.15, with the ridge level similar to many of these structures built over that last 30 years in Pittwater.

As, such, the proposal's height, whilst seeking a variation to the height control, still results in a development which is consistent with the expectations for boat sheds on the northern end of Pittwater, and remains consistent with the desired character of the Pittwater waterway.

Objective (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development.

Many of the boat sheds on the eastern shores of Pittwater, are similar in height and scale.

Objective (c) to minimise any overshadowing of neighbouring properties.

The proposal will not result in any overshadowing of neighbouring properties due to the location of the boat shed and the rising slope of the adjoining sites where dwellings are located.

Therefore, the variation to the height limit does not result in any overshadowing on neighbouring properties.

Objective (d) to allow for the reasonable sharing of views.

Due to the location of the boat shed floor being below the lowest floor levels of neighbouring dwellings, the proposed development, and the minor variation to the height limit, do not result in any significant view impacts, allowing for the reasonable sharing of views.

The proposal does not interrupt or obstruct any significant views to or from the site or Pittwater, making the proposed development consistent with this objective.

Objective (e) to encourage buildings that are designed to respond sensitively to the natural topography.

The proposed development has been designed to respond sensitively to the natural topography, which slopes steeply away from a level area just behind the Mean High Water Mark.

The building occupies the same site as the current boat shed.

Objective (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

There are no heritage items affected by the proposal, and the building will have a similar visual impact on the existing environment being entirely consistent with waterfront boat sheds in this area of Pittwater.

Pittwater LEP 2014 cl. 4.6 Exceptions to development standards sets out the parameters for varying a development standard such as cl. 4.3 Height of buildings described above. Compliance with the relevant provisions of cl 4.6 is achieved as follows:

- (3) (a) as demonstrated above compliance with the development standard cl.4.3 is unreasonable or unnecessary in this case, and,
- (b) there are sufficient environmental planning grounds to justify contravening the development standard in this instance.
- (4) (a) (i) the proposed modification to the existing development is modest in scale and typical of boat sheds for water access only properties in Pittwater.

CLAUSE 4.6(4)(a)(ii) IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE ZONE AND DEVELOPMENT STANDARD.

Consistency with the objectives of the development standard.

The proposed development is consistent with the objectives of the height of buildings standard in clause 4.3, for the reasons discussed previously in CLAUSE 4.6(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY.

Consistency with the objectives of the zone.

The proposed development is consistent with the underlying objectives of the W1 Waterways zone. The primary driver of the variation is the result of designing a boat shed fit for purpose with minimal impact on the natural environment. The proposal will have minimal visual impact on the development on neighbouring sites or Pittwater.

The proposed siting and design of the boat shed will not affect existing public access along the waterfront.

The proposed development is of good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying the requirement that the proposal, and the height limit standard variation, are in the public interest.

Overall public interest.

The proposed development is considered to be in the public interest for the following reasons:

- Boat sheds are a specifically permissible use of the site and consistent with the character of the Pittwater locality.
- Boat sheds of this traditional form add character to waterways foreshores when viewed by the public using the waterway for recreational purposes.

On the basis of the above, we believe that the consent authority can be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard for building height contained in clause 4.3 of the PLEP 2014, and with the objectives of the W1 Waterways zone under the PLEP 2014.

CONCLUSION

The assessment above demonstrates that compliance with the maximum building height development standard in Clause 4.3 of the PLEP 2014 is unreasonable and unnecessary in the circumstances of this case and that the justification is well founded. It is considered that the variation allows an orderly and economic use and development of the land, and that the structure is of good design that will reasonably protect and improve the amenity of the surrounding built environment.

This clause 4.6 variation demonstrates that, notwithstanding the variation to the maximum building height development standard, the proposed development:

- Satisfies the objectives of the development standard for height of buildings in clause 4.3 of PLEP 2014,
- Satisfies the objectives of the W1 Waterways zone under PLEP 2014,
- Provides for a better outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

As such, the Development Application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2014.

STEPHEN CROSBY

ITEM 4.3**DA2020/1294 - 18 PORTIONS, LOVETT BAY -
CONSTRUCTION OF A JETTY RAMP AND PONTOON AND
RESTORATION OF THE BOAT SHED****AUTHORISING MANAGER** Rodney Piggott**TRIM FILE REF** 2021/261737**ATTACHMENTS**
1 Assessment Report
2 Site Plan & Elevations
3 Clause 4.6**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 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. DA2020/1294 for construction of a jetty ramp and pontoon and restoration of the boat shed at Lot 3 DP 20284, 18 Portions, Lovett Bay, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1294
---------------------	-------------

Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 3 DP 20284, 18 Portions Lovett Bay LOVETT BAY NSW 2105
Proposed Development:	Construction of a jetty ramp and pontoon and restoration of the boat shed
Zoning:	E3 Environmental Management
Development Permissible:	Yes - Zone E3 Environmental Management Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Kelly Jane Morrison
Applicant:	Kelly Jane Morrison

Application Lodged:	19/10/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	27/10/2020 to 10/11/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 25.75%
Recommendation:	Approval

Estimated Cost of Works:	\$ 95,000.00
--------------------------	--------------

The proposal is for the construction of a boat shed and associated works. The application is referred to the Northern Beaches Local Planning Panel for review and determination due to the contravention of the Height of Buildings development standard exceeding 10%.

The proposed works are permitted within the W1 Natural Waterways Zone by virtue of *clause 2.5 (Additional Permitted Uses)* of PLEP 2014.

As a result of the public exhibition of the application, Council received no submissions.

The proposed variation to the Height of Buildings development standard of the Pittwater Local Environmental Plan 2014 (PLEP 2014) for the boat shed is 25.75% (5.03m).

Despite the building height numeric non-compliance, the proposal is not considered to result in unreasonable bulk, scale or amenity impacts as viewed from the adjoining Pittwater Waterway or adjoining properties.

The proposed development is generally compliant with the numeric controls under the Pittwater 21 Development Control Plan (P21DCP) with minor variations to *D15.12 Development seaward of mean high water mark* and *D15.15 Waterfront development*.

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

PROPOSED DEVELOPMENT IN DETAIL

Development consent is sort for the following works:

- The replacement of existing jetty with new timber decking
- Construction of a ramp, pontoon and two (2) piles at the southern end of the jetty
- Removal of ten (10) existing piles adjacent the proposed ramp and pontoon
- Demolition of existing timber stairs and construction of new access stairs at the northern end of the jetty
- Construction of a boat shed with associated timber decking and skid ramp
- Removal and replacement of two (2) existing piles adjacent the proposed skid ramp

All works are proposed to be located below the mean high water mark. As a result, while the subject site is wholly located within the E3 Environmental Management Zone, the works proposed under this application will be undertaken within the W1 Natural Waterway Zone, see figure 1 below.



Figure 1: Subject site outlined in red within the E3 Environmental Management Zone, with all proposed works being located in the adjoining W1 Natural Waterways Zone (light blue).

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

Assessment - Integrated Development – DPI Fisheries - Fisheries Management Act (s205 Marine vegetation—regulation of harm)

Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils

Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area

Pittwater 21 Development Control Plan - D8.3 Building colours and materials

Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark

Pittwater 21 Development Control Plan - D15.13 Lateral limits to development seaward of mean high water mark

Pittwater 21 Development Control Plan - D15.14 Minimum frontage for waterfront development

Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 3 DP 20284 , 18 Portions Lovett Bay LOVETT BAY NSW 2105
Detailed Site Description:	The subject site consists of one (1) allotment identified as Lot 3 DP 20284, 18 Portions Lovett Bay. The site is irregular in shape with a boundary along the mean high water mark of 24.9 meters adjoining the Pittwater Waterway. The site has a surveyed area of 1057m². The site is located within the E3 Environmental Management Zone and includes existing waterway development located within the W1 Natural Waterways Zone. Existing development within the subject site consists of a split level residential dwelling and an existing seawall, jetty and piles is located within the waterway to the south of the site. The subject site falls steeply from north to south by approximately 24 meters. The site is identified as

	Geotechnical Hazard Area H1. Landscaping on site is characterised by native vegetation, small to medium shrubs and areas of lawn. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one and two storey residential dwellings and associated waterway development primarily consisting of jetties and boatsheds. The subject site, and that within the vicinity, have no vehicle access and are only accessible via water.
--	--

Map:



SITE HISTORY

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

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

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land).

Section 4.15 Matters for Consideration'	Comments
instrument	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)	<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. <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. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to: • Clause 4.6 justification Report • Geotechnical Report • Estuarine Risk Assessment • Acid Sulfate Soil Assessment • Marine Habitat Survey <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. <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. <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. <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.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was not submitted with the application, however the application was referred to the NSW Rural Fire Service who provided a response on 17 February 2021. The NSW RFS response includes specific conditions that are included within the conditions of consent.

As a result, Council can be satisfied that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/10/2020 to 10/11/2020 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	The applicant seeks approval to: • Remove sea stairs • Modify the existing jetty to include a 6.0m ramp and 6.0x2.4m floating pontoon with two inner pontoon piles extending 32m from the seawall • Rebuild a damaged boathouse as per existing design 6.2m x 4.0m • Extend lifting skid on hydraulic arms 6.0m x 4.0m • Construct an external walkway around the boatshed Plans indicate that sections of the existing jetty structure will need to be removed along with 10 existing piles. Two new piles are required for the pontoon structure and two of the existing timber piles for the boatshed ramp require replacement. Environmental Health have considered the preliminary acid sulfate report by Copley Marine dated 12/1/21 and the updated Marine Habitat Survey Report by H2O Consulting dated 2/2/21. Clause 7.1 of the Pittwater LEP provides certain exemptions to the requirement for an acid sulfate soil management plan (the preliminary acid sulfate soil report states these exemptions are relevant to the proposal), however it does not provide exemption to the Protection of the Environment Operations Act 1994 or the Fisheries Management Act 1994. The preliminary acid sulfate soil report does not address the fact that acid sulfate reactions can proceed in the presence of dissolved oxygen, i.e. in surface waters (please refer to previous environmental health response). Soft-sediments in Pittwater are known to be long-term sinks of historical pollutants. Disturbance of these sediments can cause the rapid reintroduction of heavy metals and harmful chemicals into the waterway. Also, disturbance of monosulfide-containing sediments resulting in exposure to dissolved oxygen, will result in the formation of acid and facilitate the release of heavy metals. Sediment curtains will not prevent chemical pollutants entering the water body. Dilution of heavy metal and chemical pollutants by the incoming tide is not considered an adequate mitigation method, it simply indicates that

