

# AGENDA

## NORTHERN BEACHES LOCAL PLANNING PANEL

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

**WEDNESDAY 21 JULY 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**

David Crofts	Chair
Kara Krason	Town Planner
Graham Brown	Town Planner
Lloyd Graham	Community Representative

**Quorum**

A quorum is three Panel members

**Conflict of Interest**

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



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

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 7 July 2021	
<b>3.0</b>	<b>PUBLIC MEETING ITEMS</b>	<b>5</b>
3.1	DA2021/0179 - 255 Condamine Street, Manly Vale - Construction of a boarding house development	5
3.2	DA2021/0200 - 1110 Barrenjoey Road, Palm Beach - Construction of a dwelling house, including a secondary dwelling and swimming pool	78
3.3	DA2021/0318 - 14 South Steyne, Manly - Alterations and additions to commercial development	133
<b>4.0</b>	<b>NON PUBLIC MEETING ITEMS</b>	<b>189</b>
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.	
4.1	DA2021/0115 - 1/57 Lauderdale Avenue, Fairlight - Alterations and additions to a residential flat building (Apartment 1)	189
4.2	DA2021/0448 - 28-33 South Steyne, Manly - Subdivision of 10 existing Torrens Title Lots into five (5) new Torrens Title Lots	225

## **ACKNOWLEDGEMENT OF COUNTRY**

As a sign of respect, the Northern Beaches Local Planning Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

### **1.0 APOLOGIES & DECLARATIONS OF INTEREST**

### **2.0 MINUTES OF PREVIOUS MEETING**

#### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 7 JULY 2021**

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The Panel notes that the Minutes of the Northern Beaches Local Planning Panel held 7 July 2021 were adopted by the Chairperson and have been posted on Council's website.

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### 3.0 PUBLIC MEETING ITEMS

ITEM 3.1	DA2021/0179 - 255 CONDAMINE STREET, MANLY VALE - CONSTRUCTION OF A BOARDING HOUSE DEVELOPMENT
AUTHORISING MANAGER	Anna Williams
TRIM FILE REF	2021/502095
ATTACHMENTS	<ol style="list-style-type: none"><li>1 Assessment Report</li><li>2 Site Plan &amp; Elevations</li><li>3 Clause 4.6</li><li>4 Design &amp; Sustainability Advisory Panel Report</li></ol>

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#### PURPOSE

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

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#### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2021/0179 for construction of a boarding house development at Lot 8 DP 604034, 255 Condamine Street, Manly Vale for the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0179
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 8 DP 604034, 255 Condamine Street MANLY VALE NSW 2093
Proposed Development:	Construction of a boarding house development
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	My Manly Vale Pty Ltd
Applicant:	My Manly Vale Pty Ltd

Application Lodged:	09/03/2021
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	22/03/2021 to 21/04/2021
Advertised:	22/03/2021
Submissions Received:	21
Clause 4.6 Variation:	4.3 Height of buildings: 78%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 5,084,700.00
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### EXECUTIVE SUMMARY

The application seeks consent for the construction of a 39 room boarding house under the provisions of *State Environmental Planning Policy (Affordable Rental Housing) (SEPP ARH)*.

The site is significantly constrained by a natural creekline (Burnt Bridge Creek) that dissects the site in two. The application proposes to construct the boarding house over and partially within the creekline, inconsistent with the policy position of both Council and the Natural Resources Access Regulator (NRAR). The application constitutes integrated development, and in the absence of general terms of approval from NRAR, the application cannot be approved, irrespective of the merits of the application. The application also requires concurrence from Transport for NSW (TfNSW) for works within the road reserve, which has not been obtained.

The proposal is contrary to the provisions of SEPP ARH, *Warringah Local Environmental Plan 2011 (WLEP 2011)* and *Warringah Development Control Plan 2011 (WDCP 2011)*, with specific concerns relating to character, height, bulk and scale, setbacks, flooding, stormwater management, traffic, parking and general amenity. These matters were also raised as cause for concern in the 21 submissions received in objection to the proposal.

The proposed boarding house development is reliant upon a variation to the maximum building height development standard prescribed by clause 4.3 of WLEP 2011, with a maximum variation of 8.58m or 78%. The variation is not limited in height or area, with the entire upper floor protruding above the 11m height plane by a minimum of 3.1m. The applicant's written request to vary this standard has not satisfactorily demonstrated that compliance with the standard is unreasonable or unnecessary, nor that there are sufficient environmental planning grounds to warrant the variation.

As the application has received more than 10 unique submissions by way of objection, and as the development involves a variation to the building height development standard greater than 10%, the application is referred to the Northern Beaches Local Planning Panel for determination, with a recommendation of refusal.

#### PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the demolition of existing site improvements and the construction of a boarding house at the subject site. Specifically, the boarding house comprises:

- 1 39 boarding rooms, all double rooms, with a maximum occupancy of 78 people,
- 1 Off-street parking for 7 cars (inclusive of 3 car share spaces), 8 motor bikes and bicycles,
- 1 2 internal common rooms and 1 external area of communal open space,
- 1 Stormwater infrastructure,
- 1 New driveway crossing and access driveway, and
- 1 Landscaping.

The proposal involves works over and within the creekline, constituting integrated development under the provisions of s91 of the *Water Management Act 2000* and s4.46 of the EP&A Act, and general terms of approval are required from NRAR.

The application also seeks consent for works within the road reserve of a classified road, requiring the concurrence of TfNSW in accordance with the provisions of s138 of the *Roads Act 1993*.

#### 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**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Local Environmental Plan 2011 - Zone B2 Local Centre  
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Local Environmental Plan 2011 - 6.1 Acid sulfate soils  
Warringah Local Environmental Plan 2011 - 6.2 Earthworks  
Warringah Local Environmental Plan 2011 - 6.3 Flood planning  
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land  
Warringah Development Control Plan - B2 Number of Storeys  
Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks  
Warringah Development Control Plan - B7 Front Boundary Setbacks  
Warringah Development Control Plan - B10 Merit assessment of rear boundary setbacks  
Warringah Development Control Plan - C2 Traffic, Access and Safety  
Warringah Development Control Plan - C3 Parking Facilities  
Warringah Development Control Plan - C4 Stormwater  
Warringah Development Control Plan - C7 Excavation and Landfill  
Warringah Development Control Plan - C9 Waste Management  
Warringah Development Control Plan - D8 Privacy  
Warringah Development Control Plan - D9 Building Bulk  
Warringah Development Control Plan - D20 Safety and Security  
Warringah Development Control Plan - E6 Retaining unique environmental features  
Warringah Development Control Plan - E8 Waterways and Riparian Lands  
Warringah Development Control Plan - F1 Local and Neighbourhood Centres

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 8 DP 604034 , 255 Condamine Street MANLY VALE NSW 2093
<b>Detailed Site Description:</b>	<p>The site is slightly irregular in shape, with a 15.19m wide frontage to Condamine Street, a 15.24m wide rear boundary, a maximum depth of 57.75m and a total area of 863m<sup>2</sup>. The site is dissected by Burnt Bridge Creek, which passes from the rear south-west corner of the site through to the front north-east corner of the site, where the creek is then piped under Condamine Street. The topography of the site undulates in response to the creekline, with a maximum fall to the creek bed of 6m from the north-western corner of the site and 5m from the south-eastern corner of the site.</p> <p>A partially demolished building is located in the south-eastern corner of the site, with the remainder of the site free of development and any significant vegetation.</p> <p>The site is surrounded by development of varying typology, density, age and character, with three and four storey shop</p>



top housing developments to the north, two and three storey bulky goods premises to the south and east, one and two storey low density residential development to the west and north-west, and a local reserve to the south-west.

Condamine Street is a six lane classified road, with limited parking along the frontage of the site to align with afternoon bus lane requirements. The site is in close proximity to the Manly Vale B1 bus stops, which are located approximately 150m to the north and north-east of the site, on either side of Condamine Street.

Map:



## SITE HISTORY

### Site History

On 19 July 2017, Development Application DA2017/0708 was lodged with Council, seeking consent for a five storey boarding house, comprising 63 boarding rooms.

On 7 March 2018, Development Application DA2017/0708 was refused by Council for a number of reasons, primarily in relation to:

- 1 encroachment over the creekline,
- 1 inconsistency with the provisions of SEPP ARH,
- 1 inconsistency with the provisions of SEPP Infrastructure,
- 1 inconsistency with the objectives of the B2 zone,
- 1 height non-compliance,
- 1 flooding,
- 1 non-compliant setbacks, and
- 1 waste management.

On 25 August 2020, a pre-lodgement meeting was held in relation to an amended boarding house development at the subject site. The amended proposal was limited to four storeys and comprised 47 boarding rooms. Council was not supportive of the amended proposal.

#### Application History

On 9 March 2021, the subject application was lodged with Council. The subject application further reduces the amount of proposed boarding rooms to 39, and introduces the central courtyard to break down the overall mass of the building.

On 22 April 2021, the application was referred to the Design and Sustainability Panel (**DSAP**) for comments and recommendations. Upon review of the proposal and after hearing from the applicant with regards to the design of the development, the DSAP concluded:

*The Panel does not support the proposal.*

*The Panel does not consider the site suitable for residential development.*

*The site is so constrained that it will be very difficult to achieve adequate design quality and amenity for residential use.*

*The site is more appropriate for commercial use consistent with the objectives of the zone*

*If the proposal does proceed in any form the Panel recommends significant reduction in the volumes of the building and the following measures:*

- *No rooms should have single aspect to the main road (AADT > 40,000)*
- *The building mass should be reduced so that it does not extend past a line midway between the bottom and top of bank*
- *The building should be setback from the adjoining building by at least 3m at any point*
- *The courtyard alignment should more closely align with the courtyards to the north*
- *The height of the building on the eastern end may be increased as it would not have an adverse effect on any adjoining properties or on the character of the area*

On 13 May 2021, Council wrote to the applicant, outlining concerns in relation to:

- 1 inconsistency with the B2 zone objectives,
- 1 encroachment of the watercourse,
- 1 water management,
- 1 flooding,
- 1 encroachment of the road reserve,
- 1 vehicular access,
- 1 parking,
- 1 waste management,
- 1 urban design,
- 1 solar access,
- 1 site management, and
- 1 building height.

The applicant was provided with the opportunity to amend or withdraw the application, or to nominate for the application to be determined based on the information before Council.

On 31 May 2021, Council wrote to the applicant to ask how they wished to proceed, noting the absence of any response to Council's earlier correspondence.

On 1 June 2021, the applicant provided a response requesting the determination of the matter, and



advised of the lodgement of a Class 1 Appeal with the NSW Land and Environment Court with respect to the deemed refusal of the application.

On 4 June 2021, Council received notice of the appeal.

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

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

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The proposed development was supported by a Detailed Site Investigation, which confirms that the site can be managed to ensure a suitable level of risk. See further discussion with regard to SEPP 55.
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&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b></p>

Section 4.15 Matters for Consideration'	Comments
	<p>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirements of SEPP ARH, WLEP 2011, WDCP 2011 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

#### **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

#### **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

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

The subject development application has been publicly exhibited from 22/03/2021 to 21/04/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 21 submission/s from:

Name:	Address:
John Koorey	36 Bower Street MANLY NSW 2095
Mr Ravi Bhushan Garg	5/24 Augusta Road MANLY NSW 2095
Mrs Kelly Forrest	2 / 251 Condamine Street MANLY VALE NSW 2093
Simon Laurance Waddington	10 Pitt Street MANLY VALE NSW 2093
Mr Stephen Graham Hancock	44 Quinlan Parade MANLY VALE NSW 2093
Mrs Kathryn Barbara Stevens	48 Sunshine Street MANLY VALE NSW 2093
Mr Michael Tsakiris	13 Highview Avenue MANLY VALE NSW 2093
Ms Tiziana Beninati	13 Nenagh Street NORTH MANLY NSW 2100
Gilbey Burgess Strata Management Pty Ltd	1/214 Condamine Street BALGOWLAH NSW 2093

Name:	Address:
Mrs Ann Frances Collins	41 Gordon Street MANLY VALE NSW 2093
Mr Malcolm John Fisher	37 King Street MANLY VALE NSW 2093
Ms Nicole Macleod	Address Unknown
Tracey Cook	Address Unknown
Ms Lauren Kelly	8 Sunshine Street MANLY VALE NSW 2093
Mr David Darnton Hunt	47 Gordon Street MANLY VALE NSW 2093
Mr Phillip Andrew Lambley	23 Innes Road MANLY VALE NSW 2093
Atlas Capital & Equities Pty Limited	43 Redman Road DEE WHY NSW 2099
Colco Consulting Pty Ltd	20 Amiens Road CLONTARF NSW 2093
Mr Francesco Lucia	C/- Atlas Capital & Equity Pty Ltd 43 Redman Road DEE WHY NSW 2099
Mr Kevin Henry Mascarenhas	28 Chandos Street MANLY VALE NSW 2093
Mr Matthew Koorey	12 Pitt Street MANLY VALE NSW 2093

The concerns raised in the submissions received can be generally summarised and addressed, as follows:

#### 1 Parking

Comment: A number of submissions raise concern in regards to the shortfall of on-site parking and a lack of on-street parking in the vicinity of the site. These concerns are shared by Council's Traffic Engineer, and the application is recommended for refusal in this regard.

#### 1 Flooding

Comment: Concerns have been raised in relation to the works within and around the creekline, and any potential impacts upon flood levels on adjoining sites. Council's Flood Engineers are not satisfied with the level of information provided in this regard, with specific concerns regarding additional impacts to adjoining properties during the PMF event. The application is recommended for refusal in this regard.

#### 1 Impacts upon the creek

Comment: Submissions have been received raising concerns in relation to the impact upon the creekline. The level of disturbance of the creekline is not supported by NRAR or Council's Riparian Officer, and the application is recommended for refusal in this regard.

#### 1 Overshadowing

Comment: Submissions have been received in regards to overshadowing arising from the development in relation to the adjoining property to the south and the adjoining property to the west. The application was supported by shadow diagrams to confirm that the proposal will not result in overshadowing of the adjoining dwelling to the west. However, the application does not provide sufficient detail with respect to the property to the south, noting that the shadow diagrams provided do not qualify the impact associated with the non-compliant built form compared to that of a compliant scheme. The lack of appropriate solar analysis is not nominated

as a reason for refusal of its own accord, but forms a contributing factor as to why the applicant's request to vary the building height development standard is not justified.

**1 Setbacks & spatial separation**

Comment: Submissions have been received in objection to the limited setback between the proposal and the rear boundary, resulting in unreasonable overlooking of adjoining and nearby properties. As discussed with regard to clause B10 of WDCP 2011, the proposed rear setbacks do not provide adequate spatial separation or an appropriate transition to the low density neighbouring properties to the rear, attributing to the refusal of the subject application.

Further submissions have been received in relation to the proximity of the proposal to properties to the north and south. As discussed with regard to clause B6 of WDCP 2011, portions of the development are also considered to be inappropriately sited in relation to these adjoining properties, resulting in adverse impacts and inconsistency with the objectives of the side setback control. The inadequacy of the side setbacks also attributes to the refusal of the subject application.

**1 Impacts upon flora and fauna**

Comment: Concerns have been raised in relation to potential impacts upon flora and fauna as a result of the works within and around the creekline. The proposed development has not been designed in accordance with Council's *Protection of Waterways and Riparian Land Policy*, and the application is recommended for refusal in this regard.

**1 Site management**

Comment: Submissions received highlight discrepancies in the application in relation to the provision of a on-site manager. The SEE and POM confirm that an on-site manager is to be employed and that a manager's room is to be provided, however the Traffic Report states that a manager's room is not proposed. Should the application be approved, a condition of consent can be imposed to ensure the provision of an on-site manager.

**1 Construction impacts (inc. vibration)**

Comment: A submission has been received raising concern with regards to impacts associated with construction, including dust and vibration. Should the application be approved, conditions of consent can be imposed to ensure the appropriate management of the site during construction.

**1 Overdevelopment**

Comment: A number of submissions suggest the proposal is an overdevelopment of the highly constrained site. In light of the multiple areas and extent of non-compliance with the applicable plans and policies, it is agreed that the proposal is an overdevelopment of the site, and the application is recommended for refusal in this regard.

**1 Height non-compliance**

Comment: Submissions have been received in objection to the non-compliant height of the development. As discussed with regard to clause 4.3 of WLEP 2011, the extent of height non-compliance is not supported and the proposal is recommended for refusal in this regard.

**1 Activation of street frontage**



Comment: Submissions received raise concern with the lack of commercial/business floor space presenting to Condamine Street. The absence of any commercial or business floor space is inconsistent with the objectives of the B2 Local Centre Zone. Whilst the proposal is not recommended for refusal in this regard, inconsistency with the objectives of the zone is a contributory factor as to why the request to vary the maximum building height is not supportable in this instance.

## 1 Internal amenity

Comment: Submissions have been received that question the internal amenity of the proposed development. In particular, some submissions highlight the amount of single aspect rooms oriented towards Condamine Street and the choice occupants will need to make between fresh air and acoustic privacy. Further submissions relate the lack of parking to a sub-standard amenity, particularly if the development is occupied at capacity. The concerns raised in relation to the amenity of the proposal are echoed in this assessment, noting non-compliance with solar access requirements, limited spatial separation between buildings, and awkward access arrangements to the rear building. The application is recommended for refusal in this regard.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p><b>No objection, with conditions.</b></p> <p><i>Despite the SEE incorrectly stating the site is not classified as Acid Soil affected, Councils maps show the site as Class 4 and 5 Acid Sulfate Soils.</i></p> <p><i>The applicant has provided an assessment for acid soils by Martens Consulting Engineers Feb 2021 which makes a number of recommendations and this report and recommendations will form part of our conditions of approval.</i></p>
Environmental Health (Contaminated Lands)	<p><b>No Objection, with conditions</b></p> <p><i>Environmental Health reviewed the Detailed Site Investigation by Martens Consulting Engineers dated 28 January 2021 (Reference: P1605609JR04V02 – January 2021). The report:</i></p> <ol style="list-style-type: none"> <li>1 <i>Found fill material up to 1.4 mBG using boreholes (no asbestos found in the boreholes. However, a fragment of confirmed asbestos was found at the surface of the site during the detailed site investigation in 2017 and additional fragment identified at the surface during a recent site inspection in 2021.</i></li> <li>1 <i>The report advised: The asbestos SAC was exceeded due to material sample ACM01 containing Chrysotile and Amosite asbestos. This sample was located on the ground surface. However, we cannot confirm if this ACM sample is representative of ACM limited to the surface or near-surface, or whether ACM is also within fill material, which had a maximum depth of approximately 1.4 mBGL.</i></li> </ol>

Internal Referral Body	Comments
	<p>1 <i>The report recommended:</i> Due to asbestos SAC being exceeded, remedial advice is required for guidance of fill removal and certification. Following successful remedial implementation, we consider the site is suitable for the proposed residential development. Prior to any soil material being removed from site, a formal waste classification assessment is required in accordance with NSW EPA Waste Classification Guidelines (2014).</p> <p><i>From a review of the above Environmental Health provide the following comments regarding the contamination report:</i></p> <p>1 <i>The consultant has used boreholes in their assessment for contamination. However, if there is fill material onsite that is likely to contain asbestos bore holes are generally not adequate in assessing fill material for asbestos contamination. Typically tests pits or trenches would be used to identify/delineate a sbestos confirmation.</i></p> <p>1 <i>Given the Geotechnical Report by Martens Consulting Engineers dated 10 February 2021 (Reference: P1605609JR06V01 – February 2021) indicates that there will be bulk excavation of up to approximately 1.5 meters below ground level (mBGL) it is important to determine if the fill material onsite contains asbestos.</i></p> <p>1 <i>The consultant however, has taken a conservative approach and recommended:</i> Due to asbestos SAC being exceeded, remedial advice is required for guidance of fill removal and certification. Following successful remedial implementation, we consider the site is suitable for the proposed residential development. Prior to any soil material being removed from site, a formal waste classification assessment is required in accordance with NSW EPA Waste Classification Guidelines (2014).</p> <p>1 <i>Council as the consent authority needs to be satisfied based on the available information that the land can be remediated prior to issuing consent. The main issue with Asbestos contamination will be costs to the applicant associated with its removal and/or cap and containment.</i></p> <p>1 <i>Environmental health however, can put conditions on to ensure that the data gaps be addressed and if necessary a remediation report prepared and subsequent validation of the site.</i></p>
Environmental Health (Industrial)	<p><b>No objection, with conditions.</b></p> <p><i>A development application proposing the demolition of the existing site structures and the construction of a boarding house containing 39 boarding rooms and car parking for 7 vehicles accessed from Condamine Street.</i></p>

Internal Referral Body	Comments
	<i>A Plan of Management has been submitted.</i>
Landscape Officer	<p><b>No objection, with conditions.</b></p> <p><i>This application is for the construction of a boarding house. The site incorporates a portion of Burnt Bridge Creek.</i></p> <p><i>Councils Landscape Referral section has considered the application against the Warringah Local Environment Plan, and the following Warringah DCP 2011 controls:</i>  <i>D1 Landscaped Open Space and Bushland Setting</i>  <i>E1 Preservation of Trees or Bushland Vegetation</i></p> <p><i>I would defer to comments from Council's Natural Environment section regarding treatment and revegetation of creek banks as proposed, however, from a landscape perspective, the proposal is not objected to.</i></p> <p><i>Within the site, planting is proposed for a central courtyard and front setback which is considered to be suitable for the proposal.</i></p> <p><i>No objections are raised to approval subject to conditions as recommended.</i></p>
NECC (Development Engineering)	<p><b>Objection.</b></p> <p><i>The subject site is flood affected and the exemption from OSD as requested by the applicant's Hydraulic Engineer is acceptable. The applicant has not included a stormwater drainage plan for the proposal which is required for assessment. If connection of stormwater from the site is proposed into the drainage pit in Condamine St, concurrence from Transport for NSW TfNSW will be required for the connection.</i></p> <p><i>It is noted that further information is required by TfNSW for the driveway crossing and Council's Traffic and Road Asset Teams regarding similar issues. Once their requirements have been satisfied the assessment can be completed with regard to this issue and the treatment of the footpath.</i></p> <p><i>Development Engineers cannot support the application due to insufficient information to address clause C4 of Warringah DCP.</i></p>
NECC (Riparian Lands and Creeks)	<p><b>Objection.</b></p> <p><i>The proposed building is covering extensively the creek and the floodplain.</i>  <i>Approximately 80% of the Burnt Bridge Creek Southern bank within the lot is located under the proposed building.</i>  <i>The proposal also shows the building is overhanging the creek bed at two locations.</i>  <i>6 piles are directly located in the creek bank, 7 piles are located on the floodplain.</i>  <i>The extensive covering of the banks, the covering of the creek bed</i></p>

Internal Referral Body	Comments
	<p>and the piles locations are not consistent with Council Policy and are not supported.</p> <p>The Water way Impact Statement is missing from the documentation and must be supplied.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p><b>Objection.</b></p> <p>The proposed development is for a multi-level boarding house. The flood modelling output, specifically Map 16 of the Attachment F in the Flood Assessment Report shows post-development increases in the PMF velocities on private property (lot to the south of the subject site) of greater than 10%. The development cannot result in potential adverse flood impacts of more than 10% increase of PMF velocity on private land.</p> <p>More information is required to show the flood model set up, this includes how existing buildings have been modelled in the lots to the north and south of the subject site. It appears the modelling conducted by the flood consultant does not include neighbouring existing buildings in the model. The flood impact assessment for the development should factor in buildings in the assessment. 1% AEP and PMF Water level and Velocity afflux mapping must be provided for a greater area around the site (extent of 100- 150m upstream and downstream of the site to show proposed flood impacts on surrounding properties).</p> <p>The Air Conditioning condensers must be positioned completely above the 1% AEP due to risk of damage in a 1% AEP flood. Justification must be provided as to why the base of the western lift must be located below the 1% AEP flood level. Without adequate justification it must be raised above the 1% AEP flood level.</p> <p>The above are required to reduce the risks and impacts of flooding and to adequately assess the proposed development.</p>
NECC (Water Management)	<p><b>Objection.</b></p> <p>The MUSIC model must be supplied for Council review.</p> <p>The bio-swale details is not showing extended detention depth and is lacking details.</p> <p>The location of the biofiltration is too close to the creek flow path (elevation and location) with risk of damages (erosion of filter material and deposition of sediment from the creek).</p> <p>Access for maintenance is also an issue including risk of falls with 1.25m from top of wall to bio retention base.</p>
Road Reserve	<p><b>Objection.</b></p> <p>There is limited impact on Council's existing road infrastructure, however, the sub-ground floor plan and ground floor plan indicates the building structures encroach on the public road reserve. Past DA's have been required to address the existing retaining structure that traverses the frontage of the site. The building shall not be permitted to encroach on the public road reserve. Development Engineering to</p>



Internal Referral Body	Comments
	<i>provide further assessment and improvements to existing footpaths as per Council's public space design guidelines.</i>
Strategic and Place Planning (Urban Design)	<p><b>Objection.</b></p> <p><i>The proposal should address the following additional issues:</i></p> <ol style="list-style-type: none"> <li><i>1. The boarding rooms around the middle courtyard are facing each other directly at 9m apart. The courtyard width should be increased to 12m to improve room amenity. Boarding rooms should also be reorientated to prevent direct overlooking as a priority and use appropriate privacy screening as a secondary solution. The proposal should consider reducing room numbers to achieve the above suggestion. The middle courtyard should be aligned with the courtyard of the adjacent northern neighbour as much as possible to maximise solar access.</i></li> <li><i>2. Building height breach of 11m should be supported with solar analysis as compared with a complying 11m development to ensure no additional shadows are casted to surrounding neighbours. As such, setting back the top floor might be required on the common southern boundary.</i></li> <li><i>3. The bottom balcony proposed that breach the rear setback should be deleted to maintain adequate building separation distances to neighbouring sites.</i></li> </ol> <p><b>Previous PLM comments:</b></p> <p><i>The 37 rooms proposal has more potential provided the following issues are considered:</i></p> <ol style="list-style-type: none"> <li><i>1. Setback of the boarding rooms/balconies to the northern side boundary is increased to 6m as a minimum. Consider applying 9m setback to rooms 4,5, 15,16,23 &amp; 24 as they will be facing directly onto the balconies and private open spaces of the next door residences. The 9m setback will also create an indent to break up the long linear northern façade proposed.</i></li> </ol> <p><b>Response:</b> <i>The current scheme proposes a central courtyard to break up the building into two blocks.</i></p> <ol style="list-style-type: none"> <li><i>2. The top floor proposed will completely breach the 11m building height control. It will also diminish sunlight access to the southern neighbouring property future development potential. Considering the constrained site condition and the neighbouring developments (approved and future), the fourth storey should be broken up to have a 12m wide gap to line up with the courtyard of the approved DA to the north. The southern facade of the top storey should also be set backed 3m to allow the 11m building height transition to potential development to the south.</i></li> </ol> <p><b>Response:</b> <i>The central courtyard should be widened to 12m and the top floor be setback as required on the south boundary to not cast additional shadow compared to a complying scheme.</i></p> <ol style="list-style-type: none"> <li><i>3. The residential development to the north will be expecting a similar</i></li> </ol>

Internal Referral Body	Comments
	<p><i>residential proposal on the subject site to continue the concept of the 12 wide courtyard which ideally should be continued to the Freedom furniture site to the south. The proposal should investigate this option of re-orientating boarding rooms into a central courtyard, Condamine street and rear boundary. The issue of 24 rooms potentially overlooking the residential development to the north can be minimised with this approach.</i></p> <p><b>Response:</b> <i>The rooms looking into the central courtyard can be supported but they should be 12m apart (balcony to balcony). Privacy screens to prevent direct line of sight should also be incorporated.</i></p> <p><b>4. The front façade facing Condamine Street should consider the ground floor opening height reduced to 2.7m (subject to service vehicle requirement) to avoid the cavernous look proposed. It should be treated as part of the public domain footpath and ideally should have shopfront spaces activating the public footpath. Nonetheless, it should be a fitting space with quality finishing and treatment for a front lobby majority of the time while also acting as a service area.</b></p> <p><b>Response:</b> <i>The proposal could be improved further with an awning to lower the scale at the pedestrian entry point. This will help to lessen the impact of the hostile environment created by the high traffic flow on Condamine Street.</i></p> <p><b>5. Awning on the street facade should be considered to provide some street amenity/ shelter. New awnings to be setback minimum 1000mm from the face of the kerb to accommodate utility poles and traffic /parking in the kerbside lane. Where street trees are required, the minimum awning to setback from the kerb is 1500mm.</b></p> <p><b>Response:</b> <i>Consider the awning suggestion in point 4 above.</i></p> <p><b>6. Access to the creek bed and riparian area could be considered as part of the recreation area for the residents. Fern garden with shade plantings could be a unique recreation opportunity.</b></p> <p><b>Response:</b> <i>A staircase to access the creek bed and riparian area has been provided.</i></p>
Traffic Engineer	<p><b>Objection.</b></p> <p><i>The development is for demolition of the existing building on the site and construction of a 39 room boarding house with no manager's room. The development also proposes off-street parking for 7 cars (including 1 disabled space), 8 motorcycles and 8 bicycles in a ground floor carpark. 3 of the parking spaces are proposed to be designated as car share spaces with those car share vehicles also to be available to the general public. A new vehicle crossing on 5.5m in width will be constructed on the property's Condamine Street frontage.</i></p> <p><u><b>Traffic:</b></u></p> <p><i>In terms of traffic generation the traffic and parking assessment report has estimated the traffic generation of the development to be 3-4 vehicle trips per hour. The traffic generated by the development may differ slightly from this figure and is likely to be less than other</i></p>

Internal Referral Body	Comments
	<p><i>potential development types on the site and as the site fronts Condamine Street a State Road, the traffic generation from the developed site is acceptable and considered unlikely to significantly impact on conditions in the surrounding road network.</i></p> <p><u><i>Parking:</i></u> <i>The development proposes off-street parking for 7 cars.</i></p> <p><i>The Warringah DCP does not nominate a parking rate for boarding house developments but advises that comparisons must be drawn with developments for a similar purpose.</i></p> <p><i>The SEPP Affordable Rental Housing advises that a consent authority may not refuse a development if it provides parking in excess of 0.5 spaces per boarding room plus no more than 1 space for a manager that is resident on the site. In this instance, there is no resident manager so the SEPP requirement is 19.5 spaces (rounded up to 20)</i></p> <p><i>The developer proposes that three of the parking spaces be designated as car share spaces with such spaces to be managed by the car share company GoGet. The traffic and parking assessment report proposes that each carshare space can be assessed as being equivalent to 10 car spaces. Using this figure the traffic consultant asserts that the 7 car spaces are equivalent to 34 car spaces. The traffic consultant also asserts that Council had agreed at the prelodgement meeting that a car share space could be considered equivalent to 5 car spaces.</i></p> <p><i>The prelodgement advice actually was that although consideration would be given to a car space being equivalent to 5 spaces "Council's preference is to provide no more than 2% or 2 car share spaces, whichever is greater." If a maximum of 2 car share spaces were provided the 39 bed boarding room would therefore require a total of 12 parking spaces. It is also noted that the plans presented at the Prelodgement meeting also proposed a service vehicle bay. This bay has been deleted from the plans now presented for consideration.</i></p> <p><i>In addition, the car share spaces are also to be made available to the general public. While this is understandable in terms of GoGets business model this would render the spaces unsuitable for use by boarding house tenants for much of the time as the car would often be in use by the general community and not available for those they are supposed to be serving.</i></p> <p><i>Given the above, the proposed car parking supply is considered inadequate to meet the needs of the development</i></p> <p><i>The SEPP also requires one bicycle space for every 5 boarding rooms and one motorcycle space for every five boarding rooms. This equates to 8 motorcycle and 8 bicycle parking spaces. As the development provides parking for 8 bicycles and 8 motorcycles, these requirements, which are mandatory, are met.</i></p>



Internal Referral Body	Comments
	<p><i>In terms of the parking layout. Parking space No. 19 is undersized with AS2890.1 section 2.4.1(b) requiring that a space adjacent to a wall or fence be no less than 2.7m in width</i></p> <p><i>Swept path plots have not been provided with the traffic and parking assessment report to demonstrate that access for B85 vehicles to each of the spaces without encroachment on other spaces is possible.</i></p> <p><u><i>Vehicular Access:</i></u>  <i>The development proposes to remove the existing vehicle crossing serving the site and construct a new vehicle crossing which is of 5.5m in width. Concurrent entry/exit to the driveway by B85 vehicle and B99 vehicle has not been demonstrated by way of turning path plots to/from the kerbside lane of Condamine. These should be provided to demonstrate compliance with the requirements of A2890.1 and also to address concerns by TfNSW</i>  <i>The driveway continues at a width of 5.5m inside the property as required by AS2890.1 which allows for an entering vehicle to pass and exiting vehicle.</i>  <i>It is noted that the construction of the new driveway will require relocation of a power pole. That work will need to be completed to Ausgrid requirements and at no cost to Council or Transport for NSW.</i></p> <p><u><i>Pedestrian access:</i></u>  <i>The development provides an appropriately graded accessible path of travel from the carpark although as outlined below. If the turning bay is being used by a service vehicle access to the lift and lobby area, particularly for those with a disability is blocked. Access from the street for those with a disability relies upon the use of a wheel chair which is not ideal.</i></p> <p><u><i>Servicing:</i></u>  <i>It is noted that the service bay that was proposed as part of the prelodgement plans has been deleted from the plans with servicing now intended to be conducted from within the turning bay in the basement carpark. This is considered unsuitable as use of the service bay by delivery drivers would a) impede access to the motorcycle cycle and bicycle parking bays b) prevent vehicles parked in parking bay No.s 18 and 19 from turning forcing such vehicles to reverse from the site onto a busy State Road to turn around which is unacceptable. c) impede pedestrian access to the Lift and foyer area.</i>  <i>It is considered that a service bay is necessary to cater for deliveries, small moving vans, property maintenance purposes etc however this should be catered for by a designated service bay capable of accommodating at least a small rigid vehicle.</i></p> <p><i>The turning path plots provided with the traffic and parking assessment report are inadequate as they do not demonstrate that small rigid vehicles can enter and exit the site from the kerbside lane of Condamine Street. This has also been noted in TfNSW comments.</i></p>

Internal Referral Body	Comments
	<p><i>Finally, It is also noted that Council's Waste Services team have raised concerns about the waste servicing arrangements proposed and these concerns should also be addressed as part of a review of the design.</i></p> <p><u>Summary:</u>  <i>The development in its current form is considered inadequate in terms of its parking supply, parking layout, lack of service vehicle parking. additional information and some design review is required prior to further consideration of the proposal</i></p>
Waste Officer	<p><b>Objection.</b></p> <p><i>The proposal does not comply with Councils' Waste Management Design Guidelines.</i></p> <p><i>Specifically:</i></p> <ol style="list-style-type: none"> <li><i>1. The waste storage room is too small to accommodate the required number of bins. Councils' waste generation rates calculate that 31 x 240 litre bins would be required for a weekly service of the 39 boarding rooms. The applicant is proposing a room large enough to contain just 6 x 240 litre bins for both garbage and recycling. This would require the bins to emptied a minimum of five days per week, resulting three trucks entering and leaving the site on an almost daily basis.</i></li> <li><i>2. The waste storage area is too far from the front property boundary with the street and is only accessible via the vehicular driveway. Council does not require onsite servicing of the waste and recycle bins. Council will provide kerbside collection from a binroom designed and constructed to comply with Councils' Waste Management Design Guidelines.</i></li> <li><i>3. There is no bulky goods storage room shown on the plans. A bulky goods storage room must be provided that complies with Councils' Waste Management Design Guidelines.</i></li> </ol>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p><b>No objection, with conditions.</b></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
NSW Roads and Maritime Services (Traffic Generating Development)	<p><b>Objection, Concurrence not granted.</b></p> <p>The application involves works within the road reserve. Condamine Street is a classified road, and as such, the application was referred to</p>

External Referral Body	Comments
	<p>TfNSW for concurrence in accordance with the provisions of s138 of the Roads Act. TfNSW provided the following response:</p> <p><i>TfNSW has reviewed the development application and is unable to provide concurrence due to the following reasons:</i></p> <ol style="list-style-type: none"> <li>1. <i>Swept path plans of SRV entering and exiting the site from the kerbside lane of Condamine Street were not submitted for review. Lane allocation of Condamine Street should be included on plans to demonstrate manoeuvres from the kerbside lane such that traffic flows on adjacent lanes are not impacted.</i></li> <li>2. <i>Submitted plans only indicate the driveway within the property boundary. The driveway crossover, kerb and gutter should be included in all submitted plans. This includes requested swept path plans, which should include the driveway crossover to demonstrate movements from/into the kerbside lane.</i></li> <li>3. <i>Swept path plans demonstrating forward entry and exit of passenger vehicles from the kerbside lane into each proposed car space were not submitted for review. Adequate turnaround space should be provided onsite and cars should also be able to exit the site in a forward direction when all car spaces are occupied.</i></li> </ol>
<p>Nominated Integrated Development – Natural Resources Access Regulator - Water Management Act 2000 (s91 Controlled Activity Approval for works within 40m of watercourse)</p>	<p><b>Objection, General Terms of Approval not issued.</b></p> <p>The application involves works within and over the creekline, constituting integrated Development under the provisions of s91 of the <i>Water Management Act 2000</i>. The application was referred to NRAR, who advised that additional information is required before NRAR can issue General Terms of Approval, as follows:</p> <p><i>The proposal shows the building overhanging the low flow of the watercourse. The north west corner area is over nearly all of the water flow. The proponent has made the low flow channel of the watercourse much larger than it actually is to make their proposal seem like less of an impact. The area below is all bank and doesn't go over the water as their proposal plans to.</i></p> <p><i>The adjacent building has replaced itself as it previously was and taken no more room than it did before except in height. The bank works on the adjacent building, or this site, would normally not be supported by NRAR but the previous building was already there and could have remained, and the watercourse is then piped under the road and shopping centre.</i></p> <p><i>I have spoken to the proponent about this site in the past and told them that the building is not to overhang any water, meaning the low flow. The adjacent building is not a justification for their building, as they have tried to show, and they need to show their building is not</i></p>

External Referral Body	Comments
	<i>overhanging the watercourse as submitted to us.</i>
	<i>Please show plans in keeping with the above advice.</i>

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

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

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

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

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

##### SEPP 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated. The application was supported by a Detailed Site Investigation, which identifies that the site contains asbestos. The Detailed Site Investigation includes measures to ensure that any contaminates can be disposed of safely, ensuring that the risk to workers on site, neighbouring properties and the environment can be minimised.

