



northern  
beaches  
council

# AGENDA

## NORTHERN BEACHES LOCAL PLANNING PANEL

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

**WEDNESDAY 5 MAY 2021**

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

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

**Panel Members**

Peter Biscoe	Chair
Annelise Tuor	Town Planner
Graham Brown	Town Planner
Lloyd Graham	Community Representative

**Quorum**

A quorum is three Panel members

**Conflict of Interest**

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



## Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 5 May 2021

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 26 April 2021	
<b>3.0</b>	<b>PUBLIC MEETING ITEMS .....</b>	<b>5</b>
3.1	DA2020/1136 - 13 Pacific Road, Palm Beach - Demolition works and construction of a dwelling house .....	5
<b>4.0</b>	<b>NON PUBLIC MEETING ITEMS .....</b>	<b>49</b>
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.	
4.1	DA2020/1425 - 265 Condamine Street & 1 Kenneth Road, Manly Vale - Demolition works and construction of a shop top housing development.....	49
4.2	DA2021/0119 - 1 West Promenade, Manly - Alterations and additions to an existing commercial/retail building .....	126
4.3	DA2020/1587 - 51A Beaconsfield Street, Newport - Construction of a ramp, pontoon and stabilising piles .....	159
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4.5	DA2020/1503 - Lot 1/ & Lot 374/ Lawrence Street, Freshwater - Alterations and additions to an existing community facility (Girl Guides Hall & Harbord Literary Institute) and use of the premises as a child care centre .....	235

## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 21 APRIL 2021**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 21 April 2021 were adopted by the Chairperson and have been posted on Council's website.

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### 3.0 PUBLIC MEETING ITEMS

ITEM 3.1	DA2020/1136 - 13 PACIFIC ROAD, PALM BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE
AUTHORISING MANAGER	Anna Williams
TRIM FILE REF	2021/296750
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. DA2020/1136 for demolition works and construction of a dwelling house at Lot 404 DP 19651, 13 Pacific Road, Palm Beach subject to the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1136
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<b>Responsible Officer:</b>	David Auster
<b>Land to be developed (Address):</b>	Lot 404 DP 19651, 13 Pacific Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Demolition works and construction of a dwelling house
<b>Zoning:</b>	E4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	William Warwick Grounds
<b>Applicant:</b>	Jamisa Architects

<b>Application Lodged:</b>	17/09/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	22/03/2021 to 06/04/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	21
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 17.6%
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 1,265,000.00
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### Executive Summary

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is not suitable and appropriate development for the subject site.

The assessment has found that the proposed height, bulk and scale of the development is excessive, and will have unacceptable impacts. The proposal is non-compliant with the height of buildings development standard, and side boundary envelope control, and overall the proposal will have unreasonable impacts on both public and private views, visual impacts caused by the overall bulk and scale, and will be generally inconsistent with the desired future character as expressed in the locality statement for Palm Beach.

Council received a large number of submissions in relation to the application, primarily concerned with

the height, bulk and scale (and associated impacts) of the proposal. These submissions are generally supported, to the extent discussed within the report.

Given the assessment conclusions, the application is considered to be unsuitable development for the subject site, and not in the public interest.

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

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be refused, for the reasons attached to this report.

### **PROPOSED DEVELOPMENT IN DETAIL**

The proposal involves demolition of the existing structures on site, and construction of a new three storey dwelling. The dwelling will be comprised of the following:

#### Lower Ground Floor Plan

- Three bedrooms
- Rumpus room
- Two bathrooms
- Rear patio

#### Ground Floor Plan

- Open plan living/dining/kitchen
- Laundry
- Bathroom
- Front patio
- Rear deck
- Storage area

#### First Floor Plan

- Master Bedroom
- Bathroom
- Rear deck
- Front entry
- Carport for two cars (parked end to end)

The plans initially provided with the application were assessed to be unacceptable, and the applicant was requested to withdraw the application due to non-compliance with the height of buildings development standard, and inconsistency with clauses A4.12 Palm Beach Locality, C1.3 Views, C1.4 Solar Access, and D12.8 Building Envelope of the Pittwater DCP. The applicant did not withdraw the application, but provided amended plans, which pulled back the development in some places from the eastern (rear) boundary and the southern (side) boundary. These amendments were re-notified to surrounding neighbours. Height poles were also erected at the request of Council to enable accurate

assessment of view loss.

The amended plans are the subject of the assessment in this report.

## **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 E4 Environmental Living  
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality  
Pittwater 21 Development Control Plan - C1.3 View Sharing  
Pittwater 21 Development Control Plan - C1.4 Solar Access  
Pittwater 21 Development Control Plan - D12.5 Front building line  
Pittwater 21 Development Control Plan - D12.8 Building envelope  
Pittwater 21 Development Control Plan - D12.11 Fences - General

## **SITE DESCRIPTION**

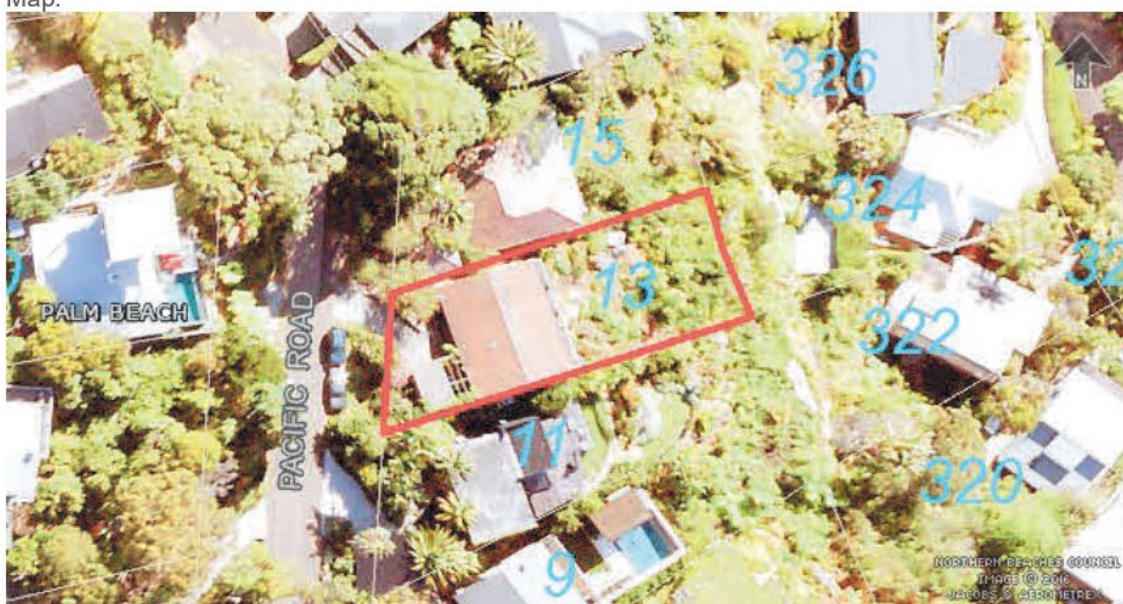
<b>Property Description:</b>	Lot 404 DP 19651 , 13 Pacific Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	The site is an irregularly shaped lot, located on the eastern side of Pacific Road. It is legally described as Lot 404, DP19651. The site has an area of 604.8sqm, and slopes steeply down from front to rear, and also has a slight cross fall from north west to south east. The site is located in a natural amphitheatre formed by the sites to the south along Pacific Road and down Norma Road, such that the site is in a visually prominent location from many neighbouring properties. The subject site and surrounding sites all have expansive ocean and headland views to the north, east and south.



There is an existing dwelling with carport situated on the site, with a steep driveway down to the level of the carport. Surrounding development consists of detached dwellings of various heights and styles. The properties to the rear are located well below the subject site, and the properties across the road to the west are well above, due to the steep topography.

The site is well vegetated to the rear, and includes rocky outcrops.

Map:



## **SITE HISTORY**

A search of Council's records has revealed that there are no recent or relevant applications for this site. No prelodgement meeting was held for the proposal.

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:

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
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

Section 4.15 Matters for Consideration'	Comments
	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)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to height poles being erected. The applicant also submitted amended plans, although these were not requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent if the application is approved.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent if the application is approved.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent if the application is approved.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>



Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development. The development of the site with a dwelling is appropriate, however, as discussed throughout this report, the proposed scale of the building is considered unacceptable.
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 relevant requirement(s) of the Pittwater LEP and DCP, 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 22/03/2021 to 06/04/2021 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 21 submission/s from:

Name:	Address:
Vernon Casey Mrs Donna Casey	11 Pacific Road PALM BEACH NSW 2108
Trent Peterson	9 Pacific Road PALM BEACH NSW 2108
Mr Neil William Johnson	61 Holdsworth Street WOOLLAHRA NSW 2025

<b>Name:</b>	<b>Address:</b>
Mr John Douglas Whiteford	15 Rock Bath Road PALM BEACH NSW 2108
Mrs Penelope Ann Mainwaring Davis	324 Whale Beach Road PALM BEACH NSW 2108
Mr Ross Nicholas	30 Pacific Road PALM BEACH NSW 2108
Ms Nicholina Elizabeth Ralston Kuner	77 Market Street RANDWICK NSW 2031
Mr John Paul Liefeld	322 Whale Beach Road PALM BEACH NSW 2108
Oliver Johnson	Address Unknown
Mr James Frederick Waley	17 Pacific Road PALM BEACH NSW 2108
The Palm Beach & Whale Beach Association Inc	PO Box 2 PALM BEACH NSW 2108
Mrs Karen Elizabeth Chapman	14 A Pacific Road PALM BEACH NSW 2108
Karina Chapman	1 Malo Road WHALE BEACH NSW 2107
Mr Gary Clifford Timm	14 A Pacific Road PALM BEACH NSW 2108
Mr Peter McCallum	5 Pacific Road PALM BEACH NSW 2108
Mr Jeffrey Stanley Skebe	23 Norma Road PALM BEACH NSW 2108
Mr Carlton William Lamb	7 Pacific Road PALM BEACH NSW 2108
Mr Storm Seymour Jacklin	7/343 Edgecliff Road EDGECLIFF NSW 2027
Mrs Christine Heather Mackinnon	16 Norma Road PALM BEACH NSW 2108
Mr Robert Donald Mackinnon	16 Norma Road PALM BEACH NSW 2108
Mainstream Group Holdings Limited	Level 1 51-57 Pitt Street SYDNEY NSW 2000

The 21 submissions received originated from 16 different properties in the surrounding area. As a result of the re-notification of the amended plans, two new submissions were received, from people who had previously objected (numbers 5 and 11 Pacific Road). None of the original submissions were withdrawn as a result of the amendments, and as such are considered to be maintained by the objectors.

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

- Cost of works
- Non-compliance with built form controls including height of buildings development standard and clause 4.6
- Views
- Solar access
- Visual and acoustic privacy
- Landscaping
- Aims of LEP
- Zone objectives
- Locality statement
- Landslip
- Driveways
- Character, visual dominance
- Fences

- Misleading ground levels on plans
- Stormwater

The matters raised within the submissions are addressed as follows:

- **Cost of works**

Concerns were raised with that the cost of work submitted was inaccurate.

Comment:

The application includes a Cost Summary Report, filled out by a registered architect. This is in accordance with Councils requirements for development applications of this type. The total cost identified of \$1,265,000 is considered acceptable. The submissions are not supported in this regard.

- **Non-compliance with built form controls including height of buildings development standard and clause 4.6**

Concerns were raised with regard to non-compliance with various built form controls, and particularly the overall height of the development.

Comment:

These issues are assessed in detail under the relevant sections of this report. The proposal is significantly non-compliant with the height of buildings development standard under clause 4.3 of the LEP, and the building envelope control under clause D12.3 of the DCP. In summary, the extent of non-compliance proposed is not supported in the circumstances, and non-compliance with these built form controls form are included as recommended reasons for refusal.

- **Views**

Concerns were raised with respect to view loss from numbers 5 and 11 Pacific Road, and more generally from the public domain along Pacific Road.

Comment:

View sharing is assessed in detail under clause C1.3 View Sharing in this report. In summary, the proposal is not considered to maintain a reasonable sharing of views, and this is recommended reason for refusal.

- **Solar access**

Concerns were raised with regard to overshadowing of southern neighbours.

Comment:

This issue has been assessed in detail under clause C1.4 Solar Access in this report. In summary, the proposal is considered to maintain a reasonable level of solar access to the southern neighbours, given the constraints presented by the subdivision pattern and topography.

- **Visual and acoustic privacy**

Concerns were raised with respect to both visual and acoustic privacy.

Comment:

The proposal is not considered to result in any unreasonable privacy impacts. Side facing

windows are generally limited, and where they do occur will not generally create significant impacts. W-06 is north facing and off the main living / dining area on the middle level. However, this window is approximately 1.2m higher than the top of the neighbouring south facing window, and is also offset, such that privacy impacts in that direction would be limited.

The rear facing balconies are generally screened from the southern neighbours by setbacks and by the structure itself. However, the living room rear deck is located at RL84.145, which is only just above the neighbouring south facing bedroom windows at 83.89. If the application is approved, a condition would be recommended requiring a privacy screen on the northern side of this deck.

The northern neighbour also raised concerns regarding the stairwell to be located along the northern boundary. This stairwell / path, while raised in part above the existing ground levels, is considered to be a low use 'service' type path way, as is normal to have down the side of a house, which will not create significant privacy impacts.

Acoustically, the proposal is for a residential dwelling in a residential zone. It is not considered to result in any unreasonable impacts in this regard. If the application is approved, a standard condition limiting all mechanical plant to 5dBA above ambient noise levels would be recommended.

- **Landscaping**

Concerns were raised that the proposal provides inadequate landscaping, and that the proposal does not comply with the minimum requirements.

Comment:

The assessment has found that the proposal does comply with the minimum 60% landscaped area requirement under clause C1.1 of the DCP. Council's Landscape Officer has also assessed the proposal, and is satisfied with the proposed landscaping plan. The proposed landscaping is considered generally adequate in this regard.

- **Aims of LEP**

Concerns were raised that the proposal is inconsistent with the aims of the LEP.

Comment:

As discussed throughout this report, the proposal is not supported for various reasons, including non-compliance with the height of buildings development standard, and inconsistency with the desired character statement for the Palm Beach Locality. As such, the proposal is considered to be inconsistent with the aims of the LEP, and the submissions are supported in this regard.

- **Zone objectives**

Concerns were raised that the proposal is inconsistent with the zone objectives.

Comment:

The zone objectives are discussed in detail under clause 4.6 in this report. In summary, the proposal is considered to be inconsistent with the zone objectives, and this is a recommended reason for refusal.

- **Locality statement**

Concerns were raised that the proposal is inconsistent with the locality statement.

Comment:

This issue is discussed in detail under clause A4.12 Palm Beach Locality of the DCP. In summary, the proposal is considered to be inconsistent with the locality statement in a number of aspects, and this is a recommended reason for refusal.

- **Landslip**

Concerns were raised regarding potential damage to neighbouring properties as a result of vibrations during excavation.

Comment:

The geotechnical report provided with the application identifies vibrations as a hazard, and recommendations are provided within the report to move the risk of the hazard from 'unacceptable' to 'acceptable', including close monitoring during excavation and limits on peak particle velocity, or use of other tools to break rock. Should the application be approved, conditions would be recommended requiring full compliance with the recommendations of this report, and further conditions requiring pre and post construction dilapidation reporting to be carried out. Subject to these conditions, the issue is considered to be adequately addressed.

- **Driveways**

Concerns were raised with regard to the height of the driveway above ground.

Comment:

The driveway proposed has been assessed by Council's Engineers and is acceptable with regard to gradients. A raised driveway and parking structure is considered relatively normal for sites with steep topography, and the proposal is considered generally acceptable in this regard. Other concerns are discussed throughout the report with the overall height of the proposal, however, the height of the driveway is not considered to be unacceptable.

- **Character, visual dominance**

Concerns were raised with regard to the character and visual dominance of the development.

Comment:

These concerns are addressed throughout the report, and generally speaking the submissions are supported in relation to this issue. The height, bulk and scale are considered greater than acceptable, and the extent of non-compliance with the applicable built form controls is considered excessive.

- **Fences**

Concerns were raised with regard to the proposed front fence.

Comment:

This issue has been discussed in detail under clause D12.11 Fences in this report. In summary, the proposed front fence is considered acceptable in the circumstances of the site, and the submissions are not supported in this regard.

- **Misleading ground levels on plans**

Concerns were raised with regard to the ground levels shown on the plans, particularly the elevations.



Comment:

The amended plans provided by the applicant include elevations with the existing ground levels shown along the boundaries. The applicant has also provided the roof plan overlaid on the survey. Further, the applicant has provided height and envelope planes clearly showing the extent of non-compliance proposed with the height and envelope controls. This issue is considered to have been adequately addressed, and no concerns are raised with the plans in this regard.

- **Stormwater**

Concerns were raised from the two neighbouring properties to the rear regarding stormwater run off and sedimentation, both during construction and the long term impacts.

Comment:

Council's Development Engineer has assessed the proposal and is satisfied that the proposal can comply with Council's Stormwater policy. Conditions have been recommended to require the stormwater system to be designed in accordance with the policy. Further conditions will be applied to the consent in relation to silt and sediment barriers during construction, should the development be approved. Subject to these conditions, the concerns are considered to be reasonably satisfied.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application is for additions to an existing dwelling including a driveway and car space, and extended decks to the dwelling. The existing site does not have vehicular access and the proposal requires the removal of two existing trees, and without a design alternative to retain.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 Environmental Living zone, and the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D12 Palm Beach Locality</li> </ul> <p>The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees. The existing site contains natural landscape features at the rear of the site including stone outcrops and existing indigenous trees and palms that are proposed for protection. The frontage of the site currently is occupied by an existing dwelling with a small setback distance supporting contains low height vegetation only.</p> <p>The proposed development does not impact upon the natural landscape features and existing trees at the rear of the site. Existing</p>

Internal Referral Body	Comments
	<p>vegetation, exempt species by either height or type, are proposed for removal to accommodate the works. A Landscape Plan is provided that proposes retention and enhancement of the lower slopes of the site retaining the natural attributes typical of the E4 Environmental Living zone outcomes, and additionally provides landscape treatments to the frontage and side boundaries to comply with the requirements of D12.2 Scenic protection - General, where the proposed landscaping does not impact upon the natural environment and waterway when viewed from the street.</p> <p>Landscape Referral raise no objections to the proposal, subject to conditions of consent.</p>
NECC (Development Engineering)	No objections 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 (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 1073809S).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	51

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

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

#### Ausgrid

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

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

#### Comment:

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

### **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 site falls within the coastal use area identified on the map. The proposal does not unreasonably impact on any of the matters for consideration in paragraph (a) above, noting that view loss caused by the proposal is not of the 'foreshore'. The proposal is therefore considered to be designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a). However, with regard to paragraph (c), and as assessed throughout this report, the proposal is considered to be of a bulk, scale and size that is inappropriate in its context, in relation to the surrounding built environment.

As such, it is considered that the application does not 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 site is situated well away from the coastline, and is not subject to any coastal hazards. The proposal is not likely to cause any increased risks in this regard.

**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?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m (10m variation)	9.997m	17.6%(over 8.5m)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No

Clause	Compliance with Requirements
4.6 Exceptions to development standards	No
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

#### Detailed Assessment

#### **Zone E4 Environmental Living**

See discussion under clause 4.6.

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

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.997m
Percentage variation to requirement:	17.6%

##### 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 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 steepness of the site, and areas of non-compliance with the height limit relating to steeper drops in the landform below.
- The development will appear as two storeys when viewed from the street, with the appearance of full compliance with the height of buildings development standard.
- Non-compliant elements of the proposal are not visible from any public vantage point within 150m-200m from the site. The dwelling is not readily visible from properties to the east due to the topography. The minor non-compliance will not be readily distinguishable to any casual observer.
- The portions of the building that project above the height limit are minor elements that do not create any significant impacts in terms of view loss, overshadowing, or privacy.
- The proposal is consistent with the zone objectives.

#### Comment

The arguments presented above are not generally concurred with. The site is more than 30% in slope, and therefore could potentially qualify under clause 4.3(2D) for a height limit of up to 10m. However, the proposal is not considered to achieve the other requirements of clause 4.3(2D), in that the portions of the building protruding above the 8.5m limit are not 'minor', the objectives of clause 4.3 are not considered to be achieved (see assessment below), and the building does not adequately step down the slope. As such, the proposal does not qualify for a 10m height limit under clause 4.3(2D).

It is true that the development will appear as two storeys from the street, and that there are no public vantage points within close proximity with views towards the rear of the subject site. However, the site is at the northern end of a natural amphitheatre, and is in a highly visible location from properties to the south along Pacific Road, and further to the south east along Norma Road. The subject site is considered to be in a visually prominent location, and the proposal will be significantly and noticeably higher than existing surrounding development.

As discussed in this report, the proposal will have a significant impact on views from both the public domain on Pacific Road, and from number 5 Pacific Road to the south, which would lose the view of



Barrenjoey Lighthouse, partially as a result of elements above the 8.5m height limit. The proposal is considered to comply with the requirements for solar access and privacy in the DCP, albeit the non-compliance with the height of buildings development standard increases shading across multiple southern neighbours in the afternoons.

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).

**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 E4 Environmental Living 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:

As discussed under clause A4.12 Palm Beach Locality of the DCP in this report, the proposal is considered to be inconsistent with a number of aspects of the locality statement. A significant portion of the proposal is three storeys in height, and the proposal overall is not considered to minimise bulk and scale of development, given the level of proposed non-compliance with the height of buildings development standard, and the building envelope. Nor is it considered to adequately integrate with the landform.

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

Comment:

The proposal will be significantly higher than its immediate neighbours, and all neighbours in the visual catchment to the south east. This is a result of significant non-compliance with the height of

buildings development standard, and the building envelope control, and is to an extent that the overall development is not considered to be compatible with the height and scale of surrounding and nearby development.

*c) to minimise any overshadowing of neighbouring properties,*

Comment:

The proposal complies with the minimum requirements for solar access in the DCP, although the extent of non-compliance with the relevant built form controls does not necessarily minimise overshadowing of neighbouring properties.

*d) to allow for the reasonable sharing of views,*

Comment:

As discussed under clause C1.3 View Sharing in this report, the proposal is not considered to allow for a reasonable sharing of views. This is partially as a result of the proposed height non-compliance.

*e) to encourage buildings that are designed to respond sensitively to the natural topography,*

Comment:

The proposal includes one major 'step' from the upper level to the middle level, but otherwise the responsiveness to the topography is limited.

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

Comment:

The proposal will not significantly impact on any heritage areas or items, nor on the natural environment.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of Clause 4.3 – 'Height of buildings'.

## Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

The proposal is not considered to be 'low-impact' given its given its height above surrounding development, and resulting visual impacts.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

The proposed height of the development is considered to have significant visual impacts given its height above surrounding development, including unreasonable impacts on views

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:

As discussed throughout this report, the scale of the development is not considered to be low, and the proposal does not adequately integrate with the landform.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

N/A

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the E4 Environmental Living zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard can not be assumed.

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	4m (carport roof)	38.4%	Yes (variation permitted)
Rear building line	6.5m	16.836m	N/A	Yes
Side building line	2.5m	S 2.5m	N/A	Yes
	1m	N 1.09m	N/A	Yes
Building envelope	3.5m	S Outside envelope up to	N/A	No

		3.4m		
	3.5m	N Outside envelope up to 3.5m	N/A	No
Landscaped area	60%	60.57%	N/A	Yes

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	No
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	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	No	No
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	No
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.11 Fences - General	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

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

The proposal is not considered to achieve the desired character of the Palm Beach Locality. In particular, the proposal is considered inconsistent with the following aspects of the locality statement:

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

Comment: The proposed new dwelling is in part three storeys. A large proportion of the upper level, occupied by the proposed master bedroom, ensuite, walk-in-robe, and carport will be three storeys in height. This element of the proposal is non-compliant with the 8.5m height limit (see discussion under clause 4.6 in this report), and is substantially non-compliant with the side boundary envelope control, with the majority of the three storey high portion of the upper level being outside of the envelope. This indicates a development which has not adequately responded to the landform.

- *Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form.*

Comment: As mentioned above, the proposal is substantially outside the side boundary envelope control, and is also non-compliant with the height of buildings control. Due to the slope of the land, the proposal will remain generally below the tree canopy level. However, the proposal overall will be substantially higher than its immediate neighbours to the north and south, and is not considered to adequately respect the horizontal massing of the existing built form in the vicinity. The site is in a visually prominent location in a natural amphitheatre, and it is considered that the bulk and scale of the development is inconsistent with existing development in the visual catchment.

- *Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance.*

Comment: The proposal is stepped at the upper level, but not at the two lower levels. This results in substantial non-compliances with the height of buildings development standard, and side boundary envelope control. The level of stepping proposed in the development is considered inadequate to sufficiently integrate with the landform.

### C1.3 View Sharing

#### Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

#### 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:

The two properties who made specific objections to view loss from their properties are numbers 5 and 11 Pacific Road, both to the south of the subject site. There were other more general view loss objections, including a number objecting to view loss from the public road.

#### 5 Pacific

The view impacted is a highly valuable view including the ocean, headlands, and Barrenjoey Lighthouse to the north. Barrenjoey Lighthouse is considered iconic in the context of these principles. The development will block the view of the lighthouse.

**View from number 5 of Barrenjoey Lighthouse (from side facing kitchen/living room window)**



#### 11 Pacific

The view impacted from number 11 is also highly valuable, taking in wide headland and ocean views. However, Barrenjoey Lighthouse is not visible from number 11. The development will block a small amount of headland and ocean view to the north.

#### **View from living room deck of number 11**





## 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 2:5 Pacific

The views to the lighthouse are obtained across multiple side boundaries, from side (north) facing windows from the open plan kitchen/living area, from a standing position. The lighthouse would also be visible from the rear (east) facing windows, but is obscured by an existing tree on another lot.

11 Pacific

The views affected are obtained from the main living area and attached deck, and the upper level bedroom. They are across the side boundary, from both sitting and standing positions.

**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 3:5 Pacific

The extent of impact would be considered generally minor, if it were not for the 'iconic' feature of the view being impacted. The wide ocean and headland views will remain mostly unaffected. However, given that the development will block the lighthouse (and part of the headland below) from the main living area, the impact is assessed as 'moderate'.

11 Pacific

The proposal will not have a significant impact on the whole view available from any point in the dwelling. The wide ocean and headland views will remain generally unaffected. As such, the impact is assessed as 'negligible'.

**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 significant non-compliances with the height of buildings development standard, and the side boundary envelope control in the DCP. These issues do not significantly impact on views from number 11, which is impacted more by the rear setback of the proposal. The height of the building does however impact on the view from number 5. The part of the

proposal that impacts on the view of the light house is the rear of the middle and upper levels. This includes the rear south eastern corner of the kitchen, and balustrade above (on the master bedroom deck) which are above the 8.5m height limit, and significantly outside the building envelope. It is acknowledged that there is a steep slope on the site, however, as discussed under clause 4.6 of the LEP in this report, the proposal is not considered to meet the requirements to allow for a variation of up to 10m, partly as a result of the impacts on views. The upper level of the proposal is generally above the side boundary envelope. Given these factors, and the iconic nature of the view impacted, the proposal is not considered to maintain a reasonable sharing of views amongst dwellings.

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

Comment:

The proposal will block a significant amount of ocean views from Pacific Road. The proposed carport is open, and will allow some ocean views to be maintained through that area of the development. However, the rest of the upper level, which is partly above both the 8.5m height limit, and generally significantly above the side boundary envelope, will still block a significant ocean view. The applicant has argued that there is no footpath along Pacific Road, and that therefore the impact on views from the public domain is limited. However, as evidenced by the number of submissions that raised this as an issue, it is considered that there is significant community concern in this regard. As such, the proposal is not considered to achieve this objective.

- *Canopy trees take priority over views.*

Comment:

No canopy trees are proposed for removal to gain views.

Having regard to the above assessment, it is concluded that the proposed development is not 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 not supported, in this particular circumstance.

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

The control requires that *"The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st"*.

The proposal partially complies with the control, in that the southern part of the main private open space of the immediate southern neighbour (number 11), achieves 3 hours of sunlight to their main private open space (being their rear deck off the main living room). The northern part of this deck is shaded by 12pm. This deck is also self shaded by a privacy / shade awning on the dwelling at number 11, so that by 12pm the deck will largely be in shadow, and therefore not generally receive the full 3 hours of sunlight required by the control.

The rear yard area, which although not the main private open space, and not highly useable due to the slope and lack of direct access from living areas of the dwelling, does receive the required amount of solar access up to 12pm.



Given these considerations, a merit assessment against the objectives is carried out below.

#### Merit consideration

With regard to the consideration for a variation, the proposed development is considered against the underlying outcomes of the control as follows:

- *Residential development is sited and designed to maximise solar access during mid-winter.*

#### Comment:

The proposal is non-compliant with the height and building envelope controls, as discussed throughout this report. Due to the topography and east/west orientation of the site and neighbours, the southern neighbour is highly vulnerable to overshadowing. The proposed development, although significantly breaching the boundary envelope and 8.5m height limit on the southern side, is setback between 2.5m - 5.64m. These are significant side setbacks on a site that is 15m wide. Given that the development maintains partially compliant solar access to the southern neighbour, despite the high vulnerability and topographical difficulties, the proposal is considered on balance to maintain a reasonable level of solar access.

- *A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development.*

#### Comment:

As discussed above, the proposal is considered to maintain a reasonable level of solar access to the southern neighbour, given the vulnerability of the neighbour due to the subdivision pattern and topography, and despite the proposed non-compliance to the height of buildings development standard, and side boundary envelope control.

- *Reduce usage and/dependence for artificial lighting.*

#### Comment:

The proposal is unlikely to cause significantly greater usage or dependence on artificial lighting.

Given the above considerations, the proposal is considered to maintain a reasonable level of solar access to the south, and this is not a recommended reason for refusal.

### **D12.5 Front building line**

The minimum front building line is 6.5m for the site. The proposed dwelling is generally compliant with this requirement. However, the carport roof will be 4m from the front boundary. The control states that "Where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable". Given the steepness of the site, the proposal satisfies this variation, and the proposal is considered to be compliant with the control as a result.

### **D12.8 Building envelope**

The application proposes major non-compliances with the side boundary envelope on both sides, being

up to 3.4m outside the envelope on the southern side, and 3.5m on the northern side.

Clause D12.8 of P21 DCP states that the building envelope may be varied when the slope of the exceeds 30%. This variation is applicable in relation to the subject site, and a merit assessment against the outcomes of the clause is carried out below.

#### Merit consideration

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

#### Comment:

This matter has been discussed within section A4.12 of this report. In summary, the proposal is not considered to achieve the desired future character of the locality, due to the overall bulk and scale of the development. A substantial portion of the new dwelling is three storeys in height (rather than the two required by the locality statement). The proposed non-compliances with the building envelope control, and height of buildings development standard, are considered excessive, and will cause the development to be unreasonably larger in scale than existing development in the area. Further, the proposal does provide adequate stepping to sufficiently integrate with the landscape. As such, the proposal is not considered to achieve this outcome.

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

#### Comment:

The proposal will have a significant impact on views from Pacific Road, and will take away a substantial amount of ocean views from the public domain. This view loss is caused by the proposed upper level, which is largely above the building envelope on both sides, and also substantially higher than the 8.5m height limit. Given the view loss caused by significantly non-compliant elements, the proposal is not supported in relation to this outcome.

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

#### Comment:

The proposal is located in a natural amphitheatre created by the topography mainly to the south and south east, and as a result is in a visually prominent location. It will be significantly larger in bulk, scale and height than surrounding neighbouring buildings, and the amount of stepping proposed does not adequately respond to the steep topography, to minimise non-compliance with the building envelope control.

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

#### Comment:

As discussed above, the bulk and scale of the development is considered excessive, and the extent of non-compliance with the building envelope is a symptom of this. The majority of the upper level master bedroom is outside the building envelope, and the extent of non-compliance proposed is not supported. The dwelling will be substantially larger in scale than existing surrounding development, and located as it is in a visually prominent area, will appear out of place compared to the scale of neighbouring buildings.



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

Comment:

This matter has been addressed in more detail within the report (refer to Clause C1.3 View Sharing under P21DCP). In summary, the proposal will cause a significant loss of the existing available views and vistas from the public road, and will also impact on the views of neighbours. Given the extent of non-compliance proposed with the building envelope, this view loss is not considered reasonable in the circumstances.

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

Comment:

The proposed development will not result in any unreasonable privacy impacts. As discussed under clause C1.4 Solar Access in this report, the proposal is considered, on balance, to maintain a reasonable level of solar access despite the proposed non-compliance.

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

Comment:

No concerns are raised in relation to this outcome. Council's Landscape officer has assessed the proposal and is satisfied with the vegetation to be retained, and the proposed landscape plan.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **D12.11 Fences - General**

### Description of non-compliance

The proposed front fence is up to 1.7m high at the front boundary, and up to 2.1m high adjacent to the driveway just behind the front boundary (at the top of the stair). The control requires a maximum height of 1m for front fences.

### Merit consideration

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

Comment:

As discussed in this report, the proposal is considered inconsistent with the desired future character as expressed in the locality statement. However, this is not as a result of the proposed front fencing. The proposed front fence, while higher than the maximum 1m allowed by the control, will be of a generally low height compared to the street level, due to the steep slope of the land. The top of the fence, at approximate RL87.69, will generally be marginally lower than the RLs at the southern edge of the bitumen at the front of the site (between RL88.14 and RL87.49). It will not have any significant adverse impacts on the public domain or streetscape in this regard.

- *To ensure fences compliment and conserve the visual character of the street and neighbourhood*

Comment:

As discussed above, the fence will be low compared to the height of the road, and will have no significant negative impacts on the visual character of the street or neighbourhood.

- *To define the boundaries and edges between public and private land and between areas of different function.*

Comment:

The fence achieves this outcome.

- *To contribute positively to the public domain.*

Comment:

The fence is generally lower than the level of the road, and will not have any significant negative impacts on the public domain. The materials chosen are

- *An open streetscape that allows casual surveillance of the street.*

Comment:

The height of the fence will enable casual surveillance of the street frontage, due to the slope of the land.

- *Fences, where provided, are suitably screened from view from a public place.*

Comment:

The topography means that the fence will be located significantly lower than the public road, and will have no significant impacts in this regard.

- *Safe sight distances and clear view of the street (including to and from driveways) for motorists and pedestrians.*

Comment:

The proposed fence will not impact on sight distances for vehicles exiting the driveway.

- *To ensure heritage significance is protected and enhanced.*

Comment:

No heritage items will be impacted upon by the fence.

- *To ensure an open view to and from the waterway is maintained.*

Comment:

The fence will not affect views to the ocean.

- *An area of private open space is provided for properties that front the Pittwater Waterway.*

Comment:

N/A

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

with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2019**

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

A monetary contribution of \$12,650 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,265,000.

### **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, 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 Pittwater Local Environment 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.

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 DA2020/1136 for the Demolition works and construction of a dwelling house on land at Lot 404 DP 19651, 13 Pacific Road, PALM BEACH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E4 Environmental Living 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 is inconsistent with the provisions of Clause 4.3 Height of buildings 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 is inconsistent with the provisions of Clause 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014.
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 A4.12 Palm Beach Locality of the Pittwater 21 Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.3 View Sharing of the Pittwater 21 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 D12.8 Building envelope of the Pittwater 21 Development Control Plan.







Ref: 2025  
Date: 01.09.20

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## ANNEXURE A: CLAUSE 4.6 VARIATION – BUILDING HEIGHT

ADDRESS: 13 Pacific Road, Palm Beach

This Clause 4.6 Variation Request is to accompany a development application to Northern Beach Council seeking consent for the demolition of an existing dwelling and construction of a new dwelling at No. 13 Pacific Road, Palm Beach

The remaining parts of this variation request identify the extent of the proposed non-compliance and responds to the statutory requirements of Clause 4.6 of Pittwater 2014 detailing that the application of flexibility to the development standard in this instance appropriate.

**1. What is the name of the environmental planning instrument that applies to the land?**

Pittwater Local Environmental Plan 2014.

**2. What is the zoning of the land and what are the objectives of the zone?**

**1 Objectives of E4 – Environmental Living zone**

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

**2 Identify the Development Standard to which this Clause 4.6 Variation applies?**

Clause 4.3 of Pittwater LEP 2014 – relates to Maximum Building Height and Clause 4.3(3) identifies a maximum building height as identified on the Height of Buildings Map, which in relation to the site is 8.5m. Notwithstanding, subclause 4.3(2D) allows dwellings on particular sites, which includes the subject site, to extend to a height of 10m. The proposal relates to a minor exceedance of Clause 4.3(2D).

**3 Is the standard expressly excluded from operation of Clause 4.6**

Clause 4.3(2D) is not identified as being expressly excluded from operation of 4.6 as it is not identified at Clause 4.6(6) or (8) of the LEP.

**4 What are the objectives of the development standard?**

*Building Height objectives:*

- (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 What is the numeric value of the development standard in the environmental planning instrument?**

Clause 4.3(2) of the LEP requires a minimum building height of 8.5m at the subject site, however, pursuant to Clause 4.3(2D) that height may be varied to 10m in the following circumstances:

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the [Height of Buildings Map](#) is minor, and*
- (b) the objectives of this clause are achieved, and*
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

**6 How do the existing and proposed numeric values relate to the development standard? What is the percentage variation (between your proposal and the environmental planning instrument)?**

The existing dwelling at the site is located below the maximum building height, however, this dwelling is constructed over one level with an additional minor subfloor level. The proposal seeks to construct a dwelling at the site that achieves close to the permitted FSR whilst mediating between the street level and the natural ground level at the rear of the property. The result of which is a dwelling that is constructed over three levels and mostly complies with the 10m height requirement, albeit having a maximum height of 10.59m above ground level (existing).

As detailed above, Clause 4.3(2) requires a maximum building height of 8.5m, however, Clause 4.3(2D) allows a building height of up to 10m where amongst other things, the building footprint is located on land that slopes more than 30%.

Section AA details that over the 16.4m length of the dwelling, the land falls 6.4m which is a slope of 39% and therefore it would be reasonable to apply Clause 4.3(2D) to the site which provides a maximum building height of 10m.

Provided at Figure 1 below is an extruded height blanket which details the portions of the dwelling that project above the maximum 10m requirement, noting that these relate to small portions of the roof to the ground and first floor levels.



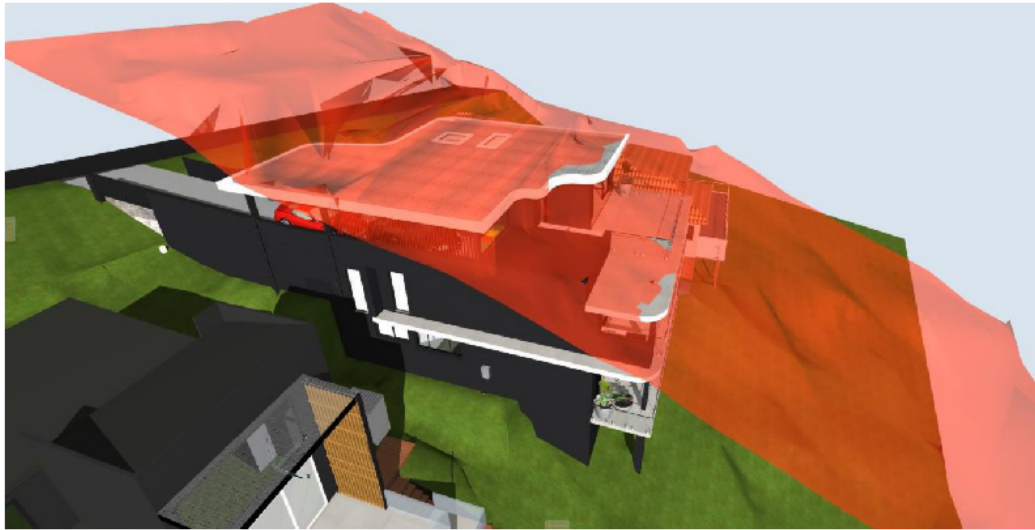


Figure 1: Height blanket detailing the extent of non-compliance with the 10m height limit

In light of the above, the proposal seeks a departure of 0.59m from the maximum permitted building height standard and a variation of 5.9% relating to the small encroaching elements identified at Figure 1 above.

**7 How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?**

The Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 provides the five part test to determine if compliance with a development standard is unreasonable or unnecessary with only one test needing to be satisfied.

*Note: These five tests are not exhaustive of the ways in which you might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. You do not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, you can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

Test 1: In our view, the proposal satisfies the first test in *Wehbe v Pittwater Council* [2007] NSWLEC 827 as the objectives of the standard are achieved notwithstanding non-compliance with the standard. Refer to discussion below relating to compliance with the objectives of the development standard.

**8 Are there sufficient environmental planning grounds to justify contravening the development standard?**

In considering whether there are sufficient environmental planning grounds to support the building height non-compliance, the following principles are relied on.

*In the recent Court decision Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ further clarified the correct approach in the consideration of clause 4.6 requests. This advice further confirms that the clause does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not.*



*As held in Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 at [39], Preston CJ confirmed (at[25]) that the test in 4.6 (4)(a)(i) does not require the consent authority to directly form the opinion of satisfaction regarding the matters specified. Rather, it needs to do so only indirectly in forming its opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated.*

*By contrast, the test in cl4.6(4)(a)(ii) requires that the consent authority must be directly satisfied about the matter in that clause (at[26]); namely that the 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.*

With regard to the above, it is our view that there are sufficient environmental planning grounds to support the proposed non-compliance for the following reasons:

1. The dwelling is located on a steep sloping site that has a fall of 39% over the primary portion of the building footprint. The non-compliant elements primarily relate to isolated parts of the dwelling where the natural ground level below falls more dramatically;
2. When viewed from the street, the dwelling presents as a modest 2 storey form that sits approximately 4.2m below the maximum building height at the site and therefore appears fully compliant with the maximum height requirement;
3. The non-compliant elements of the dwelling are not visible from the street or any other public vantage point within 150m – 200m from the site. Due to the natural topography of the land, the dwelling is not readily visible from the properties to the east of the site and is only visible from distant portions of Whale Beach Road. Given the generally obscured nature of the proposal from any public area and the minor nature of the non-compliances, these portions of the dwelling are non-readily distinguishable to casual observer;
4. The portions of the dwelling that project above the 10m height limit are minor elements of the ground and first floor roofs and cannot be attributed to any significant impacts in terms of view loss, overshadowing or privacy. Such impacts are discussed in detail in the accompanying Statement of Environmental Effects where it is concluded that impacts arising from shadow, privacy and views loss are appropriate;

In addition to the above, the proposal is in the public interest because it is consistent with the objectives of the standard and the zone in which the development is carried out. Provided below is an assessment of the proposal with respect to the objectives of the Building Height requirement and the E4 – Environmental Living zone.

The proposal is consistent with the objectives Clause 4.3 Building Height as detailed below.

