

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 19 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
Brian Kirk	Town Planner
Graham Brown	Town Planner
John Simmonds	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 19 May 2021

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

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 5 MAY 2021

The Panel note that the Minutes of the Northern Beaches Local Planning Panel held 5 May 2021 were adopted by the Chairperson and have been posted on Council's website.

3.0 PUBLIC MEETING ITEMS

ITEM 3.1	MOD2021/0005 - 1858 PITTWATER ROAD, CHURCH POINT - MODIFICATION OF CONSENT A212/63 - ALTERATIONS AND ADDITIONS TO THE EXISTING MOTEL, RESTAURANT AND SHOPS
AUTHORISING MANAGER	Lashta Haidari
TRIM FILE REF	2021/333307
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2021/0005 for Modification of consent A212/63 - alterations and additions to the existing Motel, Restaurant and Shops at Lot 142 DP 752046, Lot 1 & 3 DP 1148738 & LIC 502589, 1858 Pittwater Road, Church Point subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0005
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Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 142 DP 752046, 1858 Pittwater Road CHURCH POINT NSW 2105 Lot LIC 502589, 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 320 DP 824048, 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 1 DP 1148738, 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 3 DP 1148738, 1858 Pittwater Road CHURCH POINT NSW 2105
Proposed Development:	Modification of consent A212/63 - Alterations and additions to the existing Motel, Restaurant and Shops
Zoning:	B1 Neighbourhood Centre W1 Natural Waterways
Development Permissible:	Yes - Zone B1 Neighbourhood Centre Yes - Zone RE1 Public Recreation Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Altius Pty Ltd
Applicant:	Altius Pty Ltd

Application Lodged:	25/01/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	05/02/2021 to 19/02/2021
Advertised:	Not Advertised
Submissions Received:	80
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks consent for a modification of the original development consent A212/63 to allow

for the consolidation of the three (3) retail tenancies into (2) two. An ancillary outdoor seating area with awning above is also proposed to the west of the building associated with the general store/deli and the existing keg store / bin area located to the east is proposed to be enclosed.

The application is being referred to the NBLPP as a total of 75 unique submissions have been received (65 in objection 10 in support). The issues raised in the objections relate to concerns about the intensification of use, existing use rights, parking, operational issues and impacts on the public domain the Sir Thomas Stephen Reserve and access to the foreshore. The comments raised in support refer to the general improvement of the area and the enhanced service to the community.

There is no additional floor space proposed and subject to conditions to ensure that the tenancies operate in accordance with the definition of a Neighbourhood Shop there is no intensification of use and the proposal is substantially the same as the original consent. Conditions are also included in the recommendation to ensure that there is no commercial kitchen, no cooking (only food preparation and heating) a restriction in the hours of operation of the retail tenancies and outdoor seating area and standard noise conditions.

The external alterations are minor and there is no impact on the heritage significance of the area. The proposal will help activate the adjoining reserve and will not unreasonably impact on access to the reserve or the foreshore. As there is no additional floor space or change of use there is no need for additional parking.

In summary, the Panel can be satisfied that the proposal generally complies with the relevant controls contained within the Pittwater LEP and DCP. No objections have been raised from internal experts, subject to conditions. On balance, the proposal is recommended for approval having considered the relevant issues as part of the assessment of the plans submitted.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks a modification of the original 1963 consent (A212/163) to include alterations primarily to the three ground floor retail tenancies and other minor work. In detail, the proposal seeks modified consent for:

- 1 Demolition of toilets and external stair and internal walls to existing retail tenancies.
- 1 The consolidation of 3 shop tenancies to create 2 shop tenancies. The primary tenancy, namely the expanded existing general store and delicatessen has a retail floor area of 100sqm and the second tenancy a floor area of 17.6sqm. (Note: no details have been included in respect of the internal fit out of the smaller tenancy).
- 1 The internal fit out of the primary tenancy includes a new 28.4sqm kitchen with pick up/ take away window in the western elevation and a cool room and chilled display counter.
- 1 An outdoor seating area, enclosed with a 1.4m high wall, adjacent to the western perimeter of the building. The outdoor seating is associated with the general store / deli with indicative seating for and 15 customers and awning roof over.
- 1 New doors and window in the north and west elevation of the general store / deli.
- 1 The enclosure of the existing waste storage and empty keg collection handling areas within the south-eastern corner of the site.
- 1 The relocation of the existing bathroom facilities to facilitate the reconfiguration of the existing shop tenancies. A total of 7 unisex toilets are provided including 1 ambulant toilet. Access to the facilities is via both the existing restaurant and the general store/ deli (for staff).
- 1 The replacement of the existing external fire egress stair at the rear of the property and an expansion of the paved area to the north-west corner of the site in the area where the existing stair is located.

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:

- 1 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;
- 1 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;
- 1 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;
- 1 A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- 1 A review and consideration of all documentation provided with the application (up to the time of determination);
- 1 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 B1 Neighbourhood Centre
Pittwater Local Environmental Plan 2014 - Zone RE1 Public Recreation
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - C2.12 Protection of Residential Amenity
Pittwater 21 Development Control Plan - C2.21 Food Premises Design Standards
Pittwater 21 Development Control Plan - C2.22 Plant, Equipment Boxes and Lift Over-Run
Pittwater 21 Development Control Plan - C5.20 Liquor Licensing Applications
Pittwater 21 Development Control Plan - D4.6 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 142 DP 752046 , 1858 Pittwater Road CHURCH POINT NSW 2105 Lot LIC 502589 , 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 320 DP 824048 , 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 1 DP 1148738 , 1858 Pittwater Road CHURCH POINT NSW 2105 Lot 3 DP 1148738 , 1858 Pittwater Road CHURCH POINT NSW 2105
Detailed Site Description:	The subject site is identified as 1858 Pittwater Road, Church Point (Lot 142, Deposited Plan 752046) and is located on

the northern side of Pittwater Road. A two storey mixed use building commonly referred to as "Pasadena" is located on the site. The building comprises the following: Ground floor: a restaurant, associated kitchen, store, toilets and outdoor dining to the restaurant. Three (3) shops fronting Pittwater Road including a general store and deli known as "The Pantry", a real estate agency and the entrance to the first floor motel. Level 1: thirteen (13) guests rooms and managers accommodation. Level 2 (roof level): laundry and store room.

The subject site is oriented towards the southwest and adjoins the Pittwater Road reserve. The southeast side boundary adjoins a public car park and residential properties are located at a higher level to the south of the site. The western boundary adjoins a paved public reserve (Thomas Stephens Reserve). Two commuter wharfs, one being heritage listed, and the two storey heritage listed Church Point Post Office are located further to the west. The Waterfront cafe and general store is located to the west of the site on the opposite side of the reserve. The northern boundary adjoins public land that includes public walkways between the subject site and Pittwater foreshore.

Map:



SITE HISTORY

There is an extensive history to the site. A summary of the relevant applications is provided below:

A212/63

Building Application reference 212/63 for alterations and additions for the conversion of store and dance hall into shops and hostel was approved on 23 March 1963. The floor plans illustrate 3 ground

floor shops fronting Pittwater Road, a restaurant, toilets and store at ground level, 13 rooms and a self contained 2 bedroom unit at level 1 and laundry, store and plant room at roof level.

A61/84

Building Application 61/84 for alterations and additions to Pasadena approved on 21 November 1961. The report to the Planning Committee described the proposal as including: Ground Floor - 3 shops, office, kitchen, 3 self contained rooms, toilets, reclamation, tea garden, swimming pool, car parking and boat moorings. First Floor 14 self contained rooms and second floor residence and roof gardens.

MOD2019/0605

MOD2019/0605 approved the modification of A212/63 for the installation of an accessible passenger lift into the existing stairwell void to service the motel. It is noted that the lift was required to satisfy the disability access provisions of the Building Code of Australia (BCA) and the Disability Discrimination Act 1992 (DDA).

PLM2020/0287

A pre-lodgement meeting (PLM2020/0287) was held on 17 December 2020 to discuss a modification of A212/63 for alterations and additions to an existing mixed development and a change of use (Shop to a Neighbourhood Shop and Take Away Food and Drink Premises). (Note: The plans proffered are the same as those to which the subject MOD relates). The issues raised at the PLM included:

- 1 Concern that the proposal is not substantially the same as that approved under A212/63 and therefore legal advice is required with respect to lodging the proposal as a Modification of Consent;
- 1 The change of use to a neighbourhood shop is considered to increase the intensity of use, particularly with the addition of kitchen and cool room amenities which lends itself to servicing an ancillary take away food and drink service.
- 1 The addition of outdoor seating adjacent to the neighbourhood shop and capacity for indoor dining could substantially increase the foot traffic to the site as well as generating additional vehicular traffic to the development.

History of subject site

On 17 March 2021, additional information was submitted including an Estuarine Management Report, confidential legal advice in respect of existing use rights and a report from Boston Blyth Flemming Planners. It is noted that the continued use of the site relies upon Sc 4.70(2) (b) (Savings provisions) of the Environmental Planning and Assessment Act 1979 which has the effect of preserving the original approvals.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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:

- 1 An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated

regulations;

- 1 A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- 1 Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for A212/63, in full, with amendments detailed and assessed as follows:

The application was submitted as a 4.55(1a) Modification, it is Council Officers opinion that the application should be assessed as a 4.55(2) Modification which requires notification in accordance with the regulations.

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council</i> (1999) 106 LGERA 289 where His Honours states:</p> <p><i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i></p> <p><i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i></p> <p><i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper</i></p>

Section 4.55 (2) - Other Modifications	Comments
	<p><i>contexts (including the circumstances in which the development consent was granted)."</i></p> <p>The applicant has provided the following justification to support their argument that the modifications are substantially the same:</p> <p><i>- The proposal does not represent an intensification of use on the subject site with no changes to the established motel and ancillary restaurant land use. The proposed modifications maintain the established general store/ delicatessen land uses, do not increase publicly accessible floor space and maintain the established land uses such that there will be no additional traffic generation as a consequence of the modifications sought.</i></p> <p><u>Comment</u></p> <p>The approved retail shops are consistent with the definition of a <i>Neighbourhood Shop</i> in the PLEP 2011. A condition is recommended to ensure that the consolidated tenancies operate in accordance with the definition of a <i>Neighbourhood Shop</i>, refer to discussion under section Zone B1 (Neighbourhood Centre) within this report.</p> <p>Conditions are also recommended to ensure that there is no intensification of use. Conditions prohibit the fitout of a commercial kitchen and cooking within the tenancies (only food preparation and heating), no table service is allowed to the outdoor seating and trading hours are restricted.</p> <p>The proposal will not increase the gross floor area or change the approved use, as such, there is no additional parking required.</p> <p><i>- The approved development remains, in its modified state, a development which will continue to relate to its surrounds and adjoining development in the same fashion as originally approved in terms of view sharing, height, side boundary setbacks and landscape outcomes. The modifications will not significantly alter the 3-dimensional built form, residential amenity or heritage conservation outcomes achieved through approval of the original scheme.</i></p> <p><u>Comment</u></p> <p>It is agreed that the proposed modifications will not</p>

Section 4.55 (2) - Other Modifications	Comments
	<p>increase the approved built form or result in unreasonable impacts in terms of residential amenity or heritage, subject to conditions.</p> <p><i>- The external building appearance, envelope and volume as perceived from adjoining properties and the public domain is not significantly altered.</i></p> <p><u>Comment</u> It is agreed the external appearance and envelope of the building is not significantly altered.</p> <p>Significant public concerns has been expressed about the impact of the outdoor seating and new openings on the adjoining reserve and the effect of privatising the public space. It is Council's opinion that the outdoor seating will help activate the adjoining reserve. The area to which the outdoor seating relates is within the site boundary, leased by the applicant from Council and Council's Parks and Reserve Unit have no objections to the proposal.</p> <p>Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> it is concurred that the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Act.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application A212/63 did not require concurrence from the relevant Minister, public authority or approval body.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that</p>	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, the Pittwater Local Environmental Plan 2011, Pittwater 21 Development Control Plan and the Community Participation Pan .

Section 4.55 (2) - Other Modifications	Comments
requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for commercial purposes for an extended period of time. The proposed development retains the commercial use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to concerns raised in submissions</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>regarding the intensification of use.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	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

The use relies on Section 4.70(2) (b) of the Environmental Planning and Assessment Act 1979

(Savings of existing consents) and not existing use rights.

Section 4.70 provides the following:

4.70 Saving of effect of existing consents (previous s109B)

(1) Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.

(2) This section—

(a) applies to consents lawfully granted before or after the commencement of this Act, and

(b) does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent, and

(c) has effect despite anything to the contrary in section 4.66 or 4.68.

(3) This section is taken to have commenced on the commencement of this Act.

Council has previously investigated the issue of the validity of the works undertaken in 2018 at the Pasadena pursuant to a construction certificate obtained by the owner in late 2017. It is considered that works undertaken in accordance with the construction certificate are lawful because the original approvals for a motel, shops and restaurant granted in 1961 and 1963 are approvals which remain in force. It is also understood that the provisions of the Warringah Planning Scheme Ordinance including clauses 66 and 68 had the effect of preserving those original approvals and they were then further preserved on the coming into force of the Environmental Planning and Assessment Act in 1979.

Pursuant to clause 4.70 (2) (b) of the Act the preserved consent can be modified. The proposed alterations to the retail tenancies and keg store can therefore be considered as a S4.55 modification to the 1963 consent relying on section 4.70 (2) (b) as detailed above.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 80 submission/s from:

Name:	Address:
Wayne Michael Lazarides	15 Wirringulla Avenue ELVINA BAY NSW 2105
Mr Mark Charles Gray	2133 Pittwater Road CHURCH POINT NSW 2105
Mrs Virginia Ann Gray	2133 Pittwater Road CHURCH POINT NSW 2105
Ms Helen Jillanne Bridgman	PO Box 273 CHURCH POINT NSW 2105
Anne Sutherland	Address Unknown
Mr John Anthony Nicholas	12 Pine Hill Avenue DOUBLE BAY NSW 2028

Name:	Address:
Tregoning	
Ms Julie-Anne Maxwell	11 Carisbrook Street LINLEY POINT NSW 2066
Ronald Stewart Thiessen	PO Box 551 CHURCH POINT NSW 2105
Mr Bruce Anthony Deane	183 McCarrs Creek Road CHURCH POINT NSW 2105
Ms Catherine Anne Kubany	183 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Frank Joseph Soriano	2195 Pittwater Road CHURCH POINT NSW 2105
Ms Diane Jayne Dromgold	221 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Patrick Harry Broughton Melinda Elizabeth Houston Broughton	PO Box 526 CHURCH POINT NSW 2105
Karen Lambert	4 Portions LOVETT BAY NSW 2105
Zoe Shacklady	8 Baroona Road CHURCH POINT NSW 2105
Mr Kurt Matthew Sims Mrs Alexandra Sims	14 McCarrs Creek Road CHURCH POINT NSW 2105
Jenny Cullen	62 Greycliffe Street QUEENSCLIFF NSW 2096
Ms Lisa Atkins	35 Wirringulla Avenue ELVINA BAY NSW 2105
Roy Atkins	PO Box 143 CHURCH POINT NSW 2105
John McCririck	Address Unknown
Ms Vicki Anne Hare	90 McCarrs Creek Road CHURCH POINT NSW 2105
Mrs Celia Joy Keyte	28 Eastview Road CHURCH POINT NSW 2105
John Smeaton	Address Unknown
Mr Ian Peter Robinson	227 McCarrs Creek Road CHURCH POINT NSW 2105
Ms Jennifer Marion Cummins	39 McCarrs Creek Road CHURCH POINT NSW 2105
Ms Camila Marchioreto Hardy	12 Robertson Road SCOTLAND ISLAND NSW 2105
Mr Chris Hardy	12 Robertson Road SCOTLAND ISLAND NSW 2105
Ms Elaine Hensby	13 Quarter Sessions Road CHURCH POINT NSW 2105
Mrs Kristina Sarah Thomas	476 Barrenjoey Road AVALON BEACH NSW 2107
Mrs Nevine Neill	PO Box 432 CHURCH POINT NSW 2105
J Jobson	PO Box 364 CHURCH POINT NSW 2105
Mr Roy Baxter	191 McCarrs Creek Road CHURCH POINT NSW 2105
Mrs Jane Caroline Baxter	191 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Richard John Layton	2137 A Pittwater Road CHURCH POINT NSW 2105
Ms Jackie Graham	7 Wirringulla Avenue ELVINA BAY NSW 2105
Mr Richard Walter Hughes	95 Richard Road SCOTLAND ISLAND NSW 2105
Mr Terrence Charles Mackaness	32 Wirringulla Avenue ELVINA BAY NSW 2105
Mrs Catherine Elizabeth Nicholl	25 Eastview Road CHURCH POINT NSW 2105
Gina Leone	6 McCarrs Creek Road CHURCH POINT NSW 2105
Mrs Claire Margaret Gorman	141 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Wes Dickson	6 McCarrs Creek Road CHURCH POINT NSW 2105

Name:	Address:
Mr Robert Mander	22 Quarter Sessions Road CHURCH POINT NSW 2105
Piyaporn Ikin	PO Box 8 CHURCH POINT NSW 2105
Petra Godfrey	PO Box 206 CHURCH POINT NSW 2105
Ms Janice Beatrice Murray	91 Florence Terrace SCOTLAND ISLAND NSW 2105
Mrs Rosemary Jane Haskell	PO Box 443 CHURCH POINT NSW 2105
Mr Robert Waddell Fox	PO Box 346 CHURCH POINT NSW 2105
Mr Michael Zulman De Berg	144 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Mark Thomas Ethell	61 Florence Terrace SCOTLAND ISLAND NSW 2105
Ms Tejinder Kaur Gill	5 Warringulla Avenue ELVINA BAY NSW 2105
Mr Alec Beckett	87 Thompson Street SCOTLAND ISLAND NSW 2105
Ms Ainslie Gaye Murray	137 McCarrs Creek Road CHURCH POINT NSW 2105
Ms Lesley Jill Scott	PO Box 625 CHURCH POINT NSW 2105
Ms Jane Christine Rich	1 Thompson Street SCOTLAND ISLAND NSW 2105
Withheld	NSW
Mrs Therese Bakker	PO Box 215 CHURCH POINT NSW 2105
Jeff Delaney	Address Unknown
Margaret Stephens	Address Unknown
Mr Stephen Michael Todd	PO Box 273 CHURCH POINT NSW 2105
West Pittwater Community Association	PO Box 289 CHURCH POINT NSW 2105
Church Point Friends	PO Box 88 CHURCH POINT NSW 2105
Bruce Hunt	19 McCarrs Creek Road CHURCH POINT NSW 2105
Mrs Monique Stidwill	44 Sturdee Lane LOVETT BAY NSW 2105
Mr Bradley Robert Jones	PO Box 65 CHURCH POINT NSW 2105
Ms Janet Marjorie Tinkler	89 McCarrs Creek Road CHURCH POINT NSW 2105
Mrs Margaret Holley	117 Richard Road SCOTLAND ISLAND NSW 2105
Withheld Cassandra Brooks	NSW
Withheld Cassandra Brooks	Address Unknown
Ms Susan Rushforth	7 Quarter Sessions Road CHURCH POINT NSW 2105
Judith Kubanyi	Address Unknown
Ms Samantha Lecky	2115 Pittwater Road CHURCH POINT NSW 2105
John Smith	Address Unknown
Mr Paul David John Chudleigh	2115 Pittwater Road CHURCH POINT NSW 2105
Mr Jeffrey Raymond Quinn	11 Eastview Road CHURCH POINT NSW 2105
Ms Carole Anne Cooper	109 McCarrs Creek Road CHURCH POINT NSW 2105
Hayley Croft	Address Unknown
Sally Victoria Crompton	PO Box 65 CHURCH POINT NSW 2105
Ray Schembri	Address Unknown

Name:	Address:
Mrs Pippin Elizabeth Schembri	111 McCarrs Creek Road CHURCH POINT NSW 2105
Ms Anne Tenney	88 McCarrs Creek Road CHURCH POINT NSW 2105
Church Point Community Projects	PO Box 40 CHURCH POINT NSW 2105

A total of eighty (80) submissions have been received, however, a number of submissions are from the same property, therefore, in accordance with the Community Participation Plan a total of seventy five (75) unique submissions have been received sixty five (65) in objection and ten (10) in support.

The following issues were raised in the objections:

- 1 **Impact on the adjoining public domain the Sir Thomas Stephens Reserve and Foreshore**
- 1 **Intensification of use / patron numbers**
- 1 **Parking**
- 1 **Noise**
- 1 **Conditions required on operation of entire premise**
- 1 **Existing use rights**
- 1 **Alcohol corridor**
- 1 **Heritage impacts**

The issues raised in the objections have been addressed below:

- 1 ***Impact on the character of the Sir Thomas Stephens reserve which is a local meeting point, especially for off shore residents.***

Comment

The minor external alterations will not impact on the character of the adjoining public reserve.

- 1 **Loss and miss-use of the Crown Land at Thomas Stephens Reserve. The proposal is contrary to Council plans to upgrade the reserve as part of the Church Point Plan of Management to maintain the community value of the public space and should be considered as part of this upgrade. Council needs to progress a fully independent Conservation Management Plan for the Church Point Precinct prior to considering any future developments in the area.**

Comment

The proposal to upgrade the Sir Thomas Stephen Reserve is currently on exhibition. The subject application has been referred to Council's Parks Team who confirm that the proposal will not impact on the proposed plans to upgrade the reserve and will provide the opportunity for beneficial community interaction and transition between private and public land.

The outdoor seating area is contained within the subject site and will not result in a loss of public open space. The proposal is not considered to represent a loss or miss use of the reserve.

- 1 **The permanent commercial kitchen with servery windows for increased take-away services replaces the small take away coffee cart.**

The existing Pasadena coffee cart and associated seating privatises the space, the expansion of private use in the public reserve which is orientated to take advantage of the reserve will add to unreasonable public impacts. The wall along the western edge to the outdoor seating will impact on public access to the reserve and foreshore.

Comment

Conditions are included in the recommendation to ensure that a commercial kitchen will not be installed in the consolidated tenancy and that no cooking is permitted, only food preparation and heating. It is not considered that the patrons queuing in the reserve for take-away from the servery will have an unreasonable impact on the reserve and it likely that there will be a neutral impact to the existing arrangement with the coffee cart and associated seating.

1 Illegal use of the reserve with tables and umbrellas in the space.

Comment

The current use of the reserve with tables and chairs associated with commercial businesses is not a matter for consideration under the subject modification. Council's Compliance Unit have been asked to investigate this matter separately.

1 Additional patrons (15 seats) to the seating area with the potential for additional seating to the north. Insufficient information regarding patron numbers. The total patron numbers for the entire Pasadena should be maintained at 138. There are no existing conditions on noise, patron numbers, hours of use, parking, plan of management etc.

Comment

It is acknowledged that the original 1963 consent (A212/63) was limited in terms of the operational conditions imposed for the use of the retail tenancies / the entire premise. The modification relates to alterations to the retail tenancies and keg storage area only. The use of the Pasadena restaurant and motel is not part of the subject modification and issues relating to the operations of these aspects of the site, including patron numbers, noise, hours of use and management of the entire operation of the building cannot be considered or imposed under the modification.

It is noted that the liquor license for the Pasadena provides conditions relating to the operation of the venue.

In respect of the subject modification a conditions are recommended to limit the hours for the operation of the consolidated tenancy and ancillary outdoor seating area are limited to between 6.30am and 8.30pm Sunday to Thursday and 6.30am to 9.00pm Friday and Saturdays. Internal trading of the retail tenancies is limited to between 6.30am - 9.00pm Sunday to Thursday and up to 10.00pm on Fridays and Saturdays. Standard noise conditions are also recommended to ensure that there will be no unreasonable impacts on neighbouring acoustic privacy.

The inclusion of proposed conditions to regulate the operation of the consolidated retail tenancy and ancillary outdoor seating area meets the Newbury test for assessing the validity of the conditions. The conditions are reasonable and fairly and reasonably relate to the proposed modified development particularly given that the original consent is 58 years old was quite simple with limited conditions (no operational conditions).

1 The premise does not have sufficient parking for its current operation and more patrons will require more parking. Conditions should be included to require functions with 10

people or more to be busses to the venue via private coaches or public transport.

Comment

As noted above, the modification only relates to the retail premises and not the Pasadena restaurant and motel, therefore, issues relating to the operations of these aspects of the site, including parking and the transportation of customers to attend functions, cannot be considered under the modification. The application was referred to Council Traffic Engineer who confirms that the proposal seeks to continue the approved retail use and there is no impact on parking provision requirements under the DCP as there is no increase in floor area.

- 1 **The proposal represents new development and not a modification and should be lodged as a DA as it increases the intensification of the use with extra seating capacity and a new kitchen. The proposal represents new development and not a modification and should be lodged as a DA as it increases the intensification of the use with extra seating capacity.**

Comment

As discussed above, there is no change of use or intensification of use. Conditions are included in the recommendation requiring the tenancies to operate in accordance with the definition of a *Neighbourhood Shop* with no commercial kitchen or cooking permitted. The area to which the outdoor seating relates is narrow and limited in area, as such, the indicative suggestions for 15 seats within the area is not unreasonable. The proposal, subject to conditions, is substantially the same as that approved under the 1963 consent, namely ground floor retail tenancies, and can be assessed as a modification. Refer to discussion under Section 4.55(2) of this report.

- 1 **Noise impacts.**

Comment

The use of the outdoor seating area is limited in terms of patron numbers and hours of use and conditions are included in the recommendation requiring compliance with standard noise limits.

- 1 **Existing use rights relating to the use of the premise are unfounded.**

Comment

The use of the ground floor retail premise was approved under the 1963 consent. The continued use of the site as a motel, restaurant and retail relies upon S4.70 (Savings Provisions) of the Environmental Planning and assessment Act 1979.

As noted above, the original approvals for a motel, shops and restaurant granted in 1961 and 1963 are approvals which remain in force. The provisions of the Warringah Planning Scheme Ordinance including clauses 66 and 68 had the effect of preserving those original approvals and they were then further preserved on the coming into force of the Environmental Planning and Assessment Act in 1979.

Pursuant to clause 4.70 (2) (b) of the Act the preserved consent can be modified. The proposed alterations to the retail tenancies and keg store can therefore be considered as a S4.55 modification to the 1963 consent relying on section 4.70 (2) (b) as detailed above.

- 1 **The outdoor seating area will be used as an alcohol corridor linked to the licensed area**

which will cause policing issues. Conditions are required to ensure that alcohol is not served within the outdoor seating area and the tenancy is not operating as a bottle shop.

Comment

The license area does not extend into the outdoor seating area and customers are not permitted to take alcohol into this area. A condition restricts the consumption of alcohol within the outdoor seating area (this would require separate approval from the Liquor Licensing Authority). The management of the Pasadena will be responsible for ensuring conditions relating to the liquor license for the premise and condition of the modified development consent are adhered to in accordance with the relevant liquor license.

- 1 **The new opening on the current blank western wall of the Pasadena will impact on the amenity of the reserve in terms of privacy. Light could be provided to the western tenancy via high level windows.**

Comment

The proposed openings along the western elevation will not impact on privacy to the public space and will help activate the frontage. The openings will also allow for improved access to light and ventilation to the western tenancy.

- 1 **Impact in the heritage significance of the area including the reserve.**

Comment

The proposal is contained to the subject site and given the small scale of the external changes Council's Heritage Specialist has no issues with the proposal in terms of the impacts on the heritage significance of the area. Refer to comments in the Referral section of this report.

- 1 **The proposed roof should not be used by patrons access is only for maintenance.**

Comment

The awning roof proposed over the outdoor seating area is not accessible to patrons.

- 1 **The proposal should be for internal alterations only.**

Comment:

The minor external alterations can be considered as part of the modification as they are substantially the same as the original consent.