Internal Referral Body	Comments
	the final receiving body of water is the Tasman Sea. Whilst Environmental Health acknowledge that the driving of piles generally causes less sediment disturbance than some other methods, pollution mitigation is still of vital importance especially considering the abundance of jetties in Pittwater and the rate at which they are being replaced or upgraded. The cumulative effect on the health of the Pittwater estuary must be considered. Ideally, applicants should have soil samples analysed by a NATA accredited laboratory for potential acid sulfate soils (particularly monosulfides), heavy metals and relevant chemical substances, prior to the commencement of works. Appropriate mitigation methods should be developed based upon the results of the soil analyses. If these procedures are not followed, estuarine developments risk causing water pollution as defined by Protection of the Environment Operations Act 1997. Applicants must also consider potential disturbance of sediment and damage to native seagrasses by barges delivering and installing piles. As such, it is considered that the application can be supported subject to applied conditions of consent.
NECC (Bushland and Biodiversity)	The proposed development will not impact the terrestrial environment. The Marine Habitat assessment includes a range of environmental mitigation measures in line with the advice from NSW Fisheries. The development is designed, sited and will be managed to avoid any significant adverse environmental impact to the terrestrial environment, and satisfies the objectives of the local planning controls and clause 13 of the Coastal Environment SEPP.
NECC (Coast and Catchments)	The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. The application has been assessed in consideration approval/support of: • Consent to lodge DA from the Department of Crown Lands under the NSW Planning, Industries & Environment dated 30 July 2020 • No navigational Concerns from the Transport for NSW-Maritime Division dated 13 April 2019 enclosing dated and signed maps • No Objection from the DPI-Fisheries under the Department of Primary Industries dated 14 February 2019 Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the

Internal Referral Body	Comments
	proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016. State Environmental Planning Policy (Coastal Management) 2018 The proposed development site has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA. <u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Copley Marine Consulting Group Pty. Ltd. dated 28 July 2019, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. Pittwater LEP 2014 and Pittwater 21 DCP Estuarine Risk Management The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7-B3.10 Estuarine Hazard Controls will apply to proposed rebuilding of the boatshed at the site. The Estuarine Hazard Controls do not apply to Jetties, Bridging Ramps or Pontoons located on the seaward side of the foreshore edge. The applicant has sought a professional advice on estuarine planning levels and submitted the Updated Coastal Engineering Risk Assessment Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 19 January 2021. Considering the design life of the boat shed as 30 years and the wave and other climatic conditions, an estuarine planning level (EPL) of RL 1.93m AHD has been assessed. On internal assessment and as assessed in the submitted Updated Coastal Engineering Risk Assessment Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 19 January 2021, the floor level for the proposed boatshed is below the recommended EPL for the site. The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP. Development on Foreshore Area A large section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of

Internal Referral Body	Comments
	the Pittwater LEP 2014 applies for any development within the foreshore area. The DA proposes rebuilding of the boatshed work. This proposed development is consistent with Clause 7.8(2)(b). On internal assessment, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014. Development seaward of mean high water mark Proposed pontoon and ramp are located on crown land below the Mean High Water Mark. Hence, Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP applies to proposed development. <u>Comment:</u> On internal assessment, the DA satisfies requirements under the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP. An analysis of the proposal demonstrated that the proposed development will not adversely impact on the visual amenity of the foreshore or water quality or estuarine habitat of the Pittwater waterway. The applicant has submitted Marine Habitat Survey prepared by H2O Consulting Group Pty. Ltd. dated 31 October 2018. The report assessed that " the proposed development is not expected to have a negative impact on any threatened or endangered species or communities in the area. As such, it is considered that the application does comply with the requirements of the Section D15.12: Development seaward of mean high water mark of the Pittwater 21 DCP. Waterfront Development Proposed developments are considered as waterfront development on waterways area. Hence, Section D15.15: Waterfront Development of the Pittwater 21 DCP applies to proposed development. <u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Copley Marine Consulting Group Pty. Ltd. dated 28 July 2019 , the DA satisfies requirements under the Section D15.15: Waterfront Development of the Pittwater 21 DCP. As such, it is considered that the application does comply with the requirements of the Pittwater 21 DCP.
NECC (Development Engineering)	The proposed development is located within a Geotechnical Hazard H1 area. In accordance with Clause B3.1 Landslip Hazard of Pittwater

Internal Referral Body	Comments
	32 DCP, a risk assessment is to be undertaken (Geotechnical Risk Management Policy for Pittwater) for the site and submitted to Council. In this regards a geotechnical report, addressing the Geotechnical Risk Management Policy for Pittwater and include the forms 1 and 1(a) must be submitted to Council. <u>22 February 2021</u> A Geotechnical Report has been submitted. The applicant must include the Geotechnical Report prepared by ESWNMAN Pty Ltd, in to the construction plans.
NECC (Riparian Lands and Creeks)	This application proposes alterations and additions to an existing jetty. The applicant must ensure environmental safeguards are in place, prior to commencement of works, to prevent turbid plumes entering the environment. No equipment or anchoring of vessels is occur on seagrass beds. The applicant must ensure all tools and equipment removed from the location are washed down before mobilisation offsite. A Construction Environment Management Plan (CEMP) is to be prepared and submitted to the certifying authority for approval prior to the issue of the construction certificate. The CEMP must address all potential risks identified in the Marine Habitat Survey. Contractors must be inducted and comply with the CEMP throughout the life of the works. All CEMP documentation shall be retained onsite. The applicant is required to comply with the conditions issued by DPI Fisheries at all times. With the application of these conditions it is considered unlikely that the development will have an adverse impact on the integrity and resilience of the biophysical, ecological and hydrological environment. It is therefore recommended for approval subject to conditions.

External Referral Body	Comments
NSW Rural Fire Service – local branch (s4.14 EPAA)	The application was referred to the New South Wales Rural Fire Service (NSW RFS) as the subject site is located within a Bushfire Prone Land Map. The NSW RFS provided a response on 17 February 2021. The NSW RFS response includes specific conditions that are included within the conditions of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential 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 (Coastal Management) 2018

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

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The assessment undertaken by Council's Coast and Catchments Officer has determine that subject to conditions, the proposed development is unlikely to cause an adverse impact on the characteristics of the coastal environment area as listed above and therefore satisfies this requirement. Council planning officers agree that the proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed alterations and additions do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

- (2) *Development consent must not be granted to development on land to which this clause applies*

unless the consent authority is satisfied that:

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

Comment:

Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause.

14 Development on land within the coastal use area

(1)

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The assessment, including an assessment undertaken by Council referral bodies has determined that subject to conditions, the development is unlikely to have an adverse impact on that listed under (a) and Council is therefore satisfied the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a).

The proposal does not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected and the surrounding area consists of examples of similar developments.

The assessment has also taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development. As discussed throughout this report, the development is considered to be considered with this and the desired future character of the locality.

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

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

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

Comment:

Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone E3 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone E3 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	E4 - 8.5m W1 Zone 4m*	Complies 5.03m (above 1.17 AHD)	- 25.75%	Yes No

*Pittwater Local Environment Plan 2014, Clause 4.3 (2) Height Of Buildings states "The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map". The boatshed is to be constructed within the land area that dictates a maximum building height of 4.0m. As a result, the propose boatshed does not comply with the maximum building height requirements of the Pittwater Local Environment Plan 2014.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes

Detailed Assessment

Zone W1 Natural Waterways

The proposed works are permitted within the W1 Natural Waterways Zone by virtue of clause 2.5 (Additional Permitted Uses) of PLEP 2014.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	4m
Proposed:	5.03m (above 1.17 AHD)*
Percentage variation to requirement:	25.75%

***Note** 1.17 refers to the Highest Astronomical Tide which is assessed as being the most relevant reference point for measuring the height of development within the waterway.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3 - Height of Buildings 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:

- The proposed boat shed is entirely consistent with height and built form requirements specified for boat sheds as outlined under Clause D15.15 of the Pittwater 21 Development Control Plan.
- The proposed height of the boat shed above 1.17 AHD is consistent with the height other boat shed development recently approved within the surrounding Waterways Locality and is therefore not out of character.
- The location of the boat shed, being entirely seaward of the mean high water mark (MHWM) does not result in overshadowing of neighbouring properties.
- The location of the boat shed at the bottom of a steep slope located immediately behind the boat shed and that of adjoining and surrounding sites will ensure the development will not obstruct any views from surrounding properties.
- The location and materials proposed for the boat shed are compatible with the surrounding natural environment and will contribute positively to the Waterways Locality.
- No heritage items exist within proximity to the proposed development and as such the non-compliance will have no impact on these items.

It is agreed that the development is visually consistent in terms of height, bulk and scale of surrounding waterfront development, and that the breach of the height limit (located towards to the south-east and south-west portion of the boatshed) will not result in any unreasonable impacts to neighbouring properties.