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

**Response:** The dwelling is largely compliant with the maximum building height limit which allows a dwelling to extend up to 10m. The extent the non-compliance is minor and not readily perceptible from any public vantage points. Accordingly, the scale of the dwelling is largely consistent with the desired form of dwellings constructed on sloping sites.

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

**Response:** The dwelling is only visible from the street frontage and from distant vantage points at the foreshore and along Whale Beach Road. When viewed from the street front, the dwelling is located well below the maximum height limit and appears to sit well within a scale and form reasonably expected at the site.

Other than from Pacific Road, the surrounding dwellings are only visible from distant vantage points where the extent of non-compliance proposed is not readily perceptible. The dwelling is constructed over three levels and is consistent with a number of other dwellings that contain three levels and tier down steep sloping sites. Accordingly, the proposal is contextually appropriate and not inconsistent with the established height and scale of surrounding and nearby dwellings.

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

**Response:** The submitted Statement of Environmental Effects details that the site is located on an east to west axis and the adjoining southern dwelling at No. 11 Pacific Road is vulnerable to overshadowing. Notwithstanding, it is established that the proposal maintains solar access to the open space areas of the adjoining dwelling and the proposed development does not give rise to any significant loss of sunlight to the east facing living room windows of this adjoining dwelling.

It is therefore concluded that overshadowing impacts are acceptable and given the modest variation proposed, the height breaches cannot be attributed to any measurable shadow impacts beyond that of a compliant scheme.

*Objective (d) to allow for the reasonable sharing of views,*

**Response:** View impacts are considered in the submitted Statement of Environmental Effects and are concluded to be negligible with minor impacts relating to oblique views from windows that overlook side boundaries towards the subject site. Given the expansive panoramic views maintained to the surrounding properties, view impacts are not significant and are consistent with the view sharing principles of *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*. Whilst the view impacts from the proposed development are acceptable it is also noted that the minor non-compliant elements are not in any way attributed to any view loss.

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

**Response:** The proposed dwelling has been designed and sited at the property to both minimise excavation as well as allow an improved access relationship from the street for pedestrians and vehicles. The result are the proposed levels which generally comply with the height requirements on a challenging and steep sloping property. The minor non-compliant portions proposed could be resolved by increasing excavation at the site, however, this would promote additional and unnecessary earth works as well as being a less favourable outcome in terms of access from the street to the dwelling.

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

**Response:** As noted above, the dwelling when viewed from the street frontage is fully compliant and the only non-compliant elements of the dwelling are visible from a western aspect looking towards the eastern façade of the dwelling. Any such aspects are distant and the degree of non-compliance would not be readily discernible from any public vantage point. Accordingly, from the distant foreshore the non-compliant elements are not perceptible to the casual observer and as such there are no visual impacts on the natural environment envisaged.

The site is not located in the vicinity of a heritage item.

The proposal is consistent with the objectives of the E4 – Environmental Living zone detailed in the table below.

Compliance with the objectives of the E3 – Environmental Living Zone	
Objective	Response
<ul style="list-style-type: none"> <li>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</li> </ul>	The site does not have any special scientific values according to the LEP mapping. In any event, the dwelling is designed to minimise excavation and impacts on the natural land forms at the site. Despite the minor height exceedance, this objective is satisfied by the proposed sensitively sited dwelling.
<ul style="list-style-type: none"> <li>To ensure that residential development does not have an adverse effect on those values.</li> </ul>	As above, the proposed dwelling will not impact on sensitive ecological or aesthetic values given the careful siting the dwelling on the sloping lot as well as it not be readily visible from any public vantage points.
<ul style="list-style-type: none"> <li>To provide for residential development of a low density and scale integrated with the landform and landscape.</li> </ul>	The dwelling is located at the site to minimise disturbance on the natural land form and despite the height exceedance the design philosophy of the proposal is responsive to the landscape and landform.
<ul style="list-style-type: none"> <li>To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.</li> </ul>	No impacts on riparian vegetation of the foreshore.

**9 Is there any other relevant information to be considered in order to justify varying the development standard?**

As noted above, the proposed dwelling results in a departure from the 10m building height requirement that applies to the site. The non-compliance is attributed to the steep sloping nature of the site and the design approach which minimises excavation due to the geotechnical status of the area. The dwelling appears compliant with the building height from the street frontage and the non-compliant portions of the dwelling are not readily visible from any public vantage point to the extent that they are indistinguishable from a fully compliant form.

As established in this variation request and the submitted Statement of Environmental Effects, the proposed dwelling will not give rise to any material impacts in terms of view loss, privacy and overshadowing.

Clause 4.6 Variation Request  
Building Height – 13 Pacific Road, Palm Beach

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The proposal is consistent with the objectives of the zone and the building height development standards. In satisfaction of the statutory test of Clause 4.6 of Pittwater LEP 2014 it is requested that Council support the variation as proposed.

## 4.0 NON PUBLIC MEETING ITEMS

ITEM 4.1	DA2020/1425 - 265 CONDAMINE STREET & 1 KENNETH ROAD, MANLY VALE - DEMOLITION WORKS AND CONSTRUCTION OF A SHOP TOP HOUSING DEVELOPMENT
AUTHORISING MANAGER	Anna Williams
TRIM FILE REF	2021/296773
ATTACHMENTS	<ol style="list-style-type: none"><li>1 Assessment Report</li><li>2 Site Plan &amp; Elevations</li><li>3 Clause 4.6</li><li>4 DSAP Report</li></ol>

### 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. DA2020/1425 for demolition works and construction of a shop top housing development at Lot 3 Sec G DP 975160 & Lot C DP 39108, 265 Condamine Street & 1 Kenneth Road, Manly Vale subject to the reasons set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1425
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<b>Responsible Officer:</b>	Rebecca Englund
<b>Land to be developed (Address):</b>	Lot C DP 39108, 1 Kenneth Road MANLY NSW 2095 Lot 3 DP 975160, 265 Condamine Street MANLY VALE NSW 2093
<b>Proposed Development:</b>	Demolition works and construction of a shop top housing development
<b>Zoning:</b>	Warringah LEP2011 - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Co-Ordinated Projects Pty Limited
<b>Applicant:</b>	Co-Ordinated Projects Pty Limited

<b>Application Lodged:</b>	12/11/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	19/03/2021 to 02/04/2021
<b>Advertised:</b>	19/03/2021
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 39%
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 12,057,675.00
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### EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of DA2020/1425 for the demolition of existing buildings and the construction of a shop top housing development, comprising 31 apartments, 3 retail tenancies and basement car parking at 265 Condamine Street and 1 Kenneth Road, Manly Vale (the site).

The proposed development is reliant upon a variation to the maximum building height development standard prescribed by clause 4.3 of *Warringah Local Environmental Plan 2011* (WLEP 2011), with a maximum variation of 39%. The variation is not limited in height or area, with the entire upper floor protruding above the 11m height plane by up to 4.3m. The applicant's written request to vary this standard has not satisfactorily demonstrated that compliance with the standard is unreasonable or

unnecessary, nor that there are sufficient environmental planning grounds to warrant the variation proposed, and the consent authority cannot be satisfied of the relevant matters of clause 4.6 of WLEP 2011.

The proposal is contrary to a number of the design principles of *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65), and the requirements and objectives of the *Apartment Design Guide* (ADG), WLEP 2011 and *Warringah Development Control Plan 2011* (WDCP 2011), with specific concerns regarding solar access, spatial separation/setbacks, bulk and scale, and general amenity. Further concerns are also raised with regard to potential contamination, with inconsistency with the relevant provisions of *State Environmental Planning Policy No. 55 - Remediation of Land* (SEPP 55).

As the application relates to a four-storey shop top housing development that is subject to the provisions of SEPP 65 and involves a variation to the building height development standard greater than 10%, the application is referred to the Northern Beaches Local Planning Panel for determination with a recommendation of refusal.

## PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the demolition of all structures and the construction of a four storey shop top housing development, comprising:

- 11 x one bedroom apartments
- 19 x two bedroom apartments
- 1 x three bedroom apartment
- 3 x retail tenancies (229m<sup>2</sup> retail GLFA)
- 38 x residential car spaces
- 7 x residential visitor car spaces
- 11 x retail car spaces
- 42 x bicycle spaces
- residential storage cages
- residential roof top communal open space

Note: Whilst the application seeks consent for demolition of existing structures, it is apparent that all existing structures have already been demolished.

## ASSESSMENT INTRODUCTION

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

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

- determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## **SUMMARY OF ASSESSMENT ISSUES**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Local Environmental Plan 2011 - Zone B2 Local Centre  
 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 - B10 Merit assessment of rear boundary setbacks  
 Warringah Development Control Plan - C2 Traffic, Access and Safety  
 Warringah Development Control Plan - C9 Waste Management  
 Warringah Development Control Plan - D2 Private Open Space  
 Warringah Development Control Plan - D6 Access to Sunlight  
 Warringah Development Control Plan - D8 Privacy  
 Warringah Development Control Plan - D9 Building Bulk  
 Warringah Development Control Plan - D18 Accessibility and Adaptability  
 Warringah Development Control Plan - F1 Local and Neighbourhood Centres

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot C DP 39108 , 1 Kenneth Road MANLY NSW 2095 Lot 3 DP 975160 , 265 Condamine Street MANLY VALE NSW 2093
<b>Detailed Site Description:</b>	<p>When consolidated, the site will be irregular in shape with a 15.262m wide frontage to Condamine Street to the east, a 19.2m wide frontage to Kenneth Road to the north, a maximum east-west depth of 63.535m, a maximum north-south depth of 45.64m and a total area of 1561m<sup>2</sup>. The site experiences a fall from Kenneth Road (north) down to the southern boundary of approximately 2.5m (5%) and a fall from the western boundary down to Condamine Street (east) of approximately 6m (9%).</p> <p>The site previously contained one and two storey commercial and wholesale premises that were in a state of disrepair, and had been vacated for a number of years. These structures have now been demolished. Vehicular and pedestrian access is available from both Condamine Street and Kenneth Road.</p> <p>Condamine Street is a seven lane classified road, with bus lanes and intermittent parking restrictions on both sides of the street. The Condamine Street road reserve immediately adjacent to the site comprises a narrow footpath, with no street trees or overhead infrastructure. Kenneth Road is a three lane local road, that lacks formal</p>

kerb and guttering for the majority of the frontage of the site. Traffic lights control the intersection of Condamine Street and Kenneth Road, with signalised pedestrian crossings on the western, northern and eastern sides of the intersection.

The site is surrounded by a variety of different land uses and buildings of varied age and character, with a number of recent development approvals under construction or yet to be acted upon. Low density residential development is located immediately to the north of the site, on the opposite side of Kenneth Road.

Map:



## SITE HISTORY

On 5 May 2020, a prelodgement meeting was held with regards to a four storey shop top housing development comprising 37 residential apartments and 2 retail tenancies. The prelodgement minutes advised:

*The proposal has a number of substantial non-compliances and critical design issues that will not enable Council to support the proposal as presented as it represents an overdevelopment of the site. The significant issues relates to solar access to the common open space and the lower level apartments and in turn issues with height exceedance and setbacks. In addition, insufficient retail space has been provided and a redesign of the ground level is required to address this issue and in turn issues relating to building entry and street setbacks.*

On 12 November 2020, the subject development application was lodged with Council. The application initially sought consent for 36 units with off-street parking for 59 vehicles.

On 17 December 2020, the application was put before the Design and Sustainability Advisory Panel (DSAP) for review. Whilst the full suite of commentry is provided further in this report, the DSAP concluded:



*The Panel does not support the proposal in its current form.  
A complete re-design is required to provide adequate amenity and meet the objectives of the ADG.  
A benchmark complying scheme should be prepared to demonstrate how any non complying proposal would be better in relation to ADG objectives.  
The Panel notes the extensive legal precedents provided in the SEE in relation to the s4.6 application, but does not consider these a justification for the low amenity.*

On 28 January 2021, the assessing officer met with the applicant to discuss concerns with the proposal. The applicant requested an opportunity to address the concerns raised by DSAP and any matters from Council.

On 2 February 2021, additional information was requested to address concerns relating to:

- Building height non-compliance
- Setbacks to adjoining sites
- Residential amenity, specifically non-compliance with a number of ADG criteria
- Limited extent of retail floor space
- Traffic and parking
- Stormwater management
- Insufficient information

On 8 March 2021, additional information was provided, as follows:

- Amended architectural drawings indicating a reduction in density from 36 apartments to 31 apartments, an increase in retail GLFA and other refinements
- Amended clause 4.6 submission
- Amended BASIX Certificate
- Amended stormwater management plans
- Solar access diagrams
- Waste management plan

On 6 April 2021, the assessing officer met with the applicant to discuss ongoing concerns with the proposal.

On 7 April 2021, the applicant was advised in writing of Council's ongoing concerns and was provided with an opportunity to withdraw the application. The concerns raised include:

- Building height non-compliance
- Setbacks to adjoining sites
- Residential amenity, specifically non-compliance with a number of ADG criteria
- Traffic and parking
- Insufficient information

On 12 April 2021, the applicant advised that they did not wish to withdraw the application.

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

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



Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. As discussed with regard to SEPP 55, the application has not satisfactorily demonstrated that there is an acceptable level of risk with regard to potential contamination.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested and submitted.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter can be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the</p>

Section 4.15 Matters for Consideration'	Comments
on the natural and built environment and social and economic impacts in the locality	Warringah Development Control Plan section in this report.  (ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.  (iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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	One submission received - 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 requirements of WLEP 2011, WDCP 2011 and SEPP 65 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 19/03/2021 to 02/04/2021 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 1 submission/s from:

Name:	Address:
Phillip Fagan	6 Pitt Street MANLY VALE NSW 2093

The concerns raised in the submission received are addressed, as follows:

- **Building height**  
The submission received raises concerns with regard to the non-compliant height of the

proposal and resultant overshadowing of the property to the south-west at 6 Pitt Street, Manly Vale. The application indicated that the proposal will result in additional overshadowing of this property at 9am in mid-winter. The applicant has not demonstrated that this impact is reasonable in circumstances where the impact is likely attributable to a portion of the development that protrudes above the height plane.

The non-compliant height of the development is considered to warrant the refusal of the subject application.

- **Precedence**

The submission raises concern regarding the precedence that would be established if this development was to be approved. Each individual application, and each clause 4.6 request for variation in particular, is considered on its own merits and supporting a height non-compliance in relation to one application does not create an automatic entitlement for the next.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported, with conditions.</b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate stage.</p>
Environmental Health (Contaminated Lands)	<p><b>Not Supported.</b></p> <p>Application is for demolition works and construction of a shop top housing development.</p> <p>The applicant has provided a Preliminary Site Contamination Investigation by Alliance Geotechnical Pty Ltd dated 28 August 2020 (reference: 11416-ER-1-1 Rev 2).</p> <p>The report concludes the following:</p> <p><i>AG consider that soil contamination is likely to be present onsite given long-term historical use of the site for commercial-light industrial purposes. Possible groundwater contamination is also likely due possible use of solvent, inks and dyes, and PFAS containing compounds.</i></p> <p>And Recommends:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>· A search of the SafeWork NSW dangerous goods database and Council records pertaining to relevant development approvals associated with historical commercial-light industrial activities.</li> <li>· If not yet conducted, a Hazardous Materials Survey (HMS) should be completed by a suitably qualified and experienced consultant prior to commencement of any demolition works to identify any hazardous materials that may be present within existing structures.</li> <li>· A Detailed Site Investigation (DSI) should be completed post-demolition to identify possible risks posed to end users of the site from any contamination that may be present. This investigation should include a program of soil sampling and groundwater assessment, and depending on findings, potential soil gas (vapour). The finding of this investigation can be utilised to derive a method of management should any risk to end users be identified.</li> <li>· AG recommends that (if required) the HMS can be carried out post-DA approval, prior to demolition, and that the DSI be carried out post-DA approval and post-demolition. These items can be incorporated within any development consent conditions, to be executed prior to construction stage. Due to current access constraints associated with partial basement and building structures at the site, the collection of soil and groundwater data at pertinent locations is likely to be impeded by these current constraints. Demolition of existing structures prior to detailed investigation will aid characterisation of both soil and groundwater, and any subsequent contaminated land management (CLM) decision making required.</li> </ul> <p>The Preliminary site Investigation has not undertaken a SafeWork NSW dangerous goods database and Council records search. This is an integral component of the Preliminary site Investigation and as per NSW EPA Guidelines (<i>The Guidelines for Consultants reporting on contaminated Land: Contaminated land guidelines</i>) and it also helps inform the Detailed Site Investigation and provide Council with better information if the site is safe or can be made safe through remediation.</p> <p>The Preliminary site Investigation has also indicated that soil contamination is likely to be present onsite given the long-term historical use of the site and that there could be possible groundwater contamination and has recommended that a Detailed Site Investigation be undertaken.</p> <p>If a Detailed Site Investigation Report is required this is typically required prior to Council proceeding with an assessment and determination of a DA. This is in order for Council to be satisfied that the land is suitable for the proposed use can be remediated. The</p>

Internal Referral Body	Comments
	<p>consultant has advised that due to access restraints from the current structure they recommend the Detailed Site Investigation be undertaken post-DA approval and post-demolition.</p> <p>Environmental Health will need to be satisfied that the site if required can be made safe through remediation. As such Environmental Health requests that the Preliminary site Investigation be updated to include SafeWork NSW dangerous goods database and Council records search and also either be prepared by, or reviewed and approved, by a certified consultant as per NSW EPA requirements.</p> <p>[Despite request during the assessment process, the information was not submitted by the applicant.]</p> <p>Environmental Health understands that the majority of the structures onsite have since been demolished, removing any access constraints that would have prevented a Detailed Site Investigation from being undertaken.</p> <p>As such Environmental Health recommends refusal pending a Detailed Site Investigation that has been prepared, or reviewed and approved, by a suitably qualified and experienced certified contaminated land consultant as per NSW EPA Contaminated Land Consultant Certification Policy. The Detailed Site Investigation is to be conducted in accordance with SEPP 55 and NSW EPA guidelines. The Detailed Site Investigation is to include SafeWork NSW dangerous goods database and Council records search.</p> <p>If the land is found to be contaminated and not suitable for the proposed development, a Remedial Action Plan (RAP) in accordance with SEPP 55 and NSW EPA guidelines will also be required for the remediation of the land. The RAP if required is to be prepared, or reviewed and approved by a suitably qualified and experienced certified contaminated land consultant as per NSW EPA Contaminated Land Consultant Certification Policy.</p>
Environmental Health (Industrial)	<p><b>Supported, with conditions.</b></p> <p>Application is for demolition works and construction of a shop top housing development.</p> <p>Shop top housing developments can pose amenity concerns for residential occupants of the building and neighbouring properties. This includes noise concerns such as noise from mechanical ventilation.</p> <p>Another concern with shop top housing is that the retail tenancies often end up being food premises. During the building design stage there tends to be little thought given to any future mechanical ventilation that might need to be installed, subsequently creating potential future noise and odour issues. Despite food premises usually being assessed via individual DAs, the planning for mechanical</p>



Internal Referral Body	Comments
	<p>ventilation generally needs to be addressed at the building approval stage.</p> <p>The applicant has provided an Acoustic Report by Wilkinson Murray Pty Limited dated 21 July 2020 (reference: Report No. 20220 Version A).</p> <p>Due to traffic noise ingress into to the apartments the report has recommended glazing as per Table 4-1 within the report for some of the apartments.</p> <p>The report also recommends the following regarding Mechanical Noise Emissions:</p> <p><i>No details of mechanical plant have been determined at this early stage of the project. Likely sources of mechanical noise from the proposed development will be the air-conditioning and ventilation plant located on the roof, basement level carpark fan ventilation shafts and possibly some pumps within the basement.</i></p> <p><i>Mechanical plant such as rooftop exhausts, air-conditioning and refrigeration associated with the development should be assessed at the time of detailed design and selection, having regard to nearby residential and commercial properties surrounding the development and the noise criteria detailed in Section 3-3.</i></p> <p><i>Any noise control measures can be incorporated into the development to ensure the acoustic amenity of nearby residences is protected. Therefore no particular difficulty is foreseen in meeting the noise emission requirements from the development.</i></p> <p>Environmental Health have no objections subject to conditions regarding further acoustic assessment of mechanical plant for the building at the detailed design phase of the development and following the installation of the plant.</p> <p>Environmental Health also recommends that the buildings design allows for adequate provisions for mechanical ventilation to be installed for the retail tenancies for any future food premises that may require mechanical ventilation.</p>
Landscape Officer	<p><b>Supported, with conditions.</b></p> <p>This application is for the demolition of existing buildings and structures, excavation for basement parking and the construction of a shop-top housing development.</p> <p>Council's Landscape Referral section have considered the application against the following documents relevant to landscape assessment:</p> <ul style="list-style-type: none"> <li>• Warringah DCP 2011</li> <li>• State Environment Planning Policy No. 65 - Design Quality of</li> </ul>

Internal Referral Body	Comments
	<p>Residential Apartment Development</p> <ul style="list-style-type: none"> <li>• The Apartment Design Guide 2015</li> </ul> <p>Landscape Plans are provided within the application and the works proposed include on-slab planters to the ground floor internal courtyard, and to the building facade facing Condamine St. At grade planting is proposed on the level 1 pedestrian and vehicle entry facing Kenneth St, alongside on-slab planters to internal courtyards and terraces facing the western boundary. On-slab planters have been proposed to level 2 terraces facing both the western boundary and internal courtyards, on level 3 facing Condamine St, and on level 4 facing both internal courtyards and Kenneth Rd.</p> <p>The landscape component of the proposal is acceptable subject to the additional vegetative privacy screening on level 4 terraces facing Kenneth Rd.</p>
NECC (Development Engineering)	<p><b>Not Supported.</b></p> <p><u>Stormwater</u> The drainage concept plans submitted at lodgement were unsatisfactory. The amended hydraulic plans are satisfactory subject to conditions. It is noted that the development proposes to connect the stormwater from the site to an existing RMS pit in Condamine St. It is considered that the application must be referred to Transport for NSW for their comments and conditions with respect to the proposal and impact upon Condamine Street.</p> <p><u>External Works</u> With respect to the driveway crossing, the levels shown do not comply with the requirements of the required Council's Normal profile and the gradient for the first 6 metres from the boundary into the basement must be at a maximum gradient of 1 in 20 (5%) with the transitions beyond this point in accordance with AS/NZS 2890.1:2004. The details on the drawings do not confirm that these gradients have been achieved in the design. Also the existing driveway crossing on Condamine St has not been amended as per the previous comments.</p> <p>Development Engineers cannot support the application due to insufficient information to address Clauses C2 of Warringah DCP.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p><b>Supported, with conditions.</b></p> <p>The proposed development generally complies with the DCP and LEP.</p> <p>The south-east corner of 265 Condamine St is affected by the Medium Flood Risk Precinct, and the 1% AEP flood extent is only just inside the boundary.</p> <p>The 1% AEP flood level is 11.1m AHD.</p> <p>The habitable floor levels are above the FPL, and there is no reduction of storage below the 1% AEP flood level.</p>

Internal Referral Body	Comments
Strategic and Place Planning (Urban Design)	<p><b>Not Supported.</b></p> <p>The proposal has not addressed the issues and apply the recommendations of the Design and Sustainability Advisory Panel (DSAP) - meeting held on 17 december 2020. In summary, The panel does not support the proposal in its current form. A complete re-design is required to provide adequate amenity and meet the objectives of the ADG. A benchmark complying scheme should be prepared to demonstrate how any non complying proposal would be better in relation to ADG objectives. The Panel notes the extensive legal precedents provided in the SEE in relation to the s4.6 application, but does not consider these a justification for the low amenity.</p> <p>1. The proposal breaches the building height of 11m on the top floor. The non-complying building bulk over the 11m height should not cast additional shadow to the neighbouring residential units (existing or approved to be constructed).  <b>Response:</b> The building height breach on the top floor is still severe where it is almost a full storey over the 11m limit. The sun access diagrams indicate that the bottom units (southern neighbour and proposed units) facing the courtyard will gain better solar access with a complying 11m high scheme. As such the top floor residential units should be deleted and replaced with a communal landscaped open space on the roof as suggested by DSAP.</p> <p>2. The proposed design incorporating seven internal courtyards is not in accordance with the Apartment Design Guide (ADG pg81) of not using courtyard as primary exposure for main living areas. A preferred solution will be to combine the smaller courtyards into bigger courtyards (12mx12m minimum) for main habitable rooms of internal units to face into.  <b>Response:</b> The internal courtyards are now consolidated into a main large courtyard where living areas face into. The smaller courtyard only opens to bedroom windows. Issue of noise nuisance and visual privacy should be addressed and minimised further. Windows to living rooms should not face each other directly across the courtyard.</p> <p>3. Solar access of 3 hours during winter solstice will be required for 70% of the units as the site is not located in a Metropolitan area.(ADG pg79) Future submissions including PLM proposal should provide comprehensive solar analysis to demonstrate internal courtyards will allow adequate sunlight access.  <b>Response:</b> The solar analysis submitted indicates that the building height breach especially the top floor will cast additional shadow into the internal courtyards facing units and neighbouring residential units (existing and future approved units).</p> <p>4. More retail spaces at ground floor should be provided for shops fronting Condamine Street to continue the existing established retail strip. As such the applicant should consider moving the entrance to residential lobbies proposed from Condamine Street to enter from the</p>

Internal Referral Body	Comments
	<p>Kenneth Road frontage. This would also consolidate all residential entry points to the same level as the central courtyard which would improve the entry experience.</p> <p><b>Response:</b> The entry to lift lobbies 1 &amp; 2 have been moved to arrive from Kenneth Road. Only lift lobby 1 is accessed from Condamine Street. Lift lobby 2 entry experience could be further improved by entering from the bigger central courtyard and converting unit C.05 into a communal room. That will minimise the long and windowless corridor effect. Further improvement to lift lobby 2 will be to relocate the front doors of residential units to not face the lift door directly.</p> <p>5. Deep soil zone could be provided on the south-western corner of the site by cutting back the basement extent to keep clear of the 6m boundary building setback area.</p> <p><b>Response:</b> Deep soil has been provided as suggested by DSAP.</p>
Traffic Engineer	<p><b>Not Supported.</b></p> <p><u>Traffic Comments on amended plans:</u></p> <p>The amended plans do not address the concerns raised in the previous comments. The issues below are considered outstanding:</p> <ul style="list-style-type: none"> <li>• Sightline to pedestrians: a 2m by 2.5m clear sight triangle shall be provided at the property line with no reliance on the adjacent property.</li> <li>• Driveway and driveway crossing gradients: The grade of the first 6m of the driveway from the property boundary into the car park, shall be a maximum of 1:20 (5%). Also, the proposed driveway crossing shall be amended to comply with the Council's driveway crossing profile.</li> <li>• Pedestrian Access: Given the location of the pedestrian entries next to the vehicular access of the adjacent properties both on Condamine Street and Kenneth Road, consideration shall be given to pedestrians' safety by the provision of a 2m separation between the pedestrian entries and the adjacent driveways at the property boundary. This could be achieved by placement of planter boxes within the property (at the property boundary into the property) for both pedestrian entries, as well as provision of set back in the southern wall at the common boundary with No.263 Condamine Street to maintain the clear sightline to the pedestrian for the vehicles exiting the driveway of 263 Condamine Street.</li> <li>• Provision of on-site services and deliveries bay: as per the previous comments.</li> </ul> <p>Given the location of the proposed driveway within less than 100m from a signalised intersection, the proposed development application should be referred to Transport for NSW for their concurrence. In view of the above, the proposal cannot be supported by transport team.</p>

Internal Referral Body	Comments
	<p><u>Earlier Comments:</u> The development proposal involves the demolition of the existing buildings and construction of a new mixed-use building comprising 2 retail shops with a combined floor area of 131m<sup>2</sup> and 36 residential apartments.</p> <p><u>Parking Provision:</u> The proposed development is served by a 2 level basement containing a total of 59 off-street car parking spaces comprising 43 resident spaces, 8 resident visitor spaces, and 8 retail spaces. In addition to the car parking provision, there are 2 motorbike spaces and 42 bicycle racks proposed throughout the basement. The proposed parking provision satisfies the DCP requirements and is considered acceptable.</p> <p><u>Traffic Impact:</u> The applicant has assessed the development as a high density residential flat building in accordance with the 'RMS Guide to Traffic Generating Developments'. Council would consider this development a medium density flat building as the assessment of high density dwellings is based on units that are greater than 6 storey. This will result in a higher level of traffic generation for the site, calculated as 25 vtpd during the weekday peak periods. However, the anticipated traffic generation is not considered to have a significant adverse impact on the road network and is deemed acceptable.</p> <p><u>Service Bay:</u> Given the proposed number of units as well as two retail shops, the development will require providing an appropriate loading bay to accommodate the deliveries, removalists, and other services. The reliance on a future on-street Loading Zone on Kenneth Road which is subject to Local Traffic Committee Approval is not supported. The loading bay shall be provided within the site with convenient access to the lifts to provide an appropriate connection to residential, and retail component. Therefore, the provision of an on-site service bay accommodating a small rigid truck (SRV) at minimum will be required. The vehicular access and car park are to be designed in compliance with AS2809:2:2002 to accommodate the appropriate size service vehicles. In this regards a longitudinal driveway and swept path analysis is to be provided to demonstrate the convenient access of the service vehicles from the frontage street to the loading bay.</p> <p><u>Pedestrian, Vehicular Access and driveway</u> The driveway is to be designed in accordance with Australian Standards AS2890.1:2004. In accordance with the relevant standards, the gradient of the first 6m of the driveway from the boundary into the basement must be at a maximum gradient of 1 in 20(5%) with the transitions beyond this point. There is no detail on the drawings to confirm the gradients have been achieved in the design.</p> <p>The vehicular access is to be positioned at least 1m away from the</p>



Internal Referral Body	Comments
	<p>common Boundary and the provision of a 2.0m by 2.5m clear pedestrian triangle, as required by AS2890.1:2004, is to be demonstrated with no reliance on the neighbouring site.</p> <p>The proposed location of the pedestrian access raises a safety concern due to the provision of no separation between the pedestrian access and the adjoining driveway. This together with the presence of the extended wall at the common boundary between the vehicular and pedestrian access will result in a restricted sightline to pedestrians for the vehicles exiting the adjoining driveway.</p> <p>Conclusion: In view of the above, the proposal can not be supported in the current proposed form.</p>
Waste Officer	<p><b>Not Supported.</b></p> <p>Please be advised that the bin room and bulky goods room size and location complies with Council's requirements - it is only access to the rooms for residents and service staff that needs to be addressed.</p> <p>Specifically: Bulky Goods Room</p> <ul style="list-style-type: none"> <li>• The door is too narrow - <i>the door must be a minimum of 1200mm wide.</i></li> <li>• The door opens inwards - <i>the door must open outwards and away from the direction of travel when entering and leaving the room.</i></li> </ul> <p>Bin Storage Room</p> <ul style="list-style-type: none"> <li>• As stated previously, service access from Kenneth Rd to the binroom is through two doors, one immediately behind the other. - <i>Is it possible to remove one of the doors OR provide an explanation as to why two doors are needed.</i></li> <li>• The service access door/s leading to Kenneth Rd are too narrow - <i>the door/s must be a minimum of 1200mm wide.</i></li> <li>• The Condamine Street binroom and bulky goods room have been deleted from the amended plans. This leaves the occupants of the tower fronting Condamine St with a rather "onerous journey" to reach the binroom. Done their lift, across the full length of the underground carpark and up another lift. - <i>Can this be improved to provide easier access?</i></li> </ul>
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

External Referral Body	Comments
	relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. Should the application be approved, these recommendations can be included as a condition of consent.
NSW Roads and Maritime Services (Traffic Generating Development)	<p>The application was referred to Transport for NSW in accordance with s138 of the Roads Act. Transport for NSW advised that a referral response was not required and rejected Council's referral through the NSW Planning Portal.</p> <p>The application was also referred to Transport for NSW in accordance with s104 (Traffic Generating Development) of the Roads Act. No response was received during the 21 day period, and as such, it can be assumed that Transport for NSW do not wish to comment in this regard.</p>

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

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

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

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

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

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

Clause 7(1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated.

In response to the requirements of the SEPP, the applicant has submitted a Preliminary Environmental Site Investigation (prepared by Alliance Geotechnical Pty Ltd, dated 28 August 2020). In its conclusion, the investigation states:

*AG consider that soil contamination is likely to be present onsite given long-term historical use of the site for commercial-light industrial purposes. Possible groundwater contamination is also likely due possible use of solvent, inks and dyes, and PFAS containing compounds.*

Therefore, as the report indicates that there is a potential for contaminants to exist on the site, Clauses 7(1)(b) and 7(1)(c) of the SEPP must be considered.

Clause 7(1)(b) stipulates that "if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out".

Given the claimed potential of contamination on the site as noted in the Preliminary Environmental Site Investigation, a complete Phase 1 (and if necessary, Phase 2 Environmental Site Assessment) should

be provided to confirm whether contamination is actually present, at what levels and at what locations. However, the information provided to date is insufficient and given the claimed presence of contamination, Council cannot be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

Clause 7(1)(c) stipulates that *"if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose"*.

The extent of any potential remediation of the site is uncertain due to the lack of appropriate information. Therefore, before any remediation of the site could be recommended and undertaken, a further assessment is required in accordance with the SEPP and the *Contaminated Lands Management Act 1997* to confirm the presence of contamination, what any such contamination may actually consist of and the precise locations and depths of any contamination.

The lack of appropriate consideration of the possible contamination of land is considered to warrant the refusal of the subject application.

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

The application seeks consent for a four storey shop top housing development, comprising 31 dwellings, and as such, the provisions of SEPP 65 apply to this development.

Clause 28 of SEPP 65 requires a consent authority to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the design quality of the development when evaluated in accordance with the design quality principles identified in Schedule 1 of SEPP 65, and the Apartment Design Guide ('ADG').

The proposal is considered with regard to the design quality principles of SEPP 65, as follows:

- **Principle 1: Context and Neighbourhood Character**

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

*Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.*

*Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.*

Comment: The proposed development is located in the Manly Vale B2 Local Centre zone. Condamine Street is one of the main roadways through the Northern Beaches LGA, with an extremely high volume of passing traffic. Condamine Street is characterised by larger scale development with limited setbacks to the roadway. The building fronting Condamine Street is considered to be an appropriate response to the context and character of Condamine Street, which is now well established by development recently completed and under construction (but near completion).

Kenneth Road is a lesser order local road, with low density residential development located directly opposite the site. The architectural response to the Kenneth Road building is notably different to that of the Condamine Street building, which is a direct response to the differing contexts.

- **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 bulk and scale of the building fronting Condamine Street is generally considered to be an appropriate response in consideration of the established character of the street facade. The height and general four storey presentation is consistent with other development immediately adjacent to the site, and further to the north and south.

However, concern is raised with regard to the height and scale of the building fronting Kenneth Road, as discussed in further detail with specific regard to height and setbacks. The form of the Kenneth Road building is considered to be excessive in consideration of size and scale of surrounding development, and the siting of the building is not considered to be an appropriate response to the siting of adjoining development.

- **Principle 3: Density**

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

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

Comment: There are no provisions within WLEP 2011 or WDCP 2011 that relate to the density anticipated on the subject site, and as such, the appropriateness of the density proposed is appraised based on the amenity of the development, the size/scale of the development and the impact of the development upon the surrounding environment.

Whilst a higher density may be appropriate in this general location, the proposed development does not appropriately respond to the constraints of the site and a high level of amenity for future occupants is not achieved.

- **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 application was supported by a BASIX Certificate, which includes recommendations to ensure that the building performs in accordance with industry standards. In response to specific concerns raised by the DSAP, the application was amended to provide a deep soil zone at the rear of the site, and a water tank that collects rainwater runoff to be re-used for toilet flushing, laundries and garden irrigation. However, the proposal remains deficient with regard to the amount of natural daylight received by individual units and reliance upon



artificial lighting and heating will be high.

- **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 useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.*

Comment: The site is located within a high density local centre that has no landscaped area requirements prescribed by WDCP 2011. Nonetheless, the proposal provides deep soil landscaping in the south-western corner of the site, with suspended landscaping incorporated in the central courtyard and on upper levels of the building. The landscape solution is considered to be appropriate for the site, however further information will be required to clarify common property and private property, and on-going maintenance of these spaces. Specific concern is raised in relation to the deep soil zone in the south-west corner of the site that is not accessible from a common area.

- **Principle 6: Amenity**

*Good design positively influences internal and external amenity for residents and neighbours.*

*Achieving good amenity contributes to positive living environments and resident well being.*

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

Comment: As detailed in the assessment against the ADG and WDCP 2011, the proposed development is not appropriately resolved and fails to provide a reasonable level of amenity for future occupants of the development. Furthermore, the proposal also attributes to impacts upon the amenity of adjoining properties.

- **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: Whilst the proposal is generally acceptable in this regard, concern remains with regard to the amenity of the access pathway between Kenneth Road and the apartments in the south-western corner of the site.



- 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 and providing opportunities for social interaction among residents.*

Comment: Whilst the application provides a reasonable mix of apartment sizes, the application fails to demonstrate the appropriate level of liveable or adaptable apartments, as required by the ADG and WDCP 2011.

- 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: Putting aside the concerns relating to the scale of the development, the architectural treatment of the facades of the development are considered to be of good design, utilising a variety of materials, colours and textures.

The following table is an assessment against the ADG as required by SEPP 65:

DC – Is the development consistent with the Design Criteria?  
 DG – Is the development consistent with the Design Guidance?  
 O – Is the development consistent with the Objective?

ADG reference	Subclause	Design Criteria	DC	DG	O
<b>Part 3 Siting the Development</b>					
3A Site analysis	3A-1	Design decisions based on site analysis.	-	Y	Y
3B Orientation	3B-1	Layouts respond to the streetscape and optimise solar access.	-	N	N
	3B-2	Overshadowing of neighbouring properties is minimised during mid winter.	-	N	N
3C Public domain interface	3C-1	Transition between private and public places is achieved without compromising safety and security.	-	Y	Y
	3C-2	Amenity of the public domain is retained and enhanced.	-	Y	Y
3D Communal and public open space	3D-1	Communal open space has a minimum area equal to 25% of the site.	N	Y	Y
		Development must achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (midwinter).	Y	Y	Y
	3D-2	Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	-	N	Y

ADG reference	Subclause	Design Criteria	DC	DG	O
	3D-3	Communal open space is designed to maximise safety.	-	N	Y
	3D-4	Public open space is responsive to the existing pattern and uses of the neighbourhood.	-	-	-
3E Deep soil zones	3E-1	At least 7% of the site are shall comprise deep soil zones.	N	Y	Y
3F Visual privacy	3F-1	A minimum setback of 6m is to be provided between habitable rooms and balconies and side or rear setbacks, and a minimum setback of 3m is to be provided is to be provided between non-habitable rooms and side and rear setbacks.	N	N	N
	3F-2	Building design elements increase privacy without compromising access to light and air and balance outlook from habitable rooms and private open space.	-	N	N
3G Pedestrian access and entries	3G-1	Entries and pedestrian access connects to and addresses the public domain.	-	Y	Y
	3G-2	Access, entries and pathways are accessible and easy to identify.	-	N	N
	3G-3	Large sites provide pedestrian links for access to streets and connection to destinations.	-	-	-
3H Vehicle access	3H-1	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	-	N	N
3J Bicycle and car parking	3J-1	Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.	-	-	-
	3J-2	Parking and facilities are provided for other modes of transport.	-	Y	Y
	3J-3	Car park design and access is safe and secure.	-	Y	Y
	3J-4	Visual and environmental impacts of underground car parking are minimised.	-	Y	Y
	3J-5	Visual and environmental impacts of on-grade parking are minimised.	-	-	-
	3J-6	Visual and environmental impacts of above ground enclosed car parking are minimised.	-	-	-
<b>Part 4 Designing the building</b>					
<b>Amenity</b>					
4A Solar and daylight access	4A-1	Living rooms and private open space of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at midwinter.	N	N	N
		A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Y	Y	Y
	4A-2	Daylight access is maximised where sunlight is limited.	-	Y	Y
	4A-3	Design incorporates shading and glare control, particularly for warmer months.	-	N	N
4B Natural	4B-1	All habitable rooms are naturally ventilated.	N	N	N

ADG reference	Subclause	Design Criteria	DC	DG	O										
ventilation	4B-2	The layout and design of single aspect apartments maximises natural ventilation.	-	N	N										
	4B-3	At least 60% of all apartments are naturally cross ventilated.	N	N	N										
		Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Y	Y	Y										
4C Ceiling heights	4C-1	As measured from the finished floor level, the minimum ceiling height for: - habitable rooms is 2.7m, - non-habitable rooms is 2.4m, and - ground floor non-residential uses is 3.3m.	Y	Y	Y										
	4C-2	Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.	-	Y	Y										
	4C-3	Ceiling heights contribute to the flexibility of building use over the life of the building.	-	Y	Y										
4D Apartment size and layout	4D-1	Apartments are required to have the following minimum internal areas:	Y	Y	Y										
		<table><tr><th>Apartment Type</th><th>Min. internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 Bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 Bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 Bedroom</td><td>90m<sup>2</sup></td></tr></table>	Apartment Type	Min. internal area	Studio	35m <sup>2</sup>	1 Bedroom	50m <sup>2</sup>	2 Bedroom	70m <sup>2</sup>	3 Bedroom	90m <sup>2</sup>			
		Apartment Type	Min. internal area												
		Studio	35m <sup>2</sup>												
		1 Bedroom	50m <sup>2</sup>												
		2 Bedroom	70m <sup>2</sup>												
	3 Bedroom	90m <sup>2</sup>													
	The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m <sup>2</sup> each.														
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	N	N	N											
4D-2	Habitable room depths are limited to a maximum of 2.5 x ceiling height.	N	N	N											
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	N	N	N											
4D-3	Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobes).	Y	Y	Y											
	Bedrooms have a minimum dimension of 3m (excluding wardrobes).	Y	Y	Y											
	Living rooms or combined living/dining rooms have a minimum width of 3.6m for 1 bedroom apartments and 4m for 2 bedroom apartments.	Y	Y	Y											
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Y	Y	Y											
4E Private open space and balconies	4E-1	All apartments are required to have primary balconies as follows:	Y	Y	Y										
		<table><tr><th>Apartment Type</th><th>Min. area</th><th>Min. depth</th></tr></table>	Apartment Type	Min. area	Min. depth										
Apartment Type	Min. area	Min. depth													

ADG reference	Subclause	Design Criteria			DC	DG	O
		Studio	4m <sup>2</sup>	-			
		1 Bedroom	8m <sup>2</sup>	2m			
		2 Bedroom	10m <sup>2</sup>	2m			
		3 Bedroom	12m <sup>2</sup>	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 15m <sup>2</sup> and a minimum depth of 3m <sup>2</sup> .			N	N	N
	4E-2	Primary private open space and balconies are appropriately located to enhance liveability for residents.			-	N	N
	4E-3	Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.			-	N	N
	4E-4	Private open space and balcony design maximises safety.			-	Y	Y
4F Common circulation and spaces	4F-1	The maximum number of apartments off each circulation core on a single level is eight.			Y	Y	Y
	4F-2	Common circulation spaces promote safety and provide for social interactions between residents.			-	N	N
4G Storage	4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:			Y	Y	Y
		<b>Apartment Type</b>		<b>Min. area</b>			
		Studio		4m <sup>3</sup>			
		1 Bedroom		6m <sup>3</sup>			
		2 Bedroom		8m <sup>3</sup>			
		3 Bedroom		10m <sup>3</sup>			
		At least 50% is to be located within the apartment.					
	4G-2	Additional storage is conveniently located, accessible and nominated for individual apartments.			-	Y	Y
4H Acoustic privacy	4H-1	Noise transfer is minimised through the siting of buildings and building layout.			-	Y	Y
	4H-2	Noise impacts are mitigated within apartments through layout and acoustic treatments.			-	N	Y
4J Noise and pollution	4J-1	In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.			-	Y	Y
	4J-2	Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.			-	Y	Y
<b>Configuration</b>							
4K Apartment Mix	4K-1	A range of apartment types and sizes is provided to cater for different household types now and into the			-	Y	Y

ADG reference	Subclause	Design Criteria	DC	DG	O
		future.			
	4K-2	The apartment mix is distributed to suitable locations within the building.	-	Y	Y
4L Ground floor apartments	4L-1	Street frontage activity is maximised where ground floor apartments are located.	-	N	Y
	4L-2	Design of ground floor apartments delivers amenity and safety for residents.	-	Y	Y
4M Facades	4M-1	Building facades provides visual interest along the street while respecting the character of the local area.	-	Y	Y
	4M-2	Building functions are expressed by the facade.	-	Y	Y
4N Roof design	4N-1	Roof treatments are integrated into the building design and positively respond to the street.	-	Y	Y
	4N-2	Opportunities to use roof space for residential accommodation and open space are maximised.	-	Y	Y
	4N-3	Roof design incorporates sustainability features.	-	Y	Y
4O Landscape design	4O-1	Landscape design is viable and sustainable.	-	Y	Y
	4O-2	Landscape design contributes to the streetscape and amenity.	-	Y	Y
4P Planting on structures	4P-1	Appropriate soil profiles are provided.	-	Y	Y
	4P-2	Plant growth is optimised with appropriate selection and maintenance.	-	Y	Y
	4P-3	Planting on structures contributes to the quality and amenity of communal and public open spaces.	-	Y	Y
4Q Universal design	4Q-1	Universal design features are included in apartment design to promote flexible housing for all community members.	-	N	N
	4Q-2	A variety of apartments with adaptable designs are provided.	-	N	N
	4Q-3	Apartment layouts are flexible and accommodate a range of lifestyle needs.	-	Y	Y
4R Adaptive reuse	4R-1	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	-	-	-
	4R-2	Adapted buildings provide residential amenity while not precluding future adaptive reuse.	-	-	-
4S Mixed Use	4S-1	Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	-	Y	Y
	4S-2	Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.	-	N	N
4T Awnings and signage	4T-1	Awnings are well located and complement and integrate with the building design.	-	-	-
	4T-2	Signage responds to the context and desired street character.	-	-	-
<b>Performance</b>					
4U Energy efficiency	4U-1	Development incorporates passive environmental design.	-	N	N
	4U-2	Development incorporates passive solar design to optimise heat storage in winter and reduce heat	-	Y	Y



ADG reference	Subclause	Design Criteria	DC	DG	O
		transfer in summer.			
	4U-3	Adequate natural ventilation minimises the need for mechanical cooling.	-	Y	Y
4V Water management and conservation	4V-1	Potable water use is minimised.	-	Y	Y
	4V-2	Urban stormwater is treated on sit before being discharged to receiving waters.	-	Y	Y
	4U-3	Flood management systems are integrated into site design.	-	-	-
4W Waste management	4W-1	Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	-	Y	Y
	4W-2	Domestic waste is minimised by providing safe and convenient source separation and recycling.	-	Y	Y
4X Building maintenance	4X-1	Building design detail provides protection from weathering.	-	Y	Y
	4X-2	Systems and access enable ease of maintenance.	-	Y	Y
	4X-3	Material selection reduces ongoing maintenance costs.	-	Y	Y

#### Detailed ADG Discussion

- **Orientation (3B-1 and 3B-2)**

Objective 3B-1 of the ADG seeks to ensure that building types and layouts respond to the streetscape and the site while optimising solar access within the development. The proposal has been designed to present to both Condamine Street and Kenneth Road. However, with the exception of the units overlooking Kenneth Road, the proposal seems to miss an opportunity to capture any more of the northern orientation available deeper into the site.