Ten (10) submissions have been received in support of the application which note the following:

- 1 **Improved facilities.**
- 1 **The business provides a benefit to the community.**
- 1 **Alleged impacts on the reserve and parking are unfounded.**
- 1 **The proposal will enhance the reserve providing a complementary ancillary use.**
- 1 **The awning along the western elevation will provide shade.**
- 1 **Natural light and ventilation will be provided to the western tenancy, and**
- 1 **Removal of the deteriorated stairway which is visually intrusive.**

Comment

Council generally concur with the comments made in support. Issues in respect of the current use of the reserve and ongoing parking issues are not directly relates to the application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Food Premises, Skin Pen.)	<p>Supported (Subject to conditions)</p> <p>Environmental Health has been requested to consider this proposal for "Modification of Development Consent A212/63 granted for alterations and additions to install an accessible lift to the motel".</p> <p>The statement of Environmental Effects lists elements of the proposed development as:</p> <ol style="list-style-type: none"> 1 The enclosure of the existing waste storage and empty keg collection handling areas, 1 The relocation of the existing bathroom facilities to facilitate the reconfiguration of the existing shop tenancies, 1 The consolidation of 3 shop tenancies to create 2 shop tenancies, 1 The expansion of the existing general store and delicatessen to include a new pick up/ take away window, access doors and roofed deck orientated towards the adjacent reserve, and 1 The replacement of the existing external fire egress stair at the rear of the property. <p>The original referral response from Environmental Health referenced the potential non-compliance with the Building Code of Australia (BCA) in relation to sanitary facilities, in particular, the provision of urinals for male patrons as well as "unisex" facilities.</p> <p>In response, the applicant has submitted amended plans which include the provision of a male urinal within the area of the sanitary facilities.</p> <p>There are 5 existing toilets that serve the site and the alterations to the toilets will result in a total of 6 toilets which is an increase in the current arrangement.</p> <p>As this modification application seeks consent for work relating to the retail tenancies and not the restaurant, it is considered appropriate that conditions be recommended to ensure that there is no intensification of use within the retail tenancies, and that there will be a restriction on cooking</p>
NECC (Bushland and Biodiversity)	<p>Supported (subject to conditions)</p> <p>Council's Natural Environment Unit - Biodiversity referral team have</p>

Internal Referral Body	Comments
	<p>reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <ul style="list-style-type: none"> 1 Biodiversity Conservation Act 2016 (BC Act) 1 State Environmental Planning Policy (Coastal Management) 1 Pittwater Local Environmental Plan (PLEP) - 7.6 Biodiversity Protection <p>The application will not impact upon prescribed trees, and is unlikely to indirectly impact upon nearby biodiversity values. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Coast and Catchments)	<p>Supported (subject to conditions)</p> <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>Coastal Management Act 2016</p> <p>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.</p> <p>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>State Environmental Planning Policy (Coastal Management) 2018</p> <p>The subject land 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, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Risk Management</p>

Internal Referral Body	Comments
	<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 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>In accordance with the Estuary Risk Management Report prepared by Advisian Pty. Ltd. dated April 2016 and Addendum dated March 2021, a base estuarine planning level (EPL) of RL 2.00m AHD has been recommended for the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.06m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m.</p> <p>As assessed in the submitted Estuary Risk Management Report prepared by Advisian Pty. Ltd. dated April 2016 and Addendum dated March 2021, the ground floor level for the proposed additions and alterations is located at 2.15m AHD.</p> <p>The submitted report made certain recommendations and hence, proposed development is subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p>Development on Foreshore Area</p> <p>A 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>The DA proposes alterations within existing building located on the foreshores area and hence, the DA does not require to satisfy the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Supported (subject to conditions)</p> <p>The southern and eastern edges of the property are affected by a 1% AEP flood level of 1.92m AHD.</p>

Internal Referral Body	Comments
	<p>The bin area to be enclosed already just above this level. Other works are outside of the flood affected area.</p> <p>Note that the floor level of the bin area is 2.1m AHD, which is below the FPL of 2.22m AHD. If hazardous goods are to be stored in the bin area, they must be stored above the FPL.</p> <p>The proposed development generally complies with the flood requirements of the DCP and LEP.</p>
Parks, reserves, beaches, foreshore	<p>Supported</p> <p>The Pasadena site adjoining Sir Thomas Stephens Reserve. The modification application includes works within the property facing the Reserve, including a proposed servery window that may be accessed by persons within the Reserve, and the proposed opening of the western façade of the building and external deck for the use of persons who have purchased takeaway food and beverages.</p> <p>Parks and Recreation are currently exhibiting a proposal to upgrade the Reserve.</p> <p>It is considered that the modification application will not impact upon the use of the Reserve nor the upgrade proposal, and will provide the opportunity for beneficial community interaction and transition between private and public land.</p> <p>Parks, Reserves and Foreshores Referral support the application.</p>
Strategic and Place Planning (Heritage Officer)	Supported - HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as it adjoins a heritage item and is within the vicinity of two others</p> <p>Church Point Post Office Store - 1860 Pittwater Road Church Point</p> <p>Church Point Wharf - 1860B Pittwater Road Church Point</p> <p>Graveyard and Site of Former Methodist Church - 1 McCarrs Creek Road Church Point</p>
	Details of heritage items affected
	<p>Details of the items as contained within the Pittwater inventory is as follows:</p> <p>Church Point Post Office Store</p> <p><u>Statement of significance:</u></p> <p>The Church Point Post Office and store complex is an extremely important landmark for Pittwater. The cultural significance of the post office and store is demonstrated by its role as an interchange for water based transportation to the Western Foreshores of Pittwater and Scotland Island. The architectural value of the property is demonstrated by the corrugated iron gable roof and sandstone retaining sea wall dating back to the late 19th Century. It is closely linked with the Church Point Wharf and holds social value</p>

Internal Referral Body	Comments																					
	<p>for the community, which was reflected in the public involvement in preventing the closure of the store in 1978.</p> <p><u>Physical description:</u> The Post Office is a c.1895 building with a 1903 store. It is a single storey painted timber structure with a corrugated iron gabled roof and veranda facing the street. Built on the foreshore, the rear of the building projects over the water and is supported by a timber wharf. Site also contains a war memorial stone.</p> <p>Church Point Wharf <u>Statement of significance:</u> The Church Point Wharf is an extremely important landmark for Pittwater. It has close associations with the post office and is socially significant for its role in waterborne transportation to the Western Foreshores of Pittwater and Scotland Island.</p> <p><u>Physical description:</u> Stone pier and timber jetty with steel balustrade.</p> <p>Graveyard and Site of Former Methodist Church <u>Statement of significance:</u> The Graveyard and Site of Former Methodist Church is a small secluded cemetery which is significant as a memorial to local pioneers buried there. Its simplicity of style and arrangement is typical of rural aesthetic style in the nineteenth century. It also has connections with the naming of the area as it was attached to the church which gave its name to Church Point. It is an aesthetically pleasing and tranquil place.</p> <p><u>Physical description:</u> Grassed area on hillside above Pittwater Road with filtered views of Pittwater through the Spotted Gum trees. Accessed by footpath from Quarter Sessions Road or Pittwater Road</p> <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>N/A</td><td></td></tr></table> <p>Consideration of Application</p>	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	
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NSW State Heritage Register	No																					
National Trust of Aust (NSW) Register	No																					
RAIA Register of 20th Century Buildings of Significance	No																					
Other	N/A																					

Internal Referral Body	Comments
	<p>The proposal seeks consent for modifications to the Pasadena building including rearrangement of the commercial tenancies, enclosure of the delivery and bin area, new outdoor dining area and awning on the western side of the site adjoining the reserve and changes to the rear external staircase. Directly adjoining the site to the west and north is the heritage listed Church Point Wharf. Further to the west is the general store and to the south west across the road is the graveyard and former church site. The proposal is contained to the subject site and given the small scale of external changes it is considered to have minimal impact upon the identified heritage items or their significance.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? A short statement is contained within the Statement of Environmental Effects.</p>
Traffic Engineer	<p>Supported (subject to conditions)</p> <p>The modification is described as minor and provided the use continues as retail only then there is no impact on parking provision requirements under the DCP as the use has not changed. A change of use application would trigger the re-assessment of parking provision and the need for a parking assessment. Modification is supported subject to conditions.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for 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 its continued commercial land use.

SEPP (Coastal Management) 2018

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

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

- (1) *The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
 - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
 - (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
 - (d) *any other development.*

Comment:

The proposal generally relates to the fitout of the existing building (ground floor tenancies and toilet area and the enclosure of the existing keg store area to the southern corner of the building. The proposed alterations will not harm marine vegetation.

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

- (1) *Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

The proposed development will not significantly impact on the ecological integrity of the adjacent

coastal wetland or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland.

12 Development on land within the coastal vulnerability area

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

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

Comment:

The proposal will not alter coastal processes to the detriment of the natural environment or reduce public amenity, access to and use of the foreshore.

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 proposal is unlikely to cause an adverse impact on the quality of the ecological, coastal and marine environment, vegetation or water quality.

- (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:

As discussed above, the proposal will not result in adverse impacts on the natural environment or reduce public amenity, access to and use of the foreshore.

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 will not impact on access, view loss or overshadowing to the foreshore or the cultural and built environmental heritage of the area.

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

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

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

Comment:

The proposal is not likely to cause increased risk of coastal hazards on the land.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone B1 : Yes Zone RE1: Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone B1 : Yes Zone RE1: Yes Zone W1 : Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.35m	No change	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Clause	Compliance with Requirements
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone B1 Neighbourhood Centre

The proposal seeks consent for the consolidation of three existing commercial tenancies into two. The largest tenancy is described as a *general store / delicatessen* has a 100sqm retail floor area and includes a servery and chilled food counter and kitchen. The original 1963 development consent approved three retail shops all with a GFA of less than 100sqm. The original consent, which did not include any operational conditions, was approved under the Cumberland Planning Ordinance dated 1951. The Cumberland Planning Ordinance, 1951 defined "Shop" as

"any building or place or portion of a building or place, used for the purposes of exposing or offering goods for the sale by retail, and any premises which may be licensed by the council as a refreshment room and any premises licensed under the Liquor Act 1912, as amended by subsequent Acts."

Planning legislation has evolved in the last 70 years and in terms of comparing the approved 1963 (A212/63) "shop" (retail) use with the relevant current planning instrument and its definitions, namely the Pittwater LEP 2014, the approved shops compares closes to that of a Neighbourhood Shops which are permissible within the B1 Neighbourhood zone.

A site inspection confirms that the primary tenancy, known as the *Pantry Pasadena*, is being used as a premise which sells general merchandise and cold foodstuff. It also offers a dry cleaning service.

A *Neighbourhood Shop* is defined in the Pittwater LEP as

a premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include neighbourhood supermarkets or restricted premises.

It is recommended that a condition be imposed requiring the use of the consolidated ground floor retail tenancies to be consistent with the PWLEP 2012 definition of a Neighbourhood Shop. In summary, the continuation of the use of the ground floor tenancies as shops is permitted within the B1 Neighbourhood Centre zone and consistent with the objectives of the zone that seek to:

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

Zone RE1 Public Recreation

The area to the west of the building comprises the Sir Thomas Stephens Reserve and is zoned RE1 (Public Recreation). The area is currently used as an area of outdoor seating and is partially occupied by a coffee truck which is consistent with other uses that surround the reserve. It is noted that the 1963 consent did not include any details on the use of this area.

The proposal seeks consent for the use of part of the western edge of the building as outdoor seating in association / ancillary to the general store / deli (Neighbourhood Shop). The work includes the construction of a low wall which defines the outdoor seating area with a canopy above and a new door and a serve window.

The ancillary outdoor seating use associated with the approved Neighbourhood Shop is permissible within the RE1 zone which allows for restaurants, or cafes and take away food and drink premises and is consistent with the objectives of the RE1 zone as discussed below:

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

Comment:

The proposal has a neutral impact on the use of the land as public open space and recreation given its current use.

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

Comment:

The proposal provides a compatible land use to the reserve.

To protect and enhance the natural environment for recreational purposes.

Comment:

The proposal will have no impact on the natural environment for recreational purposes.

To allow development that does not substantially diminish public use of, or access to, public open space resources.

Comment:

The proposal will not substantially diminish public use of or access to public open space given its current use.

To provide passive and active public open space resources, and ancillary development, to meet the needs of the community.

Comment

The proposal provides a suitable ancillary development that meets the needs of the community.

7.8 Limited development on foreshore area

The work proposed along the western perimeter of the site associated with the outdoor seating is located within the foreshore building line.

Clause 7.8 (2) allows for:

(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area.

Comment

The proposed work associated with the outdoor seating along the western perimeter of the existing building will not extend the footprint of the building further into the foreshore area. As such, the outdoor area is acceptable in principle.

(b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

Comment:

The proposal provides an outdoor facility that will activate the adjoining public reserve.

Clause 7.8 (4) states that in deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

(a) continuous public access to and along the foreshore through or adjacent to the proposed development.

Comment:

The proposal will have a neutral impact on access to the foreshore (and the adjoining reserve).

(b) public access to link with existing or proposed open space.

Comment:

As noted above, the proposal will have a neutral impact on public access to link with the reserve and foreshore.

(c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land.

Comment:

Access via an agreement or other instrument is not considered to be necessary.

(d) public access to be located above mean high water mark.

Comment:

The proposal will not change the levels of the land.

(d) the reinforcing of the foreshore character and respect for existing environmental conditions.

Comment:

The proposal will not result in unreasonable impacts in respect of existing environmental conditions, refer to the comments from Council's Coast and Catchment Officer.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line (south)	3.5m	Nil (existing)	unaltered	N/A
Rear building line (north)	3.0m	Nil (existing)	unaltered	N/A
Side building line (east)	3.0m	Nil (existing)	unaltered	N/A
Side building line (west)	3.0m	1.9m (existing)	unaltered	N/A
Building envelope	3.5m	Outside envelope	unaltered	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
A4.15 Waterways Locality	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes
B1.2 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
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.3 Awnings	Yes	Yes
C2.7 Building Facades	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.21 Food Premises Design Standards	N/A	N/A
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2.24 Take-away Food Premises	Yes	Yes
C5.17 Pollution control	Yes	Yes
C5.20 Liquor Licensing Applications	N/A	N/A
C5.22 Environmental Sustainability	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.2 Scenic protection - General	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	N/A	N/A
D4.6 Side and rear building line	Yes	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes
D15.1 Character as viewed from a public place	Yes	Yes
D15.2 Scenic protection - General	Yes	Yes
D15.3 Building colours and materials	Yes	Yes

Detailed Assessment

B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites

The proposal will not have an unreasonable impacts on the heritage significance of the neighbouring heritage items. Refer to Heritage Officers comments in the referrals section of this report.

B6.3 Off-Street Vehicle Parking Requirements

Concern has been raised in the submissions regarding the intensification of the use and the impact on the availability of parking. Clause B6.3 of the PDCP requires 1 space per 30sqm gross floor area for retail premises. It is noted that the same rate applies to restaurants and cafes. The proposal will not result in an increase in the floor area, as such, in accordance with the controls the proposal does not result in a need for additional car parking spaces and Council's Transport Unit offer no objections to the proposal.

C2.12 Protection of Residential Amenity

Clause C2.12 applies where development adjoins land zoned or used for residential purposes.

Comment

The site has a spit land zoning with the existing building being located within a B1 (Neighbourhood Centre) zone and the land to the west of the building zoned RE1 (Public Recreation). The land to the south of the RE1 zone, on the opposite side of Pittwater Road, is mapped as E4 (Environmental Living). In order to protect the amenity of the residential area to the south conditions are recommended to ensure that there will be no intensification of the retail use approved in the 1963 consent and standard noise conditions are also recommended to ensure that there is no unreasonable impacts in terms of noise nuisance.

In addition, a condition requires noise generating plants and the like shall not produce noise levels that

exceed 5dBA above the background noise when measured from the nearest property boundary and noise generated from the use not to be offensive as defined by the Protection of the Environment Operations Act 1997.

C2.21 Food Premises Design Standards

It is noted that a kitchen is included in the plans for the extended general store / deli. However, a condition requires that there is no commercial kitchen and no cooking, the kitchen shall only be used for food "warming". The general store / deli shall continue to operate as a "*Neighbourhood Shop*" in accordance definition contained in the Pittwater LEP and not a food and drink premises.

C2.22 Plant, Equipment Boxes and Lift Over-Run

Clause C2.22 requires:

Plant or noise generating equipment such air conditioning units or garbage collection area or similar to be sited to protect the acoustic privacy of workers, residents and neighbours.

Comment:

There is no change in the location of the keg storage area or garbage collection area to the south-east and the enclosure of the space will help minimise impacts on acoustic privacy to residential properties. It is also noted that the proposed kitchen is not a commercial kitchen and there will be no mechanical plant associated with this aspect of the proposal. The air conditioning units are maintained within the building and standard noise conditions are recommended.

C5.20 Liquor Licensing Applications

Clause C5.20 requires a premise that intends to serve alcohol, which may include pubs, registered clubs and restaurants or cafes, must obtain a liquor license from the Casino, Liquor and Gaming Control Authority prior to the serving of alcohol for sale on premises.

Comment:

There is no change of use from the existing retail tenancies and a condition is included in the recommendation that alcohol will not be served to customers in the outdoor seating area.

D4.6 Side and rear building line

Clause D4.6 requires a 3m side set back.

Comment

The proposal maintains a 1.9m set back to the west. A low wall enclosing the outdoor dining area with an awning above is proposed to extend 1.9m from the western elevation.

The proposed awning and wall has been assessed as a minor encroachment into the setback, ancillary structures which will offer weather protect and define the outdoor dining area. Subject to conditions the proposal will achieve the outcomes of the side building line control as discussed below:

To achieve the desired future character of the Locality.

Comment:

The proposal minor external modifications will not result in unreasonable impacts on the character of the Church Point area.

The bulk and scale of the built form is minimised.

Comment:

The alterations are minor with no increase in the envelope of the existing building.

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

Comment

There will be no impacts on views and vistas from public or private places.

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

Comment

There will be no unreasonable impacts on view sharing.

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

Comment

There will be no unreasonable impacts on residential amenity in terms of privacy or solar access.

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

Comment

There is no change in the landscaping the works are generally contained within the existing building.

Flexibility in the siting of buildings and access.

Comment

The proposal allows for improved access to the retail tenancies.

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

Comment

Not relevant the works are generally internal . There is no loss of vegetation.

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

Comment

Not relevant the works are generally internal and there is no change to the landscaping.

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 \$1,398 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$139,800.

CONCLUSION

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

- 1 Environmental Planning and Assessment Act 1979;
- 1 Environmental Planning and Assessment Regulation 2000;
- 1 All relevant and draft Environmental Planning Instruments;
- 1 Pittwater Local Environment Plan;
- 1 Pittwater Development Control Plan; and
- 1 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:

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

The proposed modification for the consolidation of the retail tenancies and ancillary outdoor seating is substantially the same as the original 1963 (A212/63) consent. Conditions are recommended to ensure that there is no intensification of use including a restriction in the operation of the tenancies in accordance with the definition of a Neighbourhood Shop. In addition conditions are recommended to ensure that there is no commercial kitchen, no cooking (only food preparation and warming), a restriction in the operating hours of the tenancies and the number of patrons that can be seated within the outdoor area. The proposal will not result in an increase in the gross floor area and with no change of use no additional parking is required.

The minor external alterations will not impact on the heritage significance of the area. The proposal will help activate the adjoining Sir Thomas Stephens Reserve and a condition requires the deletion of the enclosing wall to the outdoor seating area to ensure that there is no impacts on public access to the reserve of the foreshore.

The issues raised in the submissions have been addressed with conditions and it is considered that the proposal generally satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

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 Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2021/0005 for Modification of consent A212/63 - Alterations and additions to the existing Motel, Restaurant and Shops on land at Lot 142 DP 752046, 1858 Pittwater Road, CHURCH POINT, Lot LIC 502589, 1858 Pittwater Road, CHURCH POINT, Lot 320 DP 824048, 1858 Pittwater Road, CHURCH POINT, Lot 1 DP 1148738, 1858 Pittwater Road, CHURCH POINT, Lot 3 DP 1148738, 1858 Pittwater Road, CHURCH POINT, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S4.55-A-050 Rev C Site Plan	05/11/2020	Quattro Architecture
S4.55-A-099 Rev C Ground Level Plan Demo	05/11/2020	Quattro Architecture
S4.55-A-100 Rev C Ground Level Plan	05/11/2020	Quattro Architecture
S4.55-A-200 Rev C Building Existing Elevations (Demo of stair)	05/11/2020	Quattro Architecture
S4.55-A-201 Rev C Building Proposed Elevations	05/11/2020	Quattro Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Estaraine Risk Management Report	02/03/2021	Advisian

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:

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

Add Condition 10 RESTRICTION ON THE USE OF THE RETAIL TENANCIES to read as follows:

The retail tenancies shall operate in accordance with the definition of a *Neighbourhood Shop* as prescribed in the Pittwater LEP 2013, namely

a premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the

local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include neighbourhood supermarkets or restricted premises. The retail floor area shall be limited to 100sqm.

The tenancies shall operate in accordance with the following:

- (a) The primary tenancy shall be used for the purposes of selling food, light refreshments. There shall be no commercial kitchen, i.e. no stove, oven, deep fryer, grease trap or extraction fan(s) only food preparation and warming facilities for small food items.
- (b) The operating hours of both tenancies shall be limited to between 6.30am - 9.00pm Sunday to Thursday, 6.30am - 10.00pm Friday and Saturday.
- (c) The consolidated retail tenancies shall not be licensed.
- (d) Any intensification of the use of the retail premises in relation to serving of food will be subject to approval by way of a separate development application.

Reason: To ensure that the tenancy does not operate as a food and drink use and to protect neighbouring residential amenity.

Add Condition 11 DEAD OR INJURED WILDLIFE to read as follows

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

Add Condition 12 NO WEEDS IMPORTED ON TO THE SITE to read as follows

No Priority or environmental weeds are to be imported on to the site prior to or during construction works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

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

Add Condition 13 FLOODING to read as follows

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

Building Components and Structural Soundness – C3

Any new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 2.22m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Storage of Good - D1

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level of 2.22m AHD unless adequately protected from floodwaters in accordance with industry

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

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

Add Condition 14 ESTUARINE HAZARD DESIGN REQUIREMENTS to read as follows

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

Add condition 15 ESTUARINE PLANNING LEVEL REQUIREMENTS to read as follows

A base Estuarine Planning Level (EPL) of 2.0m AHD has been recommended in the Estuarine Risk Management Report prepared by Advisian Pty. Ltd. dated April 2016 modified by an Addendum dated March 2021 and adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

1. All structural elements below adopted EPL shall be of flood compatible materials. It is noted that the proposed enclosure would need to be constructed from flood compatible materials and must be designed and constructed so that it will have a low risk of damage and instability due to wave action and tidal inundation. It is recommended that the enclosure be constructed from cementrendered brick to match the exterior of the surrounding building.
2. All structural elements below adopted EPL shall be of flood compatible materials.
3. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be waterproofed to the EPL. It is recommended that any of these services within the storage area be set at 2.5 m AHD or above.
4. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 1.7m AHD (which is considered to be the EPL for this location 40 m away from the foreshore). Construction of an elevated platform at approximately 2.0 m AHD or higher for stowing the garbage bins may be considered to cater for future increased inundation risk.
5. All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.5m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.5m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure aspect of the development are built at the appropriate level.

Add Condition 16 COMPLIANCE WITH ESTUARINE RISK MANAGEMENT REPORT to read as follows

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Advisian Pty. Ltd dated April 2016 and updated with an Addendum dated March 2021, and these recommendations are to be incorporated into construction plans.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

Add Condition 17 COMPLIANCE WITH ESTUARINE RISK MANAGEMENT REPORT to read as follows

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Advisian Pty. Ltd. dated April 2016 and updated by an Addendum dated March 2021 and these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment.

Add Condition 18 OUTDOOR SEATING to read as follows

- (a) Seating shall be limited to fifteen (15) persons.
- (b) There shall be no table service.
- (c) The outdoor seating area shall not be licensed.
- (c) The operating hours of the ancillary outdoor seating area shall be limited to between 6.30am and 8.30pm Sunday to Thursday, 6.30am to 9.30pm Friday to Saturday.

Reason: In the public interest.

Add Condition 19 NOISE GENERAL to read as follows

The use of the retail tenancies and ancillary outdoor seating area must be controlled so that any emitted noise is at a level so as not to create an "offensive noise" as defined in the Protection of the Environment Operations Act 1997 to any affected receiver. Noise generating plants and the like associated with the consolidated tenancies shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary and noise generated from the use not to be offensive as defined by the Protection of the Environment Operations Act 1997.

Reason: To comply with Noise Legislation.

Add Condition 20 LIGHTING to read as follow

Lighting is to be shielded or located to minimise any likely adverse visual impact when viewed from the Waterway, any adjoining public land, and adjoining residences.

Reason: To protect public amenity.

Add Condition 21 SIGNAGE to read as follows

No signage is approved other than signage which may be permissible under the Exempt and Complying Code

Reason: To avoid visual clutter.

Add Condition 22 WASTE MANAGEMENT to read as follows

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

Add Condition 23 CONSTRUCTION AND FITOUT OF FOOD PREMISES to read as follows

The construction fit-out and finishes of any retail tenancy that involves the preparation and/or retail sale of food must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises'. Prior to any Occupation Certificate (OC) being issued certification is to be provided by a suitably qualified person that the fit-out complies with the above requirement.

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

Add Condition 24 FOOD PREPARATION EQUIPMENT to read as follows

No food preparation equipment may be used within the retail tenancies that has:

- (i) a total maximum electrical power input exceeding 8 kW; or
- (ii) a total gas power input exceeding 29 MJ/h; or

The total maximum power input to more than one apparatus must not exceed—

- (i) 0.5 kW electrical power; or
- (ii) 1.8 MJ gas,

Reason: To restrict equipment used on the premises that would facilitate cooking.

Add Condition 25 CONSTRUCTION TRAFFIC MANAGEMENT PLAN to read as follows

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- 1 The proposed phased of construction works on the site, and the expected duration of each construction phase.
- 1 The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- 1 Make provision for all construction materials to be stored on site, at all times.
- 1 The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- 1 The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- 1 The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- 1 Make provision for parking onsite.
- 1 Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- 1 Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- 1 The proposed manner in which adjoining property owners will be kept advised of the timeframes

for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.

- 1 Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- 1 Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- 1 The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- 1 Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- 1 The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- 1 Proposed protection for Council and adjoining properties.
- 1 The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure Work zones are monitored and installed correctly.

Add Condition 26 WORK ZONES AND PERMITS to read as follows

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

Add Condition 27 IMPLEMENTATION OF CONSTRUCTION TRAFFIC MANAGEMENT PLAN to read as follows

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all

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

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

Add Condition 28 OPERATIONAL MANAGEMENT PLAN to read as follows

The operation of the development. The OMP shall include, but not be limited to the following:

- 1 Management of car parking areas.
- 1 The location and content of directional signage.
- 1 Complaints management.
- 1 Noise management.
- 1 Truck delivery times and methods of control to manage the sequencing of the loading docks.
- 1 Waste management.

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

Reason: To ensure that the development operates with minimum disruption to the surrounding area.

Add Condition 29 Policy Controls to read as follows

Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$1,398 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$139,800.