The Detailed Site Investigation has been reviewed by Council's Health Officer, who confirms that the measures identified can be incorporated into conditions of consent, should the application be approved. As such, Council can be satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out.

##### SEPP (Affordable Rental Housing) 2009

The application seeks consent for a boarding house and the provisions of SEPP ARH are applicable. The relevant provisions of this policy are considered as follows:

#### Division 3: Boarding houses

##### Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or	<b>Consistent.</b> The site is located within the B2 Local Centre zone and the proposed use is permissible with consent under WLEP 2011.



(f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	
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Clause 27: Development to which this Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Comment
<p>(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.</p> <p><b>Note: Accessible area</b> means land that is within:</p> <p>(c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</p>	<p><b>Consistent.</b></p> <p>The site is located within the B2 Local Centre zone and is situated not more than 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</p> <p>Specifically, the site is located within approximately 150m from the Manly Vale B1 bus stops, which are serviced not only by the B1 bus route but many other routes that travel along Condamine Street.</p>
<p>(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.</p>	<p><b>Not applicable.</b></p> <p>The site is located within the Sydney region.</p>

Clause 28: Development may be carried out with consent

Requirement	Comment
Development to which this Division applies may be carried out with consent.	The development constitutes the construction of a boarding house, as defined by the Standard Instrument. Therefore, the development may be considered under this Division of the SEPP as development which may be carried out with consent.

Clause 29: Standards that cannot be used to refuse consent

**Not applicable.**

Standard	Requirement	Proposed	Compliant/Comment
(1) Density and scale A consent authority	(a) the existing maximum floor space	Floor space ratios are not applied in WLEP	<b>Not applicable.</b>



must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	ratio for any form of residential accommodation permitted on the land, or	2011 or WDCP 2011.	
	(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP 2011.	<b>Not applicable.</b>
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:  (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or  (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.	Residential flat buildings are not permitted on the land and floor space ratios are not applied in WLEP 2011 or WDCP 2011.	<b>Not applicable.</b>
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
<b>(a) building height</b>	if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	The proposal reaches a maximum height of 19.58m, being 8.58m greater than the 11m height limit prescribed by WLEP 2011.	<b>Noted.</b> As the proposal exceeds the 11m height limit, Council may refuse the application in relation to building height.

<b>(b) landscaped area</b>	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	WDCP 2011 does not prescribe a minimum landscaped area calculation for the site.	<b>Noted.</b>
<b>(c) solar access</b>	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	Both the ground floor and upper floor communal areas are oriented to the east and will not receive solar access after 10:30am.	<b>Noted.</b> As neither of the communal living rooms receive a minimum of 3 hours of direct sunlight between 9am and 3pm in midwinter, Council may refuse the application in this regard.
<b>(d) private open space</b>	if at least the following private open space areas are provided (other than the front setback area):  (i) one area of at least 20m <sup>2</sup> with a minimum dimension of 3.0m is provided for the use of the lodgers,  (ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m <sup>2</sup> with a minimum dimension of 2.5m is provided adjacent to that accommodation,	The application provides a communal roof terrace for use of the lodgers, with an area of 20m <sup>2</sup> and no dimension less than 3.0m.  The application is inconsistent with respect to whether a manager's room is proposed. Nonetheless, the proposal incorporates boarding rooms (7, 29, and 30) with outdoor spaces with an area of at least 8.0m <sup>2</sup> with a minimum dimension of 2.5m.	<b>Noted.</b>
<b>(e) parking</b>	if:  (i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and  (ii) in the case of development carried out by or on behalf of a	The development is not carried out for or on behalf of a social housing provider.  Based on the proposed 39 room boarding house, the development may be refused on the grounds of parking if 20 car spaces are not provided. Only 7 spaces are proposed in the subject application.	<b>Noted.</b> As the proposal does not provide 20 car spaces, the application may be refused in relation to parking.

	<p>social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p>		
<b>(f) accommodation size</b>	<p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	Each of the boarding rooms have a gross floor area of at least 16m <sup>2</sup> .	<b>Noted.</b>
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	Each boarding room has both private kitchen and bathroom facilities.	<b>Noted.</b>
	(4) A consent authority may consent to development to which this Division applies		<b>Noted.</b>

	whether or not the development complies with the standards set out in subclause (1) or (2).		
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Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	Two communal living rooms are proposed.	<b>Compliant.</b>
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m <sup>2</sup> ,	The gross floor area of the proposed boarding rooms range from 17m <sup>2</sup> to 25m <sup>2</sup> , with no room exceeding 25m <sup>2</sup> .	<b>Compliant.</b>
(c) no boarding room will be occupied by more than 2 adult lodgers,	In accordance with the POM, no boarding room will be occupied by more than two adults.	<b>Compliant.</b>
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Private bathroom and kitchen facilities are provided within each room. The communal areas also include bathroom and kitchen facilities.	<b>Compliant.</b>
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The application is inconsistent with regard to the provision of an on site boarding house manager.	<b>Inconsistent.</b> However, if approved, a condition of consent can be imposed in this regard.
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	The site is zoned B2 Local Centre, being land zoned primarily for commercial purposes. Boarding houses are permissible with consent within the B2 zone.	<b>Compliant.</b> The proposal comprises residential purposes on the ground floor. Whilst this results in inconsistency with the objectives of the B2 zone, which is problematic with regard to the application's reliance upon a clause 4.6 variation, WLEP 2011 permits boarding houses within the zone, with no limitation upon the inclusion of residential development at the frontage of the ground floor.
(h) at least one parking space will be provided for a bicycle, and	Required bike racks: 8 racks Proposed bike racks: 8 racks	<b>Compliant.</b>

one will be provided for a motorcycle, for every 5 boarding rooms.	Required motorbike spaces: 8 spaces Proposed motorbike spaces: 8 spaces  The proposed development meets the minimum requirements of this clause.	
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.		<b>Not applicable.</b>

#### Clause 30A: Character of the local area

A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

The site is zoned B2 Local Centre and immediately adjoins land zoned R2 Low Density Residential to the rear (west). The four-storey front facade of the development is generally compatible with the character of Condamine Street. However, clause 30A is not limited to the streetscape, but requires consideration of the wider local area. In this regard, concern is raised in relation to the four-storey form at the rear of the site. The scale and proximity of the proposed development does not provide an appropriate transition in relation to the one and two storey low density development to the rear, specifically noting the reduced height of other development at the rear of adjoining B2 zoned sites.

The proposal also fails to appropriately respond to the natural character of the creekline, which is a contributory element of the surrounding locality.

#### SEPP ARH Conclusion

The proposal meets, or is capable of meeting, the development standards for boarding house development prescribed by this policy. However, the development does not appropriately respond to the character of the wider local area, and the proposal is recommended for refusal in this regard.

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 1177271 dated 17 February 2021).

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

Commitment	Required Target	Proposed
<b>Water</b>	40	53
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	35	38

Should the application be approved, a condition can be included to require compliance with the commitments indicated in the BASIX Certificate.



### SEPP (Infrastructure) 2007

The site is situated on Condamine Street, which is a classified road, and as such, the provisions of clause 101 of SEPP Infrastructure are applicable. Clause 101(2) of SEPP Infrastructure prescribes that the consent authority must not grant consent to development on land fronting a classified road unless it is satisfied that:

- a. *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- b. *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
  - i. *the design of the vehicular access to the land, or*
  - ii. *the emission of smoke or dust from the development, or*
  - iii. *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- c. *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The consent authority cannot be satisfied of these matters, as follows:

- a. Access to the site via an alternate road is not an option for this site.
- b. The application is yet to demonstrate that the use of the proposed boarding house will not adversely impact upon the safety, efficiency and ongoing operation of Condamine Street. TfNSW and Council's Engineers are not satisfied with the level of detail provided in relation to the driveway design, with further concerns regarding servicing of the site.
- c. DSAP raised concerns regarding the amount of single aspect rooms oriented towards Condamine Street. Whilst the application was supported by an Acoustic Report to ensure that noise levels within all rooms will be acceptable, this assumes that all windows are closed, which results in over reliance upon mechanical ventilation.

### Warringah Local Environmental Plan 2011

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

### Principal Development Standards

Standard	Requirement	Proposed	Variation	Complies
Height of Buildings:	11m	19.58m	8.58m or 78%	No

### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
6.1 Acid sulfate soils	Yes
6.2 Earthworks	No
6.3 Flood planning	No
6.4 Development on sloping land	No

#### Detailed Assessment

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

The application seeks consent for the construction of a boarding house, which is permissible within the B2 Local Centre zone under the provisions of both SEPP ARH and WLEP 2011. However, the proposed development is not consistent with the objectives of the B2 zoning, as follows:

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

Comment: The proposal is for residential use and no component of the development is designated for retail, business, entertainment or community use.

- 1 *To encourage employment opportunities in accessible locations.*

Comment: The proposal does not provide or encourage employment opportunities, with no portion of the development to be used as employment generating land.

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

Comment: The proposal is sited in close proximity to the Manly Vale B1 bus stops, and noting the shortfall of parking provided on site, occupants of the development will be highly reliant upon public transport and walking and cycling infrastructure. However, this should not be used as justification for the on-site parking shortfall proposed.

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

Comment: The application lacks sufficient information to ensure that the pedestrian environment along Condamine Street will maximise safety for pedestrians. Furthermore, the proposal lacks any meaningful street activation, with no retail or business premises on the ground floor.

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

Comment: The scale of the streetscape facade is generally compatible with that of surrounding built form. However, concern is raised in relation to the way in which the proposal responds to the creekline that dissects the site, noting that the proposed encroachments of the creekline are antipathetic to Council's Riparian Management Policy.

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

Comment: The application has not demonstrated that the proposed residential development is appropriate on such a constrained and hostile site, or that the density of the proposed development has adequate regard to the amenity and use of adjoining sites.

#### 4.3 Height of buildings

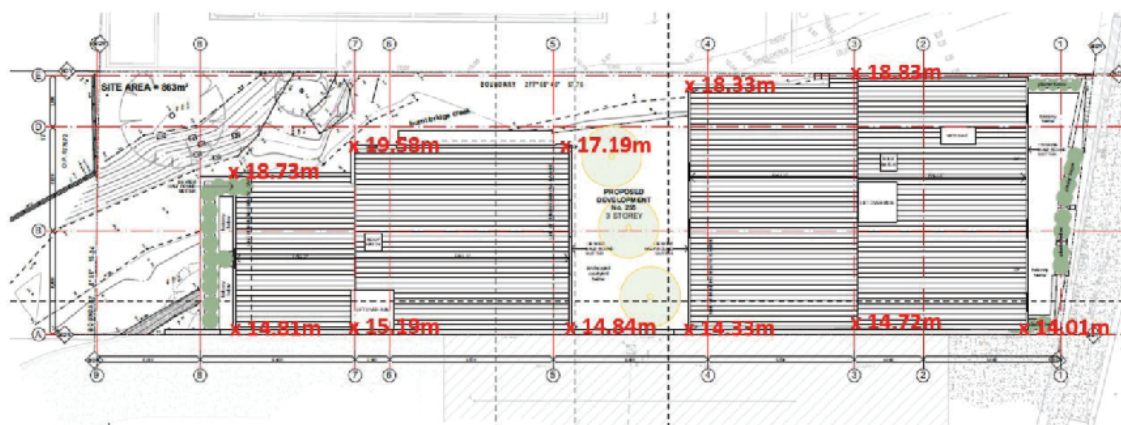
#### and 4.6 Exceptions to development standards

With a maximum building height of 19.58m, the proposed development is inconsistent with the 11m maximum building height prescribed by clause 4.3 of WLEP 2011. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of WLEP 2011 can be applied.

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

#### What is the extent of the breach?

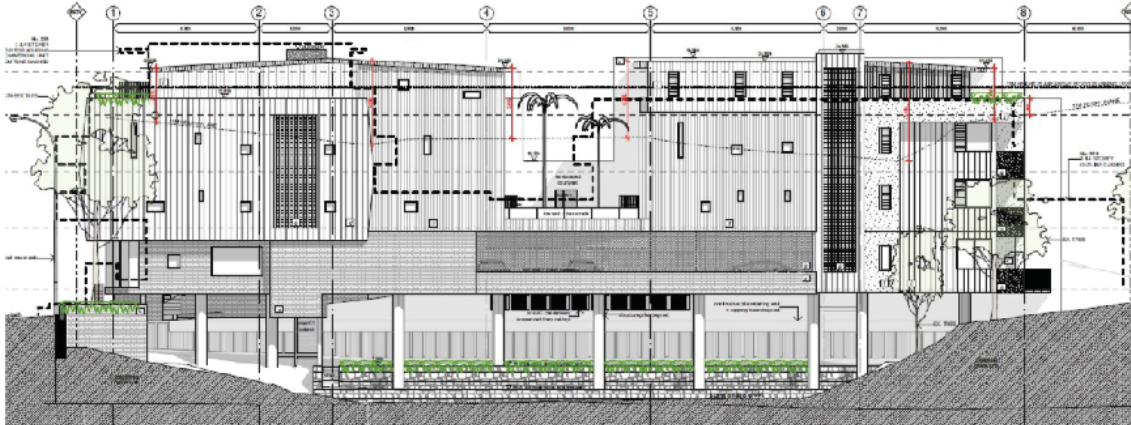
The proposed development reaches a maximum height of 19.58m, representative of a 8.58m or 78% variation to the 11m maximum building height development standard. The maximum height occurs in the central roof form of the rear building, where the development overhangs the creekline. Whilst the extent of non-compliance decreases across the remainder of the building, the entire top floor protrudes beyond the 11m height plane, with a minimum non-compliance of 3.01m at the front south-east corner of the front building. The height of varying parts of the building is best illustrated in the diagram below.



It is noted that Council's calculations differ from those nominated in the applicant's 4.6 submission by up to 3.23m or 29%. Upon review of the clause 4.6 submission, it appears that the applicant has measured the height of the development from the 11m height plane shown on the northern elevation (see Diagram 2, below). However, as evident in Diagram 2, the 11m height plane does not relate to the



existing ground levels nominated on the elevation. Council's height calculations, as translated in Diagram 1, were calculated by superimposing the roof plan onto the detailed survey, to then deduct the surveyed ground level from the proposed roof level at any one point.



Has the applicant's submission addressed the relevant criteria?

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

- a. That compliance with the development standard is unreasonable or unnecessary in the circumstances 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 has not satisfactorily demonstrated that the proposed development will achieve consistency with the objectives of the building height development standard, particularly with regards to the following objectives:

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

Comment: The submission from the applicant emphasises the proposal's compatibility with other development along the streetscape, and in this regard, the four storey nature of development presenting to Condamine Street is not denied. However, the submission fails to acknowledge the height of buildings towards the rear of the site, where the development adjoins the R2 zone. Similar to the proposed development, the adjoining building to the north at 259 Condamine Street is broken into two buildings. Whilst the front building is four storeys in height, the building to the rear is only three storeys in height, and sits a full storey lower than the rear building proposed. With only a 6m setback to the rear boundary, the applicant's 4.6 submission also fails to demonstrate how the non-compliant 4 storey rear building is compatible with the height and scale of the one and two storey dwellings to the rear.

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

Comment: The applicant's claims that the visual impact of the non-compliant portions of the development have been appropriately minimised are not supported. The non-compliant upper floor of the proposal sits forward of the 5m minimum front setback and will be highly visible from Condamine Street, particularly noting the comparatively undeveloped nature of the site to the south. Furthermore, the application relies upon a canopy tree in the front setback to soften the visual impact of the development. However, despite being shown to reach the height of the proposed development, the subject tree is proposed within a planter box that is covered by the level above, such that the tree will never extend beyond the first floor.

With regard to solar access, the application has failed to undertake any comparative analysis in relation to the proposed scheme and a compliant built form, such that any impact arising from the height non-compliance cannot be qualified. Whilst solar access to the solar panels of the adjoining bulky goods premises may not hold determining weight, the adjoining site may ultimately be developed for shop top housing development, and as evident in the subject application, the obtainment of solar access from the north-east is of utmost importance.

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

Comment: As above, the applicant has not demonstrated that the visual impact of the non-compliant upper floor has been appropriately managed as viewed from Condamine Street. The application is also silent in regards to the visual impact of the development from the adjacent public reserve.

It is also questioned as to how the applicant can be satisfied that the non-compliant portions of the development can achieve the objectives of the control in circumstances where the extent of non-compliance has not been accurately identified.

Overall, the applicant has not demonstrated that strict compliance with the 11m height limit is unreasonable and unnecessary in the circumstances of this application.

*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] NSWLEC118*, "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 applicant's submission highlights a number of reasons/grounds for the proposed departure from the building height development standard, the most pertinent being:

- The proposal is consistent with the height of other development along the streetscape, and the non-compliance ensures that the building achieves an appropriate contextual fit with the 4 storey character of the western side of Condamine Street,
- The depression through the site created by the creek distorts any reasonable assessment of height when expressed in metres above ground level (existing),
- The height limit has been effectively abandoned along this section of Condamine Street in favour of a consistent and cohesive streetscape,
- Strict compliance would require the deletion of the upper 2 floors of the development and

result in a two storey built form that would appear inconsistent with the height and cohesive streetscape established by recently approved and constructed shop top housing development along this section of Condamine Street.

- The building is of exceptional design quality with the variation facilitating a height and floor space that provides for contextual built form compatibility, the delivery of affordable housing and the orderly and economic use and development of the land consistent with the objects 1.3 (c), (d) and (g) of the Act.

Similar to that said in relation to the objectives of the building height control, the applicant's grounds presented to justify the proposed building height variation place excessive weight on the height of buildings fronting Condamine Street to the north of the site, with no consideration of buildings behind the street facade. The applicant's statement ignores the reduced height of the rear building on the site to the north, and the height of existing development to the south and west.

Whilst the effect of the depression associated with the creekline has an obvious impact upon the measurement of height, this is not considered to warrant variation of the building height to the extent proposed, particularly in circumstances where the maximum height breach occurs in the location where the development overhangs the centreline of the creek, inconsistent with Council's *Protection of Waterway and Riparian Land Policy* and the position of NRAR.

The proposed development has a considerable shortfall with respect to on-site vehicular parking, which would be resolved if the non-compliant upper floor was reduced or removed. Whilst it is appreciated that the additional floor space will provide additional boarding rooms, the proposal presents as an over development of the site, and the applicant has not demonstrated that the site is suitable for the density proposed.

The applicants submission is not considered to establish sufficient environmental planning grounds to justify the contravention of the building height proposed.

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

Is the proposal in the public interest?

Under the provisions of clause 4.6(4)(a) of WLEP 2011, consent must not be granted to a proposal that contravenes a development standard unless 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 the zone in which the development is to be carried out.

The proposal is not considered to be consistent with the objectives of the building height development standard, as follows:

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

Comment: The height and scale of the building fronting Condamine Street is considered to be compatible with the height and scale of buildings to the north. However, the four storey height of the development will be visually jarring as seen from the south and west, and when viewed in conjunction with the three storey rear building on the site to the north.

- 1 *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*



Comment: The proposed development will not result in any unreasonable impacts upon views. However, as above, the application has not satisfactorily demonstrated that the visual impact of the development has been minimised, or that the non-compliant development as a whole will not result in adverse solar access impacts. The application is also unresolved with regard to visual privacy, with inadequate setbacks between the two buildings proposed on the site.

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

Comment: Whilst not specifically a 'bush' environment, it is important to note that the proposal will have a significant impact upon the scenic quality of the creekline, inconsistent with Council's *Protection of Waterway and Riparian Land Policy*.

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

Comment: As above, the applicant has not demonstrated that the visual impact of the non-compliant upper floor has been appropriately managed as viewed from Condamine Street. The application is also silent in regards to the visual impact of the development from the adjacent public reserve.

Furthermore, as discussed separately above, the proposal is not considered to be consistent with the relevant objectives of the B2 Local Centre zone, primarily due to the fact that the proposal does not provide any business/retail floor space or street activation.

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

#### Has concurrence been obtained?

Pursuant to clause 4.6(4) of WLEP 2011, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with correspondence from the Deputy Secretary dated 30 June 2020, the Northern Beaches Local Planning Panel may assume the Secretary's concurrence in relation to the proposed development.

#### Conclusion

Overall, the consent authority cannot be satisfied of the matters prescribed by clause 4.6 of WLEP 2011, and the proposed building height variation cannot be supported.

### **6.1 Acid sulfate soils**

The proposed development involves disturbance of at least 1 tonne of soil. As such, clause 6.1 of WLEP 2011 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 4 and 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works at depths beyond 2.0m below the natural ground surface and/or works by which the watertable is likely to be lowered more than 2.0 metre below the natural ground surface within a Class 4 acid sulfate

soil area are required to be assessed to determine if any impact will occur.

The Preliminary Geotechnical and Acid Sulfate Soils Assessment and Acid Sulfate Soils Management Plan (prepared by Martens Consulting Engineers dated February 2021) identifies the presence of alluvial soils and includes recommendations to be complied with during construction and a treatment plan.

The Preliminary Geotechnical and Acid Sulfate Soils Assessment and Acid Sulfate Soils Management Plan was referred to Council's Environmental Health Officer who concurred with the findings and provided a series of conditions of consent, to be imposed if the application was to be approved.

## 6.2 Earthworks

Clause 6.2 of WLEP 2011 requires the consent authority to have consideration of the following matters before granting consent for earthworks:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality*
- (b) the effect of the proposed development on the likely future use or redevelopment of the land*
- (c) the quality of the fill or the soil to be excavated, or both*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties*
- (e) the source of any fill material and the destination of any excavated material*
- (f) the likelihood of disturbing relics*
- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area*

The proposal involves excavation and fill below the building and along/within the creekline. As addressed in more detail by the relevant referral bodies, the application is yet to demonstrate that these works will not unreasonably impact upon the watercourse or adjoining properties (with respect to flooding).

## 6.3 Flood planning

### and E11 Flood Prone Land of WDCP 2011

In accordance with the provisions of clause 6.3(3) of WLEP 2011, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land, and*
- (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*
- (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

Furthermore, in accordance with clause E11 of WDCP 2011, the proposal must be designed in



accordance with the design Matrix, to ensure the protection of people, the natural environment and private/public infrastructure and assets.

As addressed by Council's Flood and Riparian Officers, the proposed development will result in adverse impacts upon adjoining properties during the PMF event and unacceptable impacts upon the creekline, contrary to both the design Matrix of WDCP 2011 and Council's Protection of Waterway and Riparian Land Policy. Furthermore, the application has not been supported by sufficient information to confirm the basis of the conclusions reached in the Flood Report, such that the consent authority cannot be satisfied that the proposal will not result in additional impact during the more frequent flood events.

As such, the consent authority cannot grant consent to the proposal, and the application is recommended for refusal in this regard.

#### 6.4 Development on sloping land

##### and E10 Landslip Risk of WDCP 2011

Clause 6.4(3) of WLEP 2011 prescribes that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) *the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*
- (b) *the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*
- (c) *the development will not impact on or affect the existing subsurface flow conditions.*

Further, clause E10 of WDCP 2011 requires the preparation of a geotechnical report, in addition to the preparation of a hydrological assessment of stormwater discharge and subsurface flow conditions, prepared by a suitably qualified geotechnical/hydrological engineer.

The proposed development was supported by a geotechnical report which assesses the risk associated with landslides in relation to both property and life, and considers the proposal's impacts upon existing subsurface flow conditions, and as such the consent authority can be satisfied of the matters listed in points a and c, above. However, despite the provision of a detailed Stormwater Management Report, the application was not supported by a Stormwater Management Plan. The report provides multiple options for the dispersion and treatment of stormwater, however without a concept plan, Council cannot confirm the option/s ultimately relied upon. Furthermore, it is unclear as to whether the proposal intends to drain to the creekline or whether the proposal will connect to the stormwater infrastructure in Condamine Street, which will necessitate concurrence from TfNSW.

Whilst it is considered that an engineering solution can be developed to ensure against any adverse impacts associated with stormwater discharge, in the absence of a stormwater plan, council cannot be satisfied in this regard.

#### Warringah Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Proposed	Variation	Complies
B2 Number of storeys	3	4	1 storey	No
B5 Side Boundary Setbacks	North - Merit	Nil - 6.7m	See discussion.	No
	South- Merit	Nil.	See discussion.	No

B7 Front Boundary Setbacks	Ground - Maintain Level 1 - Maintain Level 2 - 5m Level 3 - 5m	Nil. Nil. Nil. 3.5m	See discussion.	No
B9 Rear Boundary Setbacks	West - Merit	6m	See discussion.	No

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B2 Number of Storeys	No	No
B6 Merit Assessment of Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	No	No
B10 Merit assessment of rear boundary setbacks	No	No
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	No
C4 Stormwater	No	No
C7 Excavation and Landfill	No	No
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	No
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	No	No
D20 Safety and Security	No	No
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	No	No
E8 Waterways and Riparian Lands	No	No
E10 Landslip Risk	No	No
E11 Flood Prone Land	No	No
F1 Local and Neighbourhood Centres	No	No

#### Detailed Assessment

## B2 Number of Storeys

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

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

The proposed four storey development is not supported in this instance, as consistency with the objectives of the control are not achieved, as follows:

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

Comment: The proposal has not satisfactorily demonstrated that four storey development will not visually dominate the surrounding properties, particularly those to the south and west. The proposal cannot rely upon precedence in relation to the rear building, noting that the rear building of the development to the north is compliant with the three storey development control.

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

Comment: The statement of environmental effects suggests that the proposal presents as a three storey development to Condamine Street. The fourth storey is readily apparent in each of the street views prepared to support the application, particularly when viewed from the south where a four storey wall presents with a nil setback to the southern boundary. The application does not address the visual impact of the four storey development as viewed from the low density development to the west or the public reserve to the south-west.

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

Comment: The proposed development is unlikely to impact upon views from adjoining or nearby properties.

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

Comment: The fourth storey is not considered to unreasonably impact upon the amenity of adjoining and nearby properties, particularly noting the increased setback at the rear. However, the upper floor may impact upon the development potential of the adjoining site to the south.

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

Comment: The design of the roof does not impact upon the design of the fourth floor or non-compliance with the three storey height control.

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

Comment: The proposal is both inconsistent with the height of buildings development standard

and the three storey height limit.

## B6 Merit Assessment of Side Boundary Setbacks

Clause B6 of WDCP 2011 prescribes that side boundary setbacks will be determined on a merit basis with regard to streetscape, amenity of surrounding properties, and setbacks of neighbouring development.

The application proposes varied side setbacks, with nil to 6.7m setbacks along the northern side boundary and nil setbacks along the entire length of the southern facade. Particular concern is raised in relation to the setbacks of the following aspects of the proposal:

- 1 The northern side setback of the front four storey building: The majority of the front building is sited with a nil setback to the northern side boundary. This results in an awkward relationship with the building to the north, which is angled to follow the creekline with openings presenting to the south (towards the proposed development). The alignment of the proposal creates a pinch point, with only 1.3m between the adjoining buildings. As discussed in the recommendations from DSAP, a minimum 3m setback should be achieved between buildings. This would require additional setbacks between the stair of the front building and boarding rooms 10, 23 and 34 of between 0.2m - 1.8m.
- 1 The southern side setback of both buildings at the upper floor: The application proposes nil setbacks along the entire southern facade, carried up on each four storeys. Noting that the entire top floor exceeds both the height and number of storeys standards/controls, the reasonableness of the nil setback to the southern side boundary at the upper floor is questioned. The application has not demonstrated the impacts associated with the additional floor upon the development potential of the site to the south, nor has it considered the impacts of overshadowing of the roof mounted solar panels. Furthermore, the lack of a setback at the upper floor is a blunt transition to the adjoining two storey development to the south, with no attempt to minimise the visual impact of the non-compliant fourth storey from the public domain. The impact of the nil side setback is exacerbated by the reduced break between the proposed buildings and the non-compliant front setbacks on the second and third floor.

Overall, the proposal is not considered to achieve consistency with the following objectives of the side setback control, as follows:

- 1 *To ensure that development does not become visually dominant.*

Comment: The lack of any setback along the southern side of the top floor actively increases the visual prominence of the non-compliant fourth storey, such that it will be highly visible from the south. The reduced setbacks to the north also impact upon what should be a consistent channel between buildings, correlating with the creekline below. The proximity of the proposed development will also have unacceptable visual dominance as seen from the adjoining development to the north, that is oriented with openings to the south.

- 1 *To ensure that the scale and bulk of buildings is minimised.*

Comment: The bulk and scale of the proposal overwhelms the creekline, creating a pinch point between buildings of only 1.3m. Extending the upper floor to the southern boundary, where the height non-compliance will be most visually evident, is also counter-productive to this objective,



which seeks to minimise the bulk and scale of development.

- 1 *To provide adequate separation between buildings to ensure a reasonable level of amenity and solar access is maintained.*

Comment: The spatial separation between the proposed development and the existing development to the north is unacceptable. Furthermore, the applicant has not demonstrated the impact of the non-compliant fourth storey in relation to solar access to the site to the south. To ensure the development potential for the site to the south, the proposal should not cast any additional overshadowing when compared to a compliant built form.

### **B7 Front Boundary Setbacks**

Clause B7 of WDCP 2011 prescribe that existing front setbacks at the ground and first floor should be maintained, with 5m setbacks at the second floor. Noting that the DCP does not anticipate a third floor, it is reasonable to assume that the 5m setback for the second floor should also be carried up to any third floor (as a minimum).

The dominant facade of the ground, first and second floor is sited with a nil setback to Condamine Street, with minor portions of the building encroaching within the public road reserve. Council and TfNSW object to any encroachment of the public road reserve, and owners consent will not be granted for these works.

Despite non-compliance with the 5m minimum prescribed, the nil setback on the second floor is supported in these circumstances, as it responds to the form of development approved along the remainder of the street, consistent with the objective of this control which aims to maintain the visual continuity and pattern of buildings.

However, the 3.8m (minimum) setback of the third floor is not supported due to inconsistency with the objectives of the front setback control, as follows:

- 1 *To create a sense of openness.*

Comment: The policy does not anticipate a third floor. To ensure a sense of openness is achieved, and third floor should be setback such that it is not visible from the street.

- 1 *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment: The proposed 3.8m setback is inconsistent with the alignment of other upper floors in the vicinity of the site. The adjoining two storey development to the south has considerably greater setbacks, and the third floor of the adjoining building to the north is setback at a minimum distance of 5m from the front boundary.

- 1 *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment: The proposal does not appropriately respond to its context, and in particular, the prominence of the upper floor does not act to protect or enhance the streetscape.

- 1 *To achieve reasonable view sharing.*

Comment: The proposal is unlikely to impact upon views from adjoining or nearby residences.



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

The application has a predominant setback of 6m from the rear boundary, with a ground floor balcony extending within 4.5m from the rear boundary. Whilst SEPP 65 and the ADG do not apply in relation to the proposal, it is relevant to note that an apartment building of the same scale would require a setback in excess of 6m, in acknowledgement of the R2 Low Density zoning to the rear. The proposed setback to the rear boundary is not considered to be appropriate with respect to the scale of the development for the following reasons:

- 1 the proposal does not provide an appropriate transition to the low density residential development to the rear,
- 1 whilst the 6m setback aligns with the adjoining development to the north, the resultant setback area is constrained by the creek such that no screen planting can be introduced between the building and the rear setback, and
- 1 the proposal places an over-reliance upon landscaping on the adjacent low density site to ensure privacy, with no privacy measures proposed as part of the development.