Objective 3B-2 of the ADG provides that living areas, private open space and communal open space should receive solar access in accordance with the provisions of Objective 4A-1 of the ADG. As discussed further in the report, the proposal falls well short of the minimum solar access requirements prescribed. Objective 3B-2 also aims to minimise overshadowing of adjoining properties. As discussed with regard to building height and setbacks, the application is inconsistent in this regard, noting that the non-compliant height and siting of the proposal results in additional overshadowing of adjoining properties.

- **Communal open space (3D-1, 3D-2 and 3D-3)**

The application proposes a communal roof top terrace in the south-west corner of the site. The rooftop terrace has an area of approximately 44m<sup>2</sup> or 2.8% of the total site area, of which only 34m<sup>2</sup> (2.2%) is usable space. The proposal is well shy of the 25% communal open space requirement of Objective 3D-1 of the ADG. In circumstances where the vast majority of units receive little to no sunlight in mid-winter, and where the areas of private open space of number of units are sited in somewhat hostile environments, the provision high quality and usable private open space is of utmost importance.

Access to the terrace is as equitable as possible, with access from both the south-western lift core and the northern lift core. Furthermore, the setback and elevated siting of the space will afford a high level of amenity in good weather, consistent with the minimum requirements of Objective 3D-1 of the ADG. However, the space is undersized for the density of development proposed, and does not provide any protection from wind or rain or harsh sunlight in summer.

- **Deep soil zones (3E-1)**

The proposal provides a deep soil zone in the south-west corner of the site with an area of approximately 91m<sup>2</sup> or 5.8% of the total site, just shy of the 7% minimum requirement of Objective 3E-1 of the ADG. The deep soil zone provided is considered to be a positive contribution to the proposal, and despite non-compliance, the area proposed is sufficient in light of the B2 Local Centre zoning that applies to the land and the absence of any landscaped area requirements in WDCP 2011.

- **Visual Privacy (3F-1 and 3F-2)**

Elements of the proposed development do not provide sufficient spatial separation to ensure appropriate levels of amenity for future occupants of the proposed development and adjoining properties. Whilst specific examples are explored with regard to clause B6 and B10 of WDCP 2011, the application does not have appropriate regard to the context of the site, and lacks sufficient detail to ensure that reasonable outcomes will be achieved.

- **Pedestrian access and entries (3G-2, 4F-2, 4S-2)**

Pedestrian access between the street and the lift core at the east of the site (fronting Condamine Street) and the lift core to the north (fronting Kenneth Road) is acceptable, with direct and accessible access for future occupants and visitors to the site. However, access to the lift core in the south-west corner of the site is indirect, with a poor level of amenity in the lobby/hallway on each level. A higher level of amenity would be achieved by continuing the access path through to the central courtyard to align with the lift core, reducing the length of the internal hallway and removing an internal dog leg through the building. However, this would result in negative impacts upon the amenity of Apartment C.05, which is already compromised by virtue of its location on the site.

It is noted that the original design featured ground floor communal space, which has since been removed. In consideration of the concerns regarding the lack of sunlight to the ground floor south-western units and the amenity of the access arrangement for the units in the south-western portion of the site, it is considered that the ground floor of the south-western corner of the site would be more appropriately used for additional commercial/business purposes and internal communal floor space.

- **Vehicle access (3H-1)**

The application proposes the driveway entrance at the highest level of the site, inconsistent with the design guidance of Objective 3H-1. Whilst it is appreciated that access to Condamine Street has been restricted by TfNSW, the application has not demonstrated that the proposed driveway location is the most suitable egress point on Kenneth Road. Furthermore, the detail of the driveway design is not supported by Council's Development and Traffic Engineers.

The proposal put forward during the prelodgement process included a driveway on the eastern (low) side of the Kenneth Road, which is the preferred location for the subject site. The applicant could also explore shared access arrangements with the adjoining site currently under construction.

- **Solar and daylight access (4A-1 and 4A-3)**

The proposed development falls well short of the requirements of Objective 4A-1 of the ADG, which prescribes that 70% of units proposed should receive a minimum of 2 hours of direct sunlight to living room windows and areas of private open space between 9am and 3pm in mid-winter.

Note: The shadow diagrams provided are inconsistent with the proposal presented to Council and make reference to incorrect unit numbers. The below calculations are as accurate as

possible, noting the deficiencies in the information provided. It is noted that no similar analysis was provided by the applicant, despite request.

Unit No.	Internal	External	Compliance	Unit No.	Internal	External	Compliance
<b>C.01</b>	No*	No	No	<b>K.01</b>	Yes	Yes	Yes
<b>C.02</b>	No*	No	No	<b>K.02</b>	Yes	Yes	Yes
<b>C.03</b>	No	No	No	<b>K.03</b>	Yes	Yes	Yes
<b>C.04</b>	No	No	No	<b>K.04</b>	No	No	No
<b>C.05</b>	No	No	No	<b>C.15</b>	No*	Yes	No
<b>C.06</b>	No	No	No	<b>C.16</b>	Yes	No	No
<b>C.07</b>	No	No	No	<b>C.17</b>	Yes	No	No
<b>C.08</b>	No*	No	No	<b>C.18</b>	No*	Yes	No
<b>C.09</b>	No*	No	No	<b>C.19</b>	No*	No	No
<b>C.10</b>	No	No	No	<b>C.20</b>	No	No	No
<b>C.11</b>	No	No	No	<b>K.05</b>	Yes	Yes	Yes
<b>C.12</b>	No*	No	No	<b>K.06</b>	Yes	Yes	Yes
<b>C.13</b>	No*	No	No	<b>K.07</b>	Yes	Yes	Yes
<b>C.14</b>	No	No	No	<b>K.08</b>	No*	No	No
				<b>K.09</b>	Yes	Yes	Yes
				<b>K.10</b>	Yes	Yes	Yes
				<b>K.11</b>	No*	No	No

\*Achieves 2 hours if calculated from 8:30am

As outlined above, only 8 of the 31 (26%) apartments proposed receive 2 hours of direct sunlight to windows associated with living rooms and areas of private open space between 9am and 3pm in midwinter. The calculation is somewhat improved (9/31 or 29%) if you consider sunlight received prior to 9am (at 8:30am), however in most cases, this only improves solar access to windows of the living room, and not the area of open space. When looking at windows to living rooms in isolation, the proposal still falls short, with only 18/31 or 58% units receiving 2 hours of sunlight to living room windows between 8:30am and 3pm in midwinter.

Whilst the site is conveniently located with regard to shops and the B-Line bus stop, the proximity of the site to the main road impacts upon the amenity of the units. The amenity is also challenged by other unavoidable site constraints that impact upon the outlook of the proposal, such as the scale and proximity of adjoining development. As such, the proposal needs to succeed with regard to solar access to ensure an acceptable level of amenity for future residents.

A variation to the amount of sunlight required in relation to areas of private open space may be supportable in some instances. However, the provision of sunlight to living rooms would need to achieve strict compliance with the 70% requirement and a larger, usable area of communal open space would be required to ensure that occupants of the development have access to a sunny and protected area of open space.

Objective 4A-3 of the ADG also requires development to include appropriate shade and glare control, particularly for warmer months. It is noted that the upper floor areas of private open space and the communal area of open space lack sufficient shade structures. This appears to be a consequence of the need to minimise the extent of height non-compliance and to ensure that the development is hidden from view from the street. This is somewhat counter-productive to the amenity of the development for future occupants and further consideration of this objective is required in relation to upper floor units.

- **Natural ventilation (4B-1, 4B-2 and 4B-3)**

15 of the 31 units proposed (48%) have been designed with natural cross ventilation in the manner depicted by Objective 4B-1 of the ADG, inconsistent with the 60% minimum prescribed. However, the proposal incorporates operable skylights in a number of top floor units, which will facilitate ventilation to an additional six units, increasing the amount of ventilated apartments to 21/31 or 67%.

- **Apartment size and layout (4D-1, 4D-2)**

Objective 4D-1 of the ADG prescribes that every habitable room must have a window in an external wall of not less than 10% of the wall area, and that daylight and air must not be borrowed from other rooms. Whilst the study areas of Units K.04 and K.08 feature a window on an external wall of a reasonable size, the window comprises fixed glass blocks which do not facilitate air-flow, resulting in inconsistency with this requirement.

Objective 4D-1 of the ADG also advises that a window should be visible from every point in a habitable room. The design of the kitchens in Units K.01, K.05 and K.10 are inconsistent with this guidance. These units also have awkward layouts, with dark entrances at the end of long, dog legged hallways, with no access to light or ventilation.

Objective 4D-2 of the ADG prescribes that the maximum habitable room depth of an open plan living area shall be limited to 8m. Units K.02, K.03, K.06, K.07, K.09 and K.10 are all non-compliant with this design criteria.

- **Private open space and balconies (4E-1, 4E-2 and 4E-3)**

Objective 4E-1 of the ADG prescribes that the area of private open space should be increased to 15m<sup>2</sup>, with minimum dimensions of 3m, for ground floor units. None of the 5 ground floor units proposed (C.03, C.04, C.05, C.06 and C.07) meet these minimum requirements.

The balconies of Units C.04, C.05, C.11, C.13, C.17 and C.19 are also inconsistent with the design guidance of Objective 4E-2 of the ADG which advises that areas of private open space should be oriented with the longer side facing outwards to optimise daylight to adjacent rooms. In circumstances where daylight is limited, and noting that none of the units in question receive compliant levels of solar access, this is considered to be of greater importance.

- **Acoustic privacy (4H-2)**

There are some instances where bedrooms of one unit are proposed immediately adjacent to living rooms of another unit, inconsistent with the guidance of Objective 4H-2 of the ADG. The occurrence of this has been limited in the proposal, and should the application be approved, conditions could be imposed to ensure appropriate construction methodology to minimise noise transmission.

- **Ground floor apartments (4L-1)**

Objective 4L-1 of the ADG advises that ground floor apartments should support small office home office (SOHO) use to provide future opportunities for conversion into commercial or retail areas. The ground floor units in the south-west corner of the development are particularly suited



to such use, yet the proposal has not been designed to facilitate flexibility in this regard.

- **Universal design (4Q-1 and 4Q-2)**

Objective 4Q-1 of the ADG prescribes that 20% of unit proposed should be designed in accordance with the Liveable Housing Guidelines Silver Level Standard. The cover page of the architectural plans indicate that Unit K.01 and K.11 (6% of the units proposed) have been designed to meet these requirements, inconsistent with the minimum requirement prescribed.

Objective 4Q-2 of the ADG advises that the development should provide adaptable housing units in accordance with Council policy. As discussed with regard to clause D18 of WDCP 2011, 10% (rounded up) of units should be designed in accordance with Class C of AS4299. The cover page of the architectural plans indicate that Unit C.15 and K.04 (6% of the units proposed) have been designed to meet these requirements, inconsistent with the minimum requirement prescribed.

The application was supported by an Access Report at lodgement, however it was not updated to reflect the amended plans and the recommendations no longer relate to the amended proposal.

- **Energy efficiency (4U-1)**

The application was supported by a BASIX Certificate to confirm that the development has been designed to meet industry standards. However, the low level of daylight to units and communal spaces increases reliance on artificial lighting and heating, inconsistent with the guidance of this objective.

The proposal is inconsistent with a number of key areas of the ADG, with specific concern raised in relation to general amenity and access to daylight/sunlight. The proposal is also deficient with regard to the design principles of SEPP 65. In accordance with clause 30 of SEPP 65, development consent must not be granted to the application, as the proposal does not have adequate regard to the objectives of the ADG and the design quality principles of SEPP 65.

#### Design and Sustainability Advisory Panel

The application was referred to the DSAP on 17 December 2020 for review, the notes from which are attached to this report.

The amended proposal has somewhat responded to the following concerns raised:

- lack of communal open space (a roof terrace has been introduced),
- lack of deep soil (an area of deep soil has been provided in the south-west corner of the site), and
- lack of sufficient retail floor space (retail floor space has been increased).

However, the amended proposal has not appropriately responded to the following key concerns:

- insufficient site analysis,
- excessive floor space/area,
- excessive height without adequate consideration of impacts to the amenity of adjoining premises,
- poor access to units in the south-west corner of the site, and
- poor amenity of single aspect units (consider more dual aspect units).



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

The proposed development, which comprises parking for more than 50 motor vehicles, constitutes Traffic Generating Development and a referral to Transport for NSW is required in accordance with clause 104 of this policy. The application was referred to Transport for NSW, however no response was received.

Clause 101 of SEPP (Infrastructure) requires the consent authority to be satisfied of certain matters relating to development with a frontage to a classified road. The consent authority can be satisfied of these matters, noting that:

- Vehicular access is provided by the lower order street (Kenneth Road) and not Condamine Street,
- The safety, efficiency and ongoing operation of Condamine Street will not be adversely affected by the proposed development, and
- The application has been accompanied by an acoustic report and the proposal has been designed to incorporate measures to ameliorate potential traffic noise and vehicle emissions associated with the ongoing use of Condamine Street.

### **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?	No

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	15.3m	4.3m (39%)	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
6.2 Earthworks	No
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

### Detailed Assessment

#### **Zone B2 Local Centre**

The proposal development is considered with respect to the objectives of the B2 zone, as follows:

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

Comment: The proposal provides an adequate range of retail/business uses on the ground floor. Whilst it is considered that this could be enhanced with the incorporation of SOHO units in the south-western corner of the site, the proportion of retail/business floor space is not antipathetic with the zoning.

- *To encourage employment opportunities in accessible locations.*

Comment: The proposal provides adequate employment generation floor space in a highly accessible location.

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

Comment: The site is favourably sited in close proximity to the Manly Vale B1 bus stop, and cycling paths connecting to Manly, Brookvale and the Spit.

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

Comment: The proposal has been designed to maximise active street frontages to Kenneth Road and Condamine Street.

- *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: Concern is raised with regard to the scale of the proposal, particularly with how it responds to Kenneth Road. The height of the development works against the fall of the land, and the setback to Kenneth Road does not respond to the siting of the existing development up slope (to the west) or the R2 zoning on the opposite side of the street.

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

Comment: The application has not been designed to minimise conflict between the use/nature of the adjoining site to the west and the residential dwellings proposed in the south-west corner of the site. Not only are these units compromised by the built form of the adjacent development (and the setbacks proposed), but the impacts upon the amenity of the west facing units immediately adjacent to openings in the eastern facade of the adjacent mixed use development have not been considered.

The proposal is not consistent with the objectives of the B2 Local Centre zone.

#### **4.3 Height of buildings**

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

With a maximum height of 15.3m, the proposed development is non-compliant with the 11m maximum building height prescribed by clause 4.3 of WLEP 2011. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of WLEP 2011 can be applied.

Pursuant to clause 4.6(2) of WLEP 2011, consent may be granted for development even though the development contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the maximum building height is not expressly excluded and thus the clause can be applied in this instance.

#### Extent of the height breach

The height breach occurs across the entire upper level of the development, as follows:

- The entire roof form and upper-most portion of the building fronting Condamine Street protrudes beyond the height plane, with a maximum non-compliance of 2.8m at the south-east corner (where the building is also non-compliant with both the minimum front and side setbacks applicable).
- The proposed roof terrace (and access thereto) protrudes above the height plane, with a maximum height breach of 4.3m at the south-western lift-core. The non-compliance is not limited to the upper roof terrace, noting that vast majority of the roof of the level below also protrudes above the roof plane, with a maximum non-compliance of 2.3m at the south-eastern corner.
- The entire roof form and upper-most portion of the building fronting Kenneth Road protrudes above the height plane, with a maximum non-compliance of 4.1m at the south-west corner. The height non-compliance is not limited to the upper floor, with portions of the roof of Level 2 also protruding above the height plane.

The extent of non-compliance is demonstrated on the architectural drawings, with the 11m height plane shown on each elevation and section.

#### Has the Applicant's submission addressed the relevant criteria?

Pursuant to clause 4.6(4) of WLEP 2011, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of WLEP 2011. The application was supported by a submission (attached) addressing the provisions of clause 4.6 of WLEP 2011. The submission is considered with regard to the criteria of clause 4.6(3) of WLEP 2011, as follows:

- a. *That compliance with the development standard is unreasonable or unnecessary in the circumstances*

Comment: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater CC* to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard satisfactorily demonstrated that the proposed development will achieve consistency with the objectives. It is not considered to be unreasonable and unnecessary in the circumstances of this application.

In particular, the applicant has not demonstrated that the non-compliant portions of the development

- ensure that the development is compatible with the height and scale of surrounding and nearby

surrounding development.

- act to minimise the visual impact of the development and impacts upon overshadowing of adjoining scale, and impacts upon the amenity of adjoining properties with regard to solar access.

b. *That there are sufficient environmental planning grounds to justify contravening the development*

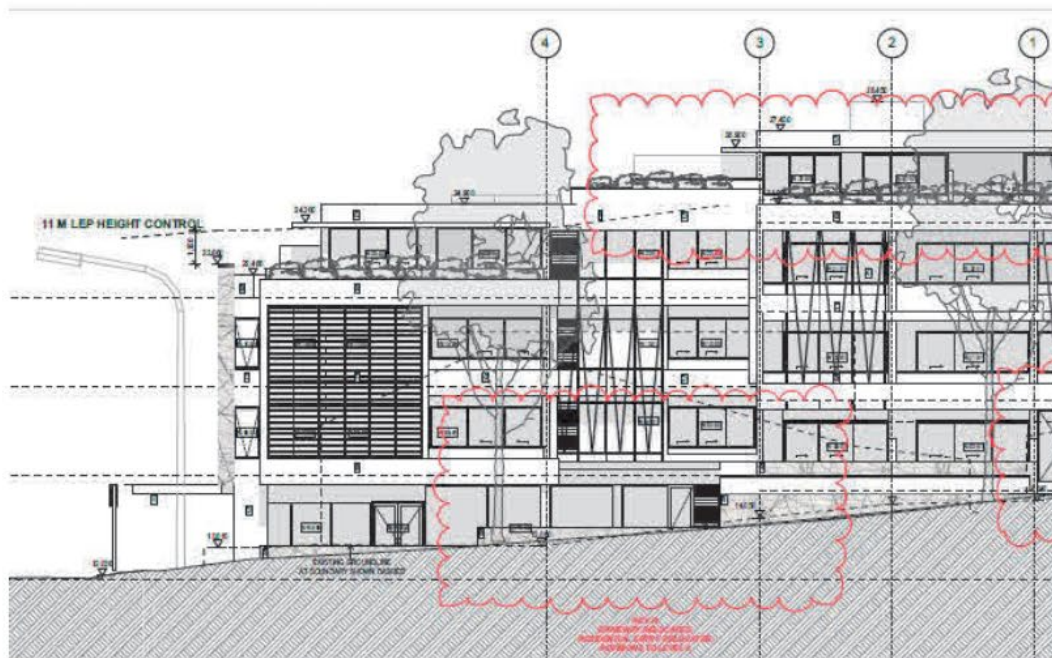
Comment: In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 11* purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act.

The applicant's submission provides that the areas of non-compliance are a result of:

- *The 11m height limit has been effectively abandoned along this particular section of Condamine*
- *Strict compliance would require the deletion of the entire upper floor of the development and replaced by recently approved and constructed shop top housing development adjacent to the site.*
- *The building is of exceptional design quality with the variation facilitating a height and floor space of the land consistent with objectives 1.3(c) and (g) of the Act.*

These propositions are not supported, as follows:

- The 11m height limit has been varied along Condamine Street frontage to provide facilitate a corner development along Kenneth Road. Only one development (the corner site at 267-269 Condamine Street) was considered on a merit basis, noting that the site was a corner allotment, and subject to design requirements of Kenneth Road and generally consistent with the height of any future (compliant) development at the subject site.



- The proposed development extends above the height of the existing four storey development up Condamine Street. The proposal does not provide a cohesive height plane, which would be achieved by the existing development.
- The proposed development is not of exceptional design quality, in so far as it fails to meet a number of the objectives of the Act.



impacts upon adjoining properties.

With this in mind, it is considered that the applicant's written request to vary the maximum building planning grounds to justify contravention of the 11m maximum building height development stand:

Therefore, the consent authority cannot be satisfied that the applicant's written request has satisfactorily addressed the matters required by clause 4.6(3) of WLEP 2011.

Is the proposal in the public interest?

Under the provisions of clause 4.6(4)(a) of WLEP 2011, consent must not be granted to a proposal that contravenes a development standard unless that proposed development (as a whole) will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is to be carried out.

As discussed in further detail separately above, the proposal is not considered to be consistent with the relevant objectives of the B2 Local Centre zone.

The proposal is also considered to be inconsistent with the objectives of the building height development standard, 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 fronting Kenneth Road is not compatible with the height of surrounding development. The proposal sits higher than the existing development up slope, and works against the fall of the streetscape.

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

Comment: The applicant has not satisfactorily demonstrated that the visual impact of the proposed development has been appropriately minimised, with particular concern with regard to the Kenneth Road frontage and the forward (non-compliant) projection of Levels 1 and 2 designed to screen the non-compliant level above. Furthermore, the visual impact of the south-eastern corner of the Condamine Street facade is not appropriately resolved, with inadequate consideration of the siting of the adjoining development to the south.

The proposal also fails to adequately consider potential solar access impacts of the development, with additional overshadowing of adjoining development directly attributed to areas of the proposal that extend well above the height plane.

Visual privacy is also compromised by the non-compliant height of the upper floor fronting Kenneth Road, with resultant overlooking of an area of private open space of the adjoining development to the east.

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

Comment: Not Applicable.

- (d) *to manage the visual impact of development when viewed from public places such as parks and*



*reserves, roads and community facilities.*

Comment: The proposal presents as an over-development of the site, with inadequate consideration of the siting and scale of adjoining development. The proposal places too much reliance upon the built form approved on the adjacent corner site, with a lack of regard for the lesser order street context of Kenneth Road. The development of the Kenneth Road frontage should result in a built form that sets back from the road as you move up the hill into the R2 Low Density zone. Rather, the proposal sits proud on the site and projects further towards the roadway, resulting in excessive bulk and scale as seen from the public domain.

Therefore, the consent authority cannot be satisfied that the proposal is in the public's interest.

#### Has concurrence been obtained?

Pursuant to clause 4.6(4)(b) of WLEP 2011, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Planning Circular PS 18-003 (dated 21 February 2018) issued by the NSW Department of Planning and Environment, the Secretary's concurrence may be assumed in this instance as the application is to be determined by the Northern Beaches Local Planning Panel.

#### Conclusion

Overall, the consent authority cannot be satisfied of the matters prescribed by clause 4.6 of WLEP 2011, and the proposal cannot be supported.

## 6.2 Earthworks

Clause 6.2 of WLEP 2011 requires Council to consider, amongst other matters, the quality of soil to be removed from the site and the effect of the proposed development on the proposed use of the land, to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The application proposes significant disturbance of the site, and the Preliminary Environmental Site Investigation provided to support the application indicates that contamination is likely.

Without confirmation of such contamination and any necessary remediation plan, Council cannot be satisfied that the proposal is consistent with the intent/objectives of this control.

## Warringah Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	3	4	1 (33%)	No
B6 Side Boundary Setbacks	West - Merit	Nil	-	No
	South - Merit	Nil	-	No
	North - Merit	Nil	-	No
	East - Merit	Nil	-	No
B8 Front Boundary Setbacks	Ground - maintain	Condamine - 1.1m Kenneth - 2.9m	-	Yes No
	Level 1 - maintain	Condamine - Nil Kenneth - 1.7m - 4.1m	-	Yes No

	Level 2 - 5m	Condamine - Nil Kenneth - 1.7m - 4.1m	-	No No
	Level 3 - 5m	Condamine - Nil - 3.1m Kenneth - 5.9m - 8.5m	-	No No
B10 Rear Boundary Setbacks	West - Merit	7.2m - 7.5m	-	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	No	No
B6 Merit Assessment of Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	No	No
B10 Merit assessment of rear boundary setbacks	No	No
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	Yes
D2 Private Open Space	N/A	N/A
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	No
D7 Views	Yes	Yes
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	No	No
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes
F1 Local and Neighbourhood Centres	No	No

#### Detailed Assessment

## B2 Number of Storeys

The application seeks consent for a four storey development, inconsistent with the three storey height limit prescribed by this control. The applicant justifies this non-compliance by advising that a DCP control cannot derogate from the provisions of the LEP (11m height limit), however the entirety of the proposal also exceeds the 11m height limit prescribed.

Whilst it is acknowledged that Council has approved four storey development along Condamine Street, the application cannot rely upon precedence alone, and must demonstrate consistency with the objectives of the number of storeys control. Furthermore, whilst 4 storey elements may be supported at certain parts of the site (such as the Condamine Street facade), 4 storeys may not be appropriate across the site as a whole.

Inconsistency with the 4 storey height limit is not supported in this instance, as the proposal is inconsistent with the following objectives of the control:

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

Comment: The fourth storey of the Kenneth Street building will be visible from the public domain. As proposed, this element of the development does not dominate the streetscape, however that is only because the levels below protrude forward of the setbacks prescribed (and the prevailing building line) to screen the upper floor from view. The fourth storey of the building in the south-west of the site is elevated above ground and sits well above the roof plane of other four storey elements on the site and adjoining buildings. This component of the development will be visually dominant as seen from west facing dwellings in the central courtyard of the proposed development and at 263 Condamine Street.

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

Comment: As above, the visual impact of the development when viewed from the public domain and adjoining properties has not been minimised.

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

Comment: The application has not demonstrated that the portion of the development that exceeds both the height of buildings development standard and the subject number of storeys control does not impact upon the amenity of adjoining properties.

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

Comment: As above, the proposed four storey development exceeds both the 11m height limit of WLEP 2011 and the 3 storey height limit of this control.

## B6 Merit Assessment of Side Boundary Setbacks

Clause B6 prescribes that side boundary setbacks will be determined on a merit basis with regard to streetscape, amenity of surrounding properties and setbacks of neighbouring development. Noting that the proposal is also subject to the provisions of SEPP 65, and in turn the ADG, the reasonableness of

the setbacks are also considered with respect to the spatial separation requirements of Objective 3F-1 of the ADG.

The areas of concern are considered individually, as follows:

- **Upper level northern side setback to 267-269 Condamine Street (adjacent to Unit C.17)**  
The development at 267-269 Condamine Street features a blank wall along the common boundary at the ground, first and second floor. However, at the upper floor, the central courtyard is open to the common side boundary. The application proposes a nil setback to this area, inconsistent with the provisions of the ADG which prescribe that nil setbacks are only acceptable between blank walls. In consideration of the open nature of the upper level of the courtyard approved at 267-269 Condamine Street, it is considered that the proposal should be setback 6m from the side boundary adjacent to the courtyard, to more appropriately respond to the context of the site and to create an upper level link between the courtyards along Condamine Street. This would essentially result in the deletion of Unit C.17, however it would facilitate the northern orientation of Unit C.16 which, despite its top floor location, does not achieve compliant levels of solar access.  
Note: The nil setback proposed in relation to Unit C.15 is acceptable as it adjoins a blank wall of the development to the north.
- **Upper level southern side setback to 263 Condamine Street (adjacent to Unit C.15)**  
The southern external wall of Unit C.15 is setback 1.9m from the southern side boundary, inconsistent with the 6m spatial separation requirement of Objective 3F-1 of the ADG. With a setback of only 3.6m from the front boundary, this portion of the development is also inconsistent with the 5m minimum front setback prescribed by clause B7 of WDCP 2011. The application has not satisfactorily demonstrated that the non-compliance will not adversely impact upon solar access of the adjacent development at 263 Condamine Street. Further, the application has not demonstrated that the reduced setback does not unreasonably impact upon the amenity of the units to the west on the subject site, noting that the amenity of Unit C.10 (and those below) would be improved by increasing the setback of C.15 and in turn, the eastern opening to the internal courtyard at the upper most level.
- **Upper level eastern side setback to 267-269 Condamine Street (adjacent to Unit K.09)**  
The application proposes a 3m setback between the eastern edge of Unit K.09 and the eastern side boundary, inconsistent with the 6m minimum requirement of Objective 3F-1 of the ADG. The reduced setback results in unacceptable overlooking of the upper level terrace of the development approved to the east at 267-269 Condamine Street. A minimum setback of 4.5m is considered to be warranted, to achieve 9m spatial separation between the adjoining dwellings.
- **Western side setback to 3-9 Kenneth Road**  
The application proposes nil setbacks along the western side boundary adjacent to 3-9 Kenneth Road. The nil setback is considered acceptable where it adjoins the blank wall of the adjoining building, however concern is raised where the proposed development protrudes above and forward of the adjacent development. This is discussed further with respect to building height and front setbacks.

The development cannot be said to be consistent with the objectives of the side setback control that seek to ensure that development does not become visually dominant, to ensure that the scale and bulk of buildings is minimised, and to provide adequate separation between buildings to ensure a reasonable level of amenity and solar access is maintained. As such, the setbacks of the proposal are not considered acceptable on merit.



## B7 Front Boundary Setbacks

Clause B7 of WDCP 2011 prescribes that development at the ground and first floor shall be setback to maintain a minimum setback to the road frontage, with development at the second floor and above to be setback 5m from the street, with the aim to create a sense of openness, maintain visual continuity and pattern of buildings and to protect and enhance the visual quality of the streetscape.

The proposal is non-compliant with the minimum setbacks prescribed and in some instances, the setback is also inconsistent with the objectives of the control. The application appears to rely upon lesser setbacks approved on the adjoining site at 267-269 Condamine Street, however the circumstances of that approval differ and the corner nature of that site played a key role in Council's ultimate support of the lesser front setbacks proposed on that site. Further, the application seems to disregard the setbacks of the other adjoining sites, which should carry as much weight as the development at 267-269 Condamine Street, in so far as they contribute to the prevailing/established building line.

The areas of non-compliance are addressed, as follows:

- **Ground Floor to Kenneth Road**

The retail space on the ground floor of the Kenneth Road frontage is setback 2.9m from the front boundary, inconsistent with the setback of the pre-existing building (3.6m - 6.7m) and the setback of the development to the west (6.7m). The setback of the retail space is supported on merit, as it facilitates additional internal retail space, which is essential to the development of the site. The enclosing wall of the garage is also sited forward of the existing setback, inconsistent with the immediately adjacent development. If the development was to be approved, a condition could be imposed to 'lighten' the enclosing blade wall to maximise visibility and create a greater sense of openness when viewed from the street.
- **Level 1 and 2 to Kenneth Road**

The floor plan of Levels 1 and 2 are replicated, with balconies setback at a minimum distance of 1.7m from the front property boundary and external walls setback at a minimum distance of 4.1m from the front boundary. Level 1 is inconsistent with the requirement to maintain the existing building line and Level 2 is inconsistent with the 5m minimum setback prescribed. Whilst the replicated nature of the setbacks on Level 1 and 2 is supported, greater setbacks are required in response to the lower density nature of the street (noting that R2 zoned sites are immediately opposite the site), and to ensure that the development steps back in response to the setback of the development to the west.

It also appears that Levels 1 and 2 have been designed to be more prominent in order to reduce visibility of the non-compliant upper floor. The introduction of bulk forward of the established/prescribed building line to screen the non-compliant height of the proposal is antipathetic to the objectives of both the front building line control and maximum building height development standard, and is not supported.
- **Level 2 to Condamine Street**

With nil setbacks proposed, Level 2 of the Condamine Street frontage is inconsistent with the 5m minimum setback prescribed by this control. Nonetheless, the Level 2 setback is consistent with the prevailing building line for Level 2 development fronting Condamine Street, and the nil setback allows for maximum sunlight to living rooms fronting the street.
- **Level 3 to Condamine Street**

The entirety of the Level 3 frontage to Condamine Street is forward of the 5m minimum setback prescribed by this control, with a minimum setback of 3.1m. The non-compliant nature of the



reduced setback at the southern side of the upper floor will be highly visible given the increased setback of the development to the south, and is likely to attribute to overshadowing of areas of private open space at 263 Condamine Street. As such, the proposed variation to the upper floor front setback is not supported.

Overall, the proposal as a whole cannot be said to be consistent with the objectives of the front building line control, and the proposal is recommended for refusal in this regard.

### **B10 Merit assessment of rear boundary setbacks**

Clause B10 of WDCP 2011 prescribes that the rear boundary setback is to be determined on merit with regard to streetscape, amenity of surrounding properties, setbacks of neighbouring development and the objectives of the control. The external wall of the western facade of the proposed development is setback 7.5m from the rear western boundary, with upper level balconies extending slightly forward of this alignment, with a setback of 7.2m from the rear boundary.

Whilst the constraints arising from the height and proximity of the existing development at 3-6 Kenneth Road are acknowledged, the setback and treatment of the setback proposed is not considered to provide for an acceptable level of amenity for the west facing, single aspect apartments proposed.

Units C.07, C.14 and C.20 receive little to no sunlight throughout the majority of the year. Unlike Units C.06, C.13 and C.19, which are cross through units that also benefit from an absence of development to the south-west, Units C.07, C.14 and C.20 are single aspect units that will be completely overwhelmed by the enclosing four storey brick walls to both the north and west. The sense of enclosure is amplified by the proposal itself, which extends above the height limit in the area in question.

Whilst adequate plantings appear to be provided at Ground Level, the two Kentia Palms proposed will do little to soften the visual impact of the four storey enclosing red brick wall from within Units C.14 and C.20, or mitigate any visual or acoustic impacts associated with the opening in the existing wall on the southern boundary, located directly opposite the proposed terraces.

The proposed rear setback does not provide appropriate amenity for the proposed single aspect west facing units, and in particular, a sense of openness in the rear yard is not achieved. As such, the proposed rear setback is not acceptable on merit, as the objectives of the control are not achieved.

### **C2 Traffic, Access and Safety**

As discussed in detail by Council's Development and Traffic Engineers, the application has not demonstrated that the proposed driveway location is safe or consistent with Council's Vehicle Crossing Policy. As such, the proposed development is inconsistent with the requirements and objectives of this control.

### **C9 Waste Management**

As outlined by Council's Waste Officer, the proposed development does not strictly comply with Council's Waste Management Guidelines. However, should the application be approved, conditions of consent could be imposed to ensure consistency in this regard.

### **D2 Private Open Space**

Clause D2 of WDCP 2011 requires a total area of 10m<sup>2</sup> with minimum dimensions of 2.5m for

each dwelling within a shoptop housing development. However, these requirements are inconsistent with the minimum requirements of the Apartment Design Guide, and in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the Apartment Design Guide in relation to private open space and balconies have no effect.

## **D6 Access to Sunlight**

### Proposed Units

Clause D6 of WDCP 2011 requires at least 50% of the required area of private open space for each dwelling to receive 3 hours of direct sunlight between 9am and 3pm in midwinter. However, this requirement is inconsistent with the minimum requirements of the Apartment Design Guide, and in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the Apartment Design Guide in relation to solar access have no effect.

### Adjoining development

Clause D6 of WDCP 2011 also requires at least 50% of the required area of private open space for each adjoining dwelling to receive 3 hours of direct sunlight between 9am and 3pm in midwinter. The ADG does not prescribe any minimum requirements in relation to impacts upon neighbours, and as such, these provisions of clause D6 of WDCP 2011 are relevant to the proposal. The application was supported by shadow diagrams that indicate that the proposal will result in overshadowing of areas of private open space at 263 Condamine Street (both the units presenting to the internal courtyard and the upper floor unit facing Condamine Street) and 6 Pitt Street. However, insufficient information has been provided to confirm whether the proposal will meet the minimum requirements of this control.

Given the likely impacts are associated with multiple areas of built form non-compliance and noting the absence of necessary information, Council cannot support the proposed development with regard to potential unreasonable overshadowing of adjoining properties.

## **D8 Privacy**

The proposed development is generally consistent with the requirements of this control, with the exception of the upper floor terraces associated with Units K.09 and K.10. The application is inconsistent with respect to the treatment between the units, as the plan indicates that the screen between the adjacent areas of private open space is less than 1.4m in height, however a taller screen (of unknown detail) is shown in some elevations but not all.

Whilst a condition would ordinarily be able to be imposed, the imposition of a condition is not supported in circumstances where this part of the development protrudes well above the height limit and the visual impact of the required screens has not been shown to be acceptable.

## **D9 Building Bulk**

As discussed in detail with respect to specific areas of built form non-compliance, the bulk and scale of the proposal is not considered to be appropriately minimised in order to ensure an acceptable outcome. In particular, the proposal is inconsistent with the following requirements of this control:

- *Side and rear setbacks are to be progressively increased as wall height increases.*
- *Building height and scale needs to relate to topography and site conditions.*

## **D18 Accessibility and Adaptability**

Clause D18 of WDCP 2011 requires 10% (rounded up to the next whole number) of dwellings to be capable of being adapted in accordance with the Class C provisions of AS4299. The cover page of the architectural drawings indicates that two units (C.15 and K.06) or 6% of the units proposed have been designed to meet these requirements. The inclusion of two adaptable units is non-compliant with the 10% requirement (4 units) of this control.

At lodgement, the application was supported by an Access Report confirming that four units (C.15, K.04, K.09 and K.13) are capable of achieving compliance with the provisions of AS4299. However, this statement was made in relation to superseded plans, and is inconsistent with the current application. The confirmation is also unfounded, as the proposal was not supported by plans demonstrating the level of adaptation required.

The applicant has not provided any justification for the non-compliance proposed or the lack of necessary supporting documentation. There is no reason as to why the proposal cannot achieve consistency in this regard, and as such, non-compliance with this control is found to warrant the refusal of this application.

### **F1 Local and Neighbourhood Centres**

The proposal is consistent with the requirements of clause F1 of WDCP 2011 that specifically relate to Manly Vale, in so far as the proposal enhances the amenity of Condamine Street, with vehicular access provided from Kenneth Road.

However, the proposed development is inconsistent with the provisions of this control that require:

- *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.*
- *Applicants are to demonstrate how the following significant considerations meet the objectives of this control:*
  - *Scale and proportion of the façade;*
  - *Pattern of openings;*
  - *Ratio of solid walls to voids and windows;*
  - *Parapet and/or building heights and alignments;*
  - *Height of individual floors in relation to adjoining buildings;*
  - *Materials, textures and colours; and*
  - *Architectural style and façade detailing including window and balcony details*

### **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 \$120,577 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$12,057,675.

### CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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 proposal presents as an over development of the site. Whilst the constraints of the site are acknowledged, they do not justify the intensity of the development proposed, particularly in circumstances where the development falls well short of minimum industry standards and impacts upon the amenity of adjoining properties.

It is considered that the proposed development does not satisfy the appropriate controls and that all

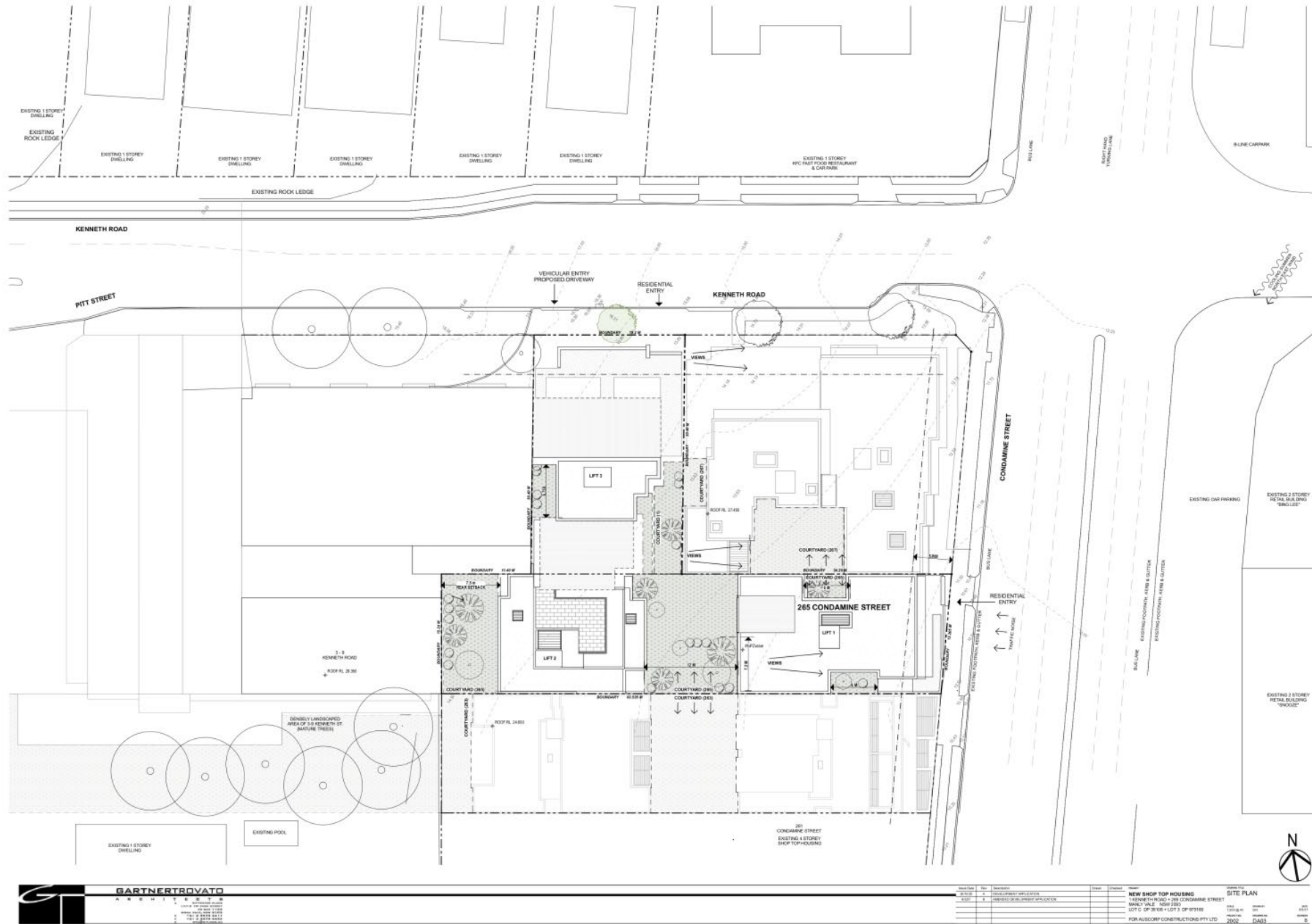
processes and assessments have been satisfactorily addressed.

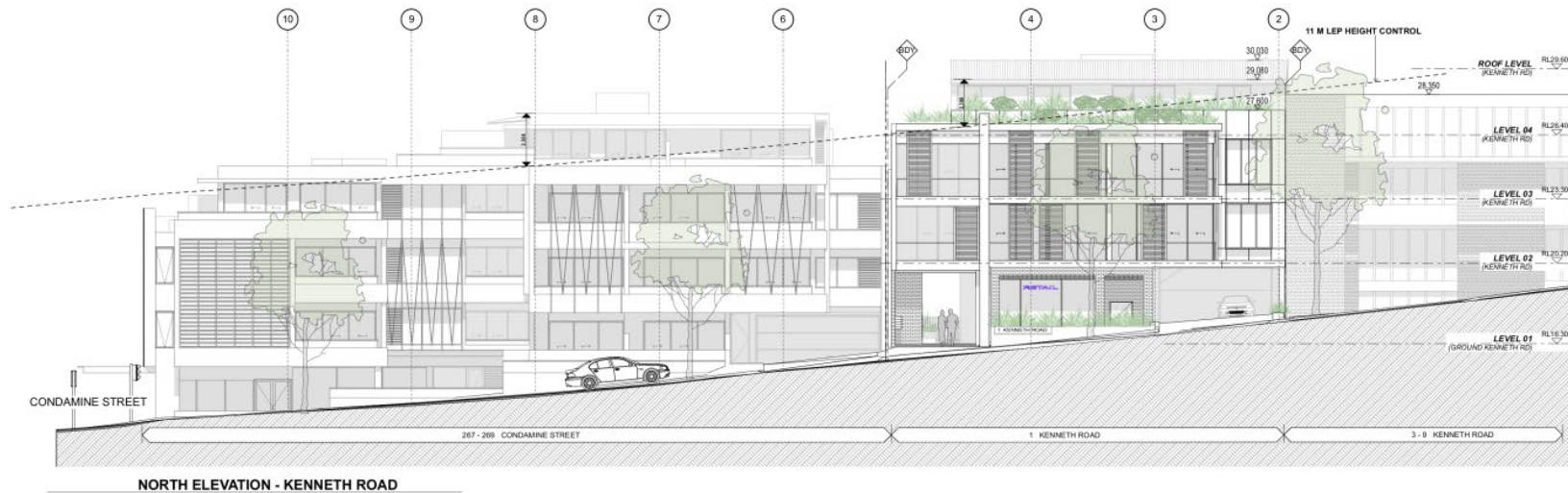


## RECOMMENDATION

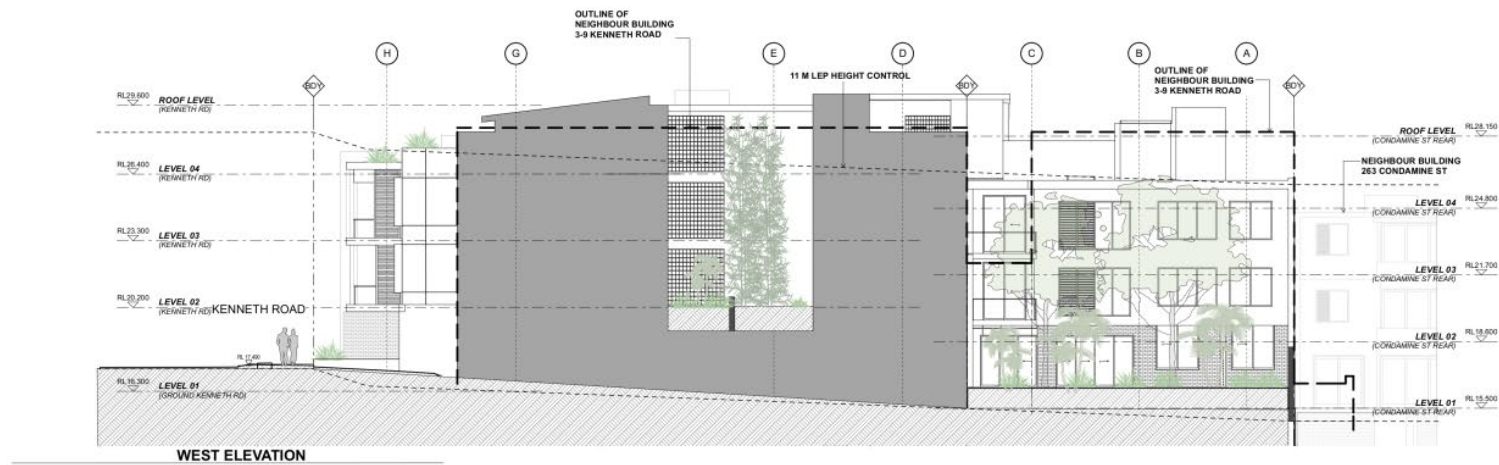
THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/1425 for the Demolition works and construction of a shop top housing development on land at Lot C DP 39108,1 Kenneth Road, MANLY, Lot 3 DP 975160,265 Condamine Street, MANLY VALE, for the reasons outlined as follows:

1. The application has not demonstrated that the site is suitable for the proposed development with regard to potential land contamination, and the consent authority cannot be satisfied of the matters prescribed by clauses 7(1)(b) and 7(1)(c) of *State Environmental Planning Policy No. 55 - Remediation of Land*.
2. In accordance with clause 30 of *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65), development consent cannot be granted, as the development has not had adequate regard to the design principles of SEPP 65 or the objectives of the *Apartment Design Guide*.
3. The proposed development is inconsistent with the maximum building height and objectives of clause 4.3 (Height of buildings) of *Warringah Local Environmental Plan 2011* (WLEP 2011).
4. The proposed development does not satisfy the provisions of clause 4.6 (Exceptions to development standards) of WLEP 2011.
5. The proposed development is inconsistent with the minimum requirements and objectives of the front, rear and side setback controls, as prescribed by clauses B6 (Merit Assessment of Side Boundary Setbacks), B7 (Front Boundary Setbacks) and B10 (Merit Assessment of Rear Boundary Setbacks) of *Warringah Development Control Plan 2011* (WDCP 2011). The bulk and scale of the built form is excessive, with unreasonable impacts upon adjoining properties and the streetscape.
6. The proposed driveway design and location is inconsistent with the requirements and objectives of clause C2 (Traffic, Access and Safety) of WDCP 2011.
7. The application proposes unreasonable impacts upon adjoining properties with regard to solar access, and compliance with the minimum requirements of clause D6 (Access to Sunlight) of WDCP 2011 has not been demonstrated.
8. The proposed development will result in unreasonable impacts upon an adjoining property with regard to visual privacy, inconsistent with the requirements and objectives of clause D8 (Privacy) of WDCP 2011.
9. The proposed development fails to provide a sufficient amount of adaptable housing units, inconsistent with the requirements and objectives of clause D18 (Accessibility and Adaptability) of WDCP 2011.









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BostonBlythFleming  
Town Planners

8<sup>th</sup> March 2021

The General Manager  
Northern Beaches Council  
PO Box 82  
Manly NSW 1655

Attention: Rebecca Englund – Principal Planner

Dear Ms Englund,

**Development Application DA2020/1425  
Supplementary Statement of Environmental Effects and  
Amended Clause 4.6 variation request – Height of buildings  
Proposed Shop Top Housing Development  
1 Kenneth Road and 265 Condamine Street, Manly Vale**

Reference is made to Council's issues letter of 8<sup>th</sup> February 2021. This submission represents a considered response to the issues raised and is to be read in conjunction with the following amended plans and documentation:

- Architectural plans DA01 to DA16 and DA18 to DA22, Issue B, prepared by Gartner Trovato Architects,
- Landscape plan DA17, Issue B, prepared by Gartner Trovato Architects,
- Stormwater plans DA01 to DA02, Issue B, prepared by iStruct Consulting Engineers,
- Waste Management Plan,
- Amended BASIX Certificate, and
- Amended clause 4.6 variation request – Height of buildings

The amendments can be summarised as follows:

- A reduction of 5 apartments through the deletion of the 3 upper level apartments located in the south western corner of the site and the deletion of 1 apartment from Level 2 and Level 3 of the Kenneth Road facing pavilion,
- Building height reduced by deletion of the top floor apartments in south western corner of the site and the provision of rooftop communal open space in this location,



- Setbacks increased to courtyards and lightwells and the rear setback to the south western apartments increased to 7.5 metres,
- An increase in the east side boundary setback of the Kenneth Road pavilion to 6 metres,
- Amend entry walkway into the rear of the Condamine Street pavilion,
- Deep soil areas increased,
- Solar access and cross ventilation diagrams provided,
- Increase to retail and business floor area, and
- Revised stormwater management plans with OSD and water tanks relocated to the courtyard.

The amended clause 4.6 variation request is at Attachment 1.

We briefly respond to the various issues raised as follows:

### **1. Building Height**

Response: The building height has been reduced through the deletion of the 3 upper level apartments located in the south-western corner of the site with the 8.4 metre setback to the Kenneth Road fronting upper level apartments ensuring that they are recessive elements in the streetscape. The height and setbacks proposed, including those relating to the upper level adjacent to both street frontages, are complimentary and compatible with those recently approved and/or approved and constructed on adjoining properties and to that extent will not be perceived as inappropriate or jarring in a streetscape context.

The application is accompanied by an amended clause 4.6 variation request in support of the building height variation proposed with such variation request well-founded.

### **2. Setbacks**

Response: The setbacks have been amended to provide a minimum 3 metre depth to the proposed lightwells, a minimum 6 metre setback to the east facing Kenneth Road pavilion apartments, a 7.5 metre rear setback to the western boundary to the apartments located in the south-western corner of the site and increased setbacks the Kenneth Road frontage as requested. The setbacks proposed to the Kenneth Road fronting pavilion are complimentary and compatible with those recently approved and/or approved and constructed on adjoining properties and to that extent will not be perceived as inappropriate or jarring in a streetscape context.

The increased setbacks will ensure the provision/ maintenance of appropriate residential amenity having regard to the built form characteristics established by recently approved/ existing development on adjoining properties. To that extent, the setbacks proposed are contextually responsive and appropriate under the circumstances.

### **3. Residential Amenity**

Response: Communal open space has now been provided at the upper level of the pavilion located in the south-western corner of the site with deep soil landscaping provided in the south-western corner of the site. The amended plan bundle includes detailed solar gain diagrams which demonstrate that 22 of 31 (71%) of apartments will receive a minimum 2 hours of solar access between 9am and 3pm on 21<sup>st</sup> of June. Further, the plans demonstrate that 19 of 31 (61%) of apartments will be naturally cross ventilated. Accordingly, the consent authority can be satisfied that the proposal satisfies the ADG guidelines as they relate to solar access and natural cross ventilation.

The balance of the issues identified by Council have been reviewed by the project Architect with amendments incorporated where considered necessary.

### **4. Business/ Retail GLFA**

Response: The plans have been amended to incorporate additional business/retail floor space as requested. Both street frontages and our well activated with appropriately sized and dimensioned retail/business tenancies accessed therefrom.

### **5. Traffic and Parking**

Response: The plans have been reviewed and where necessary amended to ensure compliance with the required driveway gradients, circulation geometry and sightlines. In this regard, we rely on the driveway profile shown at Section 3 to demonstrate that compliant gradients can be provided to the driveway with no objection raised to a condition ensuring compliance with such requirement.

Consistent with what has been approved for adjoining shop top housing development along Condamine Street the proposed development will be serviced via vans rather than small rigid trucks. No objection is raised to a suitably worded condition in this regard.

In relation to sightlines, we note that unobstructed views are available in both directions given the location of the driveway on the western adjoining property and the width of the driveway crossing into the subject site.

### **6. Stormwater Management**

Response: The application is accompanied by amended stormwater plans DA01 to DA02, Issue B, prepared by iStruct Consulting Engineers. These plans respond to the issue raised by Council and the amended Architectural detailing.

## 7. Insufficient Information

Response: This submission is accompanied by the required Waste Management Plan with the Architectural detailing and ADG solar/cross ventilation table on the cover page demonstrating that the proposal is consistent with the ADG guidelines. The PSI is currently being reviewed with a response to be provided under separate cover.

Finally, concern was also raised in relation to whether the development satisfy the definition of shop top housing noting that there appeared to be residential apartments at ground floor level in the south-western corner of the property where they were below the level of the ground floor retail premises located adjacent to the Kenneth Road frontage. In this regard, we confirm that apartments C.05, C.06 and C.07 are all located on the portion of the consolidated allotment known as No. 265 Condamine Street and located within the rear pavilion associated with the Condamine Street facing building.

This pavilion is separated from the Condamine Street fronting pavilion due to the provision of a centrally located courtyard which aligns with the courtyards established by the balance of shop top housing development to the south of the site and which facilitates compliance with the separation/ privacy provisions of the ADG. A basement connects both the front and rear pavilions located on the Condamine Street facing allotment with apartments C.05, C.06 and C.07 all located wholly above the ground floor retail premises located within the same building adjacent to the Condamine Street frontage being the frontage of the property upon which the apartments are located.

On this basis, we are satisfied that the proposed development is appropriately defined as shop top housing having regard to the judgement in *Hrsto v Canterbury City Council* (No 2) [2014] NSWLEC 121.

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

Yours sincerely

Boston Blyth Fleming



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

## Attachment 1

### Amended Clause 4.6 variation request – Height of buildings Proposed Shop Top Housing Development 1 Kenneth Road and 265 Condamine Street, Manly Vale

#### Height of Buildings

##### 1.0 Introduction

This clause 4.6 variation request has been prepared on the basis of amended Architectural plans DA01 to DA16 and DA18 to DA22, Issue B, prepared by Gartner Trovato Architects.

This variation request 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:

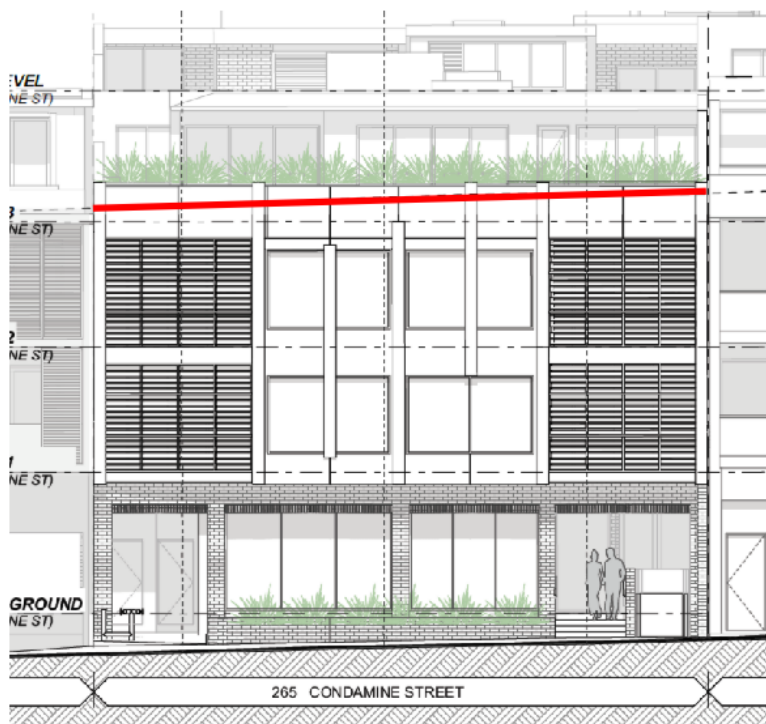
***building height (or height of building)** means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*

Ground level existing is defined as follows:

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

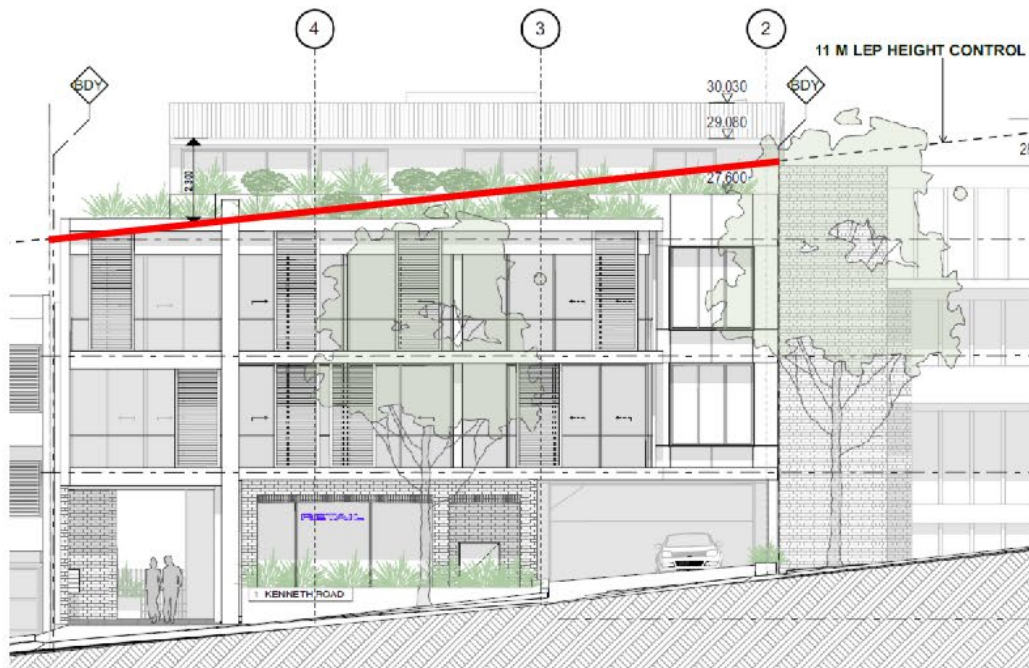
The proposed development has a variable street facing parapet height of between 13.2m and 13.5m to the Kenneth Road elevation and 11.2 and 11.6m to the Condamine Street elevation. The extent of building height breach increases beyond the front parapets to a maximum of 3.9 metres in the south western corner of the consolidated site where the site falls away from the Kenneth Road frontage.

The variable extent of the building height breaching elements is depicted on the elevations and sections at Figures 1 to 4 below and over page and the contextual building height breaching diagrams at Figure 5.

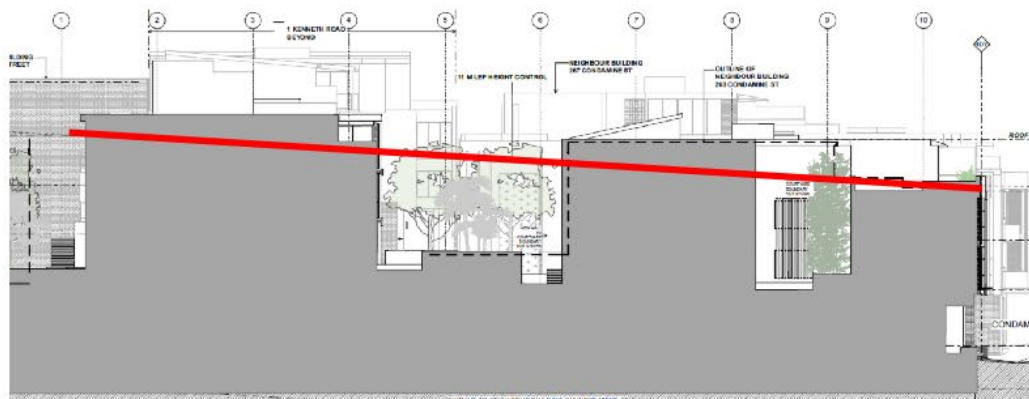


**Figure 1** – Extent of building height breach adjacent to the Condamine Street frontage

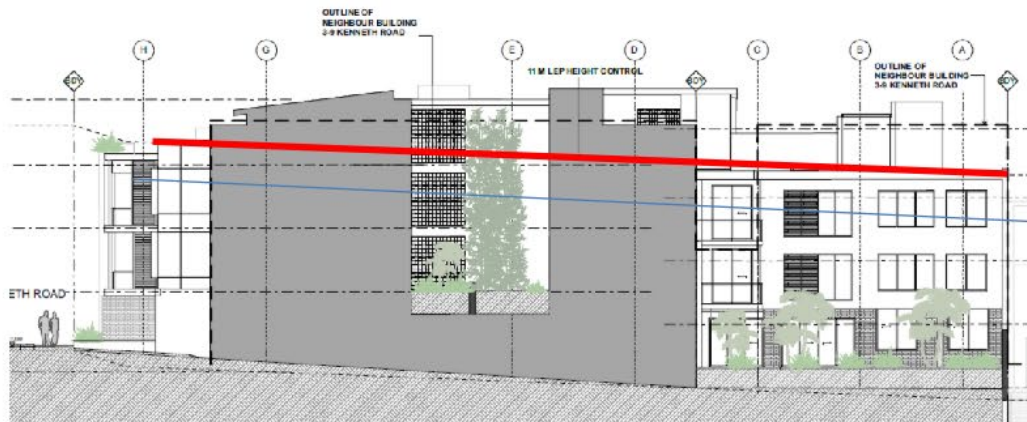




**Figure 2 – Extent of building height breach adjacent to the Kenneth Road frontage**



**Figure 3 – Extent of building height breach adjacent to southern boundary**



**Figure 4 – Extent of building height breach adjacent to the western boundary**



11 M HEIGHT PLANE VIEW FROM KENNETH ROAD



11 M HEIGHT PLANE VIEW FROM CONDAKINE STREET

**Figure 5 – Contextual building height breaching blanket diagrams**

## 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 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 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under 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?**

We are of the opinion that this provision is a development standard to which clause 4.6 applies.

##### **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/ 5 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 Condamine Street including the buildings having frontage to secondary streets including Kenneth Road and King Street.

We note that the non-compliant building height only relates to the upper portion of the upper level floor plate and roof form which are appropriate setback to both frontages. Such setbacks will ensure that the breaching elements are recessive in a streetscape context with the building displaying a height and scale compatible with that of other recently approved and constructed 4 storey shop top housing development both within this street block and more broadly along this section of Condamine Street between Burnt Bridge Creek and King Street.

Such setback and landscape characteristics ensure that this upper level breaching elements will not be readily discernible as viewed from Condamine Street or Kenneth Road nor will it contribute, to any unacceptable or jarring extent, to the perceived bulk and scale of the development as viewed from the neighbouring properties or in a broader streetscape context.

The building and design are entirely appropriate for both Condamine Street and Kenneth Road streetscape as it reinforces the building as it integrates with the existing recent development noting that a majority of properties have now been approved/ constructed with a 4 storey building form along both streets. In this regard, we have formed the considered opinion that the height, bulk and scale of the development including its 4 storey form are compatible 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 any visual, view, privacy or solar access impacts with appropriate spatial separation maintained to adjoining properties.

The proposal achieves this objective.

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

Comment: The non-compliant building height elements will not be discernible as viewed from any coastal or bushland environments. 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: The non-compliant building height will not be visually prominent as viewed from the street or any public area.

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 Condamine Street and Kenneth Road frontage 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 property does not directly adjoin the R2 Low Density Residential zone but it is close proximity to that zone. The design response adopted minimises conflict between land uses in the zone and adjacent zones and ensure amenity of any adjoining or 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 is 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 along this section of Condamine Street and Kenneth Road.

It can also be argued that the 11 metre height standard has been effectively abandoned along this particular section of Condamine Street and Kenneth Road in favour of a consistent and cohesive streetscape and urban design outcome.

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 exceptional 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 21<sup>st</sup> February 2018, 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 determination s 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**





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## PANEL COMMENT AND RECOMMENDATIONS

### Item 3.3 - 265 Condamine Street, MANLY VALE

The panel recognises that the site is an 'orphan' or 'remnant' site that is in a highly constrained location and that despite efforts of the owner to engage with the owner of the adjoining site with the aim of coordinating development, this has not progressed. As a result, the design has to contend with a design on the adjoining site (267-269 Condamine) that is under construction that when completed will present extensive blank walls, and significantly overshadow the site.

The Panel recognises that this is a result of the planning controls that apply to this part of Manly Vale where there are no limits on floor space in the form of FSR controls, and that building envelope controls alone do not, and cannot guarantee high amenity.

This means that it is even more important to comply with planning controls and demonstrate that adequate amenity has been achieved.

In general, the Panel will not support a scheme that does not comply with the planning controls.

Any non-compliance with planning controls can only be considered where there is:

- a demonstrable improvement in amenity within the proposal,
- reduced impact on adjoining sites (either existing or in relation to future development potential)
- contributions to the public domain or other public benefits (affordability, environmental performance)

In order to demonstrate the benefits of non-compliance, the non-compliant proposal should be benchmarked and compared to a complying 'reference scheme'.

Given the location of the site, there are no public benefits that could be expected, and the impact on the adjoining sites needs to be acceptable.

The Panel also notes the comprehensive arguments and explanation of the basis for the section 4.6 application appended to the SEE. In the Panel's considerations that focus on design quality, these arguments are immaterial, but would make the point that the scheme appears to have selectively complied with some controls and objectives and ignored others.

For example, the SEE claims that the Warringah LEP does not require deep soil on the basis of the B2 zoning. This is true, but only to the extent that the LEP does not mention 'deep soil' in relation to any zone or any control, presumably on the basis that it is assumed that this is addressed by the SEPP.

Conversely most of the residential accommodation in the proposal, that is described as 'shop top housing' is not *"located above ground floor retail premises or business premises"* as set out in the WLEP.

The total amount of retail is 64 + 67sqm= 131sqm that replaces 2,100sqm of warehouse floorspace. If the 'shop-top' definition were taken literally, this would permit in the order of 400sqm of residential within height limits. The proposed residential floor space is in the order of 3,200sqm though no figures have been provided, resulting in a 4% retail/ 96% residential mix.

There is no retail proposed beneath KS nor beneath the SW block, so it is unclear how these parts of the development can be considered 'shop top'.



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The SEE also states that the residential component may be classified as 'shop-top' and refers to *Hrsto v Canterbury Council* given that the proposed residential units *sit entirely above the ceiling height of the ground floor retail tenancies*.

The Panel notes this, but observes that this has been interpreted as permitting 3,400sqm of residential 'above' 131sqm of retail.

The Panel points are concerned with the overall quality of development and does not believe that detailed interpretations of the statutory controls should override the overall objectives and intent of the ADG: deep soil, common open space, solar access, legibility and so forth, noting that the primary objectives of the B2 Zone are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To provide an environment for pedestrians that is safe, comfortable and interesting.
- To create urban form that relates favorably 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.

Given that 'shop top housing' or any residential accommodation is not identified in any of the objectives, it can be inferred that 'shop top housing' is ancillary and subordinate to the retail and business objectives.

Furthermore, the proposal significantly reduces the amount commercial floor area, and reduces the employment opportunities on the site.

The reduction of employment opportunities is not consistent with the zone, with the LSPS, nor with the North District Plan.

Therefore the Panel's comments are focussed on amenity, landscape, and other matters set out in the Apartment Design Guide.

Given all of the foregoing, in the Panels' view there has been insufficient site analysis, the amenity is not adequate, and the proposal is an over development of the site, in relation to the residential component. As an indication of overdevelopment: although there is no FSR control in the Warringah LEP, a general rule of thumb derived from the analysis of apartment buildings, is that in mixed use developments the ground level uses approximately 0.6:1 and upper residential level 0.3-0.33:1. The site has an approximate FSR of 2.2:1 (3,300/1500sqm) so it would be expected that this would need to have a height of 6 storeys :  $1 \times 0.6 + 5 \times 0.33:1 = 6$  storeys. Instead the design attempts to cram this into 4-5 storeys.

No justification for exceeding the height limits and other controls has been provided, and as noted these do not guarantee adequate amenity in any case.

Consequently, the comments that follow should be understood as issues that should be addressed in the development of these options, rather than refinements that would make the current proposal acceptable.

The Panel identified a wide range of issues. It would be of little use to suggest modifications to all of these if a comprehensive re-design is undertaken as is needed.



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### **Terminology**

The development is comprised of four building blocks:

- block facing Kenneth, “K” with a northern part that faces Kenneth Street “K-N”
- a southern wing “K-S” with units that face east and west and look into blank walls
- a block facing Condamine “C” and and
- a block in the south west of the site. “SW”

These will be referred to as K-N K-S, C and SW respectively

### **SEPP 65; Apartment Design Guide compliance**

There are too many instances of ‘non-compliance’ or failure to meet the objectives or adopt the design guidance as set out in the Apartment Design Guide to list individually.

This is primarily due to the proposed over development of the site as noted.

The Design Panel provides advice, it is not the consent authority. However documentation for Development Applications must be sufficient to show that adequate regard has been given to the following;

The objectives, design criteria and design guidance set out in Parts 3 and 4 of the Apartment Design Guide for the following (appropriate documentation shown in brackets):

- (a) visual privacy, 2F/3F (all separation dimensions shown)
- (b) solar and daylight access, 4A (sun eye diagrams , dwelling compliance schedule)
- (c) common circulation and spaces, 4F (focus on design guidance for daylight and natural ventilation)
- (d) apartment size and layout, 4D (minimum areas to bedrooms and living room widths shown on the plans)
- (e) ceiling heights, 4C (including Fig 4C-1 for mixed use projects)
- (f) private open space and balconies, 4E (minimum areas noted on plans)
- (g) natural ventilation, 4B (indicated on plan schedule in colour- *as per GFA*, dwelling compliance schedule)
- (h) storage. 4G (indicated on plans in colour, dwelling compliance schedule)

Additionally, although not referred to specifically in the SEPP, the Panel would expect to see:

- (i) Deep soil 3E (minimum % and dimensions for different site areas shown on plans)
- (j) Communal open space 3D (minimum % and dimensions, solar access to 50% of useable part to be shown on plans)

As previously noted, and particularly for such a constrained site, a thorough site analysis as set out in Section 3A and specified in Appendix 1 of the ADG

Lastly, as previously noted, justification for a non-compliant scheme would need to demonstrate a better outcome in relation to these objectives and criteria.



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The Submission claims 69.4% solar access and 61% cross-ventilation but this seems high for solar. The point was made that this would be lower if the building heights were reduced

Solar access, cross ventilation and overall ADG compliance not included in submitted files.

Amenity of many apartments would appear to be severely compromised (one example would be K05 where the living is folded into the corner of 2 solid walls with one small window 4m (?) off boundary with adjacent building)

The Panel considers the following Objectives to be critical at early stages of the design while it is possible to achieve good design in relation to other aspects later in the design process as 'refinements and during 'design development'

#### Recommendations

1. Provide a schedule and accompanying *diagrams* to show compliance with ADG as set out above. Refer to schedule at the end of this report. It is not possible to confirm compliance by simply referring to the table in the SEE.  
  
Light well courtyards provide very little amenity, in terms of solar access, noise privacy, ambient light and outlook.  
  
Maintenance access into the landscaped courtyard does not seem to be provided.

#### **Overall planning, Built form and envelope**

The development exceeds the height limit.

Light well courtyards provide very little amenity, in terms of solar access, noise privacy, ambient light and outlook.

Maintenance access into the landscaped courtyards does not seem to be provided.

#### Recommendations

2. Prepare a complying scheme and show how a non complying scheme with the same yield would achieve better amenity.
3. This may involve exploring:
  - Moving KS block to the east or west to either abut 267 Condamine or the commercial building to the west with the aim of improving outlook, consolidating and increasing the amount of open space/ courtyard area
  - Moving SW block to the east or west to either
    - abut commercial building to the west or
    - move eastward and reduce height to increased set back to provide better ambient light, improved acoustics and larger landscape courtyard with an improved outlook.
  - Reducing the depth of Condamine block to have dual aspect apartments; single aspect apartments facing 40,000 VPD roads are not acceptable where it can be avoided.

#### **Deep soil**

The SEE states that no deep soil zone is required by Warringah LEP (SEEP 2 of ADG compliance table)- this correct but only because deep soil is not referred to at all in the LEP or DCP. Therefore the SEPP should apply.

Deep soil provided is inadequate and has parking under and building over. This does not count as deep soil which must be terra firma.





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Site area is greater than 1500sqm

The ADG (3E-1) suggests 15% (225sqm) for sites of this size.

#### **Recommendations**

4. Need to provide additional deep soil and have it go through to natural ground. Provide at least 10% of site areas as deep soil given lots are over 1500m2. Aim for 15% deep soil if collocated with the communal open space.
5. Deep soil should be given priority over car-parking provision.

#### **Access**

- Wayfinding and legibility for building entries is very poor. Access to SW is particularly tortuous
- Consider increasing retail frontage on Condamine Street and integrate entries on Kenneth Road

#### **Recommendation**

6. Street address and legibility of pedestrian access to the C and SW blocks from Kenneth should be a fundamental consideration of the re-design

#### **Common open space**

- Communal open space – Courtyard is not communal open space. No access. Ideally we link communal open space with deep soil
- Minimum ADG should be complied with.
- Outdoor COS is minimal only being a small patio off the communal lounge.

The SEE states that “As discussed and agreed with Council no communal open space is considered necessary given the proximity of the site to a plethora of open space recreational areas.”

#### **Recommendation**

7. The panel does not agree with this and considers that the requirements of the ADG for 25% of the site should be allocated for communal open space. The communal open space could be provide on the roof . 50% of the useable open space should receive 2 hours of sun 9-3 mid winter
8. Given the constraints of the site, rooftop common space may prove a more achievable alternative. Breaches of height limits by lift core in order to provide access to rooftops may be acceptable

#### **Private open space**

Ground/podium level units do not meet ADG requirements of 15sqm POS: units C.03,C.04,C.05,C.06,C.07

#### **Recommendation**

9. Provide open space in accordance with ADG.





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### **Parking**

The Panel commends the architect for allowing for a potential connection through to the adjoining car park on 267 Condamine- this should be retained in the re-design.

Additional parking above requirement is not supported given the highly accessible location. Priority should be given to achieving 7% deep soil.

### **Recommendation**

10. In consultation with council investigate reduction of minimum car parking requirement given the accessibility of the location;
11. Prioritise the achievement of 10% deep soil in the central courtyard area
12. Retain potential for connection to adjoining site car park.

### **Sustainability initiatives**

The potential for onsite sustainability initiatives and landscaping is very limited , however consideration could be given to the following:

### **Recommendations**

13. Photovoltaic panels on the roof that could double as a sun shade for a common area.
14. The Panel encourages the maximization of onsite renewable energy generation and electrification of all appliances and services in anticipation of decarbonisation of the grid.
15. Rainwater collection at a high level that could passively irrigate planters on balconies below.
16. Increase and improve design of Communal terrace. Current communal space too small. We would strongly recommend the design of a roof top garden to provide a useable communal space and could incorporate seating, BBQ area, communal kitchen gardens and Solar panels.
17. Ensure planting areas on Communal terrace is minimum 300mm for Ground covers, 600mm for shrub planting and 1000mm for trees.
18. Planter boxes with trailing plants/climbers to balconies where space allows.

## **PANEL CONCLUSION**

The Panel does not support the proposal in its current form.

A complete re-design is required to provide adequate amenity and meet the objectives of the ADG.

A benchmark complying scheme should be prepared to demonstrate how any non complying proposal would be better in relation to ADG objectives.

The Panel notes the extensive legal precedents provided in the SEE in relation to the s4.6 application, but does not consider these a justification for the low amenity.

**ITEM 4.2****DA2021/0119 - 1 WEST PROMENADE, MANLY -  
ALTERATIONS AND ADDITIONS TO AN EXISTING  
COMMERCIAL/RETAIL BUILDING**

**AUTHORISING MANAGER** Rodney Piggott  
**TRIM FILE REF** 2021/296804  
**ATTACHMENTS** 1 Assessment Report  
2 Site Plan & Elevations

**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as it is a development involving a heritage item.

**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. DA2021/0119 for Alterations and additions to an existing commercial/retail building at Lot 51 DP 1237990, 1 West Promenade, Manly subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/0119
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<b>Responsible Officer:</b>	Catriona Shirley
<b>Land to be developed (Address):</b>	Lot 51 DP 1237990, 1 West Promenade MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and additions to an existing commercial / retail building
<b>Zoning:</b>	Manly LEP2013 - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Manly Civic Club
<b>Applicant:</b>	Pbdt Projects Services

<b>Application Lodged:</b>	23/02/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	08/03/2021 to 22/03/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 64,515.00
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### Executive Summary

The proposal seeks approval for the addition of five (5) white PVC sail awnings over the existing outdoor terrace areas of the Manly Civic Club.

The Manly Civic Club is a Heritage Listed Building, item I156 - Auckland Garage, on the corner West Promenade and Gilbert Street. The subject site is also located opposite Gilbert Park and within close proximity to a number of other heritage items.

In light of the alterations and additions to the Heritage Listed Building the application is referred to the Northern Beaches Local Planning Panel for determination.

The subject site contains a registered club (Manly Civic Club), and a residential flat building.



The public exhibition of the proposal resulted in one submission. The primary issue raised related to the visual impact of the proposed sail awnings from the adjoining residential flat building.

Councils Heritage Officer has serious concerns with three (3) of the proposed five (5) sail awnings B1, B2 and B3, in that these three sail awnings will obstruct the views to the significant features of the Heritage Item. Particularly important as the building has landmark status and can be visually seen from the forecourt outside Manly Town Hall as well as the intersection of Belgrave Street and Gilbert Street.

The assessment has found that the proposed development (as conditioned) is satisfactory in relation to character, streetscape, heritage impact and, on balance given the adaptive nature of the proposal, with respect to the adjoining residential units internal and external residential amenity.

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

### **PROPOSED DEVELOPMENT IN DETAIL**

The application includes the addition of five (5) white PVC awning sails over the existing outdoor terrace areas of the Manly Civic Club.

The sails are to be located within the front setback of the subject site, with the sails attached to the front and sides of the Heritage Listed building.

The sails will be fixed to the exposed roof rafters and masonry walls of the building and extend to the existing boundary fence where they will be supported by powder-coated metal posts and rails.

The posts will be affixed to the existing planter wall upstand.

The sail awnings are not a fixed structure, rather they are able to be removed when no longer needed.