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

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

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

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

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

Comment:

Objectives of development standard

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

Comment:

SHED

4.000

COLLECTING RIBS

RIBS

RIBS

CLADDING REBARS

CLADDING REBARS

CLADDING REBARS

FLOOR

NEW THRESHOLD

NEW THRESHOLD

0 5 10 15 20

BOAT SHED EAST ELEVATION

1. SHED

2. CLADDING REBARS

3. RIBS

4. FLOOR

5. NEW THRESHOLD

6. NEW THRESHOLD

7. CLADDING REBARS

8. CLADDING REBARS

9. CLADDING REBARS

10. FLOOR

11. NEW THRESHOLD

12. NEW THRESHOLD

13. CLADDING REBARS

14. CLADDING REBARS

15. CLADDING REBARS

16. FLOOR

17. NEW THRESHOLD

18. NEW THRESHOLD

19. CLADDING REBARS

20. CLADDING REBARS

21. CLADDING REBARS

22. FLOOR

23. NEW THRESHOLD

24. NEW THRESHOLD

25. CLADDING REBARS

26. CLADDING REBARS

27. CLADDING REBARS

28. FLOOR

29. NEW THRESHOLD

30. NEW THRESHOLD

31. CLADDING REBARS

32. CLADDING REBARS

33. CLADDING REBARS

34. FLOOR

35. NEW THRESHOLD

36. NEW THRESHOLD

37. CLADDING REBARS

38. CLADDING REBARS

39. CLADDING REBARS

40. FLOOR

41. NEW THRESHOLD

42. NEW THRESHOLD

43. CLADDING REBARS

44. CLADDING REBARS

45. CLADDING REBARS

46. FLOOR

47. NEW THRESHOLD

48. NEW THRESHOLD

49. CLADDING REBARS

50. CLADDING REBARS

51. CLADDING REBARS

52. FLOOR

53. NEW THRESHOLD

54. NEW THRESHOLD

55. CLADDING REBARS

56. CLADDING REBARS

57. CLADDING REBARS

58. FLOOR

59. NEW THRESHOLD

60. NEW THRESHOLD

61. CLADDING REBARS

62. CLADDING REBARS

63. CLADDING REBARS

64. FLOOR

65. NEW THRESHOLD

66. NEW THRESHOLD

67. CLADDING REBARS

68. CLADDING REBARS

69. CLADDING REBARS

70. FLOOR

71. NEW THRESHOLD

72. NEW THRESHOLD

73. CLADDING REBARS

74. CLADDING REBARS

75. CLADDING REBARS

76. FLOOR

77. NEW THRESHOLD

78. NEW THRESHOLD

79. CLADDING REBARS

80. CLADDING REBARS

81. CLADDING REBARS

82. FLOOR

83. NEW THRESHOLD

84. NEW THRESHOLD

85. CLADDING REBARS

86. CLADDING REBARS

87. CLADDING REBARS

88. FLOOR

89. NEW THRESHOLD

90. NEW THRESHOLD

91. CLADDING REBARS

92. CLADDING REBARS

93. CLADDING REBARS

94. FLOOR

95. NEW THRESHOLD

96. NEW THRESHOLD

97. CLADDING REBARS

98. CLADDING REBARS

99. CLADDING REBARS

100. FLOOR

Figure 2: Building height variation shown in green.



The variation will not contribute to an adverse bulk and scale. Boatsheds are common development within the Lower Western Foreshores and Scotland Island locality and proposed height and scale is satisfies with the outcomes within clause D15.15 of P21DCP. In turn, the proposed development is considered to be consistent with the desired character of the locality.

Comment:

A scenic view of a lake with a white cabin on a small pier in the foreground and several houses built into a steep, forested hillside in the background. The water is a vibrant green, and the sky is clear blue. The hillside is covered in lush green trees and vegetation, with several houses visible, some appearing to be built into the slope. A small white cabin with a green roof sits on a wooden pier extending into the water. A stone wall runs along the shoreline, and a few people can be seen walking on it. The overall atmosphere is peaceful and idyllic.

404



Photo 2: View from the Pittwater waterway of neighbouring Boat Sheds, i.e. No. 19 and No. 20 Portions.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposal will not result in any overshadowing of neighbouring properties due to the location of the boat shed partly over water, and the rising slope of the adjoining sites where dwellings are located.

d) to allow for the reasonable sharing of views,

Comment:

An inspection of the subject site and foreshore area has determined that the location of the development allows for the reasonable sharing of views and it is not considered the height exceedance would contribute to any impact.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment:

The development utilises existing piles within the Waterway and will not require any excavation or tree removal. The assessment has determined the development will not adversely impact coastal processes or natural topography of the land. The proposed colours and materials will ensure compatibility with the natural environment is achieved.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,

Comment:

The proposal does not include the removal of any canopy trees, with the proposed colours and materials complimenting and enhancing the visual character and its location within the natural landscapes of Pittwater. There are no identified heritage items in the vicinity. To ensure the retention of any items that are found during construction a condition of consent will be imposed for potential items be referred to the Aboriginal Heritage Office.

Zone objectives

The underlying objectives of the W1 Natural Waterways zone are:

- *To protect the ecological and scenic values of natural waterways.*

Comment:

Given that outlined above and within the assessment of the report, it is considered that the development has been designed and sited to achieve compatibility with existing and recently approved boat shed development within the Waterway while also achieving the desired future character of the locality. The assessment has determined the development will not compromise the ecological or scenic values of natural waterways.

- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*

Comment:

DPI (Fisheries) and relevant Council Referral Bodies including Council's Natural Environment Unit and Environmental Health -Acid Sulfate Soils have reviewed the application in relation to the natural values of the waterways zone. Their assessment has raised no concerns to the proposal, therefore recommending approval, subject to conditions.

- *To provide for sustainable fishing industries and recreational fishing.*

Comment:

The development facilitates recreational fishing and will have no adverse impact on this or on sustainable sustainable fishing industries.

- *To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.*

Comment:

The proposal has been reviewed by DPI Fisheries and the RMS who have issued written support and raised no issues regarding navigational concerns. Furthermore, the application has been referred to the relevant Council Referral bodies who raise no concerns regarding impacts on the natural environment or obstruction of navigation within the waterway.

- *To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.*

Comment:

The proposed development provides improved and satisfactory private access to the waterway as well as continuous path of travel along the foreshore area.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the W1 Natural Waterways 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 Height of buildings Development Standard is assumed by the Local Planning Panel.

7.1 Acid sulfate soils

The subject land is identified as Class 1 Acid Sulfate Soils. An Acid Sulfate Soil Assessment, dated 12 January 2021, was submitted with the application.

The report concluded that :

"The works are therefore classified as low risk Acid Sulfate Classification for the site and the implementation of the environmental mediations above into a Construction Environmental Management Plan will assist in the limiting of the disturbed low volume level of soil."

The application and report was also reviewed and assessed by Council's Environmental Health Officer (Acid Sulfate) who has recommended approval subject to conditions. The applied conditions that include the recommendations of the Acid Sulfate Soil Assessment, will ensure the development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

7.8 Limited development on foreshore area

The 'foreshore area' is defined under the PLEP 2014 as *"the land between the foreshore building line and the mean high water mark of the nearest natural waterbody shown on the Foreshore Building Line Map."*

The proposed works are located entirely seaward of the mean high water mark and are therefore outside of the foreshore area.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Side building line	2m	9.6m (West)	-	Yes
*D15.13 Lateral limits to development seaward of the mean high water mark applies	1m	Nil (East)	100%	No
Building envelope	3.5m	Within (West)	-	Yes
	3.5m	Within (East)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes
B5.13 Development on Waterfront Land	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	No	No
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.12 Waste and Recycling Facilities	No	No
C1.14 Separately Accessible Structures	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.2 Scenic protection - General	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.8 Building envelope	Yes	Yes
D8.11 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	No	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	No	Yes

Detailed Assessment

D8.3 Building colours and materials

To ensure the built form is of low reflectivity, and compatible with the surrounding natural environment a condition has been applied requiring external colours and materials for the boat shed, including the roof materials to be of dark and earthy tones, consistent with Clause D8.3.

D15.12 Development seaward of mean high water mark

The proposal includes the construction of various waterway structures located entirely seaward of the mean high water mark which are permitted with consent within the W1 Natural Waterways Zone.

The proposed jetty does not extend further seaward than the existing jetty structure. Where new structures are proposed including the boat shed and skid ramp, the encroachment of these structures into the waterway has been minimised through siting and design and remain consistent with the location of adjoining and surrounding development of this type. The proposed development has also been designed to facilitate satisfactory public access along the foreshore.

The application has been reviewed by Council's Natural Environment Team who subject conditions, are satisfied that the structures will not harm marine vegetation. A referral response by the Department of Primary Industries (Fisheries) has also been provided with the application, raising no objections subject to conditions.

It is therefore considered the outcomes and controls of this clause are achieved.

D15.13 Lateral limits to development seaward of mean high water mark

Description of non-compliance

The Control stipulates that waterfront development shall be setback a minimum of 2.0 metres along the full length of the lateral limit lines to minimise conflict and to maximise equitable access to the waterway.

The proposed boat shed and associated decking and skid ramp is located with a nil setback to the eastern lateral limit.

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

Merit Consideration

- *To ensure that fair and equitable enjoyment of the waterway is achieved between neighbouring waterfront landowners through restricting unreasonable encroachment of waterfront development in front of adjoining properties.*

Comment:

The proposed jetty, deck, pontoon and berthing area will continue to allow for the fair and equitable enjoyment of the waterway. The replacement jetty and deck is a continuation of an existing arrangement resulting in the location being directly adjacent to the eastern lateral limit. The location of the berthing area to the south-west would facilitate navigation of boats away from this lateral limit. Furthermore, the adjoining property to the north (No.19 Portions) has an existing jetty, pontoon and berthing area located centrally between the lateral limits. The application is accompanied

by a letter of correspondence from Transport for NSW, dated 13 April 2019, which states that the proposed development will not cause any navigational issues.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP 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.

D15.14 Minimum frontage for waterfront development

Description of Non-compliance

The Control stipulates that allotments with a water frontage of less than 15.0m metres are generally only permitted to contain waterfront development such as a jetty, ramp and pontoon. Multiple facilities including boatsheds will not be permitted. The mean high water mark adjoining the Pittwater Waterway is 24.9m. As a result, multiple facilities below the mean high water mark can be considered.

However, the Control furthermore states that waterfront facilities should be shared with neighbouring waterfront properties to minimise the density and visual impact of foreshore development.

The proposal consists of a boat shed and associated decking and skid ramp and pontoon for the individual use of the occupants of the subject site. It should be noted that both adjoining properties contain individual jetties, pontoons and boat ramps. Therefore, it is not considered necessary or practical to require such structures to be used communally between neighbouring properties.

Merit consideration

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

- *To minimise the individual and cumulative visual impact of waterfront development.*

Comment:

Both adjoining properties contain existing jetties, pontoons and boat ramps thus the proposed works are not considered likely to inflict a negative visual impact upon the existing waterfront development. Boatsheds are common development within the Lower Western Foreshores and Scotland Island locality and proposed height and scale is consistent with the design requirements within clause D15.15 of P21DCP. In turn, the proposed development is considered to be consistent with the desired character of the locality.

As such, it is considered the control and outcomes of this clause are achieved.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP 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.

D15.15 Waterfront development

Description of non-compliance

The proposal presents the following non-compliances with the design criteria outlined within this clause:

c) Boatsheds

i. Boatsheds shall be located above mean high water mark on freehold land, where practicable. Where this cannot realistically be achieved, as much of the proposed boatshed as is practical must be located above mean high water mark to minimise encroachment onto the littoral zone below mean high water mark.

Comment:

The proposed boatshed and associated works are located entirely seaward of the MHW. However, the development is permitted with consent below the mean high water mark as Area 23 of the Additional Permitted Uses Map under the PLEP 2014 applies.