As such, the rear setback is not consistent with the objectives of the rear setback control, and the proposed setback is not supportable on merit.

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

The application has not demonstrated that the driveway design will ensure safe egress to/from the site, and the development does not include appropriate provision for service vehicles. See further discussion with regard to feedback from TfNSW and Council's Traffic Engineer, above.

### **C3 Parking Facilities**

WDCP 2011 does not prescribe a minimum parking rate for boarding houses, but rather turns to the provision of parking in other boarding house developments. In this respect, Council notes that clause 29 (2)(e) of SEPP ARH prescribes that the consent authority must not refuse a development on the grounds of parking if at least 0.5 parking space per room are provided.

Based on the minimum 'must not refuse' standards of SEPP ARH, the proposal generates demand for 20 carparking space. The application proposes seven parking spaces, three of which are car share spaces.

The applicant's Traffic and Parking Report identifies that each car share should be considered to be equivalent to 10 parking spaces. This position is not supported by Council's Traffic Engineer, who considers the car share spaces to be equivalent to five parking spaces. There is also concern regarding the provision of three such spaces, noting that in accordance with the nature of the business model of such companies, these spaces would need to be dedicated solely to car share use and permanently available for use by members of the public. With this in mind, Council's Traffic Engineer would only support a maximum of two such spaces on any development site.

With reliance upon two car share spaces, the proposal is five spaces short of the 20 space requirement.

Whilst the proximity of the site to the B1 Manly Vale bus stops is appreciated, it seems highly unlikely that the five remaining spaces (noting that the two car share spaces must remain solely dedicated to

car spare) will meet the parking demand arising from a boarding house with 39 rooms and a total maximum occupancy of 78 people. The limited amount of on-site parking is of particular concern given the lack of on-street parking available in the vicinity of the site.

The proposal also fails to provide parking for a service vehicle, which is required on a site that has a high frequency turn over of occupants, and noting the on-going maintenance requirements associated with the development.

The correlation of what presents as an overdevelopment of the site and a shortfall of on-street car parking spaces cannot be ignored, and the application is recommended for refusal in this regard.

#### **C4 Stormwater**

See clause 6.4 (Development on sloping land) of WLEP 2011 and the referral response from Council's Development Engineer for comments in this regard.

#### **C7 Excavation and Landfill**

See clauses 6.2 (Earthworks) and 6.4 (Development on sloping land) of WLEP 2011 for further discussion in this regard.

#### **C9 Waste Management**

##### **and D14 Site Facilities**

As discussed by Council's Waste Officer above, the proposal fails to provide the necessary area for the amount of bins required in consideration of the density of the site. Furthermore, the storage area has not been designed in accordance with Council's Waste Management Policy and is too far from the street.

Noting that the Plan of Management is silent with respect to waste management relating to the site as a whole, it is assumed that the site intends to rely upon Council's weekly collection. However, Council will not service the site unless the development is amended to achieve consistency with Council's Waste Management Policy. This cannot be conditioned in this instance, as compliance will result in considerable changes to the design and layout of the ground floor.

In the alternate view, the site may be serviced independently. However, this would need to be detailed in the Plan of Management, and the car park would need to be designed to ensure that all waste collection vehicles can enter and exit the site, as collection from Condamine Street will not be permitted in consideration of the nature of the street.

The proposal is recommended for refusal in this regard.

#### **D8 Privacy**

The proposal fails to provide appropriate spatial separation between the two buildings on the site. Whilst it is acknowledged that the provisions of SEPP 65 and the ADG are not applicable in relation to the proposal, the ADG prescribes the need for 12m minimum spatial separation for buildings of the height and density proposed, as opposed to the 9m typically required between individual dwellings and lower density development. The spatial separation between the two buildings was raised as an area of concern by DSAP and Council's Urban Designer, who both expressed the need for greater spatial separation at the site.

DSAP also expressed the need for greater spatial separation between the proposal and the rear boundary, noting that the ADG identifies the need for >6m setbacks to boundaries where there is a transition to a lower density zoning.

The proposal does not ensure appropriate levels of privacy for future occupants of the development or adjoining properties, and is inconsistent with the requirements and objectives of this control.

### D9 Building Bulk

The proposed development is inconsistent with the following requirements of clause D9 of WDCP 2011:

- 1 *Side and rear setbacks are to be progressively increased as wall height increases,*

Comment: There is no change or variation in the side setbacks on any level. The lack of increased side setbacks is of particular concern in relation to the top level, which exceeds both the building height development standard and the maximum number of storeys development control by a full storey.

- 1 *Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief,*

Comment: There is no variation to the four storey wall plane along the southern elevation where the building abuts a two storey built form.

- 1 *Building height and scale needs to relate to topography and site conditions,*

Comment: The proposal essentially acts to ignore the presence of the creekline that dissects the site.

- 1 *Landscape plantings are to be provided to reduce the visual bulk of new building and works,*

Comment: The application is reliant upon landscaping that cannot physically be accommodated by the proposal. As the proposal builds to and over the creekline, the application is unable to provide necessary plantings to the rear of the site to soften the transition to the low density residential neighbour.

### D20 Safety and Security

The proposed development has been designed to overhang the creekline, to sit above the relevant flood levels and to facilitate the clear passage of flood water below the building. Because of the proposed proximity to the adjoining development to the north, the proposal has also been designed to turn away from the creekline, oriented towards the front and rear of the site, and the internal courtyard.

As a result, the proposal incorporates a large undercroft area that is open to the creekline, with no opportunities for casual surveillance and awkward access and maintenance arrangements, inconsistent with the CPTED design principles.

The proposal is also unresolved with regard to access arrangements to the car park, noting that the proposal incorporates 3 car share spaces, that must be accessible to members of the general public at all times. Access is proposed to be restricted by virtue of the roller door, which is necessary for security of the wider ground floor car park, but is counter-productive to the incorporation of car share spaces.

## E6 Retaining unique environmental features

Clause E6 of WDCP 2011 requires development to be designed to address any distinctive environmental features of the site and on adjoining nearby land and that development should respond to such features through location of structures, outlook, design and materials.

The proposed development is not considered to appropriately respond to the creekline that dissects the site, with unreasonable encroachment over and within the low flow channel. See further concerns expressed in comments from NRAR and Council's Flooding and Riparian Officers.

## E8 Waterways and Riparian Lands

Clause E8 of WDCP 2011 requires the development to be designed in accordance with Council's *Protection of Waterway and Riparian Land Policy*. The proposed development, which includes piers within the creekbed, stormwater infrastructure within the bank and development overhanging the low flow channel, is inconsistent with the provisions of this policy that aim to ensure:

- 1 that the natural characteristics of the waterway are maintained and enhanced, with the promotion of naturalistic bank protection works when stabilisation is required (ie: soft engineering outcomes),
- 1 that new development is appropriately setback from the creekline, and
- 1 that development within waterways and riparian land should be avoided.

## F1 Local and Neighbourhood Centres

The site is located within the Manly Vale Local Centre and is subject to the provisions of clause F1 of WDCP 2011, which prescribes more general design requirements for development within a local centre and one requirement specific to Manly Vale. The proposal is inconsistent a number of general design requirements and the Manly Vale specific requirement, as follows:

- 1 *The built form of development in the local or neighbourhood retail centre is to provide a transition to adjacent residential development, including reasonable setbacks from side and rear boundaries, particularly above ground floor level.*

Comment: The proposed development is not considered to provide an appropriate transition to the low density development at the rear. The 6m setback proposed is not considered to provide appropriate spatial separation, particularly in circumstances where plantings are limited by the creekline that runs between the building and the rear boundary. The ADG prescribes 6m setbacks to boundaries between land with the same zoning, with the need for greater separation to lower density sites to ensure an appropriate transition. Whilst it is acknowledged that the ADG is not applicable, it does provide an adopted industry standard for development of the same scale and density as that proposed.

- 1 *Buildings greater than 2 storeys are to be designed so that the massing is substantially reduced on the top floors and stepped back from the street front to reduce bulk and ensure that new development does not dominate existing buildings and public spaces.*

Comment: The proposal slightly reduces the footprint of the fourth storey, with no reduction at the third storey. Noting that the policy does not anticipate a fourth storey on the subject site, the lack of reduction at the third storey is inconsistent in this regard.



- 1 *Applicants are to demonstrate how the following significant considerations meet the objectives of this control:*

- *Scale and proportion of the façade;*
- *Pattern of openings;*
- *Ratio of solid walls to voids and windows;*
- *Parapet and/or building heights and alignments;*
- *Height of individual floors in relation to adjoining buildings;*
- *Materials, textures and colours; and*
- *Architectural style and façade detailing including window and balcony details*

Comment: The proposal does not appropriately respond to the massing of adjoining development. In particular, the proposal is at odds with the pattern of established courtyards to the north. The reduced setback between buildings on the site will also unreasonably restrict the development potential of the site to the south, and their ability to also benefit from the established pattern of courtyards.

As above, the height of the building at the rear of the site fails to respond to the height established by the adjoining development to the north and south, or that of the low density development to the west.

- 1 *Manly Vale: Condamine Street will be enhanced by ensuring the design of buildings and use of land maintains activity at street level and creates a cohesive and attractive streetscape. Vehicle access will be provided from streets other than Condamine Street.*

Comment: The site does not provide an active street front, with no retail or business premises addressing Condamine Street. No alternate access arrangements are feasible in relation to this site, and as such, entrance via Condamine Street is unavoidable.

## THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

## CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

## POLICY CONTROLS

### Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$50,847 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,084,700.



## 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 Warringah Local Environment Plan;
- 1 Warringah 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, 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:

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

Council is not satisfied that:

1. The Applicant's written request under Clause 4.6 of the WLEP 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:
  - a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
  - b) There are sufficient environmental planning grounds to justify the contravention.
2. The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposal cannot be approved in the absence of general terms of approval from NRAR and concurrence from TfNSW. However, even if these legislative hurdles were able to be overcome, there are still a plethora of issues relating to areas of non-compliance that warrant the refusal of the subject application.

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

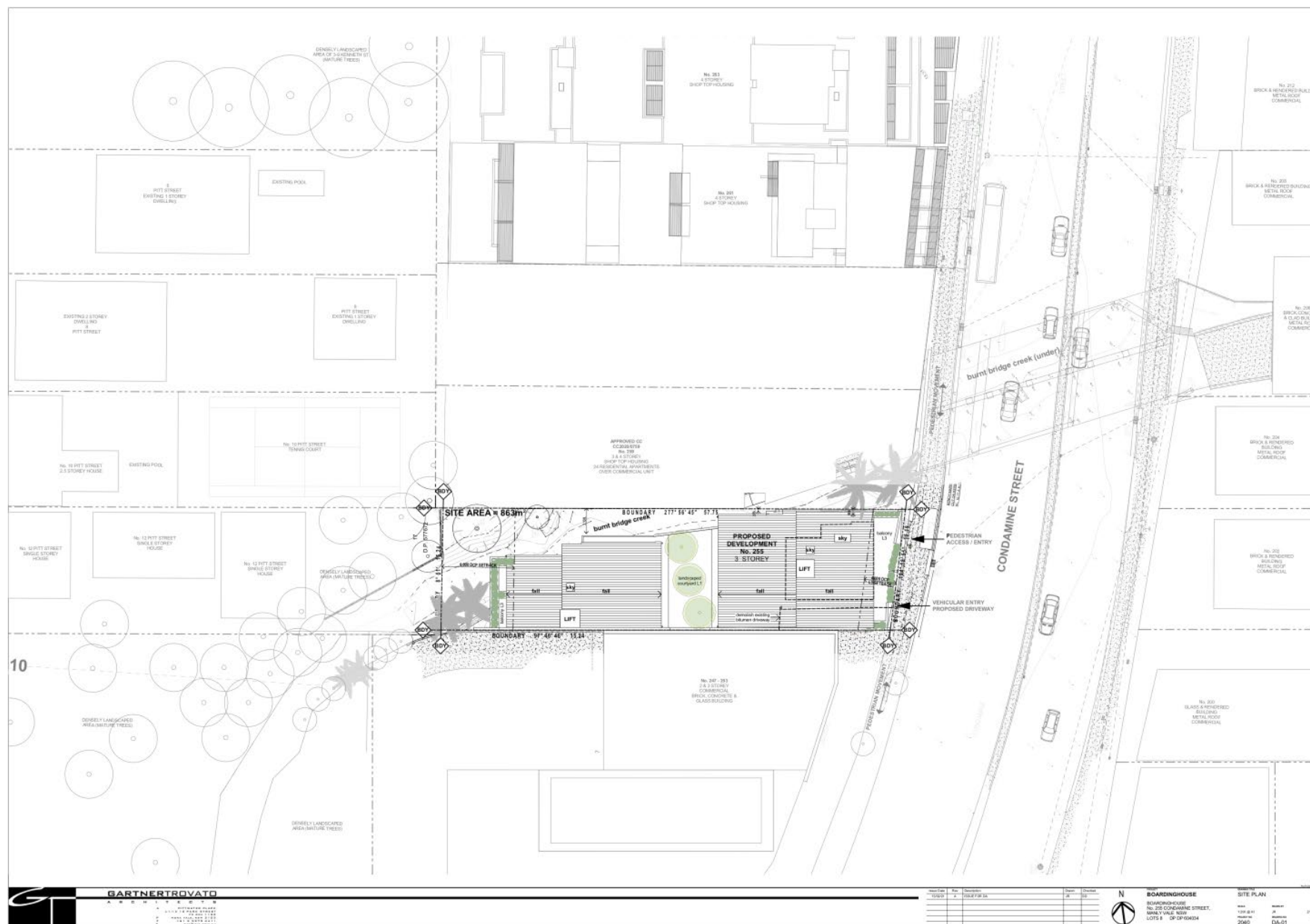
## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2021/0179 for the Construction of a boarding house development on land at Lot 8 DP 604034, 255 Condamine Street, MANLY VALE, for the reasons outlined as follows:

1. In accordance with the provisions of s.4.47(2) of the *Environmental Planning and Assessment Act*, consent cannot be granted as general terms of approval have not been obtained the Natural Resources Access Regulator for Activity Approval required under s91 of the *Water Management Act*.
2. The extent of development over and within the waterway is inconsistent with Council's *Protection of Waterway and Riparian Land Policy*, and the requirements and objectives of clauses E6 (Retaining unique environmental features) and E8 (Waterways and Riparian Lands) of *Warringah Development Control Plan 2011* (WDCP 2011).
3. The proposed development is not reflective of the character of the local area, specifically in relation to the treatment of the creekline and the relationship with the adjoining low density development at the rear, resulting in inconsistency with clause 30A of *State Environmental Planning Policy (Affordable Rental Housing)* (SEPP ARH).
4. The proposed development is inconsistent with the maximum building height development standard and objectives of clause 4.3 of *Warringah Local Environmental Plan 2011* (WLEP 2011) and the three-storey height control of clause B2 (Number of Storeys) of WDCP 2011.
5. The proposed development is inconsistent with the provisions of clause 4.6 (Exceptions to Development Standards) of WLEP 2011.
6. The proposed development will result in adverse flood impacts upon adjoining properties, inconsistent with the provisions of clause 6.3 (Flood planning) of WLEP 2011 and clause E11 (Flood Prone Land) of WDCP 2011.
7. The proposed development is inconsistent with the minimum requirements and objectives of the front, rear and side setback controls, as prescribed by clauses B6 (Merit Assessment of Side Boundary Setbacks), B7 (Front Boundary Setbacks) and B10 (Merit Assessment of Rear Boundary Setbacks) of WDCP 2011. The bulk and scale of the built form does not appropriately respond to the pattern of adjoining development and is excessive, with unreasonable impacts upon adjoining properties and the streetscape, inconsistent with the provisions of clause F1 (Local and Neighbourhood Centres) of WDCP 2011.
8. The application proposes works within the road reserve of a classified road and concurrence from Transport for NSW has not been obtained, inconsistent with the provisions of s138(2) of the *Roads Act*.
9. The application has not demonstrated safe vehicular movement to/from or within the site, inconsistent with the provisions of clause 101 of *State Environmental Planning Policy (Infrastructure)* and the requirements and objectives of clause C2 (Traffic, Access and Safety) of WDCP 2011.
10. The proposed development results in an unacceptable shortfall (five spaces) of on-site car parking, inconsistent with the requirements and objectives of clause C3 (Parking Facilities) of WDCP 2011.
11. The application has not demonstrated a suitable stormwater management solution for the site, resulting in inconsistency with the requirements and objectives of C4 (Stormwater) of WDCP 2011. The absence of an appropriate stormwater solution also attributes to inconsistency with the provisions of clauses 6.3 (Earthworks) and 6.4 (Development on sloping land) of WLEP 2011, in addition to

clause E10 (Landslip Risk) of WDCP 2011 noting that the subject site is identified as being prone to landslip.

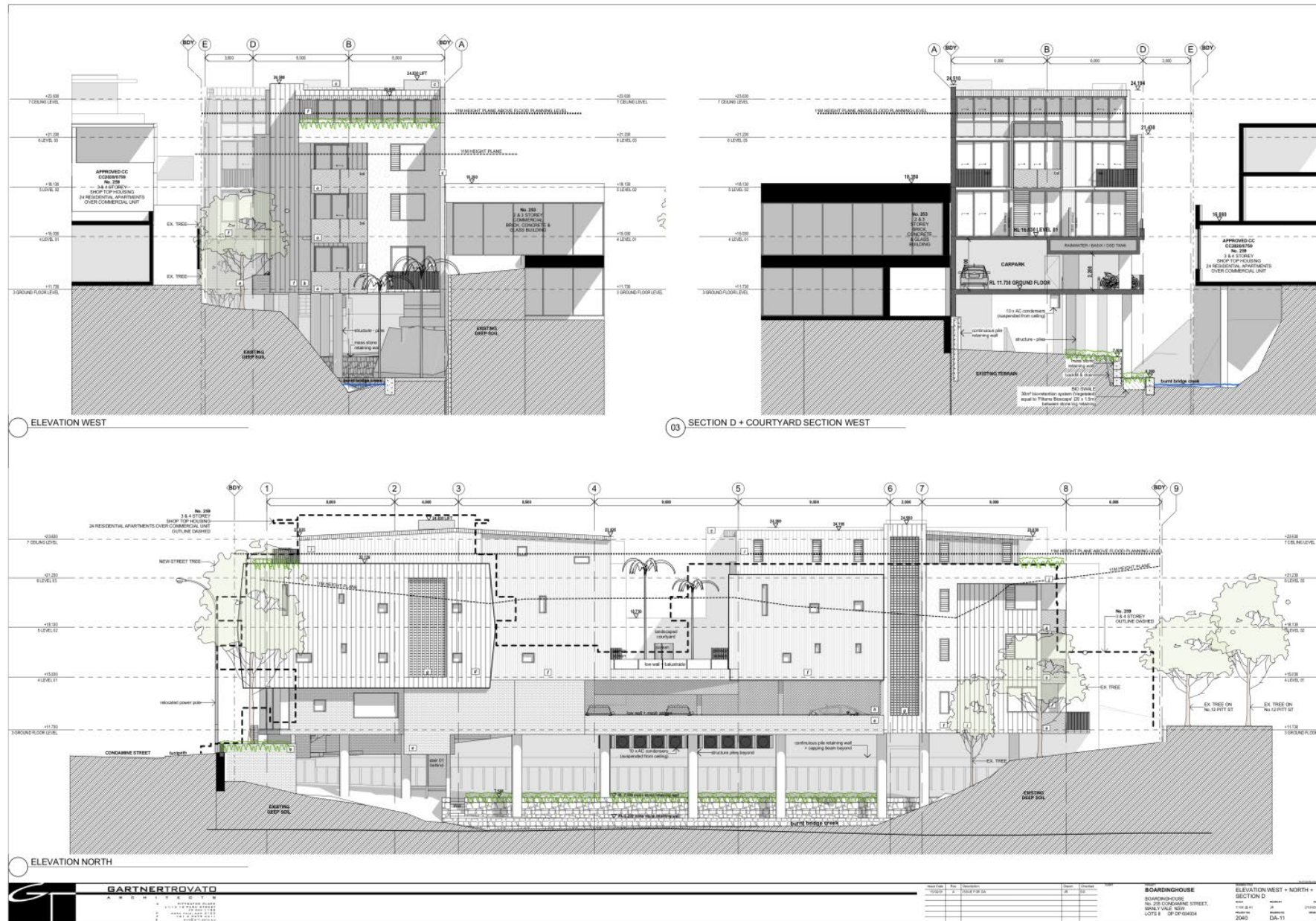
12. The proposed development is inconsistent with *Northern Beaches Council's Waste Management Guidelines*, resulting in inconsistency with the requirements and objectives of clause C9 (Waste Management) of WDCP 2011.
13. The proposed undercroft area is inconsistent with the Crime Prevention through Environmental Design principles and the requirements and objectives of clause D20 (Safety and Security) of WDCP 2011.











## Annexure 1

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**Clause 4.6 variation request – Height of buildings****Proposed Boarding House****255 Condamine Street, Manly Vale****1.0 Introduction**

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

**2.0 Warringah Local Environmental Plan 2011 (WLEP)****2.1 Clause 4.3 - Height of buildings**

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

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

*Building height is defined as follows:*

**Building height** is defined as follows:

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

Ground level existing is defined as follows:

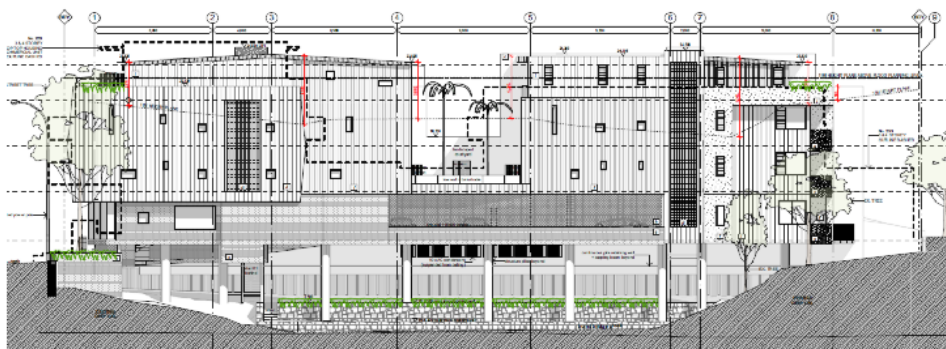
***ground level (existing)*** means the existing level of a site at any point.

It has been determined that the proposed development has a variable building height as measured above ground level (existing), which includes the bed of Burnt Bridge Creek, of between 12 and 16.35 metres representing a non-compliance of between 1 metre (9%) and 5.35 metres (48%). The extent of building height variation is depicted on the following height blanket diagram prepared by the project Architect.



**Figure 1** - Height blanket diagram showing extent of building height breach when measured above ground level (existing)

I note that the extent of non-compliance is significantly reduced when the 11 metre building height standard is applied above the flood planning level (FPL) noting that it is the FPL that establishes the ground floor level of the development. The extent of building height breach when assessed above the FPL is detailed in Figure 2 below.



**Figure 2** - Elevation showing building height breaching elements when the 11 metre height standard is projected above the FPL



## 2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of WLEP provides:

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

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

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

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

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

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

Clause 4.6(2) of WLEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.*



*However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

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

Clause 4.6(3) of WLEP provides:

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

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

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

Clause 4.6(4) of WLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

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

(b) *the concurrence of the Director-General has been obtained.*

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

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

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

Clause 4.6(5) of WLEP provides:

- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*

- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

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

### 3.0 Relevant Case Law

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

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*



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

1. Is clause 4.3 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
  - (a) compliance is unreasonable or unnecessary; and
  - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of WLEP?

#### **4.0 Request for variation**

##### **4.1 Is clause 4.3 of WLEP a development standard?**

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

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

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

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

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

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

##### **Consistency with objectives of the height of buildings standard**

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

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

Comment: Development within the site’s visual catchment, and within the 11 metre height precinct, is eclectic in nature and in transition with a number of older one and two storey commercial and mixed use buildings being replaced with more contemporary 4 storey shop top housing building forms.

The height of development also varies significantly with 1, 2, 3 and 4 storey commercial and shop top housing development defining the visual character of the area and site context. Figures 1 and 2 depict such context it being noted that the examples of 4 storey shop top housing development are located within the 11 metre height area and are grouped in such a manner as to establish a clear street wall height and existing/ desired future character and along this section of Condamine Street.



**Figure 1** – View looking north-west towards adjoining properties to the north



**Figure 2** – Existing 4 storey shop top housing development further to the north along Condamine Street

I note that the Level 3 building facade maintains an appropriate setback to Condamine Street such that it will be recessive in a streetscape context consistent with that of other recently approved and constructed shop top housing development along Condamine Street. The upper level, representing the majority of the building height breach particularly as viewed from Condamine Street, will not be perceived as inappropriate or jarring in a streetscape context with the height consistent with that of adjoining properties to the north. The 4 storey stepped and pavilion style building form will be complimentary and compatible with development within the site's visual catchment notwithstanding the building height breach sought.

In this regard, we have formed the considered opinion that the height, bulk and scale of the development including its 4 storey stepped form are entirely consistent with the height and scale of surrounding and nearby development as viewed from the street and neighbouring properties. As indicated in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 development does not have to be the same height to be considered compatible.

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

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

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

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



In this regard, I rely on the shadow diagrams at Attachment 1 and the fact that all boarding rooms and associated balconies are orientated to the front or rear of the site, or alternatively into the internalised courtyard area, where the upper-level boarding rooms associated with the non-compliant building height will not give rise to unacceptable privacy impacts.

Having inspected the site and its immediate surrounds to identify potential view lines I am satisfied that the building height breaching elements will not give rise to any unacceptable view loss with the form and massing of the development, particularly those elements located above the height limit, will not giving rise to any inappropriate or jarring visual impacts to surrounding development.

The proposal achieves this objective.

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

Comment: The non-compliant building height elements will not be discernible as viewed from any coastal or bushland environments. This objective is achieved.

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

Comment: The non-compliant building height will not be visually prominent as viewed from the street or any public area. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context.

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

#### **Consistency with zone objectives**

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

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

Response: I note that boarding houses are permissible with consent in the zone and to that extent will provide affordable rental accommodation that will serve the needs of people who live in and visit the local area. The proposal is not antipathetic to this objective

- *To encourage employment opportunities in accessible locations.*

Response: The proposed boarding house will generate temporary and permanent employment opportunities associated with the day-to-day management and maintenance of the facility. The proposal is not antipathetic to this objective.

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

Response: The development provides appropriately for vehicle, motorcycle and bicycle parking to achieve this objective.

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

Response: the proposed building is of exceptional design quality with the ground level front façade designed to provide an appropriate level of Street level activation. The proposed breaching height elements are not antipathetic to this objective.

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

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

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

Response: The property adjoins the R2 Low Density Residential zone to the south of the site with particular attention given to ensuring the maintenance of appropriate amenity to the properties within this adjoining zone in relation to privacy and solar access. The design response adopted, including the orientation of all apartments towards the front, rear or central courtyard area, minimises conflict between land uses in the zone and adjoining zones and ensure amenity of any adjoining or nearby residential land uses. This is particularly the case for the non-compliant building height elements. This objective is achieved.

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

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

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

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

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

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

### **Sufficient Environmental Planning Grounds**

There are sufficient environmental planning grounds to justify the variation sought it being noted that the finished heights proposed, relative to the level of Condamine Street, will be complimentary and compatible with the height of adjoining development to the north and development generally along this section of Condamine Street. In this regard, the non-compliant building elements ensure that the building achieves an appropriate contextual “fit” have regard to the desired future streetscape character of 4 storey development established on the western side of Condamine Street.

The depression through the site created by the creek line distorts any reasonable assessment of building height on the site when expressed in metres above ground level (existing). Accordingly, the assessment contained within this report assesses the acceptability of the finished building heights proposed against the finished building heights established by existing and approved development along this section of Condamine Street. This represents an appropriate environmental planning consideration for development on this particular site.

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

Strict compliance would require the deletion of the upper 2 floors of the development and result in a 2 storey form that would appear inconsistent with the height and cohesive streetscape established by recently approved and constructed shop top housing development along this section of Condamine Street. The building is of exception design quality with the variation facilitating a height and floor space that provides for contextual built form compatibility, the delivery of affordable housing and the orderly and economic use and development of the land consistent with objectives 1.3(c) (d) and (g) of the Act.



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

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

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

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

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

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

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

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

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

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

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

#### **4.5 Secretary's concurrence**

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

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

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

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

#### **5.0 Conclusion**

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

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

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

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

**Boston Blyth Fleming Pty Limited**



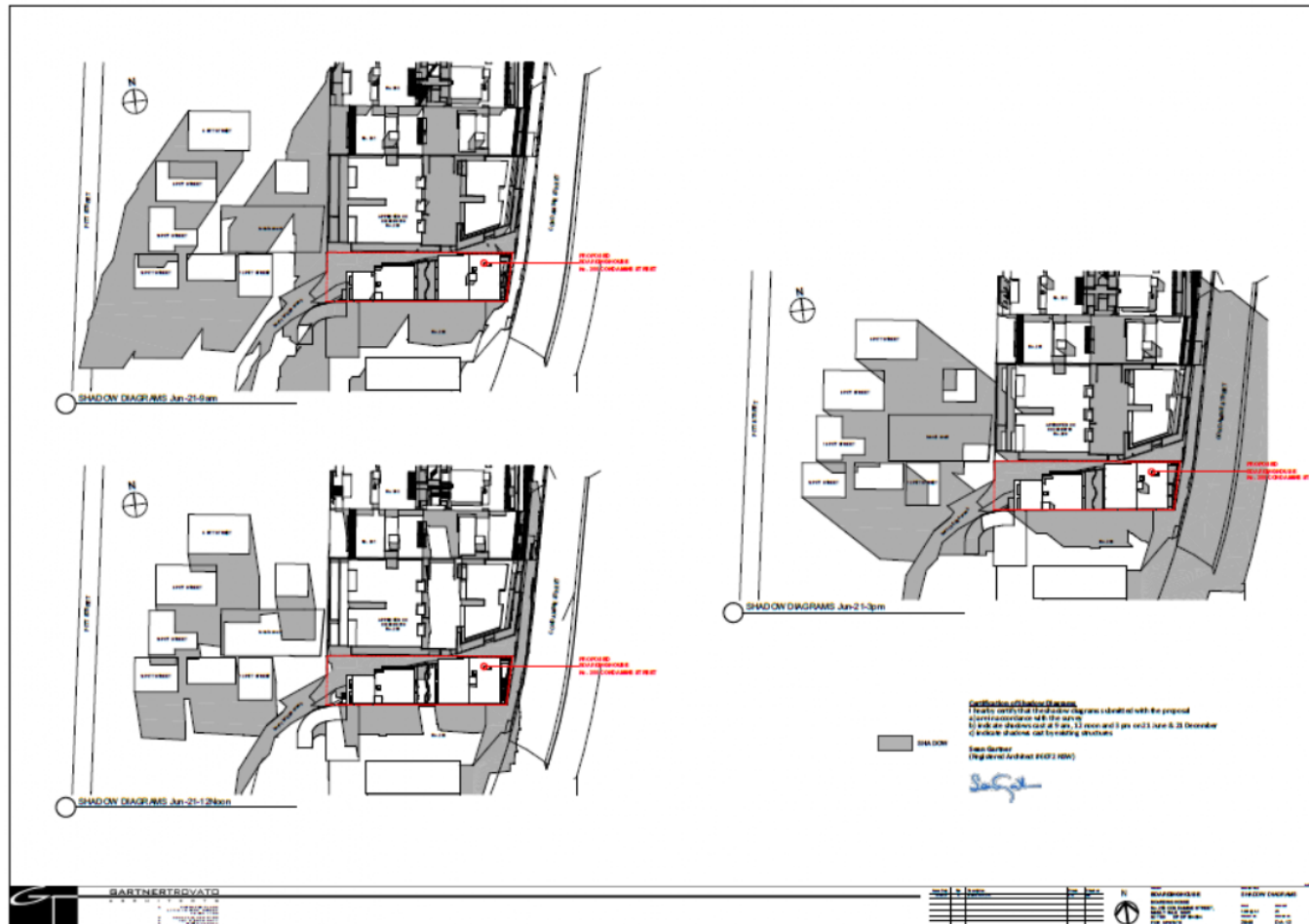
**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

**Director**

**Attachment 1**    Shadow diagrams

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Design + Sustainability Advisory Panel Meeting - 22 April 2021

## 4 DA 2021/0179 255 Condamine St MANLY VALE

### PANEL COMMENT AND RECOMMENDATIONS

#### **General**

The site is zoned B2 Local Centre under the provisions of WLEP 2011 and the proposed boarding house is permissible with consent.

#### **Overall comment**

Although boarding houses are permissible in the zone, the site is located on the highly trafficked Condamine Street (AADT>40,000) and is highly constrained by the requirement not to build over the creek, by flooding and by the size and geometry of the site.

The objectives of the zone include:

- *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.*

No commercial or business activity floor space is proposed.

Although the Panel is not an approval authority, the **suitability** of the site **exclusively** for residential accommodation of any kind is questionable.

Consequently, the proposal can only be considered on its merit in relation to:

- the internal amenity of the residential accommodation
- the adjoining urban pattern and potential development to the south
- the impact and relationship to the creek
- the presentation to the road including activation of the street frontage that is already inhospitable

The panel also notes a number of non-compliances identified at the PLM, as well as comments by various Council departments. These identify a range of issues related to the **quality** of the design in relation to impacts on neighbouring properties, riparian area, internal amenity in addition to the non-compliance with specific controls.

The Panel notes that this development in conjunction with the approved development to the north has effectively destroyed the environmental integrity of this section of the creek. It is very difficult to see how vegetation would survive in the low light levels, and whether bio-retention system would be viable. Given the poor access to the area and the fact that the undercroft and creek area does not provide amenity to the occupants of the site or for the adjoining site, it is unlikely that it will be maintained. The low amenity is clearly illustrated on sections B and C.

The reality is the undercroft space will not be cared for simply because there is no reason for it to be.

Given these circumstances, the Panel suggests that the treatment of the undercroft area be treated as 'hard infrastructure' whose primary function will be determined by flood mitigation. In high flow events it is likely that the 'bio-retention' and any soft landscaping would be stripped



out, and rubbish would be deposited on the uneven, unsurfaced, excavated 'existing terrain' shown on section B.

In summary, the Panel does not consider the site appropriate for residential accommodation.

### ***Scale, built form and articulation***

The height non-compliance is not of concern as much as the bulk of the floor plates, the separation distance between the buildings and the encroachment over the creek.

The neighbouring building was only approved through the Land and Environment Court, and at the time, there was no indication of piles in the creek. The development next door should not be used as a precedent in any respect if the aim is to achieve design quality.