### **ASSESSMENT INTRODUCTION**

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

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



## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone B2 Local Centre  
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation  
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area  
 Manly Local Environmental Plan 2013 - 6.11 Active street frontages  
 Manly Local Environmental Plan 2013 - 6.13 Design excellence  
 Manly Local Environmental Plan 2013 - 6.21 Noise impacts—licensed premises  
 Manly Development Control Plan - 3.1.3 Townscape (Local and Neighbourhood Centres)  
 Manly Development Control Plan - 3.2 Heritage Considerations  
 Manly Development Control Plan - 4.2.3 Setbacks Controls in LEP Zones B1 and B2  
 Manly Development Control Plan - 5 Special Character Areas and Sites

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 51 DP 1237990 , 1 West Promenade MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the north side of West Promenade.</p> <p>The site is regular in shape with a surveyed area of 1562m<sup>2</sup>. The frontage to the subject site is 33.35m along West Promenade, 43.98m along Gilbert Street, and 24.59 to Eustace Street.</p> <p>The site is located within the B2 Local Centre zone and is part of a recently constructed mixed use development approved under DA0176/2016. The subject development is comprised of a registered club (the Manly Civic Club) with a residential flat building above.</p> <p>The subject site contains a Heritage Listed Building, Item I156 - Auckland Garage building (former service station) of which the Manly Civic Club operates from.</p> <p>The subject site is located opposite Gilbert Park and is within close proximity to a number of heritage items:</p> <ul style="list-style-type: none"> <li>• Item I252 - Residential flat buildings 3, 5, 6, 7 and 8 West Promenade</li> <li>• Item I 253 - Uniting Church 4 West Promenade</li> <li>• Item I157 - Gilbert Park and Item 12 - Stone kerb - West Promenade.</li> </ul> <p>Adjoining and surrounding development is characterised by residential flat buildings and a place of public worship.</p>

Map:





## SITE HISTORY

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

- **DA0176/2016** for construction of a mixed-use development and alterations to the existing Auckland Garage building, comprising a registered club at ground level and residential accommodation above, basement carparking and associated landscaping - Approved on 28 June 2017 the Sydney North Planning Panel.
- **DA0176/2016** Part 2 for Section 96 to modify approved construction of a mixed-use development and alterations to the existing Auckland Garage building, comprising a registered club at ground level and residential accommodation above, basement carparking, associated landscaping and strata subdivision - Approved on 19 September 2017 under staff delegation.
- **DA0176/2016** Part 3 for Section 96 to modify approved construction of a mixed-use development and alterations to the existing Auckland Garage building, comprising a registered club at ground level and residential accommodation above, basement carparking, associated landscaping and strata subdivision - Approved on 1 November 2017 under staff delegation.
- **Mod2018/0318** for Modification of Development Consent DA176/2016 granted for construction of a mixed use development comprising a registered club and residential dwellings - Approved on 31 July 2018 under staff delegation.
- **Mod2018/0449** for Modification of Development Consent DA2016/0176 granted for Construction of a mixed use development comprising a registered club at ground level and residential accommodation above basement carparking and associated landscaping - Approved on 14 January 2019 under staff delegation.
- **DA2018/1843** for Stratum subdivision of one Lot into two Lots of an approved mixed use development - Approved on 21 February 2019 under staff delegation.
- **DA2020/0145** for Business Identification Signage - Approved on 15 May under staff delegation.

## 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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. / This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>



Section 4.15 Matters for Consideration'	Comments
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 08/03/2021 to 22/03/2021 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 1 submission/s from:

Name:	Address:
Mr George Max Gordon Mrs Kay Ruth Gordon	510/54-68 West Esplanade MANLY NSW 2095

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

- **Visual Amenity**

The matters raised within the submissions are addressed as follows:

- *Concern was raised from a resident of the adjoining residential flat building that the proposal will be "unsightly and not in keeping with the general appearance of the building and the neighbourhood".*

Comment:

The proposed five (5) sail awnings will cover the outdoor areas within the subject site. The proposal and Heritage Item Conservation Management Plan (CMP) have been reviewed by Council's Heritage Advisor, who raised concerns as to the visual impact the sail awnings will have on the Heritage listed building.

The amenity impacts of the proposal, particularly in relation to acoustic, privacy, front setbacks and streetscape outcomes for the Heritage item have been addressed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development.





The Heritage and planning assessment concluded that the sides of the building are considered the only appropriate location for the sail awnings as the side of the buildings contain less heritage detailing and are less visually significant. It was also considered that the sail awnings over the side outdoor terrace areas would reduce the acoustic impact of the outdoor areas, and assist to obscure views of the intrusive existing doorway openings, particularly from the streetscape.

In order to satisfy the Manly LEP and DCP controls, only awnings A1 and C1 can be supported. The proposal is to be conditioned to remove awnings B1, B2 and B3 from the proposal.

Councils Heritage officer considers the conditioned proposal would not unreasonably impact the nearby heritage listed items, being the apartment buildings on West Promenade, the stone kerbs or Gilbert Park.

In this regard, given the nature of the conditioned proposal, its location, acoustic improvements and Heritage outcomes, the impact is not considered to be unreasonable and this issue does not warrant the refusal of the application.

## REFERRALS

Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject property is a heritage item, and is within proximity to a number of others.
	<b>I156 - Auckland Garage</b> - Gilbert St (corner West Promenade and Gilbert Street)
	<b>I2 - Stone Kerbs</b> - (Eastern side of West Promenade adjoining Gilbert Park)
	<b>I157 - Gilbert Park</b>
	<b>I252 - Residential flat buildings</b> (3, 5, 6, 7 and 8 West Promenade)
	Details of heritage items affected
	Details of the item as contained within the Manly inventory is as follows:
	<p><b>Auckland Garage</b></p> <p><u>Statement of significance:</u> A well preserved and rare example of a petrol service station in the Inter War Spanish Mission style dating from the 1930s.</p> <p><u>Physical description:</u> Single storey rectangular building in Inter War Spanish Mission style</p>

Internal Referral Body	Comments	
	<p>with roofed forecourt and garage attached at the rear. Gabled tiled roof with slightly off centre gabled bay to the façade., brick walls with white painted stucco. The building is set at a diagonal to the two streets, the forecourt forming a triangle at the street corner. The gabled bay to the façade and the end walls feature stepping brickwork, windows and doors have semi-circular fanlights, and windows are 12-paned timber framed double hung.</p> <p><b>Stone Kerbs</b> Statement of significance: Stone kerbs are heritage listed.</p> <p>Physical description: Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.</p> <p><b>Gilbert Park</b> <u>Statement of significance:</u> High significance as part of HG Simth's 1850's promenade system and integral with Manly's first planting.</p> <p><u>Physical description:</u> Open space bounded by Belgrave Street, West Promenade leading from Gilbert Street to Sydney Road and Ivanhoe Park. Significant elements are mature trees; Araucaria Heterophylla and Ficus Macrophylla probably dating from the mid 19th century and Edwardian split stone edged raised planting beds.</p> <p><b>Residential Flat Buildings</b> <u>Statement of significance:</u> Significance in terms of building mass and scale but major significance as a backdrop to Gilbert Park.</p> <p><u>Physical description:</u> Streetscape consists of five three storey blocks of brick flats with tile roofs and the Manly Uniting Church (no.4). The flats have a variety of decorative devices but show many signs of Spanish Mission influence. No.6 provides a good example of polychrome brickwork used as ornament. While none of the buildings have particular architectural significance, their scale, style and grouping opposite Gilbert Park has great influence on the streetscape and as a group of similar date (c.1920-c.1930) they provide evidence of Manly's early 20th century development boom.</p>	
Other relevant heritage listings		
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage	No	



Internal Referral Body	Comments		
	Register		
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register		
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
<p>The proposal seeks consent for new sail clothes attached to the heritage listed former garage and service station. The heritage item was retained and adaptively reused as part of the Manly Civic Club redevelopment project approved under DA0176/2016. As part of that approval a Conservation Management Plan (CMP) was prepared by NBRS + Partners in 2017 to guide the ongoing management of the heritage item. Therefore any consideration of this proposal needs to also consider that CMP.</p> <p>In brief the most important parts of the CMP in relation to this proposal are listed below.</p> <ul style="list-style-type: none"><li>On page 59, the statement of cultural heritage significance indicates the building has landmark significance due to its corner location adjacent Gilbert Park and has a visual relationship through to the forecourt of Manly Town Hall.</li><li>Pages 60 and 61 of the CMP detail the heritage significance grading undertaken which indicates the front walls, windows and porte-cochere are of high significance. It also indicates the north eastern and southern western walls are of high significance except for the intrusive doorway openings.</li><li>On page 67 under recommendation 16, the plan indicates that future uses should expose original fabric to view and remove intrusive elements.</li><li>On page 68 under Views and Settings, recommendations 31 and 32 detail that views to the front and side of buildings along Gilbert Street and West Promenade should be retained, as well as views to the place from the southern forecourt of Manly Town Hall.</li></ul> <p>Based on the above recommendations from the CMP, Heritage cannot support the proposal. The proposed awnings along the front (awnings B1, B2 and B3) are considered to detract from the building and its significance and will interrupt views to the item as well as its significant features. As noted within the CMP, the building has landmark status and can be seen from the forecourt outside Manly Town Hall as well as the intersection of Belgrave Street and Gilbert Street. The proposed awnings along the front will obscure the view of the item and its high significance features</p>			

Internal Referral Body	Comments
	<p>which would diminish its landmark status. Heritage disagrees with the HIS where it states the proposal would not alter an understanding of the architectural character of the item.</p> <p>Further, these awnings would be considered to run counter to Objective 1 under the Manly DCP section 3.2 Heritage Considerations to conserve significant heritage items including views. It would also run counter to control 3.2.1.1 (c) (iv) to retain and respect significant views to and from heritage items.</p> <p>Conversely, Heritage can on balance support awnings A1 and C1. These sides of the building are considered more appropriate places for the awnings as views to and from these sides are less significant, these side walls have less detailing and the awnings would mostly obscure views of the intrusive doorway openings.</p> <p>Heritage considers there would be no impact to the heritage listed apartment buildings on West Promenade, the stone kerbs or Gilbert Park from the proposal.</p> <p>Based on the above, Heritage recommends amended plans to remove awnings B1, B2 and B3.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? A CMP was provided with the previous development on the site - DA0176/2016 Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes a statement from NBRS + Partners has been provided.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response on the 7 December 2020 stating that the proposal is acceptable with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

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

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

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

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



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

### SEPP 55 - Remediation of Land

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

### SEPP (Infrastructure) 2007

#### Ausgrid

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

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

#### Comment:

The proposal was referred to Ausgrid who provided a response on the 7 December 2020 stating that the proposal is acceptable with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

### Manly Local Environmental Plan 2013

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	15m	2.5m - 3.3m	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.10 Heritage conservation	No
6.2 Earthworks	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.13 Design excellence	Yes
6.21 Noise impacts—licensed premises	Yes
Schedule 5 Environmental heritage	Yes

#### Detailed Assessment

#### **Zone B2 Local Centre**

The subject site comprises of a registered club (the Manly Civic Club) with a residential flat building above.

Registered clubs are permissible with consent within the B2 Local Centre zone.

#### History

The subject site contains a registered club (the Manly Civic Club) with a residential flat building approved under **DA176/2016**.

Residential flat buildings are prohibited in the B2 Zone. The residential flat building on the subject site utilised the heritage incentive provisions in Clause 5.10 (10) of Manly LEP 2013 for the permissibility of the residential component on the subject site.

There is no change to the use of the subject site.

#### **5.10 Heritage conservation**

The proposal seeks consent for five (5) new sail awnings attached to the Heritage listed Auckland Garage former service station (Item 156 under Schedule 5 of the Manly LEP 2013). The heritage item was retained as part of the Manly Civic Club redevelopment project approved under **DA0176/2016** and a Conservation Management Plan (CMP) was prepared by NBRS + Partners in 2017 to guide the ongoing management of the heritage item.

The installation of five (5) sail awnings to the subject site does not conserve the heritage significance or associated heritage fabric of the Heritage Item.

Council's Heritage Advisor has reviewed the proposal with the CMP and has raised concerns with the proposal.

However, the proposal can be supported with the removal of awnings B1, B2 and B3 as these sail awnings are the items causing concern. These awnings obstruct the view lines to the heritage fabric of the Heritage item. The awnings to be removed via condition are highlighted in red within figure 1 below.



**Figure 1:** Awnings B1, B2 & B3 to be removed via condition of consent.

As a result, the assessment below is undertaken for only awnings A1 and C1 as awnings B1, B2 and B3 will be removed via a condition of consent.

- *a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*  
Comment:  
The proposed development (as conditioned) does not detract from the heritage building nor its heritage significance and will continue to allow views to the significant features of the buildings. As a result, the conditioned proposal will facilitate the conservation and restoration of the heritage listed Auckland Garage former service station (Item 156 under Schedule 5 of the Manly LEP 2013).
- *(b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*  
Comment:  
The development as proposed is not in accordance with the Conservation Management Plan (CMP) developed by NBRS + Partners in 2017. Council's Heritage Advisor has reviewed the proposal with the CMP and has raised concerns as to the consistency of the proposal with the CMP. As a result, proposed awnings B1, B2 and B3 will be removed via a condition of consent to ensure the proposal provides consistency with the CMP approved by the Sydney North Planning Panel under application DA176/2016.
- *(c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*  
Comment:  
Conservation work specified within the Conservation Management Plan is enforced through the application of applied conditions within application DA176/2016.
- *(d) the proposed development would not adversely affect the heritage significance of the*





*heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*

Comment:

The proposed development (as conditioned) aims to conserve and enhance the heritage significance of the Auckland Garage and its setting via the conditioned removal of sail awnings B1, B2 and B3 which detract from the heritage significance of the building.

Councils Heritage Officer can support awnings A1 and C1 as these awnings are to be installed on the side of the building. The sides of the heritage building is less significant due to less heritage detailing, and the awnings would mostly obscure views of the intrusive doorway openings.

As a result, the proposal as conditioned, will not adversely affect the heritage significance and can be supported.

- *(e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

Comment:

The proposed development, as conditioned, is acceptable in relation to amenity. This is detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of MLEP 2011, MDCP 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.

## 6.9 Foreshore scenic protection area

The consent authority can be satisfied that the matters listed by clause 6.9 of MLEP 2013 have been considered, as follows:

- *a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*

Comment:

Noting that the significant features of the Heritage Listed building remains unchanged, the proposed development will not result in any adverse impacts upon the visual amenity of the harbour or coastal foreshore, particularly with respect to overshadowing or views.

- *b) measures to protect and improve scenic qualities of the coastline,*

Comment:

The proposed development (as conditioned) does not detract from the heritage building nor its heritage significance and will continue to allow views to the significant features of the buildings. As a result, the conditioned proposal will facilitate the conservation of the Heritage listed Auckland Garage former service station (Item 156 under Schedule 5 of the Manly LEP 2013) to maintain the scenic qualities of this specific area of the Manly Foreshore scenic protection area.

- *c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*

Comment:

The proposed development (as conditioned) does not detract from the heritage building nor its heritage significance. The existing building remains suitable for its location, being a contributory item



to the heritage significance of the Manly area.

- *d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The proposed development does not result in any conflict between land-based and water-based activities.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of MLEP 2011, MDCP 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.

### 6.11 Active street frontages

The site is on land identified as "Active street frontages" on the Active Street Frontages Map and is subject to the provisions of 6.11 of MLEP 2013.

In accordance with clause 6.11(3), development consent must not be granted to the erection of a building or the change of use of a building unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use.

The proposal includes only the incorporation of external sail awnings over the outdoor terrace areas. As a result, the proposal maintains a business premises such that there is no change to the previously approved activated street frontages.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of MLEP 2011, MDCP 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.

### 6.13 Design excellence

The consent authority can be satisfied that the matters listed by clause Clause 6.13 Design Excellence of the MLEP 2013 are considered as follows:

- *a) contains buildings that consist of a form, bulk, massing and modulation that are likely to overshadow public open spaces, and*

Comment:

The proposal (as conditioned) is of suitable form in order to retain the existing sunlight to the Gilbert and Eustace Street areas.

- *b) is likely to protect and enhance the streetscape and quality of the public realm, and*

Comment:

The proposed development (as conditioned) is satisfactory in relation to built form, character, streetscape, heritage impact and, on balance given the adaptive nature of the proposal, with respect to the adjoining dwellings internal and external residential amenity.

- *c) clearly defines the edge of public places, streets, lanes and plazas through separation, setbacks, amenity, and boundary treatments, and*

Comment:

The proposed development (as conditioned) is located over the existing designated outdoor



recreational area for the Manly Civic Club. The two (2) sail awnings, A1 and C1, provide suitable definition at the ground level, with no change to the previously approved pedestrian entries, or building separation.

- *d) minimises street clutter and provides ease of movement and circulation of pedestrian, cycle, vehicular and service access, and*  
Comment:  
The proposed development (as conditioned) does not result in visual or physical clutter in the streetscape. The sail awnings A1 and C1, and their location over the designated outdoor terrace areas provides consistency with existing access arrangements, and maintain the existing pedestrianised setting along Gilbert and Eustace Street areas.
- *e) encourages casual surveillance and social activity in public places, streets, laneways and plazas, and*  
Comment:  
The proposed development (as conditioned) does not obscure required openings that allow the passive surveillance of the surrounding area to be maintained.
- *f) is sympathetic to its setting, including neighbouring sites and existing or proposed buildings, and*  
Comment:  
The proposed development (as conditioned) is of suitable height, bulk and scale to be consistent with the heritage context and character of the surrounding area and demonstrates appropriate design for the listed heritage building.
- *g) protects and enhances the natural topography and vegetation including trees, escarpments or other significant natural features, and*  
Comment:  
No other natural features of importance are present on the site. The proposal will not make any changes to the existing approved landscaping arrangement.
- *h) promotes vistas from public places to prominent natural and built landmarks, and*  
Comment:  
The Heritage and planning assessment concluded that the sides of the heritage building are considered a more appropriate location for the sail awnings as the side of the Heritage Listed building as the sides are less visually significant and contain less heritage detailing.  
  
Councils Heritage officer considers the proposal (as conditioned) will not unreasonably impact the heritage listed apartment buildings on West Promenade, the stone kerbs or Gilbert Park from the proposal.  
  
As a result, the proposal is to be conditioned to remove awnings B1, B2 and B3 and approve sail awnings A1 & C1 to ensure that the prominent area of the heritage building is visually identifiable from Gilbert and Eustace Street, and surrounding areas.
- *i) uses high standards of architectural design, materials and detailing appropriate to the building type and location, and*  
Comment:  
The proposed development (as conditioned) uses appropriate colours (white sails), with painted poles and anchor plates that match the colour of the rendered brickwork, in order to reduce visual impact and demonstrate appropriateness to the heritage significance of the Heritage listed item containing the Manly Civic Club.



- *j) responds to environmental factors such as wind, reflectivity and permeability of surfaces, and*  
Comment:  
The proposed development (as conditioned) is designed and sited to as to respond adequately to the site's constraints and surrounding development.
- *k) coordinates shared utility infrastructure to minimise disruption at street level in public spaces.*  
Comment:  
Services and utilities are incorporated effectively into the proposed development in order to minimise disruption at street level.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 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.

#### **6.21 Noise impacts—licensed premises**

The proposed sail awnings are to be located over the existing outdoor terrace areas of the Manly Civic Club.

Whilst three (3) sail awnings will be removed via condition, the two (2) remaining sails (A1 & C1) will assist in reducing the noise emulating to the neighbouring residents emanating from the outdoor courtyard areas surrounding the local heritage listed Auckland Garage building whilst the club is in operation.

As a result, the proposal (as conditioned) will improve the existing acoustic impacts and is consistent with the objectives and provisions of Clause 6.21 of the MLEP 2013.

#### **Manly Development Control Plan**

##### Built Form Controls

<b>Built Form Controls - Site Area: 1562sqm</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Complies</b>
4.1.4.1 Street Front Setbacks (Gilbert Street and Eustace Street)	0m	1m - 1.5m	<b>Yes</b>

The application does not propose to alter the built form of the existing Heritage listed building.

##### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	No	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	No
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

##### **3.1.3 Townscape (Local and Neighbourhood Centres)**

The proposal is considered to make unreasonable change to the streetscape outcome for the Heritage item associated with the proposal, in that the proposal exhibits three (3) awning sails that will dominate and conceal the significant heritage frontage of the Heritage building on the subject site. Specially awnings B1, B2 and B3 are considered to detract from the heritage building and its significant features.

As stated within the approved CMP, views to the front and side of buildings along Gilbert Street and West Promenade should be retained, as well as views to the subject site from the southern forecourt of Manly Town Hall.

The three (3) sail awnings B1, B2 and B3 dominate the street frontage, which is inconsistent with predominant streetscape and not responsive to the heritage character of the local area or to the visual catchment of the site.

As a result, the proposal will be conditioned to remove awnings B1, B2 and B3 with the proposal to only include awnings A1 and C1.

As such, the proposed development (as conditioned) is consistent with the relevant townscape objectives.

Having regard to the above assessment, it is concluded that the proposed development is consistent 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 supported, in this particular circumstance.

##### **3.2 Heritage Considerations**

#### 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 conserve environmental heritage and cultural significance of Manly including:*





*significant fabric, setting, relics and view associated with heritage items and conservation areas; the foreshore, including its setting and associated views; and potential archaeological sites, places of Aboriginal significance and places of natural significance.*

Comment:

The proposed development involves the addition of five (5) sail awnings that detract from the buildings heritage significance and will interrupt views to the significant features of the heritage item. As such, the development is not consistent with this objective as it does not retain or conserve the cultural significance of Manly. For detailed heritage assessment see referral comments under Strategic and Place Planning (Heritage Officer).

As a result, the conditioned removal of proposed sail awnings B1, B2 & B3, with only sail awnings A1 and C1 to remain, is considered to satisfy the objectives of the control.

The sides of the heritage building are considered less significant. The location of the sail awnings on the sides of the heritage building are also thought to obscure views of the existing intrusive doorway openings.

The heritage building also has landmark status and can be visually seen from the forecourt outside Manly Town Hall as well as the intersection of Belgrave Street and Gilbert Street.

The removal of the sail awnings obstructing the view of the Heritage item and its high significance heritage features will maintain the existing landmark status.

As a result the proposal as conditioned satisfies this objective.

- *Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.*

Comment:

The proposed development provides for the retention/preservation of the existing heritage item, whilst improving the amenity for both the residents of the adjoining residential apartments.

As stated above, the conditioned removal of proposed B1, B2 & B3, with only sail awnings A1 and C1 to remain is considered to satisfy the objectives of the control as the sides of the heritage building are considered less significant, while the views to the significant heritage features are retained continuing to the contribution to the wider town centre.

- *Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.*

Comment:

The heritage building has landmark status and can be visually seen from the forecourt outside Manly Town Hall as well as the intersection of Belgrave Street and Gilbert Street. The removal of the sail awnings obstructing the view of the Heritage item and its heritage features will maintain the existing landmark status. As a result, the proposal (as conditioned) maintains the historic visual interest, architectural variety and continuity of the Manly townscape.



- *Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.*

Comment:

As discussed above, the heritage building has landmark status and can be visually seen from the forecourt outside Manly Town Hall as well as the intersection of Belgrave Street and Gilbert Street. The sides of the heritage building are considered less significant. Therefore to provide sail awnings along the side of the building will allow the the views to the significant heritage features to be retained.

The location of the sail awnings on the sides of the heritage building are also thought to obscure views of the existing intrusive doorway openings. The removal of the sail awnings obstructing the view of the item and its high significance features will maintain the existing landmark status.

As a result, the proposal (as conditioned) maintains the historic visual interest, architectural variety and continuity of the Manly townscape.

- *Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.*

Comment:

Within Development Application, DA0176/2016, the heritage item was retained and adaptively reused as part of the Manly Civic Club redevelopment project. As conditioned within the approval a Conservation Management Plan (CMP) was prepared by NBRS + Partners in 2017 to provide recommendations for the ongoing management of the heritage item. As a result the CMP was considered as part of the proposal to ensure good heritage management.

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.

#### **4.2.3 Setbacks Controls in LEP Zones B1 and B2**

Whilst the proposal compiles with the front setback requirements, and does not change the previously approved front setback of the heritage building, the proposed sail awnings provide limited front setback distances, 1.0m - 1.5m, to the Gilbert and Eustace Street front boundaries.

The proposal the front setbacks proposed do not protect and enhance the streetscape and quality of the public realm. An assessment was also provided by Councils Heritage Officer who states "*awnings along the front (awnings B1, B2 and B3) are considered to detract from the building and its significance and will interrupt views to the item as well as its significant features.*"

As a result, the proposal is to be conditioned to remove awnings B1, B2 and B3, which are located within the visually prominent front corner setback, in order to satisfy the heritage and front setback controls of the MDCP 2013.



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

- *Objective 1) To ensure unobstructed access between the private and public domain.*
- *Objective 2) To maintain the existing streetscape of building to the boundary.*

Comment:

Whilst the proposed sail awnings do not prevent physical access between the private and public domain, the proposal does restrict the visual access to the heritage building. The proposed awnings along the highly visual front setback corner area (awnings B1, B2 and B3) are considered to detract from the building and will interrupt views to the heritage item as well as its significant features, see Photo 1 below.



**Photo 1: View of the prominent front corner view of the Heritage Listed Building - Auckland Garage.**

As noted within the CMP, the building has landmark status and can be seen from the forecourt outside Manly Town Hall as well as the intersection of Belgrave Street and Gilbert Street. The proposed awnings along the front will obscure the view of the item and its high significance features which would diminish its landmark status.

The conditioned removal of B1, B2 and B3 will provide uninterrupted views to the significant features of the heritage item, and meets the objectives of the control.

The proposed development (as conditioned) is satisfactory in relation to built form, character, streetscape, heritage impact and, on balance given the adaptive nature of the proposal, with respect to the adjoining internal and external residential amenity.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent / consistent with the relevant objectives of MLEP 2013 / MDCP 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.

## **5 Special Character Areas and Sites**



The retention of the existing view line to the front facades at both street frontages maintains the historic visual interest, architectural variety and continuity of the townscape.

The proposed development (as conditioned) is satisfactory in relation to built form, character, streetscape, heritage impact and, on balance given the adaptive nature of the proposal, with respect to the adjoining internal and external residential amenity.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent / consistent with the relevant objectives of MLEP 2013 / MDCP 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;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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





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

The proposed development (as conditioned) provides for the preservation of the existing heritage item (I156 - Auckland Garage, on the corner West Promenade and Gilbert Street), improving the amenity for both nearby residents and the Manly Civic Club tenants of the development and the buildings aesthetic contribution to the wider town centre.

The issue raised by submission received have been considered in the context of the proposal and specific conditions have been recommended to resolve the visual amenity concerns raised.

It is considered that the proposed development (as conditioned) satisfies *Clause 5.10 Heritage Conservation* of the Manly Local Environment Plan 2013, and the objectives of section 3.2 *Heritage Considerations*, and *Clause 4.2.3 Setback Controls in LEP Zones* of the Manly Development Control Plan 2013, and all processes and assessments have been satisfactorily addressed.

The application, as conditioned, has adequately addressed the concerns raised and is therefore recommended for approval subject to conditions.  
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/0119 for Alterations and additions to an existing commercial / retail building on land at Lot 51 DP 1237990, 1 West Promenade, MANLY, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan A103-C	20/2/2017	Mijollo International
Proposed PVC Sail Location DA-01 Revision 2	Undated	Unauthored
South East Elevation & Section DA-02 Revision 1	Undated	Unauthored
North-East and South-west Elevations DA-03 Revision 1	Undated	Unauthored

**Reports / Documentation – All recommendations and requirements contained**



within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Heritage Impact	4 February 2021	NBRD Architecture Heritage

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

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

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

## 2. Prescribed Conditions

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

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

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



development consent must, at the person's own expense:

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

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

Reason: Legislative requirement.

### 3. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
  - 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

### 4. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

### 5. Amendments to the approved plans

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

- o Sail awnings B1, B2 and B3 are not approved as part of this application. The stamped plans are to be amended to remove all reference to sail awnings B1, B2 and B3 prior to the issues of the construction certificate.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the



issue of the construction certificate.

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

6. **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**

7. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements 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.

8. **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.

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**

The application is determined on //, under the delegated authority of:

**Rodney Piggott, Manager Development Assessments**

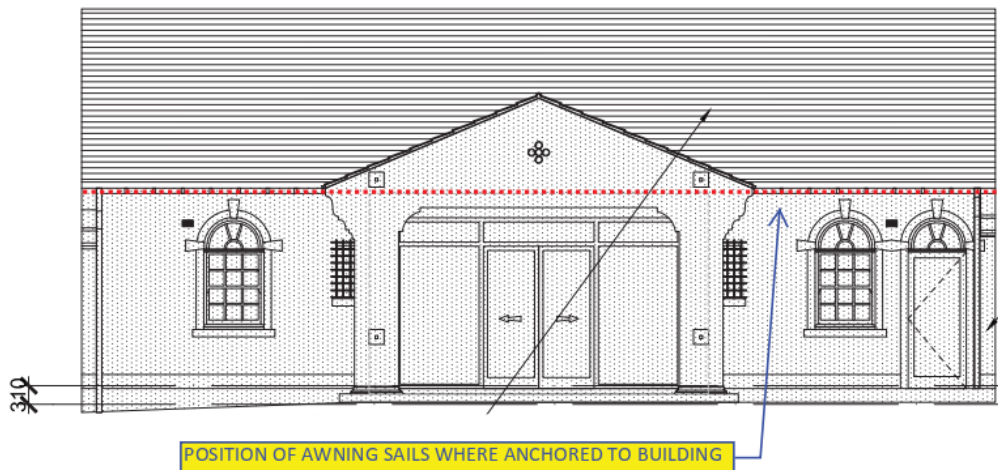




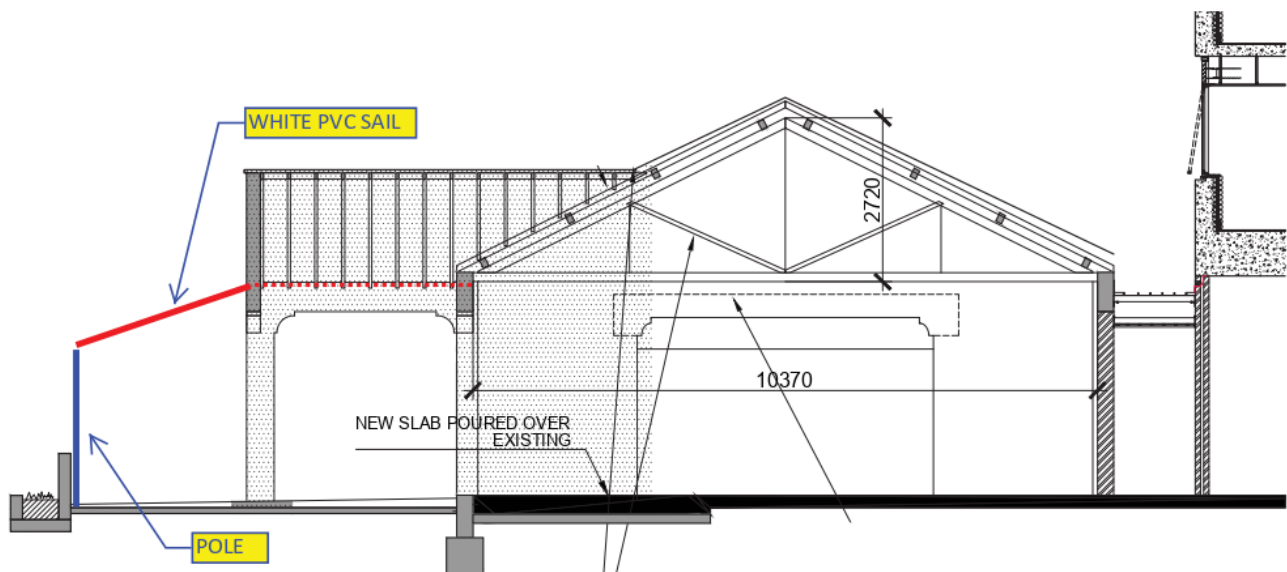
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**Peter Robinson, Executive Manager Development Assessment**



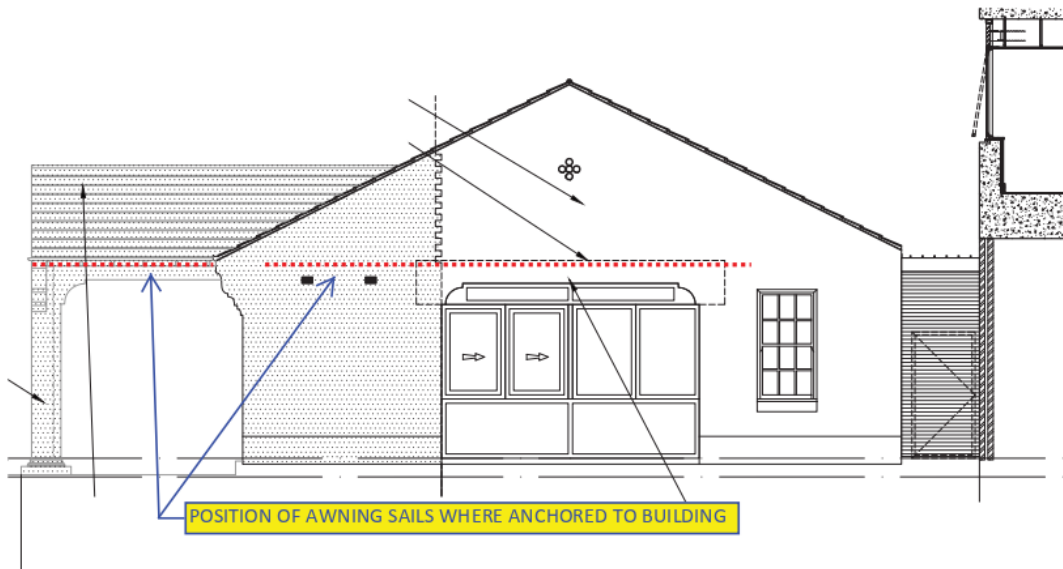


**A** SOUTH EAST  
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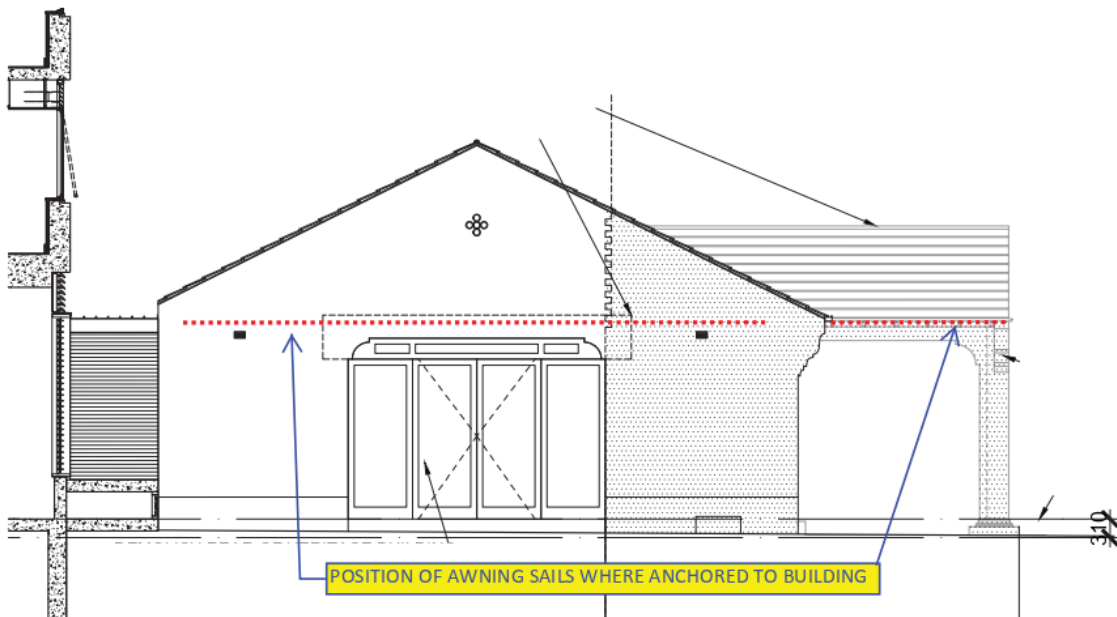


**C** SECTION  
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**MANLY CIVIC CLUB  
AUCKLAND GARAGE BUILDING  
PROPOSED PVC SAIL LOCATION  
MCC DA-02 rev 01**



**B** NORTH EAST  
1:100



**D** SOUTH WEST  
1:100

**MANLY CIVIC CLUB  
AUCKLAND GARAGE BUILDING  
PROPOSED PVC SAIL LOCATION  
MCC DA-03 rev 01**

**ITEM 4.3****DA2020/1587 - 51A BEACONSFIELD STREET, NEWPORT -  
CONSTRUCTION OF A RAMP, PONTOON AND STABILISING  
PILES**

**AUTHORISING MANAGER** Lashta Haidari  
**TRIM FILE REF** 2021/296827  
**ATTACHMENTS** 1 Assessment Report  
2 Site Plan & Section

**PURPOSE**

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

**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. DA2020/1587 for construction of a ramp, pontoon and stabilising piles at Lot 6 DP 39111 & LIC 490800, 51A Beaconsfield Street, Newport subject to the conditions set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1587
<b>Responsible Officer:</b>	Gareth David
<b>Land to be developed (Address):</b>	Lot 6 DP 39111, 51 A Beaconsfield Street NEWPORT NSW 2106 Lot LIC 490800, 51 A Beaconsfield Street NEWPORT NSW 2106
<b>Proposed Development:</b>	Construction of a ramp, pontoon and stabilising piles
<b>Zoning:</b>	E4 Environmental Living
<b>Development Permissible:</b>	Yes - Zone E4 Environmental Living No - Zone W1 Natural Waterways
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Luke Anthony Miles Ella Maree Miles
<b>Applicant:</b>	Stephen Crosby & Associates
<b>Application Lodged:</b>	11/12/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	22/12/2020 to 25/01/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	6
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 76,010.00

### EXECUTIVE SUMMARY

The application seeks consent for the demolition of the existing water access steps and construction of a new step, ramp and pontoon with two (2) stabilising piles located seaward of the Mean High Water Mark, wholly within Crown Lands.

The site is battleaxe arrangement to the street and with a narrow handle providing access to the waterfront on a concave cove coastline with existing jetties in a tight formation. The proposed jetty is not for berthing of vessels, only for the launching and retrieval of small vessels. The objections relate to

the size and need of the ramp and pontoon, the visual impact of the structure, inadequate frontage size for waterway development, the proposed use of the structure and the impact of the structure on the safety and berthing ability of surrounding water craft. The main issue being the proposal interfering with the berthing abilities of the adjoining jetties. TfNSW (Maritime) have reviewed the layout are satisfied that the jetty will not have navigational impacts on surrounding properties or impact berthing abilities.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal is a suitable and appropriate development for the subject site, for the reasons outlined in this report.

Accordingly, it is recommended that the application be approved subject to the attached conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

Development consent is sought for the demolition of the existing water access steps and construction of a new step, ramp and pontoon with two (2) stabilising piles.

## **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 - 23 Use of certain land in the W1 Natural Waterways Zone  
Pittwater 21 Development Control Plan - D15.13 Lateral limits to development seaward of mean high water mark

Pittwater 21 Development Control Plan - D15.15 Waterfront development

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 6 DP 39111 , 51 A Beaconsfield Street NEWPORT NSW 2106 Lot LIC 490800 , 51 A Beaconsfield Street NEWPORT NSW
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	2106
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Beaconsfield Street.</p> <p>The property is a dual battle-axe shaped block with a 4.7m wide frontage to Beaconsfield Street and a 38.0m long access handle to the main portion of the block. The site has a secondary 50.0m long access handle to the rear which leads to Pittwater waterway. This secondary access handle is subject to a "right of foot-way" easement which benefits Nos. 53; 55 &amp; 57 Beaconsfield Street, allowing them access to the waterway. The site has a total area of 1208 m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two storey dwelling house and a swimming pool. The area of Crown Land adjoining the site, in which this proposal is subject (adjacent to the access handle of No.51A Beaconsfield Street) is zoned W1 Natural Waterways. This area of Crown Land currently contains water access steps and multiple established trees.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by two storey dwellings with outlooks orientated towards Pittwater waterway. Surrounding sites that adjoin Pittwater Waterway contain Jetty, ramp and pontoon structures for the purposes of waterway access, with many also having associated berthing areas.</p>

Map:



## SITE HISTORY



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

The land has been 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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 22/12/2020 to 25/01/2021 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 6 submission/s from:



<b>Name:</b>	<b>Address:</b>
Mr Stephen John Hansen	55 Beaconsfield Street NEWPORT NSW 2106
Mr Paul Damien Hrobat	47 A Beaconsfield Street NEWPORT NSW 2106
Mrs Ella Maree Miles	21 Iluka Avenue MANLY NSW 2095
Ms Judyth Erica Boyle	57 Beaconsfield Street NEWPORT NSW 2106
Mrs Corrina June Bouman	1 Hill View Crescent WARRIEWOOD NSW 2102
BBF Town Planners Mr Grant Eugene Simmer Ms Alexandra Simmer	1 / 9 Narabang Way BELROSE NSW 2085

Of the six (6) submissions that were received, five (5) were in support and one (1) was in objection.

The matters raised within the submissions are addressed as follows:

- **Inadequate frontage for waterfront development**

Comment:

Concern has been raised that size of the frontage of the subject site onto Pittwater waterway is insufficient to permit water front development and that the proposal does not meet the requirements of Clause D15.14 of the Pittwater DCP.

Clause D15.14 of P21DCP specifies that where an existing allotment has a water frontage of less than 15.0 metres, limited development such as a jetty, ramp and pontoon will generally only be permitted. The proposal is considered to meet this requirement as the proposal would be limited to a ramp and pontoon. It is considered the proposal would meet the intention and objectives of this clause as it would provide equitable waterway access to a number of properties who benefit from this waterway access and is not considered to result in unreasonable visual impact.

- **Visual impact from waterway**

Comment:

Concern has been raised that the location of the proposed ramp and pontoon, between two existing jetties, would result unacceptable visual impact when viewed from the waterway.

The proposed structure does not exceed the length of surrounding structures and is considered to be consistent with the design and scale of surrounding development. No berthing area is proposed as part of this development, therefore, the proposal would not result in additional vessels being berthed on the waterway.

The proposal has been assessed by Council's Coastal Management Officer who has raised no objection to the proposal.

- **The proposal would impact on the ability of surrounding watercraft to be berthed safely**

Comment:

Concern has been raised by an adjoining neighbour that the proposal would limit the ability of surrounding watercraft to be berthed safely and would create navigational issues.

Access to the berthing area to the adjacent property to the east (No.51 Beaconsfield Street) is from the south and would not be impacted by the proposal.

The length of the proposed ramp and pontoon would be in line with the jetty and pontoon to the west (No.61 Beaconsfield Street) and would be behind the berthing area of this property. No berthing area is proposed as part of this development, and as such, the proposal would not result in additional vessels being berthed on the waterway in front of the structure. This is also to be conditioned within any consent. Hence, it is considered that the proposal would not impact the ability of No. 61 Beaconsfield Street to manoeuvre into their berthing area.

Correspondence submitted with the application from Transport for NSW Maritime advises that an inspection/ assessment has been conducted by the local Boating Safety Officer and that there are no navigational concerns regarding the designated proposal.

The proposal has been assessed by Council's Coastal Management Officer who has raised no objection to the proposal.

- **Concern regarding the size and need of the structure**

Comment:

Concern has been raised with regards to the size and length of the ramp and pontoon, given its intended use of launching small watercraft. It was also raised that there is no reasonable need for this development given the existence of waterway access steps.