Full compliance is also considered unreasonable in this instance, due to the significant excavation that would be required due to the steep slope of the site immediately above the mean high water mark.

ii. Boatsheds shall be one storey and no greater than 4.5 metres in building height above the platform on which it is built, 4.0 metres in width and 6.0 metres in length, as illustrated in Diagram 4. The use of lofts or similar design concepts shall not be permitted.

Comment:

The proposal seeks a maximum height of 5.1m (1 AHD) resulting in a variation of 27.5% (1.1m). As detailed within PLEP 2014 *Clause 4.6 Exceptions to development standards* of this assessment report, the applicant has submitted a written request under Clause 4.6 of the PLEP 2014 seeking to justify a contravention of *Clause 4.3 Height of Buildings* (4m building height) and 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.

The development is visually consistent in terms of height, bulk and scale of surrounding waterfront development, and that the breach of the height limit (located towards the south-east and south-west portion of the boatshed) will not result in any unreasonable impacts to neighbouring properties.

It is considered the building height variation will not contribute to an adverse bulk and scale. Boatsheds are common development within the Lower Western Foreshores and Scotland Island locality and proposed height and scale is satisfies with the outcomes within clause D15.15 of P21DCP. In turn, the proposed development is considered to be consistent with the desired character of the locality.

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3) and the variation to the building height standard of the PLEP 2014 (4m) and P21DCP (4.5m) is supported.

The proposed boat shed has dimensions of 4 meters wide by 6.2 meters long, presenting a minor non-compliance (0.2m in length) to the dimensions specified above. While the proposed boat shed does not comply with the specified dimensions, the design is of acceptable bulk and scale and consistent with the character of adjoining and surrounding boat sheds.

d) Slipways and launching ramps

Slipways and Launching Ramps are generally not favoured.

Comment:

The application proposes the construction of a launching ramp adjoining the southern elevation of the

proposed boat shed. While launching ramps are generally not favoured, the clause allows for a variation to this requirement, stating that Council may consider launching ramps where structures are unlikely to detract from the visual character of the foreshore, will not affect marine vegetation and will not restrict public foreshore access. In such instances, the following criteria shall apply:

Innovative design which incorporates slipping facilities with other existing or proposed structures is encouraged (Diagram 5).

Comment:

The proposal is generally consistent with diagram 5 and public foreshore access continues to be facilitated around the structure by a 1 meter wide timber deck around the proposed boat shed.

Structures, the storage of lightweight boats, and any winch equipment shall be entirely on private freehold land and shall not obstruct public foreshore access.

Comment:

All structures are located entirely seaward of the MHWL and therefore not within private freehold land. However, it is important to note that these structures are permitted with consent as the land is subject to Area 23 of the Additional Permitted Uses Map under the PLEP 2014. It is also considered that the design of the structures ensure that the storage of any equipment will not obstruct public foreshore access.

Structures shall be at ground level, where possible. Slipways from boatsheds, or reclamation must be recessed into the subject structure or work to minimise the height of the sliprails or boat ramp above the bed of the Pittwater Waterway. (Diagram 6).

Comment:

The proposed skid ramp is not recessed into the subject structure as the boat shed is sited above existing piles. Despite this, the ramp has a maximum height of 1.5 meters above existing ground level and is therefore not considered to have an adverse or unreasonable visual impact when viewed from the Pittwater Waterway. The skid ramp is consistent with adjoining and surrounding skid ramp development, and the character of the locality, despite failure to be recessed into the subject structure.

Sliprails are to be in the form of two parallel rails, no more than 2 metres width apart, with either locking spreaders between the rails or bolted directly to the surface of the concrete without the use of spreaders or embedded in concrete to facilitate free access. (Diagram 7).

Comment:

No sliprails are proposed.

Timber construction is preferred for proposed boat ramps. Concrete ramps may be considered at bed level in certain locations such as at Crystal Bay, Winji Jimmi Bay, Palm Beach and Careel Bay or where it can be shown, to the satisfaction of Council, that the aims of this clause are not compromised. Other materials such as steel with bonded rust proof coating will also be considered.

Comment:

As indicated on the architectural plans, the proposed construction material for the skid ramp is timber, providing satisfaction with the clause.

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

Merit Consideration

- *Waterfront development does not have an adverse impact on the water quality and estuarine habitat of Pittwater.*

Comment:

The development application was referred to Department of Primary Industries (Fisheries) with no objection raised subject to conditions. The application provided an Estuarine Risk Management Report, and a Geotechnical Assessment Report and which supported the proposed works. An Estuarine Risk Management Report prepared for the site was assessed against the Pittwater LEP 2014 and Pittwater 21 DCP and was supported by Council's Natural Environment - Coastal Section subject to conditions.

The application is supported with a Marine Habitat Survey (prepared by H2O Ecology) which denotes the proposed works is not expected to have a negative impact on any threatened or endangered species or communities in the area.

Council's Bushland and Biodiversity, Environmental Health - Acid Sulphate and Coast and Catchments Officers have also reviewed the proposal having regard to water quality and habitat and have raised no objections subject to conditions included in the recommendation of the report. In turn, it is considered the proposal will not have an adverse impact on the water quality or estuarine habitat of Pittwater.

As a result, the proposal (subject to conditions) has been designed and sited to avoid an unreasonable or adverse impact on this and the development therefore achieves this outcome.

- *Public access along the foreshore is not restricted.*

Comment:

Notwithstanding the location and dimensions of the boat shed, public access along the foreshore will not be restricted as the development incorporates a 1 meter wide timber deck around the structure, providing safe and level public access along the foreshore.

- *Waterfront development does not encroach on navigation channels or adversely affect the use of ferries and service vessels or use of the waterway by adjoining landowners.*

Comment:

Correspondence submitted with application from Roads and Maritime Services, dated 13 April 2019, advises that an inspection/ assessment has been conducted by the local Boasting Safety Officer and that there are no navigational concerns regarding the designated proposal.

- *Structures blend with the natural environment.*

Comment:

The proposed waterfront structures will blend with the surrounding natural environment as a result of the site specific design and the conditioned use of dark and earthy external finishes.

- *Structures are not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway.*

Comment:

The proposed development will be visually consistent and comparable with existing, adjoining and surrounding waterfront development. It is considered the proposed development will not be detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway, subject to conditions included in the recommendation of this report.

- *To promote a mix of commercial waterfront development for the accommodation of boats, their repair and maintenance, and for organised waterfront development.*

Comment:

The proposal is not a commercial waterfront development. This outcome is therefore not applicable.

- *Waterfront development which does not comply with the outcomes of this clause are removed.*

Comment:

As demonstrated above, the proposed waterfront development complies with the outcomes of this clause and is considered to be both appropriate and acceptable.

Having regard to the above assessments, it is concluded that the proposed development is consistent with the relevant outcomes of the P21DCP 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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

In summary, a detailed assessment has been required for the following specific issues:

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

- 4.3 Height of Buildings

The proposal includes a significant non-compliance in relation to Building Height. The proposed height breach has been considered in relation to the provisions of Clause 4.6 of the Pittwater LEP 2014 and the context of the site and surrounding locale, which includes a number of approvals inclusive of variations to the Height of Buildings development standard. While it is acknowledged that the proposed height contravention represents a moderate breach, the resulting impacts of the development on the amenity of the adjoining properties and the Pittwater Waterway has been assessed as reasonable.

The proposal includes non-compliances with the following P21DCP Clauses:

- D15.12 - Development seaward of mean high water mark; and
- D15.15 - Waterfront development.

The aforementioned non-compliances are considered to result in minimal material impact to adjoining properties and the surrounding Pittwater Waterway, and are considered reasonable when assessed against the relevant objectives of each control.

Based on the above discussion and the full assessment undertaken, the proposal is considered to be acceptable having regard to all relevant Pittwater LEP 2013 and P21DCP controls, and is therefore recommended for approval, subject to applied conditions.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 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 DA2020/1294 for Construction of a jetty ramp and pontoon and restoration of the boat shed on land at Lot 3 DP 20284, 18 Portions Lovett Bay, LOVETT BAY, 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
DA02, Revision E - New Pontoon & Rebuild Boatshed	1 September 2020	Copley Marine Consulting Group
DA4, Revision F - Boatshed & Extension to Ramp	9 January 2021	Copley Marine Consulting Group
DA5, Revision F - Elevation	19 January 2021	Copley Marine Consulting Group
DA6, Revision F - Boatshed Front Elevation	9 January 2021	Copley Marine Consulting Group
DA7, Revision F - Boatshed East Elevation	9 January 2021	Copley Marine Consulting Group
DA8, Revision B - Boatshed West Elevation	9 January 2021	Copley Marine Consulting Group

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	22 February 2021	Eswnman Pty Ltd
Coastal Engineering Risk Assessment Report (Estuarine)	19 January 2021	Cardno (NSW/ACT) Pty Ltd
Marine Habitat Survey	31 October 2018	H20 Consulting Group
Marine Habitat Survey Addendum Letter	2 February	H20 Consulting Group

	2021	
Acid Sulfate Soil Assessment	12 January 2021	Copley Marine Consulting Group

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. 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 Rural Fire Service	Referral Response	17 February 2021
Department of Planning, Industry & Environment - Crown Lands	Landowners Consent for Lodgement of a Development Application. Reference no. 16/10858#01	30 July 2020
Roads and Maritime Services	Development application for proposed modifications and repairs to existing jetty and boatshed including pontoon at 18 The Portions Lovett Bay	13 April 2019
Department of Primary Industries	Repair boat shed, rebuild skid ramp, replace sea stairs with ramp, pontoon and piles. Reference no. CNR-19054	16 March 2021

(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.

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

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by ESWNMAN Pty Ltd dated 22nd Feb 2021 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

7. **Construction Environment Management Plan**

A Construction Environmental Management Plan (CEMP) must be prepared in accordance with the environmental risks and mitigation methods identified in the marine habitat survey and must be kept in the site office.

An induction plan for site personnel must be prepared that addresses the CEMP.

The CEMP and site induction plan must be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To protect native vegetation, wildlife, habitats and receiving waterways.