Conversely, *if* the residential proposal proceeds it is important for the building massing to relate to the pattern of courtyards that has been established by development on sites to the north.

The Panel commends the applicant for showing the relationship of the proposal to the adjacent development (Ground floor plan, sections and elevations) but this serves to show how the adjoining development has almost obliterated the creek and is set back from the proposal by less than a metre.

### **Recommendations**

1. Increase the distance between the two blocks
2. Reduce the depth of the block fronting Condamine Street and ensure no units have single aspect to Condamine Street.
3. The reduction in depth could be achieved by the elimination of units 3, 4, 5, 6, 16, 17, 18, 19, 29 and thirty.
4. Consideration could be given to an extra floor in the building fronting Condamine. This would 'retrieve' 4 units and allow the rear block to be 'slid' eastward.
5. The building should not at any point extend past bottom of bank line, and preferably not beyond a line midway between the bottom of bank and top of bank. This would increase the amount of light reaching the 'bio-swale' and retain some outlook to the creek for the adjoining property.

### ***Access Car parking and services***

Access to the rear building is solely through the car park. Pedestrian access to the rear block is via the stairs on the street, through the foyer, across the turning bay, through the carpark to the rear lobby; this is unacceptable.

### **Recommendation**

6. Provide access to the rear block via the courtyard.

### ***Privacy***

Privacy between the rooms appears to be an issue, with windows directly opposite each other between the two buildings

### **Recommendation**

7. Increase the separation distance between the block to achieve ADG separation of 12m and ensure planters have sufficient depth to support medium sized trees

**Landscape**

Refer to previous comments relating to the building alignment and treatment of the undercroft.

Eleocarpus will not fit in the front planter with building setbacks over.

The rear area is not usable communal space. It is landscaped but has no access or amenity.

**Recommendations**

8. Reconsider interface to the creek. Look to use this for resident amenity.
9. Building to be setback to provide positive streetscape benefits of this tree.

**Unit Design and Amenity**

Privacy between the rooms is issue, with windows directly opposite each other between the two buildings

Single aspect units facing the main road are undesirable

**Recommendations**

10. As noted previously, no units should have a single aspect to the creek.

**Sustainability and resilience**

The Energy Efficient Design strategies in the Design Statement are very general, and not indicated on the drawings.

**Recommendations**

11. Identify where all sustainability aspects are on the drawings.

**PANEL CONCLUSION**

**The Panel does not support the proposal.**

**The Panel does not consider the site suitable for residential development.**

**The site is so constrained that it will be very difficult to achieve adequate design quality and amenity for residential use.**

**The site is more appropriate for commercial use consistent with the objectives of the zone**

If the proposal does proceed in any form the Panel recommends significant reduction in the volumes of the building and the following measures:

- No rooms should have single aspect to the main road (AADT >40,000)
- The building mass should be reduced so that it does not extend past a line midway between the bottom and top of bank
- The building should be setback from the adjoining building by at least 3m at any point
- The courtyard alignment should more closely align with the courtyards to the north
- The height of the building on the eastern end may be increased as it would not have an adverse effect on any adjoining properties or on the character of the area

**ITEM 3.2****DA2021/0200 - 1110 BARRENJOEY ROAD, PALM BEACH -  
CONSTRUCTION OF A DWELLING HOUSE, INCLUDING A  
SECONDARY DWELLING AND SWIMMING POOL**

**AUTHORISING MANAGER** Lashta Haidari  
**TRIM FILE REF** 2021/502109  
**ATTACHMENTS**  
1 Assessment Report  
2 Site Plan & Elevations

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**PURPOSE**

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

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/0200 for construction of a dwelling house, including a secondary dwelling and swimming pool at Lot 103 DP 1256016, 1110 Barrenjoey Road, Palm Beach subject to the conditions set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/0200
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<b>Responsible Officer:</b>	Jordan Davies
<b>Land to be developed (Address):</b>	Lot 103 DP 1256016, 1110 Barrenjoey Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Construction of a dwelling house, including a secondary dwelling and swimming pool
<b>Zoning:</b>	E4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Antony Mattox
<b>Applicant:</b>	Adam Rytenschild

<b>Application Lodged:</b>	25/03/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	01/04/2021 to 15/04/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	18
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 2,368,527.70
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### Executive Summary

The subject development application is for the construction of a dwelling house, secondary dwelling and swimming pool on a recently created vacant residential parcel of land. The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the application receiving more than ten (10) unique submissions.

The application was notified for a period of 14 days and two (2) submissions were received during the notification period. However, following conclusion of the notification period but prior to determination of the application, additional submissions were received, resulting in excess of 10 submissions (total of 18 at the time of writing this assessment report). Council's policy is that all submissions are considered up until the determination of the application, therefore, the submissions received outside the formal

notification period have been considered in the assessment of the application.

The principle issues that were raised in the submissions included visual impact of the development as viewed from the west, impact to locally native canopy trees, privacy impact and geotechnical hazards associated with the development. The issue of visual privacy has been addressed by way of amended plans which included an increased setback to the pool and associated deck and the inclusion of privacy screening on the northern elevation balcony. The application is accompanied by a geotechnical report, biodiversity report and arboricultural impact report which has been reviewed by the relevant experts in Council who are satisfied each of the issues can be managed in an appropriate way, subject to their recommended conditions and compliance with the relevant expert reports.

The site is an irregular shaped battle axe lot, has a very steep gradient, a high number of locally native canopy trees scattered throughout the site and large sandstone boulders prominent in the landscape. The proposed design has broken the building into pavilions across the site, presenting as a highly articulated form with landscape treatment and existing canopy trees retained between and around the building form to soften the development as viewed from the west. The design has respected the sandstone rock outcrops and been designed to retain the most significant of the canopy trees within the site. The proposal is a well considered response to the site constraints and responds to the desired future character of Palm Beach in an appropriate way.

It is considered all relevant issues raised in the public submissions have been addressed in a satisfactory way and the proposal is generally consistent with the applicable planning controls and therefore, the proposal is recommended for approval to the NBLPP subject to conditions of consent.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposed development is for the construction of a split level residential dwelling and secondary dwelling across the site. Specifically, the proposed development consists of:

### Ground Floor

- Double garage, entry and lift (cellar space above)
- One bedroom secondary dwelling with green roof
- Driveway, visitor parking and associated turning area.

### First Floor

- Open plan kitchen, dining and living room.
- Associated deck area and swimming pool and spa
- Bathroom, lift lobby area and laundry

### Second Floor

- Three bedrooms, en suite and a bathroom
- Deck and landscaped roof terrace

### Third Floor

- Studio/Study area

### External

- Associated earthworks and removal of trees to facilitate the development.
- Associated replacement landscaping works

## **ASSESSMENT INTRODUCTION**

The application has been assessed in accordance with the requirements of the Environmental Planning

and Assessment Act 1979 and the associated Regulations. In this regard:

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

#### **SUMMARY OF ASSESSMENT ISSUES**

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks  
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards  
Pittwater 21 Development Control Plan - C1.5 Visual Privacy  
Pittwater 21 Development Control Plan - D12.5 Front building line  
Pittwater 21 Development Control Plan - D12.6 Side and rear building line  
Pittwater 21 Development Control Plan - D12.8 Building envelope  
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

#### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 103 DP 1256016 , 1110 Barrenjoey Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the eastern side of Barrenjoey Road.</p> <p>The site is irregular in shape with a frontage of 28.5m along the western boundary and a depth of 36.86mm. The site has a surveyed area of 1149m<sup>2</sup>. The site is accessed via a battle-axe handle shared with two (2) other lots off Barrenjoey Road. The battle-axe hand consists of a concrete driveway and associated retaining walls.</p> <p>The site is located within the E4 Environmental Living zone and is a vacant residential site which has been recently subdivided. The western boundary of the site is shared with the B1 Neighbourhood Centre Zone and the site directly to the west has consent for construction of a three storey shop top housing development under N0119/14.</p> <p>The site has a very steep slope rising from the western boundary to the eastern boundary, with an overall elevation</p>

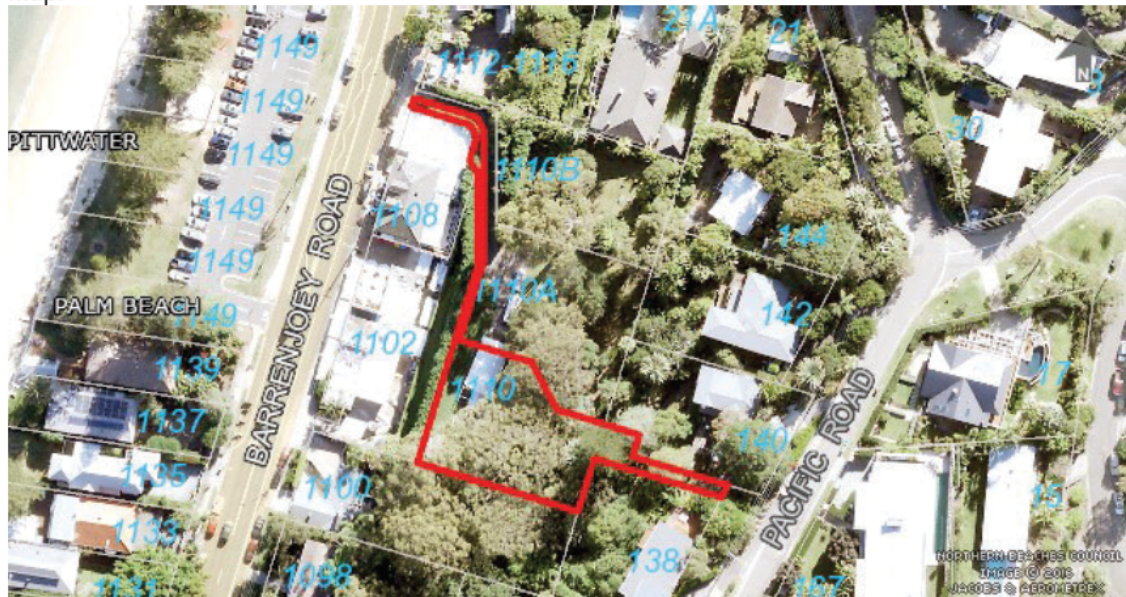
gain of 18m across the building footprint of the site. There is an existing level area adjacent to the driveway which forms a natural vehicular access point to the site.

The site has a number of large sandstone 'floaters' across the site, which are prominent features of the site. There is an existing rock retaining wall at the western portion of the site which creates an existing flat area adjacent to the driveway entrance. Throughout the site are a variety of canopy trees, with a high number of gum trees which are in varied degrees of health and height, some up to 25m in height and are the most significant features of the site. There are also a number of palm trees and low lying shrubs and vegetation scattered throughout the site.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by commercial development to the west and residential development to the north, south and east. Immediately to the west is zoned B1 Neighbourhood Centre and currently has a fish and chip shop. This site has development consent for a 3 storey shop top housing development (not yet constructed). To the north-west of the site is the local heritage item 'Barrenjoey House'. To the north of the site is a single level dwelling currently under construction. To the south of the site is an established two storey residential dwelling with landscaped rear gardens. To the east of the site are two and three storey residential dwellings on top of the escarpment.

Map:





## SITE HISTORY

The land has been used for residential purposes for an extended period of time and was subject to a subdivision application. A search of Council's records has revealed the following relevant history:

On 21 April 1999, Development Application N0482/98 was approved by Council for the subdivision of 6 lots into 5 lots at the subject site in two stages:

Stage 1 - the subdivision of 6 lots into 3 lots (as currently reflected on site).

Stage 2 - the subdivision of the rear lot (currently 1110 Barrenjoey Road) into 3 lots.

N0482/98 was approved with a condition requiring building footprints to be restricted on title on the 3 lots resulting from the Stage 2 subdivision.

On 2 April 2013, Modification Application N0482/98/S96/1 was approved by Council, to alter the subdivision of the resultant lots.

On 3 September 2019, Modification Application MOD2019/0355 was approved by Council, to modify conditions within N0482/98. This modification included the deletion of the building footprint restrictions for the land.

On 14 January 2021, a prelodgement meeting PLM2020/0292 for the construction of a dwelling and secondary dwelling was held.

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

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

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

Section 4.15 Matters for Consideration'	Comments
	<p>designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans increasing southern side setback to the pool.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Matters for Consideration'	Comments
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 01/04/2021 to 15/04/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 18 submission/s from:

Name:	Address:
Darren Yip	Address Unknown
Mr Gerald Edward Brown Mrs Lea Culverson Brown Outlook Planning & Development Ms Prudence Abby Rydstrand Mr Joshua Taylor	1100 Barrenjoey Road PALM BEACH NSW 2108
Mr Raymond John Sproats	316 Jersey Road WOOLLAHRA NSW 2025
Rosemary Edgell Bush	19 Thyra Road PALM BEACH NSW 2108
Mr Robert Donald Mackinnon	16 Norma Road PALM BEACH NSW 2108
Mr Andrew James Leppinus	41 Riviera Avenue AVALON BEACH NSW 2107
Mr Nicholas Dolf Schmidt	58 Park Street AVALON BEACH NSW 2107
Nicholas Sproats	Address Unknown
Ms Bethany Rose Hanrahan	1 / 700 Barrenjoey Road AVALON BEACH NSW 2107
The Palm Beach & Whale Beach Association Inc	PO Box 2 PALM BEACH NSW 2108
Mr Peter Leslie Gorrie	6 Wandearah Avenue AVALON BEACH NSW 2107
Philippa Warner	1137 Barrenjoey Road PALM BEACH NSW 2108
Mr Paul Geoffrey Spon-Smith	1139 Barrenjoey Road PALM BEACH NSW 2108
Ms Dale Anne-Maree Spon-Smith	1139 Barrenjoey Road PALM BEACH NSW 2108
Susan Kennedy	889 Barrenjoey Road PALM BEACH NSW 2108
Steve Jacobs	Address Unknown
Mr Douglas Michael Maher	60 Bynya Road PALM BEACH NSW 2108

Name:	Address:
Ms Anna Maria Monticelli	11 Ebor Road PALM BEACH NSW 2108

The application was notified for a period of 14 days and two (2) submissions were received during the notification period. However, following the conclusion of the notification period and prior to determination of the application, additional submissions were received, resulting in excess of 10 submissions (total of 18 at the time of writing this assessment report). Council's policy is that all submissions are considered up until the determination of the application, therefore, the submissions received outside the formal notification period have been considered in this assessment.

Multiple written submissions were received from the owner and planning consultant on behalf of 1100 Barrenjoey Road, this being counted as 1 submission only, all on behalf of the same property.

Amended plans were received which amended the pool design to increase the setback to 2.5m and provide privacy screening to the northern extent of the balcony. These plans were provided to the properties directly adjoining the property who made a submission during the notification period. No formal re-notification was required as this did not increase the impact of the development.

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

- Privacy Impact from development
- Pool and deck setback non-compliant and resulting privacy impact
- Bulk and scale of the development, particularly visual impact of the building form as viewed from the public domain and dominance of the building form in the landscape.
- The design could be designed to respond better to retain more Pittwater Spotted Gum Trees. Potential impact to the trees to be retained.
- Non-compliance with southern side setback.
- Excessive excavation and geotechnical hazards, including impact on 'timber hut' on adjoining property.

The matters raised within the submissions are addressed as follows:

- *Privacy Impact from development and acoustic impact from the development.*  
Comment:  
This is discussed in detail later in the report, with additional privacy measures implemented to address visual privacy and overlooking. In regards to acoustic impact, the deck and associated pool have been setback a compliant amount at 2.5m. The development is not considered to give rise to acoustic impacts beyond the use as a residential premises and therefore, no unreasonable impacts will arise.
- *Pool and deck setback non-compliant and resulting privacy impact*  
Comment:  
The proposal has been amended to provide a compliant 2.5m setback to the pool and deck. This provides sufficient spatial separation to provide privacy, along with the proposed landscape planting to the south of the pool which is capable of reaching 5m as shown upon the landscape plan.
- *Bulk and scale of the development, particularly visual impact of the building form as viewed from the public domain and dominance of the building form in the landscape.*



Comment:

The development has been broken up into pavilion forms, with landscaping throughout the site and retaining the most significant canopy trees on the site. The proposal is within the building height and is highly articulated throughout, using a recessive material palette and incorporating landscaping at both ground level and on the upper levels. There are four native canopy trees retained between the pool area and master bedroom in the southern half of the site, with new landscape planting in addition to this. The Pittwater Spotted Gums to be retained include T8, T9, T16 and T18 which are each 20m-26m in height, plus one 'exempt' phoenix palm tree up to 6m.

The retention of existing canopy trees between and around the building will assist in breaking down the bulk and scale of the development as visible from the public domain, along with the highly articulated building form the proposed development is considered to have an acceptable visual impact from the public domain and is an appropriate response to the site constraints.

- *The design could be designed to respond better to retain more Pittwater Spotted Gum Trees. Potential impact to the trees to be retained.*

Comment:

The application is accompanied by an aboricultural impact assessment and flora and fauna assessment report to address the proposed tree removal and impact on biodiversity. Each report has been reviewed by Council's Landscape officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent.

It is noted that the site has a number of Pittwater Spotted Gums, along with other 'exempt species' throughout the site. The site is a vacant parcel of land and any development for a new dwelling would require some level of tree removal, even with careful and skillful design. The applicant has designed the proposal to retain the highest retention value spotted gums on the site, notably T8, T9, T16 and T18 which are each 20m-26m in height. The spotted gums to be removed are T3, T4 and T12 which are 14m-17m in height and are assessed as having either a moderate to low retention value, with T11 identified for removal having a high retention value is in the middle of the building footprint and difficult to be retained.

Whilst the removal of the four identified spotted gums is regrettable, the proposed development has been designed to retain the most significant trees on the site and considered a reasonable response to the site constraints. Council's landscape officer and biodiversity officer support the proposal subject to conditions including replanting and adherence to the submitted aboricultural impact assessment which requires tree protection measures to be implemented for the trees to be retained.

- *Non-compliance with southern side setback.*

Comment:

This has been discussed in detail later in the assessment report. Amended plans have been received to provide a compliant setback to the pool and deck.

- *Excessive excavation and geotechnical hazards, including impact on 'timber hut' on adjoining property.*

Comment:

The application is accompanied by a geotechnical report prepared by a suitably qualified person. The report concludes that the development can occur without unacceptable risk upon life and property providing the recommendation of the report are followed, including stabilising

of all excavations where necessary to mitigate risk to life and property. Measures have been included in the report to address impact on the adjoining property including recommendations that excavation be stabilised and supported, this would include any excavation adjacent to the timber hut on the southern property. Council's development engineers have included conditions requiring compliance with the report to ensure there is no unacceptable risk with regards to landslip.

The excavation proposed, although deep, is only for a localised section relating to the garage and lift shaft, with the remainder of the development having lesser excavation stepping up the hill. The excavation for the lift and garage is a reasonable proposition given the slope of the land (over 40% slope) and the requirement to provide a suitable garage level for the dwelling.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p>This application is for the construction of a new residential dwelling, access drive, garage, secondary dwelling, lift, pool, outdoor areas, tree removal and new landscape works.</p> <p>Councils Landscape Referral section has considered the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls:</p> <p>B4.22 Preservation of Trees and Bushland Vegetation C1.1 Landscaping D12.10 Landscaped Area - Environmentally Sensitive Land</p> <p>The Arborist's Report, Landscape Plans and Flora and Fauna Assessment submitted with the application are noted.</p> <p>The Arborist's Report indicates that 7 non-exempt species are to be removed to accommodate the proposed works. The trees to be removed comprise 3 x <i>Glochidion ferdinandii</i> and 4 x <i>Corymbia maculata</i>. A number of exempt species (not requiring Council approval for removal) are also indicated for removal.</p> <p>The Flora and Fauna report concludes that the proposal is unlikely to have an adverse effect on threatened species and communities and that no hollow bearing trees are to be removed.</p>

Internal Referral Body	Comments
	<p>The site contains a significant number of rock outcrops which are considered a Unique Environmental Feature of the site. The proposed design of the works enable retention of the rock features with the components sited around the rock. Retention of the rock features is strongly supported. As such, the design is considered to be appropriate for the site, notwithstanding the required tree removal. Sufficient area exists on the site to accommodate replacement canopy tree planting to provide for improved native canopy cover over time.</p> <p>It is noted that comments from Council's Bushland and Biodiversity section on the Pre-Lodgement notes indicated that Landscape Plans should provide a minimum of 80% local native species. The plans provided indicate a number of exotic species and native hybrids. I would defer to the requirements of Bushland and Biodiversity regarding the adequacy of species proposed and amendments that may be required.</p> <p>However, it is recommended that replacement trees are included in any approval. Conditions have been provided requiring replanting of 11 native canopy species over the site to compensate for the proposed removals.</p> <p>In consideration of the above, no objections are raised to approval, subject to conditions as recommended.</p>
NECC (Bushland and Biodiversity)	<p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p><b>Biodiversity Conservation Act 2016 (BC Act)</b> <b>State Environmental Planning Policy (Coastal Management)</b></p> <ul style="list-style-type: none"> <li>Coastal Environment Area</li> </ul> <p><b>Pittwater Local Environmental Plan (PLEP)</b></p> <ul style="list-style-type: none"> <li>7.6 Biodiversity Protection</li> </ul> <p><b>Pittwater Development Control Plan (PDCP)</b></p> <ul style="list-style-type: none"> <li>B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor</li> <li>B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community</li> </ul> <p>It is noted that the site has since been included within the Department of Planning, Industry and Environment (DPIE) Biodiversity Values (BV) mapping. As the DA was submitted prior to 90-days after publication, the BV mapping does not apply to this DA. For any future DA within DPIE's BV mapping that requires the removal of native vegetation, the Biodiversity Offsets Scheme (BOS) will apply.</p>

Internal Referral Body	Comments
	<p>The application seeks to remove seven (7) non-exempt trees, including four Spotted Gum (<i>Corymbia maculata</i>) and three Cheese Tree (<i>Glochidion ferdinandi</i>). Additional exempt trees are also required for removal, however these do not require Council consent.</p> <p>Documents requested by Natural Environment Unit - Biodiversity during pre-lodgement discussions are noted:</p> <ul style="list-style-type: none"> <li>• Flora and Fauna Assessment</li> <li>• Arboricultural Impact Assessment</li> <li>• Landscape Plan</li> </ul> <p>The Flora and Fauna Assessment and 5-Part Test of Significance (GIS Consultants 2021) concludes that the proposal will not have a significant impact on Pittwater Spotted Gum Forest - Endangered Ecological Community. Given the local occurrence will not be significantly diminished, and all trees can be replaced elsewhere within the property, Council's Biodiversity referral body agree with this conclusion.</p> <p><u>Concerns raised by Natural Environment Unit - Biodiversity</u></p> <p>The submitted Landscape Plan (Pangkarra 2021) is non-compliant with B4.4 and B4.7 of the PDCP, and as discussed in the Pre-lodgement Meeting Minutes. Specifically:</p> <ul style="list-style-type: none"> <li>• Clause B4.7 of the Pittwater DCP, any Landscape Plan submitted must demonstrate that at least 80% of any new plantings incorporates native vegetation (as per species found on the site or listed in the Pittwater Spotted Gum Endangered Ecological Community). Found here: <a href="https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/1996-1999/pittwater-spotted-gum-forest-endangered-ecological-community-listing#:~:text=The%20Scientific%20Committee%2C%20established%20by,Schedule%201%20of%20the%20Act">https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/1996-1999/pittwater-spotted-gum-forest-endangered-ecological-community-listing#:~:text=The%20Scientific%20Committee%2C%20established%20by,Schedule%201%20of%20the%20Act</a></li> <li>• The Landscape Plan would also need to demonstrate no significant onsite loss of canopy cover or a net loss of canopy trees in accordance with Clause B4.4 and Clause B4.7 of the DCP.</li> </ul> <p>Subject to amendment of the Landscape Plan, and other conditions provided the Natural Environment Unit - Biodiversity referral body find the application to be consistent against relevant environmental</p>



Internal Referral Body	Comments
	controls.
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</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><b>State Environmental Planning Policy (Coastal Management) 2018</b> A small area of 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 and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Ingham Planning Pty. Ltd. dated February 2021, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p><b>Estuarine Risk Management</b> 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>

Internal Referral Body	Comments
	<p>On internal assessment, the ground floor level for the proposed additions and alterations is above the applicable EPL for the site.</p> <p>The proposed development is therefore not required to satisfy the relevant estuarine risk management requirements of P21 DCP.</p>
NECC (Development Engineering)	<p>The site is connected to the piped drainage system in Barrenjoey Rd and the applicant's Hydraulic Engineer has provided sufficient evidence that OSD is not warranted for this development. The existing driveway crossing and internal driveway grades are acceptable. The submitted Geotechnical report meets the objectives of the DCP.</p> <p>No objection to approval, subject to conditions as recommended.</p>
Strategic and Place Planning (Heritage Officer)	<b>HERITAGE COMMENTS</b>
	<b>Discussion of reason for referral</b>
	<p>The proposal has been referred to Heritage as the subject property is within proximity to two heritage items</p> <p><b>Barrenjoey House</b> - 1108 Barrenjoey Road</p> <p><b>Winten (house)</b> - 21 Palm Beach Road</p>
	<b>Details of heritage items affected</b>
	<p>Details of the items as contained within the Pittwater inventory as follows:</p> <p><b>Barrenjoey House</b> <u>Statement of significance:</u> Barrenjoey House is historically significant as it has been in nearly continuous use as a restaurant and guest house since it was built in 1923 by Albert Verrills. It was also the first place in Palm Beach to have a telephone and as such it holds social significance for the Palm Beach community.</p> <p><u>Physical description:</u> This plastered two-storey plastered brick building with pitched roof was built as a guest house in 1923. It features a sunny dining room with windows the length of one wall overlooking the water and a large terrace with canvas canopy for outdoor dining. The interior retains traditional character including wallpaper and emu chandeliers.</p> <p><b>Winten</b> <u>Statement of significance:</u> Winten was built in the 1920s as a holiday house. As such it has historical significance as one of the earliest developments in Palm Beach.</p> <p><u>Physical description:</u> Winten is located on a steep site, with the view from the street</p>

Internal Referral Body	Comments		
	screened by luxuriant vegetation creating a natural bush setting. Winten is a single storey cottage weatherboard to sill and asbestos sheet and battens with shingle gabled roof and casement windows.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register		
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	The proposal seeks consent for a new multi-level dwelling on the subject site. Barrenjoey House is located to the North-West of the site, while Winten is located to the North East. Winten is located at a sufficient distance from the subject site and will not be impacted by the proposal.		
	Heritage considers the proposed dwelling to be well designed in relation to Barrenjoey House. It has minimised the impacts of bulk and scale on the item through generous upper level setbacks and landscaping. Heritage can broadly agree with the conclusions of the heritage impact statement that the proposal will not impact upon Barrenjoey House or its significance. The proposed secondary dwelling at the south west corner of the property will be screened via the existing hedging and Heritage raises no objections to it either.		
	Therefore Heritage raises no objections and requires no conditions.		
	Consider against the provisions of CL5.10 of PLEP.		
	Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes		
	Further Comments		
COMPLETED BY: Brendan Gavin, Principal Planner			
DATE: 26 March 2021			

External Referral Body	Comments
Aboriginal Heritage Office	<p>The application was referred to the aboriginal heritage office for comment due to the site being identified as having high potential for aboriginal heritage.</p> <p>The AHO advised no sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p>
NSW Roads and Maritime Services (Traffic Generating Development)	<p>The application was referred to Transport for NSW as the site is accessed off Barrenjoey Road.</p> <p>The site has an existing vehicular crossover which was constructed as part of the subdivision approval. The proposed development does not alter this arrangement. TfNSW provided comments and conditions to be placed on any development consent issued.</p>

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

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

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

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

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

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

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

##### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 1166191S dated 17



February 2021).

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

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

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

### SEPP (Infrastructure) 2007

#### Ausgrid

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

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

#### Comment:

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

### SEPP (Coastal Management) 2018

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

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

- (1) *The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
  - (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 land is not on land containing coastal wetlands or littoral rainforest.

## 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 land is not on land in proximity to coastal wetlands or littoral rainforest.

## 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 land is not within the coastal vulnerability area.

**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:

Council has considered the likely impacts of the development on the matters described in (a)-(g), including an assessment by Council's Coast and Catchments team. The proposed development is a form that is integrated into the landform and landscape and respects the natural site features including rock outcrops and significant vegetation. Council is satisfied the development will not have an adverse impact on the matters listed in (a)-(g).

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

Comment:

Council is satisfied the development has been designed to avoid and minimise impacts.

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

(1)

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
  - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
  - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
  - (iv) Aboriginal cultural heritage, practices and places,
  - (v) cultural and built environment heritage, and
- (b) is satisfied that:
  - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
  - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed development does not inhibit foreshore access or overshadow public land. Council's aboriginal heritage officer has reviewed the proposal and is satisfied there will be no impact on known aboriginal heritage and has recommended conditions to cover unexpected finds. The proposed development is integrated and respects the significant natural site features and is considered to not have an adverse impact on the visual quality of the area. The proposal represents a highly articulated scheme that responds to the site constraints.

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 proposed development does not increase risk of coastal hazards.

#### Pittwater Local Environmental Plan 2014

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



#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.4m	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

#### Detailed Assessment

##### 7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

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

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during

excavation/construction.

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

*(f) the likelihood of disturbing relics*

Comment: The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

*(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area*

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

*(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

*(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.*

Comment: The proposed earth works will not result in an adverse impact on Barrenjoey House.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## 7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

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

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

*(a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

*(b) the consent authority is satisfied that:*

*(i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*

*(ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*

*(iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

### Pittwater 21 Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	1m (*Note - Western boundary noted as 'front', however no street frontage)	84%	No
Rear building line	6.5m	3.3m - 9.7m	0%-53%	No
Side building line	1m - North	1m	N/A	Yes
	2.5m - South	1.2m - 2.5m	50%	No
Building envelope	3.5m - North	Outside envelope	N/A	No
	3.5m - South	Within	N/A	Yes
Landscaped area	60%	45% (516.4sqm) - Ground level landscaping 50% (579.5sqm) - Including roof planting soil depth 1m 56% (648.4sqm) - Including roof planting + 6% permissible variation	6%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	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
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

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

The proposed development has been designed to enable the reasonable retention of visual privacy for surrounding properties by implementing the following measures to the development:

- The swimming pool and associated deck setback a compliant 2.5m from the southern boundary.
- Inclusion of landscape planting boxes around the full extent of the second floor roof terrace, to ensure direct downward views are not offered from this area. Furthermore, this area is in excess of 10m away from the adjoining dwelling to the north.
- Privacy screens have been included around the northern and eastern return of the first floor deck to retain reasonable privacy to the front yard area of the adjoining property to the north. It is noted the balcony on the site to the north is elevated well above the proposed deck off the first floor, offsetting the levels of each deck to mitigate direct visual privacy impacts.
- Extensive external privacy screening is used along the northern elevation to mitigate visual overlooking.

The proposal results in the reasonable retention of privacy for adjoining properties.

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

#### DCP Control

The DCP states that a 6.5m front setback applies to the land. The site is a battle-axe allotment and does not have a direct street frontage or adjoin a public road. Therefore, the site is not considered to have a normal 'front setback' and the proposed development is considered on merit given the size, configuration and site constraints of the land.

The proposed secondary dwelling has a 1m setback to the western boundary. The proposed garage and main dwelling provides a 11m setback to the western boundary, compliant with the control.

The secondary dwelling is a low scale structure (up to 3.1m above the ground level), nestled into the south-western corner of the site and is proposed to have a green roof to assist in blending the building form into the landscape. There is an existing established hedge on the adjoining land which would mean the secondary dwelling will not be visible at all from Barrenjoey Road. However, should this hedge be removed as part of redevelopment of the adjoining site a condition of consent is recommended to establish planting capable of achieving a 3m height along the western edge of the secondary dwelling to soften and hide the secondary dwelling as viewed from the west.

Although the secondary dwelling does not technically comply with the 6.5m front setback, given the site is a battle axe lot and the design of the secondary dwelling is low scale and integrated into the landform, it is considered a reasonable proposal and will not have a visual impact from Barrenjoey Road or adjoining properties.

#### Merit Consideration

The proposal is considered against the objectives of the control as follows:

*Achieve the desired future character of the Locality.*

Comment: The proposal responds to the character of the area by presenting a highly articulated, pavilion style building within a landscaped setting which is integrated and designed to respect the natural site features including the most significant canopy trees on the site and sandstone rock formations. The proposal presents as a two storey building within a landscaped setting, with broken down pavilions across the site and is considered an appropriate response to the highly sensitive site.

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

Comment: The proposal does not result in any view impacts.

*The amenity of residential development adjoining a main road is maintained. (S)*

Comment: The site does not have a direct frontage to Barrenjoey Road and therefore, there is limited amenity impact of the development caused by the road.

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

Comment: Whilst there is some tree removal required as part of the development, the significant canopy trees are retained and the building has been designed to retain the highest value trees on the site, along with replacement planting as proposed on the landscape plan and required as development consent conditions. Vegetation is retained and proposed between the broken pavilions to break up the building massing and reduce the visual impact of the proposal.

*Vehicle manoeuvring in a forward direction is facilitated. (S)*

Comment: This is achieved for the development.

*To preserve and enhance the rural and bushland character of the locality. (En, S)*

Comment: The proposed development retains an appropriate amount of significant canopy trees and proposes new landscape planting to preserve the bushland character of the locality and site. The broken down pavilions further allow canopy trees to be maintained between the building forms.

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

Comment: The building is within the maximum 8.5m building height and is below the predominant canopy tree level.

*To encourage attractive street frontages and improve pedestrian amenity.*

Comment: The building does not have a direct street frontage, however, presents from Barrenjoey Road in an appropriate way by retaining landscaping between and around the buildings.

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

Comment: The proposed setbacks are an appropriate response to the irregular geometry of the site, with no direct street frontage, and the proposal to have the secondary dwelling in the south-western corner is appropriate notwithstanding the numerical non-compliance. As the site is irregular, there is no existing pattern of development to adhere to. The secondary dwelling is low scale, landscape planting can be established along the boundary and a landscape roof to integrate the building into the site. The secondary dwelling does not sit directly next to any buildings on the adjoining site to the south.

The variation to the control is supported merit and the outcomes of the control are achieved. The variation is supported in this particular circumstance.

#### **D12.6 Side and rear building line**

##### DCP Control

The DCP requires a side setback of 1m to one side, 2.5m to the other side and a 6.5m rear setback.

The proposal provides 1m setback to the northern boundary (compliant), varied setback between 1.2m - 2.5m to the southern side boundary and a varied rear setback between 3.3m-10m.

The site is highly irregular in shape and has a number of site constraints to design around including significant rock outcrops, trees and the steep gradient of the land. The rear boundary is especially varied and irregular. The variation to the setbacks is considered on merit below.