The proposal is for the launching and retrieving of small craft and does not propose to permanently berth vessels. Given the changes in tide, a ramp and pontoon is considered a reasonable solution to enable safe and convenient waterway access. The size of the ramp and pontoon has been assessed under the requirements of *D15.15 Waterfront development* of P21 DCP and is considered to be a suitable design and scale. If the ramp were to be shorter, the depth of water would be insufficient to support the pontoon at low tide.

- **Concern with the Transport for NSW referral comments**

Comment:

The objection received raises the following concern:

*It is unclear what information was provided to the RMS by the applicant as the letter references "Development application for proposed repositioning of the pontoon into deep*

*water by extending the ramp on two poles at 51A Beaconsfield St,”  
It is unclear because there was no existing structure to be extended or repositioned?  
This application is for the construction of a ramp, pontoon and stabilising piles. Not the  
repositioning of an existing pontoon?*

Following this submission it was clarified by the applicant that a previous proposal (which had a shorter ramp) had been sent to TfNSW for comment. However, this proposal was rejected by Department of Primary Industries (Fisheries) who required that the ramp be extended to put the pontoon in deeper water (to accommodate changes in tide).

The plans submitted for the current proposal were re-submitted to TfNSW and have been approved and stamped by the local Boating Safety Officer stating that there are no navigational concerns regarding the designated proposal.

- **Inconsistent with SEPP (Coastal Management) 2018**

Comment:

The proposal has been assessed under the relevant clauses of State Environmental Planning Policy (Coastal Management) 2018 and is considered to comply with the requirements of this SEPP.

The proposal has been assessed by Council's Coastal Management Officer who has raised no objection to the proposal.

- **Use of the Ramp and Pontoon**

Comment:

Concern has been raised that the the Council should ensure that the use of the ramp and pontoon shall be made available to all properties who benefit from the right of footway easement over 51 A Beaconsfield Street's land adjoining the proposal.

The proposed works are located entirely on Crown Land. Crown Land consent has been submitted as part of the application. Council is unable to condition who has the right to use the proposed ramp and pontoon. This is a civil matter which may be resolved between interested parties at the waterfront licencing stage.

- **Submissions in Support**

Five submissions supporting the application were received. These submissions supported the proposal for the following reasons:

- The proposal would provide safe and equitable access into the water

- The oyster shells on the rocks at the current access point make it nearly impossible to enter the water when the tide drops marginally and the rocks are extremely slippery.

Comment:

It is agreed that given the changes in tide, a ramp and pontoon is considered a reasonable solution to enable safe and convenient waterway access

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p><b>General Comments</b></p> <p>Environmental Health have been requested to consider this proposal for " Construction of a ramp, pontoon and stabilising piles" in relation to the potential presence of acid sulphate soils.</p> <p>The subject site is classed as acid sulphate soils class 5 and is defined as:</p> <p>"Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land."</p> <p>The measurements in the provide plans indicate that no works below 5 metres Australian Height Datum are to be undertaken and that piers would be constructed in the same sulphate area</p> <p>Despite this, appropriate conditions will be placed on the development relating to notification of any new information regarding acid sulphate soils should it present during works.</p> <p><b>Recommendation</b></p> <p>Approval - subject to conditions</p>
Landscape Officer	<p>The proposed development is for the removal of existing water access steps and construction of a hinged ramp onto a pontoon.</p> <p>In terms of the Landscape Referral existing trees in proximity to the proposed works shall be protected under conditions of consent.</p> <p>No objections are raised.</p>
NECC (Bushland and Biodiversity)	<p>Councils biodiversity referrals team have assessed the development application for compliance against the following provisions:</p> <ul style="list-style-type: none"> <li>Coastal Management SEPP cl. 13 Development on land within the coastal environment area</li> </ul> <p>No terrestrial native vegetation is proposed for removal as a result of the proposal. As such, councils biodiversity referrals team are</p>

Internal Referral Body	Comments
	satisfied that the development is in compliance with clause 13 of the Coastal Management SEPP.
NECC (Coast and Catchments)	<p>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.</p> <p>The application has been assessed in consideration approval/support of:</p> <ul style="list-style-type: none"> <li>• Consent of Owner for lodgement of the DA from the Department of Crown Lands under the NSW Planning, Industries &amp; Environment dated 27 November 2020</li> <li>• No navigational Concerns from the Transport for NSW-Maritime Division dated 6 May 2020 enclosing dated and signed maps</li> <li>• No Objection from the DPI-Fisheries under the Department of Primary Industries dated 22 April 2020</li> </ul> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b> 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.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stephen Crosby &amp; Associates Pty. Ltd. dated 7 January 2021, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the</p>



Internal Referral Body	Comments
	<p>requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p><b>Estuarine Hazard Management</b></p> <p>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 any proposed development of the site. The Estuarine Hazard Controls do not apply to Jetties, Bridging Ramps or Pontoons located on the seaward side of the foreshore edge.</p> <p>Development works proposed are located on the seaward side of the foreshore edge on crown lands, below the Mean High Water Mark (MHWM).</p> <p>The proposed development is therefore not required to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p><b>Development on Foreshore Area</b></p> <p>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.</p> <p>Development works proposed are located on the seaward side of the foreshore edge on crown lands, below the Mean High Water Mark (MHWM).</p> <p>Therefore, the proposed development is not required to satisfy the relevant Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014.</p> <p><b>Development seaward of mean high water mark</b></p>

Internal Referral Body	Comments
	<p>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.</p> <p>Comment:</p> <p>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</p> <p>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.</p>
NECC (Development Engineering)	No Development Engineering objection with no conditions
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation for the protection of waterways.</p> <p>A Construction Environment Management Plan (CEMP) must be prepared to identify any potential environmental risks and mitigation measures to be implemented, this must be submitted to the certifying authority. An induction plan must be included and both documents are to be kept on site. Environmental safeguards are to be installed prior to commencement of works to prevent the release of turbid plumes into the aquatic environment during construction. All contractors must be familiar with the invasive alga <i>Caulerpa taxifolia</i> and the measures to be taken if it is found onsite. Dredging is not included in this application, any dredging constitutes another application to Council and Department of Primary Industries (Fisheries).</p> <p>With the application of these conditions it is considered unlikely that the proposal 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.</p>
External Referral Body	Comments
Aboriginal Heritage Office	Reference is made to the proposed development at the above area and Aboriginal heritage.

External Referral Body	Comments
	<p>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.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>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, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

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

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

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

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

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

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

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

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

Ausgrid

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

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

Comment:

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

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

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

#### **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 not likely to cause an adverse impact upon the matters identified in this clause. The proposed the ramp and pontoon structure does not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes. The application is supported by a response from the DPI Fisheries identifying no adverse impact upon the key fish habitats.

- (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 proposal provides a more appropriate and convenient waterway access for the residents at 51 A Beaconsfield Street while being designed to satisfy the relevant 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 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, the surrounding area consists of examples of similar developments. The foreshore area adjacent to Beaconsfield Street is mapped as having a high likelihood of containing Aboriginal heritage sites. The foreshore area is heavily modified and no sites have been identified within the vicinity of the proposed development. The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. A condition is to be imposed on any consent if in undertaking works, any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer.

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

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



Comment:

The proposed development is not likely to cause increased risk of coastal hazards on that 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 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:	N/A	N/A	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes
23 Use of certain land in the W1 Natural Waterways Zone	Yes

Detailed Assessment

**23 Use of certain land in the W1 Natural Waterways Zone**

Whilst water recreation structures are not permitted within the W1 Natural Waterways Zone in accordance to Schedule 1 Additional permitted uses of PLEP 2014 development for the purposes of boat sheds, jetties or water recreation structures is permitted with development consent. The proposed works are identified as a water recreation structure and, as such, is permitted with consent.

**Pittwater 21 Development Control Plan**

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	N/A	N/A	N/A
Rear building line	N/A FBL Applies	N/A	N/A	N/A
Side building line	2.5m	N/A	N/A	N/A
	1m	N/A	N/A	N/A
Building envelope	3.5m	N/A	N/A	N/A
	3.5m	N/A	N/A	N/A
Landscaped area	60%	N/A	N/A	N/A

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	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
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
C1.13 Pollution Control	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes
D15.1 Character as viewed from a public place	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes

#### Detailed Assessment

#### **D15.13 Lateral limits to development seaward of mean high water mark**

##### Merit Assessment

This control requires all development seaward of the MHWL to achieve a setback of 2.0m for the full length of the lateral limit lines to minimise conflict and reduce the possibility of inaccurate location of structures. The submitted plans demonstrate that the proposed ramp and pontoon would comply with the requirement. Concern has been raised by an adjoining neighbour that the proposal does not align with the orientation of the property boundaries. However, Clause D15.13 indicates that on curved shorelines lateral limits are calculated at 90 degrees from mean high water mark of the subject site and adjoining properties. This is shown in the image below:



Image 1: Dotted lines indicate guidelines at 90 degrees from mean high water mark. Orange lines



*represent indicative lateral line limits.*

Nevertheless, given the significant curvature of the shoreline in this location, the proposal is assessed the outcomes of the control below.

- *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, pontoon and berthing area will continue to allow for the fair and equitable enjoyment of the waterway.

Access to the berthing area to the adjacent property to the east (No.51 Beaconsfield Street) is from the south/south east and would not be impacted by the proposal.

The length of the proposed ramp and pontoon would be in line with the jetty and pontoon to the west (No.61 Beaconsfield Street) and would be behind the berthing area of this property. No berthing area is proposed as part of this development, and as such, the proposal would not result in additional vessels being berthed on the waterway in front of the structure. This is also to be conditioned within any consent. Hence, it is considered that the proposal would not impact the ability of No. 61 Beaconsfield Street to manoeuvre into their berthing area.

The application is accompanied by a letter of correspondence from Transport for NSW, dated 06 May 2020, 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.

#### **D15.15 Waterfront development**

The assessment of the consistency with the controls and outcomes is as follows:

a) Jetties, Ramps and Pontoons

- The submitted plans are not clear if the handrails are to be located only on one or both sides of the structure. A condition is to be imposed that a hand rail is to be installed on only one side of the structure.
- The maximum depth of the ramp and pontoon is 1.3m at low tide
- The minimum depth at the end of the pontoon is 0.9m at zero tide.
- The proposed structure does not exceed the length of surrounding structures. Correspondence submitted with the application from Transport for NSW Maritime advises that an inspection/assessment has been conducted by the local Boating Safety Officer and that there are no navigational concerns regarding the designated proposal.
- No structures are proposed above the jetty.
- No gates are proposed as part of the structure.
- The use of support piles is considered appropriate as it will not have a detrimental visual effect when viewed from the waterway. The use of support piles is in character with surrounding developments.

- DPI Fisheries have reviewed the proposal and have raised no objections subject to conditions. Council's Bushland and Biodiversity, Riparian Lands and Creeks, Acid Sulphate and Coast and Catchments Officers have also reviewed the proposal having regard to water quality and marine 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.
- No berthing area is proposed as part of this application. This is also to be conditioned within any consent.
- The proposed waterfront facilities will blend with the surrounding natural environment as a result of the site specific design and the use of dark and earthy external finishes.
- If approved, it is to be conditioned that the storage of lightweight boats and equipment shall be entirely on private freehold land and shall not obstruct public foreshore access.

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, subject to conditions, 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

The assessment of the proposal against the provisions of Pittwater Local Environmental Plan 2014 and Pittwater 21 DCP has found that the proposed development generally complies with the requirements and objectives of the applicable controls. The proposal has been reviewed relevant internal and external consulting bodies who all raise no objection subject to recommended conditions.

One objection has been received from one (1) adjoining property. This submission raised concerns particularly regarding the size and need of the ramp and pontoon, the visual impact of the structure, the inadequate frontage size for waterway development, the proposed use of the structure and the impact of the structure on safety and berthing ability of surrounding water craft. The assessment of the scheme reveals the residents issues do not warrant the refusal or further amendment of the application.

Therefore, the application is recommended for approval.

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

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/1587 for Construction of a ramp, pontoon and stabilising piles on land at Lot 6 DP 39111, 51 A Beaconsfield Street, NEWPORT, Lot LIC 490800, 51 A Beaconsfield Street, NEWPORT, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01A (Site Plan)	April 2020	Stephen Crosby and Associates Pty. Ltd
DA02 (Section)	April 2020	Stephen Crosby and Associates Pty. Ltd

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

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

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

2. **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
Planning, Industry & Environment	Crown Lands - Consent of Owner for lodgement of a Development Application (MN81H1615#02)	27/11/2020
Department of Primary Industries	DPI Fisheries Referral Response (C20/143)	31/03/2021
Transport for NSW	tfNSW Referral Response (Letter to Mr Crosby)	06/05/2020

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

### 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.

5. **Sewer / Water Quickcheck (Crown Land Only)**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

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

- o Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- o Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- o Or telephone 13 20 92.

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

6. **Design Impact on Coastal Processes and Public/Private Amenity**

All development and/or activities must be designed and constructed so that they will not adversely impact on surrounding properties, coastal processes or the amenity of public foreshore lands.

Reason: To ensure the development does not impact the coastal process and public/private amenity

7. **No consent for berthing area**

No approval is granted under this consent for a berthing area. No vessels, including small watercraft, are to be berthed adjoining the approved ramp or pontoon.

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

## FEES / CHARGES / CONTRIBUTIONS

8. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is

located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

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

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

9. **Construction Environment Management Plan**

A Construction Environmental Management Plan (CEMP) must be prepared to address any potential environmental risks and mitigation methods to address these. The CEMP 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.

10. **Compliance with Standards**

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

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

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

11. **Ramp Handrail**

A handrail shall be located on one side only of the ramp structure.

Reason: To minimise the visual impact of the development.

12. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including any excavated material is reused, recycled or disposed of in an environmentally friendly manner.

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

13. **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.

(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.

14. **Management of *Caulerpa taxifolia***

The invasive marine alga *Caulerpa taxifolia* may be present at site. Site personnel must be able 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.

15. **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.

16. **Dredging works**

Dredging is not included in this application. A permit from Council and the Department of Primary Industries (Fisheries) is required prior to conducting dredging.

Reason: Protection of the environment.

17. **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.

18. **Requirement to notify about new Acid Sulfate Soils evidence**

Requirement to notify about new Acid Sulfate Soils evidence

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement.

Reason: protection of the environment

19. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites.

The Project Arborist is to supervise excavation for pile / pier footings and construction works near the She Oak is close proximity. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

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

Note:

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

Reason: tree protection.

20. **Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be



submitted by the Arborist to the Certifying Authority,  
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,  
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,  
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,  
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: tree and vegetation protection.

## 21. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

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

## 22. **Storage of watercraft and equipment**

Any watercraft or waterway equipment shall be stored entirely on private freehold land and shall not obstruct public foreshore access at any time.

No vessels, including small watercraft, are to be berthed adjoining the approved ramp or pontoon.

Reason: Public amenity and maintenance of foreshore and waterway access

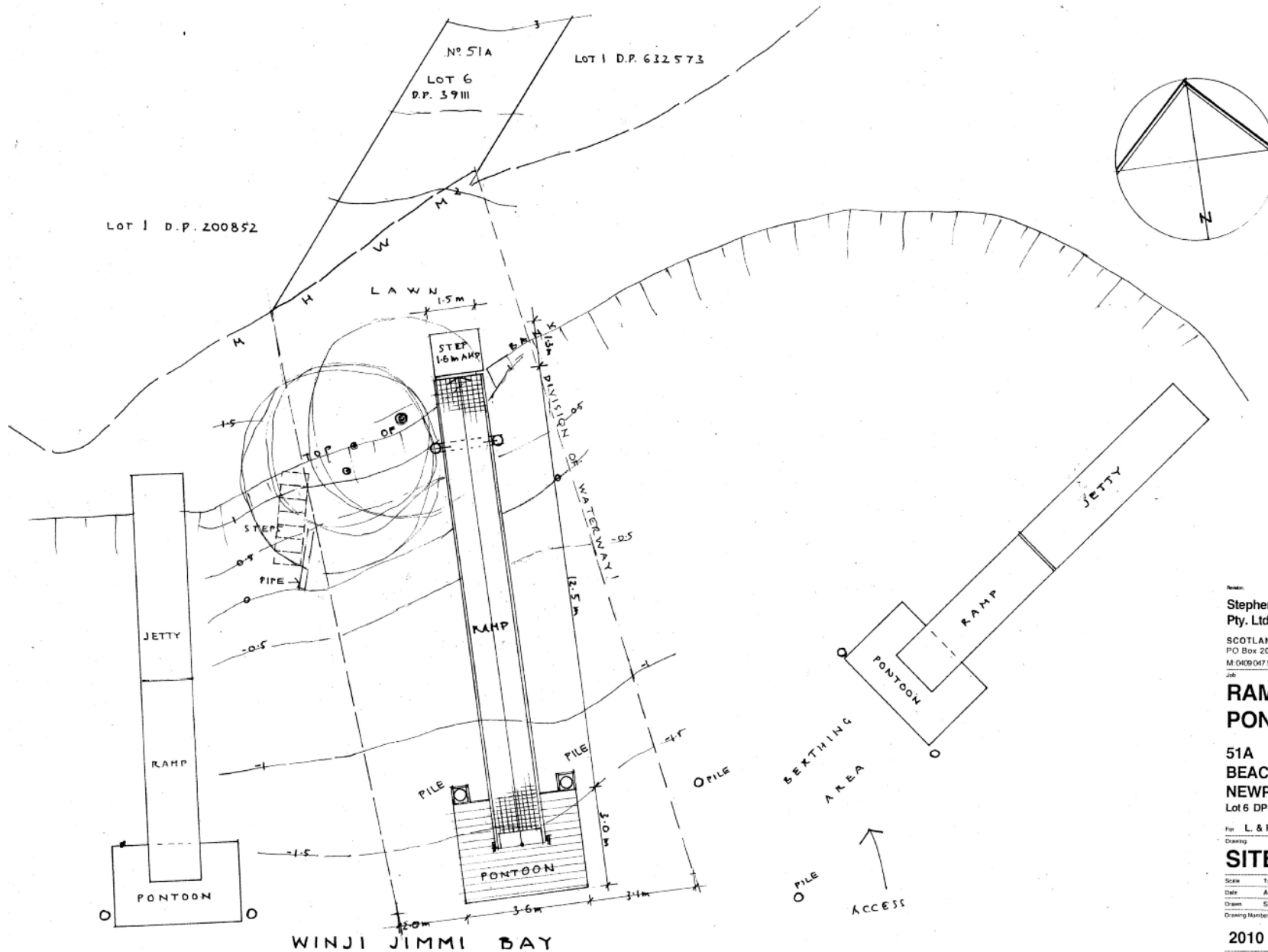
## 23. **General Foreshore Matters**



Unless in accordance with the approved works the Consent holder must ensure that:

- a) No materials or cleared vegetation that may obstruct flow or cause damage to the foreshore are left within the coastal foreshore area.
- b) All drainage works must not obstruct flow of water within the coastal waters. Drain discharge points are stabilised to prevent erosion. Any excavation must not result in diversion of any foreshore bank instability or damage to native vegetation.
- c) The foreshore is graded to enable the unimpeded flow of water and retaining structures result in a stable foreshore banks.
- d) Any vegetation or other material removed from the area of operations shall be disposed of lawfully. Burning of the material is not permitted.
- e) The foreshore is to function as an ecological system and as such, all works, access, roads, recreational areas, service easements and any other non-ecologically functioning work or activity are to be located beyond the foreshore other than provided by the consent.

Reason: Environmental protection, monitoring and enhancement of the foreshore.



Prepared: Stephen Crosby & Assoc.  
Pty. Ltd.

SCOTLAND ISLAND  
PO Box 204 Church Pl. NSW 2105  
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Job:

## RAMP & PONTON

51A  
BEACONSFIELD ST.  
NEWPORT, NSW  
Lot 6 DP 39111

For: L. & R. Miles

Drawing:

## SITE PLAN

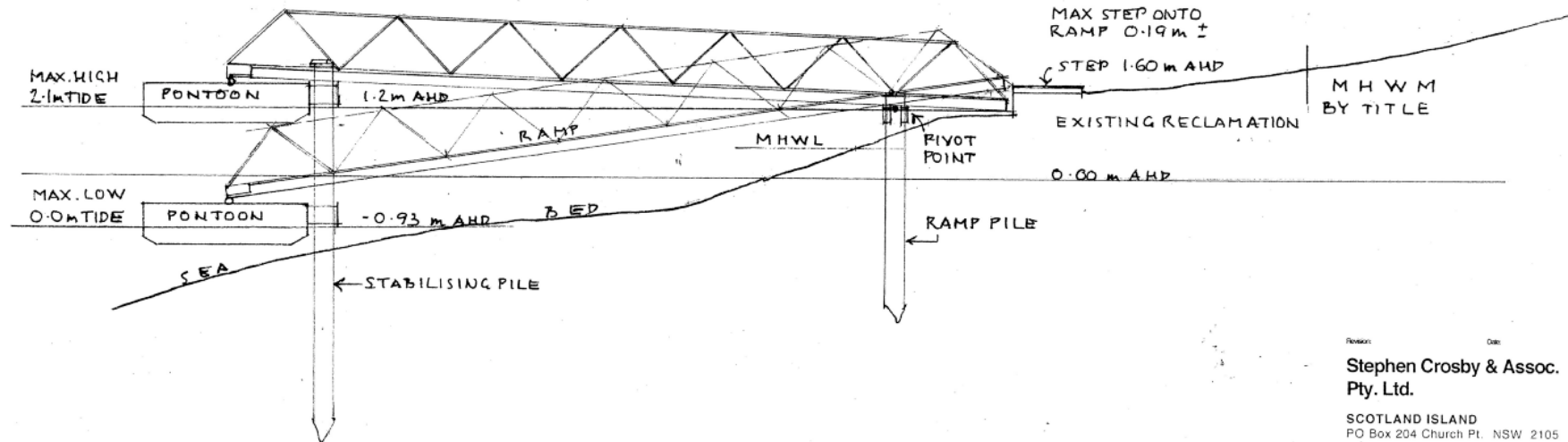
Scale: 1:100 A.T.A.3

Date: APRIL 2020

Drawn: S.C.

Drawing Number:

2010 - DA 01A



Prepared: Date:  
Stephen Crosby & Assoc.  
Pty. Ltd.

SCOTLAND ISLAND  
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## RAMP & PONTON

51A  
BEACONSFIELD ST.  
NEWPORT, NSW  
Lot 6 DP 39111

For L. & R. Miles  
Drawing

## SECTION

Scale 1:100 AT A4  
Date APRIL 2020  
Drawn S.C.  
Drawing Number

2010 - DA 02

#### ITEM 4.4

**DA2020/1657 - 2/18 BALTIC STREET, FAIRLIGHT -  
ALTERATIONS AND ADDITIONS TO RESIDENTIAL FLAT  
BUILDING**

**AUTHORISING MANAGER** Anna Williams

**TRIM FILE REF** **2021/296854**

**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 Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/1657 for alterations and additions to residential flat building at Lot 2 SP 31588 & Lot CP SP 31588, 2/18 Baltic Street, Fairlight subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1657
<b>Responsible Officer:</b>	Adam Croft
<b>Land to be developed (Address):</b>	Lot CP SP 31588, 18 Baltic Street FAIRLIGHT NSW 2094 Lot 2 SP 31588, 2 / 18 Baltic Street FAIRLIGHT NSW 2094
<b>Proposed Development:</b>	Alterations and additions to residential flat building
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Anna Louise Bowden
<b>Applicant:</b>	Watermark Planning Anna Louise Bowden
<b>Application Lodged:</b>	29/12/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	14/01/2021 to 28/01/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 16.7%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 38,500.00

### EXECUTIVE SUMMARY

The application seeks consent for alterations and additions to Unit 2 within the existing residential flat building containing eleven units.

The proposed works involve internal and external alterations to the existing Unit 2, located at the lower level of the building, including the partial enclosure of part of the existing courtyard.

The existing development was approved in the 1980's, prior to the imposition of the Manly LEP 2013, with a non-compliant floor space ratio of 0.68:1 (685.8m<sup>2</sup>). The proposal includes the enclosure of a 17.6m<sup>2</sup> area of the existing Unit 2 courtyard to create a second bedroom. The proposed increase in gross floor area results in an overall FSR of 0.7:1, representing a variation of 16.85%.



Despite the non-compliance with the FSR development standard, the works are contained generally within the existing building envelope, below the maximum roof height, and do not result in any substantial additional bulk. An assessment of the proposed FSR breach and the accompanying Clause 4.6 written request is undertaken within this report and is found to be satisfactory.

It is noted that unauthorised works have previously been undertaken to enclose this courtyard area. However, the proposal will replace these existing works and reconfigure the layout of the enclosed courtyard.

The proposed variation to the floor space ratio development standards exceeds 10% and the proposal relates to a residential flat building (Class 2). As such, the application is referred to the Northern Beaches Local Planning Panel for determination.

No submissions were received in response to the notification of the application.

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

## PROPOSED DEVELOPMENT IN DETAIL

The subject development application proposes alterations and additions to Unit 2 within an existing residential flat building. The proposed works are detailed below.

### Internal:

- Construction of a new second bedroom (and associated walk-in-robe) within an existing alcove/enclosed courtyard (note: previously unauthorised works have already enclosed this area; this proposal will both replace these unauthorised works and change the layout of the enclosed courtyard element). This element of the works will include new walls and glazed windows/doors on the northeast side of the bedroom.
- Changes to the internal layout of Unit 2. Such changes include a new internal wall/door to segregate the existing bedroom and changes to the bathroom door location (the bathroom is to be accessed via the kitchen, as opposed to the existing bedroom).
- Minor changes to the layout of the kitchen.
- New internal bulkheads, including new bathroom/kitchen rangehood exhausts.
- New internal fittings including fixed furnishings, floating floors and wall/ceiling claddings.

### External:

- New 1m high balustrade around the existing balcony.
- New steel stairs to connect the existing balcony to the at-grade landscaped/private open space area.
- New railway sleeper steps to connect the existing terraced area within the eastern side setback to the at-grade landscaped/private open space area; a new railway sleeper retaining wall is to be located adjacent to the stairs.
- Existing pavers/tiles on the balcony and terrace are to be replaced.

## 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 - 4.4 Floor space ratio  
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size

#### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot CP SP 31588 , 18 Baltic Street FAIRLIGHT NSW 2094 Lot 2 SP 31588 , 2 / 18 Baltic Street FAIRLIGHT NSW 2094
<b>Detailed Site Description:</b>	<p>The subject site consists is identified as Unit 2, 18 Baltic Street, Fairlight (Lot 2, SP 31588). 18 Baltic Street is a regularly-shaped cover allotment located on the northeast side of the intersection of Baltic and Suwarrow Streets. The site has an area of 1,003.25m<sup>2</sup> (title) and has a primary frontage/width of 27.43 metres and a secondary frontage/depth of 36.575 metres; the site is moderately sloped, with a north-to-south (i.e. front-to-rear) slope.</p> <p>The site is located within the R1 General Residential zoned under Manly Local Environmental Plan 2013. The site contains class 5 acid sulphate soils, but is not identified as containing any other significant affectations. The site does not contain a heritage item, nor is it within a heritage conservation area; the nearest heritage item is approximately 95 metres south of the subject site.</p> <p>Development on the site consists of a three-storey residential flat building with semi-basement parking and associated landscaping. Unit 2 is one of two units on the ground level (which is also shared with parking and storage</p>

facilities), and is located on the rear northeast side of this level. Landscaped areas within the rear (i.e. northern) setback area are allocated to Units 1 and 2.

#### **Detailed Description of Adjoining/Surrounding Development**

The site adjoining the eastern boundary contains a detached dwelling house, while the site adjoining the rear boundary contains a multi-dwelling housing development. Development on residential-zoned sites within the wider area consists predominantly of low-density residential development (i.e. dwelling houses and associated development), though isolated sites also contain multi-dwelling housing and residential flat buildings.

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, and that the existing residential flat building (within which Unit 2 resides) has also been situated on the site 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 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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent..</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the</p>

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

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 14/01/2021 to 28/01/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

#### REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability	<p><b>Planning Comments:</b></p> <p>The Fire Safety Certificate requirements are undertaken for the entirety of the building. As the proposal relates only to one unit within the building, it is not necessary to impose this requirement on the unit owner/applicant. As such, the</p>



Internal Referral Body	Comments
upgrades	<p>condition recommended by Council's Building Control Officer is not included.</p> <p><b>Building Comments:</b> The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i><u>Note:</u> The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>

#### 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 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 alterations and additions to a single apartment within an existing the residential flat building. With regard to clause 4(a), the proposal is not considered to constitute the erection of a new building, substantial refurbishment of the existing building nor the conversion of an existing building

As per the definition of a residential flat building and the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application.

Accordingly, no further assessment is required with regard to the provisions of SEPP 65.

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

A BASIX certificate has not been submitted with the application. The proposed works are valued at \$38,000, does not involve a change of use and does not include a swimming pool. As such, the proposal is not defined by the Regulations as 'BASIX affected development', and a certificate is not required.

#### **Manly Local Environmental Plan 2013**

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Unchanged	N/A	N/A
Floor Space Ratio	0.6:1 (601.95m <sup>2</sup> )	FSR: 0.7:1 (703.4m <sup>2</sup> ) <b>Note:</b> Additional 17.6m <sup>2</sup> of GFA proposed.	16.85%	No

#### Compliance Assessment

Clause	Compliance with Requirements
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Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.12 Essential services	Yes

#### Detailed Assessment

#### **4.4 Floor space ratio**

The plans propose an FSR of approximately 0.7:1 (703.4m<sup>2</sup>). This is slightly larger than the 0.69:1 FSR proposed by the applicant; aside from its small size, the discrepancy is likely the result of how gross floor area (particularly on the ground floor) has been calculated, noting the age of available information (i.e. building plans). Despite the discrepancy, the content of the applicant's written variation request is still considered to be relevant and satisfactory, therefore revised calculations and an amended written variation request were not requested.

Refer to the assessment of clause 4.6 (Exceptions to development standards) of Manly Local Environmental Plan 2013 for an assessment of the proposed variation.

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

##### Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (601.95m <sup>2</sup> )
Proposed:	0.7:1 (703.4m <sup>2</sup> )
Percentage variation to requirement:	16.85% (101.45m <sup>2</sup> )

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

The following assessment of the variation to 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

##### Clause 4.6 Exceptions to development standards:

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

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

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

*excluded from the operation of this clause.*

Comment:

4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

*(a) the consent authority is satisfied that:*

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicant's written request argues, in part:

### **Bulk and Scale**

- The proposal's apparent bulk and scale is negligible, not to the detriment of the scale of onsite development and not visible from surrounding sites nor the public domain.
- The additions are designed to occur within an existing roofed/walled courtyard, which allows for additional floorspace without additional built structures/increases to the building footprint.

### Comment:

It is agreed that the location of the works will not have any impact on the existing building's height, minimum setbacks, wall heights and other considerations which relate the building bulk and scale. The works will occur within the envelope of the existing building.

### **Neighbour amenity**

- There will be extensive and existing boundary setbacks, ensuring nil impact on neighbours.
- Compliance with the standard will not result in a building which has lesser bulk and the visual impact of the variation is not discernable from surrounding areas.
- There will be nil solar access impacts.
- There will be nil visual privacy impacts.



Comment:

It is agreed that the development is unlikely to have any impacts on surrounding properties (including existing units within the subject residential flat building) and the public domain in terms of visual privacy, solar access and visual appearance. The orientation of the proposed second bedroom and the height of glazed surfaces is also such that adequate solar access to this area.

**Design and Streetscape Appeal**

- Strict numerical compliance with the standard will not result in a better urban design outcome and would make no difference to the streetscape. Compliance with the standard based on streetscape would be unreasonable.
- The development will not present with excessive bulk from the public domain, with the sloped topography of the site hiding the existing courtyard from public view.

Comment:

Due to the topography of the site and the orientation of the proposed additions away from the streetscape, it is agreed that the works are unlikely to have any impact on the public domain. Compliance with the standard in this instance is unlikely to have any impact on streetscape character.

**Consistent with Zone Objectives**

- The extent of the variation would be in the public interest as the proposal remains consistent with zone objectives and ensuring that appropriate and reasonable housing is proposed.

Comment:

It is agreed that the proposal is consistent with the objectives of the standard and zone, and is therefore in the public interest.

**Natural Environment**

- The proposal will not adversely affect the natural environment, as the additions will occur within a built part of the site. there will be no reduction to landscape area.

Comment:

It is agreed that the development will not reduce existing landscaped area nor any trees on the site.

**Environmentally Sustainable Development**

- The proposal is an environmentally sustainable design, as it allows for an extension on the life of the existing unit.

Comment:

It is considered unlikely that the works will have a meaningful impact on the life of either the existing unit or the residential flat building as a whole, however the provision of an additional room and onsite storage will likely increase the flexibility of the unit's use.

**Social and Economic Welfare**

- The variation will have no social impacts.

Comment:

It is agreed that the proposed development will have no foreseeable social impacts.

**Appropriate Environmental Planning Outcome**

- The proposal is not an overdevelopment of the site and satisfies the objectives of both the zone and the development standard.
- The variation will not result in building bulk beyond that which is found with the immediate context. The variation will be compatible with its context and is reasonable in the circumstances of this case.
- Removal of the noncompliance would not alter the perceived bulk and scale of the building.

Comment:

The proposed breach of the FSR development standard is mostly, if not entirely, attributable to the design and layout of the existing residential flat building which was erected well before the imposition of Manly Local Environmental Plan 2013. The gross floor area is subsequently greater than that permitted by the LEP, and the design of the building is such that any development which increases gross floor area (including works that would have few (if any) foreseeable impacts) would result in further breaches of the FSR development standard. Whilst this proposal would result in a greater variation to the standard, the nature of the works is such that it would be unlikely to result in any adverse impacts on surrounding sites and the public domain. It is agreed that the proposal would not increase apparent building height, bulk and scale, and in this instance would not constitute an overdevelopment of the site.

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

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).

Council can therefore be 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 floor space ratio development standard and the objectives of the R1 General Density Residential zone. An assessment against these objectives is provided below.

## Objectives of development standard

### Zone objectives

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

*a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment:

The location and nature of the works are such that the proposal will have no impact on streetscape character. The topography of the site and the orientation of the additions will physically block the works from being viewed from the Baltic and Suwarrow Street frontages respectively.

*b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment:

As the works will be undertaken within an existing recess (i.e. a covered and mostly enclosed terrace), they will have no impact on landscape/townscape features nor views to and from such features.

*c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment:

The proposed alterations and additions will maintain an appropriate visual relationship between sites; there will be no impact on landscape character.

*d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment:

This assessment has found that the proposal is unlikely to result in any adverse environmental impacts on adjoining sites nor the public domain.

*e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment:

Not applicable to the subject application.

### Zone objectives

The underlying objectives of the R1 General Residential zone are:

- To provide for the housing needs of the community.

Comment:

The proposal will continue to enable Unit 2 within the development to provide for local housing

- To provide for a variety of housing types and densities.

Comment:

The development will still enable a variety of housing types to be provided both on the site and

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

Comment:

The proposal will not have any impact on the ability of the site nor surrounding sites to provide

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General 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 Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the floor space ratio Development Standard is assumed by the Local Planning Panel.

**Mainly Development Control Plan**

Built Form Controls

Built Form Controls	Requirement	Proposed	% Variation*	Complies
4.1.4.2 Side Setbacks and Secondary Street Frontages	1/3 wall height	N/A (Unchanged)	N/A	N/A
	Windows: 3m	3.2m	N/A	Yes
4.1.4.4 Rear Setbacks	8m	N/A (Unchanged)	N/A	N/A
4.1.5.3 Private Open Space	10m <sup>2</sup> with minimum 2m depth	18.5m <sup>2</sup>	N/A	Yes
Schedule 3 Parking and Access	Dwelling 1.2 spaces	1 (unchanged)	N/A	N/A

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

variation)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	N/A	N/A
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	N/A	N/A

#### Detailed Assessment

##### **3.4.2 Privacy and Security**

The setback of glazed surfaces on the northeast side of the proposed bedroom is sufficient; earthworks on the site and the associated location and heights of the boundary retaining wall and fence are such that the visual privacy of surrounding sites (including other apartments within the site boundaries) will be maintained.

The locations of the existing balcony and terrace on the north and east sides of the building respectively will be retained, and works to these elements will not result in increased visual privacy aspects (with regard to both adjoining site and other apartments on the site).

##### **4.1.1.1 Residential Density and Dwelling Size**

Dwelling density requirements are not applicable to this proposal, and as such will not be discussed further.

The plans propose a total Gross Floor Area (GFA) within Unit 2 of 63m<sup>2</sup>, which is a 7m<sup>2</sup> (i.e. 10%) variation to the minimum 70m<sup>2</sup> requirement for two-bedroom apartments under 4.1.1.1(d) of the DCP. It is however noted that in its current approved form (noting that the enclosure of the recessed courtyard was not previously approved), Unit 2 would not comply with minimum size requirements were it proposed under the current planning controls.

Despite the variation, the proposal would still provide for an apartment with adequate internal dimensions; excluding built-in-robos, the two proposed bedrooms would have areas of 8.9m<sup>2</sup> and



9.3m<sup>2</sup>, while the combined kitchen/living/dining area would have a GFA of 29.4m<sup>2</sup>. It is also considered that these rooms would also contain reasonable internal dimensions. Internal storage space would also be significantly increased by the proposal. The proposal therefore satisfy the relevant objective relating to dwelling size and internal amenity; it would also not offend other objectives to which the control relates.

As the objectives of the control are satisfied and the proposed development would not have any impacts on the amenity of other apartments or the locality more broadly, the dwelling size variation is considered to be acceptable and supportable on merit.

### **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;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs

- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

The application seeks consent for alterations and additions to a unit within the existing building.

The primary planning issue considered within the assessment is the proposed variation to the FSR development standard.

Notwithstanding the proposed floor space variation of 16.85%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

No submissions were received in relation to the proposal.

Assessment of the application against the Manly 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 Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/1657 for Alterations and additions to residential flat building on land at Lot CP SP 31588, 18 Baltic Street, FAIRLIGHT, Lot 2 SP 31588, 2 / 18 Baltic Street, FAIRLIGHT, 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
Plan (Drawing No. 01, Rev. G)	24.11.2020	Danny Glavan Design & Consulting
Elevation (Drawing No. 010, Rev. A)	27.11.2020	Danny Glavan Design & Consulting

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. Prescribed Conditions

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

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

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

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

Reason: Legislative requirement.

### 3. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
  - 7.00 am to 5.00 pm inclusive Monday to Friday,

- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



- v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2018
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Security Bond

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any

damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

5. **Amendments to the approved plans**

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

- External materials not specified on the plans (e.g. balustrades) are to be constructed of durable materials in colours that match the building.

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

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

6. **Compliance with standards (Demolition):**

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 Council prior to the commencement of demolition works.

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

7. **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.

8. **Sydney Water "Tap In"**

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

demonstrating the works are in compliance with Sydney Water requirements.

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

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

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

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

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

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

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

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

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

10. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

11. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements and floor levels are in accordance with

the approved plans.

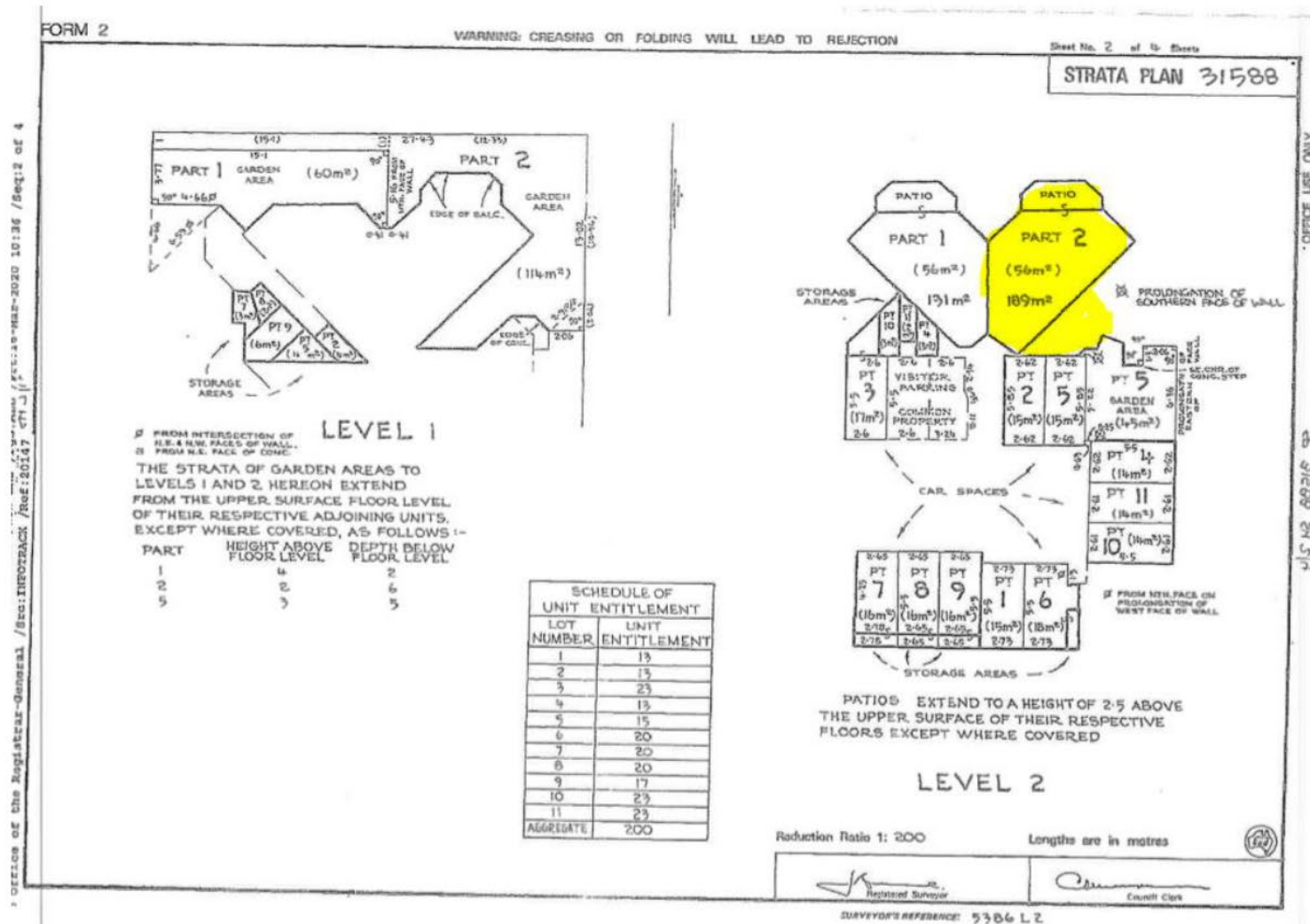
Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To demonstrate the proposal complies with the approved plans.