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

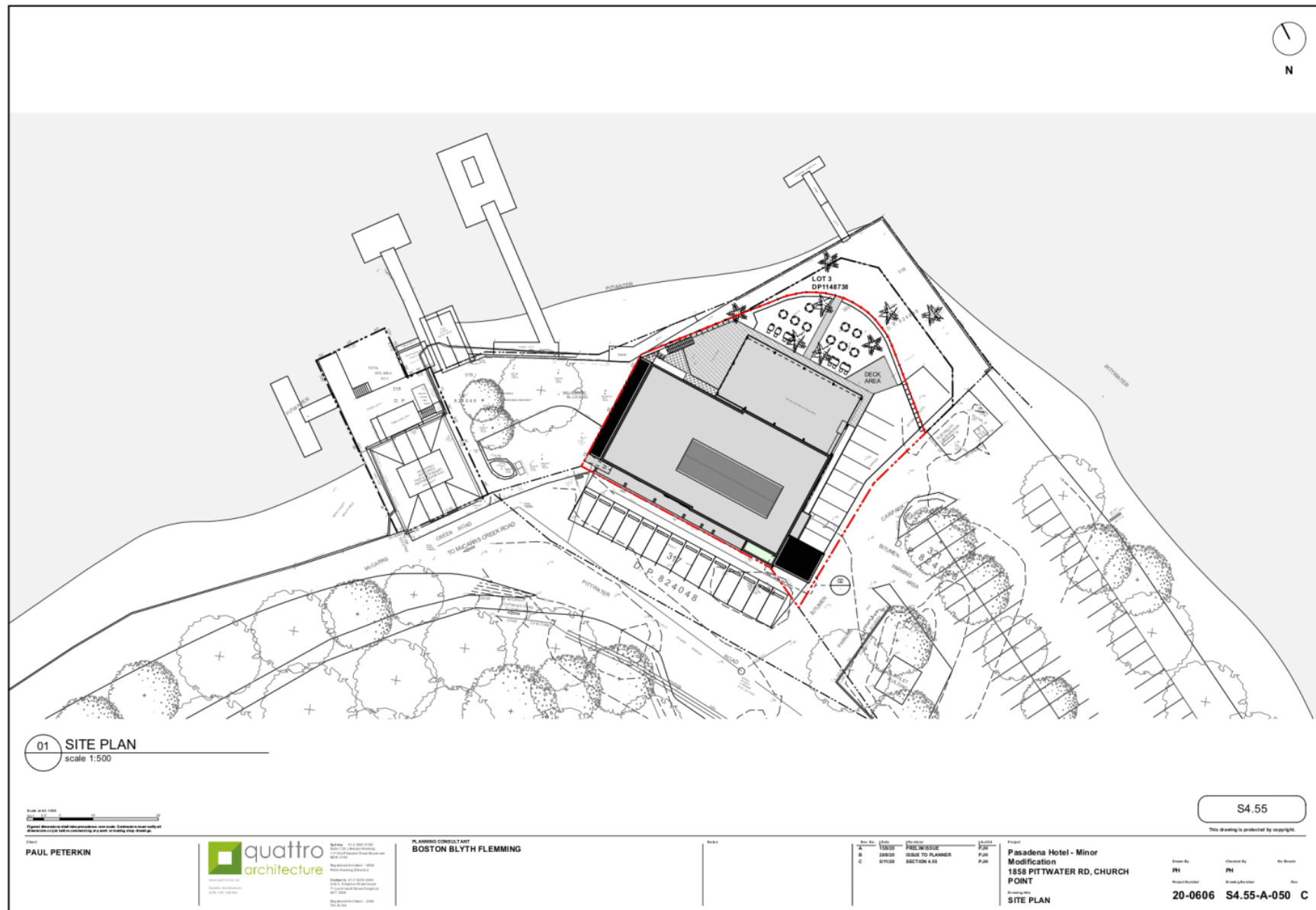
The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater

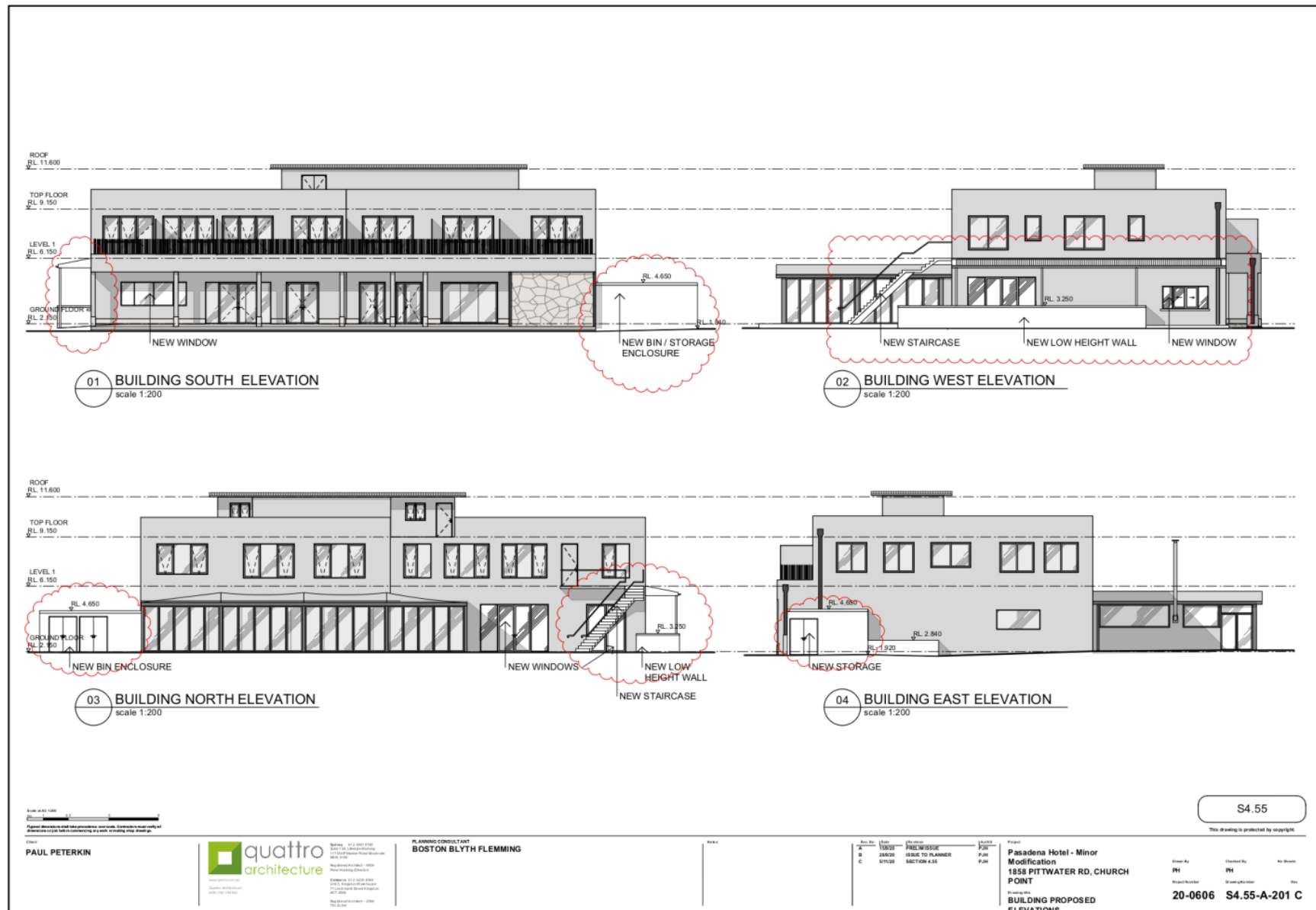
Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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







ITEM 3.2	DA2020/1466 - 50 STARKEY STREET, FORESTVILLE - USE OF PREMISES AS A PERMANENT GROUP HOME
AUTHORISING MANAGER	Anna Williams
TRIM FILE REF	2021/333340
ATTACHMENTS	1 Assessment Report 2 Site & Floor Plans

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2020/1466 for Use of premises as a Permanent Group Home at Lot 10 DP 24952, 50 Starkey Street, Forestville subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1466
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Responsible Officer:	David Auster
Land to be developed (Address):	Lot 10 DP 24952, 50 Starkey Street FORESTVILLE NSW 2087
Proposed Development:	Use of premises as a Permanent Group Home
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Ashot Nazarian Marie Nazarian
Applicant:	Sunnyfield Limited

Application Lodged:	23/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	01/12/2020 to 15/12/2020
Advertised:	Not Advertised
Submissions Received:	10
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 0.00
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Executive Summary

The proposal is for the regularisation of the use of the existing dwelling as a group home. The dwelling currently accommodates five (5) residents with intellectual disabilities, and has been operating as a group home (without approval) for an extended period of time. No construction works are proposed.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and an appropriate use for the subject site.

Council received submissions from 10 adjoining neighbours, raising concerns with the proposed use as a group home, parking, waste and noise. These submissions are considered to have been addressed to a reasonable degree by conditions of consent, and the Plan of Management provided by the

applicant.

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 subject site is currently operating as a permanent group home without development consent. The intention of this application is to regularise the use as a permanent group home, pursuant to the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009. No physical works are proposed.

The application states that the site provides permanent residential accommodation to five (5) people. While the residents have intellectual disabilities requiring some degree of care, the people that reside in the dwelling are 'high functioning' and as such do not require twenty-four-hour care. The majority of onsite and support and care services is subsequently provided by Sunnyfield (the applicant) employees at this site between 10:00am to 2:00pm.

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

SITE DESCRIPTION

Property Description:	Lot 10 DP 24952 , 50 Starkey Street FORESTVILLE NSW 2087
Detailed Site Description:	The site is a corner lot located to the north west of the intersection of Starkey Street and Wirrilda Way. It is irregular in shape, and has an area of approximately 686sqm.

There is an existing dwelling on site, with a garage beneath the living level accessed from Starkey Street, and another hardstand parking space in the south west corner of the site accessed from Wirrilda Way. There is an existing ramp from this parking space to the dwelling. The site includes a paved area to the rear, and is generally well landscaped with vegetation of various heights.

Surrounding development consists generally of detached dwellings.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. The applicant has stated that the premises has been used as a permanent group home without development consent for an extended period of time. A search of Council's records has revealed the following relevant history:

DA2012/0227 - Council issued consent on 31/05/2012 for alterations and additions to a dwelling house. These works approved included a sliding gate to the existing car parking in the southwest corner of the site, a ramp for disabled access from the car park to the rear of the dwelling, and minor internal alterations for access.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>

Section 4.15 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) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (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 01/12/2020 to 15/12/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 10 submission/s from:

Name:	Address:
Louise McManamon	46 Starkey Street FORESTVILLE NSW 2087
Mr Peter Charleson	6 Wirrilda Way FORESTVILLE NSW 2087
Mr John Maxwell Gercken	48 Starkey Street FORESTVILLE NSW 2087
Ms Rose Mary Loughnane	108 Cook Street FORESTVILLE NSW 2087
James Leong	2 Wirrilda Way FORESTVILLE NSW 2087
Mrs Tina Murdoch	56 Starkey Street FORESTVILLE NSW 2087
Gregory Robert Gudgeon	27 Blandford Street COLLAROY PLATEAU NSW 2097
Mrs Gladys Maria Margetts	58 Starkey Street FORESTVILLE NSW 2087
Mr Con Michael Cotsios	115 Cook Street FORESTVILLE NSW 2087

Name:	Address:
Mr Anthony Paul Williamson	8 Vines Avenue FORESTVILLE NSW 2087

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

- Conversion to boarding house / halfway house / similar
- Parking and traffic
- Oversupply of group homes / boarding houses
- Waste
- Noise

The matters raised within the submissions are addressed as follows:

- **Conversion to boarding house / halfway house / similar**
Concerns were raised with respect to the future conversion of the proposed permanent group home to a boarding house, halfway house or similar. More specifically, concerns were raised that the definition of permanent group homes allows for 'socially disadvantaged' people to live there, and that this was an inappropriate use in the area. The objections raised concerns with safety and security, crime, drug use, violence, noise, parking, and devaluation of property as a result of the proposed use.

Comment:

Permanent group homes are a permissible use in the R2 low density residential zone, and as such must be considered as an appropriate use in the area under the applicable planning controls. In this case, the operators are a charity organisation that cater only to people with an intellectual disability, and do not cater to other people identified as socially disadvantaged in the SEPP, such as *"persons disadvantaged for reasons of alcohol or other drug dependence, extreme poverty, psychological disorder, delinquency or other disadvantage, and persons who, for reasons of domestic violence or upheaval, require protection"*.

In relation to later conversion to a boarding house, this is a separately defined use in the LEP, and would require a development consent should that ever be proposed. 'Halfway house' is not a defined use. However, it is understood that the submissions are more generally referring to the category of persons who may live in the group home, should the current operators (Sunnyfield) ever move on and another type of operator use the group home to house people other than those with an intellectual disability.

A number of the submissions received indicated that they had few issues with the accommodation of the current residents (people with an intellectual disability), but strongly objected to other types of potential residents (socially disadvantaged persons as defined in the SEPP). In response to the submissions the applicants have suggested a condition be imposed in the consent as follows:

"The group home which is the subject of this consent is to provide permanent household accommodation for people with a disability only."

However, State Environmental Planning Policy (Affordable Rental Housing) 2009 prevents this condition from being imposed (see discussion under SEPP ARH in this report).

The building that the use is proposed to be carried out in is a relatively standard residential

dwelling on a 686sqm block of land, with normal setbacks to the northern and western side boundaries, and includes existing facilities for access for people with a disability. The orientation and design of the existing building itself does not give rise to any particular safety and security issues, noise, or other environmental impacts that might lead to the proposed use being considered inappropriate or unsuitable for the building / site. Nor does the surrounding neighbourhood have any particularly unusual attributes or circumstance that might cause the permissible use in the zone to be considered unsuitable. The above condition is included in the recommended conditions of consent, as it has been volunteered by the applicant in response to the submissions. However, the objections are not generally supported in this regard.

- **Parking and traffic**

Concerns were raised in relation to parking, and in particular that on street parking should not be used by the group home. Further concerns were raised that Starkey Street is steep in this location, and that vehicles regularly break the speed limit.

Comment:

This issue has been assessed in more detail under Clause C3 Parking Facilities in this report. The site currently contains space for four vehicles to park on site. However, the residents that are to be housed in the group home generally do not drive, and the parking demand is only likely to be taken up temporarily by a shared vehicle (driven by staff) for the residents, and staff parking. Further to this, ample on street parking has been available during two separate site visits during the assessment, though this is not expected to be required given the parking available on site. Parking provision is considered to be adequate in this regard. There is no change to the existing configuration of the site with regard to driveway access.

- **Oversupply of group homes / boarding houses**

Concerns were raised that there was an oversupply of group homes and boarding houses in the area, and that no more should be permitted.

Comment:

Under Clause 46 of SEPP (Affordable Rental Housing) Council cannot *"refuse consent to development for the purpose of a group home unless the consent authority has made an assessment of the community need for the group home"*. Council's Strategic Planning department and Social Planning & Services department were both consulted, and Council has made no wider assessments of the community need for group homes. As such, Council could not refuse the application based on this issue.

In relation to the individual group home applied for in this application, the fact that the dwelling has been used as a group home for an extended period of time (albeit without approval) would tend to indicate it is more likely that there is in fact a community need for this use. The submissions are not supported in this regard.

- **Waste**

Concerns were raised that bins are not properly managed on site leading to birds scattering garbage.

Comment:

The Plan of Management submitted by the applicant includes provisions for management of waste bins by the onsite manager. This includes *"Organising waste, recycling and bulky waste collection services as needed for the site, maintaining bin storage areas, placing waste and recycling bins out for collection no earlier than 2pm the day before collection and withdrawing"*

them no later than 7pm on the day of service, regular cleaning of bins and waste storage areas/rooms, and managing litter and illegal dumping onsite. The manager is also responsible for coordinating prompt removal of dumped items onsite and/or at the kerbside".

The Plan of Management also requires that a complaints register be maintained and available for inspection by Council, and provides contact details. Ongoing compliance with the Plan of Management is a recommended condition of consent, and the formalisation of a development consent for the use, including the Plan of Management, is likely to improve management of this issue. Subject to this condition, the submissions are considered to be reasonably satisfied.

- **Noise**

Concerns were raised with regard to noise caused by 24 hour staff on site.

Comment:

The Plan of Management includes measures to restrict noise from the premises, including:

- Operating hours of outdoor common areas e.g. No use of the outdoor areas permitted after 10.00pm.
- Visitor policy including maximum guests per room, visitors not permitted after 10.00pm
- Activities and noise - Loud music or television noise is not permitted after 10.00pm.
- Parties or gatherings are not permitted upon the premises after 10.00pm.

Given these restrictions, the proposal is unlikely to cause any unreasonable noise impacts, and will be more heavily restricted than a normal residential dwelling. As discussed above, the Plan of Management also requires that a complaint register be kept, available for inspection by Council, which may be used to manage any future noise disturbances if they arise in future.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p> <p>Planner's comment: With regard to the note above, the referral response has not provided any conditions required to be carried out at Construction Certificate stage. There are not building works proposed with this application, and no Construction Certificate is required.</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 (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 7: Group homes

Clause 42 Definitions:

(1) *In this Division —*

group home means a permanent group home or a transitional group home.

permanent group home means a dwelling—

(a) *that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and*

(b) *that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged, but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.*

Comment:

The proposal is for a permanent group home for people with a disability.

Clause 43 Development in prescribed zones

(1) *Development for the purpose of a permanent group home or a transitional group home on land in a prescribed zone may be carried out—*

(a) *without consent if the development does not result in more than 10 bedrooms being within one or more group homes on a site and the development is carried out by or on behalf of a public authority, or*

(b) *with consent in any other case.*

(2) *Division 1 of Part 2 of State Environmental Planning Policy (Infrastructure) 2007 applies in respect of development carried out by or on behalf of a public authority under subclause (1) and, in the application of that Division, any reference in that Division to that Policy is taken to be a reference to this clause.*

Comment:

The site is zoned R2 Low Density Residential, which is a prescribed zone. However, the applicant is not a public authority or working on behalf of a public authority. As such, development consent is being sought.

Clause 46 Determination of development applications

(1) A consent authority must not—

(a) refuse consent to development for the purpose of a group home unless the consent authority has made an assessment of the community need for the group home, or

(b) impose a condition on any consent granted for a group home only for the reason that the development is for the purpose of a group home.

(2) This clause applies to development for the purpose of a group home that is permissible with consent under this or any other environmental planning instrument.

Comment:

The proposal is recommended for approval. Council has not made any wider assessment of the community need for group homes.

In response to objections raised as part of the notification of the development application, Sunnyfield (the operator) proposed that a condition of consent be imposed to ensure the group home is only used as accommodation for people with a disability. The proposed condition is to read as follows:

"The group home which is the subject of this consent is to provide permanent household accommodation for people with a disability only".

However, this condition conflicts with the requirement in clause 46(1)(b) above to "not impose a condition on any consent granted for a group home only for the reason that the development is for the purpose of a group home". As such, the proposed condition has not been included in the recommended conditions of consent.

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

No building works are proposed. The application is for the use of the existing building only.

Warringah Development Control Plan

Built Form Controls

No building works are proposed. The application is for the use of the existing building only.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D8 Privacy	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes

Detailed Assessment

C3 Parking Facilities

Appendix 1 states that parking rates for group homes comparisons should be made with developments for a similar purpose. The application notes that the scale of the group home proposed (with 5 residents) is similar in scale to a dwelling house (which requires two car spaces) in terms of parking demand. The application further notes that there is space for four vehicles to park on site, and goes onto state that *"Sunnyfield group home residents typically do not drive, the only traffic generation associated with these sites are Sunnyfield carers/employees; a van/people mover is otherwise used by Sunnyfield staff to transport residents to/from the site. The four (4) car parking spaces are therefore capable of meeting the parking demand generated by this proposed use."*

The site is also located within walking distance of bus stops providing access to Chatswood and Sydney CBD.

The parking space located in the south western corner of the site includes an access ramp to the house for people with a disability.

Given that the main parking demand is likely to arise from the one or two staff on site at any one time, and the existing spaces available, the provision for parking on site is considered to be acceptable.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

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 DA2020/1466 for Use of premises as a Permanent Group Home on land at Lot 10 DP 24952, 50 Starkey Street, FORESTVILLE, 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:

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Plan of Management for proposed group home at 50 Starkey Street, Forestville (available via the Application Search on Council's Website)	Not dated	Not named

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

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

2. Approved Land Use

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

A permanent group home is defined as:

“permanent group home means a dwelling—

(a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and

(b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged, but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.”

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

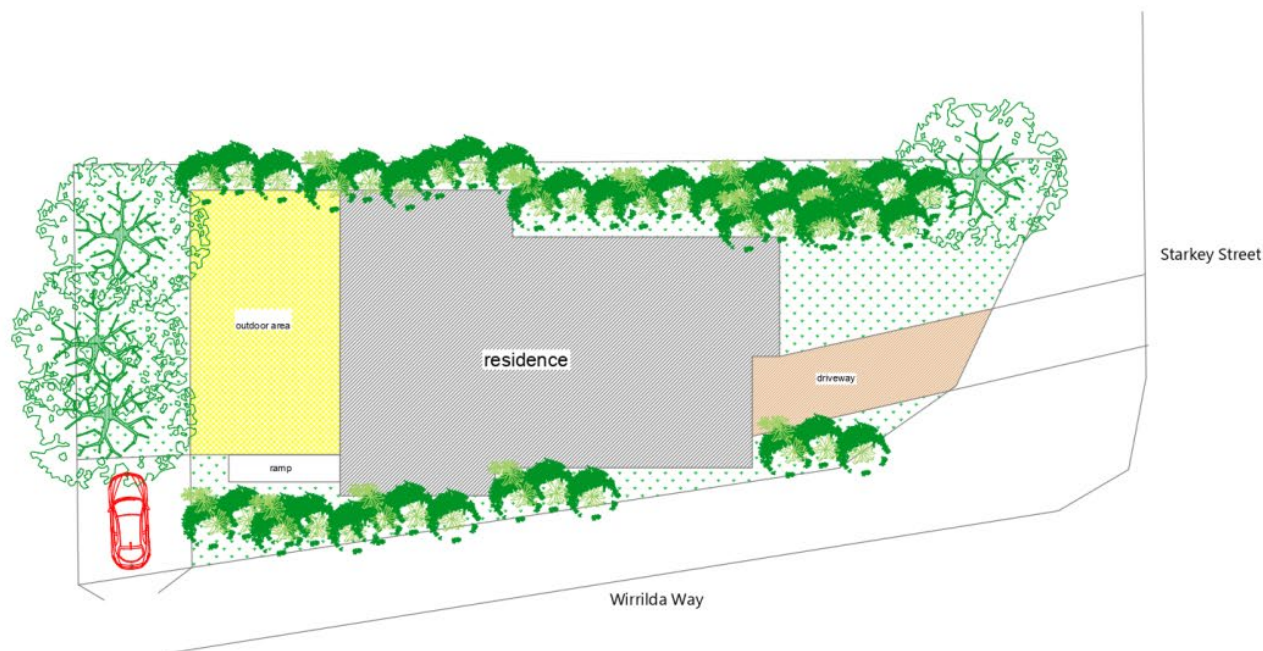
Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

3. Compliance with Standards



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

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



<p>project</p> <p>Proposed change of use to a Group Home</p>	<p>proponent</p> <p>Sunnyfield</p> <p>P 02 89 7788 70 a Allambi Heights NSW 2100</p>	<p>location</p> <p>50 Starkey Street, Forestville NSW 2087</p> <p>Scale 1:200 @ A3</p> <p>Date: <input type="text"/> <small>Over 2003.2020</small></p> <p>Drawn AS</p> <p>Issue : A</p>	<p>DRWG No</p> <p>AP01</p> <p>drawing title</p> <p>SITE PLAN</p>
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project Proposed change of use to a Group Home	 Sunnyfield P 02 89 7788 70 a Allambi Heights NSW 2100	proponent Sunnyfield location 50 Starkey Street, Forestville NSW 2087 Scale: 1:100 @ A3 Date: <input type="text"/> <small>Date: 20/03/2020</small> Drawn: AS Issue: A	TN 	DRWG No AP02 drawing title FLOOR PLAN
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4.0 NON PUBLIC MEETING ITEMS

ITEM 4.1	DA2021/0019 - 19-23 THE CORSO, MANLY - TERMINATION OF THE EXISTING STRATA PLANS AND SUBDIVISION OF ONE LOT INTO TWO
AUTHORISING MANAGER	Anna Williams
TRIM FILE REF	2021/333379
ATTACHMENTS	1 Assessment Report 2 Subdivision Plan 3 Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- 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. DA2021/0019 for PROPOSAL at Lot CP SP 12989, 19-23 The Corso, Manly subject to the conditions set out in the Assessment Report.
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DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0019
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot CP SP 12989, 19 - 23 The Corso MANLY NSW 2095
Proposed Development:	termination of the existing strata plans and subdivision of one lot into two
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 12989
Applicant:	Hilrok Properties Pty Ltd

Application Lodged:	28/01/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	03/02/2021 to 17/02/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 14.9%
Recommendation:	Approval

Estimated Cost of Works:	\$ 0.00
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EXECUTIVE SUMMARY

Council is in receipt of development application DA2021/0019 to terminate the existing Strata Plan and to subdivide the site into two lots under Torrens title. The proposed subdivision aligns with the two separate buildings located on the site, and is more akin to the subdivision pattern of surrounding sites.

The proposed subdivision results in a technical breach of the floor space ratio development standard prescribed by clause 4.4 of Manly Local Environmental Plan 2013 (MLEP 2013) by 14.9%. The breach is not a result of any additional floor space (as no physical works are proposed), but rather a change to the proportion of existing floor space in relation to the respective lot sizes now proposed. The applicant's written request to vary the floor space ratio development standard satisfactorily address the matters required, and overall, the consent authority can be satisfied of the relevant matters of clause 4.6 of MLEP 2013.

In light of the numerical variation, being greater than 10%, the application is referred to the Northern Beaches Local Planning Panel for determination. Subject to conditions of consent, the consent authority can be satisfied that the proposal is consistent with the aims and objectives of the relevant plans and policies, and the application is recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent to terminate the existing strata plan that relates to 19 - 23 The Corso to facilitate the torrens title subdivision of the land into two lots. Specifically, the resultant lots will comprise:

- Lot 1 (23 The Corso), with a total area of 141.5m², to generally align with the existing two storey commercial premises.
- Lot 2 (19-21 The Corso), with a total area of 382.1m², to generally align with the existing four storey shop top housing development.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone B2 Local Centre
Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

SITE DESCRIPTION

Property Description:	Lot CP SP 12989 , 19 - 23 The Corso MANLY NSW 2095
Detailed Site Description:	The site is trapezoidal in shape, with a 16.835m wide frontage to The Corso, a 16.76m wide frontage to

Market Place, a depth of 31.2m and a total area of 523.9m². The site is situated on the northern side of The Corso, opposite its intersection with Darley Road. The site currently contains an existing four storey shop top housing development (19-21 The Corso) and a two storey retail/commercial building (23 The Corso).

The existing building at 19-21 The Corso is identified as an item of local heritage significance, and the site is located within a heritage conservation area. A small portion of the northern corner of the site is identified as being prone to flooding.

Map:



SITE HISTORY

On 28 January 2021, the subject development application was lodged with Council.

On 7 April 2021, development application DA2020/1711 was approved by the NBLPP for alterations and additions to the existing heritage listed building on the site. In approving the application, the NBLPP supported a variation to the FSR of the site as a whole, in the order of 4.3%.