8. **Estuarine Hazard Design Requirements**

The following applies to all development:

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

9. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 1.93m AHD has been recommended and accepted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below 1.93m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 1.93m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 1.93m AHD.
- All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 1.93m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 1.93m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure aspect of the development are built at the appropriate level

10. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Updated Coastal Engineering Risk Assessment Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 19 January 2021 and these recommendations are to be incorporated into construction plans.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

11. **Structural Engineering for Estuarine Risk**
Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 30years as justified and accepted by Council) the development is able to withstand the wave impact forces and loadings identified in the approved Updated Coastal Engineering Risk Assessment Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 19 January 2021.
Note: The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional
12. **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.
13. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)
14. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The plan must comply with the Northern Beaches Council Waste Management guidelines. Details demonstrating compliance must be provided to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure that any demolition and construction of waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.
15. **External colours and materials**
External colours and materials used for the boat shed and handrails are to be of dark and earthy tones, consistent with Clause D8.3 of the P21DCP.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **Environmental Health inspection before and during works**
Notification must be given in writing to Council's Environmental Health team, no later than seven (7)

business days prior to the date of commencement of works. No works relating to the removal or installation of piles, or any other structure within the area classified as Class 1 for acid sulfate soils are to commence until Council's Environmental Health Officer is on site, and has taken the required water and soil samples.

Reason: To facilitate environmental monitoring for the purposes of environmental protection.

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. **Site inductions for Construction Environment Management Plan**

The site Environmental Officer (or appropriate equivalent) must induct all staff prior to starting work, with an induction record maintained and available onsite at all times.

Personnel conducting the site induction must:

- (a) Be familiar with any environmental protection conditions under the development approval and/or the Construction Environment Management Plan
- (b) Be familiar with the names and contact details of relevant people and authorities in the event of any environmental or site management emergency.
- (c) Be familiar with the presence of environmentally significant areas within and surrounding the site.
- (d) Be able to identify threatened species of fauna if they enter the site, especially Red-crowned Toadlet.
- (e) Be familiar with animal welfare issues and procedures should human-wildlife interactions take place during the construction phase.

Reason: To ensure all personnel understand what must be done to protect native vegetation, wildlife, habitats and receiving waterways on the site.

19. **Management of *Caulerpa taxifolia***

The invasive marine alga *Caulerpa taxifolia* is present on this site. Site personnel must be able to identify *Caulerpa*. All tools, machinery and environmental control devices must be inspected and cleaned thoroughly prior to leaving the site to prevent the spread of *Caulerpa* to other sites.

Any *Caulerpa* removed from the waterway should be tightly sealed in a plastic bag and lawfully disposed in general waste.

Reason: *Caulerpa taxifolia* is listed under the Biosecurity Act 2015 for all NSW waters.

20. **Aquatic sediment management**

Environmental safeguards (e.g. silt curtains) are to be used during construction to prevent the escape of turbid plumes into the aquatic environment. The silt curtains must be carefully placed and secured to ensure they do not drag over any nearby seagrass beds.

The safeguards must be regularly maintained and removed once the works are completed.

Reason: Protection of seagrass.

21. **Use of equipment and vessels in the vicinity of seagrass**

No equipment is to be placed on any seagrass beds.

Inshore infrastructure for mooring vessels and plant must be used where suitable. Where mooring lines or cables are required, they shall be suitably buoyed prior to laying and kept buoyed once laid to prevent cable drag or swing damage (scalping). Where this is impractical, contractors should use a floating rope.

Vessels must have adequate clearance over seagrass beds, including allowance for tidal movement, swell/wind wave heights and vessel propulsion.

Reason: Protection of seagrass.

22. **Dredging works**

A permit from Council and the Department of Primary Industries (Fisheries) is required prior to conducting dredging.

Reason: Protection of the environment.

23. **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.

24. **Barge movements not to disturb sediment or seagrasses**

Barge movements to and from the approved construction footprint must be timed so as to not disturb sediment, or cause damage to any seagrasses.

Reason: To facilitate environmental monitoring for the purposes of environmental protection.

25. **Requirement to notify about new Acid Sulfate Soils evidence**

Any new information revealed during works that has the potential to alter previous conclusions about Acid Sulfate Soils, shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement.

Reason: Protection of the environment

26. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

27. Installation and Maintenance of Sediment Control

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

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

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

28. Geotechnical Certification Prior to Occupation Certificate

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

29. Control of Weeds

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds

Reason: Weed management.

30. No Planting Environmental Weeds

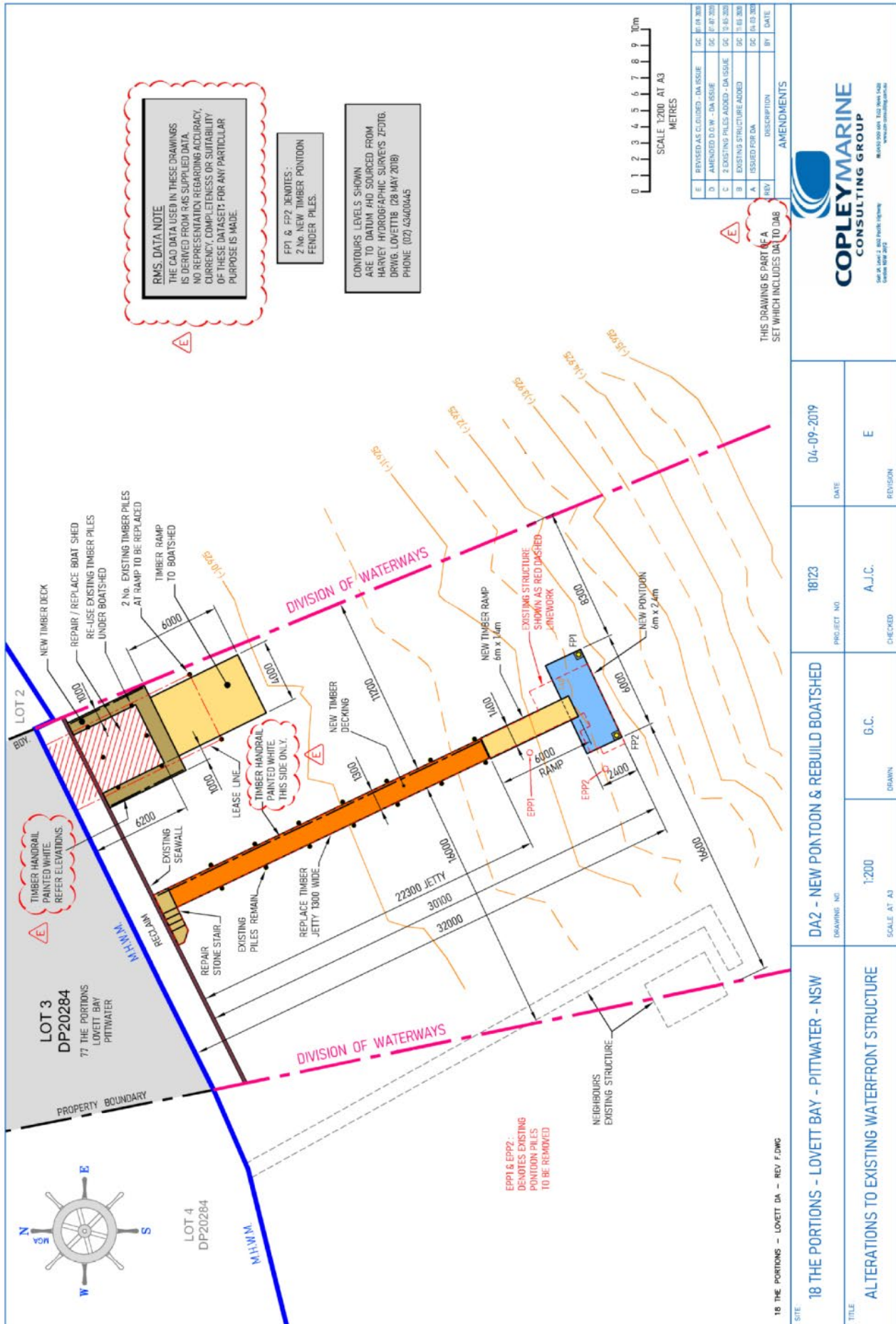
No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

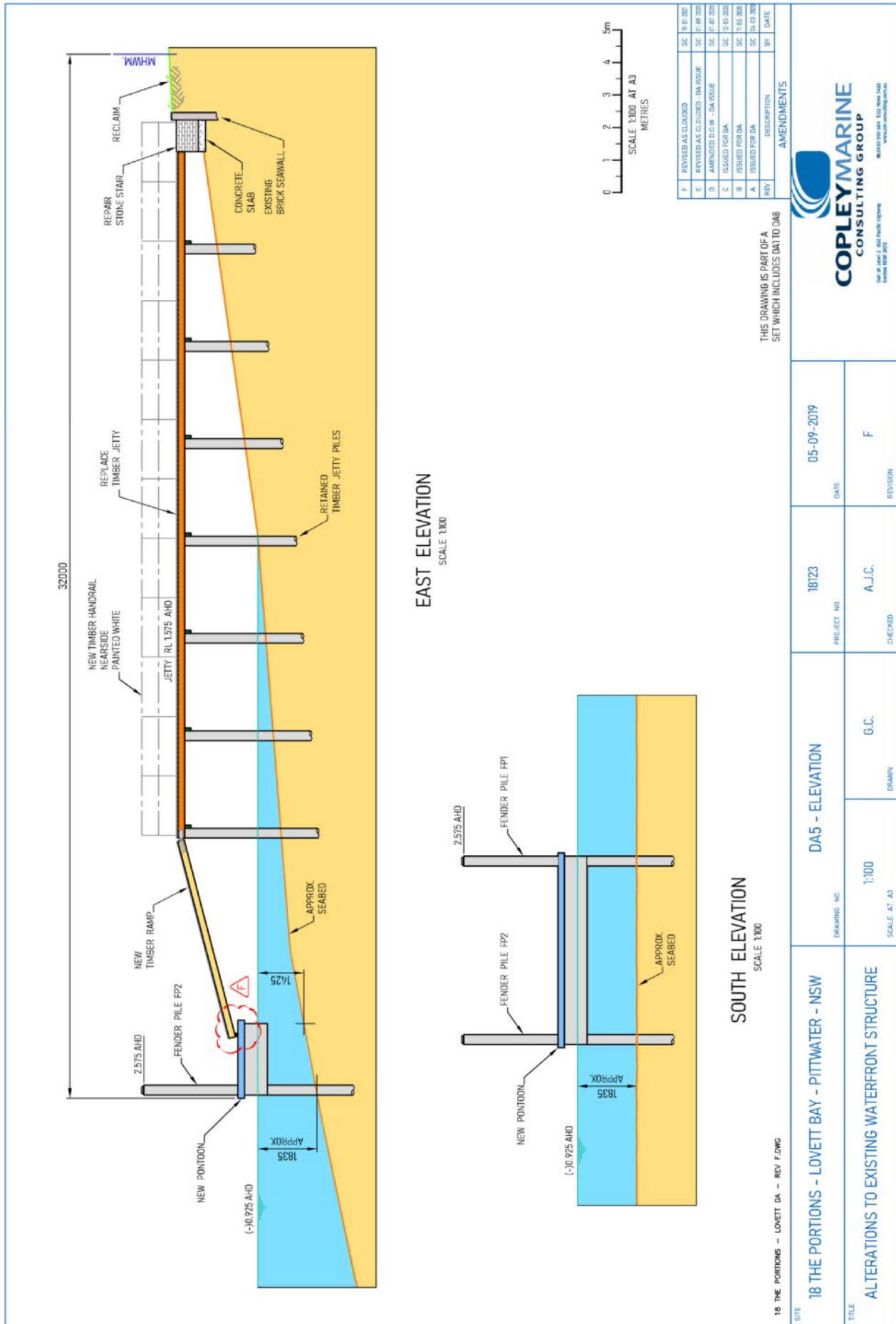
Reason: Weed management.