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

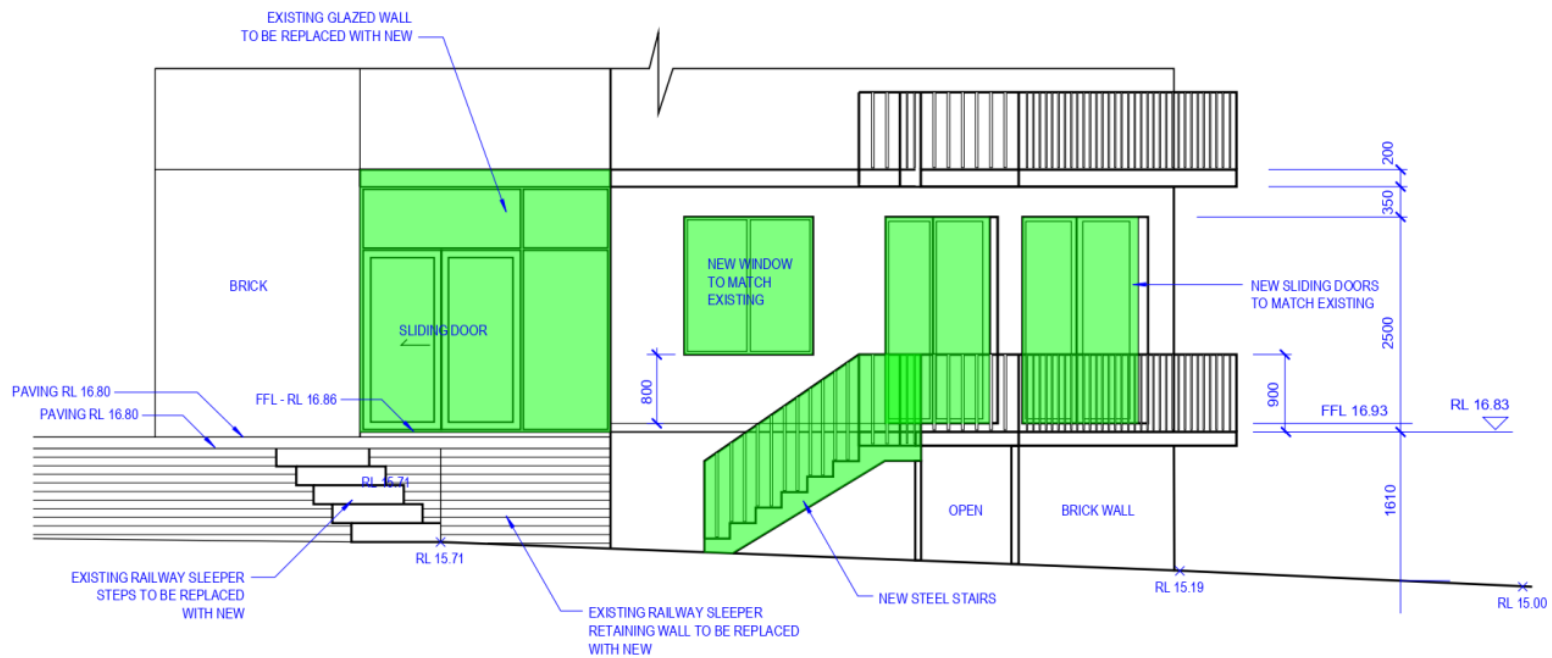
Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored 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.



SITE PLAN – Location  
Not to scale





**A Elevation - Proposed Approval Works**  
1 : 50

**DGDC**  
Danny Glavan Design & Consulting Pty Ltd  
ACN 106 983 706  
T(+612) 486 16181 F(02)486 16184

No.	Description	Date
A	Preliminary	27.11.2020

Anna Bowden

Unit 2, 18 Baltic St Fairlight

Proposed Renovation - Elevation

Project Number	-	DWG No.	010	<b>A</b>
Date	27.11.2020			
Drawn by	hjb			
Designed by	dg	Scale @ A3	1 : 50	

**Clause 4.6 Exceptions to Development Standards****Floor Space Ratio****18 Baltic Street, Fairlight****1. Introduction**

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

- (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 aims and objectives of Manly LEP 2013 Clause 4.6 are as follows:

*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

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

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

## 2. Environmental Planning Instrument Details (Manly LEP 2013)

### 2.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013

### 2.2 What is the zoning of the land?

R1 – General Residential

### 2.3 What are the objectives of the zone?

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

**2.4 What is the development standard being varied?**

Cl 4.4 – Floor Space Ratio

**2.5 Under what clause is the development standard listed in the environmental planning instrument?**

Cl 4.4 of the Manly Local Environmental Plan 2013

**2.6 What are the objectives of the development standard?**

*The objectives of this clause are as follows:*

- a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

**2.7 What is the numeric value of the development standard in the environmental planning instrument?**

The numeric value of the Floor Space Ratio development standard applicable to the subject site is a maximum of 0.6:1.

**2.8 What is proposed numeric value of the development standard in your development application?**

The development proposes a maximum Floor Space Ratio of 0.69:1.

This is based on a lot size of 1003m<sup>2</sup>, and existing floor area of 678.1m<sup>2</sup> (FSR 0.68:1) and an additional 16.25m<sup>2</sup> being added, totalling 692.35m<sup>2</sup> (0.69:1).



### 2.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation between the proposal and the environmental planning instrument is 12.6% or 76.3 m<sup>2</sup>.

However only 16.25m<sup>2</sup> of this is as a result of this proposal.

## 3. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

### 3.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*





In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

### 3.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater* [2007] NSW LEC 827 and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each, but it is not essential.

### 3.3 *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

### 3.4 *Zhang v City of Ryde*

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent



with the objects of the standard which is not met; and

3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

### 3.5 Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

## 4. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

**Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?**

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in Winten v North Sydney Council and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

### 4.1 Five (5) Part Test - *Wehbe v Pittwater*

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***



The objectives of the standard are:

***(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,***

Comment

The variation is entirely the result of the enclosure of a covered courtyard. The courtyard area is not visible from the street or any other site and has no impact on the streetscape character of the site.

Accordingly, the variation is consistent with surrounding development, being hidden from view and allowing for improved use of an existing space. It is considered this objective is met, despite the numerical variation.

***(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,***

Comment

The variation is contained within an enclosed courtyard area which already sits within the built form of the residential flat building. The enclosure has a nil impact on bulk and does not impact any landscape features or the townscape.

The proposed development will not present with excessive bulk from the public domain or to neighbours due to the sloping topography of the site and surrounding area, due to the small area of variation and the hidden/central location of the variation.

It is considered this objective is met, despite the numerical variation.

***(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,***

Comment

The proposed variation in FSR has no impact on the existing character and landscape of the area being contained within the existing built form.

It is therefore considered this objective is met, despite the numerical variation.

***(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,***

Comment



The proposed variation to FSR does not result in any adverse impacts for the neighbouring sites, with the small additional area of gross floor area, not visible from adjoining sites or the public domain. Despite the FSR variation sought, it is considered the underlying objective of this clause has been satisfied.

***(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.***

Comment

N/A

- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason.

- 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).***

This exception to development standards request does not rely on this reason.

- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the FSR of buildings control pursuant to the First Way outlined in Wehbe.



Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

**4.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

There are sufficient environmental planning grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*.

In particular:

**Bulk and scale**

- The apparent bulk through the variation is negligible and not to the detriment of the scale of the residential flat building with works not visible from the public domain or neighbouring sites from any point satisfying Cl1.3(g).
- The small variation to the FSR occurs at within the existing walled and roofed courtyard. It allows for additional habitable space in the existing development without additional built structure /footprint being created. The additions have been designed to sit within the existing structure satisfying Cl1.3(g).

**Neighbour Amenity**

Fulfillment of each of the criteria below demonstrates a development satisfying Cl1.3(g).

- The variation is provided with an extensive and existing setback to the boundaries, ensuring the impact on for neighbours is of nil consequence with regard to the apparent bulk. In addition to extensive setbacks, there is also substantial landscape screening existing. The small FSR variation will have no impact the neighbours and compliance with the development standard would be unreasonable.
- Compliance with the FSR control would not result in a building which has a lesser bulk and the impact to neighbours of no additional variation is not discernible neighbours. Accordingly, compliance with the development standard in this instance is unreasonable.
- Solar access impacts as a result of the small FSR variation are nil as the courtyard is already within the built form (roofed and 3 walls). Accordingly, compliance with the development standard based on this would be unreasonable.





- The small variation to the floor area has no impact on privacy for neighbours, being confined to the existing enclosed courtyard space, not within neighbouring view. Accordingly, the variation is reasonable in the circumstances of the case.

#### **Design and Streetscape Appeal**

- Strict numerical compliance with the FSR control would not result in a better urban design outcome and the street view would be unchanged. Compliance with the development standard based on this would be unreasonable.
- The proposed development will not present with excessive bulk from the public domain with the sloping topography of the site and location of the courtyard space resulting in the enclosed courtyard being hidden from view satisfying Cl1.3(g). The streetscape appeal is unaffected by the small variation to the FSR standard, and it would be unreasonable to require compliance with development standard based on this.

#### **Consistent with Zone Objectives**

- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone ensuring that appropriate and reasonable housing suitable for the local community is proposed. Compliance with the development standard based on this would be unreasonable.

#### **Natural Environment**

- The inclusion of the small FSR variation to facilitate enclosure of the existing courtyard has not impact on the natural environment. The small variation sits within the built form and will not result in any impact to the existing natural components of the site or neighbourhood. No landscape area is lost or impacted through the minor variation satisfying Cl1.3(b). The natural environment is unaffected by the small departure from the development standard, and it would be unreasonable for the development to be refused on this basis.

#### **Environmentally Sustainable Development**

- The proposal represents an environmentally sustainable design allowing for extension of the life on an existing dwelling unit satisfying Cl1.3(f). Compliance with the development standard based on this would be unreasonable.

**Social and economic welfare**

- The small variation to the FSR as detailed above will have no social impacts for the site or local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.
- The small variation to the FSR as detailed above will have no economic impacts for the site or the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

**Appropriate Environmental Planning Outcome**

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.
- The variation does not result in a building bulk beyond that which is found in the immediate context, with other residential flat buildings located along Suwarrow Street. The small variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying Cl1.3(c). Compliance with the development standard based on this would be unreasonable.
- Removal of the non-compliance would not result in alter the perceived bulk and scale due to the minor nature, siting and topography.

The variation confined to enclosure of a rear existing courtyard is minor and the discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and retention of amenity. These are not simply benefits of the development as a whole, but are a direct result of the breach of the maximum FSR control.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the floor space ratio variation.

**4.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.**



The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

#### **Zone – R1 General Residential**

##### **Objectives of zone**

- *To provide for the housing needs of the community*

Consistent. The proposal is for alterations and additions to an existing residential flat building and will provide additional habitable space and accommodation for the residents.

- *To provide for a variety of housing types and densities.*

Consistent. The proposed development retains the existing unit, providing variety within a neighbourhood detached dwellings and residential flat buildings.

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

Not relevant. The proposal is for alterations and additions to a residential unit.

Despite the proposal seeking an exception to the Floor Space Ratio clause, the bulk and scale of the building will appear unchanged and have minimal effects representing only a minor exceedance consistent with surrounding development.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

#### **Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,**

The non-compliance will not raise any matter of State or Regional Significance.

#### **Clause 4.6(5)(b) the public benefit of maintaining the development standard,**

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard. The variation is reasonable, not easily visible from any viewpoint and has no impact on the public domain.

#### **Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence**

**How would strict compliance hinder the attainment of the objects specified in Section 1.3 of**



the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

- (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.*

As proposed the development allows for all of the above objects to be achieved. In particular it is noted that there is no social or economic impact other than the benefit of a small amount of employment through the works which will be undertaken.

The upgrade and redevelopment of an existing dwelling unit to an improved standard is a positive environmentally sustainable result.

The development proposed a good design which is achieved partly through the minor development standard variation.



Strict compliance with the FSR development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

## Conclusion

The proposed development is for alterations and additions to an existing residential flat building on land zoned R1 – General Residential.

As stated above the proposed non-compliance is minor with only 16.25m<sup>2</sup> sought. The variation does not result in any unreasonable impacts and is largely the result of taking into account the slope of the site and working within the constraints of adding to an existing dwelling unit within a residential flat building. It is of a very limited area and located at the rear and within the existing footprint, resulting in it not being easily visible from any location, and appearing appropriate and consistent from those areas where it may be viewed.

The proposed development will present as unchanged to the streetscapes and does not present with excessive bulk in comparison to surrounding properties. There will not be any view loss and solar access is fully compliant with Council controls. Amenity is retained for all neighbours.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4, and therefore the merits of the proposed variation are considered to be worthy of approval.



**ITEM 4.5**

**DA2020/1503 - LOT 1/ & LOT 374/ LAWRENCE STREET,  
FRESHWATER - ALTERATIONS AND ADDITIONS TO AN  
EXISTING COMMUNITY FACILITY (GIRL GUIDES HALL &  
HARBORD LITERARY INSTITUTE) AND USE OF THE  
PREMISES AS A CHILD CARE CENTRE**

**AUTHORISING MANAGER** Anna Williams

**TRIM FILE REF** 2021/297864

**ATTACHMENTS**  
1 Assessment Report  
2 Site Plan & Elevations

**PURPOSE**

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

**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grants **deferred commencement approval** Application No. DA2020/1503 for alterations and additions to an existing community facility (Girl Guides Hall & Harbord Literary Institute) and use of the premises as a child care centre at Lot 1 DP 864459 & Lot 374 DP 752038, Lot 1/ & Lot 374/ Lawrence Street, Freshwater subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1503
<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 374 DP 752038, 374 / 0 Lawrence Street FRESHWATER NSW 2096 Lot 1 DP 864459, 1 / 0 Lawrence Street FRESHWATER NSW 2096
<b>Proposed Development:</b>	Alterations and additions to an existing community facility (Girl Guides Hall & Harbord Literary Institute) and use of the premises as a child care centre
<b>Zoning:</b>	Warringah LEP2011 - Land zoned RE1 Public Recreation
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Department Of Lands Girl Guides Association (NSW) T/As Girl Guides NSW & ACT
<b>Applicant:</b>	Queenscliff Girl Guides
<b>Application Lodged:</b>	26/11/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	19/03/2021 to 02/04/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Deferred Commencement Approval
<b>Estimated Cost of Works:</b>	\$ 5,276.00

### EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application DA2020/1503 for use of the existing community hall as a 'centre-based child care facility' in conjunction with the existing community use and alterations and additions to the existing building pursuant to State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 and Warringah LEP 2011.

The subject site is zoned RE1 Public Recreation under the provisions of the Warringah Local Environmental Plan 2011 (WLEP 2011), and the proposed development is permissible with consent.

The public exhibition period generated a total of one (1) individual submission in support of the application.

The application proposes to utilise Council land (Harbord Literary Institute) that adjoins the subject site to the west as an outdoor play area. As the application proposes to operate on Council land, the application is referred to the Northern Beaches Local Planning Panel.

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

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be determined by way of Deferred Commencement.

## PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for use of the existing community hall as a centre-based child care facility pursuant to *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*.

Specifically, the development involves:

- Use of the existing building as a child care centre in conjunction with the existing use as a community facility (girl guides).
- Use of the Harbord Literary Institute for outdoor play (Council Land);
- Construction of a balustrade.

The proposed operational details are as follows:

- Maximum 20 children (3 - 5 years);
- Hours of Operation:
  - Monday to Wednesday: 8:00am - 3:00pm
  - Thursday to Friday: 7:30am - 3:45pm
  - Saturday to Sunday: Closed
- 3 Staff members.
- The proposed child care centre will operate at separate times to the girl guides ensuring that there is no overlap between the two uses.

## ASSESSMENT INTRODUCTION

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

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D3 Noise

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 374 DP 752038 , 374 / 0 Lawrence Street FRESHWATER NSW 2096 Lot 1 DP 864459 , 1 / 0 Lawrence Street FRESHWATER NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Lawrence Street and the eastern side of Oliver Street (adjacent to the Council carpark).</p> <p>The site is regular in shape with a frontage of 15.11m along the Council carpark (off Oliver Street) and a depth of 32.33m. The site has a surveyed area of 488.4m<sup>2</sup>.</p> <p>The site is located within the RE1 Public Recreation zone and accommodates an existing Girl Guides Hall.</p> <p>The site has a cross fall from the southwest (rear) down toward the frontage of approximately 2m.</p> <p>The site is not known to contain any threatened species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by a mixture of community and commercial uses such as Harbord Baby Centre, Harbord Literary Institute, Harbord Kindergarten, a public carpark, electricity substation, liquor outlet and Freshwater Village.</p>

Map:



## **SITE HISTORY**

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

### Development Application No. 1993/93 Consent No. 93/375

This application for alterations and additions to an existing Girl Guide Hall was granted consent on 25 August 1993.

### Development Application DA2018/0587

This application for alterations and additions to a community facility (Girl Guides Hall) was granted consent under delegation on 27 August 2018.

### Modification application No.2020/0005 (DA2018/0587)

Modification of Development Consent DA2018/0587 granted for Alterations and Additions to a community facility Girl Guides hall approved 11 February 2020.

### Pre-lodgement Meeting

A pre-lodgement meeting for use of the premise as a child care centre, was held between the applicant and Council on 23 July 2020.

## **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) –	Draft State Environmental Planning Policy (Remediation of Land)



Section 4.15 Matters for Consideration'	Comments
Provisions of any draft environmental planning instrument	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 community purposes for an extended period of time. The proposed development retains the commercial use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clause 50(1A) of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p>Clauses 54 and 109 of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to outdoor open space and owners consent.</p> <p>Clause 92 of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p>Clauses 93 and/or 94 of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>

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

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/03/2021 to 02/04/2021 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 1 submission/s from:

Name:	Address:
James Griffin Mp	2 / 2 Wentworth Street MANLY NSW 2095

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

- **Support of application**

The matters raised within the submissions are addressed as follows:

- **Support of application**

Comment:

A letter of support was received in support of the application noting the potential positive impact upon the community.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application proposes alterations to an existing Public Hall and Change of Use to a Child Care Centre and associated works. No objection subject to conditions.
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>Application is for a change from an existing building to a child care centre.</p> <p>The applicant has provided a Noise Impact Review by Waves Acoustic Consulting Pty Ltd dated 10 September 2020 (reference: Document No. 60.00849.01 LTR1R1.DOCX).</p> <p>The review concluded the following:</p> <p><i>Waves Consulting has conducted a noise impact review of the proposed Child Care Centre at 29 Lawrence Street, Freshwater, NSW. The proposal seeks to relocate twenty (20) children from the existing Kindergarten at 23 Oliver Street, Freshwater to the proposed Child Care Centre. This assessment has investigated the worst-case noise emissions associated with the operation of the facility.</i></p> <p><i>This review has demonstrated that the predicated noise emissions from the site to the surrounding environment are low. The proposed development satisfies all the AAAC noise targets for Child Care Centres at all nearby noise-sensitive receivers. No operations mitigation measures are required as a results.</i></p> <p><i>It is concluded that the proposed Child Care Centre is complying development with respect to noise impacts and is therefore suitable for operation.</i></p> <p>The applicant has also provided a letter from Ausgrid dated 15 June 2020 regarding satisfactory Electric and magnetic fields (EMF) from the adjacent Harbord Zone Substation.</p> <p>Due to the potential age of the building and the proposed use as a child care centre a hazardous building materials survey of the premises (asbestos, lead, SMF, PCBs) by suitably qualified and experienced persons will be required to ensure that the premises is safe with respect to hazardous materials during any proposed works and for occupants of the building.</p>

Internal Referral Body	Comments
	<p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
<p>Environmental Health (Food Premises, Skin Pen.)</p>	<p><b>General Comments</b></p> <p>Application is for a change from an existing building to a child care centre.</p> <p>The SEE does not mention if food is going to be provided to the children as part of the operation of the child care centre.</p> <p>If food is going to be provided to the children it is regarded as food for sale under the Food Act 2003. The kitchen will need to be commercial in nature and comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises'.</p> <p>The SEE advises that recent upgrades to the building includes a new kitchen however, this was for the existing use (Girl Guides Hall) and the new kitchen is unlikely to be commercial in nature and comply with the above mentioned requirements. Furthermore, the plans and the SEE indicate that there will be no further works to the kitchen and the plans specify that the flooring within the kitchen is timber. Timber flooring does not comply with the requirements of AS 4674 'Design, construction and fit out of food premises'.</p> <p>In order for Environmental Health to assess the application the applicant is to confirm if food is going to be provided to the children. If so, the kitchen will need to comply with the above mentioned requirements. This could result in extensive works to the kitchen and an amended application. Applicant should obtain advice from someone that is suitably qualified and experienced to determine if the current kitchen can easily be made complaint with the above mentioned requirements.</p> <p>If children are to provide their own food there will most likely be a condition that no food for sale be prepared using the existing kitchen.</p> <p>Recommendation</p> <p>REFUSAL</p> <p><b>New Information – Additional Review 27 January 2021</b></p> <p>Applicant has advised that no food will be provided to the children on site, with Children will bring their own food for morning tea and lunch.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>

Internal Referral Body	Comments
Landscape Officer	The plans indicate that no external works to the landscaped areas are proposed. No objections are raised to approval subject to conditions regarding tree protection.
Strategic and Place Planning (Heritage Officer)	<p><b>HERITAGE COMMENTS</b></p> <p>Discussion of reason for referral</p> <p>The proposal has been referred to Heritage as the subject property adjoins two heritage items</p> <p><b>I71 - Building known as 'Harbord Literary Institute' - Corner Lawrence Street and Oliver Street</b></p> <p><b>I72 - Building known as 'Early Childhood Health Centre' - 29 Lawrence Street</b></p> <p><b>Details of heritage items affected</b></p> <p>Details of the item as contained within the Warringah heritage inventory is as follows:</p> <p><b>Harbord Literary Institute</b></p> <p><u>Statement of significance:</u> "Harbord Literary Institute" has great social &amp; historical significance for the community, having been part of community life since early 1900's. Historically the buildings indicate the growing need for facilities for the increasing permanent community.</p> <p><u>Physical description:</u> Essentially two buildings with original building at rear which is a single storey brick building with 2 stringcourses of darker brick in line with top &amp; bottom of windows. Gabled corrugated iron roof. Brick flat roofed addition on eastern side. Building on corner-single storey brick with hipped tiled roof. Brick gable located over entrance with arched opening &amp; semi-circular plain leadlight. Timber weatherboards under eaves. Flag poles.</p> <p><b>Early Childhood Health Centre</b></p> <p><u>Statement of significance:</u> A representative example of inter-war fire station architecture displaying high integrity of fabric. Strong social significance as the 1st permanent fire station building in Freshwater &amp; in its continual use for the provision of community services.</p> <p><u>Physical description:</u> Single storey brick building with multi-gabled roof and detailed parapet on front facade. Roof of slate with terracotta capping &amp; finials. Timber louvres to small gable ends. Facade partly rendered. Changes to entrance when changed to baby health centre. Canopy over entrance door. Brick course around door. Public toilets have been added to rear of building. Tree still exists to east of building</p>



Internal Referral Body	Comments		
	adjacent to public pathway. Timber flag pole on top.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	The proposal seeks consent to use the existing Girls Guide Hall as a child care centre and to raise the height of the hall's deck railing. The hall will continue to be used by Girls Guides but the uses will operate at different times. This hall is not a heritage item, and the proposal will not impact upon the adjoining heritage listed early childhood centre building located to the south.		
	The proposal also includes utilizing the existing playground on the site to the west as an outdoor play area. This playground is located on the same lot as the Literary Institute building which is heritage listed. However no physical works are proposed on this lot and the use of the existing playground by the child care centre will not impact upon this heritage item's significance.		
	Therefore Heritage raises no objections and requires no conditions.		
	Consider against the provisions of CL5.10 of WLEP.		
	Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No, given no physical works are proposed to any heritage item and the only works included in this application are minor. Has a Heritage Impact Statement been provided? No		
	Further Comments		
COMPLETED BY: Brendan Gavin, Principal Planner			
DATE: 26 November 2020			
Traffic Engineer	The proposal is for a change in use of the girl guides hall at times when it is not in use by the girl guides. The change is supported as it		

Internal Referral Body	Comments
	<p>eliminates the current issues associated with the preschool operating from two sites on either side of the carpark. The amended arrangement sites all preschool activities on the same side of the carpark and allows for children to be transferred between playground and indoor activities via an internal gate. No increase in staff or student numbers is proposed so the application does not result in increase traffic or parking requirements.</p> <p>I would have concerns if the site at No.23 Oliver Street was to remain in use by the Child Care Centre (or another child care facility) as this may then result in increased staff or student numbers and an associated increase in drop off and pick up activity. Continued use of No.23 Oliver Street by the Child Care Centre would also not address existing safety concerns relating to children having to cross the carpark between the two buildings. This may require a condition being placed on any consent requiring the applicant to surrender the child care centre consent for No.23 Oliver St.</p> <p>The Child Care Centre is located adjacent to a 42 space public carpark. The existing child care centre caters for 60 children in total with 20 of these children to be re-sited from No.23 Oliver Street to the Girl Guides hall. The total number of children is unchanged from those permitted under the in the existing approval and would not generate any additional parking demand. As is the case with the existing development, the public carpark adequately caters for the drop off and pick up needs generated by the centre.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No objections are raised and no conditions are recommended.
Ausgrid: (Substation)	The proposal was referred to Ausgrid. No objections are raised and no conditions are recommended.

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

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

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

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

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

##### **SEPP Educational Establishments and Child Care Facilities 2017**

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

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

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

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

## DESIGN QUALITY PRINCIPLES

### Principle 1: Context

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

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

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

#### Comment:

The proposed child care centre provides for a streetscape presentation, overall built form and integration of landscaping that is appropriate given the context of the area. The context is formed by a mix of one-two storey commercial development within the Freshwater Village.

### Principle 2: Built Form

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

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

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

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

#### Comment:

The application utilises the existing community building on site. The existing building fits appropriately within the Freshwater Village.

**Principle 3: Adaptive Learning Spaces**

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

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

Comment:

The proposal involves indoor activity rooms, and outdoor play areas to cater for 3-5 year old children. This results in appropriate opportunity for different modes of learning, technology, interaction and allows for a variety of settings.

**Principle 4: Sustainability**

Sustainable design combines positive environmental, social and economic outcomes.

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

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

Comment:

The proposed development achieves a suitable level of sustainability and internal amenity. This is contributed to by appropriate openings which surround the built form, allowing for cross ventilation, sunlight and passive thermal design. The siting provides an appropriate balance for access to and protection from sunlight through the use of shade structures.

**Principle 5: Landscape**

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

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

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Comment:

The outdoor play area is surrounded by a landscaped area and this design provides appropriate

amenity for the use of the area. The landscaping surrounding the building, along with the outdoor play area which has a colour to complement the landscaping, provides an appropriate visual outcome for the site. Overall, the landscaping that surrounds each feature of the development results in a design that is appropriate for the use and area.

#### Principle 6: Amenity

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

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

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

#### Comment:

The proposal provides an orientation of the building and location of the outdoor play areas that is well separated from residential development. Along with the access to sunlight to the rear, including to the outdoor play area, this contributes to an adequate amenity outcome for the site.

#### Principle 7: Safety

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

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

#### Comment:

The proposed development is appropriately designed to achieve safety and security on the site. This is a result of the numerous areas which are open to allow for passive surveillance but also have the ability to be closed from the rest of the site and public space for safety.

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

#### MATTERS FOR CONSIDERATION

Objectives	Criteria/Guidelines	Comments
<b>3.1 Site selection and location</b>		
<b>C1 To ensure that appropriate zone considerations are assessed when</b>	For proposed developments in public or private recreation zones, consider: <ul style="list-style-type: none"> <li>• the compatibility of the proposal with the operations and nature of the community or</li> </ul>	<b>Complies</b>  The site is suitable for the proposed child care facility for



<p><i>selecting a site</i></p>	<p>private recreational facilities</p> <ul style="list-style-type: none"> <li>• if the existing premises is licensed for alcohol or gambling</li> <li>• if the use requires permanent or casual occupation of the premises or site</li> <li>• the availability of on site parking</li> <li>• compatibility of proposed hours of operation with surrounding uses, particularly residential uses</li> <li>• the availability of appropriate and dedicated sanitation facilities for the development.</li> </ul>	<p>the following reasons:</p> <ul style="list-style-type: none"> <li>• The subject site currently operates as community facility and has sufficient access to off-street parking.</li> <li>• The existing premise is licensed for alcohol or gambling.</li> <li>• The proposed hours of operation is restricted to business hours and does not operate on the weekend.</li> </ul>
<p><b>C2 To ensure that the site selected for a proposed child care facility is suitable for the use</b></p>	<p>When selecting a site, ensure that:</p> <ul style="list-style-type: none"> <li>• the location and surrounding uses are compatible with the proposed development or use</li> <li>• the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards</li> <li>• there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed</li> <li>• the characteristics of the site are suitable for the scale and type of development proposed having regard to: <ul style="list-style-type: none"> <li>- size of street frontage, lot configuration, dimensions and overall size</li> <li>- number of shared boundaries with residential properties</li> <li>- the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas</li> </ul> </li> <li>• where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use</li> <li>• there are suitable drop off and pick up areas, and off and on street parking</li> <li>• the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use</li> <li>• it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or</li> </ul>	<p><b>Complies</b></p> <p>The site is suitable for the proposed child care facility for the following reasons:</p> <ul style="list-style-type: none"> <li>• The subject site is surrounded by a variety of commercial, community and residential uses including retail shops and food and drink premises within the Freshwater Village. These uses are compatible with a child care centre in that amenity impacts and use times will be similar to the surrounding uses, subject to conditions.</li> <li>• The subject site adjoins the Oliver street car park which will provide appropriate pick-up and drop off facilities.</li> <li>• A historical search of Councils records, including of the</li> </ul>

	gambling such as hotels, clubs, cellar door premises and sex services premises.	subject site and surrounding sites has found that no uses have taken place or activities carried out which indicate any evidence of environmental contamination or hazardous material.
<b>C3 To ensure that sites for child care facilities are appropriately located</b>	<p>A child care facility should be located:</p> <ul style="list-style-type: none"> <li>• near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship</li> <li>• near or within employment areas, town centres, business centres, shops</li> <li>• with access to public transport including rail, buses, ferries</li> <li>• in areas with pedestrian connectivity to the local community, businesses, shops, services and the like.</li> </ul>	<p><b>Complies</b></p> <p>The proposed child care facility is located in an area that has the following features:</p> <ul style="list-style-type: none"> <li>• The subject site is located in the Freshwater Village.</li> <li>• The site is located close to numerous bus stops along Lawrence Street.</li> </ul>
<b>C4 To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazard</b>	<p>A child care facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from:</p> <ul style="list-style-type: none"> <li>• proximity to: <ul style="list-style-type: none"> <li>- heavy or hazardous industry, waste transfer depots or landfill sites</li> <li>- LPG tanks or service stations</li> <li>- water cooling and water warming systems</li> <li>- odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses</li> </ul> </li> </ul>	<p><b>Complies</b></p> <p>A search of Councils records, a site visit, and evidence provided by the applicant has identified not evidence of adverse environmental conditions.</p> <p>Council's Environmental Officers also reviewed the application and raise no concerns and have provided conditions.</p> <p>It is noted that the subject site adjoins an AUSGRID substation. Information provided by the applicant directly from AUSGRID and Council own referral to AUSGRID raised no concern with the proposed use.</p>
<b>3.2 Local character, streetscape and the public domain</b>		
<b>C5 To ensure that the child care facility is</b>	<p>The proposed development should:</p> <ul style="list-style-type: none"> <li>• contribute to the local area by being</li> </ul>	<b>Complies</b>

<i>compatible with the local character and surrounding streetscape</i>	<p>designed in character with the locality and existing streetscape</p> <ul style="list-style-type: none"> <li>• reflect the predominant form of surrounding land uses, particularly in low density residential areas</li> <li>• recognise predominant streetscape qualities, such as building form, scale, materials and colours</li> <li>• include design and architectural treatments that respond to and integrate with the existing streetscape</li> <li>• use landscaping to positively contribute to the streetscape and neighbouring amenity</li> <li>• integrate car parking into the building and site landscaping design in residential areas.</li> </ul>	The design and siting of the development complements the existing character and desired future character of the area.
<b>C6, C7, C8 To ensure clear delineation between the child care facility and public spaces</b>	<p>Create a threshold with a clear transition between public and private realms, including:</p> <ul style="list-style-type: none"> <li>• fencing to ensure safety for children entering and leaving the facility</li> <li>• windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community</li> <li>• integrating existing and proposed landscaping with fencing.</li> </ul>	<b>Complies</b>  A clear transition between the centre and public space is formed through fencing, clear separation of areas on site and a landscaped buffer, which surrounds the development.
	<p>On sites with multiple buildings and/or entries, pedestrian entries and spaces associated with the child care facility should be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.</p>	<b>Not applicable</b>
	<p>Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions:</p> <ul style="list-style-type: none"> <li>• clearly defined street access, pedestrian paths and building entries</li> <li>• low fences and planting which delineate communal/ private open space from adjoining public open space</li> <li>• minimal use of blank walls and high fences.</li> </ul>	<b>Not applicable</b>
<b>C9, C10 To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.</b>	<p>Front fences and walls within the front setback should be constructed of visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.</p>	<b>Complies</b>  The existing fencing on site is an appropriate solution for the proposed use.

	High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary	Not applicable
<b>3.3 Building orientation, envelope and design</b>		
<b>C11 To respond to the streetscape and site, while optimising solar access and opportunities for shade</b>	<p>Orient a development on a site and design the building layout to:</p> <ul style="list-style-type: none"> <li>• ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: <ul style="list-style-type: none"> <li>- facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties</li> <li>- placing play equipment away from common boundaries with residential properties</li> <li>- locating outdoor play areas away from residential dwellings and other sensitive uses</li> </ul> </li> <li>• optimise solar access to internal and external play areas</li> <li>• avoid overshadowing of adjoining residential properties</li> <li>• minimise cut and fill</li> <li>• ensure buildings along the street frontage define the street by facing it</li> <li>• ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions.</li> </ul>	<p><b>Complies</b></p> <p>The proposal seeks to occupy an existing building.</p>
<b>C12 To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised</b>	<p>The following matters may be considered to minimise the impacts of the proposal on local character:</p> <ul style="list-style-type: none"> <li>• building height should be consistent with other buildings in the locality</li> <li>• building height should respond to the scale and character of the street</li> <li>• setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility</li> <li>• setbacks should provide adequate access for building maintenance</li> <li>• setbacks to the street should be consistent with the existing character.</li> </ul>	<p><b>Complies</b></p> <p>The proposal maintains the existing built form height and setbacks.</p>
<b>C13, C14 To ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context</b>	Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant	<p><b>Complies</b></p> <p>The application proposes to use the existing community building on site. The site is sufficiently separated from Lawrence Street and Oliver Street.</p>

	adjoining land use.	
	On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.	<b>Not applicable</b>
<b>C15 To ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute to an area's character</b>	<p>The built form of the development should contribute to the character of the local area, including how it:</p> <ul style="list-style-type: none"> <li>• respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage</li> <li>• contributes to the identity of the place</li> <li>• retains and reinforces existing built form and vegetation where significant</li> <li>• considers heritage within the local neighbourhood including identified heritage items and conservation areas</li> <li>• responds to its natural environment including local landscape setting and climate</li> <li>• contributes to the identity of place.</li> </ul>	<p><b>Complies</b></p> <p>The development on the site suitably relates to the context of the site and the character of the area through colours, materials and landscaping that complements the landscape setting.</p>
<b>C16 To ensure that buildings are designed to create safe environments for all users</b>	<p>Entry to the facility should be limited to one secure point which is:</p> <ul style="list-style-type: none"> <li>• located to allow ease of access, particularly for pedestrians</li> <li>• directly accessible from the street where possible</li> <li>• directly visible from the street frontage</li> <li>• easily monitored through natural or camera surveillance</li> <li>• not accessed through an outdoor play area.</li> <li>• in a mixed-use development, clearly defined and separate from entrances to other uses in the building.</li> </ul>	<p><b>Complies</b></p> <p>The facility allows for ease of access directly from Lawrence Street via a access path . The entry is clearly visible from the Lawrence Street and Oliver street car park, and can be simply monitored through natural or camera surveillance.</p>
<b>C17 To ensure that child care facilities are designed to be accessible by all potential users</b>	<p>Accessible design can be achieved by:</p> <ul style="list-style-type: none"> <li>• providing accessibility to and within the building in accordance with all relevant legislation</li> <li>• linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry</li> <li>• providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible</li> <li>• minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath.</li> </ul>	<p><b>Complies</b></p> <p>The centre provides access from the Lawrence Street to the built form and to the carpark areas. This is accessible by all potential users.</p>



	<b>NOTE:</b> The National Construction Code, the Discrimination Disability Act 1992 and the Disability (Access to Premises – Buildings) Standards 2010 set out the requirements for access to buildings for people with disabilities.	
<b>3.4 Landscaping</b>		
<b>C18, C19 To provide landscape design that contributes to the streetscape and amenity</b>	Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space.  Use the existing landscape where feasible to provide a high quality landscaped area by: • reflecting and reinforcing the local context • incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping.	<b>Complies</b>  The proposal seeks to use the adjoining Harbord Literary Institute for the outdoor play area. The outdoor area contains significant planting to ensure the child care centre complements the adjoining residential and commercial development.
	Incorporate car parking into the landscape design of the site by: • planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings • taking into account streetscape, local character and context when siting car parking areas within the front setback • using low level landscaping to soften and screen parking areas.	<b>Not applicable</b>  Not additional parking is proposed.
<b>3.5 Visual and acoustic privacy</b>		
<b>C20, C21 To protect the privacy and security of children attending the facility</b>	Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.	<b>Complies</b>
	Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through: • appropriate site and building layout • suitably locating pathways, windows and doors • permanent screening and landscape design.	<b>Complies</b>  The proposal will not result in any unreasonable direct overlooking to residential development.
<b>C22 To minimise impacts on privacy of adjoining properties</b>	Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through: • appropriate site and building layout • suitable location of pathways, windows and doors • landscape design and screening.	<b>Complies</b>  As above, the proposal will not result in any unreasonable direct overlooking to residential development.
<b>C23, C24 To minimise the impact of child</b>	A new development, or development that includes alterations to more than 50 per cent	<b>Not applicable</b>

<p><i>care facilities on the acoustic privacy of neighbouring residential developments</i></p>	<p>of the existing floor area, and is located adjacent to residential accommodation should:</p> <ul style="list-style-type: none"> <li>• provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence).</li> <li>• ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure.</li> </ul> <p>A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters:</p> <ul style="list-style-type: none"> <li>• identify an appropriate noise level for a child care facility located in residential and other zones</li> <li>• determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use</li> <li>• determine the appropriate height of any acoustic fence to enable the noise criteria to be met.</li> </ul>	<p>Acoustic fence not required. The subject site does not adjoin residential development.</p> <p><b>Complies</b></p> <p>The proposal is supported by an Acoustic Assessment Waves Consulting (Dated 10 September 2020) in response to this requirement.</p> <p>The recommendations within the Acoustic Assessment Report have been included within the recommended conditions of consent.</p>
<p><b>3.6 Noise and air pollution</b></p>		
<p><b>C25, C26</b></p>	<p>Adopt design solutions to minimise the impacts of noise, such as:</p> <ul style="list-style-type: none"> <li>• creating physical separation between buildings and the noise source</li> <li>• orienting the facility perpendicular to the noise source and where possible buffered by other uses</li> <li>• using landscaping to reduce the perception of noise</li> <li>• limiting the number and size of openings facing noise sources</li> <li>• using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens)</li> <li>• using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits</li> <li>• locating cot rooms, sleeping areas and play areas away from external noise sources</li> </ul> <p>An acoustic report should identify appropriate noise levels for sleeping areas and other non play areas and examine impacts and noise attenuation measures where a child care facility is proposed in any of the following locations:</p>	<p><b>Complies</b></p> <p>The proposed childcare centre involves adequate physical separation to adjoining/surrounding dwellings and commercial development, and provides numerous areas for use on site.</p> <p>This intensity of the use is not unreasonable in the context of being located within the Freshwater Village</p> <p>The proposal is supported by an Acoustic Assessment Waves Consulting (Dated 10 September 2020) in response to this requirement.</p> <p><b>Complies</b></p> <p>The proposal is supported by an Acoustic Assessment Waves Consulting (Dated 10 September 2020) in response</p>

	<ul style="list-style-type: none"> <li>• on industrial zoned land</li> <li>• where the ANEF contour is between 20 and 25, consistent with AS 2021 - 2000</li> <li>• along a railway or mass transit corridor, as defined by State Environmental Planning Policy (Infrastructure) 2007</li> <li>• on a major or busy road</li> <li>• other land that is impacted by substantial external noise.</li> </ul>	<p>to this requirement.</p> <p>The recommendations within the Acoustic Assessment Report have been included within the recommended conditions of consent.</p>
<b>C27, C28 To ensure air quality is acceptable where child care facilities are proposed close to external sources of air pollution such as major roads and industrial development</b>	<p>Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.</p>	<p><b>Complies</b></p> <p>The siting is sufficiently separated from any major road or industrial area.</p>
	<p>A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed child care facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines.</p> <p>The air quality assessment report should evaluate design considerations to minimise air pollution such as:</p> <ul style="list-style-type: none"> <li>• creating an appropriate separation distance between the facility and the pollution source.</li> </ul> <p>The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution</p> <ul style="list-style-type: none"> <li>• using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway</li> <li>• incorporating ventilation design into the design of the facility.</li> </ul>	<p><b>Not applicable</b></p>
<b>3.7 Hours of operation</b>		
<b>C29, C30 To minimise the impact of the child care facility on the amenity of neighbouring residential developments</b>	<p>Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.</p>	<p><b>Complies</b></p> <p>The hours of operation are to be restricted to:</p> <p>Monday to Wednesday: 8:00am - 3:00pm Thursday to Friday: 7:30am - 3:45pm Saturday to Sunday: Closed.</p>