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	Draft State Environmental Planning Policy (Remediation of Land)

Section 4.15 Matters for Consideration'	Comments
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 commercial and residential purposes for an extended period of time. The proposed development does not disturb the substrate of the site and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). 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 on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/02/2021 to 17/02/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, no conditions.</p> <p><i>The application seeks to separate a four level mixed use building at 19-21 The Corso and the two storey Hotel section at 23 The Corso Manly.</i></p> <p><i>Works to construct a separating wall have been approved in DA2019/0574 therefore it is stated that no work is proposed as part of this application. No objection subject to conditions.</i></p> <p><u>Planner comment:</u> It is noted that a condition relating to strata subdivision was imposed. As the application does not seek to strata subdivide the resultant development, this condition has been deleted.</p>
NECC (Development Engineering)	<p>Supported, with conditions.</p> <p><i>Development Engineering has no objection to the application subject to the following conditions of consent.</i></p>
Strategic and Place Planning (Heritage Officer)	<p>Supported, no conditions.</p> <p><i>The proposal has been referred to Heritage as the site is part of group heritage item, being Item I106 - Group of commercial buildings - All numbers, The Corso. The property is also located in C2 - Town Centre Conservation Area and within the vicinity of a number of heritage items as listed in Schedule 5 of Manly LEP 2013:</i></p> <ul style="list-style-type: none"> • Item I107 - Commercial building - 36 The Corso • Item I113 - St Matthews Church and church hall - 44 The Corso (corner The Corso and Darley Road) • Item I104 - Street trees - The Corso (from Whistler Street to Sydney Road) <p><i>The proposal seeks consent for subdividing the existing site (Lot 1) which consists of two buildings (being 19-21 The Corso and 23 The Corso) that are not physically connected following the consent of DA2019/0574. Given that the proposed subdivision does not change the established subdivision pattern of the surrounding area, it is</i></p>

Internal Referral Body	Comments
	<p><i>considered that the proposal will not adversely impact the significance or the heritage items or the conservation area.</i></p> <p><i>Therefore, no objection are raised to this application on heritage grounds and no conditions required.</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 & commercial purposes for a significant period of time with no prior land uses. Furthermore, the application does not involve any works that will disturb the substrate. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7(1)(b) and (c) of SEPP 55 and the land is considered to be suitable for the continuation of the existing land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	N/A N/A	Lot 1 - 141.5m ² Lot 2 - 382.1m ²	- -	N/A N/A
Height of Buildings:	10m	no works	-	Yes
Floor Space Ratio	Lot 1 - 3:1 Lot 2 - 2.5:1	Lot 1 - 1.89:1 Lot 2 - 2.87:1	- 14.9%	Yes No
Gross floor area in Zone B2	Maximum 1000m ² per	Lot 1 -	-	Yes

	premises	268.84m ² Lot 2 - 170m ²	-	Yes
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Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	N/A
6.12 Essential services	Yes
6.16 Gross floor area in Zone B2	Yes

Detailed Assessment

Zone B2 Local Centre

The proposed development is consistent with the objectives of the B2 Local Centre zone, as follows:

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

Comment: The proposed subdivision does not alter the existing use of the site, and the site will continue to provide a range of retail, business and residential land uses to serve the needs of people who live in, work in and visit The Corso.

- *To encourage employment opportunities in accessible locations.*

Comment: The subdivided premises will continue to provide employment generating floor space, with no physical works or change in use proposed.

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

Comment: The site is located in a highly accessible area, in close proximity to public transport, including the main bus stops and ferry services at Manly Wharf. The site is also centrally located on The Corso, surrounded by a range of retail premises, restaurants and services, such that residents/tenants of the development have easy and direct access the services they require.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment: The application proposes no change the physical form or use of the existing buildings, with no impacts upon the amenity of people who live within the Manly Town Centre.

4.4 Floor space ratio

and 4.6 Exceptions to development standards

With a floor space ratio (FSR) of 2.87:1, Lot 2 is non-compliant with the 2.5:1 maximum FSR prescribed by clause 4.4 of MLEP 2013. The maximum FSR is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of MLEP 2013 can be applied.

Pursuant to clause 4.6(2) of MLEP 2013, consent may be granted for development even though the development contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause not not apply to those standards expressly excluded, the maximum FSR is not expressly excluded and thus the clause can be applied in this instance.

Extent of FSR breach

In April 2021, the NBLPP approved DA2020/1711 for alterations and additions, which included a minor variation to the FSR calculation. The approval of this development resulted in a FSR of 2.6:1 across the site as a whole, slighting exceeding the 2.5:1 standard prescribed.

The application does not propose any physical works. However, as a result of the proposed subdivision, the proportion of floor space on each lot is altered, resulting in one lot that is below the permitted FSR and one lot that is above the permitted FSR, as follows:

	Standard	Proposed	Variation
Lot 1	3:1	1.89:1	-
Lot 2	2.5:1	2.87:1	14.9%

Has the Applicant's submission addressed the relevant criteria?

Pursuant to clause 4.6(4) of MLEP 2013, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of MLEP 2013. The application was supported by a detailed submission (attached) addressing the provisions of clauses 4.4 and 4.6 of MLEP 2013. The submission is considered with regard to the criteria of clause 4.6(3) of MLEP 2013, as follows:

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

Comment: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council [2007] NSWLEC 827*, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission relies upon this method.

The applicant's submission satisfactorily demonstrates that compliance with the FSR development standard is both unreasonable and unnecessary in this instance, as the objectives of the control are otherwise achieved.

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

Comment: In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, "environmental planning grounds" were found to be grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act. The environmental planning grounds put forward by the applicant include:

- There is no change to the existing form, bulk and scale of the existing building,
- The bulk and scale of the existing buildings are consistent with the existing and desired streetscape character,
- The works do not attribute to any unreasonable impacts upon the amenity of the locality,
- The development is consistent with the underlying objectives of the standard and the B2 zone
- The development will facilitate the existing commercial building on the proposed Lot 1 to be managed independently from the heritage listed shop top housing development on proposed Lot 2 (with potential for LEP heritage mapping amendments in the future),
- The resultant breach to the FSR on the proposed Lot 2 relates to a building of local heritage significance that was constructed prior to the introduction of the current FSR controls.

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically that the requested variation will facilitate the orderly and economic development of the site.

The proposed subdivision of the site is consistent with the prevailing subdivision pattern of the area, essentially reverting to something more akin to the original subdivision of the land.

Therefore, the consent authority can be satisfied that the applicant's request has satisfactorily addressed the matters prescribed by clause 4.6(3) of MLEP 2013.

Is the proposal in the public's interest?

Under the provisions of clause 4.6(4)(a) of MLEP 2013, consent must not be granted to a proposal that contravenes a development standard unless the proposed development (as a whole) will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

The proposed development is consistent with the relevant objectives of the FSR development standard, as follows:

- a. *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment: The application does not propose any physical works. As such, the proposal will not result in an intensification of the bulk and scale of the development and the two buildings will remain consistent with the existing and desired streetscape.

- b. *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment: The proposed development does not alter the bulk or density of the existing development, and as the built form of the development remains unchanged, the proposal will not obscure important landscape and townscape features.

- c. *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment: The proposal will not alter the form of the development or the visual relationship between the development and the character of the area.

- d. *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment: The proposal does not give rise to any adverse environmental impacts.

- e. *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment: The proposed development does not seek consent for any changes to the retail floor space of either existing building, or any changes to existing approved land uses. In the long term however, the proposed subdivision will facilitate the further development of 23 The Corso, which is comparably undeveloped compared to surrounding sites.

This is not to suggest that the recent approval for alterations and additions to the existing shop top housing development on the proposed Lot 2 benefitted from the undeveloped state of the existing building on the proposed Lot 1, as the development of the shop top housing development on the proposed Lot 2 predated the introduction of the FSR controls now applicable.

As discussed with regard to the B2 Local Centre Zone of MLEP 2013, the proposal is consistent with the objectives of the B2 zone.

As such, the proposal is considered to be in the public's interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4)(b) of MLEP 2013, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Planning Circular PS 18-003 (dated 21 February 2018) issued by the NSW Department of Planning and Environment, the Secretary's concurrence may be assumed in this instance as the application is to be determined by the Northern Beaches Local Planning Panel.

Conclusion

Overall, the consent authority can be satisfied of the matters prescribed by clause 4.6 of MLEP 2013, and the proposal can be supported, despite contravention of the FSR development standard.

6.9 Foreshore scenic protection area

The consent authority can be satisfied that the matters listed by clause 6.8 of MLEP 2013 have been considered. Noting that the proposed development does not involve any physical works or any changes to approved land uses, the proposed development will not impact upon:

- 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,

- the scenic quality of the coastline,
- the suitability of the site given its type, location and design and its relationship with and impact on the foreshore, or
- conflict between land-based and water-based coastal activities.

Manly Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	N/A	N/A
3.1.3 Townscape (Local and Neighbourhood Centres)	N/A	N/A
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	N/A	N/A
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	N/A	N/A
3.4.1 Sunlight Access and Overshadowing	N/A	N/A
3.4.2 Privacy and Security	N/A	N/A
3.4.3 Maintenance of Views	N/A	N/A
3.4.4 Other Nuisance (Odour, Fumes etc.)	N/A	N/A
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	N/A	N/A
3.7 Stormwater Management	N/A	N/A
3.8 Waste Management	N/A	N/A
3.9 Mechanical Plant Equipment	N/A	N/A
3.10 Safety and Security	N/A	N/A
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	N/A	N/A
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	N/A	N/A
4.1.5 Open Space and Landscaping	N/A	N/A
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	N/A	N/A
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	No	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	N/A	N/A
4.2.3 Setbacks Controls in LEP Zones B1 and B2	N/A	N/A
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	N/A	N/A
4.2.5 Manly Town Centre and Surrounds	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.5.4 Car Parking and Access	N/A	N/A
4.4.8 Subdivision	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	N/A	N/A
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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.

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 DA2021/0019 for termination of the existing strata plans and subdivision of one lot into two on land at Lot CP SP 12989, 19 - 23 The Corso, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Subdivision Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Plan of Subdivision of Lot 1 in DP590711, Sheet 1 of 1, reference 6934D_DraftDP1a	[undated]	C.M.S. Surveyors Pty Ltd

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

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

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

2. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or

demolition work is being carried out, but must be removed when the work has been completed.

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 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.

4. No Physical Works

No physical works are authorised by this consent.

Reason: To protect the heritage significance of the existing building on proposed Lot 2.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

5. Provision of Services for Subdivision

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

6. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

7. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

8. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.

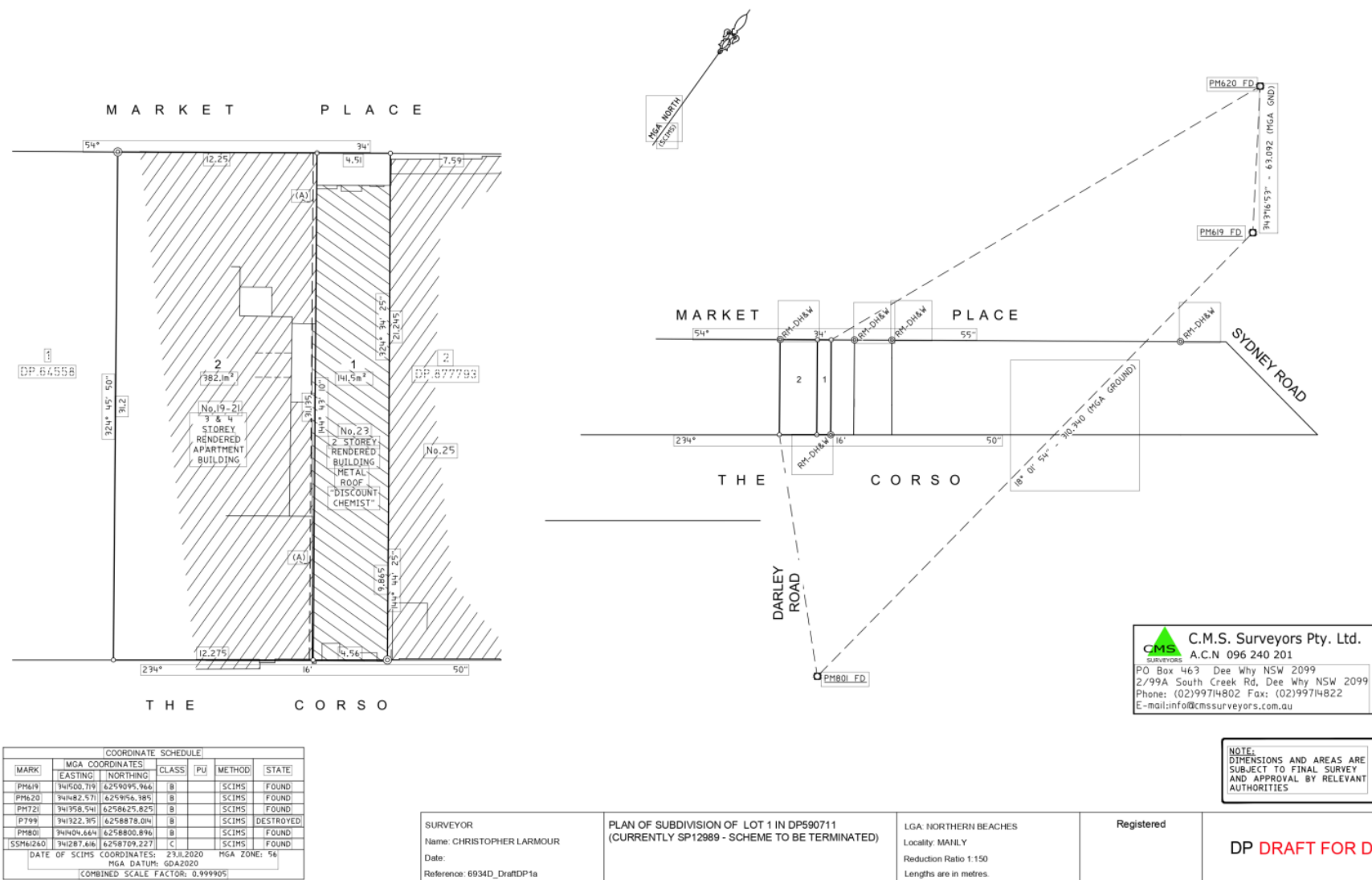
9. **BCA Certification**

Written certification is to be provided by a suitably qualified professional, to confirm that the two buildings are appropriately separated in accordance with the provisions of the BCA.

If physical works are needed to achieve appropriate separation, separate consent will be required from Council. No physical works are authorised by this consent.

Evidence of satisfaction of this condition is to be provided to the Principal Certifying Authority prior to the issuance of the subdivision certificate.

Reason: To ensure compliance with the BCA and to protect the item of local heritage significance.



DESIGN COLLABORATIVE
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MCP (MIT)
MPIA (Life Fellow)
MIS Aust
MRTPI
FAPI29 April 2021
Ref: 181121.19WR**Written Request Providing Grounds for Variation to FSR Development Standard Pursuant to Clause 4.6 of Manly Local Environmental Plan 2013****D/2021/0017 – Subdivision of Lot 1 of DP590711 at 19-23 The Corso**Introduction

This written request has been prepared in respect of Clause 4.6 of Manly Local Environmental Plan 2013 (*the LEP*) to accompany a Development Application to subdivide Lot 1 in DP590711 at 19-23 The Corso, separating the four storey mixed use building at 19-21 The Corso (19-21) and the approved two storey pub at 23 The Corso (23). No work is proposed as part of the Application.

The Development Application seeks a variation to the development standard provided at Clause 4.4 of the LEP, being Floor Space Ratio (FSR). Under Clause 4.4 of the LEP, the FSR development standard for 19-21 and 23 is 2.5:1.

Clause 4.4(2A) allows an additional FSR of 0.5:1 for sites where at least 50% of the GFA will be used for the purpose of commercial premises. Therefore a maximum FSR of 3:1 is potentially available for 23.

Calculations for the existing mixed use building at 19-21 The Corso and approved pub (not constructed) at 23 The Corso, already exceeds the 2.5:1 FSR standard under the LEP with a FSR of 2.59:1 (1356.84 sqm GFA), an exceedance of 0.09:1 (46.84 sqm GFA). The exceedance is lower in the existing calculations as 19-21 The Corso takes advantage of the less developed 23 The Corso.

The proposed subdivision application will result in an increase of FSR for 19-21 The Corso. With an existing Site Area of 382.1sqm and a GFA of 1088sqm, the FSR will come to 2.84:1, an exceedance of 0.34:1 for 19-21 with no works proposed.

We note that a separate Development Application (DA2020/1711) that sought alterations and additions to the existing building at 19-21 has been approved on 7 April 2021.

The proposed subdivision application will result in a further increase of FSR for 19-21 The Corso. With a Site Area of 382.1sqm and a GFA of 1097sqm, the FSR will come to 2.87:1, an exceedance of 0.37:1.

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For 23 The Corso, the subdivision will result in a site area of 141.5sqm and an approved GFA of 268.84sqm. The FSR of 23 The Corso is therefore 1.89:1, under the permitted maximum FSR of 3:1.

19-21 The Corso therefore results in an overall exceedance of the standard by 0.37:1 (14.9%).

The subdivision application is consistent with the Clause 1.3(c) of the Environmental Planning and Assessment Act 1979 (*the EP&A Act*) to promote the orderly and economic use and development of land.

By approving the subdivision application for 19-21 and 23, the physically separate buildings with different land uses can be managed independently, and allow for tailored management for each heritage listed building.

With the FSR breach carried from historic approvals of the locally heritage listed shop top housing development predating the current FSR controls, approving the subdivision application will remove this burden for the buildings should there be any further planning applications.

The subdivision application is of no interest to the public and is capable of improving management for both buildings. With benefits far outweighing the costs, there is no reason to refuse the proposed subdivision application.

Clause 4.6 of the LEP provides:

- (1) The objectives of this clause are as follows:*
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

This document constitutes the written request referred to in Clause 4.6(3) in relation to the Development Application's proposed variation to the FSR development standard.

It is noted that the NSW Department of Planning and Environment provides guidance on how to prepare clause 4.6 variations in the form of Varying development standards: A Guide (August 2011). This written request to vary the FSR development standard is based on the DP&E's Guide.

This written request has also been prepared having regard to the recent judgment of the Chief Justice of the Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*). At paragraphs 17 – 21 of *Initial Action*, Preston CJ confirmed the findings in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), regarding the available avenues to establish that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case (in accordance with the test provided by cl 4.6(3)(a) of the LEP) including establishing that the objectives of the development standard are achieved notwithstanding non-compliance with the standard (*Initial Action* at [17]).

Further, Preston CJ found in *Initial Action*, at paragraphs 87 and 88, in the context of Clauses 4.6(3)(a) and (b) that:

"...Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development..."

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

Written Request

As stated above, when measured in accordance with the definition in the LEP, the existing building on the site already exceeds the 2.5:1 FSR standard under the LEP with a FSR of 2.59:1 (1356.84sqm GFA), an exceedance of 0.09:1 (46.84 sqm GFA) across two buildings at 19-23 The Corso.

No work is proposed as part of the Application. The proposed subdivision application will result in an increase of FSR for 19-21 The Corso. With an existing Site Area of 382.1sqm and a GFA of 1088sqm, the FSR will come to 2.84:1, an exceedance of 0.34:1 for 19-21.

The proposed subdivision application will result in a further increase of FSR for 19-21 The Corso. With a Site Area of 382.1sqm and a GFA of 1097sqm, the FSR will come to 2.87:1, an exceedance of 0.37:1.

19-21 The Corso therefore results in an overall exceedance of the standard by 0.37:1 (14.9%), depending on the order of determination.

23 The Corso will result in a site area of 141.5sqm and an approved GFA of 268.84sqm. The FSR of 23 The Corso is therefore 1.89:1, under the permitted maximum FSR of 3:1.

The increase in the FSR of the proposed development results from the subdivision of 19-21 The Corso and 23 The Corso.

The subdivision application is consistent with the Clause 1.3(c) of the Environmental Planning and Assessment Act 1979 (*the EP&A Act*) to promote the orderly and economic use and development of land. By approving the subdivision application for 19-21 and 23, the physically separate buildings with different land uses can be managed independently, and therefore allow for more appropriate management of the heritage listed Ivanhoe Hotel adjacent to 19-23.

As the FSR breach arises from historic approvals of the 19-23 of the locally heritage listed shop top housing development and predates the current FSR controls, approving the subdivision application will remove this burden for 23 in further planning applications.

Based on the foregoing, the subdivision application is at no cost to the public and can improve management of the separate buildings. With benefits far outweighs the costs, there is no reason to refuse the proposed subdivision application.

The questions set out in the DP&E's Guide are addressed below.

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

Manly Local Environmental Plan 2013.



2. What is the zoning of the land?

The zoning of the land is B2 Local Centre.

3. What are the objectives of the zone?

The objectives of the B2 zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

4. What is the development standard being varied?

The development standard being varied is the FSR development standard.

5. Under what Clause is the development standard listed in the environmental planning instrument?

The development standard is listed under clause 4.4 of the LEP.

6. What are the objectives of the development standard?

The objectives of clause 4.4 are:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

19-23 The Corso | 181121.19WR

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7. What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the FSR development standard is 2.5:1 at 19-21 The Corso, with an additional 0.5:1 (resulting in 3:1) for 23 The Corso as at least 50% of the GFA is used for commercial purposes.

8. What is the proposed numeric value of the development standard in your development application?

The maximum numeric value proposed is 2.87:1, equating to an additional FSR of 0.37:1.

9. What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation is 14.9%.

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

In the circumstances of the case, it is considered that strict compliance the FSR development standard applicable to the site is unreasonable and unnecessary for the following reasons:

A. The objectives of the development standard are achieved notwithstanding non-compliance with the standard (cl 4.6(3)(a), cl 4.6(4)(ii) and Initial Action at [17])

Objective 4.4(1)(a) - to ensure the bulk and scale of development is consistent with the existing and desired streetscape character

Objective 4.4(1)(b) - to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features

Objective 4.4(1)(c) - to maintain an appropriate visual relationship between new development and the existing character and landscape of the area

The bulk and scale of the proposed development, including the proposed FSR variation, is considered to be acceptable in its context and would not give rise to unacceptable impacts on the existing streetscape, townscape or character of the area as it reflects the existing situation in terms of the existing building bulk, scale and density on the site.

As noted above, the existing buildings already exceed the FSR standard with a FSR of 2.59:1 as 19-21 takes advantage of the comparatively underdeveloped 23. With no works proposed, the subdivision application will increase to 2.87:1 (minor increase of 9sqm).

The change in the GFA/FSR compared with the existing building results from the subdivision of the two building at 19-21 and 23.



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The addition 9sqm is due to the internal alterations within the building, being the removal of stairs at the Ground and First Floors. There is no change in the external built form or its bulk and scale compared with the existing situation in both situations.

The Application, including the FSR variation, does not involve any change to the existing bulk and scale of the building as viewed from the street as the existing built form is maintained and the existing relationship of building forms in the streetscape. The proposed development will therefore be compatible with the adjoining development, the streetscapes of The Corso and Market Place and will maintain the amenity of the public domain.

With the FSR breach carried from historic approvals of the locally heritage listed shop top housing development predating the current FSR controls, approving the subdivision application will remove this burden for the buildings should there be any further planning applications.

There is no change to the visibility and visual prominence of the parts of the building in excess of the FSR standard when viewed from the public domain and there is no change to the existing streetscape/townscape character of the building as viewed from The Corso and Market Place.

Based on the foregoing, the subdivision application is at no cost to the public and is capable of improving management of both buildings. With benefits far outweighing the costs, there is no reason to refuse the proposed subdivision application.

Desired Future Streetscape Character

The desired future streetscape character of the subject building is set out in Manly DCP 2013 which contains townscape objectives and provisions for local and neighbourhood centres in Section 3.1, townscape provisions for Manly Town Centre in Section 4.2.5.1 and character provisions for Manly Town Centre Heritage Conservation Area and The Corso in Section 5.1. The proposed development, including the proposed FSR variation, is considered to be consistent with these provisions, as follows.

Manly DCP Townscape Objectives and Provisions

The townscape objectives of the DCP are as follows:

- Objective 4) *To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*
- Objective 5) *To assist in maintaining the character of the locality.*
- Objective 6) *To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*



Objective 7) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.

The proposal is consistent with the above objectives, in that there will be no works to the buildings, therefore maintaining the existing parking, character of locality, pedestrian movement, townscape design and townscape qualities.

The proposal, including the FSR variation, is consistent with the applicable townscape provisions of the DCP, as follows.

Local role of the site

The Application maintains the local role of the site as no work is proposed. The proposal maintains the existing built form relationship with adjoining development and public spaces.

Townscape Principles Map

The proposed development is consistent with the Townscape Principles map as it relates to the subject site by maintaining the existing important vistas along The Corso and from Darley Road towards the site.

Design Details

The proposal is consistent with the relevant design details controls in that there is no work proposed as part of the Application.

Manly DCP Character Provisions for Manly Town Centre Heritage Conservation Area and The Corso

General Character

No work is proposed as part of the Application therefore has no impact on the general character of the Town Centre Conservation Area.

The Corso

The proposed development is consistent with the guidelines for The Corso in that:

- the existing building at 19-21 The Corso, which is part of the group heritage item on The Corso, is to be conserved, not redeveloped;
- no change is proposed to the existing building;
- the parapet to The Corso will continue to be read against the sky;
- there are no critical views to be kept open to or through the site;



- a new building is not proposed;
- windows and balconies open to the street;
- there is no existing arcade through the site;
- the shopfront to The Corso occupies most of the width of the frontage to maximise activity.
- the shop front is existing on the site;

Accordingly, despite the FSR variation of the proposed development, the bulk and scale of development is consistent with the existing and desired streetscape character, will not obscure important landscape and townscape features and maintains an appropriate visual relationship between new development and the existing character and landscape of the area.

Objective 4.4(1)(d) - to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain

The proposed FSR variation will not result in any additional adverse impacts on the amenity of surrounding properties or the public domain in terms of privacy, overshadowing/solar access or view loss/disruption as there is no proposed work.

Objective 4.4(1)(e) - to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres

The proposed FSR variation will have no impact on the viability of the business zone.

B. Consistency with the objectives of the B2 Local Centre zone (cl 4.6(4)(a)(ii))

As well as achieving the objectives of clause 4.3 as demonstrated above, the proposal is also in the public interest as it is consistent with the relevant objectives of the B2 Local Centre zone in that:

- it contributes to the range of retail uses in the zone that serve the needs of people who live in, work in and visit the local area, including existing and future residents of the subject building;
- it provides for employment opportunities in a highly accessible location through the non-residential floor space which exceeds Council's minimum floor space for such uses;
- it maximises public transport patronage and encourages walking and cycling with residential development in a highly accessible, walkable location without private car parking; and
- it minimises conflict between land uses in the zone and adjoining zones and ensures amenity for the people who live in the local centre by maintaining the existing land use mix on the site.



It is therefore considered that the proposed FSR variation does not impact on the ability of the Development Application to satisfy the relevant B2 Local Centre zone objectives. The Development Application must therefore be considered to be in the public interest.

11. How would strict compliance hinder the attainment of the objects specified in Section 1.3(a) and (c) of the Act?

The proposal satisfies the zone and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives. The proposal will have no impact on the existing surrounding development, the heritage significance of the building and neighbouring development and continue to make a positive contribution to the character of the streetscape and the locality.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development and therefore a better planning outcome overall.

In this regard, the proposal also meets the object of the Act with respect to good design and amenity of the built environment.

The subdivision application is consistent with the Clause 1.3(c) of the Environmental Planning and Assessment Act 1979 (*the EP&A Act*) to promote the orderly and economic use and development of land.

By approving the subdivision application for 19-21 and 23, the physically separate buildings with different land uses can be managed independently, and allow for tailored management for each heritage listed building.

With the FSR breach carried from historic approvals of the locally heritage listed shop top housing development predating the current FSR controls, approving the subdivision application will remove this burden for the buildings should there be any further planning applications.

There is no public interest in requiring compliance with the relevant FSR standard on the basis that doing so would hinder the attainment of the objects of section 1.3(a) and (c) of the Act, which are to promote the social and economic welfare of the community and to provide a better environment by the proper management, development and conservation of the State's natural and other resources, in addition to promoting and coordinating orderly and economic use and development of land.

The subdivision application is of no interest to the public and is capable of improving management for both buildings. With benefits far outweighing the costs, there is no reason to refuse the proposed subdivision application.

12. Is the development standard a performance based control? Give Details.

The FSR development standard is a performance based control as the control contains objectives which the standard is targeted to achieve.



13. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?

This matter is addressed in detail above in the answer to Question 10. Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development.

The development is consistent with the provisions of orderly and economic development and good design and amenity of the built environment.

14. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details. (cl 4.6(3)(b) and Initial Action at [24])

There are sufficient environmental planning grounds to support the variation to the FSR development standard applicable to the site, being:

- The existing development on the site involves a breach of the FSR standard. The additional breach of 0.34:1 or 0.37:1 (if determined post DA/2020/1711) for 19-21 is due to the proposed subdivision intensifying the FSR. The FSR for 23 will be reduced to 1.89:1.
- There is no change in the form, bulk and scale of the existing building associated with the breach of the FSR standard.
- The bulk and scale of the proposed development, including the proposed FSR variation, are consistent with the existing and desired streetscape character, will have no impact on the important landscape and townscape features and continue to maintain an appropriate visual relationship between new development, the existing character and landscape of the area.
- The proposed development, including the FSR variation, is consistent with the townscape objectives and design principles for the Manly Town Centre and The Corso.
- The proposed development, including the FSR variation, is consistent with the heritage significance of the site, as part of The Corso heritage item, and the wider Manly Town Centre Conservation Area.
- The FSR variation will not give rise to any adverse amenity impacts on surrounding development in terms of overshadowing, loss of solar access or loss of views as no change in building height, bulk or form is proposed.
- The proposed development, including the FSR variation, achieves compliance with the relevant underlying objectives of the standard and the objectives of the zone.

The above factors confirm that there are sufficient environmental planning grounds to justify the variation and that the Clause 4.6 variation request is well-founded.

Summary



Accordingly, it is considered that there are more than sufficient environmental planning grounds to justify the variation on the basis that compliance with the FSR standard would be unreasonable and unnecessary in the circumstances of this particular case. As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the FSR standard and the objectives of the B2 zone.

In the context of the other requirements of Clause 4.6, it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

The proposal also meets the objects of the EP&A Act with respect to good design and amenity of the built environment and will continue to contribute to a good environment by maintaining a built form which respects the scale and definition of the existing streetscape and townscape qualities.

This request is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case.

Despite the proposal's non-compliance with the FSR development standard, the proposed development is considered to meet the relevant objectives of the standard and the objectives of the B2 zone.



ITEM 4.2

**MOD2021/0014 - 79A LAUDERDALE AVENUE, FAIRLIGHT -
MODIFICATION OF DEVELOPMENT CONSENT DA2019/0342
GRANTED FOR ALTERATIONS AND ADDITIONS TO
EXISTING RESIDENTIAL FLAT BUILDING TO ALLOW FOR
THE CREATION OF AN ATTACHED DUAL OCCUPANCY AND
STRATA SUBDIVISION**

AUTHORISING MANAGER Anna Williams
TRIM FILE REF 2021/333570
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 modification of a determination or decision made by a local planning panel.

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. Mod2021/0014 for Modification of Development Consent DA2019/0342 granted for alterations and additions to the existing residential flat building to allow for the creation of an attached dual occupancy and strata subdivision at Lot 11 DP 867302, 79A Lauderdale Avenue, Fairlight subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0014
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 11 DP 867302, 79 A Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA2019/0342 granted for alterations and additions to the existing residential flat building to allow for the creation of an attached dual occupancy and strata subdivision
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Stepping Stone Custodian Pty Ltd
Applicant:	Stepping Stone Custodian Pty Ltd
Application Lodged:	02/02/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	09/02/2021 to 23/02/2021
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The application proposes to modify DA2019/0342, which was approved through a Review of Determination, REV2020/0006, by the Local Planning Panel on 20 May 2020.

The subject modification application has been made under Section 4.55(2) of the EPA Act. As such, the application is referred back to the NBLPP for determination.

The application includes minor changes to the building/development that require the deletion of conditions of consent that have now been satisfied by the modified proposal.

There is no deletion or amendment of any conditions of consent imposed by the LPP, and no further variations to development standards to those approved under REV2020/0006.

Three submissions were received by way of objection in response to the notification/advertising of the application, generally relating to the omission of levels/details from the plans demonstrating consistency with the previously approved conditions of consent.

Minor amendments to the modification were made by the applicant at the request of Council to address concerns raised in the submissions and the Development Engineering referral. These amendments are discussed in further detail under the Detailed Description of Development.

No further assessment issues are raised and the modification is recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification seeks consent for changes as follows:

- Changes to approved car parking configurations at ground and first floor levels, including a new double carport at the front boundary
- Changes to the existing eastern driveway crossing
- Reconfigured paving and gardens within lower ground floor rear courtyard
- Reconfigured planters and gardens at ground and first floor levels to suit new car parking
- Changes to approved juliet balconies at ground and first floor levels
- Changes to second floor balcony to satisfy conditions of consent
- Internal reconfigurations to Units 1 & 2
- Changes to doors and windows
- Changes to materials and finishes

Amended plans have been provided that include the below changes:

- Ground floor garage and first floor carport levels lowered by 100mm to retain existing footpath levels
- Reference to second floor planter replaced with pebble ballast
- Previously approved RL of the southern end of the second floor roof added to plans (RL34.78)

Deletion/Amendment of Approved Conditions

The approved conditions of consent 13, 25 & 61 are either satisfied or made irrelevant by the proposed modification, and are recommended to be deleted with the agreement of the Applicant. Condition 60 also requires amendment based on the modified car parking.

Condition 13. Amendment to the Approved Plans

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

- *The second floor plan (DA 17) is to be amended by reducing the length of the deck from 5.424m to 4.0m. The area where the deck is reduced is to be non-trafficable.*
- *The first floor plan (DA 16) are to be amended to:*

a) increase the height of the first section of the planter boxes on each side of the car space (b)
b) add a boundary fence commencing at the western corner of the planter box on the western
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.

Comment: The modified plans reduce the length of the second floor deck to 4m with a pebble ballast over the non-trafficable area, satisfying the first dot point above. The modification includes the reconfiguration of the planters adjacent to the first floor carport, and retention of the existing terraced gardens and entry steps to the west of the driveway/carport. As such, condition 13 is recommended to be deleted.

Condition 25. Driveway Plans

Additional plans are to be prepared and submitted for approval prior to construction of the driveway showing how the sandstone steps adjacent to the driveway will be reconstructed and indicating the proposed width of the steps and the remaining width of driveway adjacent to those steps. The new steps and any related driveway adjustments are to be completed at the Applicant's cost. Any adjustment to the steps or the common driveway serving 79A and 79B Lauderdale Avenue required as a result of this development be completed at full cost to the applicant.

Reason: To ensure the stairs are adequately maintained.

Comment: The western driveway/ground floor garage is proposed to be reconfigured, and the adjacent sandstone steps are to be retained as existing. As such, condition 25 is recommended to be deleted.

Condition 60. Visitor Parking

The space behind the car space allocated to Unit 02 on the Ground Floor is to be kept available for visitor parking and is to be signposted as such.

Comment: The approved visitor parking is proposed to be deleted by the applicant. However, as this proposed change results in a shortfall of one visitor space and a surplus of one space allocated to the units, one of the spaces in the first floor carport is conditioned to be visitor parking. As such, condition 60 is recommended to be amended to reflect this change.

Condition 61. Residential Parking

The tandem spaces on the Ground Floor are to be allocated to Unit 01.

Comment: The modified car parking configuration does not include any tandem spaces. As such, condition 61 is recommended to be deleted.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites
 Manly Development Control Plan - Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

SITE DESCRIPTION

Property Description:	Lot 11 DP 867302 , 79 A Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site is identified as 79A Lauderdale Avenue, Fairlight (Lot 11, DP 867302), and consists a single allotment located on the southern side of Lauderdale Avenue.</p> <p>Aside from an angled front boundary, the site is otherwise regularly-shaped, has a 13.055 metre frontage along Lauderdale Avenue and a maximum depth of 22.25 metres. The site has a surveyed area of 264.8m² (survey), and contains a front-to-rear slope with a maximum fall of approximately 6.2 metres.</p> <p>The site is located within the R1 General Residential zone under MLEP 2013; sites adjoining the front and eastern side boundaries are also within the R1 zone, while allotments adjoining the rear and western boundaries are located within the E4 Environmental Living zone.</p> <p>The site is identified as being affected by class 5 acid sulphate soils, a Potential Geotechnical Landslip Hazard Areas (Area G2, denoting flanking slopes of 5-25 degrees), and is located within the Foreshore Scenic Protection Area. The subject site does not contain a heritage item and is not within a Heritage Conservation Area; it is approximately 35 metres from a heritage item (identified by Schedule 5 of MLEP 2013 as Item I49; Esplanade Park and Fairlight Pool).</p>

Development on the site consists of a three-storey residential flat building containing three units. Car parking facilities and some landscaped areas are located towards the front of the site.

Detailed Description of Adjoining/Surrounding Development

Development on adjoining and surrounding residential-zoned sites contains a variety of residential development, which includes dwelling houses and residential flat buildings of varying sizes. Areas around waterways to the south are mostly undeveloped.

Map:



SITE HISTORY

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

- 8 September 2017: Development Application No. DA0326/2016 refused. The application proposed alterations and additions to an existing Residential Flat Building. An appeal against this refusal was submitted on 22 December 2017; an agreement between the Applicant and Northern Beaches Council under Section 34 of the Land and Environment Court Act 1979 on 7 December 2018. An objector to DA0326/2016 lodged a third party appeal in the Supreme Court in relation to the approved upper deck structure and potential associated impacts. The parties agreed upon conditions of consent that would satisfy the Appellant; the parties agreed upon withdrawal of the appeal subject to condition of a development application to formalise the agreed conditions of consent.
- 5 December 2017: Section 8.2(1A) Review (Application No. 10.2016.326.2) of the determination of DA0326/2016 withdrawn, as a result of an appeal against the refusal of DA0326/2016 (see above).
- 27 November 2019: Development Application No. DA20190342 refused. The application

proposed alterations and additions to an existing residential building to create an attached dual occupancy and strata subdivision.

- 20 May 2020: Section 8.2 Review of Determination of Application DA2019/0342 approved. As per the original approval, the review sought consent for alterations and additions to an existing residential building to create an attached dual occupancy and strata subdivision.
- 2 February 2021: Subject modification application lodged.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for REV2020/0006 (DA2019/0342), in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under REV2020/0006 (DA2019/0342) for the following reasons:</p> <p><i>"(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—</i></p> <p><i>(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent</i></p>

Section 4.55 (2) - Other Modifications	Comments
	<p><i>was originally granted and before that consent as originally granted was modified (if at all), and"</i></p> <p><u>Comment:</u> The proposed changes maintain the approved dual occupancy use and do not alter the intent of the lot to be developed. The resulting built form and general appearance of the development is materially the same as originally approved. The modifications generally relate to driveway, car parking and internal reconfigurations, landscaping changes, and minor amendment of the approved balconies. The proposal also includes changes to doors, windows and materials/finishes.</p> <p>The modified development largely maintains the approved built form, and is not considered to result in any significant departures from the previous approval in relation to visual or amenity impacts.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application REV2020/0006 (DA2019/0342) did not require concurrence from the relevant Minister, public authority or approval body.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2013 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&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 in the original consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	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 09/02/2021 to 23/02/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mrs Michelle Montgomery	72 Lauderdale Avenue FAIRLIGHT NSW 2094
Ms Deborah Anne Taylor	1 / 68 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Benjamin Mark Neighbour	5 / 78 Lauderdale Avenue FAIRLIGHT NSW 2094

The matters raised within the submissions are addressed as follows:

- The submissions generally relate to the omission of levels/details on the modification plans, and subsequent concerns regarding the compliance of the modified development with the previously approved conditions of consent 39, 53, 56 & 62.

Comment:

The proposed second floor plans, as amended, are consistent with the imposed conditions of consent 53, 56 & 62, in addition to the Plan Reference No. 21254 ('The Plan'). The amended plans include the 4m dimension of the second floor deck, the approved southern roof level of RL34.78, and 'pebble ballast' to the non-trafficable roof area beyond the second floor deck, rather than 'planter' as previously proposed. Further, it is noted that these conditions are not required to be satisfied until/during works and prior to the issue of the occupation certificate. 'The Plan' was not submitted with this application as it is not proposed to be modified, and remains as previously approved.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Supported with conditions. No objections subject to conditions. It is noted that no BCA report has been submitted to address what will be the remaining portions of the building.
NECC (Coast and Catchments)	Supported without further conditions. The modification application has been assessed in consideration of the <i>Coastal Management Act 2016</i> , State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP. The application has also been assessed using Northern Beaches SREP assessment template. Coastal Management Act 2016 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 Coastal Management Act 2016. State Environmental Planning Policy (Coastal Management)

Internal Referral Body	Comments
	<p>2018</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p><u>Comment:</u></p> <p>On internal assessment, the modification DA satisfies requirements under Clause 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</p> <p>Harbour Foreshores & Waterways Area</p> <p>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 2, Clause 14 and Part 3, Division 2 apply in assessing this DA.</p> <p>On internal assessment, it is determined that the Planning Principles and Matters for Consideration of the Area have been met.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area Management</p> <p>The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the modification application does comply with the requirements of the Manly DCP 2013.</p>
NECC (Development Engineering)	<p>Supported with conditions.</p> <p><u>2nd Development Engineering referral</u></p> <p>The applicant dropped the carport level into RL 29.0. And the existing footpath on Lauderdale Avenue will be retained. As such, Development Engineering has no objection to the applications subject to the following additional conditions.</p>

Internal Referral Body	Comments
	<p><u>1st engineering referral</u></p> <p>The applicant proposed to widen the existing driveway crossing on Lauderdale Avenue.</p> <p>The existing footpath level on Lauderdale Avenue is between RL 29.00 to 28.50 at the proposed driveway location.</p> <p>The footpath should not be amended to accommodate a private driveway crossing</p> <p>There is about 600mm height difference between the existing footpath and the proposed carport level on the western side of the driveway crossing.</p> <p>As such, the proposed driveway crossing does not comply with the Council's driveway crossing profile and the related Australian Standard 2890.1.</p> <p>In this regards, Development Engineering cannot support the application as the clause 4.1 of Council's Manly DCP 2013.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

Two BASIX certificates (A367187_02 and A367190_02, both dated 8 November 2020) have been submitted with the application

In the event of approval and where required, conditions requiring compliance with the commitments in the BASIX Certificates will be modified.

SEPP (Infrastructure) 2007Ausgrid

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

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

Comment:

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

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:

Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.

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 modifications will have no foreseeable impact on coastal hazards.

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	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.7m	Unchanged	N/A	No (as approved)
Floor Space Ratio	0.5:1 132m2	1:1 265m2	Unchanged	N/A	No (as approved)

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.4 Floor space ratio	N/A
5.8 Conversion of fire alarms	N/A
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The proposed modification does not include any change to the previously approved building height.

4.4 Floor space ratio

The proposed modification does not include any change to the previously approved floor space ratio.

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being

of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

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 is required to be assessed to determine if any impact will occur.

The proposed modification includes minimal additional excavation, and is unlikely to significantly impact the watertable.

6.2 Earthworks

The proposed modification includes minimal additional excavation, and is acceptable.

6.5 Terrestrial biodiversity

The proposed modification results in negligible impact to landscaping or vegetation, and will not alter the previous assessment of this control.

6.9 Foreshore scenic protection area

The proposed modification does not materially alter the built form or visual appearance of the dwelling, and will not result unreasonable impacts in relation to visual aesthetic amenity or views to and from Sydney Harbour.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 264m ²	Requirement	Approved	Proposed	Complies
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m (GF carport)	0m (GF & FF carports)	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55% of site area 145.64m ²	39.27% 104m ²	33% 87.2m ²	No (as approved)
4.1.5.2 Landscaped Area	Landscaped area 35% of open space 30.52m ²	8.5% 14.2m ²	26.5% 23.1m ²	No (as approved)
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	100% (12.5m)	Unchanged	No (as approved)
Schedule 3 Parking and Access	Residential: 1 space per dwelling, plus 0.5 spaces per 3-bed dwelling (= 3 spaces)	4 spaces	4 spaces	Yes
	Visitor: 0.25 spaces per dwelling (= 1 spaces)	1 space	0 space	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	No	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The proposed carport is an open, low-profile design and maintains a consistent siting with existing car parking structures in the surrounding streetscape.

3.4.1 Sunlight Access and Overshadowing

The proposed modification maintains the approved building envelope and will not result in substantial additional overshadowing impacts.

3.4.2 Privacy and Security

Merit consideration

The proposed modification generally retains the approved glazing sizes and locations at the eastern and western elevations. A condition is included to ensure that the second floor western window W17 remains as approved in accordance with 'The Plan'. The proposal results in some additional glazed areas at the southern location that are orientated to the rear of the site to access views. The depth of the ground and first floor Juliet balconies is maintained as approved, with sufficient setbacks provided to

the east and west side boundaries. The modification is not considered to result in any adverse privacy or overlooking impacts, and is supported.

3.4.3 Maintenance of Views

The proposed modification retains the approved built form at the upper levels and will not result in any adverse view loss impacts to surrounding properties. The levels and dimensions of the second floor roof have been included on the amended plan set ensure consistency with the approved conditions of consent.

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

Description of non-compliance

The proposed 0m front setback to the ground floor and first floor carports are non-compliant with the 6.5m control.

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposed first floor carport is consistent with the existing streetscape, which includes various examples of existing car parking structures within the front setback. The proposed ground floor carport/garage is located largely below ground level at the front boundary and is generally not visible from the street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed front setback breach will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

The proposed front building line is compatible with the surrounding streetscape, notwithstanding non-compliance with the numerical requirement.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed modification does not result in any material reduction to the approved deep soil areas within the site.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

4.1.5 Open Space and Landscaping

The proposed total open space and landscaped areas are non-compliant as approved. The total open space area reduction is largely a result of the inclusion of the previously approved visitor car space in the calculation. The previous approval also included a condition requiring the reduction of the second floor balcony area by approximately 6m².

4.1.8 Development on Sloping Sites

The proposed modification includes minimal additional excavation and no geotechnical assessment is considered to be necessary.

Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

Compliance with control

The modified car parking configuration provides a total of four car parking spaces, with two spaces allocated to each unit. However, the previously approved visitor space is no longer provided due to the revised ground floor driveway design, resulting in a non-compliant parking arrangement. As the modified proposal exceeds the minimum parking requirements allocated to the units (3 spaces), one space within the first floor carport is to be allocated and signposted as visitor parking in order to fully comply with the controls. Suitable conditions of consent are included in this regard.

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

Section 7.12 contributions were levied on the Development 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 proposal seeks various modifications to the approved alterations and additions to the dual occupancy (attached). The proposal is considered to be a suitable and appropriate development within the context of the site.

The key planning issues considered within the assessment are the associated streetscape, visual and amenity impacts.

Three submissions were received in response to the notification/advertising of the application, and are addressed in detail within this report.

The proposed modifications will not materially alter any impacts resulting from the approved

development as assessed.

Assessment of the application against the Manly LEP and DCP finds that the development is acceptable in regard to the relevant numerical controls and amenity considerations.

Based on the assessment completed within this report, the application is recommended for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2021/0014 for Modification of Development Consent DA2019/0342 granted for alterations and additions to the existing residential flat building to allow for the creation of an attached dual occupancy and strata subdivision on land at Lot 11 DP 867302, 79 A Lauderdale Avenue, FAIRLIGHT, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-01 Site Plan	Rev. E, 28 April 2021	Chapman Architecture
DA-11 Proposed Lower Ground Floor Plan	Rev. D, 15 January 2020	Chapman Architecture
DA-12 Proposed Ground Floor Plan	Rev. E, 28 April 2021	Chapman Architecture
DA-13 Proposed First Floor Plan	Rev. E, 28 April 2021	Chapman Architecture
DA-14 Proposed Second Floor Plan	Rev. E, 28 April 2021	Chapman Architecture
DA-21 Proposed Cross Section	Rev. D, 15 January 2020	Chapman Architecture
DA-22 Proposed Long Section	Rev. E, 28 April 2021	Chapman Architecture
DA-23 Proposed Long Section	Rev. E, 28 April 2021	Chapman Architecture
DA-24 Proposed Cross Sections	Rev. E, 28 April 2021	Chapman Architecture
DA-31 Proposed North Elevation	Rev. D, 15 January 2020	Chapman Architecture
DA-32 Proposed East Elevation	Rev. E, 28 April 2021	Chapman Architecture
DA-33 Proposed South Elevation	Rev. E, 28 April 2021	Chapman Architecture
DA-34 Proposed West Elevation	Rev. E, 28 April 2021	Chapman Architecture
DA-51 BASIX Information	Rev. D, 15 January 2020	Chapman Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A367187_02	8 November 2020	Chapman Andrew
BASIX Certificate No. A367190_02	8 November 2020	Chapman Andrew

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

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

Landscape Plans

Drawing No.	Dated	Prepared By
Lower Ground Landscape Plan	19 October 2020	Aspect Designs
Ground Floor Landscape Plan	19 October 2020	Aspect Designs
Level 1 Landscape Plan	19 October 2020	Aspect Designs
Level 2 Landscape Plan	19 October 2020	Aspect Designs

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

B. Add Condition 32a. BCA requirements, Fire Safety Upgrade and Access Requirements to read as follows:

32a. BCA requirements, Fire Safety Upgrade and Access Requirements

The whole of the building is to be upgraded to comply with the requirements of Part C, D, E and F of the Building Code of Australia and requirements are to be incorporated into the proposal.

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

Reason: To ensure adequate provision is made for Health, Amenity, Fire safety and to facilitate compliant access (where required), to and within the premises for building occupants.

C. Add Condition 32b. Vehicle Crossings Application to read as follows:

32b. Vehicle Crossings Application

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

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

Reason: To facilitate suitable vehicular access to private property.

D. Add Condition 32c. Vehicle Driveway Gradients to read as follows:

32c. Vehicle Driveway Gradients

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

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

Reason: To ensure suitable vehicular access to private property.

E. Add Condition 32d. Window W17 to read as follows:

No change is approved to the second floor western window W17. The location, size and dimensions of W17 are to remain in accordance with the previously approved architectural plans and Plan Reference No. 21254 ('The Plan').

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

Reason: To ensure that the window design is in accordance with The Plan.

F. Add Condition 49a. Vehicle Crossings to read as follows:

49a. Vehicle Crossings

The Applicant is to construct one vehicle crossing 5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

G. Add Condition 49b. Footpath Levels to read as follows:

49b. Footpath Levels

No approval is granted for any change to existing footpath level at Lauderdale Avenue to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

H. Add Condition 57a. BCA requirements, Fire Safety Upgrade and Access Requirements to read as follows:

57a. BCA requirements, Fire Safety Upgrade and Access Requirements

The whole of the building is to be upgraded to comply with the requirements of Part C, D, E and F of the Building Code of Australia and requirements are to be incorporated into the proposal.

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

Reason: To ensure adequate provision is made for Health, Amenity, Fire safety and to facilitate compliant access (where required), to and within the premises for building occupants.

I. Amend Condition 60. Visitor Parking to read as follows:

60. Visitor Parking

The eastern space within the first floor carport is to be kept available for visitor parking and is to be signposted as such.

Reason: To ensure compliance with the relevant car parking requirements for the development.

J. Delete Condition 13. Amendment to the Approved Plans to read as follows:

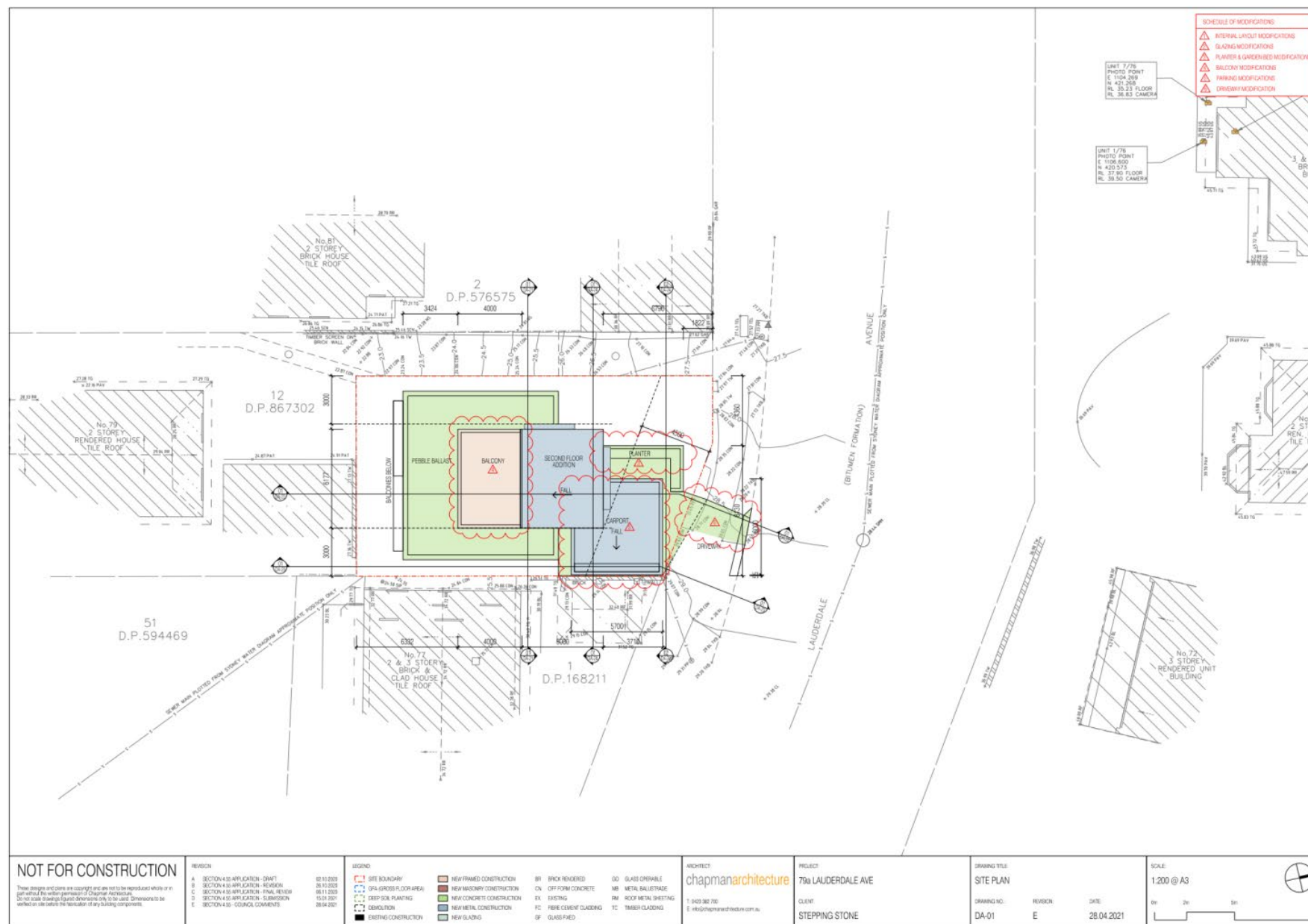
13. DELETED

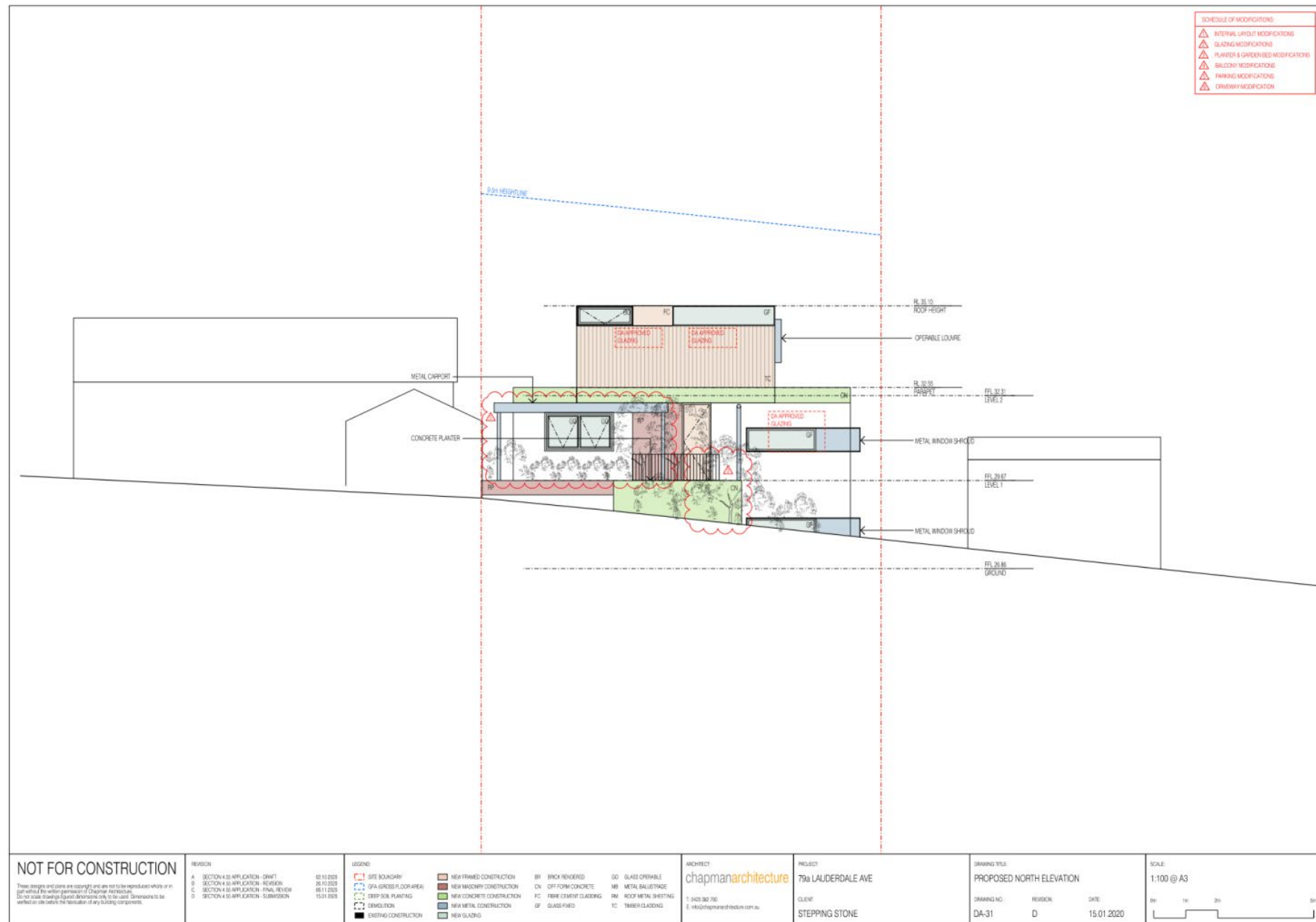
K. Delete Condition 25. Driveway Plans to read as follows:

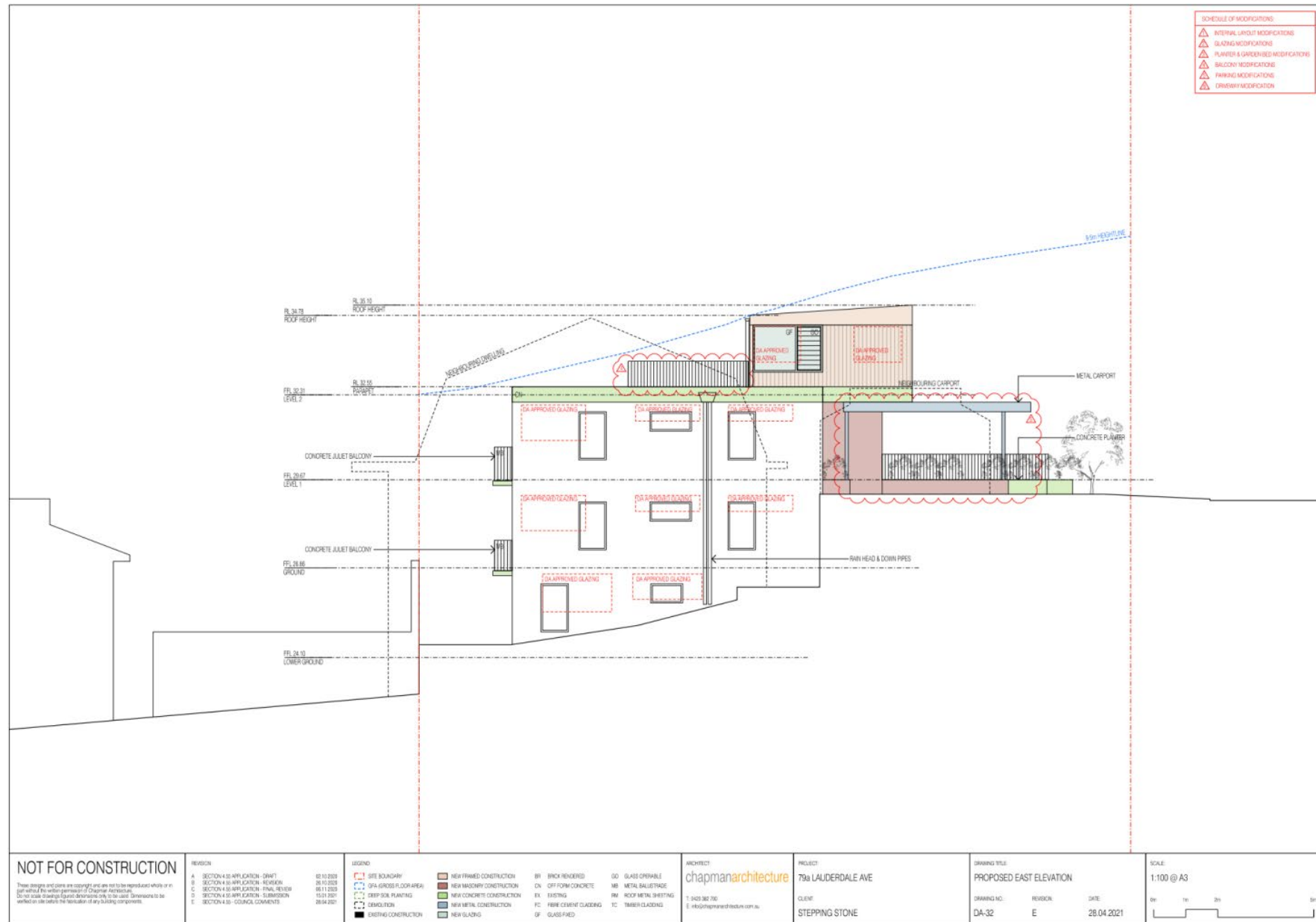
25. DELETED

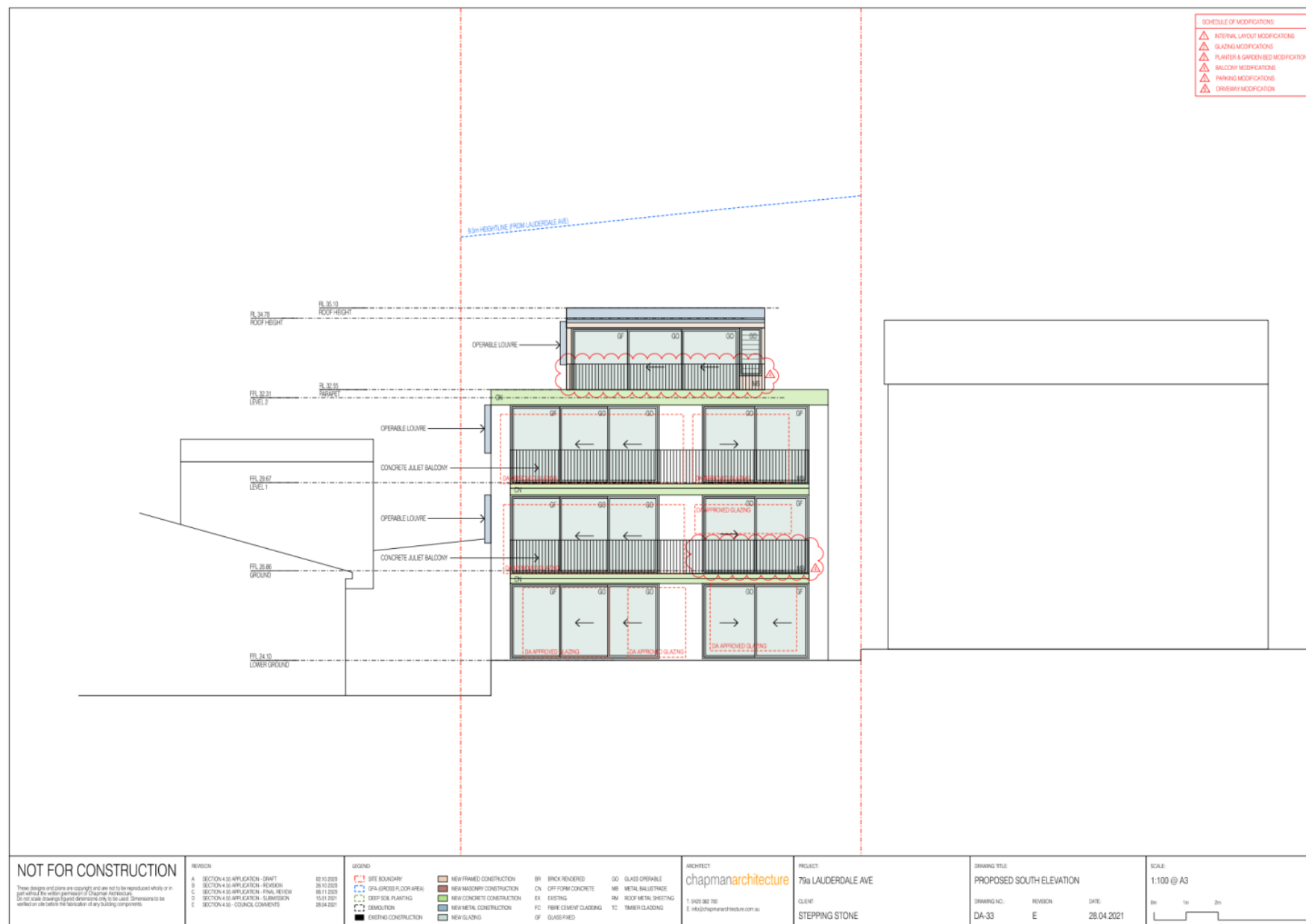
L. Delete Condition 61. Residential Parking to read as follows:

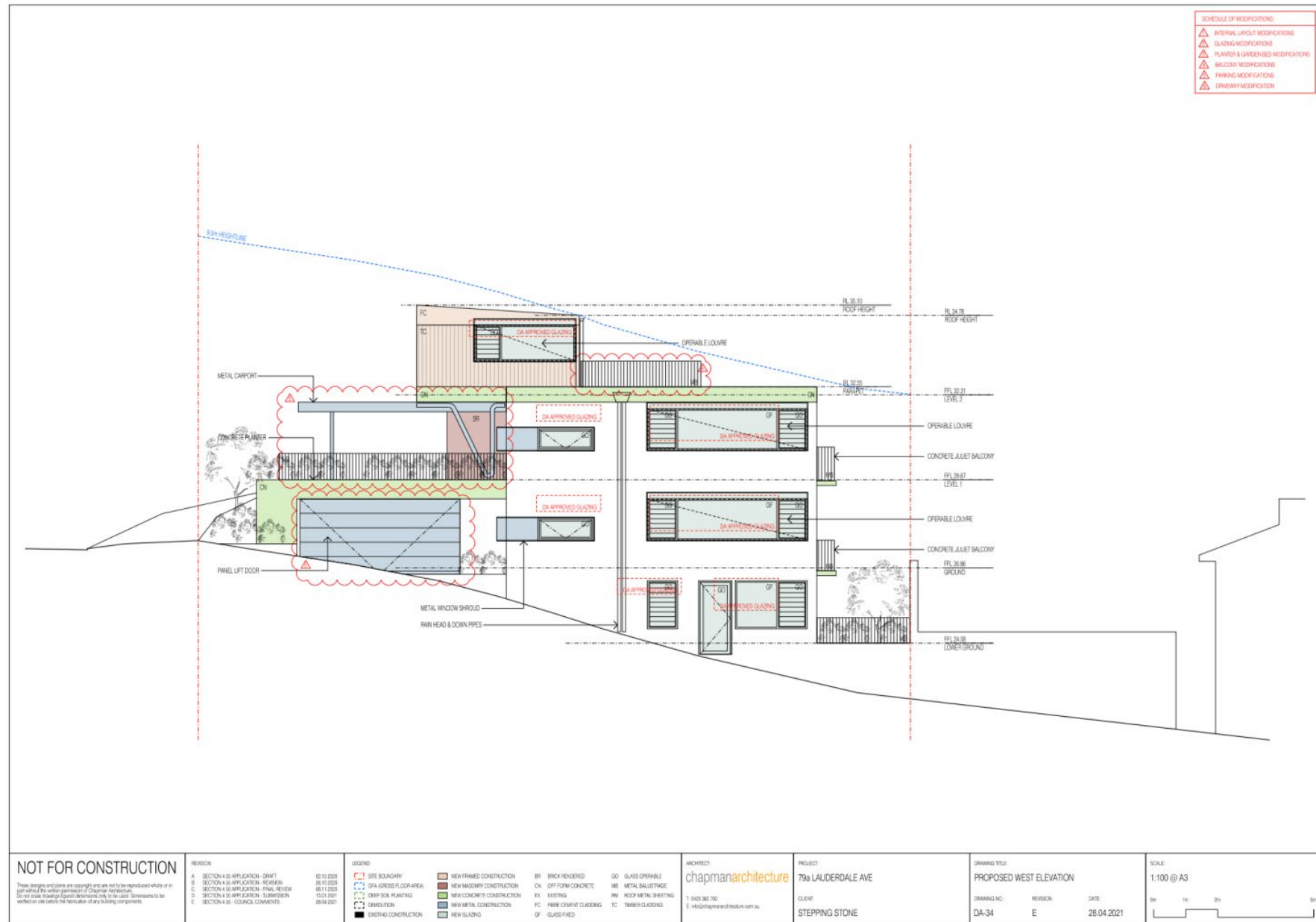
61. DELETED











ITEM 4.3

DA2020/1424 - 173 WARRINGAH ROAD, BEACON HILL - USE OF PREMISES AS RESPITE DAY CARE CENTRE, INCLUDING ALTERATIONS AND ADDITIONS AND SUBDIVISION OF THE SITE INTO TWO LOTS

AUTHORISING MANAGER Anna Williams

TRIM FILE REF 2021/333595

ATTACHMENTS

- 1** Assessment Report
- 2** Site, Elevation & Subdivision Plans
- 3** Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/1424 for Use of premises as respite day care centre, including alterations and additions and subdivision of the site into two lots at Lot 1 DP 802299, 173 Warringah Road, Beacon Hill subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1424
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 1 DP 802299, 173 Warringah Road BEACON HILL NSW 2100
Proposed Development:	Use of premises as respite day care centre, including alterations and additions and subdivision of the site into two lots
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Keith Lindsay Hills Martin Allan Hills
Applicant:	Keith Lindsay Hills Martin Allan Hills
Application Lodged:	16/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	25/11/2020 to 09/12/2020
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 29.7%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 805,000.00

EXECUTIVE SUMMARY

The development application seeks approval to use the site as a respite day care centre, as well as carrying out alterations and additions to the existing building and subdivision of the property into two (2) allotments.

The subject site was previously utilised as service (petrol) station. A Preliminary Environmental Site Investigation (Prepared by Marens and Associates dated 20 April 2021) has confirmed that

contaminants have been identified on site. A Phase 2 Environmental Site Assessment has not been provided and as such Council cannot be satisfied that the site is suitable for the proposed use, pursuant to *State Environmental Planning Policy No. 55 - Remediation of Land* (SEPP 55 - Remediation of Land).

The application proposes a variation to the Height of Buildings development standard of more than 10%. As such, the application is referred to the Northern Beaches Local Planning Panel, with a recommendation for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for the change of use of an existing pool supplies store to a 'Respite day care centre', alterations and additions to the existing building and Torrens title subdivision of one allotment into two allotments, pursuant to *Warringah Local Environmental Plan 2011* (WLEP 2011).

Specifically, the development involves:

- Change of use of existing building from pool supplies store to a respite day care centre;
- Torrens title subdivision of the existing single lot into two lots;
- Alterations and additions to existing building; including
 - Ground and upper floor extension for new internal access.
 - Internal alterations and fit out.
 - Outdoor play area.
 - Changes to materials and finishes.
- Associated landscaping;
- Signage;
- Demolitions works.

The proposed operational details are as follows:

- Maximum 14 children (2 -6 years).
- Hours of Operation:
 - Monday to Friday: 8:30am - 4:30 pm
 - Saturday to Sunday: Closed.
- Staff
 - Seven floor staff
 - Two administration staff.
- 15 Parking Spaces.
 - 9 car parking spaces, including 1 disabled space within the front setback.
 - 6 car parking spaces adjacent to the front façade of the building to be used as a drop off zone.
 - 1 disabled car parking space adjacent to the outdoor play area at the rear of the premises, with vehicular access from the common driveway.

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
 Assessment - Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 101 Development with frontage to classified road)
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - C1 Subdivision
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D18 Accessibility and Adaptability
 Warringah Development Control Plan - D23 Signs

SITE DESCRIPTION

Property Description:	Lot 1 DP 802299 , 173 Warringah Road BEACON HILL NSW 2100
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Warringah Road. The site also partially fronts Beacon Hill Road.</p> <p>The site is irregular in shape with a frontage of 30m along Warringah Road and 16m frontage along Beacon Hill Road and a depth of 43m. The site has a surveyed area of 2100m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a three storey commercial building.</p> <p>The site slopes down from the front to the rear approximately 8m</p>

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development typically single and two storey dwelling houses.

Map:



SITE HISTORY

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

DA2002/1614 - Alterations/Additions to the Current Shop – Smith's Pool Supplies. (Approved 19 August 2003)

DA1987/48 - Erect 3x 61 diameter antenna upon the existing radio mast and a 61cm x 61cm x 25cm meter box. (Approved 19 February 1987)

DA1984/440 - Use former service station for storage, display and sale of swimming pool chemicals and equipment (Approved 10 October 1984)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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. 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.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters may be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to stormwater management and access.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. These matters may be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. These matters may be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). These matters may be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>

Section 4.15 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) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the SEPP 55 - Remediation of Land. 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 25/11/2020 to 09/12/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mrs Alana Maree Monaci	22 Chalmers Avenue BEACON HILL NSW 2100
Knarf Holdings Pty Ltd	28 Beacon Hill Road BEACON HILL NSW 2100
Mr Anthony Curulli	3 Kalianna Crescent BEACON HILL NSW 2100

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

- **Privacy**
- **Site contamination**

The matters raised within the submissions are addressed as follows:

- **Privacy**
Comment:
Concern was raised about privacy impacts (acoustic and visual) from the new use of the building and new lot. The proposal has been assessed against the privacy provisions under Part D8 of the Warringah DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause Part D8 of the Warringah DCP.
- **Site contamination**
Comment:
Concern is raised in regards to potential site contamination given the previous use of the site as a petrol station and pool supplies shop. The application was referred to Council's Environmental Health Officer for comment and assessed against SEPP 55- Remediation of Land. In summary, insufficient information has been provided pursuant to the requirement of SEPP 55 - Remediation of Land to assess whether the proposed site is suitable for use as a respite day care centre and as such the application is recommended for refusal.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Supported with conditions No objections subject to conditions to ensure compliance with the Building Code of Australia (BCA). It is noted that the proposed development does not fully comply with some requirements of the Building Code of Australia however these matters may be readily determined at Construction Certificate (CC) stage by way of a BCA Alternate Solution Design or by way of modification to the affected parts with detail/s being provided with the CC.
Environmental Health (Contaminated Lands)	General Comments 6/5/21 Preliminary site investigation revealed contaminated land, Phase 2 environmental site assessment is to be provided. Environmental Health cannot support the application without this information, pursuant to Section 7(1)(b) SEPP55. Recommendation REFUSAL - The proposal is unacceptable
Environmental Health (Industrial)	General Comments Proposal for a respite day care centre of (up to) 14 children with (minimum) 7 staff operating from 8:30 am to 4:30 pm.

Internal Referral Body	Comments
	<p>We find the proposal satisfactory given compliance with the Plan of Management -methods of minimising noise of children and potential impacts on residential neighbours.</p> <p>Air conditioning plant to be located in the carpark, and not aimed at adjacent residences.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p>Supported with Conditions <u>Additional Information Comment 11/03/2021</u></p> <p>The Arborist's report and Stormwater report submitted with additional information are noted.</p> <p>The Arborist's Report indicates that subject to any new driveway construction being above existing levels and with retention of the bitumen drive underneath, an acceptable level of impact would be provided to the mature <i>Ficus macrocarpa</i> var. 'hillii' located on the adjoining property to the east.</p> <p>The report also notes that the Stormwater report does not propose new drainage works along the driveway.</p> <p>In view of the above, no objections are raised, however it must be noted that any new driveway along the eastern boundary is to be constructed above existing levels. Retention of the existing bitumen driveway is also not objected to, however, it is recommended that a Project Arborist be appointed to oversee works adjacent to the trees.</p> <p>However, if engineering requirements result in excavation of the existing bitumen drive and replacement with concrete, significant impacts on the trees' roots are anticipated.</p> <p>The Landscape Plans provided with the application indicate that existing palm trees are to be supplemented by additional palm trees and understorey planting. The proposed plant species are exempt species and provide little by way of screening, filtering of pollutants or amelioration of the bulk and scale of the building and proposed signage wall along the site frontage in this prominent location.</p> <p>Consequently, it is recommended that additional tree species be included in the front landscape garden beds to supplement the proposed planting and address the issues raised above.</p> <p>No objections are raised to approval subject to conditions as recommended.</p>
NECC (Development Engineering)	<p>Stormwater</p> <p>The submitted stormwater management plan proposes to</p>

Internal Referral Body	Comments
	<p>decommission an existing on-site stormwater detention (OSD) basin at the rear of the existing building as it is proposed to be used as a new outdoor recreation space. There are no details for the replacement of the detention volume or discharge control for this basin in the design. Stormwater from the access driveway to the rear lot has also not been collected and connected to the drainage system in the design. It is considered that a detailed design for the stormwater disposal for the site must be provided for assessment, with the discharge rates for the site controlled in accordance with the original design for the site.</p> <p>Subdivision It is unclear from the submitted plan of subdivision if proposed Lot 1 includes the access handle or if proposed Lot 2 includes the access handle. The plan of subdivision is to be amended to clarify this issue and include the necessary right of carriageway, easement for services and easement to drain water as required.</p> <p>As there are a number of existing easements burdening the site it is considered the relevant 88b instruments must be provided to identify the beneficiaries of these easements, together with a title search to ensure the site has the benefit of the drainage easement through the downstream properties.</p> <p>Vehicular Access The existing driveway crossings are to remain which is satisfactory. As it appears that a right of way will be required along the handle to proposed Lot 2, it will be necessary for the existing bitumen surface to be replaced with a concrete driveway for the extent of the proposed right of way. Details of this work must be provided including a drainage plan indicating any drainage pits and pipes required for the collection and disposal of the stormwater into the existing inter-allotment drainage line.</p> <p>There is an existing kerb with a rail along the boundary adjacent to the access driveway to proposed Lot 2. It is unclear on the architectural plans and Landscaping plans if this kerb and rail is to remain. It is considered that this kerb and rail be maintained to define the two access points to proposed Lots 1 and 2. Also the design is to incorporate an area for a letter box for proposed Lot 2 within the handle.</p> <p>Development Engineers cannot support the application due to insufficient information to address Clauses C2 and C4 of Warringah DCP.</p> <p>Additional information received 18/02/21 and 11/03/21</p> <p>The revised stormwater management plan is acceptable. The Arborist report addresses the required concrete driveway construction and comments from Council's Landscape Officer support the proposal.</p>

Internal Referral Body	Comments
	No objection to approval, subject to conditions as recommended.
NECC (Water Management)	As the proposal will retain the existing footprint and structures, water quality controls do not apply. The applicant is encouraged to maximise reuse of rainwater, internally in toilets if possible, but at a minimum for landscaping in the renewed recreation area. The screens to capture coarse sediments and organic matter in the OSD should be checked to ensure they are in good condition, and replaced if necessary.
Traffic Engineer	<p>Background on proposal: The proposal is a staged development comprising subdivision of one lot to 2 lots, and change of use of the existing retail premises (proposed as lot1) to a respite day care centre to provide care and early intervention measures to children with autistic disabilities. The following assessment has been undertaken taking into account the information provided in the development application which comprises the detailed information on the use of the lot1 and the information on the lot 2 being limited to subdivision plan.</p> <p>Assessment: <u>Subdivision of one lot to 2 lots:</u> The vehicular access to the lot2 is proposed via a a separate combined entry / exit driveway . The proposed access arrangements is considered acceptable for the proposed subdivision and will be appropriate for a low traffic generating use. <u>Change of use of lot1:</u> The following operational details has been provided in the Statement of Environmental Effects: <ul style="list-style-type: none"> - Hours of Operation: Monday to Friday 8.30am – 4.30pm - Staff Capacity: Maximum of nine staff members consisting of seven floor staff and two administration staff. - Patron Capacity: Maximum of 14 children aged 2-6 years. - The facility offers group sessions in the morning from 9am-12pm and individual sessions in the afternoon hours for children. The afternoon individual clinic sessions will have no more than 6 children attending a 1-hour session at any one time, also with up to 7 care staff plus 2 administration staff. - Arrival and Departure: Due to the nature of the children's disabilities, a 10 minute drop off window is provided to each parent to ensure routine is maintained for children. <p>Parking: <ul style="list-style-type: none"> - Off-street parking is proposed for a total of 15 cars as follows: <ul style="list-style-type: none"> • 9 existing angled car spaces including a disabled parking space • 5 new parallel spaces along the building frontage • New accessible space at the rear of the building set at lower ground level. - The loading and servicing for the Child Development Institute will be </p> </p>

Internal Referral Body	Comments
	<p>minimal, and can be adequately undertaken by light commercial vehicles such as vans, utility vehicles and the like (i.e. B99 vehicles) that are capable of fitting within a standard car space. All delivery and servicing will be scheduled outside of centre operational hours. Given the proposed operational details, the parking provision is considered appropriate for the proposed use.</p> <p>Traffic Impact: The projected traffic generation from the proposed use is 18 vehicle trips per hour in AM peak and 9 vehicle trips per hour in PM peak. Given the vehicular access arrangements being proposed via a separate entry and exit driveway, the projected traffic generation resulting from the proposed use is considered to be at an acceptable level of impact on the road network.</p> <p>Car parking, driveway and access design: Reviewing the proposed access and car parking area, there is a concern raised on lack of a safe pedestrian access to the site. A separate pedestrian access clear from any vehicular movements is to be provided from the property boundary to the building entry. This can be conditioned.</p> <p>Conclusion: In review of the above, the proposal is supported subject to conditions.</p>
Waste Officer	<p>Waste Management Assessment. Recommendation - approval with conditions.</p> <p>No residential component to building works. Noted that bin storage room has been provided large enough to contain 4 x 240 litre bins for use by the commercial unit. Ray Creer Waste Services Officer</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary Environmental Site Investigation dated 20 April 2021 and prepared by Marens and Associates. In its conclusion, the investigation states:

"As an initial screening assessment, Martens conducted a soil vapor screening assessment which included the installation of two soil vapor pins and extraction of soil gas from beneath the ground floor concrete slab in the existing site building. Collected samples were sent to Enviroblab Services Pty Ltd and analysed for a range of potential contaminants of concern generally associated site services station use.

The results of analysis did identify several contaminants above the laboratory detection limit, however below Tier 1 screening values outlined in the NEPM (2013) guidelines and other NSW EPA endorsed guidance. Laboratory reports are attached to this Letter.

We recommend that an additional screening assessment is conducted to confirm these results. The results of additional sampling along with the initial screening assessment shall be formalized in a PSI document prepared in general accordance with NSW EPA (2020) Consultants Reporting on Contaminated Land."

The Investigation indicates that there are existing contaminants 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 contamination on the site as noted in the Phase 1 Investigation, a Phase 2 Environmental Site Assessment should be provided to confirm contamination levels and at what locations. However, no Phase 2 Environmental Site Assessment has been provided. In this regard, 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, that being a respite day care centre.

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 a Phase 2 Environmental Site Assessment. Therefore, before any remediation of the site could be recommended and undertaken, a Phase 2 Environmental Site Assessment would be 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.

Accordingly, refusal of the application is recommended on this basis.