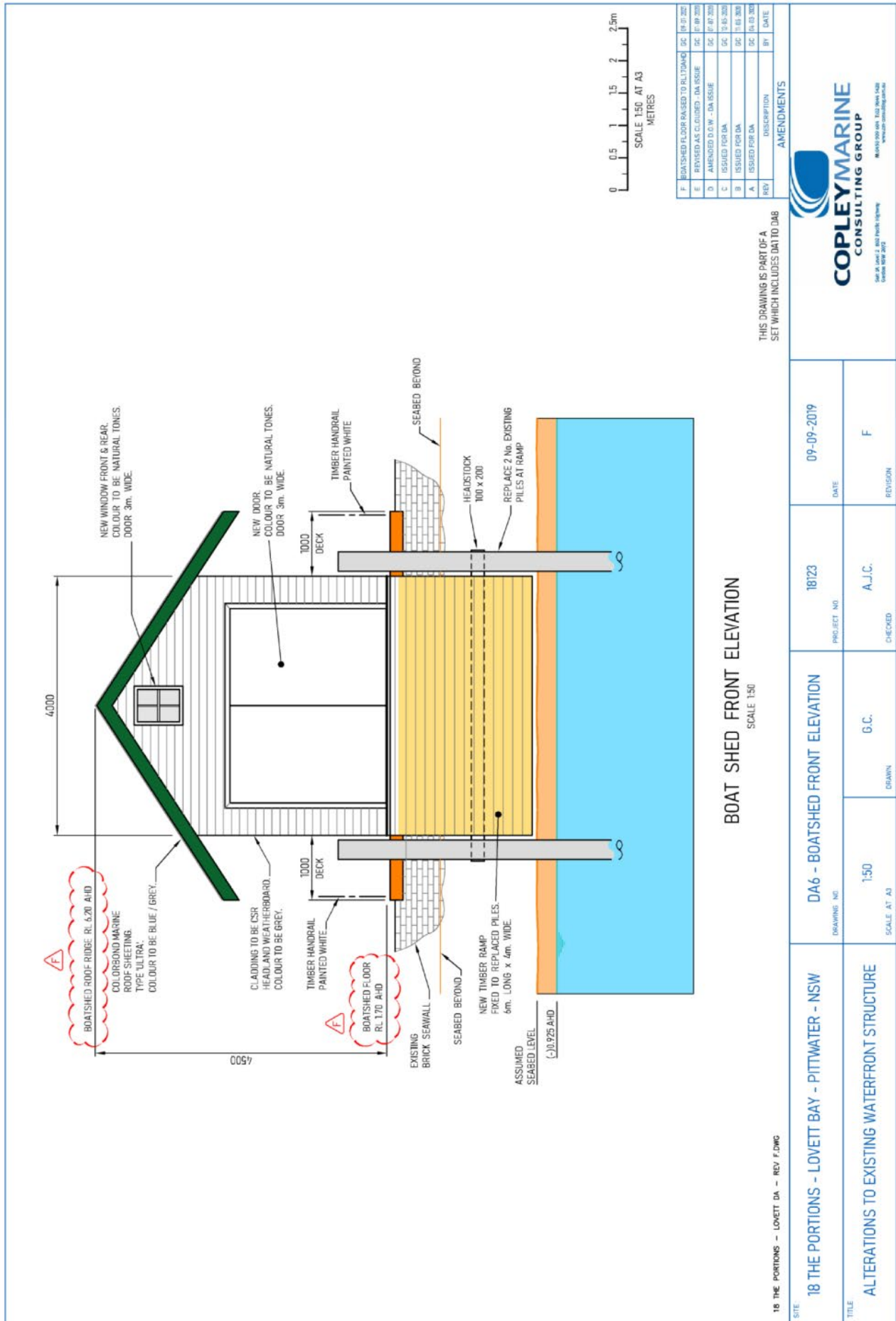
31. Compliance with Estuarine Risk Management Report

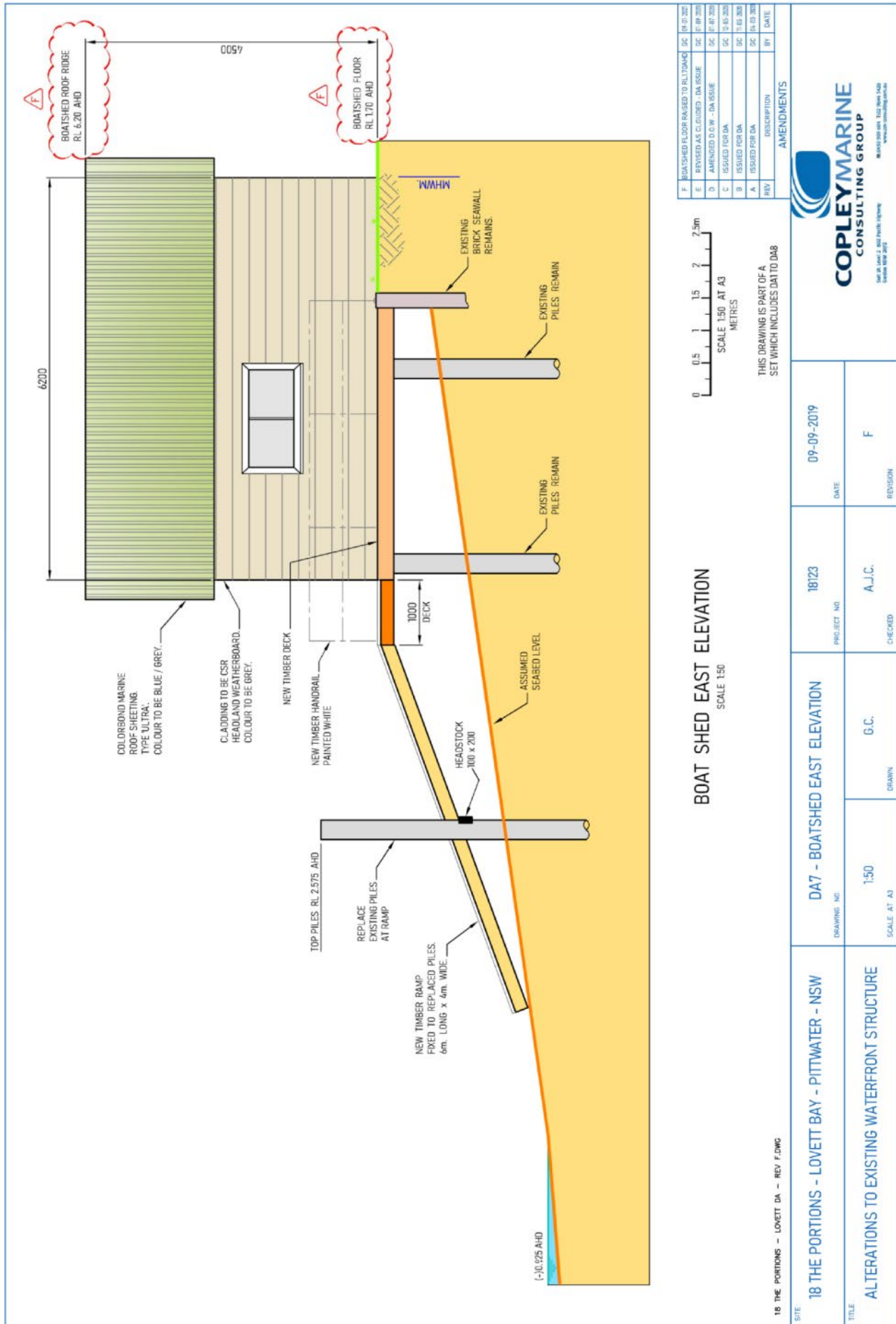
The development is to comply with all recommendations of the approved Updated Coastal Engineering Risk Assessment Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 19 January 2021 and these recommendations are to be maintained over the life of the development.