	Within mixed use areas or predominantly commercial areas, the hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.	Not applicable
<b>3.8 Traffic, parking and pedestrian circulation</b>		
<b>C31, C32, C33 To provide parking that satisfies the needs of users and demand generated by the centre</b>	<p>Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land.</p> <p>Where a Development Control Plan does not specify car parking rates, off street car parking should be provided at the following rates:</p> <p>Within 400 metres of a metropolitan train station:</p> <ul style="list-style-type: none"> <li>• 1 space per 10 children</li> <li>• 1 space per 2 staff. Staff parking may be stack or tandem parking with no more than 2 spaces in each tandem space.</li> </ul> <p>In other areas:</p> <ul style="list-style-type: none"> <li>• 1 space per 4 children.</li> </ul> <p>A reduction in car parking rates may be considered where:</p> <ul style="list-style-type: none"> <li>• the proposal is an adaptive re-use of a heritage item</li> <li>• the site is in a B8 Metropolitan Zone or other high density business or residential zone</li> <li>• the site is in proximity to high frequency and well connected public transport</li> <li>• the site is co-located or in proximity to other uses where parking is appropriately provided (for example business centres, schools, public open space, car parks)</li> <li>• there is sufficient on street parking available at appropriate times within proximity of the site.</li> </ul>	<p><b>Non-Compliant</b></p> <p><b>Warringah DCP - Appendix 1 requirements:</b></p> <p>Requirement: 1 space per 4 children</p> <p>20 children - <b>5 spaces</b></p> <p>Proposed: <b>0 spaces</b></p> <p>The proposed use does not propose any additional off-street parking. The proposed development relies on the two council carparks that adjoin that subject site to service both customer and staff parking. It is considered that the site is well located to service this area and whilst providing having access to a high level of available parking spaces. It is unreasonable given the nature of the site and it's location to upgrade the parking to a compliant standard with the parking controls.</p> <p>In balancing the proposed use and the limited parking against the provision of public transport, timed on street parking, the public carpark and the reliance on pick- up drop -off, it is considered that the non-compliant level of parking provided is acceptable in these circumstances.</p>
	In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high	Not applicable

	<p>levels of vehicle movement or potential conflicts with trucks and large vehicles.</p> <p>A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that:</p> <ul style="list-style-type: none"> <li>• the amenity of the surrounding area will not be affected</li> <li>• there will be no impacts on the safe operation of the surrounding road network.</li> </ul>	<p><b>Complies</b></p> <p>Councils Traffic Engineer is satisfied that the proposal will result in a safe outcome, subject to conditions.</p>
<b>C34, C35 To provide vehicle access from the street in a safe environment that does not disrupt traffic flows</b>	<p>Alternate vehicular access should be provided where child care facilities are on sites fronting:</p> <ul style="list-style-type: none"> <li>• a classified road</li> <li>• roads which carry freight traffic or transport dangerous goods or hazardous materials.</li> </ul> <p>The alternate access must have regard to:</p> <ul style="list-style-type: none"> <li>• the prevailing traffic conditions</li> <li>• pedestrian and vehicle safety including bicycle movements</li> <li>• the likely impact of the development on traffic.</li> </ul>	<p><b>Complies</b></p> <p>The centre will front the Oliver street Council car park and the proposal does not involve additional vehicle access to the Site.</p>
	<p>Child care facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.</p>	<p><b>Complies</b></p> <p>The Oliver street car park will allow for safe and secure access to and from the child care centre.</p>
	<p>The following design solutions may be incorporated into a development to help provide a safe pedestrian environment:</p> <ul style="list-style-type: none"> <li>• separate pedestrian access from the car park to the facility</li> <li>• defined pedestrian crossings included within large car parking areas</li> <li>• separate pedestrian and vehicle entries from the street for parents, children and visitors</li> <li>• pedestrian paths that enable two prams to pass each other</li> <li>• delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities</li> <li>• in commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or</li> </ul>	<p><b>Complies</b></p> <p>The pedestrian access is of a suitable design to ensure a safe pedestrian environment. This is enabled through the following design solutions:</p> <ul style="list-style-type: none"> <li>• A defined pedestrian crossing through the middle of the Oliver street car park</li> <li>• a loading and turning bay located away from the main entry ability for vehicles to enter and leave in a forward direction.</li> </ul>



	<p>parking areas</p> <ul style="list-style-type: none"> <li>• vehicles can enter and leave the site in a forward direction.</li> </ul>	
	<p>Mixed use developments should include:</p> <ul style="list-style-type: none"> <li>• driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by trucks</li> <li>• drop off and pick up zones that are exclusively available for use during the facility's operating hours with spaces clearly marked accordingly, close to the main entrance and preferably at the same floor level. Alternatively, direct access should avoid crossing driveways or manoeuvring areas used by vehicles accessing other parts of the site</li> <li>• parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility.</li> </ul>	<b>Not Applicable</b>
	<p>Car parking design should:</p> <ul style="list-style-type: none"> <li>• include a child safe fence to separate car parking areas from the building entrance and play areas</li> <li>• provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards</li> <li>• include wheelchair and pram accessible parking.</li> </ul>	<p><b>Complies</b></p> <p>The child care centre proposes to utilise the existing parking within the Oliver street car park.</p>

#### APPLYING THE NATIONAL REGULATIONS TO DEVELOPMENT PROPOSALS

Regulation	Design Guidance	Comments
<b>4.1 Indoor space requirements</b>		
<p><b>Regulation 107 Education and Care Services National Regulation</b></p> <p>Every child being educated and cared for within a facility must have a minimum of 3.25m<sup>2</sup> of unencumbered indoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the</p>	<p><b><i>The proposed development includes at least 3.25 square metres of unencumbered indoor space for each child.</i></b></p> <p><b>Verandahs as indoor space</b> For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space.</p> <p><b>Storage</b> Storage areas including joinery units are not to be included in the calculation of indoor</p>	<p><b>Complies</b></p> <p><b>Indoor space for each child.</b></p> <p>20 children x 3.25sqm = <b>65sqm indoor space required.</b></p> <p>Proposed unencumbered indoor space = <b>91.1sqm</b></p> <p><b>91.1/20 = 4.55sqm</b></p> <p>Proposal compliant with the minimum requirement of</p>

<p>SEPP.</p> <p>Unencumbered indoor space excludes any of the following:</p> <ul style="list-style-type: none"> <li>• passageway or thoroughfare (including door swings) used for circulation</li> <li>• toilet and hygiene facilities</li> <li>• nappy changing area or area for preparing bottles</li> <li>• area permanently set aside for the use or storage of cots</li> <li>• area permanently set aside for storage</li> <li>• area or room for staff or administration</li> <li>• kitchens, unless the kitchen is designed to be used predominately by the children as part of an educational program e.g. a learning kitchen</li> <li>• on-site laundry</li> <li>• other space that is not suitable for children.</li> </ul> <p>All unencumbered indoor spaces must be provided as a secure area for children. The design of these spaces should consider the safe supervision of children.</p> <p>When calculating indoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5)</p>	<p>space. To achieve a functional unencumbered area free of clutter, storage areas must be considered when designing and calculating the spatial requirements of the facility. It is recommended that a child care facility provide:</p> <ul style="list-style-type: none"> <li>• a minimum of 0.3m<sup>3</sup> per child of external storage space</li> <li>• a minimum of 0.2m<sup>3</sup> per child of internal storage space.</li> </ul> <p>Storage does not need to be in a separate room or screened, and there should be a mixture of safe shelving and storage that children can access independently.</p> <p>Storage of items such as prams, bikes and scooters should be located adjacent to the building entrance.</p> <p>Where an external laundry service is used, storage and collection points for soiled items should be in an area with separate external access, away from children. This will prevent clothes being carried through public areas and reduce danger to children during drop off and collection of laundry.com</p>	<p>65sqm of indoor space for 20 children. Storage area was not included as part of calculation.</p> <p>The proposal is compliant with part of the clause.</p> <p><b>Storage</b></p> <p>20 children x 0.3 sqm = <b>6sqm external</b></p> <p>Proposed external storage = <b>30sqm</b></p> <p>20 children x 0.3 sqm = <b>4sqm internal</b></p> <p>Proposed external storage = <b>6sqm</b></p>
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<p>and (6) of the National Regulations.</p> <p>Applicants should also note that regulation 81 requires that the needs for sleep and rest of children at the service be met, having regard to their ages, development stages and individual needs.</p> <p>Development applications should indicate how these needs will be accommodated.</p> <p>Verandahs may be included when calculating indoor space with the written approval from the regulatory authority.</p>		
<b>4.2 Laundry and hygiene facilities</b>		
<p><b>Regulation 106 Education and Care Services National Regulation</b></p> <p>There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children.</p> <p>Child care facilities must also comply with the requirements for laundry facilities that are contained in the</p>	<p><i>The proposed development includes laundry facilities or access to laundry facilities OR explain the other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage of soiled clothing, nappies and linen prior to their disposal or laundering.</i></p> <p>Laundry and hygiene facilities are a key consideration for education and care service premises. The type of laundry facilities provided must be appropriate to the age of children accommodated.</p> <p><b>On site laundry</b></p> <p>On site laundry facilities should contain:</p> <ul style="list-style-type: none"> <li>• a washer or washers capable of dealing with the heavy requirements of the facility</li> <li>• a dryer</li> <li>• laundry sinks</li> <li>• adequate storage for soiled items prior to cleaning</li> <li>• an on site laundry cannot be calculated as usable unencumbered play space for children.</li> </ul>	<p><b>Complies</b></p> <p>The proposal includes laundry facilities that of an adequate size to service the facility.</p>

National Construction Code.	<b>External laundry service</b> A facility that does not contain on site laundry facilities must make external laundering arrangements. Any external laundry facility providing services to the facility needs to comply with any relevant Australian Standards.	
<b>4.3 Toilet and hygiene facilities</b>		
<b>Regulation 109 Education and Care Services National Regulation</b>  A service must ensure that adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children.  Child care facilities must comply with the requirements for sanitary facilities that are contained in the National Construction Code.	<b><i>The proposed development includes adequate, developmentally and age appropriate toilet, washing and drying facilities for use by children being educated and cared for by the service.</i></b>  Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants. Design considerations could include: <ul style="list-style-type: none"> <li>• junior toilet pans, low level sinks and hand drying facilities for children</li> <li>• a sink and handwashing facilities in all bathrooms for adults</li> <li>• direct access from both activity rooms and outdoor play areas</li> <li>• windows into bathrooms and cubicles without doors to allow supervision by staff</li> <li>• external windows in locations that prevent observation from neighbouring properties or from side boundaries</li> </ul>	<b>Complies</b>  The proposal provides suitable toilet facilities to each of the playrooms within the childcare centre.
<b>4.4 Ventilation and natural light</b>		
<b>Regulation 110 Education and Care Services National Regulation</b>  Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children.  Child care facilities must comply with the light and	<b><i>The proposed development includes indoor spaces to be used by children that:</i></b> <ul style="list-style-type: none"> <li>• <i>will be well ventilated; and</i></li> <li>• <i>will have adequate natural light; and</i></li> <li>• <i>can be maintained at a temperature that ensures the safety and well-being of children.</i></li> </ul> <b>Ventilation</b> Good ventilation can be achieved through a mixture of natural cross ventilation and air conditioning. Encouraging natural ventilation is the basis of sustainable design; however, there will be circumstances where	<b>Complies</b>  The proposed development includes indoor spaces to be used by children that: <ul style="list-style-type: none"> <li>• will be well ventilated; and</li> <li>• will have adequate natural light; and</li> <li>• Can be maintained at a temperature that ensures the safety</li> </ul>

<p>ventilation and minimum ceiling height requirements of the <i>National Construction Code</i>. Ceiling height requirements may be affected by the capacity of the facility.</p>	<p>mechanical ventilation will be essential to creating ambient temperatures within a facility.</p> <p>To achieve adequate natural ventilation, the design of the child care facilities must address the orientation of the building, the configuration of rooms and the external building envelope, with natural air flow generally reducing the deeper a building becomes. It is recommended that child care facilities ensure natural ventilation is available to each indoor activity room.</p> <p><b>Natural light</b></p> <p>Solar and daylight access reduces reliance on artificial lighting and heating, improves energy efficiency and creates comfortable learning environments through pleasant conditions. Natural light contributes to a sense of well-being, is important to the development of children and improves service outcomes. Daylight and solar access changes with the time of day, seasons and weather conditions. When designing child care facilities consideration should be given to:</p> <ul style="list-style-type: none"> <li>• providing windows facing different orientations</li> <li>• using skylights as appropriate</li> <li>• ceiling heights.</li> </ul> <p>Designers should aim to minimise the need for artificial lighting during the day, especially in circumstances where room depth exceeds ceiling height by 2.5 times. It is recommended that ceiling heights be proportional to the room size, which can be achieved using raked ceilings and exposed trusses, creating a sense of space and visual interest.</p>	<p>and well-being of children.</p>
<p><b>4.5 Administrative space</b></p>		
<p><b>Regulation 110 Education and Care Services National Regulation</b></p> <p>A service must provide adequate area or areas for the purposes of conducting the administrative functions</p>	<p><i>The proposed development includes an adequate area or areas for the purposes of conducting the administrative functions of the service; and consulting with parents of children; and conducting private conversations.</i></p> <p>Design considerations could include closing doors for privacy and glass partitions to ensure supervision.</p>	<p><b>Complies</b></p> <p>The proposed childcare facility includes a dedicated office and meeting room in close proximity to the entrance.</p>



of the service, consulting with parents of children and conducting private conversations.	<p>When designing administrative spaces, consideration should be given to functions which can share spaces and those which cannot. Sound proofing of meeting rooms may be appropriate where they are located adjacent to public areas, or in large rooms where sound can easily travel.</p> <p>Administrative spaces should be designed to ensure equitable use by parents and children at the facility. A reception desk may be designed to have a portion of it at a lower level for children or people in a wheel chair.</p>	
<b>4.6 Nappy change facilities</b>		
<p><b>Regulation 112 Education and Care Services National Regulations</b></p> <p>Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children.</p> <p>Child care facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the National Construction Code.</p>	<p><i>(To be completed only if the proposed development is for a service that will care for children who wear nappies).</i></p> <p><b><i>The proposed development includes an adequate area for construction of appropriate hygienic facilities for nappy changing including at least one properly constructed nappy changing bench and hand cleansing facilities for adults in the immediate vicinity of the nappy change area.</i></b></p> <p>In circumstances where nappy change facilities must be provided, design considerations could include:</p> <ul style="list-style-type: none"> <li>• properly constructed nappy changing bench or benches</li> <li>• a bench type baby bath within one metre from the nappy change bench</li> <li>• the provision of hand cleansing facilities for adults in the immediate vicinity of the nappy change area</li> <li>• a space to store steps</li> <li>• positioning to enable supervision of the activity and play areas.</li> </ul>	<p><b>Complies</b></p> <p>The proposed childcare centre additions will include adequate nappy change facilities and appropriate hand cleansing facilities.</p>
<b>4.7 Premises designed to facilitate supervision</b>		
<p><b>Regulation 115 Education and Care Services National Regulations</b></p> <p>A centre-based service must ensure that the rooms and facilities within the premises</p>	<p><b><i>The proposed development (including toilets and nappy change facilities) are designed in a way that facilitates supervision of children at all times, having regard to the need to maintain the rights and dignity of the children.</i></b></p> <p>Design considerations should include:</p> <ul style="list-style-type: none"> <li>• solid walls in children's toilet cubicles (but</li> </ul>	<p><b>Complies</b></p> <p>The facilities within the childcare centre are of a suitable design to ensure supervision of children at all times while maintaining the dignity and rights of a child.</p>

<p>(including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity.</p> <p>Child care facilities must also comply with any requirements regarding the ability to facilitate supervision that are contained in the National Construction Code.</p>	<p>no doors) to provide dignity whilst enabling supervision</p> <ul style="list-style-type: none"> <li>• locating windows into bathrooms or nappy change areas away from view of visitors to the facility, the public or neighbouring properties</li> <li>• avoiding room layouts with hidden corners where supervision is poor, or multi room activity rooms for single groups of children</li> <li>• avoiding multi-level rooms which compromise, or require additional staffing, to ensure proper supervision. If multilevel spaces are proposed, consideration should be given to providing areas that can be closed off and used only under supervision for controlled activities</li> </ul>	
<p><b>4.8 Emergency and evacuation procedures</b></p>		
<p><b>Regulations 97 and 168</b> <b>Education and Care Services National Regulations</b></p> <p>Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation.</p> <p>Regulation 97 sets out the detail for what those procedures must cover including:</p> <ul style="list-style-type: none"> <li>• instructions for what must be done in the event of an emergency</li> <li>• an emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit</li> <li>• a risk assessment to identify potential emergencies that are relevant to the service.</li> </ul>	<p>Facility design and features should provide for the safe and managed evacuation of children and staff from the facility in the event of a fire or other emergency.</p> <p>Multi-storey buildings with proposed child care facilities above ground level may consider providing additional measures to protect staff and children. For example:</p> <ul style="list-style-type: none"> <li>• independent emergency escape routes from the facility to the ground level that would separate children from other building users to address child protection concerns during evacuations</li> <li>• a safe haven or separate emergency area where children and staff can muster during the initial stages of a fire alert or other emergency. This would enable staff to account for all children prior to evacuation.</li> </ul> <p>An emergency and evaluation plan should be submitted with a DA and should consider:</p> <ul style="list-style-type: none"> <li>• the mobility of children and how this is to be accommodated during an evacuation</li> <li>• the location of a safe congregation/assembly point, away from the evacuated building, busy roads and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings</li> <li>• how children will be supervised during the evacuation and at the</li> </ul>	<p><b>Complies</b></p> <p>The design allows for sufficient emergency and evacuation procedures. Access from adjoining Lawrence Street car park.</p>

	congregation/assembly point, relative to the capacity of the facility and governing child-to-staff ratios.	
<b>4.9 Outdoor space requirements</b>		
<p><b>Regulation 108 Education and Care Services National Regulations</b></p> <p>An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m<sup>2</sup> of unencumbered outdoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p> <p>Unencumbered outdoor space excludes any of the following:</p> <ul style="list-style-type: none"> <li>• pathway or thoroughfare, except where used by children as part of the education and care program</li> <li>• car parking area</li> <li>• storage shed or other storage area</li> <li>• laundry</li> <li>• other space that is not suitable for children.</li> </ul> <p>When calculating outdoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional</p>	<p><b><i>The proposed development includes at least 7.0 square metres of unencumbered outdoor space for each child.</i></b></p> <p>Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children's play.</p> <p>When new equipment or storage areas are added to existing services, the potential impact on unencumbered space calculations and service approvals must be considered.</p> <p><b>Verandahs as outdoor space</b> Where a covered space such as a verandah is to be included in outdoor space it should:</p> <ul style="list-style-type: none"> <li>• be open on at least one third of its perimeter</li> <li>• have a clear height of 2.1 metres</li> <li>• have a wall height of less than 1.4 metres where a wall with an opening forms the perimeter</li> <li>• have adequate flooring and roofing</li> <li>• be designed to provide adequate protection from the elements</li> </ul> <p><b>Simulated outdoor environments</b> Proponents should aim to provide the requisite amount of unencumbered outdoor space in all development applications.</p> <p>A service approval will only be granted in exceptional circumstances when outdoor space requirements are not met. For an exemption to be granted, the preferred alternate solution is that indoor space be designed as a simulated outdoor environment.</p> <p>Simulated outdoor space must be provided in addition to indoor space and cannot be counted twice when calculating areas.</p> <p>Simulated outdoor environments are internal spaces that have all the features and experiences and qualities of an outdoor</p>	<p><b>Complies</b></p> <p>Required space for 20 children at a time/ for 80 children: 140sqm</p> <p>Required space for for 80 children: 7.0 x 80 = 560sqm</p> <p><b>The total proposed unencumbered outdoor space is 733sqm</b></p>

<p>circumstances as set out in regulation 124(5) and (6) of the National Regulations.</p> <p>Applicants should also note that regulation 274 (Part 7.3 NSW Provisions) states that a centre-based service for children preschool age or under must ensure there is no swimming pool on the premises, unless the swimming pool existed before 6 November 1996. Where there is an existing swimming pool, a water safety policy will be required.</p> <p>A verandah that is included within indoor space cannot be included when calculating outdoor space and vice versa.</p>	<p>space. They should promote the same learning outcomes that are developed during outdoor play. Simulated outdoor environments should have:</p> <ul style="list-style-type: none"> <li>• more access to natural light and ventilation than required for an internal space through large windows, glass doors and panels to enable views of trees, views of the sky and clouds and movement outside the facility</li> <li>• skylights to give a sense of the external climate</li> <li>• a combination of different floor types and textures, including wooden decking, pebbles, mounds, ridges, grass, bark and artificial grass, to mimic the uneven surfaces of an outdoor environment</li> <li>• sand pits and water play areas</li> <li>• furniture made of logs and stepping logs</li> <li>• dense indoor planting and green vegetated walls</li> <li>• climbing frames, walking and/or bike tracks</li> <li>• vegetable gardens and gardening tubs.</li> </ul>	
<p><b>4.10 Natural Environment</b></p>		
<p><b>Regulation 113 Education and Care Services National Regulations</b></p> <p>The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.</p>	<p><i><b>The proposed development includes outdoor spaces that will allow children to explore and experience the natural environment.</b></i></p> <p>Creating a natural environment to meet this regulation includes the use of natural features such as trees, sand and natural vegetation within the outdoor space.</p> <p>Shrubs and trees selected for the play space must be safe for children. Avoid plant species that risk the health, safety and welfare of the facility's occupants, such as those which:</p> <ul style="list-style-type: none"> <li>• are known to be poisonous, produce toxins or have toxic leaves or berries</li> <li>• have seed pods or stone fruit, attract bees, have thorns, spikes or prickly foliage or drop branches</li> </ul> <p>The outdoor space should be designed to:</p>	<p><b>Complies</b></p> <p>The outdoor space is surrounded by and integrated with the natural environment.</p> <p>The spaces are also separated from potentially dangerous parts of the natural environment.</p>

	<ul style="list-style-type: none"> <li>• provide a variety of experiences that facilitate the development of cognitive and physical skills, provide opportunities for social interaction and appreciation of the natural environment</li> <li>• assist supervision and minimise opportunities for bullying and antisocial behaviour</li> <li>• enhance outdoor learning, socialisation and recreation by positioning outdoor urban furniture and play equipment in configurations that facilitate interaction.</li> </ul>	
<b>4.11 Shade</b>		
<p><b>Regulation 114 Education and Care Services National Regulations</b></p> <p>The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</p>	<p><b><i>The proposed development includes adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</i></b></p> <p>Providing the correct balance of sunlight and shade to play areas is important for the health and well-being of children and staff. Combining built and natural shade will often be the best option.</p> <p><b>Solar access</b> Controlled exposure to daylight for limited periods is essential as sunlight provides vitamin D which promotes healthy muscles, bones and overall well-being. Outdoor play areas should be provided with controlled solar access throughout the year. Outdoor play areas should:</p> <ul style="list-style-type: none"> <li>• have year-round solar access to at least 30 per cent of the ground area, with no more than 60 per cent of the outdoor space covered.</li> <li>• provide shade in the form of trees or built shade structures giving protection from ultraviolet radiation to at least 30 per cent of the outdoor play area</li> <li>• have evenly distributed shade structures over different activity spaces.</li> </ul> <p><b>Natural shade</b> Natural shade should be a major element in outdoor play areas. Trees with dense foliage and wide-spreading canopies provide the best protection. Existing stands of trees, particularly in rear setbacks, should be retained to provide shaded play areas. Species that suit local soil and climatic conditions and the character of the</p>	<p><b>Complies</b></p> <p>The proposal provides a covered and protected outdoor area and also provides trees within the outdoor space.</p>



	<p>environment are recommended.</p> <p>Dense shrubs can also provide shade. They should be planted around the site perimeter so they don't obstruct supervision. Pruning shrubs on the underside may create shaded play nooks underneath. Planting for shade and solar access is enhanced by:</p> <ul style="list-style-type: none"> <li>• placing appropriately scaled trees near the eastern and western elevations</li> <li>• providing a balance of evergreen and deciduous trees to give shade in summer and sunlight access in winter.</li> </ul> <p><b>Built shade structures</b> Built structures providing effective shade include:</p> <ul style="list-style-type: none"> <li>• permanent structures (pergolas, sails and verandahs)</li> <li>• demountable shade (marquees and tents)</li> <li>• adjustable systems (awnings)</li> <li>• shade sails.</li> </ul> <p>Shade structures should not create safety hazards. Support systems such as upright posts should be clearly visible with rounded edges or padding. Vertical barriers at the sides of shade structures should be designed to prevent children using them for climbing. Shade structures should allow adults to view and access the children's play areas, with a recommended head clearance of 2.1 metres. The floor area underneath the structure should be of a sufficient size and shape to allow children to gather or play actively.</p>	
<b>4.12 Fencing</b>		
<p><b>Regulation 104 Education and Care Services National Regulations</b></p> <p>Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</p> <p>This regulation does not apply to a centre-based</p>	<p><b><i>Outdoor space that will be used by children will be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</i></b></p> <p>Fencing at child care facilities must provide a secure, safe environment for children and minimise access to dangerous areas. Fencing also needs to positively contribute to the visual amenity of the streetscape and surrounding area. In general, fencing around outdoor spaces should:</p> <ul style="list-style-type: none"> <li>• prevent children climbing over, under or through fences</li> <li>• prevent people outside the facility from</li> </ul>	<p><b>Complies</b></p> <p>The proposal involves fencing which surrounds the property including to the front of the car park and surrounding the outdoor play areas. Subject to conditions, this fencing will be both safe and visually appropriate.</p>

<p>service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age. Child care facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the National Construction Code</p>	<p>gaining access by climbing over, under or through the fence</p> <ul style="list-style-type: none"> <li>• not create a sense of enclosure.</li> </ul> <p>Design considerations for side and rear boundary fences could include:</p> <ul style="list-style-type: none"> <li>• being made from solid prefinished metal, timber or masonry</li> <li>• having a minimum height of 1.8 metres</li> <li>• having no rails or elements for climbing higher than 150mm from the ground.</li> </ul> <p>Fencing and gates should be designed to ensure adequate sightlines for vehicles and pedestrian safety in accordance with Australian Standards and Roads and Maritime Services Traffic Management Guidelines. Gates should be designed to prevent children leaving/entering unsupervised by use of childproof locking systems.</p>	
<p><b>4.13 Soil Assessment</b></p>		
<p><b>Regulation 25 Education and Care Services National Regulations</b></p> <p>Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval.</p> <p>With every service application one of the following is required:</p> <ul style="list-style-type: none"> <li>• a soil assessment for the site of the proposed education and care service premises</li> <li>• if a soil assessment for the site of the proposed child care facility has previously been undertaken, a statement to that effect specifying when the soil assessment was</li> </ul>	<p>To ensure consistency between the development consent and the service approval application, a soil assessment should be undertaken as part of the development application process.</p> <p>Where children will have access to soil the regulatory authority requires a preliminary investigation of the soil. This includes sites with or without buildings and existing approved children's services where:</p> <ul style="list-style-type: none"> <li>• the application is to alter or extend the premises</li> <li>• the alteration or extension requires earthworks or deep excavations (exceeding a depth of one metre)</li> <li>• the works are going to take place in an area used for children's outdoor play or will be used for children's outdoor play after the work is completed</li> <li>• a soil assessment has not been undertaken at the children's service.</li> </ul> <p>Minor landscaping, creation of sand pits, movement of play equipment and so on do not qualify as earthworks and do not require a soil assessment.</p> <p>An assessment of soil for a children's service approval application may require three levels</p>	<p><b>Complies</b></p> <p>The statement provided by the applicant states that an assessment is not necessary given the existing use of the site as a girl guides hall.</p> <p>A search of Council's records confirms there that are no previous uses or activities that would have led to contamination.</p>

undertaken • a statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children	of investigation: • Stage 1 - Preliminary investigation (with or without soil sampling) • Stage 2 - Detailed site investigation • Stage 3 - Site specific human health risk assessment.	
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### **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 community purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

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

#### Ausgrid

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

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

#### Comment:

The proposal was referred to Ausgrid. No objections are raised and no conditions are recommended.

### **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:	-	2.2m	-	N/A

#### Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

#### Warringah Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
G5.10 Front Setback	New building built to the boundary	18.8m	N/A	N/A

**\*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
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
1. Built form in Freshwater	Yes	Yes
5. Access and loading	Yes	Yes
7. Safety and security	Yes	Yes
10. Front setback	Yes	Yes
12. Other side and rear setbacks	Yes	Yes
14. Building massing	Yes	Yes
15. Building sustainability	Yes	Yes
16. Materials and colours	Yes	Yes

#### Detailed Assessment

### **C3 Parking Facilities**

#### Merit consideration

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

- *To provide adequate off street carparking.*

#### Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Child care centre	1 space for every 4 children, having regard to the maximum number of	5 (based on 20 children)	0	- 5



	children authorised to be cared for at any particular time.			
<b>Total</b>		5	0	-5

The use of the site will result in an increase in parking demand for staff and parent drop off and pick up. It is proposed that centres staff and parents/customers will continue to use the Oliver Street and Lawrence Street car parks during the operation of the child care centre.

As noted by Council's Traffic Engineer the relocation from No.23 Oliver Street to the subject site, will allow for the child care centre to operate on the same side of the Oliver Street car park which will improve access for the children to the literary centre outdoor play area. While not numerically compliant, the provision of the additional spaces is not considered to be feasible or practical in this instance. The site location in the local business district, noting that it adjoins both the Oliver Street and Lawrence Street carpark means there are multiple options to access the site including public transport, active transport and private vehicle. Despite the increased intensity of use, the public carpark will adequately cater for the drop off and pick up needs generated by the centre and existing general use of the car park.

It acknowledging that the proposal would result in increased intensity of the use of the site a condition of consent has been imposed as part of this recommendation to ensure the existing childcare centre to which the applicant is looking to vacate (23 Oliver Street, Freshwater) surrenders the consent for the approved child care centre (20 children) to ensure there is no net increase in parking required on the site if this application is approved.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

No physical changes to the car parking arrangement is proposed.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

No physical changes to the car parking arrangement is proposed.

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

### D3 Noise

An acoustic report has been submitted with the development application to address the potential noise impacts of the development. The development is not located in close proximity to residential properties and the proposed use is to commence at 7:30am and cease at 3:45pm. Council's environmental health

officer has reviewed the submitted acoustic report and is satisfied the development will not have an unreasonable impact with regard to noise.

#### **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**

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

#### **CONCLUSION**

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

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

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

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

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

An assessment of the proposed development has found the proposal has sufficient merit, has addressed the relevant planning and environmental issues and is a suitable and appropriate development for the site and locality.

The proposal is assessed as being consistent with *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* and Warringah LEP 2011 and the general principles of

the Warringah DCP 2011 well as the relevant SEPP's.

The report addresses all relevant considerations within this report and conditions have been imposed in relation to the operational aspects of the child care centre.

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

## RECOMMENDATION

### DEFERRED COMMENCEMENT APPROVAL

A. THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Section 95 of the EP&A Regulation 2000 to DA2020/1503 for Alterations and additions to an existing community facility (Girl Guides Hall & Harbord Literary Institute) and use of the premises as a child care centre on land at Lot 374 DP 752038, 374 / 0 Lawrence Street, FRESHWATER, Lot 1 DP 864459, 1 / 0 Lawrence Street, FRESHWATER, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

### DEFERRED COMMENCEMENT CONDITIONS

#### 1. Surrender Consent

The owners of No. 23 Oliver Street shall surrender to Council Development Consent No: 83/82 (Approved by Warringah Shire Council) in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

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

Reason: To prevent inconsistencies between consent applying the site (ref s80A (5) EPAA & cl97 EPA Reg).

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 2. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By

Site Plan / Site Analysis	9 September 2020	Interlock Construction
Floor Plan	9 September 2020	Interlock Construction
Elevations	9 September 2020	Interlock Construction
Typical Detail - Balustrade	9 September 2020	Interlock Construction
Landscape Plan	10 February 2021	Interlock Construction

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Operational Management Plan	N/A	Harbord Kindergarten
BCA Performance Solution Report	19 August 2020	Design Confidence
BCA Capability Statement	18 September 2020	Modern Building Certifiers
Noise Impact Review	10 September 2020	Waves Consulting

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	N/A	Willowtree Planning

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

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

### 3. 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 **centre-based child care facility and Community Facility**.

A **centre-based child care facility** is defined as:

*“centre-based child care facility means—*

*(a) a building or place used for the education and care of children that provides any one or more of the following—*

*(i) long day care,*

*(ii) occasional child care,*

*(iii) out-of-school-hours care (including vacation care),*

*(iv) preschool care, or*

*(b) an approved family day care venue (within the meaning of the Children (Education and Care Services) National Law (NSW)),*

*Note—*

*An approved family day care venue is a place, other than a residence, where an approved family day care service (within the meaning of the Children (Education and Care Services) National Law (NSW)) is provided.*



*but does not include—*

- (c) a building or place used for home-based child care or school-based child care, or*
- (d) an office of a family day care service (within the meanings of the Children (Education and Care Services) National Law (NSW)), or*
- (e) a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or*
- (f) a child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium) to care for children while the children's parents are using the facility, or*
- (g) a service that is concerned primarily with providing lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or providing private tutoring, or*
- (h) a child-minding service that is provided by or in a health services facility, but only if the service is established, registered or licensed as part of the institution operating in the facility."*

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and 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 sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 6. Security Bond

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

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

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

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

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

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



**7. Hazardous Building Materials Survey**

A hazardous building materials survey is to be conducted by a suitably qualified and experienced person. The survey is to include a survey of hazardous building materials including but not limited to asbestos, lead, SMF and PCBs. Following the survey a Hazardous Building Materials Register is to be prepared for the premises providing recommendations for the safe management/removal of hazardous building material.

Reason: To protect human health.

**8. Sydney Water "Tap In"**

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

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

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

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

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

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

**9. Tree protection**

- (a) Existing trees which must be retained
  - i) All trees not indicated for removal on the approved plans.
  - ii) Trees located on adjoining land
- (b) Tree protection
  - i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
  - ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
  - iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
  - iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
  - v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

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

**10. Compliance with Recommendations within Hazardous Building Materials Register**

Any recommendations within the Hazardous Building Materials Register are to be implemented during any proposed works.



Reason: To protect human health.

**11. Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees.

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

**12. Fire Safety Upgrade**

The fire upgrading / Fire Engineering measures and works, as detailed and recommended in the Building Code of Australia Assessment Report prepared by 'Design Confidence', dated 28 August 2020 - Ref No. P220\_271-2 (BCA PS) LB (to the degree necessary, including where this report is updated/amended), are to be incorporated into the design of the proposed works and detailed in the Construction Certificate application.

Details demonstrating implementation/ compliance where required, are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety.

**13. Change of Use**

A person must not commence occupation or use (or change of use where an existing building) of the whole or any part of a building (within the meaning of section 109H (4) of the Act) unless an Occupation Certificate has been issued in relation to the building or part.

The Principal Certifying Authority is required to be satisfied, amongst other things, that the building complies (or will, when completed, comply) with such of the Category 1 fire safety provisions as are applicable to the building's proposed use.

**Note:** The obligation to comply with the category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in relation to the relevant

development consent.

Reason: Statutory requirement under S109N of the Environmental Planning & Assessment Act 1979.

14. **Compliance with Recommendations within the Hazardous Building Materials Register**  
Prior to the issuing of any interim / final occupation certificate, documentation is to be submitted to the satisfaction of the Principal Certifying Authority that any recommendations within the Hazardous Building Materials Register have been implemented.

Reason: To protect human health.

15. **Fire Safety Matters**

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

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Occupation Certificate (or where applicable, relating to the part of the building, being the subject of this Consent).

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

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

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

16. **Use of Kitchen**  
The existing kitchen is not to be used for the handling of food for sale as defined by the *Food Act 2003*.

Reason: Food safety. The existing kitchen is not certified as being compliant with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises'.

17. **Hours of Operation**  
The hours of operation are to be restricted to:

- Monday to Wednesday: 8:00am - 3:00pm
- Thursday to Friday: 7:30am - 3:45pm
- Saturday to Sunday: Closed.

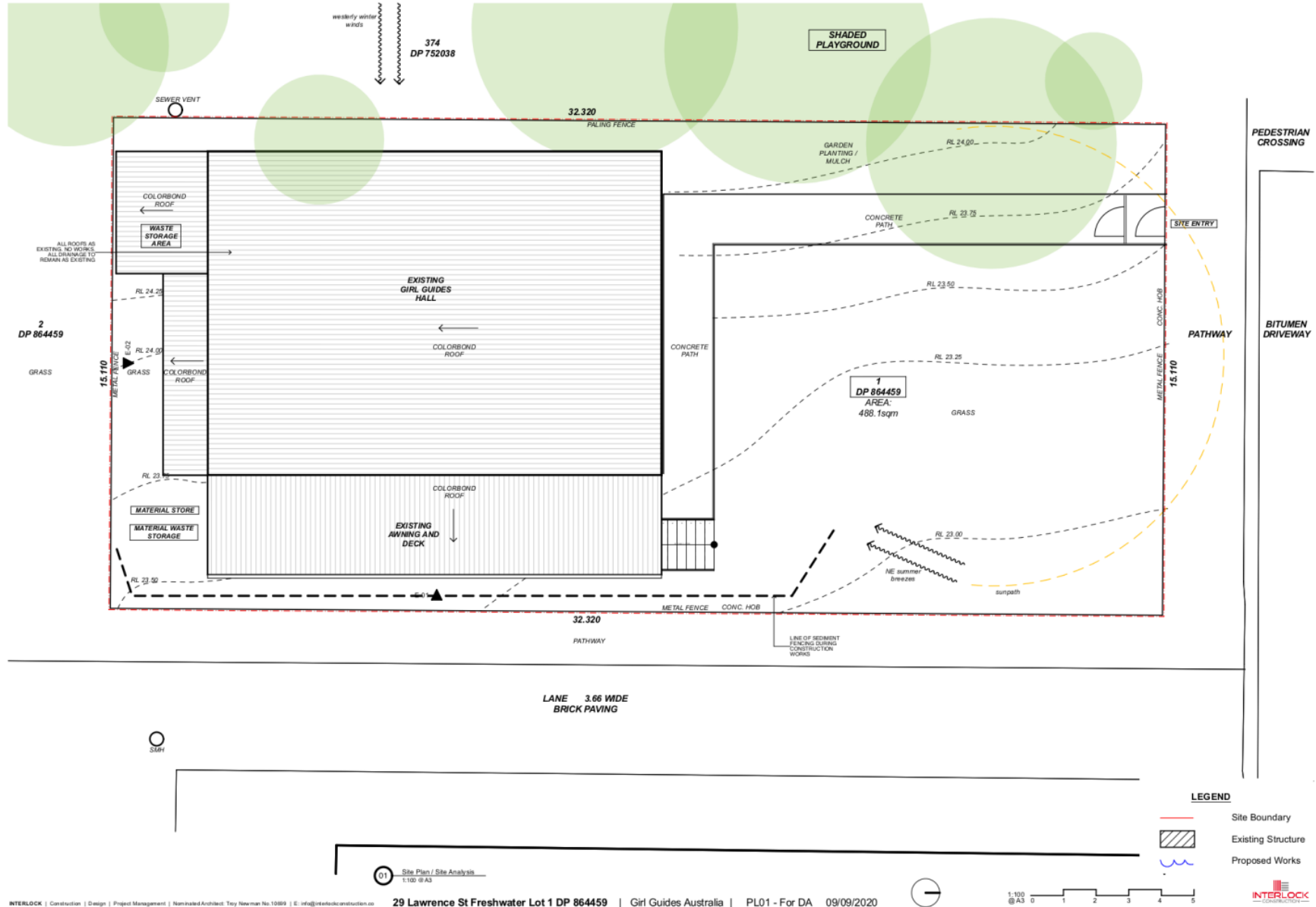
Upon expiration of the permitted hours, all service shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

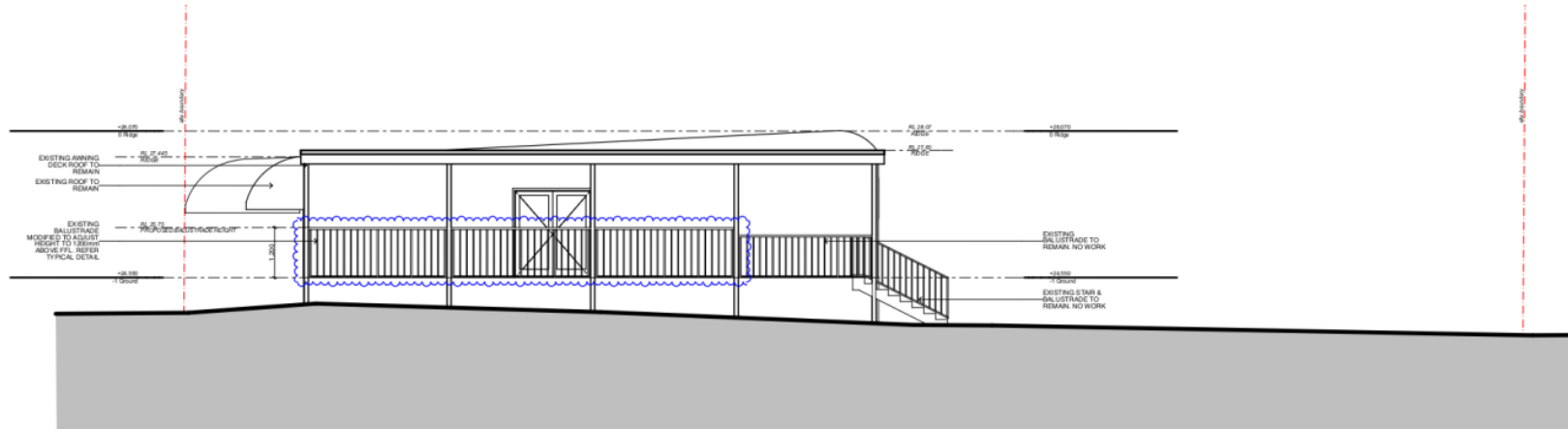
Reason: Information to ensure that amenity of the surrounding locality is maintained.

18. **Children**

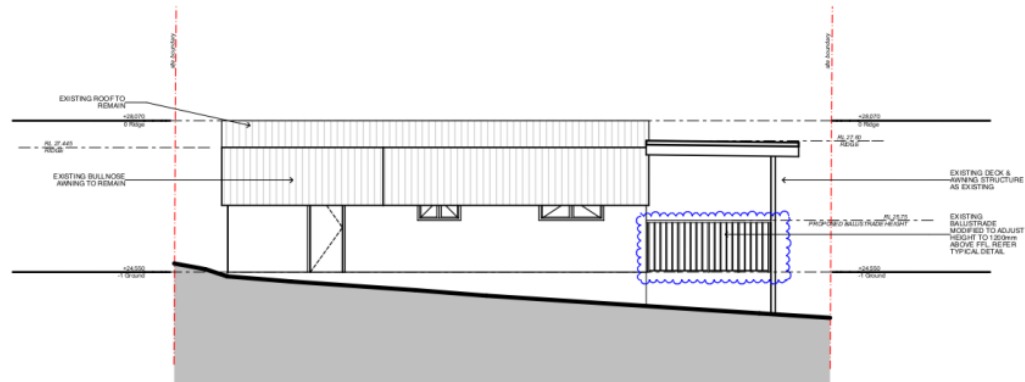
The maximum number of children shall not exceed twenty (20) at any time.

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





01 Elevation 01  
1:100 @ A3



02 Elevation 02  
1:100 @ A3

LEGEND

- Site Boundary
- Existing Structure
- Proposed Works