SEPP 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed signage is compatible with the existing and desired future character of this particular areas of Beacon Hill	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The overall design, colours and size of the signage is consistent with other outdoor advertising in the area.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The subject site is not located within an environmentally sensitive area, heritage area or the like. The signage is to not be illuminated and therefore not considered to detract on the amenity or visual quality of the area.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The proposed signage will not obscure or compromise views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The signage will not dominate the skyline or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The subject site only adjoins residential properties and as such will not impede on the rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Given the context of this site and its overall frontage to Warringah Road, the proposed scale, proportion and form of the proposed signage is considered appropriate.	YES
Does the proposal contribute to the visual interest of the streetscape,	The signage is not overbearing and assists with wayfinding.	YES

setting or landscape?		
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The signage will not create visual clutter and will improve the overall appearance of the store's signage as a result of the modern design features.	YES
Does the proposal screen unsightliness?	There is no unsightliness to be screened.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signs are appropriate in height and scale, remaining comfortably below the maximum allowable height of 8.5m	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposed signs are to replace the existing site signs, and are considered compatible with the streetscape and surrounding development in regard to scale and proportion.	YES
Does the proposal respect important features of the site or building, or both?	The proposal is not considered likely to affect any important features within the site.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signs are a contemporary advancement to the existing site signage.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No safety devices or platform proposed	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	No illumination proposed	N/A
Can the intensity of the illumination be adjusted, if necessary?	N/A	N/A
Is the illumination subject to a curfew?	N/A	N/A
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	No	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. Standard conditions recommended to be imposed.

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
Minimum subdivision lot size:	600sqm	Lot 1 (Existing building) - 1206.33sqm	-	Yes
		Lot 2 - 779.5sqm (excluding right of carriageway)	-	Yes
Height of Buildings:	8.5m	11.03m	29.7%	No

Compliance Assessment

Clause	Compliance with Requirements
4.1 Minimum subdivision lot size	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes

Clause	Compliance with Requirements
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.03m
Percentage variation to requirement:	29.7%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

- (a) the consent authority is satisfied that:*
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,

- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

"In respect to the objectives referred to above, the following is submitted to demonstrate that there are sufficient environmental planning grounds to justify the variation in the Development Standard under the provisions of Clause 4.6 of Warringah LEP2011.

- *The proposed exceedance of the maximum building height control of Warringah LEP2011 is supportable in that the variation is existing and is considered to be of a minor nature and relates solely to the enclosed staircase on the western elevation. The proposed staircase will have no adverse impact on the following:*
 - *Solar access*
 - *Overshadowing*
 - *Visual Privacy*
 - *Acoustic Amenity*
 - *Bulk and Scale*
 - *Front setbacks*
- *The existing development responds to the topography of the site by providing the bulk of the building at the rear, lower side of the allotment. The non-compliance with the development standard is minimally visible from a public place and does not result in an adverse visual impact.*
- *When viewed from the street, the northern elevation of the staircase is viewed as 5.4m in height and appears below the roof form of the existing building. The staircase is a minor addition and retains the overall essence of the building and the 1-2 storey character of the area.*
- *The development was approved by Northern Beaches Council (former Warringah Council) under a number of development approvals from 1984-2003.*
- *The proposed development involves alterations and additions to the front facade of the building, along with changes to the materials and finishes of the existing building. The proposed changes further mitigate any potential bulk and scale impacts from the proposed addition.*
- *The development involves enhanced landscaping that will soften the built form and reduce the visibility of the addition.*
- *There are no significant views or areas of environmental significance to consider as part of this proposal.*
- *The approval of this development does not set a precedent for variations to the maximum building height control. The area is characterised by 1-2 storey developments that are residential in nature. The subject building has operated as a commercial premises for a number of years and cannot be used as an example of precedent for any residential development in the immediate area.*
- *No unacceptable environmental impacts will flow from the proposed development during*

construction of the alterations and additions and internal fitout of the existing building and upon completion. The proposed staircase will not contribute to any adverse environmental impacts in terms of solar access, overshadowing, visual and acoustic privacy or bulk and scale."

Council's Assessment of the Clause 4.6 Request

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed replacement of ageing elements and access of a aging building is an orderly response to the development of the site;
- The development promotes good design and amenity of the built environment, noting that the staircase will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties.
- The development promotes a suitable new use appropriate for the zone utilising the shell of the existing building;
- The development promotes the proper construction and maintenance of buildings, in so far as the proposed non-compliance wholly relates to necessary maintenance of the ageing development.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The extension is two storey on the front elevation and is consistent with neighbouring one and two storey development. The site while for a day care centre in a residential zone is ideal given its location on a classified road and noting the size and scale of the development within the near vicinity.

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

Comment:

The proposed design complies with the relevant controls for sunlight under the WDCP 2011 and involves a design with sufficient physical separation from neighbouring properties to sufficiently minimise privacy loss. The proposed development will not compromise views to and from the subject site and adjoining properties.

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

Comment:

The proposed extension provides a two storey presentation in the streetscape and allows for soft landscaping to the front of the building. This provides a situation in which the scenic quality of the area will be suitably maintained and enhanced.

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

Comment:

The proposed non-compliance is of a reduced scale when compared to the existing bulk and scale of the building. The extension will not have an unreasonable visual impact when viewed from the Warringah Road.

Zone objectives

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

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

Comment:

Not applicable

It is considered that the development satisfies this objective.

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

Comment:

The building contributes to the day to day needs of residents by providing a increased range of uses and employment opportunities and a land use that is permissible in the zone.

It is considered that the development satisfies this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposal will retain important landscape features on site.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of Buildings Development Standard is assumed by the Local Planning Panel.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	10.59m	47%	No
B3 Side Boundary Envelope	4m (west)	Outside envelope Height - 5m Length- 7.2m	50%	No
B5 Side Boundary Setbacks	0.9m (west)	0.3m (Deck) 1.1m (Stair extension)	66% -	No
B7 Front Boundary Setbacks	6.5m	1m (signage) 17.9m (Building)	84.7% -	No

B9 Rear Boundary Setbacks	6m	3m (Disabled parking) 6.1m (Building)	50% -	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	9% (104.2m ²)	77.5%	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 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D18 Accessibility and Adaptability	No	Yes
D20 Safety and Security	Yes	Yes
D23 Signs	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

Clause B1 of the WDCP 2011 stipulates that walls are not to exceed 7.2m from the natural ground level to the underside of the ceiling on the uppermost floor.

The proposed extension would result in a maximum wall height of 10.59m above the existing ground level, non-compliant with the numeric control. This represents a 47% variation to the numeric control.

Merit consideration:

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

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

Comment:

The front facade of the extension is consistent with the wall height prescribed, and as such, the non-compliant portions of the development do not attribute to excessive built form as viewed from the street. Furthermore, the apparent size of the development as seen from adjoining properties is not unreasonable by virtue of the size of the proposed site.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

The proposed development will be compatible with the scale of the existing trees to be retained within the site.

- *To provide a reasonable sharing of views to and from public and private properties.*

Comment:

The proposed development does not result in any unreasonable impacts to views currently enjoyed from private or public spaces.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The non-compliant wall height does not attribute to any unreasonable impacts upon adjoining properties.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The proposed staircase is proposed a top of an existing concreted area. The proposed extension does not propose any excavation into the existing landform.

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

Comment:

The roof proposed to the top of the proposed stairs is a flat roof to match the existing building and to reduce the bulk of the extension.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

Clause B3 of the WDCP 2011 stipulates that buildings are to be projected at 45 degrees from 4m above the existing ground level, measured from the side boundaries. The proposed staircase encroaches into the prescribed building envelope along the western elevation at a height 5m for a length of 7.2m. This represents a 22% variation to the numeric control.

Merit consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The non-compliance is not to an extent that will result in a development that is out of character for the area or is visually dominant by virtue of its height and bulk. Furthermore, the roof form adopted will minimise the overall height and bulk of the development. The scale of the overall development is consistent with the height of the existing building.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The alterations and additions has been designed in a manner that does not unreasonably or detrimentally overshadow nor overlook adjoining and nearby properties. Adequate spatial separation is proposed between buildings. The development satisfies this objective.

- *To ensure that development responds to the topography of the site.*

Comment:

The development appropriately responds to the topography of the site and is designed to minimise the overall bulk and scale of the development and resulting amenity impacts.

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.

B5 Side Boundary Setbacks

Description of non-compliance

Part B5 of the Warringah DCP requires development be setback from side boundaries at least 0.9m. The proposed extension has a 0.3m setback, non-compliant with the numeric control. This represents a 66% variation to the numeric control.

Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

Comment:

The proposed extension does not contribute to the loss of landscaped open space.

- *To ensure that development does not become visually dominant.*

Comment:

The proposed extension will not be a visually dominant feature when viewed from the street. It is noted that the extension is below the ridge height of the existing building.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

While the proposed works are within the required side boundary setback their function is to accommodate internal access. The staircase will not be of unreasonable bulk and scale when viewed from the street and having regard to the existing context of the building.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

Amenity considerations including privacy (visual and acoustic) and solar access will not be unreasonably impacted as a result of the proposed non-compliance.

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

Comment:

The proposal is considered to preserve the available views and vistas to and/or from public and private places.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

The proposed wall sign is to be setback 1m setback from the front boundary, non-compliant with the 6.5m front setback control. This represents a 84.7% variation to the numeric control.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

With the exception of the proposed wall sign facing Warringah Road associated with this site, there are no other free standing signs associated along the frontage. This area is largely free of structures, continuing to maintain a sense of openness.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposal is considered to maintain the visual continuity and pattern of buildings and landscape elements.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposed signage will achieve a consistency with other similar signage in the nearby vicinity and is of a design that would be considered acceptable in the streetscape.

- *To achieve reasonable view sharing.*

Comment:

The proposed signage will not impact views to and from the subject site and adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B9 Rear Boundary Setbacks

Description of non-compliance

Part B9 of the DCP prescribes a 6.0m rear boundary setback for buildings and ancillary structures. The existing building attains a rear setback of over 6.0m and is not subject to change. The proposed

disabled parking space attains a setback of 3m from the rear boundary, thereby seeking a variation to the control of up to 50%.

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

The proposed off-street parking is over an existing hardstand area. The proposed non-compliance will not result in a loss of landscaped open space. The provision of car parking has been designed to achieve a balance of car parking and landscaped open space considering the change of use to allow for direct vehicular access to the bottom level of the building

- *To create a sense of openness in rear yards.*

Comment:

The proposed development is not expected to unreasonably impact the openness of the rear yard.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The proposed car parking area is open and at ground level and will therefore not have any adverse impact upon privacy, amenity and solar access. It is noted that the car parking area to the rear of the building will not be readily visible from the street and neighbouring properties.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The proposed parking area is open and free of any above ground structures which would otherwise disrupt the visual continuity and pattern of buildings and landscape elements in the rear yards. Additionally, the parking area is concealed by existing and new screen planting and will therefore not have any noticeable impact upon the existing visual continuity and pattern of buildings and landscape elements.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

The encroachment of the proposed disabled parking space into the rear boundary setback area is not considered to result in any unacceptable loss of privacy between neighbouring dwellings.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the

proposal is supported , in this particular circumstance.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	<p>R2 Low Density Residential zone requirements:</p> <p>Proposed new allotments:</p> <p>a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m²</p>	<p><u>Lot 1</u> a) 34.385m (incl. driveway) and combined frontage of 30.245m (excl. driveway) b) 30m - complies c) 150sqm footprint -existing building to be retained.</p> <p><u>Lot 2</u> a) 22.44m - complies b) 27m - complies c) 150sqm footprint - complies</p>	Yes
Access	<p>Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.</p> <p>Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.</p> <p>Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.</p> <p>Driveways in excess of 200 metres will not be allowed for residential development.</p> <p>Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.</p>	<p>Motor vehicle access from Warringah Road is provided to Lots 1 and 2.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles is not inhibited.</p> <p>The internal driveway meets the vehicular access grades.</p> <p>A passing bay has been provided.</p> <p>A concept Right of Carriageway has been provided and Council's Development Engineer is satisfied that it meets Council's requirements. Suitable conditions have been included to ensure a Right of Carriageway and Easement for Drainage is created pursuant to the provisions of Section 88B of the Conveyancing Act.</p>	Yes

	<p>Passing bays should have regard to sight conditions and minimise vehicular conflict.</p> <p>Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.</p> <p>Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.</p> <p>Width of accessways are to be as follows:</p> <table><tr><th>Number of lots to be serviced</th><th>Width of clear constructed accessway (m)</th></tr><tr><td>1 - 5</td><td>3.5</td></tr><tr><td>6 - 10</td><td>5.0</td></tr><tr><td>in excess of 10</td><td>Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)</td></tr></table> <p>Provision of services in rights of carriageway are as follows:</p> <table><tr><th>Number of lots to be serviced</th><th>Additional width to be provided in Right of Carriageway (m)</th></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>	Number of lots to be serviced	Width of clear constructed accessway (m)	1 - 5	3.5	6 - 10	5.0	in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)	Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	Up to 3 lots	0.5	4 or more lots	1.0		
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1 - 5	3.5																
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Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)																
Up to 3 lots	0.5																
4 or more lots	1.0																
Design and	All roads, rights of carriageway,	The proposal has been reviewed	Yes														

construction	<p>drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards.</p> <p>Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>	by Council's Development Engineer who raises no objections to the approval, subject to conditions.	
Drainage	<p>Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.</p>	Lots 1 and 2 will have the ability to drain stormwater. The topography of the land will not be unreasonably compromised.	Yes
Restrictions	Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.	Appropriate conditions have been recommended by Council's Development Engineer to ensure compliance with this clause if the application is to be approved.	Yes
Environmentally constrained land	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk,	The site is not environmentally constrained.	Yes

	<p>bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment.</p> <p>Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.</p>		
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	The site is not bushfire prone	Yes

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposed development results in a total landscaped area of 104.2m² or 9%, resulting in a sizeable shortfall of soft landscaping. The represents a 77.5% variation to the numeric control.

Notwithstanding the shortfall, the proposal largely maintain the existing building footprint with the additional hardstand area being a result of the parking and access alterations and proposed subdivision.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The proposal retains adequate landscaped open space in the front setback area that enables planting to be provided to enhance the streetscape.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The site has been altered over the commercial history of the allotment. There are no known indigenous vegetation, topographical features and habitat for wildlife that will be impacted by the proposed works.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

As above, the proposal will continue to provide for landscaped open space and opportunity to enable the establishment of low lying shrubs, medium and high shrubs to assist with mitigating the height, bulk and scale of the proposed works.

- *To enhance privacy between buildings.*

Comment:

The proposal additions are considered to maintain the existing levels of privacy between buildings and it is deemed that the proposal will demonstrate compliance with this merit consideration.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The site will facilitate appropriate outdoor recreational opportunities to meet the needs of the children who utilise the centre.

- *To provide space for service functions, including clothes drying.*

Comment:

Space for service functions for the proposed use will be provided on site.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The proposed works and additional hardstand area will not detrimentally impact on water management, including the infiltration of stormwater across the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

Due to the addition of the outdoor play area to the rear of the existing lot and overall change of use, an assessment of acoustic and visual privacy impacts is provided below.

Merit consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

Visual Privacy

Concern is raised in regards to the visual privacy impacts to the adjoining residential properties to the east and south. Existing boundary fencing to a height of 1.8m along the eastern and southern property boundaries is to be retained as part of the proposal. The existing parking area and proposed outdoor living area to the rear of the site is not expected to facilitate direct overlooking to adjoining residential properties. If this application is to be approved the resulting privacy impacts that would result from development on the newly created lot will be further assessed and considered when the site is developed.

Acoustic Privacy

The site is surrounded by residential development to the east, west and south. The main area of concern is to the rear of the existing building with the incorporation of the outdoor play area for the centre. The proposed operation of the centre is exclusively during business hours being 8:30am - 4:30pm Monday to Friday. It is also considered that the noise generated by the respite day care centre is not unreasonable in the context of the R2 Low Density Residential zone which allows for uses outside of a residential context including education establishments and community facilities. The acoustic report lodged with the development application notes no acoustic compliance issues are anticipated in relation to noise impacts to neighbouring residential properties.

Given the above, the proposed change of use would not result in an unreasonable noise impact that would significantly affect the existing amenity enjoyed by nearby residential properties.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

No further design solutions are warranted to improve privacy.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposed development provides personal and property security for occupants and visitors.

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

D18 Accessibility and Adaptability

Clause D18 requires that development is to comply with AS1428.2. There was no Disability Access Report prepared as part of the application indicating that the development will meet the requirements of AS1428.1. Therefore, a condition is recommended requiring compliance with AS1428.2, details of which are to be provided prior to the issue of the Construction Certificate if this application is approved.

D23 Signs

Description of non-compliance and/or inconsistency

The application proposes three (3) pieces of signage consisting of the following:

Sign	Requirement	Width	Height	M ²	Complies
Awning fascia sign (attached to the fascia or return end of an awning)	Shall not project above, below or beyond the fascia or return end of the awning to which it is attached.	4.2m	0.28m	1.12m ²	Yes
		4.2m	0.28m	1.12m ²	
Wall sign (painted onto a wall of a building or attached to the wall of a building, not being a sign elsewhere listed in this table)	Shall not extend within 200mm of the top and sides of the wall. Shall not cover any window or architectural projections; Must be of a size and shape that relates to the architectural design of the building to which it is attached; Where illuminated, shall not be less than 2.7 metres above the existing natural ground level ground; and Shall not project more than 300mm from the wall.	6m	1.1m	6.6m ²	Yes

Merit consideration

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

- To encourage well designed and suitably located signs that allow for the identification of a land use, business or activity to which the sign relates.*

Comment:

The proposed signage is well designed and suitably located to allow for property identification and the use for which it relates.

- To achieve well designed and coordinated signage that uses high quality materials.*

Comment:

The sign appears to be of an appropriate design and construction to ensure it can be exposed to the elements for a prolonged period of time.

- To ensure that signs do not result in an adverse visual impact on the streetscape or the surrounding locality.*

Comment:

As highlighted previously in this report, the signage is not seen to result in an adverse visual impact on the streetscape or the surrounding locality.

- *To ensure the provision of signs does not adversely impact on the amenity of residential properties.*

Comment:

The proposed signage will not be illuminated and is not considered to adversely impact on the amenity of residential properties.

- *To protect open space areas and heritage items or conservation areas from the adverse impacts of inappropriate signage.*

Comment:

The subject site is not a heritage item or located within any conservation areas.

An assessment of the application has also found the development to be consistent with the requirements of *State Environmental Planning Policy No. 64 - Advertising and Signage*.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in 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 \$8,050 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$805,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

CONCLUSION

The proposal includes a non-compliance in relation to the 8.5m Building Height. The proposed height breach has been considered in relation to the provisions of Clause 4.6 of the Warringah LEP 2011. While it is acknowledged that the proposed height contravention represents a moderate breach, the resulting impacts of the development on the amenity of the adjoining properties and overall streetscape has been assessed as reasonable.

The proposed Torrens title subdivision is consistent with the clause 4.1 Minimum subdivision lot size requirements under the WLEP 2011 and subdivision controls under part C1 of the Warringah DCP. The subdivision of one lot into two is generally consistent with the subdivision pattern within the immediate vicinity.

However, as noted in the assessment report the site contains the 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.

Based on the above discussion and the full assessment undertaken the application is recommended for refusal on the grounds of contamination and insufficient information to satisfy Council that the site is

suitable for the proposed respite child care centre.

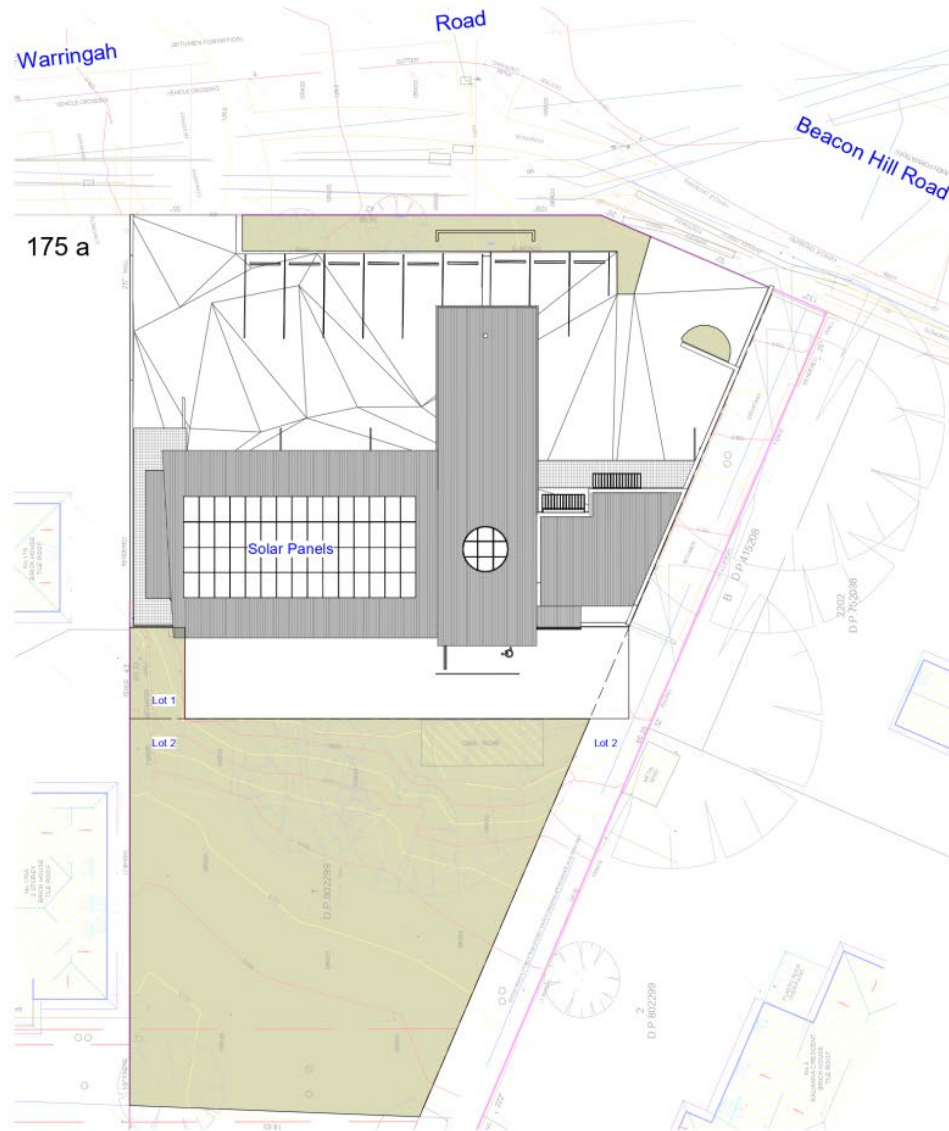
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

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 DA2020/1424 for the Use of premises as respite day care centre, including alterations and additions and subdivision of the site into two lots on land at Lot 1 DP 802299, 173 Warringah Road, BEACON HILL, 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.

A2



1 SITE PLAN
1 : 200

DA ISSUE



Project
13/10/20 DA Issue

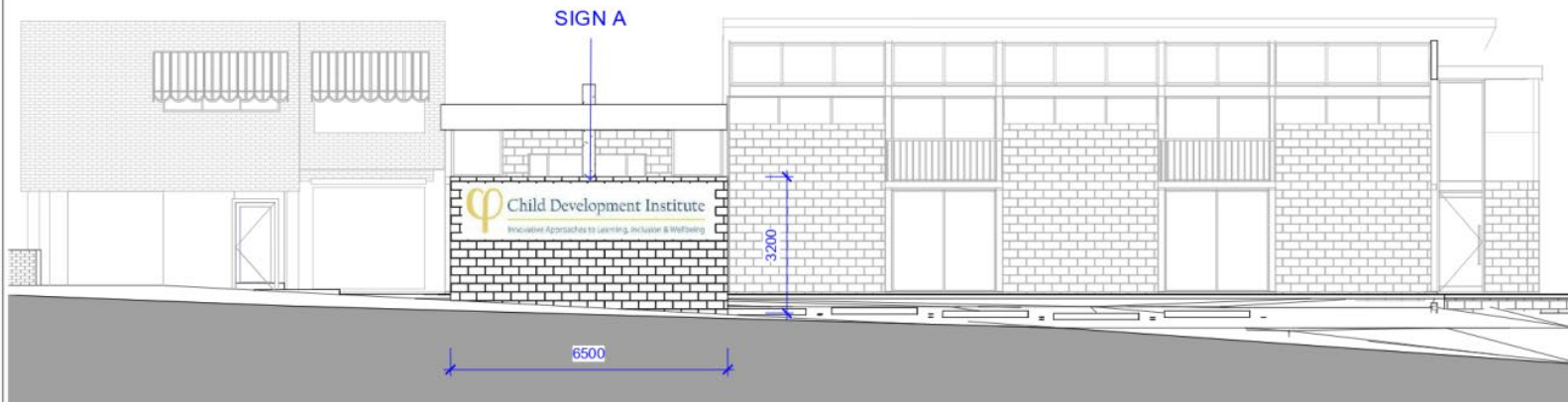
PROJECT
173 Warringah Road, Beacon Hill
DRAWING
Site Plan
Date
13/10/20
Scale
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WFF
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Project Number
20013
Drawing No.
A1.00



DIMENSIONS SHALL NOT BE OBTAINED BY SCALING THE DRAWINGS

A3

DA ISSUE



1 Street Elevation
1 : 100



GRAPHIC SCALE: 1:100
DIMENSIONS SHALL NOT BE OBTAINED BY SCALING THE DRAWINGS

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i.d. Projects

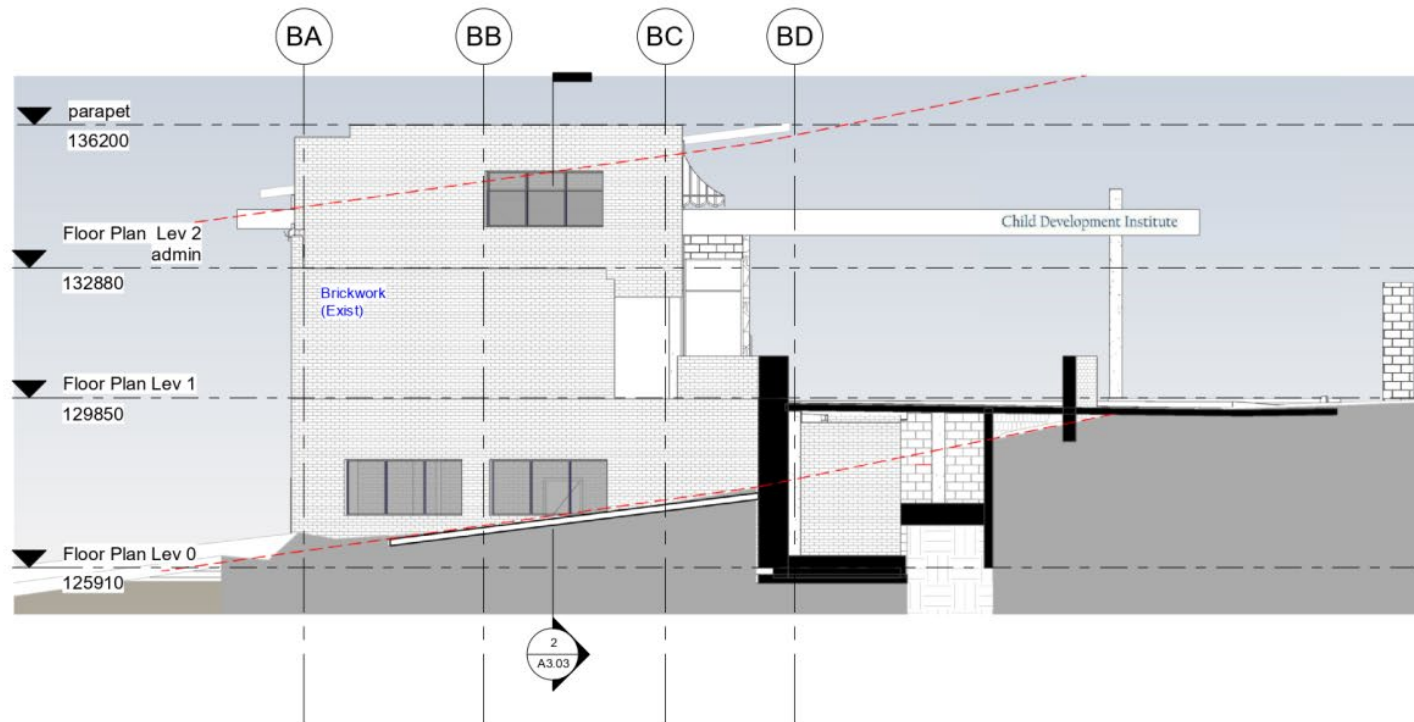
Revision
13/10/20 DA Issue

PROJECT
173 Warringah Road, Beacon Hill
DRAWING
Street Elevation

Date
13/10/20
Scale
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Project Number
20013
Drawing No. Rev No.
A2.00^A