##### Merit Consideration

The proposal is considered against the outcomes of the control as follows:

*To achieve the desired future character of the Locality. (S)*

Comment: The proposal responds to the character of the area by presenting a highly articulated, pavilion style building within a landscaped setting which is integrated and designed to respect the natural site features including the most significant canopy trees on the site and sandstone rock formations. The proposal presents as a two storey building within a landscaped setting, with broken down pavilions across the site and is considered an appropriate response to the highly sensitive site.

*The bulk and scale of the built form is minimised. (En, S)*

Comment: The buildings are broken up into pavillions, separated by landscape planting and articulated at each elevation to break up the bulk and scale of the buildings. The proposal is therefore an appropriate response to bulk and scale for the site.

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

Comment: The proposed development does not have an impact of public or private views.

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

Comment: The proposed development does not have an impact of public or private views.

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

Comment: The proposed development retains a reasonable level of privacy for adjoining properties. The portion of non-compliant buildings do not contain any windows on the southern elevation. The adjoining properties retain solar access in accordance with the DCP controls.

*Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)*

Comment: The proposal retains the most significant canopy trees on the site and provides adequate area between the buildings to provide landscape planting to provide a building that is attractive for the streetscape and present and pavilions within a landscape setting.

*Flexibility in the siting of buildings and access. (En, S)*

Comment: Access is provided around the dwellings and the buildings are designed to retain significant site features.

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

Comment: Whilst there is some tree removal required as part of the development, the significant canopy trees are retained and the building has been designed to retain the highest value trees on the site, along with replacement planting as proposed on the landscape plan and required as development consent conditions. Vegetation is retained and proposed between the broken pavilions to break up the building massing and reduce the visual impact of the proposal.

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

Comment: The site contains landscaping between the secondary dwelling and boundary adjoining the commercial zone. The commercial zone land to the west is required to provide a 3m deep soil setback to create a further landscape buffer to separate the two developments.

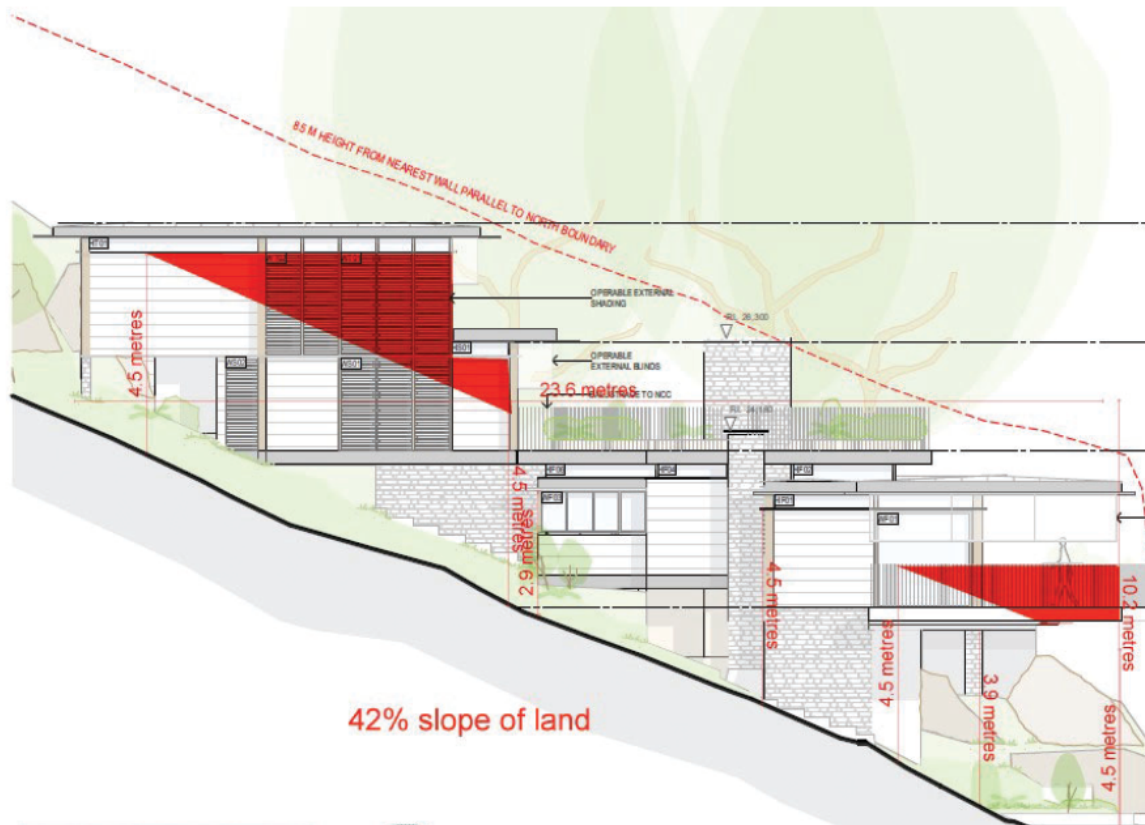
The proposed development is considered to meet the outcomes of the control and a variation to the control is therefore supported in this particular circumstance.

## **D12.8 Building envelope**

### DCP Control

The DCP requires the building be within a building envelope plane, projected at a 45 degree angle 3.5m above the side boundary. The building is partially non-compliant on the northern elevation, as shown in the below figure. The DCP control contains a variation clause where the slope of the land is in excess of 30%, which is the case for the subject site. A variation can be granted if the outcomes of the control are achieved.





### Merit Consideration

The proposal is considered against the outcomes of the control as follows:

*To achieve the desired future character of the Locality. (S)*

Comment: The proposal responds to the character of the area by presenting a highly articulated, pavilion style building within a landscaped setting which is integrated and designed to respect the natural site features including the most significant canopy trees on the site and sandstone rock formations. The proposal presents as a two storey building within a landscaped setting, with broken down pavilions across the site and is considered an appropriate response to the highly sensitive site.

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

Comment: The proposed building is below the predominant canopy trees that surround the site. The scale of the development broken up by placing the buildings in pavilions and providing landscape planting between the buildings. The proposal is a suitable density providing a single dwelling and secondary dwelling which is permitted in the zone.

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

Comment: The site has a steep gradient and it is not uncommon for the building envelope to be encroached due to the slope of the site, as recognised by the variation clause contained in the control.

The building is well articulated along the northern elevation to break up the bulk and scale, and responds to the slope of the site. The site has been designed around retention of the highest value trees on the site, which is an appropriate response notwithstanding the numerical non-compliance with the control.

*The bulk and scale of the built form is minimised. (En, S)*

Comment: The buildings are broken up into pavillions, separated by landscape planting and articulated at each elevation to break up the bulk and scale of the buildings. The proposal is therefore an appropriate response to bulk and scale for the site.

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

Comment: No view impact as a result of the development.

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

Comment: The proposed development retains a reasonable level of privacy for adjoining properties. The portion of non-compliant buildings are provided with privacy screening to maintain privacy. The adjoining properties retain solar access in accordance with the DCP controls.

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

Comment: Whilst there is some tree removal required as part of the development, the significant canopy trees are retained and the building has been designed to retain the highest value trees on the site, along with replacement planting as proposed on the landscape plan and required as development consent conditions. Vegetation is retained and proposed between the broken pavillions to break up the building massing and reduce the visual impact of the proposal.

The proposed development is consistent with the outcomes of the control and therefore a variation can be supported in this particular circumstance.

## **D12.10 Landscaped Area - Environmentally Sensitive Land**

### DCP Control

The DCP control requires 60% of the site to consist of landscaped area. The deep soil areas throughout the site total 45% of the site. There are also landscape planters provided over the garage and secondary dwelling, with soil depth of 400mm to 1.8m. When including those areas of planters over structure, the total amount of landscaping is 50% of the site.

The DCP also provides for a variation to include 6% of the site area consisting of open decks and pathways, to be included. When including the open deck, the site would have up to 56% landscaped area.

### DCP Variation

The variation is considered against the outcomes of the control as follows:

*Achieve the desired future character of the Locality. (S)*

Comment: The proposal responds to the character of the area by presenting a highly articulated,

pavilion style building within a landscaped setting which is integrated and designed to respect the natural site features including the most significant canopy trees on the site and sandstone rock formations. The proposal presents as a two storey building within a landscaped setting, with broken down pavilions across the site and is considered an appropriate response to the highly sensitive site.

*The bulk and scale of the built form is minimised. (En, S)*

Comment: The buildings are broken up into pavillions, separated by landscape planting and articulated at each elevation to break up the bulk and scale of the buildings. The proposal is therefore an appropriate response to bulk and scale for the site.

*A reasonable level of amenity and solar access is provided and maintained. (En, S)*

Comment: The proposed development retains a reasonable level of privacy for adjoining properties. The portion of non-compliant buildings are provided with privacy screening to maintain privacy. The adjoining properties retain solar access in accordance with the DCP controls.

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

Comment: Whilst there is some tree removal required as part of the development, the significant canopy trees are retained and the building has been designed to retain the highest value trees on the site, along with replacement planting as proposed on the landscape plan and required as development consent conditions. Vegetation is retained and proposed between the broken pavillions to break up the building massing and reduce the visual impact of the proposal.

*Conservation of natural vegetation and biodiversity. (En)*

Comment: Council's biodiversity officer has reviewed the proposed development and tree removal for the site and supports the proposal, subject to conditions and no significant concerns are raised regarding impact to biodiversity. Conditions have been recommended for protection of significant trees not proposed to be removed and landscape planting.

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

Comment: The landscape plan includes a variety of ground covers to reduce erosion and Council's development engineers support the proposal subject to conditions.

*To preserve and enhance the rural and bushland character of the area. (En, S)*

Comment: The proposed development retains an appropriate amount of significant canopy trees and proposes new landscape planting to preserve the bushland character of the locality and site. The broken down pavilions further allow canopy trees to be maintained between the building forms.

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

Comment: Council's development engineers have reviewed the proposed development and support the method of stormwater drainage subject to conditions of consent.

The proposed development achieves the outcomes of the control and a variation is therefore 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 \$23,685 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,368,528.

### **CONCLUSION**

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

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

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

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

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

In summary, the application has been assessed with regard to the relevant LEP and DCP controls which guide the future desired character of the area, along with the public submission received during the notification period.

The issues raised in the public submissions are considered to be addressed by way of the amended plans and the issues regarding impact to the vegetation to be retained and geotechnical hazards associated with the development have been addressed by the submitted expert reports, the recommendations of these reports forming conditions of development consent.



The proposal has been considered with regard to the visual impact and future desired character of the locality, as viewed from the public domain to the west. The building is highly articulated and is designed to retain the most significant site features including the highest value canopy trees and sandstone rock outcrops. The pavilion style building form allows landscaping to be retained and enhanced between the various sections of the building to soften the building form within the landscape and integrate the building into the landscaped setting.

Overall, the proposal is considered a suitable response to the site constraints and relevant planning controls applying to the land and it is recommended the application be approved by the NBLPP subject to the conditions outlined below.

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

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/0200 for Construction of a dwelling house, including a secondary dwelling and swimming pool on land at Lot 103 DP 1256016, 1110 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA1001 - Rev A	18/06/2021	Jorge Hrdina
DA2000 - Rev A	15/06/2021	Jorge Hrdina
DA2001	22/02/21	Jorge Hrdina
DA2002 - Rev A	15/06/2021	Jorge Hrdina
DA2003 - Rev A	15/06/2021	Jorge Hrdina
DA2004 - Rev A	15/06/2021	Jorge Hrdina
DA2005 - Rev A	15/06/2021	Jorge Hrdina
DA2221	22/02/2021	Jorge Hrdina
DA2222	22/02/2021	Jorge Hrdina
DA3000 - Rev A	18/06/2021	Jorge Hrdina
DA3001	22/02/2021	Jorge Hrdina
DA3002	22/02/2021	Jorge Hrdina
DA3003	22/02/2021	Jorge Hrdina
DA3004	22/02/2021	Jorge Hrdina
DA3100	22/02/2021	Jorge Hrdina
DA3103	22/02/2021	Jorge Hrdina
DA3102	22/02/2021	Jorge Hrdina

Engineering Plans		
Drawing No.	Dated	Prepared By
Site stormwater drainage, H-DA-01, Rev A	21/12/2020	ITM Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Flora and Fauna Assessment	05/02/2021	GIS Environmental

Arboricultural Impact Assessment, Ref - 221	14/01/2021	Rain Tree Consulting
BASIX Certificate No. 1166191S	17/02/2021	Damian O'Toole Town Planning
Geotechnical Report, 2020-232	15/12/2020	Crozier Geotechnical Consultants

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan Rev A	20/02/2021	Pangkarra

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	Undated	Jorge Hrdina

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

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

## 2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Transport for NSW	2021/260954	12/12/2021

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

## 3. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- 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);
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
  - A. the name and licence number of the principal contractor, and
  - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
  - A. the name of the owner-builder, and
  - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

#### 4. General Requirements

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



- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2018
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**  
Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$23,685.28 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,368,527.70.

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

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

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

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

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

#### 6. **Security Bond**

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

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

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

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

Reason: To ensure adequate protection of Council's infrastructure.

### **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

#### 7. **Pier Footing Design Near Trees to be Retained**

a) Pier footing and structural layout plans for the external works shall be developed in

coordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture and a qualified Structural Engineer.

b) The Arborist shall review, comment, recommend design revision as required and approve the pier footing and building layout to ensure the locations of piers and structures will be manageable in terms of tree protection measures.

c) The Arborist shall submit certification to the Certifying Authority that the locations of the pier footings and structures are accepted via the agreed pier footing and structural layout plans prior to the issue of a Construction Certificate.

Reason: Tree protection.

8. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the inter-allotment drainage line benefiting the site.

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated 15 December 2020 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Compliance with Ecologist's Recommendations – Pre-construction**

All pre-construction tree-related measures specified in the Arboricultural Impact Assessment Report (rainTree consulting 2021) and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with pre-construction measures are to be certified by the Project Ecologist and provided to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To protect trees proposed for retention.

11. **Amendment of Landscape Plans**

The submitted Landscape Plan (Pangkarra 2021) is to be amended in accordance with the following:

- Provision of at least 80% of any new plantings incorporates native vegetation (as per species found on the site or listed in the Pittwater Spotted Gum Endangered Ecological



Community). Found here: <https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/1996-1999/pittwater-spotted-gum-forest-endangered-ecological-community-listing#:~:text=The%20Scientific%20Committee%2C%20established%20by,Schedule%201%20of%20the%20Act>

- Provision of at least four (4) Spotted Gum (*Corymbia maculata*) additional to native species currently proposed. This is required such that the Local Occurrence and floristic integrity of the vegetation remains unchanged. Locations selected for planting are to be reasonably spread so as to allow trees to reach mature size.

The amended Landscape Plan is to be certified by a qualified landscape architect and provided to the Certifying Authority prior to issue of the Construction Certificate.

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

**12. Traffic Management and Control**

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

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

**13. Amendments to the approved plans**

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

- Landscape planting along the entire length of the western facade of the secondary dwelling, with a species capable of reaching a mature height of up to 3m. The landscape plan to be updated with a suitable species.
- All plans shall be updated to show a 2.5m setback to the southern boundary for the pool and associated deck.

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.

**14. Laundry Facilities (Class 1)**

The layout of the bathroom area is to be designed to incorporate clothes washing facilities, comprising of at least one washtub and space in the same room for a washing machine and is required to comply with Part 3.8.3 of the Building Code of Australia –‘Facilities’. A kitchen sink or washbasin must not be counted as a laundry washtub. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for building occupant health and amenity.

**15. Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are

to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

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

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

Reason: To provide public and private safety.

16. **Compliance with Standards**

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

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

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

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

17. **Project Arborist**

a) A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with the recommendations of the Arboricultural Impact Assessment dated 14 January 2021 prepared by Rain Tree Consulting and Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection and ground protection.

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

c) Existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist.

d) All tree protection measures specified must:

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

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

Note: i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be

- pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

18. **Tree Removal Within the Property**

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

- i) Trees 2, 13 and 14 - *Glochidion ferdinandi*
- ii) Trees 3, 4, 11 and 12 - *Corymbia maculata*

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

Reason: To enable authorised building works.

19. **Compliance with Ecologist's Recommendations – During Construction**

All biodiversity-related measures are to be implemented during construction in accordance with the Flora and Fauna Assessment (GIS Consultants 2021).

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifying Authority.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

20. **Dead or Injured Wildlife**

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

Reason: To protect native wildlife.

21. **Installation and Maintenance of Sediment and Erosion Control**

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

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

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

22. **Protection of Landscape Features and Sites of Significance**

All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

23. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected including:
  - i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
  - ii) all trees and vegetation located on adjoining properties,
  - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
  - i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated 14 January 2021 prepared by Rain Tree Consulting and Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
  - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist ,
  - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
  - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
  - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by the Project Arborist on site,
  - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with the Project Arborist including advice on root protection measures,
  - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
  - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
  - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
  - x) tree pruning from within the site to enable approved works shall not exceed



- 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must:
    - i) be in place before work commences on the site, and
    - ii) be maintained in good condition during the construction period, and
    - iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The arboricultural works listed in c) are undertaken and certified by the Project Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- d) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

24. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

25. **Survey Certificate**

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

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

26. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with

RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

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

27. **Required Tree Planting**

a) Trees shall be planted in accordance with the following:

- i) 4 x *Corymbia maculata*
- ii) 3 x *Glochidion ferdinandi*
- iii) 4 x *Livistona australis*

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

Reason: To maintain environmental amenity.

28. **Landscape Completion**

a) Landscaping is to be implemented in accordance with the approved Landscape Plans

b) Prior to the issue of any Occupation Certificate details (from a qualified horticulturalist, landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

29. **Condition of Retained Vegetation - Project Arborist**

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

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

Reason: Tree protection.

30. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

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

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

development.

31. **Protection of Habitat Features – Certified by Ecologist**

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

Written details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

32. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the amended Landscape Plans and these conditions of consent.

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

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

33. **Replacement of Canopy Trees**

At least four (4) Spotted Gum (*Corymbia maculata*) are to be planted on site to replace protected trees approved for removal.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

34. **No Weeds Imported On To The Site**

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.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

36. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life (DACPLF09)

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

##### 37. Landscape Maintenance

a) Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

Reason: To maintain local environmental amenity.

##### 38. Environmental and Priority Weed Control

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

Reason: Preservation of environmental amenity.



39. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

40. **Geotechnical Recommendations**

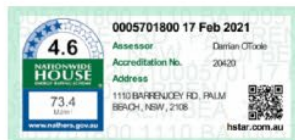
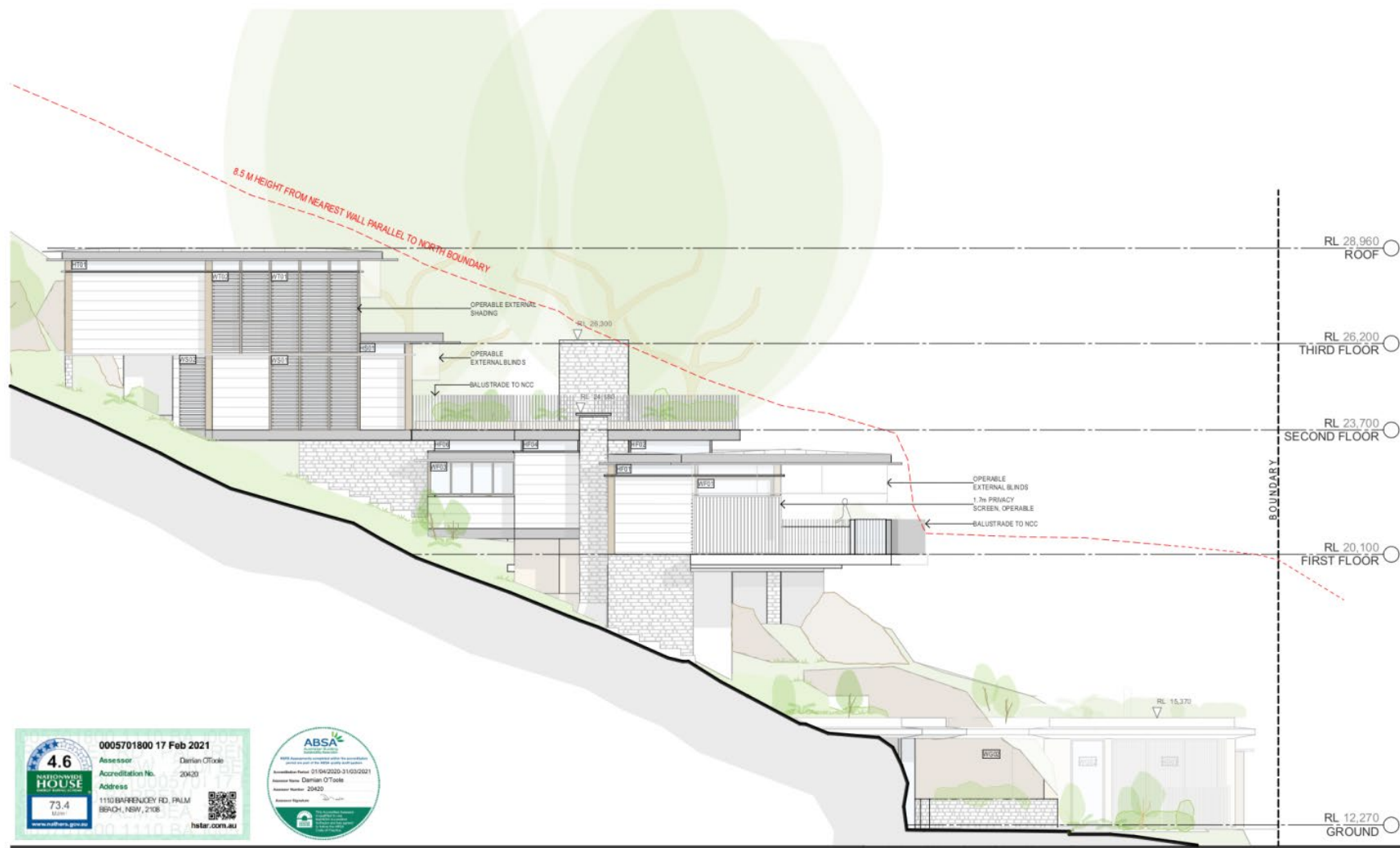
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.



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AUTHORISATION

STATUS	DEVELOPMENT APPLICATION
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# JORGE HRDINA ARCHITECTS PTY LTD

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PROJECT TITLE  
HOUSE FOR ADAM AND AMANDA

PROJECT NO  
2004

DRAWING TITLE  
NORTH ELEVATION

PROJECT ADDRESS  
LOT 3, 1110 BARRENJOEY ROAD, PALM  
BEACH, NSW D.P. 1256016

REVISION	DESCRIPTION	DATE
A	REQUEST FOR INFORMATION	15/06/21

SCALE  
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DATE  
18/6/21

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DRAWING NO

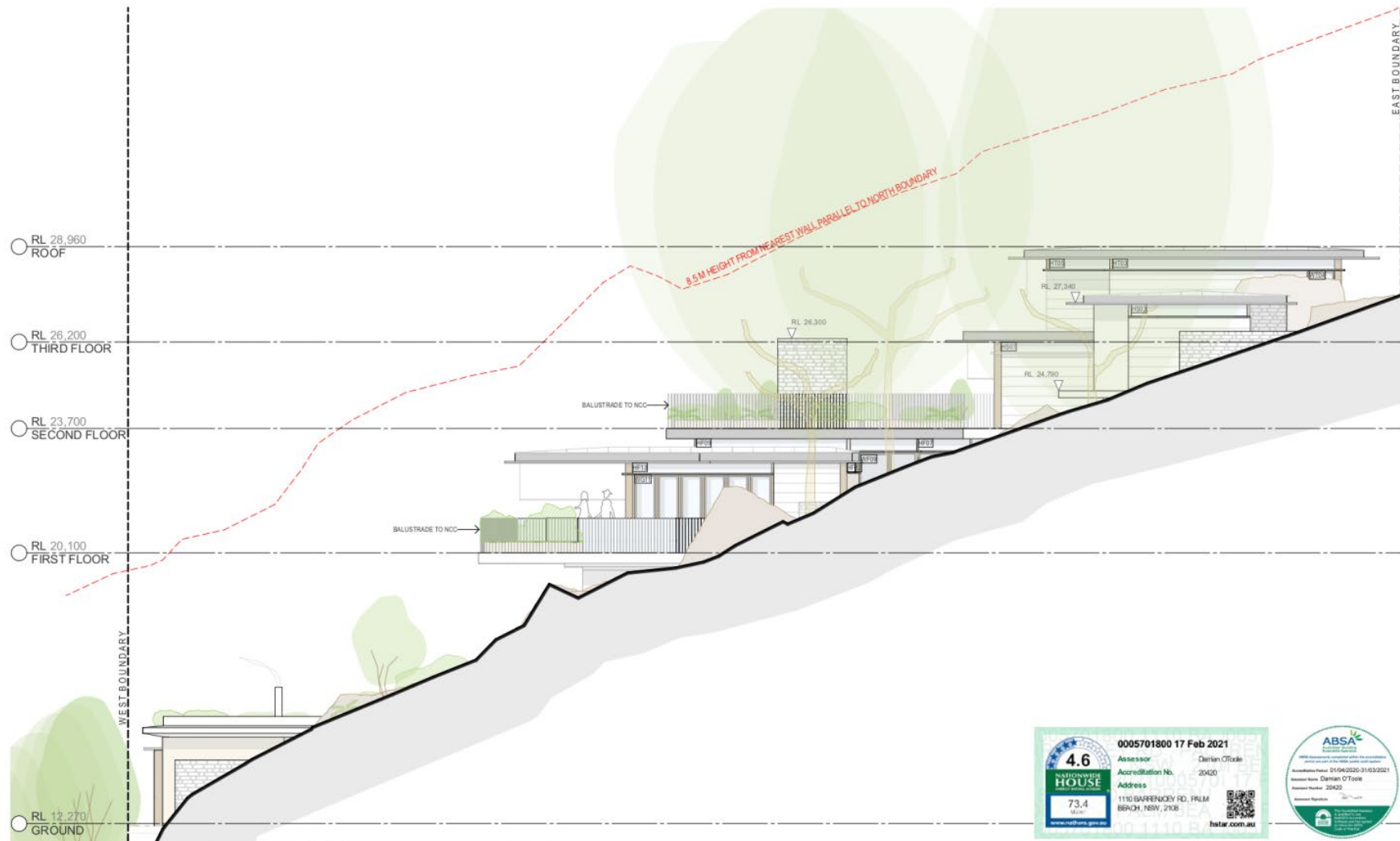
DA3000

REVISION

A

STATUS DEVELOPMENT APPLICATION

0 1 2 3 4 5 ON ORIGINAL @ A3



**JORGE HRDINA**  
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PROJECT TITLE  
**HOUSE FOR ADAM AND AMANDA**  
PROJECT ADDRESS  
LOT 3, 1110 BARRENJOEY ROAD, PALM BEACH, NSW D.P. 1256016

PROJECT NO  
**2004**  
DRAWING TITLE  
**SOUTH ELEVATION**

REVISION DESCRIPTION DATE

SCALE  
1:100 @ A3

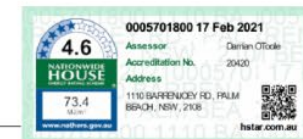
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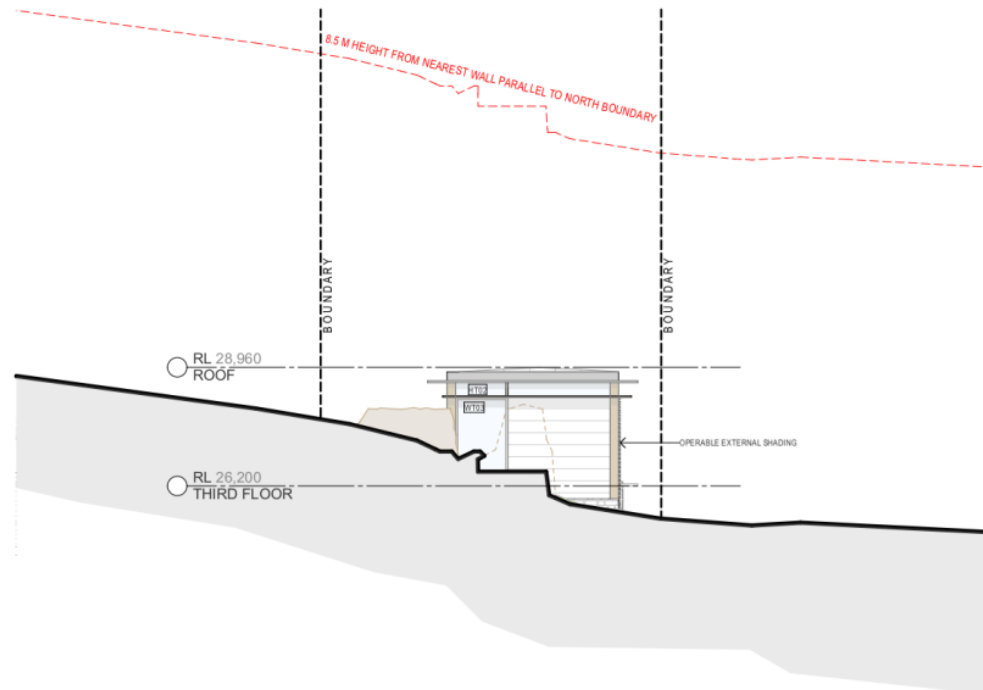
REVISION

**DA3001**

STATUS DEVELOPMENT APPLICATION







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ARCHITECTS PTY LTD

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PROJECT TITLE  
HOUSE FOR ADAM AND AMANDA

PROJECT NO  
2004

DRAWING TITLE  
EAST ELEVATION

PROJECT ADDRESS  
LOT 3, 1110 BARRENJOEY ROAD, PALM BEACH, NSW D.P. 1256016

REVISION DESCRIPTION DATE

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22/2/21

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DRAWING NO

REVISION

DA3002

STATUS DEVELOPMENT APPLICATION

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STATUS DEVELOPMENT APPLICATION

0 1 2 3 4 5 0N ORIGINAL @ A3

<b>ITEM 3.3</b>	<b>DA2021/0318 - 14 SOUTH STEYNE, MANLY - ALTERATIONS AND ADDITIONS TO COMMERCIAL DEVELOPMENT</b>
<b>AUTHORISING MANAGER</b>	<b>Rebecca Englund</b>
<b>TRIM FILE REF</b>	<b>2021/502136</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report</b> <b>2 Site Plan &amp; Elevations</b> <b>3 Clause 4.6</b>

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## PURPOSE

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

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of 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. DA2021/0318 for alterations and additions to commercial development at Lot 501 DP 736679, 14 South Steyne, Manly subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/0318
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<b>Responsible Officer:</b>	Penny Wood
<b>Land to be developed (Address):</b>	Lot 501 DP 736679, 14 South Steyne MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and additions to commercial development
<b>Zoning:</b>	Manly LEP2013 - Land zoned R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Stephen Hayes Pty Ltd
<b>Applicant:</b>	IKUS Pty Ltd T/A U+I Building Studio

<b>Application Lodged:</b>	06/04/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	15/04/2021 to 29/04/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	13
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 1.02%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 978,977.00
---------------------------------	---------------

### EXECUTIVE SUMMARY

The application seeks consent for alterations and additions and to an existing commercial building and to convert two (2) existing restaurants located in the building into the one tenancy.

The application is being referred to the Local Planning Panel as a total of thirteen (13) unique submissions have been received (including two petitions; one in support and one objecting to the development). The issues raised in the objections relate to concerns regarding intensification of the use and increase in gross floor area at the expense of the proposed works to the rear. Other issues include operational issues, acoustic privacy, visual privacy, design and appearance of the rear addition in relation to heritage.

The proposal results in an increase to the gross floor area of the building by 15.4sqm. The increase in



floor area will result in a minor variation of 1.02% (4.14sqm) to the floor space ratio control for the site. The proposed works will not alter the existing building envelope therefore having a minor impact on the existing bulk and scale of the building. An assessment of the development standard breach and the accompanying Clause 4.6 written request is undertaken within this report and is found to be satisfactory.

The external alterations are minor and there is no impact on the heritage significance of the area. The proposal will assist in screening the unsightly bin area currently located at the rear of the site and will not impact on access to the foreshore.

In summary, the Panel can be satisfied that the proposal generally complies with the relevant controls contained within the Manly 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 subject development application proposes the following works:

### External Works

- A new back of house service area will be screened by an acoustically treated fence, gated to allow access for staff and deliveries. The rear service area includes an internal bin room accessed by a roller door. An external staircase, with an acoustically treated screen, at the rear of the building is also proposed. This staircase will provide access for staff via a self-closing solid core door with acoustic seals. The proposed staircase is to be used by staff providing access to the proposed enclosed bin room to dispose of waste and bottles, to collect deliveries, and for staff to enter and exit the premises. This area is to be screened by a 3.6m high acoustically treated screen/fence with access provided via a door in the screen along the north western elevation. A 1.8m high screen is proposed along the rear of the building adjacent to the new kitchen door and stairs for a length of 2.5m.
- The existing fabric awning along the north eastern and north western elevation is to be replaced.
- The existing flat metal roof at the rear of the building is to be removed and replaced with a new tiled roof to match the existing roof style.
- New mechanical exhaust system to be located on the roof of existing building.
- Proposed acoustic screen set behind tiled roof from both Dungowan Lane and Victoria Avenue to screen new mechanical exhaust system.
- New wall and windows flush with north western facade to enclose existing balcony on the north western facade of the building.
- Windows along the north western facade to be replaced with new timber framed windows.
- Existing recess infilled at the rear of building with new window (W10).

### Internal works

The development will involve the renovation of all internal spaces, with a new internal staircase, new bathrooms (including a unisex accessible facility) new kitchen, and back of house services. The building will be occupied by a single tenant operating a single restaurant over two floors. A dumb waiter lift will

facilitate the transfer of food and utensils between floors.

#### Signage

The development application proposes four (4) signs. Three of these signs are hand painted wall signs with 2 located on the north western elevation and one located on the south western elevation. The fourth sign is a projecting wall sign along the north eastern elevation fronting South Steyne. The location and size of the three (3) hand painted wall signs are supported by Council's Heritage Officer, however given the lack of detail regarding the final design a condition is imposed that these signs be subject to further approval once a final design is provided. The projecting wall sign is supported. The signage spotlights proposed over the hand painted wall signs are not approved as part of the subject application.

#### Hours of Operation

The development application does not alter or propose new hours of operation as part of the proposed works. A review of Council's files revealed that there are two (2) separate consents operating on the site. The proposed hours of operation for the ground floor and first floor are inconsistent.

Modification 96(1A) to DA1979/86 approved the following hours of operation for Shop 1 and 2 (14 South Steyne) 7.00am to 10.00pm Monday to Sunday. Approved on 4 May 2010.

Modification 96(1A) to DA1540/1985 approved the following hours of operation; 6.30am - 12 midnight Monday to Saturday and 6.30am to 10pm on Sundays. Approved on 12 December 2013.