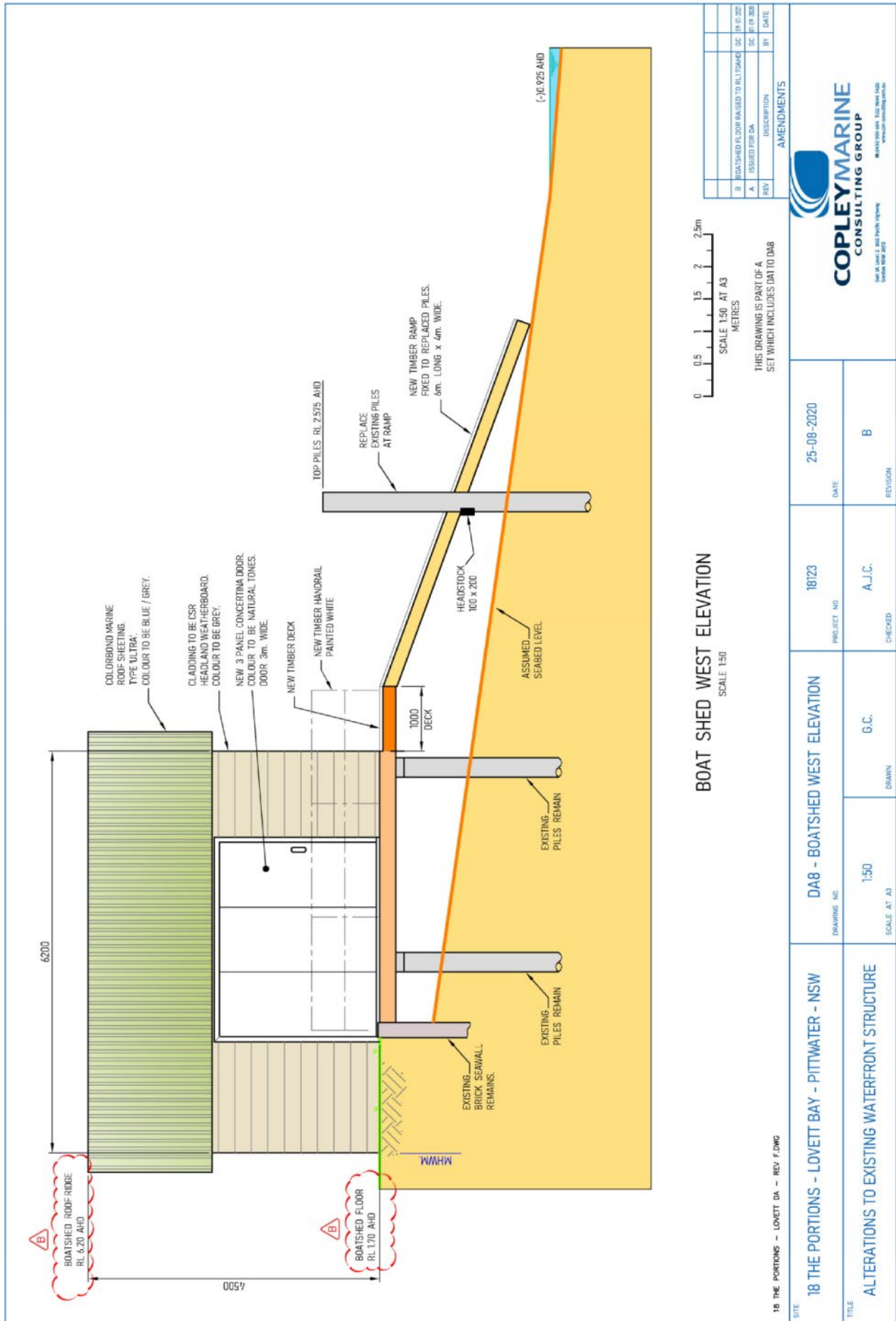
Reason: To ensure preservation of the development and the estuarine environment













Variation to Height Control

18 Portions, Lovett Bay



Prepared By:
Copley Marine Consulting Group Pty Ltd

On Behalf of Client:
Kelly Morrison

Address:
18 Portions, Lovett Bay

Date of issue:
18/1/2021

COPLEY MARINE CONSULTING GROUP
Suite 1a, 802 - 808 Pacific Hwy Gordon NSW 2072 Australia
Telephone: +61 450 909 604 Email: allister@cm-consulting.com.au Web: www.cm-consulting.com.au

Document Control

Rev	Date	Amendment Description	Author	Initials	Review	Initials
A	18/1/2021	Draft for review	K Fisher	KF	A. Copley	AC

Any persons using Copley Marine Consulting Group documents or data accepts the risk of:

- a) The use of any information contained in electronic form without checking for accuracy against the original hard copy released version.
- b) The Use of documents or data for any purpose not agreed to in writing by Copley Marine Consulting Group.

© 2020 SME Human Resources Pty Ltd trading as Copley Marine Consulting Group. This document is under Copyright control. Reproduction of this document or any part contained within is not allowed without the express written permission of SME Human Resources Pty Ltd.

Variation to Height Controls

TABLE OF CONTENTS

1. VARIATION TO HEIGHT CONTROL	3
1.1. Introduction	3
1.2. Project Proposal	4
1.3. PLEP 2014 Height of Buildings Map.....	7
1.4. Planning Instruments	7
1.4.1. Pittwater Local Environmental Plan 2014	8
1.4.2. Pittwater 21 Development Control Plan	11
1.5. Conclusion.....	12

TABLE OF FIGURES

Figure 1 - The site is on the north east foreshore of Lovetts Bay, Pittwater	3
Figure 2 – Proposed works	5
Figure 3 – Proposed works: Boatshed front elevation.....	5
Figure 4 – Proposed work: Boatshed east elevation.....	6
Figure 5 – Proposed work: Boatshed west elevation.....	6
Figure 6 - Extract from Northern Beaches Council's online mapping tool	7

1. Variation to Height Control

1.1. Introduction

18 Portions, Lovett Bay, is the property abutting the existing boatshed, jetty and seastairs structure where the proposed development is. The abutting site is located in an E3 – Environmental Management zone. The actual maritime site is zoned W1 under Pittwater Local Environmental Plan Map 10 – Sheet LZN_010 with works permissible in this zoning.

The property is situated on the south-western foreshore of Pittwater, northern side of Lovett Bay. The location is primarily a mix of bushland with some residential dwellings, many having water access structures. Access at this site and in this area is by water only. The waterfront is along this area is residential access with limited public thoroughfare access permitted along the Mean High Water Mark (M.H.W.M) via a track.

This variation report is being completed as per Northern Beaches Council (NBC) requirements (Pittwater Local Environment Plan (PLEP) 2014, cl.4.6) as part of the lodgement of a Development Application, referred to Planning Panel, for the repair of and alteration to an existing waterfront structure (the site).

The site currently has an existing lease (RI 577755) and consists of the following:

- A reclamation (approx. 26.7 x 2.0m),
- A boatshed and skid (10 x 4.45m),
- A set of stone seawall stairs,
- A fixed timber jetty, landing platform and timber sea-stairs extending approx. 32.3m from the seawall.

This variation report is focused only on the boatshed. The boatshed proposal is for a like for like rebuild to the original size of 6m x 4m on the existing piles in the same location. The height of the boatshed is proposed to be 4.5m as per the original design. A 1m wide walkway will be constructed to allow ease for the passage of the public along the waterfront.



Figure 1 - The site is on the north east foreshore of Lovett's Bay, Pittwater

Variation to Height Controls

The variation report process has been requested under the NBC's relevant Local Environment Plan (which is the PLEP 2014) as part of the development consent pathway as the height of the boatshed contravenes PLEP cl.4.3.

1.2. Project Proposal

The proposed development consists of both maintenance repair work and alterations to existing jetty, sea stairs and boatshed structures.

The property is in Lovett Bay, generally with a fetch of about 2km to the southeast. As advised in the recent Coastal Engineering Risk Assessment Report of the site, the estuary planning level is 2.62m AHD. This includes 0.3m of freeboard and 0.4m of projected sea level rise to 2050 and applies for a 100-years average recurrence interval storm occurring at 2050 at this site and a vertical seawall with a crest of 1.5 to 2.0m AHD. The nominated design wave height is 0.74m, which is based on local sea propagating to the site from the northeast to Lovett Bay.

The site is accessible only by water, so the requirement for the need to safely access the property during all tidal and weather conditions has stipulated the requirement of a water recreational facility to assist in this process. The works are deemed permissible with development consent under the PLEP and the design has been completed in accordance with the Northern Beaches Council's Development Control Plan.

The works will consist of the following:

- Alteration to an existing jetty structure to accommodate a new ramp and pontoon,
- Demolition and removal of a set of existing timber stairs,
- Repair to stone steps,
- Rebuilding of a boatshed on an existing boatshed footprint.

Variation to Height Controls

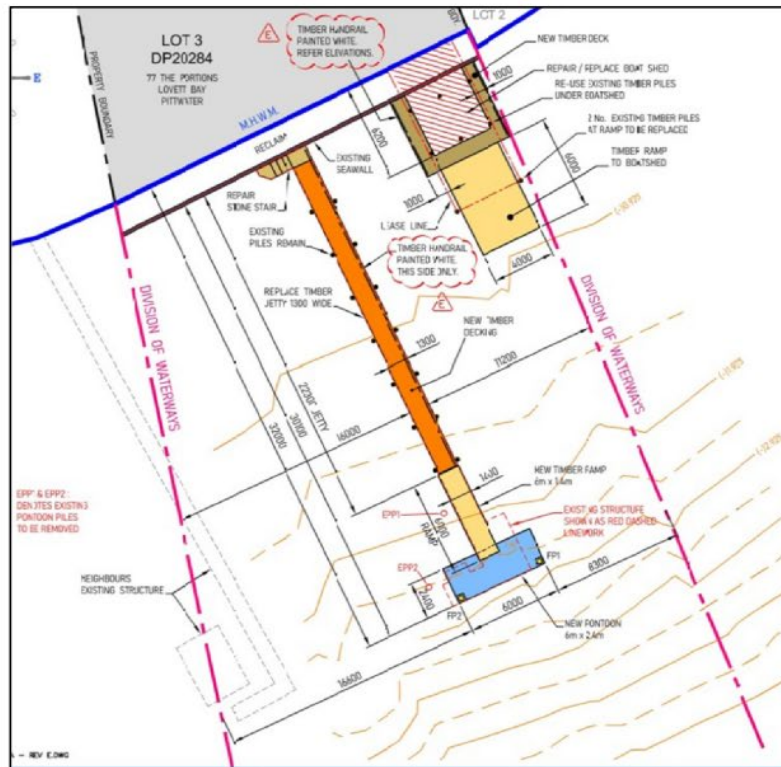


Figure 2 – Proposed works

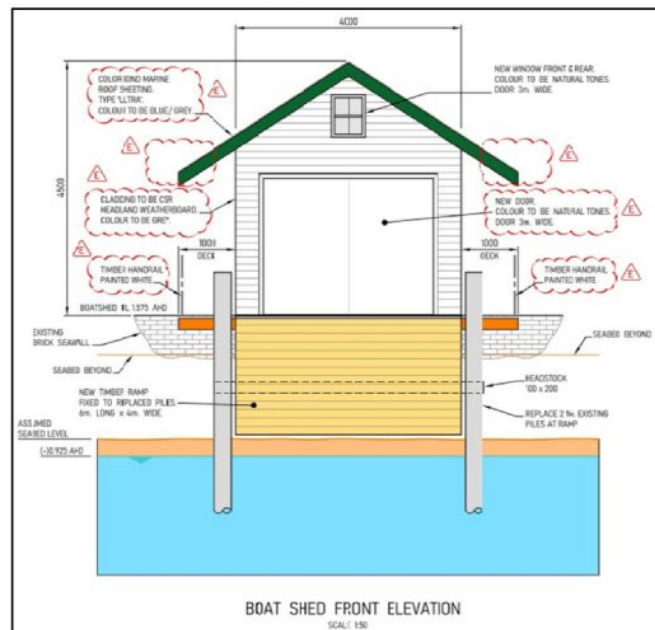


Figure 3 – Proposed works: Boatshed front elevation

[illegible][illegible]

Page 6

Variation to Height Controls

1.3. PLEP 2014 Height of Buildings Map

The Northern Beaches Council's online mapping tool (Height of Buildings Map) shows that the waterway around the site has a maximum height control of 4m. The land on which the property is located shows a maximum height control of 8.5m. The boatshed is located wholly in the waterway.