A3

DA ISSUE

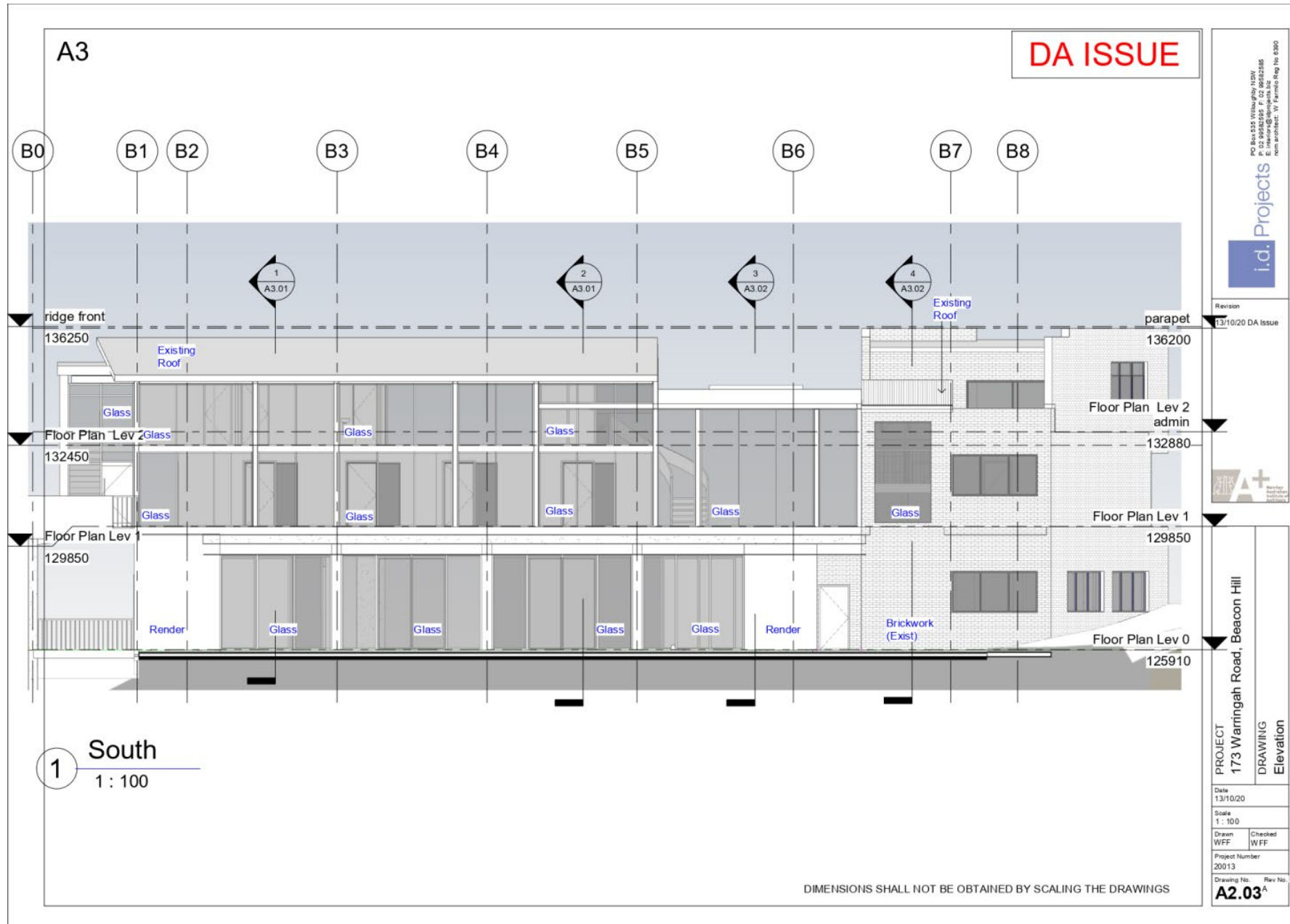


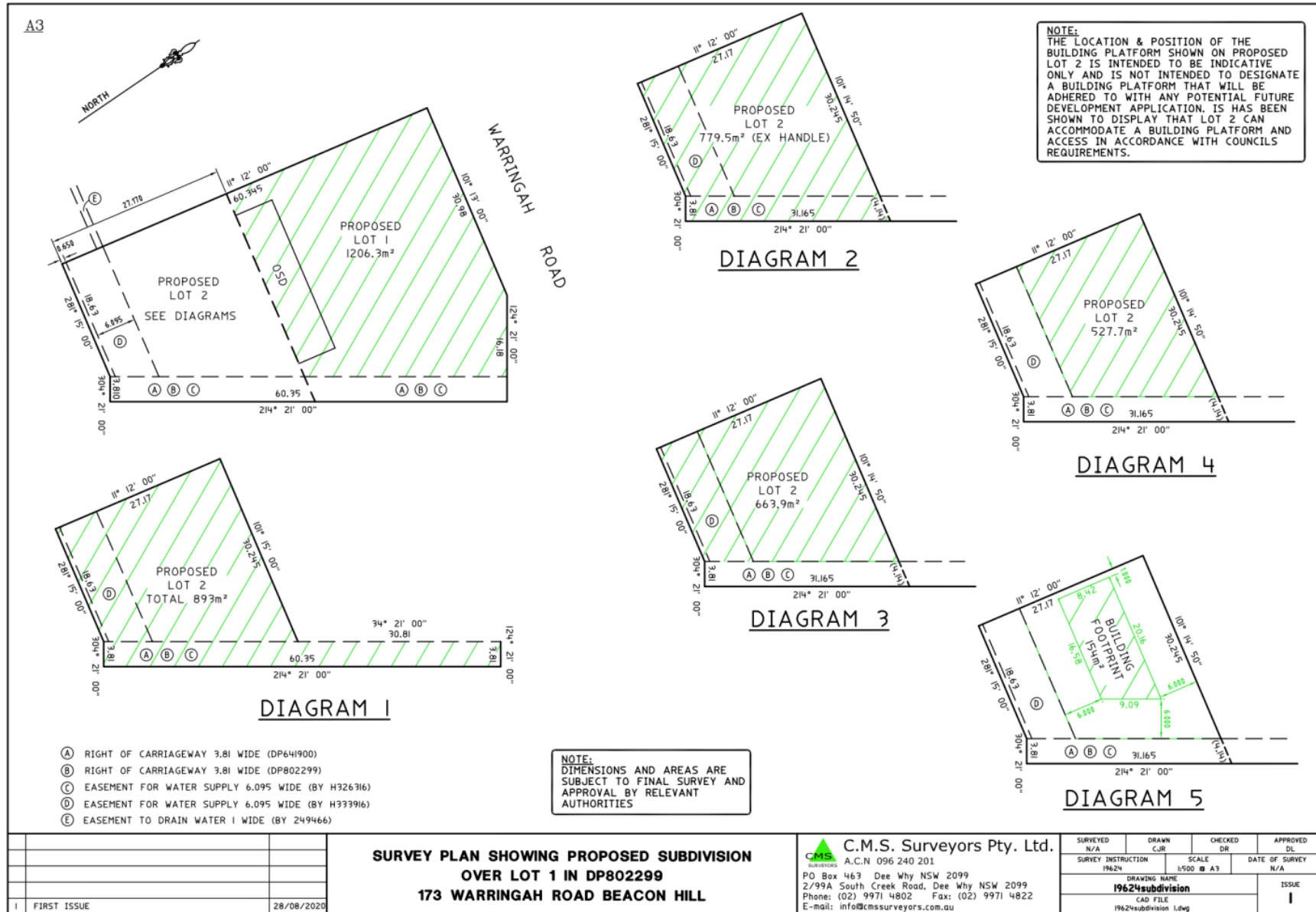
1 East
1 : 100



DIMENSIONS SHALL NOT BE OBTAINED BY SCALING THE DRAWINGS

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Revision	13/10/20 DA Issue
<p>PROJECT 173 Warragah Road, Beacon Hill</p> <p>DRAWING Elevation</p>	
Date	13/10/20
Scale	1 : 100
Drawn WFF	Checked WFF
Project Number	20013
Drawing No.	Rev No.
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Clause 4.6: Exceptions to Development Standards

Warringah Local Environmental Plan 2011

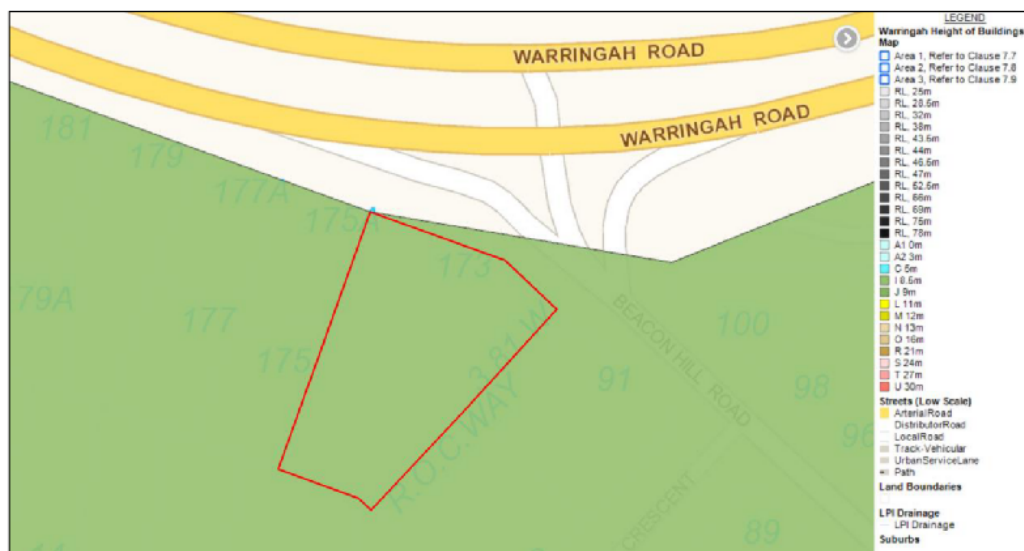
Clause 4.3 Height of Buildings

1. Introduction

This Clause 4.6 Variation has been prepared on behalf of the applicant, Child Development Institute, in support of a Development Application for a change of use, associated building and landscaping works, Torrens Title subdivision and a staged development consent at 173 Warringah Road, Beacon Hill.

The variation request seeks to vary the maximum Height of Buildings Development Standard under Clause 4.3(1) and (2) of Warringah Local Environmental Plan 2011 (Warringah LEP2011) pursuant to Clause 4.6: Exceptions to Development Standards.

Clause 4.3 (1) and (2) specifies that the height of building on any land is not to exceed the maximum height shown for the land on the Warringah LEP2011 Height of Buildings Map.



Warringah LEP2011 Height of Buildings Map. Source: Northern Beaches Council (online mapping) 2020

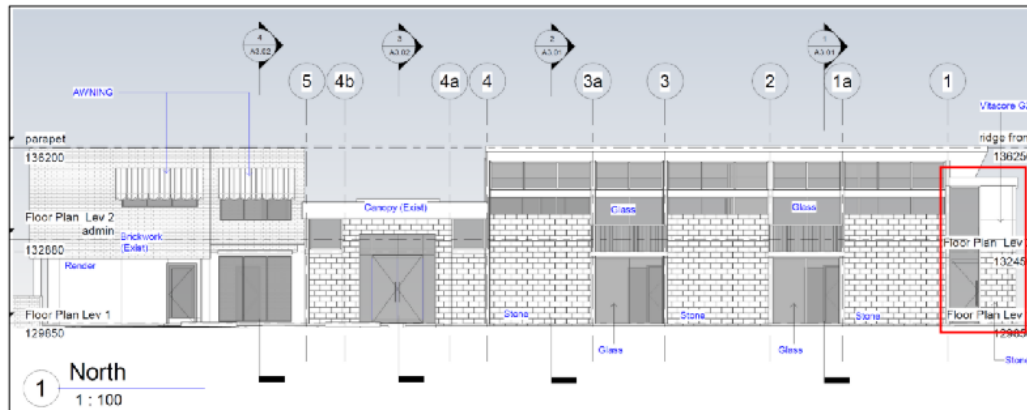
The site is subject to a maximum building height of 8.5m pursuant to the Height of Buildings Map of Warringah LEP2011.

2. Variation to Clause 4.3 Height of Buildings

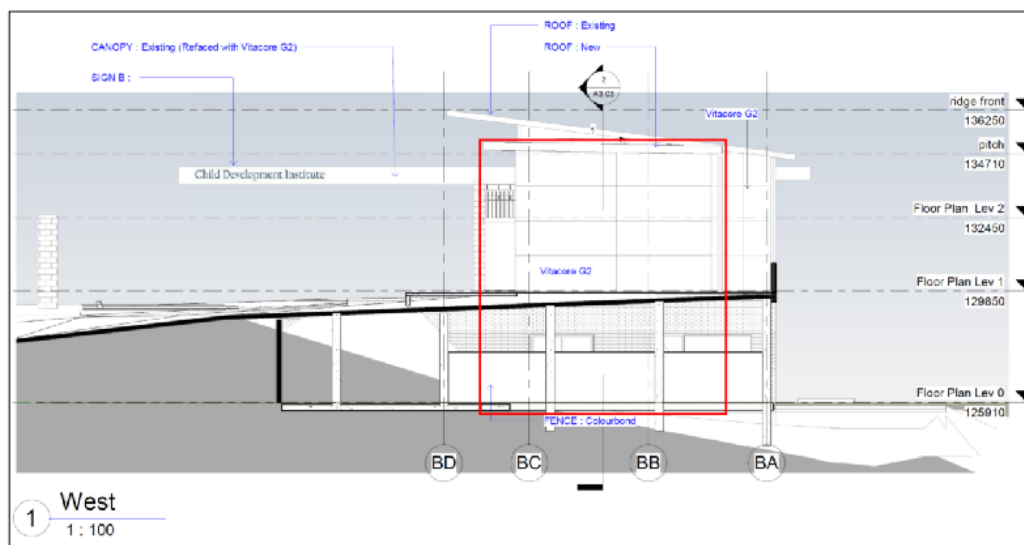
The proposed development involves an internal fitout of an existing building, with minor alterations and additions to allow for an enclosed staircase on the western side of the building that will not increase the height of the existing building. The existing development has a maximum building height of 10.34m, this height was approved as part of DA2002/1614 (and other relevant development approvals). The further breach of building height relates to the staircase located on the western side of the development. The enclosed staircase has a height of 10.08m, breaching the height control by 1.58m (18.5% variation).

Clause 4.6 Variation
173 Warringah Road, Beacon Hill
18 April 2021

The topography of the site slopes extensively to the rear of the site (south-west). The existing development successfully responds to the topography of the site and provides a basement level to the rear of the building, that is not visible from the street. The existing building is setback 15m from the front boundary and does not represent a development that is of an unreasonable bulk and scale. The proposed enclosed staircase will be minimally visible from the street and will not protrude beyond the height of the existing building.



North Elevation (A2.01). Source: i.d. Projects 2020



West Elevation (A2.04). Source: i.d. Projects 2020

The area of non-compliance is on the northern and western elevations (as shown above). Additional Architectural Plans prepared by i.d. Projects have been submitted as part of the application. The addition of a staircase on the western elevation is essential for BCA compliance and to ensure adequate accessibility throughout the site.

The building has been existing onsite since prior to 1984 when it was used as a petrol station, and then a pool supplies store (retail premises) after 1984. The existing building forms part of the character of the area and is uniquely located directly adjacent to a traffic light intersection, which makes it an ideal location for commercial developments.

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The building is setback 15m from the front boundary and provides appropriate landscaping to soften the appearance of the building, and the enclosed staircase. The proposed development includes modifications to the front elevation to 'break up' the front elevation, and improvements to the materiality of the building that will further reduce the bulk and scale of the building and provide an overall improved development. When viewed from the street, the enclosed staircase on the northern elevation is 5.4m in height and is consistent with the character and size of buildings in the immediate area.

The proposal for a change of use and associated building works will not result in an increase in the overall maximum building height for the existing development.

The site does not enjoy any views that are considered to be important or desirable.

3. Clause 4.6 Exceptions to Development Standards

Clause 4.6: Exceptions to Development Standards contends that strict compliance with the height of buildings control, as prescribed within Clause 4.3 (1) and (2) of Warringah Local Environmental Plan 2011, is unreasonable and unnecessary in the circumstances of the case and that exceedance of the maximum height standard by way of minor variations can be supported by Council in considering the merits of the proposal.

The maximum height of buildings control (Clause 4.3) is a development standard to which exceptions can be granted pursuant to Clause 4.6 of Warringah LEP2011.

The relevant Objectives and Provisions of the Clause 4.6 are as follows:

1. *The Objectives of this clause are as follows:*
 - a. *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - b. *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
2. *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - a. *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - b. *that there are sufficient environmental planning grounds to justify contravening the development standard.*
4. *Development consent must not be granted for development that contravenes a development standard unless:*
 - a. *the consent authority is satisfied that:*
 - i. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - b. *the concurrence of the Secretary has been obtained.*
5. *In deciding whether to grant concurrence, the Secretary must consider:*
 - a. *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - b. *the public benefit of maintaining the development standard, and*

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- c. any other matters required to be taken into consideration by the Secretary before granting concurrence.

3.1 Compliance with Clause 4.6(4) Exceptions to Development Standards**3.1.1 The applicant's written request has adequately addressed the matters required to be demonstrated by Subclause (3)(a).**

Subclause (3)(a) of Clause 4.6 prescribes that 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 that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council* [2018] NSWLEC118 the position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in **one or more** of the following ways:

- *The objectives of the development standard are achieved notwithstanding non-compliance with the standard. (3.1.1.1)*
- *The underlying objective or purpose is not relevant to the development. (3.1.1.2)*
- *The underlying objective or purpose would be thwarted if compliance with the standard was required. (3.1.1.3)*
- *The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard. (3.1.1.4)*
- *The zoning of the land is unreasonable or inappropriate. (3.1.1.5)*
- *Some other way. (3.1.1.6)*

3.1.1.1 The objectives of the development standard are achieved notwithstanding non-compliance with the standard

The Objectives of Warringah LEP2011 Clause 4.3 Height of Buildings are as follows:

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

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

A comment on each of the objectives is set out below.

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

The proposed development does not seek to alter the existing maximum building height of 10.34m. The proposed addition of a staircase to the western elevation is 10.08m in height and is compatible with the existing building and the streetscape. In essence, the proposal is an internal fitout of the existing building that has been onsite since prior to 1984.

The proposed staircase, when viewed from a public place (Warringah Road), views as a building of 5.4m in height. The primary non-compliance is restricted to the rear of the site, as the site falls to the south-west and will not be visible from the street. The area of non-compliance is the western elevation which is screened by mature planting on the adjoining property.

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The proposed development is compatible with the single detached dwelling houses in the immediate area. The building is two-storey on the front elevation and is consistent with the one-two storey mix of development surrounding the site. The site, despite being zoned R2 Low Density Residential is ideally located adjacent to a six-lane classified road and a traffic light intersection, making it the best location for commercial development in this locality.

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

The proposed development does not result in the disruption of views, loss of privacy or loss of solar access.

Views: The proposed enclosed staircase does not obstruct any views or lines of site from adjoining properties. The site does not enjoy any important views from the site or from any adjoining properties. Furthermore, the proposed development does not involve an increase in building height for the overall building.

Privacy: The existing building, and the adjoining dwellings, are sufficiently setback from the side boundaries to ensure there is no potential for overlooking and privacy impacts. The height of the existing building does not give rise to any privacy impacts for neighbouring properties. The proposed enclosed staircase will not contribute to any privacy issues as the area is used as a thoroughfare only.

Solar Access: The proposed staircase is below the height of the existing building, and will not result in an increase in overall building height. The shadowing and solar access to the site and adjoining properties will remain as existing.

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

Not applicable. The site is not located adjacent or in proximity to any coastal or bush environments and will, therefore, have no adverse impact on these environments.

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

The building, when viewed from a public place (Warringah Road), appears as a two-storey building of 6.4m in height. The proposed addition of a staircase to the western elevation will not result in any bulk and scale impacts and will not have an adverse impact on the visual impact of the existing building.

The existing building has been setback 15m from the front property boundary to mitigate any potential impacts from the development. Additionally, the proposed development involves alterations and additions to the front façade of the building to articulate and modulate the front elevation and provide visual interest to an outdated architectural design. The proposed development also includes modifications to the materials and finishes of the building to further soften the appearance of the building and inadvertently mitigate any potential bulk and scale concerns.

3.1.1.2 The underlying objective or purpose is not relevant to the development

The underlying objective or purpose of the development standard is not relevant to the development application and this is demonstrated in the matters raised above. Moreover, the building has been existing onsite since prior to the commencement of Warringah Local Environmental Plan 2011 which stipulates the 8.5m height control and the development does not propose to increase the height of the existing building as the proposed staircase is below the existing maximum building height.

3.1.1.3 The underlying objective or purpose would be thwarted if compliance with the standard was required.

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The underlying objective or purpose of the standard would not be defeated or thwarted if compliance with the standard were required. However, if compliance with the standard was required, this would involve substantial demolition to a building that was approved by Warringah Council.

3.1.1.4 The development standard has been virtually abandoned or destroyed by Council's decisions in granting development consents that depart from the standard

Warringah Council has approved a number of development applications in relation to the existing building on the site (as seen in the table below).

Development Application No.	Description	Determination
DA1984/440	Use former service station for storage, display and sale of swimming pool chemicals and equipment	Approved: 10 October 1984
DA1987/48	Erect 3x 61 diameter antennae upon the existing radio mast and a 61cm x 61cm x 25cm meter box	Approved: 19 February 1987
DA2002/1614	Alterations/Additions to the Current Shop – Smith's Pool Supplies	Approved: 19 August 2003
MOD2002/1614/1	Modification 1 to provide additional structural load bearing walls to basement level and to secure space and a catwalk to south elevation for window cleaning (and other)	Approved: 22 July 2004

The aforementioned development consents approved by Warringah Council demonstrate that Council was supportive of the development in its current form. It is clear that Warringah Council did not determine there to be any unreasonable planning issues with the built form of the development.

In this instance, the development standard has been virtually abandoned by Council's decisions in granting development consents for this site.

3.1.1.5 The zoning of the land is unreasonable or inappropriate

The zoning of the land is R2 Low Density Residential, which allows respite day care centres as a permissible land use. Accordingly, the proposal fits within the parameters of the legal framework for Warringah LEP2011. The proposal represents a development that is expected within the R2 Low Density Residential zone.

It is noted that the previous existing use of the site, being a retail premises, is a prohibited land use within the R2 Low Density zone. Additionally, the overall height of the existing building was not considered when the 8.5m height limit was applied to the land.

3.1.1.6 Some other way

Not applicable. Sufficient justification for the variation to Clause 4.3 Height of Buildings has been supplied in the other five ways.

3.1.2 The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)(b).

Subclause (3)(a) of Clause 4.6 prescribes that 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 that there are sufficient environmental planning grounds to justify contravening the development standard.

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Also, in the matter of *Initial Action Pty. Ltd. v. Woollahra Municipal Council [2018] NSWLEC118* the position that there are sufficient environmental planning grounds to justify contravening the development standards identifies that in *Four2Five Pty Ltd. v. Ashfield Council [2015] NSWLEC90* it is necessary to determine:

- 'Environmental planning grounds' by their nature, being grounds that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979* including Section 1.3 of the EPA Act;
- Must be 'sufficient'
 - Firstly, the environmental planning grounds advanced in the written request must be sufficient to 'justify contravening the development standard'. The focus of Clause 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.
 - Secondly, 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 Clause 4.6(4)(a)(i).

3.1.2.1 Sufficient environmental planning grounds to justify contravening the development standard.

In preparing this report, consideration has been given to the relevant Objectives of the *Environmental Planning and Assessment Act 1979* (NSW) (**the Act**) – under Section 1.3 of the Act. The relevant sections that are applicable to this proposal are set out below:

1.3 Objects of Act

The objects of this Act are as follows:

- (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,*
- (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.*

In respect to the objectives referred to above, the following is submitted to demonstrate that there are sufficient environmental planning grounds to justify the variation in the Development Standard under the provisions of Clause 4.6 of Warringah LEP2011.

- The proposed exceedance of the maximum building height control of Warringah LEP2011 is supportable in that the variation is existing and is considered to be of a minor nature and relates solely to the enclosed staircase on the western elevation. The proposed staircase will have no adverse impact on the following:
 - Solar access
 - Overshadowing
 - Visual Privacy
 - Acoustic Amenity
 - Bulk and Scale
 - Front setbacks

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- The existing development responds to the topography of the site by providing the bulk of the building at the rear, lower side of the allotment. The non-compliance with the development standard is minimally visible from a public place and does not result in an adverse visual impact.
- When viewed from the street, the northern elevation of the staircase is viewed as 5.4m in height and appears below the roof form of the existing building. The staircase is a minor addition and retains the overall essence of the building and the 1-2 storey character of the area.
- The development was approved by Northern Beaches Council (former Warringah Council) under a number of development approvals from 1984-2003.
- The proposed development involves alterations and additions to the front facade of the building, along with changes to the materials and finishes of the existing building. The proposed changes further mitigate any potential bulk and scale impacts from the proposed addition.
- The development involves enhanced landscaping that will soften the built form and reduce the visibility of the addition.
- There are no significant views or areas of environmental significance to consider as part of this proposal.
- The approval of this development does not set a precedent for variations to the maximum building height control. The area is characterised by 1-2 storey developments that are residential in nature. The subject building has operated as a commercial premises for a number of years and cannot be used as an example of precedent for any residential development in the immediate area.
- No unacceptable environmental impacts will flow from the proposed development during construction of the alterations and additions and internal fitout of the existing building and upon completion. The proposed staircase will not contribute to any adverse environmental impacts in terms of solar access, overshadowing, visual and acoustic privacy or bulk and scale.

In considering the above, there are sufficient environmental planning grounds to justify the minor contravention to the development standard.

3.1.3 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

The following requires that the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.3 Height of Buildings Control under Warringah LEP2011 and the R2 Low Density Residential zone.

3.1.3.1 Clause 4.3 Height of Buildings – Objectives

Refer to Section 3.1.1.1 of Clause 4.6: Exceptions to Development Standards for detailed assessment (Page 4).

3.1.3.2 R2 Low Density Residential Zone – Objectives

1 Objectives of zone

- (a) To provide for the housing needs of the community within a low density residential environment.*
- (b) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- (c) To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

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(a) to provide for the housing needs of the community within a low density residential environment.

Not applicable.

(b) to enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed development involves a change of use of the existing building to a respite day care centre for children with autistic disabilities. The proposed use is an essential service that will provide much needed assistance and care to children with autism in the local community. The proposed use is compatible with the R2 low density residential zone in that it is not a use that will adversely impact the amenity of residents and is not a use that operates after standard business hours.

(c) to ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

The proposed development includes the revitalisation and replacement of the existing landscaping onsite. The development provides sufficient landscaping for the proposed commercial use. The landscaping proposed will assist in mitigating any potential bulk and scale impacts and softening the built form. The proposal also includes the retention of existing mature trees.

It is therefore submitted that the proposed development is compliant with the objectives of the R2 Low Density Residential zone.