The subject development application does not alter the existing hours of operation for the restaurant. To ensure consistent hours of operation for the whole building, the following hours of operations are imposed in a condition of consent.

- Monday to Sunday & Public Holidays - 6.30am - 10.00pm.

Any changes to the approved hours of operation are subject to a new application.

#### Deliveries

Deliveries are proposed to take place between the hours of 6.30am - 8pm on weekdays and 8.00am - 8.00pm on weekends and public holidays

#### Waste Collection

Waste is to be collected by a private waste contractor from Dungowan Lane with waste stored at the rear of the premises in the dedicated bin room.

Revised plans were received on 4 June 2021 in relation to comments received from Council's Road and Assets Officer which did not support the encroachment of private floorspace into the public airspace of the Council road reserve with the enclosure of the balcony. The amended revised plans were supported by Council's Road and Assets Officer. As a result of the revised design, the plans were also submitted to Council's Heritage Officer who also supported the design changes.

### **ASSESSMENT INTRODUCTION**

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act

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

## **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
Manly Development Control Plan - 3.4.2 Privacy and Security  
Manly Development Control Plan - 4.4.3 Signage

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 501 DP 736679 , 14 South Steyne MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern corner of South Steyne and Victoria Avenue.</p> <p>The site is regular in shape with a frontage of 6.09m along South Steyne, 28.595m along the northern boundary, 21.945m along the southern boundary and 6.03m at the rear fronting Dungowan Lane. The site has a surveyed area of 175.5m<sup>2</sup>.</p> <p>The site is located within the R3 Medium Density Residential zone under the provisions of MLEP 2013 and accommodates a two (2) storey building consisting of two (2) restaurants. The building is identified as a Heritage Item I225 - Residential / commercial buildings - 7 and 14 South Steyne. The subject site is also located in proximity of a number of other items of local heritage significance, as outlined further in the report.</p> <p>The site is relatively flat and is located within the Foreshore Scenic Protection Area .</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by similar uses located adjacent to Manly Wine and the Sebel Hotel to the South. To the rear of the site abutting Dungowan Lane is a 5 storey residential apartment fronting Victoria Avenue. Directly opposite the site to the east is</p>



Manly Beach.

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:

- DA No. 1540/1985 - Restoration of the existing terrace building into shops and a restaurant - Approved 20 August 1985.
- DA No. 1797/1986 - Proposed Establishment of Refreshment Room in Existing Shop Premises - Approved 2 May 1986.
- DA15/12 - Alterations and additions to existing building including replacement and relocation of mechanical ventilation systems (exhaust system) for the two commercial kitchens. Approved 19 July 2012.
- Section 96(1A) modification to the approved Restoration of the existing terrace building into shops and a restaurant - involving modification to opening hours. Approved 12 December 2013.
- PLM2020/0286 - Alterations and additions to commercial development. Notes issues on 30 November 2020.

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

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

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



Section 4.15 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 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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the comments provided from Council's Road Reserve Section given the proposed encroachment of private habitable floorspace into the public airspace of the Council road reserve as a result of the enclosure of the first floor balcony along the eastern elevation of the building. Revised plans were received on 6 June 2021 which pushes the wall and windows (W13, W14 and W15) flush with the brick facade. This is considered acceptable.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue</p>

Section 4.15 Matters for Consideration'	Comments
	of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/04/2021 to 29/04/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Lisa Jane Clapham	C/- Manly Owners Group Pty Ltd GPO Box 7085 SYDNEY NSW 2001
Mr David Nicholas Foodey	401 / 46 Victoria Parade MANLY NSW 2095
Ms Adelle Anne Church	1 / 46 Victoria Parade MANLY NSW 2095
Joseph Maceri	202 / 46 Victoria Parade MANLY NSW 2095
Dr David Stuart Gordon Ekins	1 / 46 Victoria Parade MANLY NSW 2095

Name:	Address:
Mr Paul Brendan Hannan	11 Soniver Road NORTH CURL CURL NSW 2099
George Athol Murray Clapham	1 / 46 Victoria Parade MANLY NSW 2095
Ms Belinda Jane Hannan	11 Soniver Road NORTH CURL CURL NSW 2099
Mrs Janette Margaret Wall Mr Mark Joseph Wall	24 / 25 - 27 Victoria Parade MANLY NSW 2095
Mr Jeffrey David Schaffer	5 / 25 - 27 Victoria Parade MANLY NSW 2095
Mod Urban Pty Ltd	PO Box R1702 ROYAL EXCHANGE NSW 1225
Petition	Invalid Address NSW
Mrs Merran Grace Cooper	302 / 46 Victoria Parade MANLY NSW 2095

Eleven unique submissions were received in objection to the proposal, in addition to one petition in support of the proposal and one petition in objection to the proposal. Thirteen (13) submissions were therefore received. The matters raised in the submissions are addressed as follows:

- Noise**

Comment: Concern is raised from the neighbouring properties in relation to the level of noise anticipated as a result of the proposed development. An acoustic report was submitted with the subject development application (Prepared by Koikas Acoustics Pty Ltd, dated 10 March 2021) as requested by Council in the Pre-lodgement notes (PLM2020/0286) provided on 30 November 2020. The acoustic report was referred to Council's Environmental Health (Industrial Use) Section who raised no objections to the proposed staircase incorporating the acoustic treatment to the proposed screens.

Concern was raised in regard to the noise generated from the new mechanical ventilation system located on the roof in the southern corner of the building. An acoustic screen was also proposed along the south western facade of the mechanical ventilation system to assist in mitigating potential noise generated from the mechanical ventilation system. The acoustic report found that mechanical plant emissions are calculated to be within the acoustic design standards.

The proposed bin area is completely enclosed with access provided via a roller shutter door. This will assist in reducing the level of noise associated with disposing of waste and bottles. A condition is imposed on the consent to ensure the disposal of bottles from the restaurant to the bin room is to occur only between the hours of 7.00am to 7.00pm Monday to Friday and between the hours of 8.00am - 7.00pm Saturdays, Sundays and Public Holidays. General waste from the restaurant can be disposed of to the bin room via the use of the external staircase between the hours of 8.00am to 9.00pm Monday - Sunday and Public Holidays.

The use of the staircase by staff was also raised as a concern from the occupants at 46 Victoria Parade. These concerns were in regard to loitering on the stairs and having conversations with other staff members or using the stairs during staff breaks. A condition is imposed in the consent to ensure the stairs are only used to access the bin room within the dedicated hours imposed in the consent. Staff are not to use the staircase to enter and exit the restaurant between 9pm - 7am Monday to Sunday and Public Holidays.

Concern is raised in regard to the potential noise generated from W17 and W18 fronting Victoria Avenue and servicing the kitchen at the first floor. It is anticipated that any noise generated from these windows would not be out of keeping with the expected noise generated from a restaurant.

- **Visual Privacy**

Comment: Concern is raised in regard to the use of the stairs and the ability for a person to stand on the landing (Identified as Step 15 on Dwg No. DA11, Prepared by Building Studio, dated 06/06/2021) and look towards the north eastern elevation of the ground floor apartment and first floor apartment located at 46 Victoria Avenue. A 1.8m high privacy screen is proposed along the south western elevation of the staircase at the proposed kitchen door and continuing down the stairs with the ability for someone to look over the proposed screen whilst standing on the landing (Step 15). However given this landing will be used for a short time while accessing the staircase, it is not considered to create an unreasonable opportunity for overlooking towards the ground floor and first floor units at 46 and balconies. Suitable conditions are imposed in the consent to ensure the staircase is not utilised between the hours of 9pm and 7am by staff entering and exiting the building.

Concern regarding the visual impact of the proposed window at ground floor fronting Dungowan Lane was also raised. A condition is imposed to ensure the window (W10) is fixed with translucent glazing to reduce any potential for overlooking towards the ground floor unit located at 46 Victoria Avenue.

- **Undersized bin storage area**

Comment: The application was referred to Council's Waste Officer for comment. The proposed bin area appears to be of a sufficient area to contain 4 x 660 litre bins, however the bin located under the stairs may not have enough height clearance to allow convenient opening of the lid to deposit waste, which if left open could lead to odour problems. There is no requirement in relation to the number of bins to be provided, therefore allowing the commercial business flexibility in arranging the frequency of collection to suit their needs. A condition is therefore imposed that waste collection contractors must retrieve waste bins from the bin room and replace them in the bin room. Waste bins must not be presented or left in the road reserve for emptying.

- **FSR/ over development of the site**

Comment: Concern is raised in relation to the non-compliant gross floor area of the site. The plans indicate that the increase to the overall gross floor area is minor (3.34sqm) resulting in a 1.02% variation to the FSR development standard of 0.5:1 specified for the subject site. Whilst the proposed development does result in an increase to the overall gross floor area, the built form of the subject building is not dramatically altered, with the increase in floor area resulting in the removal of an existing internal staircase and the enclosure of a ground floor verandah and first floor balcony. The submissions argue that the proposed increased floor area and removal of internal stairs should not be at detriment to the amenity of the adjoining residents of 46 Victoria Avenue. This is discussed in further detail under *Clause 4.6 Exceptions to development standards* in the report.

- **Waste collection and Site Servicing**

Comment: Concern is raised in relation to the collection of waste from the dedicated service area at the rear of the site. A condition is imposed that waste and recyclable material generated by the premises must not be collected between the hours of 7.00pm to 6.30am the following day (Monday to Friday) and 7.00pm to 8.00am the following day (Saturday, Sunday and Public Holidays).

- **Design and appearance of staircase and metal screening to the rear of the site.**

Comment: The application was referred to Council's Heritage officer who raised no objection to the proposed addition at the rear of the site fronting Dungowan Lane. Whilst the proposed staircase is of a more modern design to the existing heritage item, Council supports the adopted



approach to delineate the addition as new works different from the character of the rest of the building and it's proposed setback to Dungowan Lane.

- **Illumination of proposed signage and light spillage from the proposed window (W10) at ground level fronting Dungowan Lane**

Comment: Revised plans received on 4 June 2021 have deleted the spotlight fronting Dungowan Lane above the wall painted sign. Comments received from Council's Heritage Officer state that the wall painted signs are supportable in concept however given the limited level of detail, the applicant is to lodge another development application for signage. The spotlights proposed on the Victoria Avenue frontage are therefore not approved as part of the subject development application. A condition is imposed to this effect.

Concern was also raised in regard to the light spillage from the new window (W10) proposed at ground level fronting Dungowan Lane. A condition is imposed to ensure this window is fixed with translucent glass to reduce the amenity impacts on the residents of 46 Victoria Avenue.

- **Insufficient Plan of Management**

Comment: Concern is raised in regard to the management of the proposed use. Given the use of the subject site as a restaurant will remain substantially unchanged, the Operational Management Plan accompanying the development application is considered reasonable. The subject development application did not address the proposed hours of operation. The two separate tenancies operate under preexisting consents where the trading hours are not the same. To ensure consistency for the proposed single tenancy a condition is imposed to limit the hours of operation to 6.30am - 10.00pm Monday to Sunday and Public Holidays. Conditions are imposed in the consent in relation to the use of the staircase, deliveries, waste and bottle disposal and waste collection.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>No objection with conditions.</b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p><b>No objection with conditions.</b></p> <p><b>General Comments</b></p> <p>A review of acoustics was undertaken by Environmental Health. It was found that the operational plan of management &amp; acoustic report provided with the development are suitable and recommended</p>

Internal Referral Body	Comments
	<p>specific treatments and controls. As such conditions have been provided to be imposed.</p> <p>Environmental Health recommend approval subject to provided conditions being imposed.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
Environmental Health (Food Premises, Skin Pen.)	<p><b>No objection with conditions.</b></p> <p><b>General Comments</b></p> <p>Environmental Health have been requested to provide comment on proposed Alts and Adds DA for 14 South Steyne for an existing commercial building. A part of this food premise fit out will be assessed.</p> <p>Based on the provided SEE and plans the overall flow of the 2x kitchens and 2x bar areas seem sufficient. Hand wash basins will need to be provided to bar areas but finer detail can be provided in fit out plans. Food premise fit out and mechanical ventilation is to be conditioned to provide certification that kitchen fit out and mechanical ventilation comply with AS 1668 &amp; AS 4674. Environmental Health recommend approval subject to conditions.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p><b>No objection with conditions.</b></p> <p>The development application is for alterations and additions to an existing commercial building listed as a local heritage item.</p> <p>Council's Landscape Referral section have assessed the application against the Manly Local Environment Plan, and against the following landscape controls of Manly Development Control (but not limited to):</p> <ul style="list-style-type: none"> <li>• section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation,</li> <li>• section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping, and 4.4.5 Eathworks (Excavation and Filling) of particular reference to this application.</li> </ul> <p>Additionally, the site frontage contains a street tree as part of the local heritage item i238 listing for street trees along Victoria Parade. Conditions of consent shall be imposed to protect this street tree and all street trees.</p> <p>Landscape Referral raise no objections to the proposal.</p>

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p><b>No objection without conditions.</b></p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018. It has also been assessed against requirements of the Manly LEP 2013 and DCP 2013.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b> The 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><b>Manly LEP 2013 and Manly DCP</b></p> <p><b>Foreshores Scenic Protection Area Management</b></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>

Internal Referral Body	Comments
	<p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by R &amp; H Projects Pty. Ltd. dated March 2021, 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 application does comply with the requirements of the 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>
NECC (Development Engineering)	<p><b>No objection with conditions.</b></p> <p>Development Engineering has no objection to the application as there is no impact to the existing on site stormwater management on the subjected site.</p> <p>However, the proposed lounge on the first floor will encroach the air space on the road reserve, which does not permit. Please refer the application to our Transport &amp; Civil Infrastructure Asset team for assessment.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p><b>No objection with conditions.</b></p> <p>The proposed development is for alterations and additions to commercial premises. There are no proposed extensions of floor areas below the flood planning level. Subject to conditions the proposal is compliant with Council's development controls.</p>
Road Reserve	<p><b>No objection without conditions.</b></p> <p>Proposal involves further encroachment of private habitable floorspace into the public airspace of the Council road reserve with enclosure of the balcony. Whilst minor, this is not supported.</p> <p>In principle, developments should be confined within their own boundaries and therefore Council should not approve any structure, other than an awning, that encroaches into the airspace above a road reserve.</p> <p><b>Amended comments as at 10 May 2021</b></p> <p>Further to discussions with the Planner the existing bay window arrangements where they encroach are acceptable however the amended plans removing the encroaching bay windows at the lounge area (First Floor - Issue C dated 03/03/2021) and indicating windows enclosing the "lounge" area (W16) will not encroach on the road reserve are acceptable.</p>



Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	<p><b>No objection with conditions.</b></p> <p><b>HERITAGE COMMENTS</b></p> <p><b>Discussion of reason for referral</b></p> <p>The proposal has been referred to Heritage as the subject property is a heritage item and is located in proximity to a number of other items:</p> <p><b>I225 - Residential/commercial buildings</b> - 7 and 14 South Steyne  <b>I2 - All stone kerbs</b> - On the South Steyne frontage  <b>I238 - Street Trees</b> - Victoria Parade  <b>I241 - Residential flat building</b> - 29 Victoria Parade  <b>I242 - Residential flat building</b> - 31 Victoria Parade  <b>I226 - House</b> - 15-16 South Steyne  <b>I224 - Public Shelters</b> - South and North Steyne (one is located diagonally opposite the site)  <b>I174 - Beach Reserve, Merret Park North Steyne and South Steyne</b> - Oceanside of North and South Steyne.</p> <p><b>Details of heritage items affected</b></p> <p>Due to the large number of heritage items, only information for the site and the immediately adjoining items is included. Details of these items as included within the Manly inventory is as follows:</p> <p><b>Residential/commercial buildings - 7 and 14 South Steyne</b>  <u>Statement of significance:</u>  A good example of early 20th century architectural styles in this form of development; in textural interest provided to streetscape and in showing Art Nouveau and California Bungalow influence.</p> <p><u>Physical description:</u>  Group of eight buildings of two to four floors, generally brick with render decoration. Provide a range of early twentieth century architectural styles from c. 1910-25, showing Art Nouveau and California Bungalow decoration and ornament in timber, shingle, brickwork and render.</p> <p><b>Stone Kerbs</b>  <u>Statement of significance:</u>  Stone kerbs are heritage listed.</p> <p><u>Physical description:</u>  Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.</p> <p><b>Street Trees - Victoria Parade</b>  <u>Statement of significance:</u>  Historical line of HG Simth's intended Victoria Park. Aesthetic.</p>

Internal Referral Body	Comments		
	<u>Physical description:</u> Norfolk Island Pines on both sides of road planted in carriageway.		
	<u>Other relevant heritage listings</u>		
	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	
	<u>Consideration of Application</u>		
	Currently the property operates as two separate restaurants occupying different levels of the heritage listed property. This proposal seeks consent for alterations and additions that includes but is not limited to		
	<ul style="list-style-type: none"><li>• Converting from two separate restaurants to one restaurant</li><li>• Internal reconfiguration</li><li>• Replacement of existing awning with a new extended awning in a striped pattern</li><li>• Replacement of rear flat metal roof with a half hipped tiled roof to match existing hipped and gable roof.</li><li>• Aluminium screening with acoustic treatment to roof mechanical plant, rear stairway and bin area adjacent to Dungowan Lane</li><li>• New bay window style pop out to the upper level of the Victoria Parade frontage, and matching window infil treatment to the lower level verandah</li><li>• New timber windows and doors to match existing</li><li>• Retention of external tile/brick detailing around doors and windows</li><li>• New external unified paint and colour scheme</li><li>• Signage areas</li></ul>		
	<u>Nearby Heritage Items</u>		
	As indicated above, there is a large number of heritage items in the immediate vicinity of this property, with two directly adjacent. The first listing is the stone kerbs which applies to the South Steyne frontage of this property, however there are no stone kerbs remaining here and there is no heritage impact. The second item is		

Internal Referral Body	Comments
	<p>the Norfolk Island Pines trees in Victoria Parade and one is located right outside the property. The proposed works will have no impact upon this item or its significance, but Heritage agrees with the conditions from Landscaping that they be protected during construction works. As to the other surrounding heritage items, the site is afforded visual and physical separation by the road carriageways and there is no impact to them from the proposal.</p> <p><i>14 South Steyne</i></p> <p>Overall there are a large number of changes proposed to the property, but they have generally been designed well to respect the significance of the item and allow for its ongoing use as a commercial operation. No objections are raised to the replacement of doors and windows on a like for like basis with timber frames. No objections are raised to the new awning or internal reconfiguration of the site. Internally it has been subject to much change and the most important intact element being the double side fireplace and surrounds is proposed to be retained as is. Further, no objections are raised to the window pop-outs to Victoria Parade or their detailing.</p> <p>There is no objections to the proposal for the roof . The half hipped and tiled roof with capping is considered to be a good response to the site that is sympathetic to the roof at the front of the property. It also provides an opportunity to improve the visual presentation to Victoria Parade by screening some of the plant and ventilation facilities. While the metal screen will just be noticeable from some places, it has been well designed with an appropriate colour scheme that will minimise its visual impact.</p> <p>The new screening to the service area adjoining Dungowan Lane is on balance acceptable. While it is quite tall, it will step back from the Victoria Parade frontage providing relief to this heritage elevation. It will also allow for amenity improvements through the screening of the bin area with a reduction in noise pollution. Further, the rear elevation of the site is considered to be less significant which allows more room for changes to occur.</p> <p>The proposed external colour scheme while not being the most traditional approach is also broadly acceptable. The only suggested amendment would be to paint the roughcast render in a different shade to highlight this feature.</p> <p>The proposed signage areas are also well designed with appropriate locations and sizing. Heritage's only concern would be the final design of these hand painted signs which is currently not known. However this can be determined later and Heritage would suggest a condition that they be subject to further approval when they are known.</p>

Internal Referral Body	Comments
	<p>Lastly, Heritage will also condition that a simple photographic archival recording of the property be undertaken generally to Heritage NSW guidelines to capture the building and provide a record in its current state before works begins.</p> <p><i>Conclusion</i></p> <p>Overall the proposal provide a good response to the heritage item and the need to resolve a number of amenity issues. It has retained important heritage features of the building and appropriately designed new works to complement them. The proposal has also been supported with a detailed heritage impact statement that has assessed the proposal against the item and its significance, as well as the provisions of the LEP and DCP. Heritage can broadly agree with the conclusions of the heritage impact statement.</p> <p>Therefore Heritage raises no objections to the proposal and recommends two conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes - A statement from Dr Anne Warr Heritage Consulting has been provided.</p> <p><b>Amended Comments 30 June 2021</b></p> <p>Amended plans were submitted by the applicant removing the proposed overhanging enclosed balcony to the upper level of the Victoria Parade frontage. The amended plans instead have this balcony infilled with glass and panels and flush with the existing boundary wall. Heritage has no objection to his amended design. Heritage also understands some concerns have been raised regarding the appearance of the rear metal screening to the laneway and its inconsistency with the rest of the building. Heritage supports the adopted approach to clearly delineate this as new works different from the character of the rest of the building and its proposed setback to Victoria Parade.</p> <p>Lastly, Heritage understands a condition will be applied requiring the signage to be dealt with via a separate application to Council. Heritage raises no objections to this approach and will remove its signage condition.</p> <p><b>Further Comments</b></p> <p>COMPLETED BY: Brendan Gavin, Principal Planner</p> <p>DATE: 3 May 2021 - Amended 30 June 2021</p>



Internal Referral Body	Comments

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

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

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

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

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

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

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

##### **SEPP 64 - Advertising and Signage**

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

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

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

Matters for Consideration	Comment	Complies
<b>1. Character of the area</b> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	<p>The proposed signage is consistent with the existing and anticipated future character of the Manly area along South Steyne.</p> <p>The proposed sign is the same design as the sign located at 8-13 South Steyne for Manly Wine Bar. It is considered that the proposed signage is compatible with the existing and desired future</p>	YES

	character along South Steyne.	
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposed projecting wall sign fronting South Steyne is in keeping with the existing projecting wall sign located at the adjoining site to the south at Manly Wine. The overall design and size of the signage is consistent with other outdoor advertising in the area.	YES
<b>2. Special areas</b> 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 forms part of a heritage item, and is within the vicinity of other heritage items. The signage is designed to be visually subservient to the heritage item and will not detract from views to this item. Furthermore, the scale and design of the sign proposed is consistent with the nearby businesses. The subject site is not located within an environmentally sensitive, natural, open space or rural area. The proposed signage does not detract from the amenity or visual quality of nearby open space areas, waterways, or residential areas.	YES
<b>3. Views and vistas</b> Does the proposal obscure or compromise important views?	The proposed signage will not obscure or compromise important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage does not project above the existing building, so does not dominate the skyline or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposed signage will not impact on the viewing rights of other advertisers.	YES
<b>4. Streetscape, setting or landscape</b> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion and form of the proposed signage is consistent with other existing comparable uses within the streetscape, and within the zoning of the site. As such, the proposed signage is appropriate in the streetscape and setting of the site.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed development and associated signage have been designed in a clear and modern manner, and therefore create visual interest within the streetscape.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signage is located at a key point on the proposed building and, therefore, does not create visual clutter.	YES
Does the proposal screen unsightliness?	The proposed signage does not give rise to unsightliness.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The subject signage does not protrude above the height of the existing building.	YES
<b>5. Site and building</b> Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or	The proposed signage is of compatible scale and proportion to the proposed building and the existing buildings in the street.	YES

both, on which the proposed signage is to be located?		
Does the proposal respect important features of the site or building, or both?	The proposed signage does not detract from important features of the site or proposed building.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage is located logically to achieve an adequate level of exposure, while remaining visually compatible with the existing building and the streetscape.	YES
<b>6. Associated devices and logos with advertisements and advertising structures</b> 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?	The proposed signage will not require safety devices, platforms or lighting devices, as the illuminated signage is lit internally.	YES
<b>7. Illumination</b> 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?	Illumination of the proposed signage will not result in unreasonable or unacceptable glare. Illumination of the proposed signage will not impact upon safety for pedestrians, vehicles or aircraft. Illumination of the proposed signage will not impact upon nearby residences or other accommodation. A condition is to be imposed to ensure that the level of illumination and/or lighting intensity used to illuminate the signage is to be minimised and the design is to be such to ensure that excessive light spill or nuisance is not caused to any nearby premises.	YES
Can the intensity of the illumination be adjusted, if necessary?	A condition of consent will require the illumination to be adjustable.	YES
Is the illumination subject to a curfew?	The proposed signage will be illuminated for the hours of operation of the proposal. This will be conditioned on any consent.	YES
<b>8. Safety</b> Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposed signage is not considered to impact on the safety of pedestrians, bicyclists or anyone travelling on a public road.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage does not obscure any sightlines, and will, therefore, not reduce pedestrian safety.	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. A response was received within the 21 day statutory period stating no decision was required for the alterations. Therefore, no objections are raised and no conditions are recommended.

**SEPP (Coastal Management) 2018**

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

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

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*

Comment:

The development is contained wholly within the subject site and is not considered likely to negatively impact upon the matters raised in subclause (1).

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*



- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The development is located within the boundaries of the subject site with the proposed works reducing any impact to the surrounding land. The proposed development is not considered to negatively impact upon the matters raised in subclause (1).

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

(1)

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
  - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
  - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
  - (iv) Aboriginal cultural heritage, practices and places,
  - (v) cultural and built environment heritage, and
- (b) is satisfied that:
  - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
  - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed development will not impact on existing public access along the foreshore and there will be no additional amenity impacts towards adjoining properties. The site is identified as a heritage item, however the proposed alterations and additions are considered sympathetic to the subject building's significance and will not impact on the visual amenity when viewed from the waterway. The development is considered to be in keeping with the visual character of South Steyne and Victoria Avenue along the foreshore of Manly. The development is therefore not likely to cause an adverse impact on the matters referred to above.

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

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

Comment:

The proposed development will not impact on existing public access along the foreshore and there will be no additional amenity impacts towards adjoining properties. The site will not impact on the visual amenity when viewed from the waterway. The development is considered to be in keeping with the

visual character of South Steyne and the broader Locality of Manly The development is therefore not likely to cause an adverse impact on the matters referred to above.

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

#### **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**

<b>Standard</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation</b>	<b>Complies</b>
Height of Buildings:	13.0m	9.4m	N/A	Yes
Floor Space Ratio	FSR: 1.5:1 (263.26sqm)	FSR: 1.52:1 (267.4sqm)	1.02%	No

#### **Compliance Assessment**

<b>Clause</b>	<b>Compliance with Requirements</b>
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
6.21 Noise impacts—licensed premises	Yes
Schedule 5 Environmental heritage	Yes

#### **Detailed Assessment**

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

##### Description of non-compliance:

Development standard:	Floor space ratio

Requirement:	263.26sqm
Proposed:	267.4sqm
Percentage variation to requirement:	1.02%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) *the consent authority is satisfied that:*

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

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

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters

required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*



The applicants written request argues, in part:

- *"The proposed enclosure of the balconies and window boxes will reduce noise levels from the restaurant (see acoustic report in the accompanying SEE);*
- *The increase in floor area has no impact on the visual impact of the building;*
- *The increase in floor area will not reduce environmental amenity of neighbouring properties through loss of views given the overall height of the building and its setbacks are unchanged;*  
*and*
- *The increase in floor space as proposed will not change the character of the locality."*

A detailed assessment of the proposal indicates that the proposed works result in a minor non-compliance of 4.14m<sup>2</sup> to the gross floor area of the subject building. This equates to a variation of 1.02% to the FSR control. The proposed works to convert two restaurants into one are predominantly internal, with the enclosure of an existing ground floor verandah and first floor balcony located along the north western elevation (Victoria Avenue). The additional floor area is also resultant from the removal of a second staircase and the removal of existing storerooms on both the ground and first floor level, which were previously excluded from FSR calculations. This increase in floor area will not alter the existing building envelope and the enclosure of the first floor balcony and ground floor verandah will assist in reducing the noise levels generated towards the public domain. The external staircase and bin room proposed at the rear of the building along Dungowan Lane is not included in the overall gross floor area calculation. The internal works to both the ground and first floor of the building result in a more functional restaurant with the area used for restaurant patrons located in the north-eastern section of the building reducing the level of noise generated towards the rear where residential properties are located.

The subject site is identified as a Heritage Item (I225 - Residential /commercial buildings - 7 and 14 South Steyne) with the proposed works supported by Council's Heritage Section. The existing building does not currently provide a dedicated bin storage area for the the two restaurants on the site, with existing bins being located at the rear of the site and visible from the public domain. The dedicated bin room and service stairs will create an area which will improve the appearance of the building by removing the unsightliness of the bins and reduce odour and noise associated with disposing of waste.

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 Floor Space Ratio development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

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

Comment:

The proposed works to the existing building do not substantially alter the existing bulk and scale of the development with the proposed alterations and additions enclosing an existing first floor balcony and verandah located along the north western facade. Revised plans were received by Council on 4 June 2021 which amended the design of the enclosed balcony (W16) to be flush with the existing facade. These amendments are supported by Council's Heritage Officer and Council's Road Asset Officer. The proposed access stairs, bin room and fencing to the rear of the building fronting both Victoria Avenue and Dungowan Lane will remain predominantly open with the enclosed bin room not visible from the public domain. The proposed screen will be extended to the rear boundary and north eastern boundary and 1.4m from the north western boundary which will provide some articulation along the north western facade.

The 4.14m<sup>2</sup> non-compliance is a direct result of minor internal works which do not dramatically alter the existing bulk and appearance of the subject building. The proposed staircase and enclosed bin room are not included in the gross floor area calculation and therefore, the 1.02% variation to the floor space ratio control is considered reasonable in this instance.

*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 alterations and additions to the subject building will not dramatically increase the bulk and scale of the building with the works resulting in the increased gross floor area being confined within the building envelope. Given the heritage significance of the building, the proposal was referred to Council's Heritage Officer who raised no concerns stating that on balance the addition is acceptable as it will step in from the Victoria Avenue frontage providing relief to this heritage elevation. The addition will assist in improving the overall amenity of the surrounds by screening the bin area which will reduce odours and noise pollution when disposing of waste. The rear of the building is also considered to be of less significance from a heritage view point therefore allowing additional changes which will delineate this as new works different from the existing character of the building. Heritage supports this adopted approach from a design perspective.

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

Comment:

The proposed development to the existing building will not dramatically alter the heritage character of the building and is supported by Council's Heritage Officer. Dungowan Lane is primarily used as a service lane for the subject site and the Sebel Hotel. The works to the rear will assist in improving the appearance of the building by providing an enclosed bin area which will reduce odours with all rubbish and bottles contained within the site and not visible from the public domain. The proposed screen will be setback 1.4m from the north western boundary fronting Victoria Avenue which will provide some relief to the building by reducing the bulk of the 3.6m high screen. The screen will extend 2.4m from the rear wall towards Dungowan Lane and will be located significantly lower than the maximum height of the building therefore ensuring a development which does not dominate the bulk and scale of the existing building.

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

Comment:

The proposed works to the existing building are contained primarily within the existing building envelope and therefore is not considered to have any adverse environmental impacts on the use or enjoyment of adjoining land and the public domain. The building will continue to be used as a restaurant.

*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 works to the existing building will retain the commercial use as a restaurant which will ensure any future business within the building will continue to contribute to the economic growth and employment opportunities within the Manly Local Centre.

## Zone objectives

The underlying objectives of the R3 Medium Density Residential zone are:

Conclusion: The underlying objectives of the R3 Medium Density Residential zone

- *To provide for the housing needs of the community within a medium density residential environment.*

Comment:

The proposed works to the existing commercial building will not impact on the existing level of housing provided within the community.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The proposed works maintain the existing use of the building as a restaurant and will not impact on the supply of housing types within the medium density residential environment.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The development proposal will maintain the existing commercial use as a restaurant and therefore will continue to service the day to day needs of residents.

- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

Comment:

The proposed development will maintain the existing use of the restaurant and will improve the appearance and function of the building by providing an enclosed bin room at the rear.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Comment:

The on-going use of the use of the building will enhance the role of Manly as an international tourist destination.

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium 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.

In accordance with Local Planning Panels Direction issued by the Deputy Secretary dated 30 June 2020, the Northern Beaches Local Planning Panel may assume the Secretary's concurrence in relation to the proposed development.

**Manly Development Control Plan**

Built Form Controls

There are no development controls under the Manly Development Control Plan (DCP) to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.3 Signage	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

#### **3.4.2 Privacy and Security**

Concern has been raised in relation to loss of privacy and overlooking towards bedrooms, kitchen/living areas and balconies to the west of the subject site at 46 Victoria Avenue. 46 Victoria Avenue is a recently constructed residential flat building consisting of eleven (11) apartments and is five (5) stories high. The subject site and 46 Victoria Avenue are separated by Dungowan Lane.

#### Visual Privacy

Concern is raised in relation to the location and use of the proposed external staircase located along the south western elevation of the subject site fronting Dungowan Lane. The staircase will be utilised by staff only for the purposes of transporting waste from the ground floor and first floor to the four (4) 660L bins located within the proposed bin room underneath the new staircase. Access to the bin room is provided at ground level via a new door along the south western elevation and from a new door at the first floor from the kitchen. A roller door is proposed along the north western elevation of the bin room with an external gate being located along the north western elevation (Victoria Avenue) within the proposed screen/fence. The proposed gate is to provide access for staff entering and existing the building and access for the commercial waste contractor.

Currently the subject site utilises the rear of the site for the location of rubbish bins used in association with the use of the site as two (2) restaurants. This area is not enclosed at present.

The plans submitted with the development application indicate that the proposed staircase at the rear of the building will remain open with a 1.8m high metal screen located along the south western elevation of the proposed landing at first floor and the stairs for a length of 2.5m. The plans indicate that a person standing on the landing (Step 15) as indicated on Drawing No, DA31 (2-Southwest facade Dungowan Lane and 3 - Southwest facade without fence) will be visible. At the second landing of the proposed staircase (Step 11), the proposed screen along Dungowan Lane will measure 1.7m in height.

Whilst it is evident that a person utilising the staircase from stair 15 to stair 11 will be visible, the staircase is to be used exclusively for staff access and for the disposal of waste from level 1 to the bin room located underneath the staircase. Any views from the staircase towards the apartments at 46 Victoria Parade will be limited to the ground floor apartment and the first floor apartment along the north eastern facade. Whilst a level of overlooking towards from the proposed staircase towards the ground floor apartment and apartment located at level 1 is unavoidable given the proposed design, the access stairs are to be used intermittently and are not considered to be a place where staff will congregate and therefore create a level of noise that is out of keeping with the noise expected to be generated from the use of a restaurant. The north eastern facade of 46 Victoria Parade is also considered vulnerable given it's location along Dungowan Lane and adjacent to the rear of existing commercial premises and the Sebel Hotel.

The staircase will also be used to provide access to the services access fixed ladder provide access to the mechanical plant area located on the south western portion of the roof via the fixed ladder along the roof. The use of this ladder is not anticipated to be used regularly with it's purpose to provide access for maintenance of the mechanical plant.