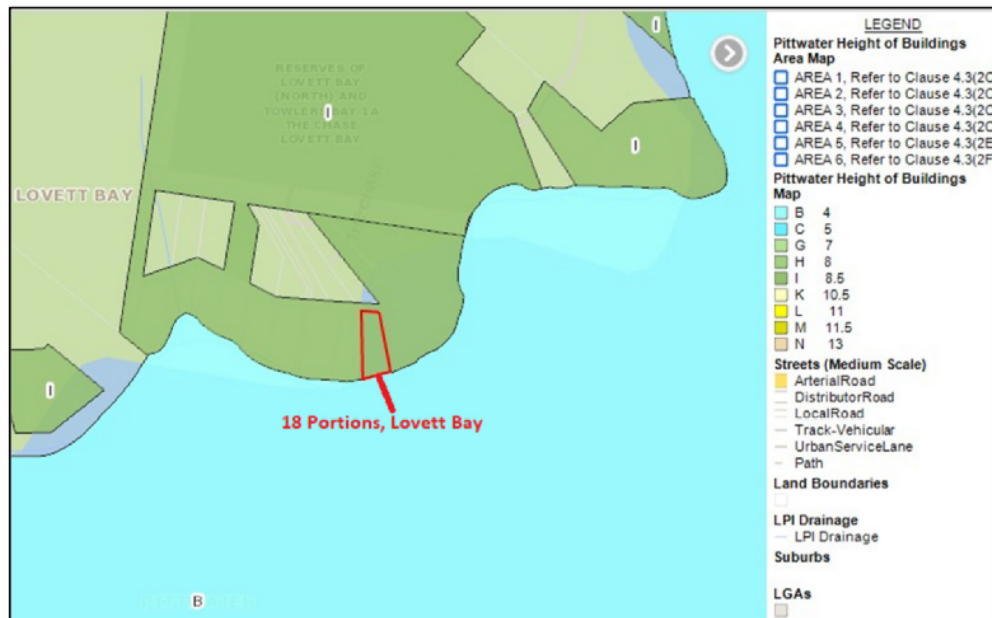


Figure 6 - Extract from Northern Beaches Council's online mapping tool

1.4. Planning Instruments

The relevant planning controls include:

- *Pittwater Local Environmental Plan 2014 (PLEP 2014).*
- *Pittwater 21 Development Control Plan (PDCP).*

The PLEP 2014 cl.4.6 grants flexibility to the NBC to grant development consent overriding developmental controls in certain circumstances to achieve better general outcomes. We believe the height standard in this instance, given the boatshed is being rebuilt on an existing footprint, meets PLEP 2014 zone objectives and height of buildings objectives and conforms to PDCP requirements, is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to support a consent despite the PLEP2014 standard.

Based on recommendations from a Coastal Engineering Risk Assessment Report of the site, the boatshed floor level will be 1.7m astronomical height tide (AHD). The proposed boatshed measures a height of 4.905m above 1.17 AHD, presenting a 22.6% variation to the 4m requirement.

Variation to Height Controls

1.4.1. Pittwater Local Environmental Plan 2014

4.3 HEIGHT OF BUILDINGS

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

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Response: *The height of the boatshed fully complies with the PDCP sD15.15 Waterfront Development, where a boatshed height is to be no greater than 4.5m in building height above the platform on which it is built. As detailed in the table below, even with the boatshed height non-compliance, all objectives stated in PLEP 2014 cl.4.3 are met.*

Objective	Response
a	<i>The height of the proposed development is consistent with specifications for boatsheds as stated in PDCP D15.15 and is in-line with numerous structures built in the area over the 120 – 30 years. This means that even though the proposed development seems to be seeking a height control variation, it is in fact consistent with surrounding structures in height and scale which make it fit in well with the desired character of the locality.</i>
b	<i>Surrounding / neighbouring boatsheds in the area are similar in height and scale to the proposed development, as was the case with the original structure.</i>
c	<i>The location of the boatshed (in the water) does not create any overshadowing of neighbouring properties.</i>
d	<i>The proposed development does not obstruct any views from surrounding properties due to its lower location due to the steep slope immediately behind the boatshed.</i>
e	<i>The boatshed will merge well with the surrounding environment due to location and proposed natural materials used for construction.</i>
f	<i>No heritage items are in proximity to this development and the boatshed will be constructed with natural materials to encourage positive impact on the natural environmental.</i>

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.
- (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 applicants 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 Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if -
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include all of these zones.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following -
 - (a) a development standard for complying development,

Variation to Height Controls

- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated,
- (c) clause 5.4.

Response: *The proposed development will meet the public interest requirement as it is consistent with the objectives of the zone (see below) and cl.4.3, and meets the development standard stated in the PDGP for boatsheds. Boatsheds are permissible in the zone and so are in character with the surrounding area.*

The aim of the design of a boatshed must be to make it fit for purpose and for it to have minimal impact on the natural environment. The proponent in this case wishes to use this structure for various water equipment storage requirements that necessitates the original height, which is not unreasonable.

The proposal (as detailed in the table above) meets the requirements for positive visual impact for the public, neighbours, and general users of the Pittwater waterways. The siting will actually increase public access through the addition of an improved walkway on the structure. Overall, the boatshed has a design that supports the natural environment by using natural materials and having a low visual impact.

LAND USE TABLE**Zone W1 Natural Waterways****1. Objectives of zone**

- To protect the ecological and scenic values of natural waterways.
- To prevent development that would have an adverse effect on the natural values of waterways in this zone.
- To provide for sustainable fishing industries and recreational fishing.
- To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.
- To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.

Response: *The proposed boatshed rebuild is based on an existing footprint where the previous structure was in situ for a substantial period of time. The boatshed will keep the scenic character of the surrounding area where other similar structures (in form and height) are currently situated and will have minimal ecological impact as it is being rebuilt on existing piles. Due to it being built on an existing footprint and its location close to the MHWL, there will not be any navigational impact. The rebuild will improve public access to the area due to the proposed public walkway access.*

1.4.2. Pittwater 21 Development Control Plan

D15 WATERWAYS LOCALITY:

15.15 Waterfront Development: Controls: Boatsheds

(c) Boatsheds shall meet the following criteria:

Boatsheds shall be located above mean high water mark on freehold land, where practicable. Where this cannot realistically be achieved, as much of the proposed Boatshed as is practical must be located above mean high water mark to minimise encroachment onto the littoral zone below mean high water mark.

- i. Boatsheds shall be one storey and no greater than 4.5 metres in building height above the platform on which it is built, 4.0 metres in width and 6.0 metres in length, as illustrated in Diagram 4. The use of lofts or similar design concepts shall not be permitted.
- ii. Boatsheds shall not prevent or hinder public foreshore access. Alternative access must be provided where a proposed Boatshed is likely to make existing foreshore access below mean high water mark difficult.
- iii. Boatsheds cannot be used for any other purpose than the storage of small boats and/or boating equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities shall not be permitted. Roof areas of Boatsheds shall not be used for recreational or observational purposes.
- iv. Boatsheds shall be constructed of low maintenance materials that are of a tone and colour which is sympathetic to the surrounding setting. Structures proposed along the western foreshores, McCarrs Creek, Horseshoe Cove, Salt Pan Cove, Refuge Cove, Clareville and Careel Bay are to have specific regard for the natural landscaped character of the area. Reflective materials and finishes for private Boatsheds shall not be permitted.
- v. The minimum floor level for proposed Boatsheds shall be in accordance with the B3 Estuarine Hazard controls for foreshore development around the Pittwater Waterway.
- vi. Boatsheds shall be able to be entirely enclosed. Boatsheds which either partially or wholly do not incorporate appropriate wall cladding shall not be permitted, as such structures tend to become visually obtrusive when viewed from the waterway.
- vii. All electrical equipment and wiring shall be water tight below the designed flood/tidal inundation level.

Boatsheds which cannot meet these criteria are considered out of scale and character with the type of residential foreshore development that exists around the Pittwater Waterway. Boats which cannot be accommodated in the recommended size Boatshed are considered inappropriate and should be accommodated using alternative facilities.

Response: The proposed development meets the criteria of the PDCP D15.15. It is one storey only, 4.5m in building height above the platform on which it is built, 4.0m in width and 6.0m in length. The design supports improved public foreshore access. It is purpose built to be used for the storage of small boats and/or boating equipment. It is proposed to be constructed of low maintenance materials that are of a tone and colour sympathetic to the surrounding settings with specific regard for the natural landscaped character of the area, and is not inclusive of any reflective materials or finishes. The boatshed floor plans show the correct specifications as per the recent Coastal Engineering Risk Assessment Report attached in this application. These plans also confirm that the proposed boatshed is fully enclosed.

Variation to Height Controls

1.5. Conclusion

The proposed works satisfy the PLEP 2014 objectives for both the Height of Buildings and the W1 Waterway zone, and do not contravene any other applicable planning instruments. They also provide for a better outcome through the support of public interest and environmental protection achieved by rebuilding the boatshed on the original footprint (on existing piles) and creating enhanced and safe all tidal external public access via a walkway along the waterfront.

PLEP 2014 cl4.6 allows for the Northern Beaches Council to provide appropriate flexibility in their development consent to achieve better outcomes where compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening it. We believe in this set of circumstances – the rebuilding of a boatshed that supports all criteria in the specific PDCP D15.15 – is within this scenario of granting development consent in this flexible manner to achieve better outcomes.

The proposed development should therefore be approved at the original height for the boatshed of 4.5m under PLEP 2014 cl.4.6.