Concern is raised in regard to the new window located at ground floor along the south western elevation (Dungowan Lane) which will service the juice/sandwich preparation area. Currently in this location is an arch shaped alcove measuring 1.2m in width providing internal and external access to an existing storage area. The application proposes to internalise this area and proposes a new window (W10) to provide natural light to this area. To ensure this window cannot be used as server window and to reduce the level of noise and improve privacy for the occupants of 46 Victoria Avenue, a condition is imposed for this window to be fixed with obscure glazing.

#### Acoustic Privacy

Concern was raised relating to the potential noise generated from staff utilising the external staircase and noise generated from the new mechanical ventilation system to be installed on the roof of the subject building. Pre-lodgement advice was provided to the applicant on 30 November 2020 (PLM2020/0286) requesting the fixed privacy screen for the external staircase be acoustically treated to mitigate noise transfer. Acoustic treatment to the kitchen door at first floor servicing the kitchen was also recommended. The development application states that the stairs will be used for staff access and to transport rubbish and bottles to the bin room located at ground floor. The objections received during the assessment of the application raised concern regarding the potential noise generated from the use of the staircase relating to the transfer of rubbish and disposal of bottles and from staff loitering on the external stairs during staff breaks.

An Operational Management Plan and an Acoustic Report (by Koikas Acoustics Pty Ltd dated 10 March 2021) was submitted with the subject application and was referred to Council's Environmental Health (Industrial Use) Section for comment. No objections were raised from the Environmental Health Officer who reviewed both reports and recommended appropriate conditions.

Whilst the acoustic treatment of the screen to the external staircase and the measures imposed to ensure the mechanical ventilation system are considered reasonable, additional conditions relating to the following are to be imposed:

- No live or amplified music (other than background music) is to be provided;
- Waste and recyclable material generated by the premises must not be collected between the hours of 8.00pm to 6.30am the following day (Monday to Friday) and 8.00pm to 8.00am the following day (Saturday, Sunday and Public Holidays).
- No service and delivery vehicles are to serve the premises between the hours of 7.00pm to 6.30am the following day (Monday to Friday) and 7.00pm to 8.00am the following day (Saturday, Sunday and Public Holidays).
- All staff are not permitted to enter and exit the premises via the external staircase after 9.00pm and before 7.00am (Monday to Sunday including Public Holidays).
- The use of the stairs to transfer bottles to the bin room is to be limited to the hours of 7.00am - 7.00pm (Monday to Friday) and 8.00am - 7.00pm (Saturdays, Sundays and Public Holidays).
- The use of the stairs to transfer waste to the bin room is to be limited to the hours of 7.00am - 9.00pm (Monday to Sundays and Public Holidays).

These conditions will ensure the level of noise generated from the restaurant is in keeping with the surrounding uses and adequately protect the amenity of the neighbouring properties.

#### **4.4.3 Signage**

The application proposes 4 pieces of signage consisting of the following:

- 1 x Projecting Horizontal Wall Sign - (Fronting South Steyne)
- 2 x Wall sign - hand painted- (Fronting Victoria Parade)
- 1 x Wall sign - hand painted (Fronting Dungowan Lane)

The projecting wall sign fronting South Steyne is compliant with the signage controls outlined in Clause 4.4.3 and is supported by Council's Heritage Officer.

The three (3) hand painted wall signs are supported in theory given their size and location on the Victoria Avenue and Dungowan Lane frontage. However, as the design of these signs is not proposed as part of the current application, a condition is imposed for any hand painted signage to be subject to a separate development application. The proposed signage spotlight is not approved as part of the subject development application.

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

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

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

The proposal is 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 \$9,790 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$978,977.

## CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

The application seeks consent for alterations and additions to an existing commercial building.

The key planning issues considered within this assessment are the proposed variations to the Floor Space Ratio development standard and amenity issues towards adjoining residential properties generated from the proposed external staircase, mechanical ventilation system and bin room proposed at the rear of the site fronting Dungowan Lane.



Notwithstanding the proposed floor space ratio variation of 1.02%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain. Conditions are recommended to ensure the use of the external service area at the rear of the site is managed to reduce any amenity impacts towards the adjoining residential properties.

The external alterations and additions to the building are not considered to impact on the heritage significance of the area.

Thirteen (13) submissions were received in relation to the proposed development. 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.

Assessment of the application against the Manly LEP and DCP finds that the development is suitable in the context of the site, and is recommended for approval.

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

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/0318 for Alterations and additions to commercial development on land at Lot 501 DP 736679, 14 South Steyne, MANLY, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Analysis/Context Plan - DA01 - Rev B	2 March 2021	Building Studio
Proposed Ground Floor Plan - DA10 - Rev B	2 March 2021	Building Studio
Proposed First Floor Plan - DA11 - Rev C	3 June 2021	Building Studio
Proposed Roof Plan - DA12 - Rev B	2 March 2021	Building Studio
Sections - DA20 - Rev C	3 June 2021	Building Studio
Proposed Elevation - DA30 - Rev C	3 June 2021	Building Studio
Proposed Elevations - DA31 - Rev C	3 June 2021	Building Studio
Proposed Materials, Colours & Finishes - DA50 - Rev C	3 June 2021	Building Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Acoustical Report	10 March 2021	Koikas Acoustics Pty Ltd

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

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

Waste Management Plan		

Drawing No/Title.	Dated	Prepared By
Waste Management Plan for 14 South Steyne, Manly NSW	2 March 2021	Loka Consulting Engineers Pty Ltd

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

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

## 2. Prescribed Conditions

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

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

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

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

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

Reason: Legislative requirement.

### 3. General Requirements

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

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



change. The applicable fee at the time of payment of the Long Service Levy will apply.

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

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

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

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

- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2018
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$9,789.77 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 \$978,977.00.

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

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

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

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

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

### 5. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

Reason: To ensure adequate protection of Council's infrastructure.

#### **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

##### **6. Heritage Listed Trees**

The site frontage contains / is adjacent to Heritage Listed trees as identified in the Local Environmental Plan. Heritage Listed Trees are to be protected from damage during demolition and construction.

a) The following Heritage Listed Trees are located within the vicinity of the approved works:

- i) Norfolk Island Pine fronting the site along Victoria Parade
- ii) multiple Norfolk Island Pines along Victoria Parade

All Heritage Listed trees along Victoria Parade are to be protected from damage from associated works as part of the development, including deliveries, construction activities and services trenching.

b) A Tree Protection Plan is to be prepared by an Arborist with minimum AQF Level 5 in arboriculture incorporating the following:

- i) annotated photographs of the tree(s) trunk, branches and any exposed roots prior to commencement of any works,
- ii) tree protection measures in accordance with AS4970-Protection of Trees on Development Sites.

As a minimum tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. The fencing shall remain in alignment for the duration of demolition and construction works and no encroachment within the fencing zone is permitted. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

Tree protection fencing shall be in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

Reason: Protection of significant community assets.

##### **7. Flooding**

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

#### Flood Effects Caused by Development – A2

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 4.29m AHD.

#### Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of 4.59m AHD shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

#### Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. 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.

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

### 8. **Photographic Heritage Record**

A simple photographic heritage record of the site is to be made of all buildings and structures, as a record of the site prior to works. The recording should be generally in accordance with *Photographic Recording of Heritage Items Using Film or Digital Capture* (Heritage NSW, 2006). This record must be submitted to and approved by Council's Heritage Officer prior to the commencement of any demolition or works on-site.

Details demonstrating compliance with this condition must also be submitted to the Principal Certifying Authority.

This photographic record should be made using digital technology and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Existing plans of any buildings (floor plans and elevations);
- Photographs of all elevations, interiors and key features (including gardens, fences, architectural details such as windows, joinery etc.) as well as a number of contextual shots depicting the sites surrounding environment.

Note: All images should be cross-referenced to a catalogue sheet.

Reason: To provide an historical photographic record of the site, including any buildings and landscape elements, prior to any works.

### 9. **Amendments to the approved plans**

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

- W10 located at ground floor located on the elevation is to be fixed with obscure glazing,
- The two signage spotlights located on the north western elevation are to be deleted, and
- The three hand-painted signs are to be deleted (to form part of a separate application to Council).



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.

10. **Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety works and recommendations as contained in the NCC Assessment Report prepared by Credwell, dated 23 /2/2021, Report Ref No. C20441-r1 are to be considered as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

11. **Access for People with Disabilities**

Access and facilities to and within the building are to be provided for Persons with a Disability. In particular any front entry ramp and the front entrance doorway are to comply with the Building Code of Australia and AS 1428.1. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

12. **Plans of Kitchen Design, construction and fit out**

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

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

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

13. **Compliance with Standards**

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

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

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

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

14. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

15. **Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

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

16. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

17. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

18. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

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

Reason: Tree protection.

19. **Certification of Services (B3)**

Certification that new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections are located above the FPL and waterproofing of electrical equipment and installation of residual current devices below the Flood Planning Level (B3)

A suitably qualified electrical engineer or contractor is to certify that all new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections

are located above the Flood Planning Level and any existing electrical devices, wiring and the like located below the FPL are protected from water egress or have residual current devices installed to cut electricity supply during flood events.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval.

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

20. **Registration of Food Business**

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

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

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

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a suitably qualified person that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

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

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

22. **Mechanical Ventilation certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

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

Reason: To ensure that the mechanical ventilation system complies with the design requirements.

23. **Acoustic Assessment Recommendations**

Prior to the issuing of any interim / final occupation certificate, details demonstrating compliance with the mechanical plant recommendations & building use recommendations made by Koikas Acoustics referenced as 4609R20210226pd14SouthsteyneManly\_DA and dated 10 March 2021 are to be submitted to the satisfaction of the Principal Certifying Authority.

Reason: To protect surrounding residence and occupants from any noise generated by the operation of the development.

24. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

**Reason:** To prevent pollution of the environment and to protect the amenity of the area.  
(DACPLF03)

25. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

**Reason:** Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

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

26. **Compliance with operational management plan**

The operational management plan and its associated hours of operation are to be complied with at all times.

**Reason:** To protect surrounding residence, occupants and the environment from noise generated by the operation of the development.

27. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Friday – 6.30am - 10.00pm
- Saturday – 6.30am - 10.00pm
- Sunday and Public Holidays – 6.30am - 10.00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

**Reason:** Information to ensure that amenity of the surrounding locality is maintained.

28. **Hours of Illumination**

Illumination of signage at the subject premises shall cease between the hours of 12.00 midnight and 6.00 am daily.

Signs must not flash, move or be constructed of neon materials.

**Reason:** To ensure residential premises are not affected by inappropriate or excessive illumination. (DACPLG11)

29. **Illumination Intensity and design**

The level of illumination and/or lighting intensity used to illuminate the signage is to be minimised and the design is to be such to ensure that excessive light spill or nuisance is not



caused to any nearby premises.

Reason: To ensure appropriate forms of signage that are consistent with Council's controls and those that are desired for the locality, and do not interfere with amenity of nearby properties. (DACPLG12)

30. **Noise from waste collection and deliveries**

Deliveries and waste collection services (including trade waste) must only occur during the following hours:

- Weekdays - 6.30am - 7.00pm
- Weekends and Public Holidays - 8.00am - 7.00pm

Reason: To minimise disruption to neighbouring properties

31. **Disposal of Bottles**

The disposal of bottles within the premises to the dedicated bin room must only occur between the following hours:

- Weekdays - 7.00am - 7.00pm
- Weekends and Public Holidays - 8.00am - 7.00pm.

Reason: To minimise disruption to neighbouring properties.

32. **Disposal of Rubbish (excludes bottles)**

The disposal of rubbish (excludes bottles) within the premises to the dedicated bin room must only occur between the following hours:

- Weekdays - 7.00am - 9.00pm
- Weekends and Public Holidays - 7.00am - 9.00pm.

Reason: To minimise disruption to neighbouring properties.

33. **Use of external staircase**

Staff are not to enter or exit the building via the external service staircase before 7.00am and after 9.00pm Monday to Sunday and including Public Holidays.

Reason: To minimise disruption to neighbouring properties.

34. **Consent not granted for hand painted wall signs**

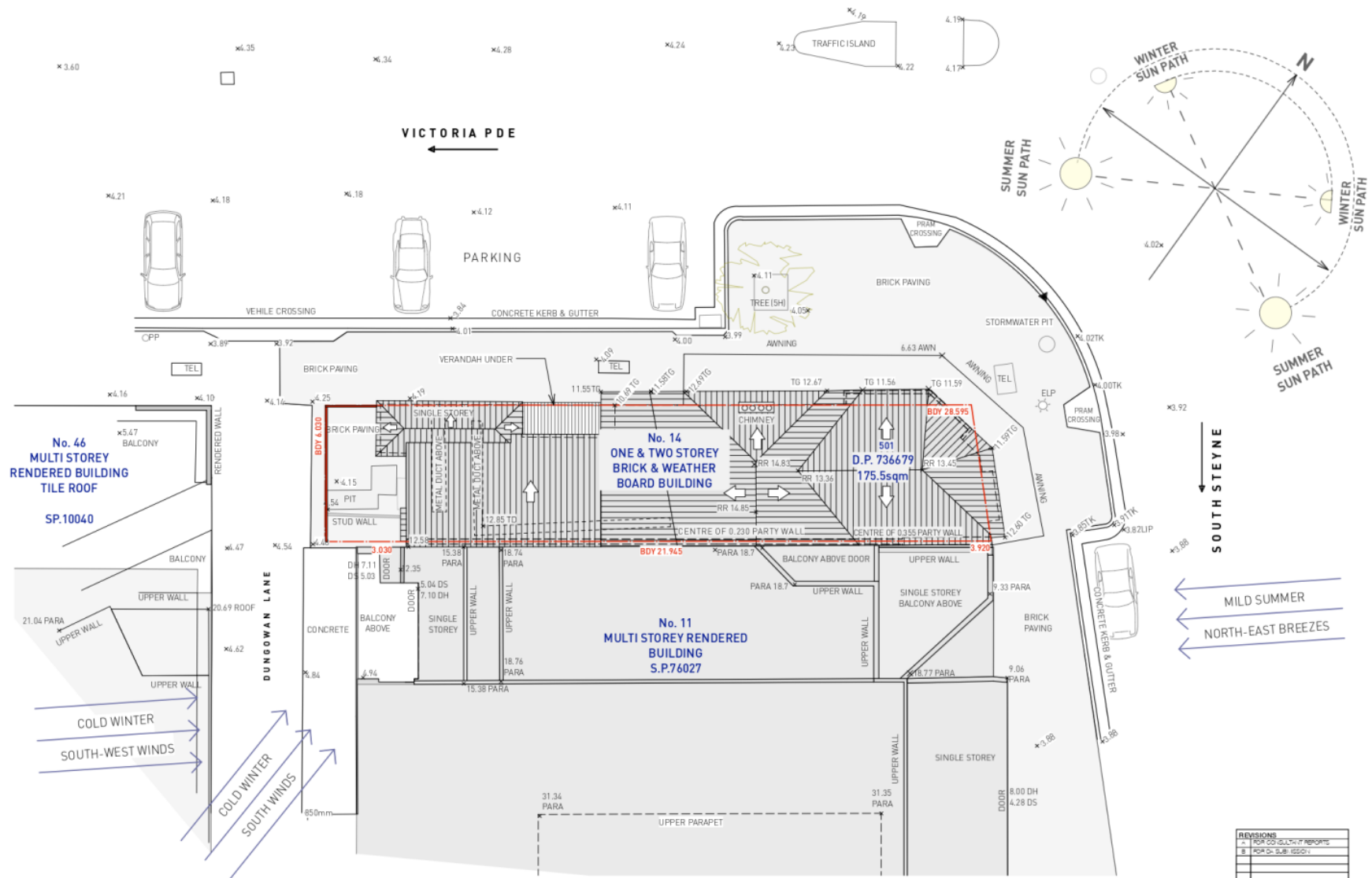
Consent is not granted for the three (3) hand painted wall signs proposed as part of the subject application. Any future signage is subject to a separate development application.

Reason: To ensure a design which is in keeping with the character of the heritage item.

35. **Waste collection and storage**

Waste collection contractors must retrieve waste bins from the bin room and replace them in the bin room. Waste bins must not be presented or left in the road reserve for emptying.

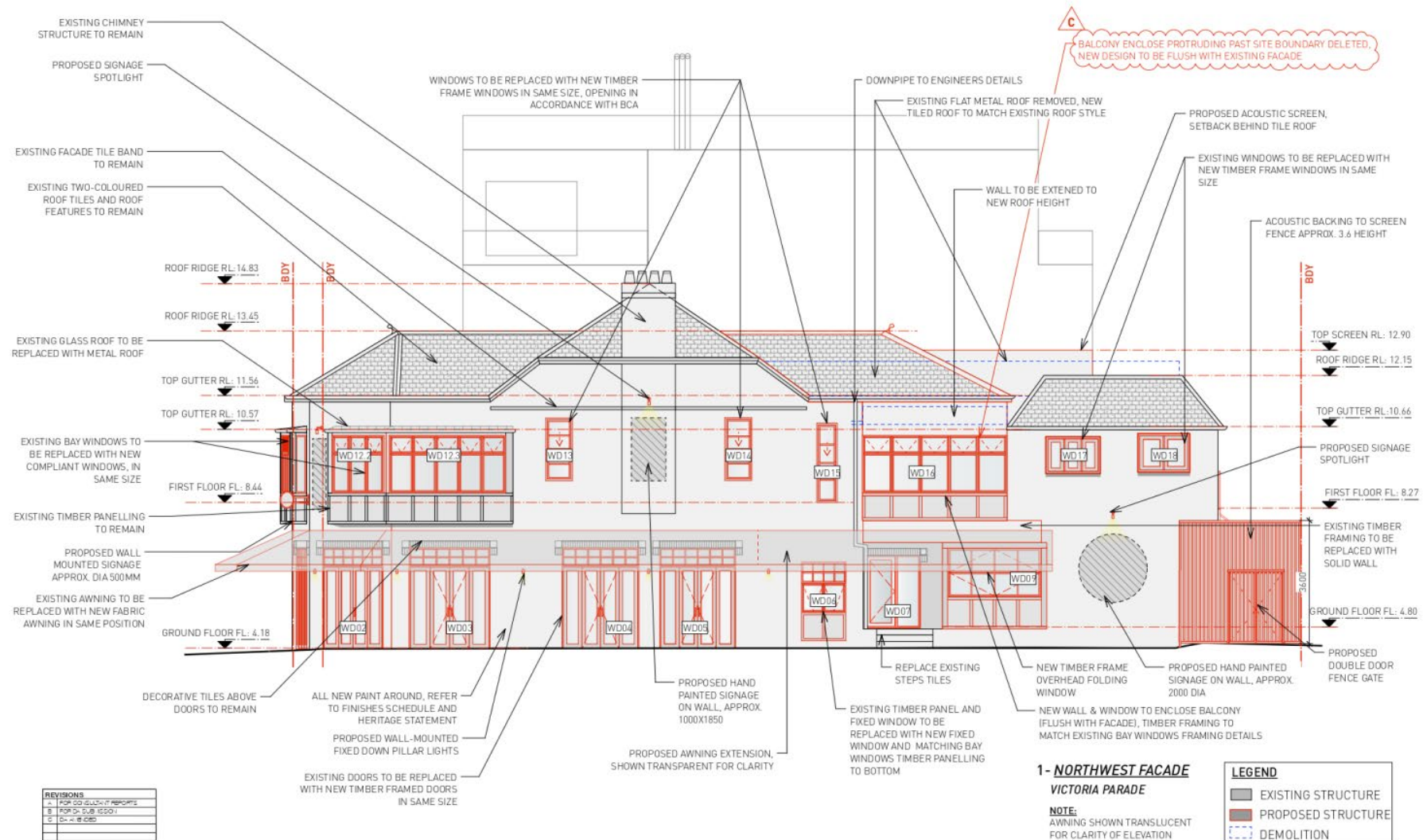
Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.



DEVELOPMENT APPLICATION (DA)

SITE ANALYSIS/ CONTEXT PLAN

Scale	Project & Address	Client	DWG No	Revision	Date
0 1 2 3 4 5m 1:150@A3	Alterations to existing commercial building 14 South Steyne Manly NSW 2095	-	DA 01	B	02/03/21
BUILDINGSTUDIO       concept   building design   interior       U+I BUILDING STUDIO       E: info@uibuildingstudio.com       W: www.uibuildingstudio.com       U+I					



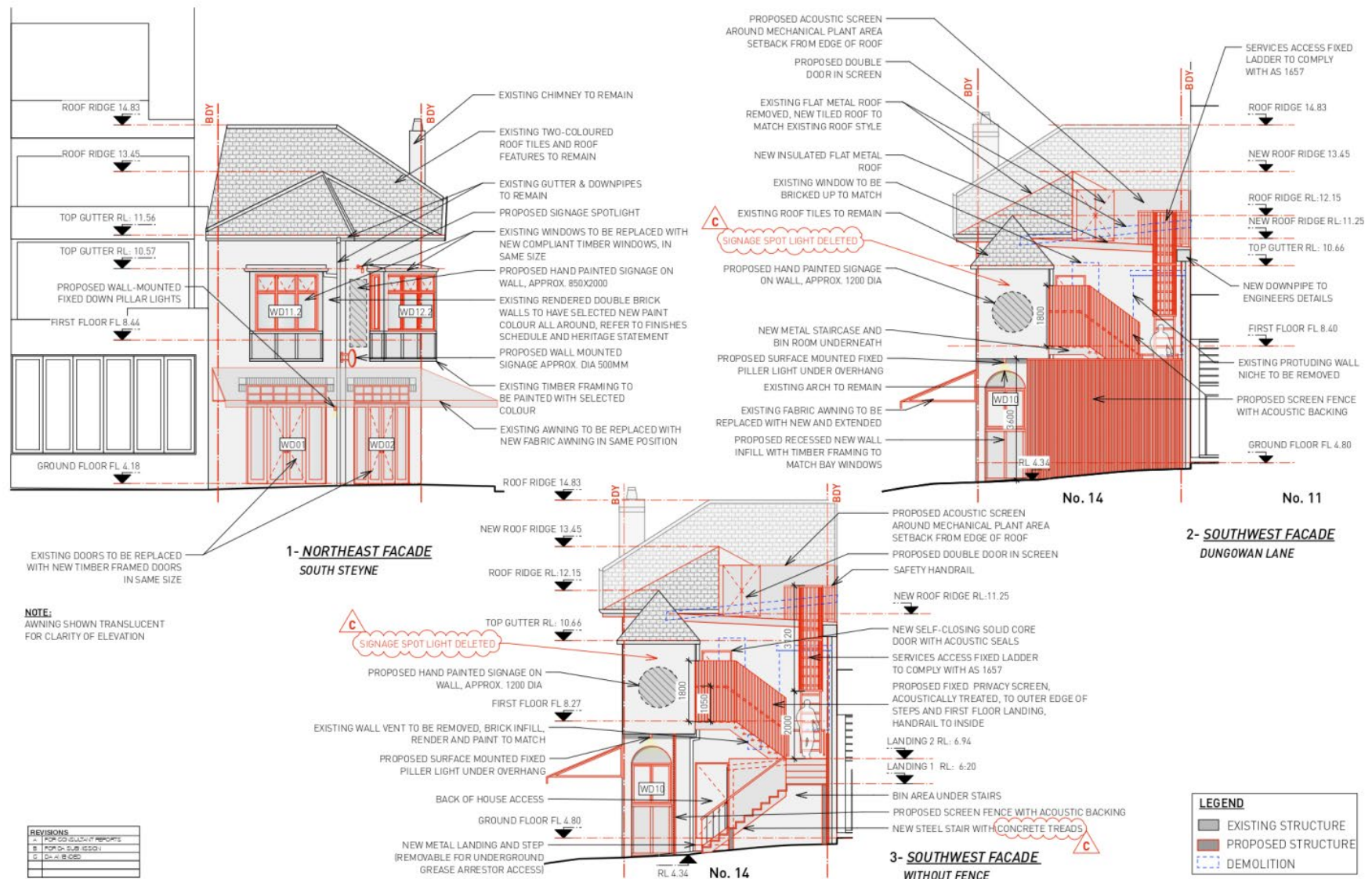
REVISIONS
A. FOR SOLUTION REPORTS
B. FOR SUB REPORTS
C. FOR SUB REPORTS

**DEVELOPMENT APPLICATION (DA) - NOT FOR CONSTRUCTION**

**PROPOSED ELEVATION**

Scale	Project & Address	Client	DWG No	Revision	Date
0 1 2 3 4 5m 1:100@A3	Alterations to existing commercial building 14 South Steyne Marly NSW 2075/ LOT 501/ DP736679		DA30	C	03/06/21





REVISIONS
1. TOP TO SUBMIT REPORTS
2. TOP TO SUB 15/07/21
3. SUB 15/07/21

**DEVELOPMENT APPLICATION (DA) - NOT FOR CONSTRUCTION**

**PROPOSED ELEVATIONS**

Scale	Project & Address	Client	DWG No	Revision	Date
1:100 (BA3)	Alterations to existing commercial building 14 South Steyne Manly NSW 2095/ LOT 501/ DP736679		DA31	C	03/06/21
BUILDINGSTUDIO	concept   building design   interior	U+I BUILDING STUDIO	E: info@uibuildingstudio.com	W: www.uibuildingstudio.com	

Justification for the Variation to a Development Standard

## 14 South Steyne, Manly

### Justification for a Variation to a Development Standard

#### FSR Control – Manly Local Environmental Plan, 2013.

#### 1 Purpose

A variation to the Floor Space Ratio (FSR) development standard contained in clause 4.4 of the Manly Local Environmental Plan, 2013 (MLEP) is requested pursuant to the provisions contained in clause 4.6 of the instrument. The proposed development is assessed in terms of permissibility and environmental impact in the accompanying Statement of Environmental Effects.

#### 2 The Site and its locality.

The subject site is located at 14 South Steyne Manly 2095. The land is described as lot 501 in DP 736679 in the Northern Beaches Council Area.

The land is irregularly shaped with a total area of approximately 175.5m<sup>2</sup>. The property is a two-storey brick building, located on a corner block bounded on the north by Victoria Parade and on the east by South Steyne Street. Dungowan Lane is located on the western boundary of the property.

The panoramic view of the residents from surrounding units will be unaffected as the height and boundaries of the building are unchanged by the proposed alterations and additions.

#### 3 The Development Standard and the extent of non-compliance

Clause 4 of MLEP provides that the maximum floor space ratio for a building on any land is not to exceed the floor space ratio for the land as shown on the relevant floor space ratio map. The subject property is within an area mapped as "S" on the floor space ratio map. Buildings on land in area "S" have a maximum FSR of 1.5:1.

As shown in the statement of environmental effects (SEE) accompanying the application for the proposed alterations and additions, current and proposed FSR are as follows:

Site Area:	175.5 m <sup>2</sup> .		
Existing Floor Space	252 m <sup>22</sup> .	Existing FSR:	1.43:1
Proposed Floor Space	273 m <sup>2</sup> .	Resulting FSR:	1.55:1

The calculation of the existing and proposed FSR is documented on Drawing DA 100 in the Architectural Drawing set contained accompanying the SEE.

The main reasons for the additional FSR are:

#### Justification for the Variation to a Development Standard

- To include areas freed up by the rationalisation of existing accessways and staircases: and
- To enclose various bay windows and balconies to improve safety and reduce noise impacts.

The additional 21m<sup>2</sup> of floor space above the existing floor space includes the following:

- ground floor part verandah enclosed 4.5m<sup>2</sup>,
- rear yard niche enclosed 2m<sup>2</sup>,
- original building has two stair void, new proposal only one smaller stair void, this adds 5 m<sup>2</sup>, and
- first floor enclosed balcony 9.75m<sup>2</sup>.

#### 4 Flexibility in the Application of Development Standards

Clause 4.6 of MLEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. The purpose of this provision is to provide flexibility in the application of development standards and to achieve better environmental and planning outcomes.

In order to vary a development standard Council must receive in writing a justification from the applicant which demonstrates the following:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- There are sufficient environmental planning grounds to justify contravening the development standard;
- 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;
- Whether the contravention of the development standard raises any matter of significance for State or Regional Planning; and
- The public benefit of maintaining the development standard.

#### 5 Justification

The justification for an increase in the FSR from 1.50:1 to 1.55:1 resulting from the proposed alterations and additions to 14 South Steyne, Manly is based on the following considerations.

Justification for the Variation to a Development Standard

#### **5.1 Compliance with the development standard is unreasonable.**

Strict compliance with the standard would be unreasonable given the relatively small departure of 21m<sup>2</sup> from the standard proposed compared to the significant improvement to the environmental benefits of the proposed alterations, improved operation of the premises, and the lack of adverse impacts on neighbouring properties.

Compliance with the standard would also be unreasonable because the proposed development is consistent with the objectives of the FSR development standard, the objectives of the R3 Medium Density Residential Zone, and is in the public interest.

#### **5.2 Compliance with the development standard is unnecessary.**

Compliance with the standard is unnecessary in this instance because the overall scale and height of the development will be unchanged. The impact of the existing building is largely unaltered as demonstrated in the accompanying SEE.

The development will not have an adverse impact on the character of the locality or the streetscape of South Steyne and Victoria Parade.

#### **5.3 The proposed variation is justified on environmental planning grounds**

A variation to the FSR control is justified on environmental planning grounds because:

- The operation of the restaurant will be improved as follows:
  - The alterations provides a better designed and more efficient restaurant layout over two levels; and
  - The current handling of waste has been improved to reduce impacts on the neighbourhood.
- The proposed enclosure of balconies and window boxes will reduce noise levels from the restaurant (see acoustic report in the accompanying SEE).
- The increase in floor area has no impact on the visual impact of the building.
- The increase in floor space will not reduce the environmental amenity of neighbouring properties through loss of views, again because the overall height of the building and its setbacks are unchanged; and
- The increase in floor space as proposed will not change the character of the locality.

#### **5.4 The proposed development is in the public interest**

The proposed development is in the public interest because it is consistent with:

- (a) the objectives of the particular standard, and
- (b) the objectives for the development within the R3 Medium Density Zone in which the development is located.



Justification for the Variation to a Development Standard

This is demonstrated in the following summary:

Objective	Consistency
<b>Floor Space Development Standard Objectives</b>	
<i>(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,</i>	<b>Consistent.</b> The bulk and scale of the building is unchanged by the proposed alterations and additions.
<i>(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,</i>	<b>Consistent.</b> Important landscape and townscape features will not be obscured by the proposed development.
<i>(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,</i>	<b>Consistent.</b> The visual relationship between the proposed development and the existing character and landscape of the area will not be changed by this proposal.
<i>(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,</i>	<b>Consistent.</b> The amenity of the locality will be unaltered by the proposed changes. The impacts on views, overshadowing of the current building are unchanged.  In terms of noise, particular attention has been given to enclosing spaces and areas of the restaurant and acoustically treating external doors at the rear of the restaurant.
<i>(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.</i>	<b>Consistent</b> The proposed alteration to an existing building, although not in a business zone, will assist in retaining a local services and employment opportunities.
<b>R3 Medium Density Zone Objectives</b>	
• <i>To provide for the housing needs of the community within a medium density residential environment.</i>	<b>Not applicable.</b> The alterations and additions are to an existing building which is currently lawfully used for restaurant purposes.
• <i>To provide a variety of housing types within a medium density residential environment</i>	<b>Not applicable</b> for the above reasons.
• <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	<b>Consistent.</b> The proposal improves the design and operation of an existing facility which is used by residents and visitors on a daily basis.

Justification for the Variation to a Development Standard

#### **5.5 Matter of significance for State or Regional Planning.**

There are no matters of State or Regional Planning significant which have a bearing on this development application and the proposed variation of the FSR development standard.

#### **5.6 The public benefit of maintaining the development standard.**

There is no public benefit involved in maintaining the standard and no precedent will be created if the standard is varied. On the contrary, the application of flexible standards to individual cases is of itself a public planning benefit.

### **6 Conclusions**

Under the proposed development application, the existing FSR is increased from 1.43:1 to 1.55:1. This represent only an increase of 9.75m<sup>2</sup> above the maximum floor space of 263.25m<sup>2</sup>. This is only a 3.7% variation. For the reasons made in this written statement, Council is justified in varying the FSR development standard that applies to the proposed alterations and additions to the existing building at 14 South Steyne, Manly

## 4.0 NON PUBLIC MEETING ITEMS

ITEM 4.1	DA2021/0115 - 1/57 LAUDERDALE AVENUE, FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING (APARTMENT 1)
AUTHORISING MANAGER	Rebecca Englund
TRIM FILE REF	2021/502154
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

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### PURPOSE

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

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the 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. DA2021/0115 for alterations and additions to a residential flat building (Apartment 1) at Lot 5 SP 33024, 1/57 Lauderdale Avenue, Fairlight subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/0115
<b>Responsible Officer:</b>	Penny Wood
<b>Land to be developed (Address):</b>	Lot 5 SP 33024, 1 / 57 Lauderdale Avenue FAIRLIGHT NSW 2094
<b>Proposed Development:</b>	Alterations and additions to a residential flat building (Apartment 1)
<b>Zoning:</b>	Manly LEP2013 - Land zoned E4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	John Patrick Cronan Jennifer Karen Cronan
<b>Applicant:</b>	Jo Willmore Designs
<b>Application Lodged:</b>	02/03/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	16/03/2021 to 30/03/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 46.6%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 120,000.00

### EXECUTIVE SUMMARY

The application seeks consent for alterations and additions to an existing unit (No. 1/ 57) within the existing development.

The proposed works involve extending the apartment to the north at the sub-floor level to increase the gross floor area by 20.9m<sup>2</sup>. Whilst the actual increase in floor area to Unit 1 is minor, the existing development as a whole already significantly exceeds the maximum FSR by 188.7m<sup>2</sup> or 42%, such that the additional floor area results in a variation to the FSR development standard of 46.6% for the building overall.



The works proposed are contained at the sub-floor level and will be located within the existing building envelope, below the maximum roof height, and do not result in any substantial additional bulk. An assessment of the proposed development standard breach and the accompanying Clause 4.6 written request is undertaken within this report and is found to be satisfactory.

The resultant variation to the floor space ratio development standard exceeds 10% and the proposal is related to a residential flat building (Class 2). As such, the application is referred to Northern Beaches Local Planning Panel for determination.

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

### **PROPOSED DEVELOPMENT IN DETAIL**

The proposed development is for alterations and additions to the existing unit (Unit 1) located within a residential flat building containing four apartments, as follows:

- Remove existing stairs and covered walkway from garage to pool area located along the northern elevation of the property.
- Replace with a new lift from the garage to the pool area which includes a covered walkway from the existing driveway.
- New door located along northern elevation of garage to new covered walkway.
- New decking over existing paved area surrounding existing in-ground swimming pool.
- New replacement stairs from pool area to rumpus room.
- Extend the apartment towards the north into existing subfloor area by 20.9sqm. The proposed new gross floor area includes a walk-in-robe and new laundry.
- Internal re-configuration of existing unit.
- A new pool fence is proposed.
- No changes to the external appearance of the building along the western elevation.

### **ASSESSMENT INTRODUCTION**

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

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

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
Manly 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

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 5 SP 33024 , 1 / 57 Lauderdale Avenue FAIRLIGHT NSW 2094
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Lauderdale Avenue</p> <p>The site is irregular in shape with a frontage of 26.05m along Lauderdale and a depth of 35.340m along the eastern boundary and 72.745m along the western boundary due to the existing access handle. The site has a surveyed area of 898.4m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental insert zone from MLEP 2013 and accommodates 4 apartments over three levels with a vehicular access provided off Lauderdale Avenue and all garages located at street level. The subject unit is located at ground level at the rear of the property with views towards Forty Baskets and North Harbour Reserve. An in-ground swimming pool is located at lower ground floor / sub floor and falls within the title of the subject unit. Access to the swimming pool is provided from the northern elevation of the unit and from the existing access stairs located along the western side of the site. An access handle is located along the western side of the site which provides access to harbour foreshore.</p> <p>The site slopes away from the Lauderdale Avenue (northern boundary) to the rear (southern boundary). At the rear of the site are two residential flat buildings which are accessed from the North Harbour walkway along the foreshore.</p> <p>The site consists of turfed open space at the rear and is also densely vegetated along the boundary providing additional privacy to the subject building.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by residential dwellings and residential flat buildings.</p>

Map:



## SITE HISTORY

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

- DA3816/90 - Alterations and additions to Unit 1. Approved 11 December 1990.

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

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the requirement of a Clause 4.6 Variation as a result of the non-compliant FSR exceeding 10% for the site.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the 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><b>(i) Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic</p>



Section 4.15 Matters for Consideration'	Comments
	impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	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 16/03/2021 to 30/03/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

### REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><b>No objection, without conditions.</b></p> <p>The development application is for alterations and additions to an existing apartment.</p> <p>Council's Landscape Referral section have assessed the application against the Manly Local Environment Plan, and against the following landscape controls of Manly DCP 2013 (but not limited to):</p> <ul style="list-style-type: none"> <li>• section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation,</li> <li>• section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space.</li> </ul> <p>The majority of proposed works are internal or for the extension of the existing unit towards the north and pool area. Existing landscape area is not impacted as all works are upon existing hard surfaces.</p> <p>Landscape Referral raise no objections to the proposed works.</p>

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p><b>No objection, without conditions.</b></p> <p>Council's biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related controls:</p> <ul style="list-style-type: none"> <li>• Manly LEP cl. 6.5 Terrestrial Biodiversity</li> <li>• Coastal Management SEPP cl. 13 Development on land within the coastal environment area</li> </ul> <p>The proposed development is largely confined to within existing built hard surfaces and will not impact on any vegetation or trees. This is supported by the Statement of Environmental Effects (SEE) submitted with the application which states that all existing landscaped areas are to remain so no change to any existing habitat for native fauna and flora.</p> <p>As such, Council's biodiversity referrals team are satisfied that the proposed development complies with the applicable controls listed above.</p>
NECC (Coast and Catchments)	<p><b>No objection, without conditions.</b></p> <p>The 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.</p> <p>The application has also been assessed using Northern Beaches SREP assessment template.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</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><b>State Environmental Planning Policy (Coastal Management) 2018</b> 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</p>

Internal Referral Body	Comments
	<p>the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the 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><b>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</b></p> <p><b>Harbour Foreshores &amp; Waterways Area</b></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><b>Manly LEP 2013 and Manly DCP</b></p> <p><b>Foreshores Scenic Protection Area Management</b></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 and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Jo Wilmore Designs dated 9 December 2020, 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</p>

Internal Referral Body	Comments																		
	<p>the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.</p>																		
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p><b>No objection, without conditions.</b></p> <p>This property is not tagged as being flood affected, however it may be subject to overland flow.</p> <p>Please refer to Development Engineering comments.</p>																		
Strategic and Place Planning (Heritage Officer)	<p><b>No objection, without conditions.</b></p> <p>HERITAGE COMMENTS</p> <p>Discussion of reason for referral</p> <p>The proposal has been referred to Heritage as the subject property is within proximity to a heritage item</p> <p><b>I49 - Esplanade Park and Fairlight Pool</b></p> <p>Details of heritage items affected</p> <p>Details of the item as contained within the Manly inventory is as follows:</p> <p><u>Statement of significance:</u> Part of driveway setting leading up to 'Fairlight House' in the 1850's. Part of Manly's foreshore open space system. Aesthetic.</p> <p>Other relevant heritage listings</p> <table><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>Yes</td><td>Fairlight Pool is on the SREP but is located over 400m to the east.</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> <p>The proposal seeks consent for alterations and additions to a unit within an existing residential apartment building. Proposed work</p>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	Yes	Fairlight Pool is on the SREP but is located over 400m to the east.	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	
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	Yes	Fairlight Pool is on the SREP but is located over 400m to the east.																	
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																		



Internal Referral Body	Comments
	<p>includes internal reconfiguration, landscaping and a new lift. The heritage item is located to the south of the subject site. However the proposed works are obscured from the item as they are located towards the northern road side of the property. As such the proposal is considered to not impact upon the heritage item or its significance.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No          Has a CMP been provided? No          Is a Heritage Impact Statement required? No          Has a Heritage Impact Statement been provided? No</p> <p><b>Further Comments</b></p> <p>COMPLETED BY: Brendan Gavin, Principal Planner</p> <p>DATE: 17 May 2021</p>

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

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

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

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

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

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

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of

contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

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

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

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

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

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

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

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

Despite the building containing 3 storeys and 4 or more dwellings the development is not considered to be a substantial redevelopment or substantial refurbishment of the existing building and not considered to offend Clause (1)(a) generally.

Therefore SEPP 65 does not apply to the proposal.

### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A398984, 9 December 2020).

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

### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

### **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:

The subject land has been included on the 'Coastal Environmental Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environmental 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.

Council's Coast and Catchments have provided comments stating the development application satisfies requirements under Clause 15 of the CM SEPP. As such, it is considered that the application comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

### **Manly Local Environmental Plan 2013**

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

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.9m	N/A	Yes
Floor Space Ratio	FSR: 0.5:1 (449.2sqm)	FSR: 0.73:1 (658sqm)	46.6%	No

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

### Detailed Assessment

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

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	449.2m
Proposed:	658.8m
Percentage variation to requirement:	46.6%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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



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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the*

*different levels of government in the State,*

*(j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- The proposed gross floor area is located within a subfloor space and is not visible from the public domain;
- There will be no change to the landscaped area from the increased floor area.
- No impact to the amenity of the surrounding properties in terms of overshadowing, view loss or loss of privacy.
- The proposal will maintain the appearance of the existing residential flat building and will have no adverse effect on the aesthetic values of the site of the natural scenic qualities of the foreshore.
- The proposed works are compatible with the objectives of the E4 Environmental Living Zone and the desired future character of the locality.

The works represent a minor increase of 20.9m<sup>2</sup> to the gross floor area of the subject unit at subfloor level which will ultimately enclose an alcove area adjoining the swimming pool area. The enclosure of this area will not substantially alter the appearance of the building and achieves a greater internal floor area with adverse visual bulk or amenity impacts. The area to be used is not landscaped or used for the enjoyment of the residents and is currently used for storage. Given the lack of solar access and amenity afforded to this area, the re-purpose of this space for additional floor area is a positive outcome for the occupants of the subject unit. The additional gross floor area will not impact on the amenity of surrounding dwellings as it will not be visible from a public space and will not be visible from Lauderdale Avenue or the foreshore.

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 Floor Space Ratio development standard and the

objectives of the E4 Environmental Living zone. An assessment against these objectives is provided below.

### Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

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

Comment:

The proposed additional bulk to the unit is located at sub-floor level and will not adversely impact the streetscape by virtue of the height and location of works.

*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 increase to gross floor area and bulk is not substantial in the context of the existing development, and will not unreasonably obscure any landscape or townscape features.

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

Comment:

The proposed development will not materially alter the appearance of the existing building and maintains the visual relationship with the character and landscape of the area.

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

Comment:

The proposal will not materially alter the appearance of the existing building and maintains the visual relationship with the character and landscape.

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

Comment:

N/A

### Zone objectives

The underlying objectives of the E4 Environmental Living Zone are:

For the reasons detailed above, the proposal is considered to be consistent the underlying objectives of the E4 Environmental Living zone

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

Comment:

The subject site is located within a sensitive area with access to the harbour foreshore provided via the access handle along the western boundary of the site, however the proposed works are located within the existing building envelope over existing hard surface area which is currently roofed. The proposed works will not alter the existing setbacks or building footprint of the building. The proposed works will have a minimal impact on the amenity of the surrounding buildings

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

Comment:

The development is not anticipated to impact on the subject site in regard to special ecological, scientific or aesthetic values as discussed above.

- *To provide for the continuance of a limited range of existing small-scale water-related business and leisure uses.*

Comment:

N/A

- *To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.*

Comment:

The proposed works to the sub-floor area will not be visible from the public domain. The development will not impact on the existing height of the development and will have a negligible impact on the natural environment.

- *To protect and enhance the natural landscape by conserving remnant bushland and rock outcrops and by encouraging the spread of an indigenous tree canopy.*

Comment:

The development will not impact on the natural landscape as the proposed increase to the gross floor area is located within an existing sub-floor area. No tree are to be removed with no landscaped area being impacted.

**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.

In accordance with Local Planning Panels Direction issued by the Deputy Secretary dated 30 June 2020, the Northern Beaches Local Planning Panel may assume the Secretary's concurrence in relation to the proposed development.

### Manly Development Control Plan

#### Built Form Controls

Built Form Controls - Site Area: 898.4sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	W: 7.2m (based on gradient 1:9)	6.9m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Consistent with prevailing setback	N/A	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	W: 2.4m (based on wall height)	1.4m	41.7%	No
4.1.4.4 Rear Setbacks	8m	No Change	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (494.12sqm)	48% (431.9sqm) (No change)	N/A	No (existing)
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (172.9sqm)	56.6% (280sqm) (No change)	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	No change	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces (no change)	N/A	Yes

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 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 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.5 Landscaping	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	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
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	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

#### Detailed Assessment

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

##### Description of non-compliance

This control requires side setback distances to be one third of the wall height. The wall height of the proposed lift shaft remains largely unchanged in relation to the height however the structure will be located at RL29.65 to accommodate access to the lift. As such, the eastern side setback requirement is 2.3m. The proposed enclosed lift structure results in the replacement of the existing staircase providing access from the lower ground level resulting in a numerically non-compliant western side setback of 1.6m.

It is noted that the existing non-compliant western side setback is 1.4m - 1.8m.

##### 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 location of the lift shaft will replace the existing staircase in a similar location. The lift shaft however will measure 2.6m above the existing roof over the enclosed staircase along the western side of the site. The lift shaft measures 1.8m in width and will be visible when viewed from Lauderdale Avenue. A new timber covered walkway measuring 1.4m in width and 3.2m along the northern elevation of the garage is proposed with a new door providing access to the existing garage. The walkway will remain open along the northern elevation with a glass handrail. Whilst a portion of the lift shaft will be visible from Lauderdale Avenue, an existing wall measuring 1.0m high with hedging along the northern side of the wall will assist in screening the proposed structure and roofed walkway. The lift shaft and roof over the walkway is flat and will sit 500mm below the existing flat roof of the development. The proposed lift shaft and covered walkway is in keeping with the proposed building height and wall height of the existing building and given the development is replacing an existing structure in a similar location, the proposal is not considered to impact upon the aesthetics of the existing streetscape, including the spatial proportions and the landscape character of 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 western side boundary is represented by an existing retaining wall which steps down the site from Lauderdale Avenue with existing and dense vegetation also located along this side boundary. In this instance, the numerical non-compliance to the western side boundary, including the , will not give rise to any unreasonable amenity impacts upon the occupants of the subject site and those of the adjoining property, being 1/59-67 Lauderdale Avenue.

The proposed works do not include any changes to the traffic conditions of the subject site or Lauderdale Avenue, nor will it impact upon the character of the existing streetscape.

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

Comment:

The flexibility of the site is not impacted as a result of the proposed works as the non-compliant western side setback will not give rise to any unreasonable amenity impacts upon the adjoining property.

*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 works are generally located over the existing building footprint at the front of the dwelling consisting of the enclosed staircase. Existing vegetation or natural features will not be impacted as a result of the non-compliant western side setback.

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

Comment:

The subject site is not located within Northern Beaches Bush Fire Prone Land Map 2020.

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

#### **4.1.5 Open Space and Landscaping**

The existing total open space equates to 48% (431.9sqm) of the site area, which does not satisfy the 55% requirement. However, the works do not decrease the existing total open space on the site.

The works do not significantly alter the footprint or envelope of the development and therefore, the existing non-compliance is supported on merit. No further consideration of this control is required for the purpose of this assessment.

The proposed landscaped area (280sqm) is not altered and complies with the minimum percentage of Total Open Space requirement of at least 35% for the site.

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

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

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

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

#### **POLICY CONTROLS**

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

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

A monetary contribution of \$ 600 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 120,000.

#### **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;
- 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

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

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

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

The application seeks consent for alterations and additions to an existing unit within a residential flat building.

The key planning issues considered within this assessment are the proposed variations to the Floor Space Ratio development standard and side setback control.

Notwithstanding the proposed floor space ratio variation of 46.6%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

No submissions were received in relation to the proposed development.

Assessment of the application against the Manly LEP and DCP finds that the development is suitable in the context of the site, and is recommended for approval.

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

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/0115 for Alterations and additions to a residential flat building (Apartment 1) on land at Lot 5 SP 33024, 1 / 57 Lauderdale Avenue, FAIRLIGHT, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan - DA-01	December 2020	Jo Willmore Designs
Floor Plan - DA-02	December 2020	Jo Willmore Designs
Garage Plan - DA-03	December 2020	Jo Willmore Designs
Elevations - DA-04	December 2020	Jo Willmore Designs
Section - DA-05	December 2020	Jo Willmore Designs

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A398984	9 December 2020	Jo Willmore Designs

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Waste Management Plan	1 December 2020	Jo Willmore

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

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

**2. Prescribed Conditions**

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

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

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

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

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

Reason: Legislative requirement.

### 3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



waste/recycling centres.

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

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

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2018
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

#### Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$600.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$120,000.00.

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

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

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

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

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

### 5. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

Reason: To ensure adequate protection of Council's infrastructure.

#### CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

6. **Compliance with Standards**

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

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

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

7. **Vertical Passenger Lift - Acoustic Report**

Prior to the issues of a Construction Certificate, certification by a suitably qualified person shall be provided to the Principle Certifying Authority demonstrating that the noise level from the vertical passenger lift will not exceed 5dBA above background noise when measured from the nearest property boundary.

Reason: To ensure an appropriate level of residential amenity is maintained.

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

8. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

9. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and

disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

10. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

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

11. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Certifying Authority prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

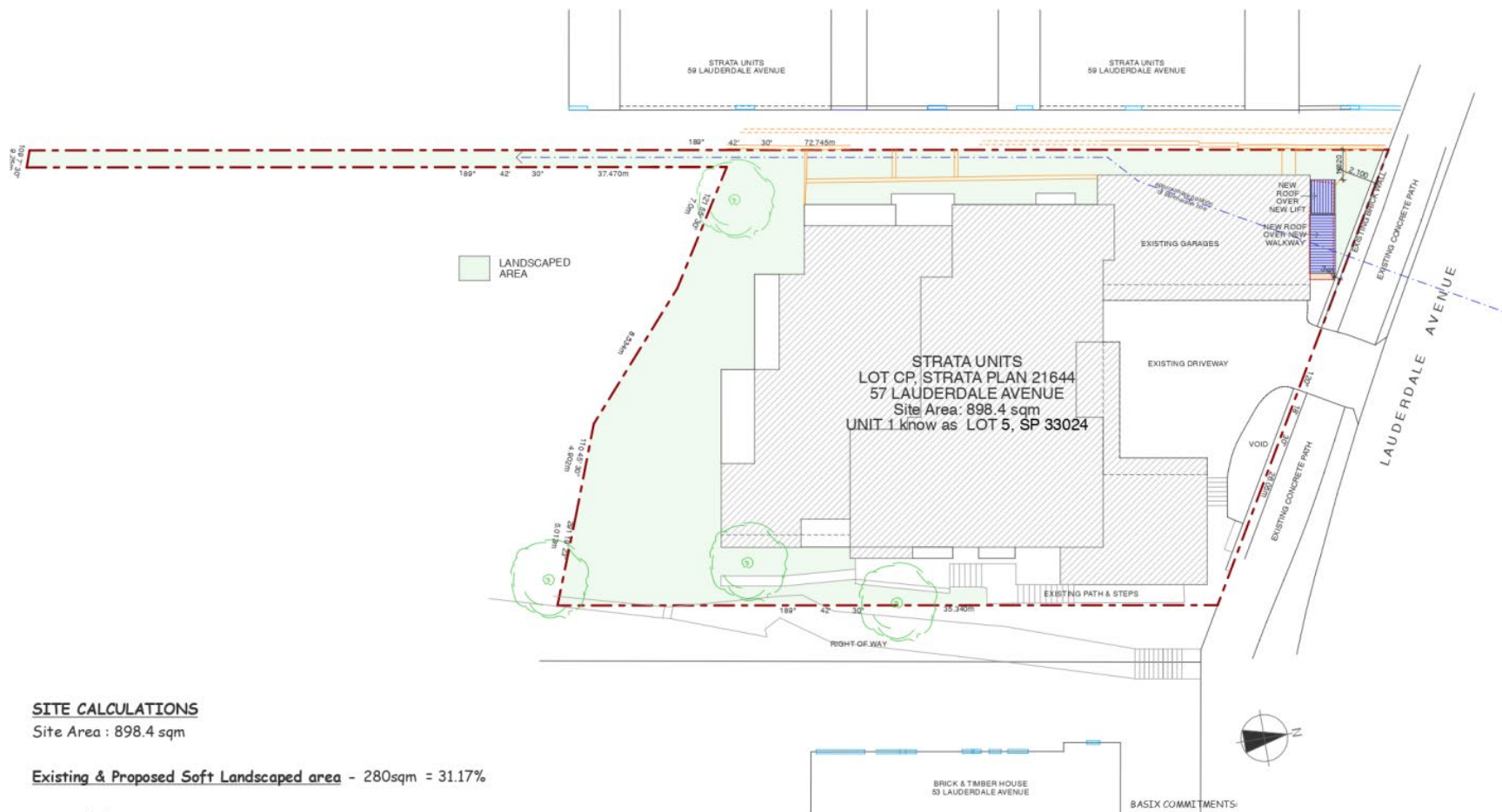
The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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



Reason: To ensure satisfactory management of stormwater.



#### SITE CALCULATIONS

Site Area : 898.4 sqm

Existing & Proposed Soft Landscaped area - 280sqm = 31.17%

Internal Floor area Unit 1

(excludes garage, external bathroom & sauna)-

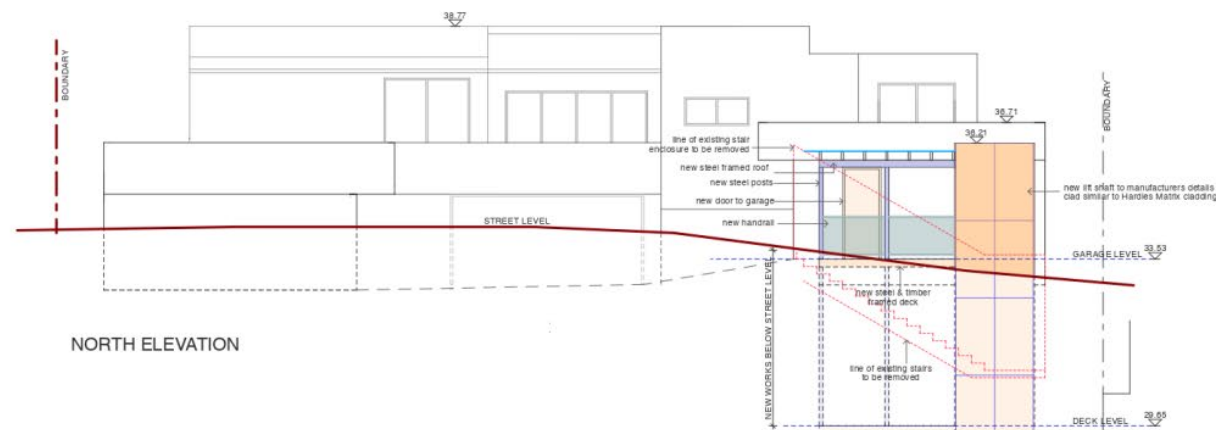
Existing - 228 sqm

Proposed - 257 sqm

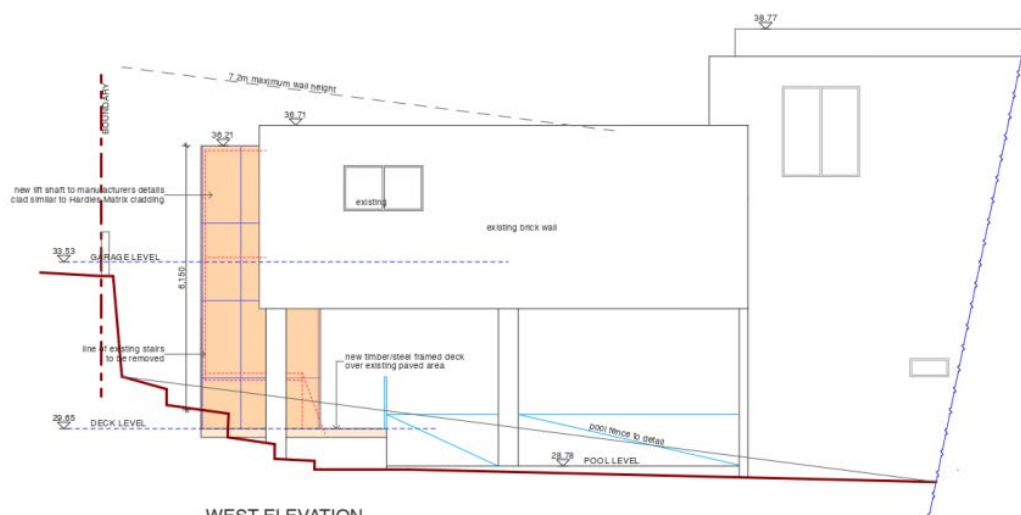
#### BASIX COMMITMENTS:

1. All construction to comply with Basix certificate A398984
2. 40% of all new/alter lighting fixtures to be fluorescent, compact fluorescent or LED
3. Minimum 3 star water rating shower heads to be installed
4. Minimum 3 star water rating toilets to be installed
5. Minimum 3 star water taps to be installed
6. Minimum R1.6 insulation to be installed to all brick veneer walls (minimum combined Rvalue with construction R1.7)
7. Minimum R1.3 insulation to be installed to all external timber framed walls (minimum combined Rvalue with construction R1.7)

AMENDMENTS	JO WILLMORE DESIGNS 11 Hudson Parade Clareville NSW 2107 (02) 9918 2479 ABN 27 370 370 173	PROPOSED ALTERATIONS AND ADDITIONS for: J. & J. Cronan at: Unit 1 57 Lauderdale Avenue FAIRLIGHT, 2094	drawing title <b>SITE PLAN</b>  NOTE: Use figured dimension only. Do not scale off drawings. All levels and dimensions to be verified prior to construction of work.	date: DECEMBER 2020 scale: 1:200 (A3)  drawing number <b>DA-01</b>
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NORTH ELEVATION



WEST ELEVATION

**BASIX COMMITMENTS:**

1. All construction to comply with Basix certificate A398984
2. 40% of all new or altered lighting fixtures to be fluorescent, compact fluorescent or LED
3. Minimum 3 star water rating shower heads to be installed
4. Minimum 3 star water rating toilets to be installed
5. Minimum 3 star water taps to be installed
6. Minimum R1.6 insulation to be installed to all brick veneer walls (minimum combined Rvalue with construction R1.7)
7. Minimum R1.3 insulation to be installed to all external timber framed walls (minimum combined Rvalue with construction R1.7)

<p>AMENDMENTS</p>	<p>JO WILLMORE DESIGNS 11 Hudson Parade Clareville NSW 2107 (02) 9918 2479 ABN 27 370 370 173</p>	<p><b>PROPOSED ALTERATIONS AND ADDITIONS</b></p> <p>for: J. &amp; J. Cronan at: Unit 1 57 Lauderdale Avenue FAIRLIGHT, 2094</p>	<p>drawing title <b>ELEVATIONS</b></p> <p>NOTE: Use figured dimension only. Do not scale off drawings. All levels and dimensions to be verified prior to construction of work.</p>	<p>date: DECEMBER 2020 scale: 1:100 (A3)</p> <p>drawing number <b>DA-04</b></p>
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**REQUEST FOR A VARIATION TO DEVELOPMENT STANDARDS UNDER  
CLAUSE 4.6 MANLY COUNCIL LEP 2013**

.....

**APPLICANTS NAME :** Jo Willmore Designs

**PROPERTY ADDRESS :** 1/57 Lauderdale Avenue, Fairlight

**PROPOSED DEVELOPMENT :** Alterations and additions to existing unit

**DATE :** 13th May 2021

**DEVELOPMENT STANDARD :** Clause 4.4 of Manly LEP 2013 Floor Space Ratio

.....

**INTRODUCTION**

Consent is sought for alterations and additions to Unit 1 at 57 Lauderdale Avenue, Fairlight. The site accommodates 4 strata units with Unit 1 being at the lowest level. The works proposed are only to Unit 1 and include the enclosure of an existing subfloor courtyard area to accommodate a new laundry and walk in robe which will increase the floor area by 29 sqm. The increase to the floor area will result in a breach to the maximum Floor space ratio allowed however as the increase in floor area will have no impact to neighbouring properties and the enclosure of the area can not be seen from any public space we are seeking approval to vary Clause 4.4 Floor Space ratio development standard of Manly Council Local Environmental Plan 2013.

**DEVELOPMENT STANDARD - Clause 4.4 FLOOR SPACE RATIO**

As per *Clause 4.4(2)* The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#)  
- the ratio shown for 1/577 Lauderdale Avenue, Fairlight is 0.5:1.

**OBJECTIVES of Clause 4.4 Floor Space Ratio**

- (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.*



## PROPOSAL

New works are proposed to existing Unit 1 at 57 Lauderdale Avenue, Fairlight. The proposed works include a new lift from the garage to pool area, new covered walkway from driveway to new lift, new deck to pool area, minor modification to internal layout of unit and enclosing part of the external pool/entertaining area to provide for a new laundry and walk in robe. This area is presently under-utilised as it is an extremely dark and uninviting space due to it being enclosed on 3 sides by existing walls and situated below the the upper levels of the development. The space is disconnected from the pool area and presently only used for storage. It is the enclosure of this space which will increase the floor area by 29 sqm and hence increase the FSR.

THE FSR for the site will be as follows

Internal floor area UNIT 1 - 257 sqm  
Internal floor area UNIT 2 - 122 sqm  
Internal floor area UNIT 3 - 130 sqm  
Internal floor area UNIT 4 - 139 sqm

TOTAL FLOOR AREA = 648sqm FSR = 0.72:1

As can be seen the FSR is above the maximum FSR allowed of 0.5:1 however as the proposed area that is to be enclosed is to a subfloor space and is not visible from the public domain - either neighbours, street or foreshore, the increased floor area and non compliant FSR will have no impact on any neighbouring properties or the existing or future desired streetscape character.

Though non compliant all the objectives of the clause will be met. The proposed increase floor area being below the existing built form will not increase the bulk and scale of the development nor change the building form or height. There will be no change to the landscaped area or landscaping from the increased floor area and no landscape or townscape features will be obscured. Again as none of the increased floor area can be seen from the surrounding area there will be no impact in terms of overshadowing, view loss or privacy loss to any neighbours from the non compliant FSR. The works will maintain a low impact residential development with no adverse effect on the aesthetic values of the site or the natural scenic qualities of the foreshore and with no loss of vegetation or change to existing character of the site the works though non compliant will be compatible with E4 zoning and the desired future character of the locality.

## CLAUSE 4.6 of PLEP 2014 EXCEPTION TO DEVELOPMENT STANDARDS

Clause 4.6 of PLEP 2014 does provides for variation to this development standard to be approved

(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.*

Also-

- (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,*

Pursuant to Clause 4.6 we are requesting the variation to clause 4.4 Floor Space Ratio of Manly LEP 2013 as we feel that the proposed works is not '*expressly excluded from the operation of this clause*' and provides a better outcome for residents of Unit 1 than a fully compliant proposal by utilising a space which is currently an unattractive and unappealing area but maintains significant outdoor entertaining space around the existing pool. Strict compliance is unnecessary as the proposed works which increase the FSR will not be seen from any public area, it will comply with all the objectives of the FSR control as set out above and will have no impact on the amenity of surrounding neighbours in terms of view loss, privacy or increased overshadowing. It is our opinion that there are 'sufficient environmental planning grounds' to justify contravening the development standard' and compliance with this standard is unreasonable and unnecessary and as such we request a variation to the standard.

**SIGNED BY APPLICANT:**



**ITEM 4.2****DA2021/0448 - 28-33 SOUTH STEYNE, MANLY - SUBDIVISION  
OF 10 EXISTING TORRENS TITLE LOTS INTO FIVE (5) NEW  
TORRENS TITLE LOTS****AUTHORISING MANAGER** Rebecca Englund**TRIM FILE REF** 2021/502224**ATTACHMENTS**  
1 Assessment Report  
2 Site Plan & Elevations

Click or tap here to enter text

**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is the council.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/0448 for Subdivision of 10 existing Torrens Title Lots into five (5) new Torrens Title Lots at Lot 1-5 DP 1255547, Part Lots 1 & 2 DP 1030165, Lots 1 & 2 DP 1030165, Lot 7 DP 861591 & Lots 10 & 11 DP 861592 28-33 South Steyne, Manly subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/0448
<b>Responsible Officer:</b>	Watermark Planning - Sarah McNeilly (external consultant)
<b>Land to be developed (Address):</b>	28- 33 South Steyne, Manly Lot 7 DP 861591; Lot 5 DP 1255547; Lot 10 DP 861591; Lot 4 DP 1255547; Lot 11 DP 861591; Lot 3 DP 1255547; Lot 2 DP 1020165; Lot 2 DP 1255547; Lot 1 DP 1030615; Lot 1 DP1255547.
<b>Proposed Development:</b>	Consolidation of ten (10) existing Torrens Title allotment and subdivision into five (5) new Torrens Title allotments
<b>Zoning:</b>	Manly LEP 2012 - B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Road Reserve - Northern Beaches Council 28-29 South Steyne– SD Company Pty Ltd 30, 31 & 32 South Steyne – Knarf Holdings 33 South Steyne– See Chuan How, Geok Leng Tan
<b>Applicant:</b>	Northern Beaches Council
<b>Application Lodged:</b>	05/05/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	11/05/2021 to 25/05/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	No
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$0

### EXECUTIVE SUMMARY

The application has been referred to the Northern Beaches Local Planning Panel (NBLPP) as Northern Beaches Council is the applicant for the DA and is one of the landowners.

The proposal consists of the consolidation of ten (10) existing Torrens Title allotments and the subdivision into five (5) new Torrens Title allotments at 28-29 South Steyne, Manly.





The application is a result of the closure of part of the western side of South Steyne and Council is now seeking to transfer lots created in the road closure process to the adjoining lot, consolidating the land with existing lots and providing a more uniform and traditional lot layout.

Two (2) submissions were received during the notification period, raising historical issues of illegal construction on the roof of existing buildings, implications for future greater floor space ratio and development of the street front.

## PROPOSED DEVELOPMENT IN DETAIL

The subject development application proposes the consolidation of (10) existing Torrens Title allotments and the subdivision into five (5) new Torrens Title allotments at 28-33 South Steyne, Manly.

The proposed lots are to be consolidated:

Address	Main Lot	Area(m <sup>2</sup> )	Road lot	Area(m <sup>2</sup> )	New lot area(m <sup>2</sup> )
28-29 South Steyne	<b>Lot 7 DP 861591</b>	339.8	<b>Lot 5 DP 1255547</b>	47.8	<b>387.6</b>
30 South Steyne	<b>Lot 10 DP 861591</b>	186.7	<b>Lot 4 DP 1255547</b>	26.2	<b>212.9</b>
31 South Steyne	<b>Lot 11 DP 861591</b>	172.5	<b>Lot 3 DP 1255547</b>	22.6	<b>195.1</b>
32 South Steyne	<b>Lot 2 DP 1020165</b>	185.2	<b>Lot 2 DP 1255547</b>	22.6	<b>207.8</b>
33 South Steyne	<b>Lot 1 DP 1030615</b>	197.6	<b>Lot 1 DP 1255547</b>	27.1	<b>224.7</b>

The consolidation of the lots will allow for the small excess road frontage lots created when South Steyne was partially closed on the western side to be consolidated into the main land lots they adjoin. The consolidation will allow for a more consistent subdivision pattern along South Steyne.

The application does not propose any building works.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 4.4.8 Subdivision

## **SITE DESCRIPTION**

<b>Property Description:</b>	<p>28-29 South Steyne, Manly          Lot 7 DP861591 to be consolidated with Lot 5 DP1255547          30 South Steyne          Lot 10 DP861592 to be consolidated with Lot 4 DP1255547          31 South Steyne          Lot 11 DP861592 to be consolidated with Lot 3 DP1255547          32 South Steyne          Lot 2 DP 1030165 to be consolidated with Lot 2 DP1255547          33 south Steyne          Lot 1 DP1030165 to be consolidated with Lot 1 DP1255547</p>
<b>Detailed Site Description:</b>	<p>The site currently comprises ten (10) lots; five (5) lots comprising shop top housing development and five (5) residual road reserve lots.</p> <p>The five (5) lots containing shop top housing development are located to the western side of South Steyne, with each lot separated from the public roadway by one of the residual road reserve lots.</p> <p>Neighbouring lots on South Steyne extend to the footpath and are not burdened by the excess road lots.</p> <p>The site is zoned B2 Local Centre.</p> <p>Surrounding development is primarily commercial/retail with Manly Corso located to the north-west of the site and Manly Beach immediately across South Steyne to the east.</p>



## SITE HISTORY

**DA5294/92** (28-29 South Steyne) — Proposed alterations and additions to existing building creating a mixed three storey commercial, residential and retail development – Approved 2 June 1992.

**DA468/2000** (30-32 South Steyne) — Mixed use retail, commercial and residential development consisting of five levels, plus a roof top terrace and recreation room, and ten (10) parking spaces accessed from Rialto Lane – Approved 29 January 2001

**DA521/2000** (33 South Steyne) — Four (4) storey mixed-use development comprising two (2) levels of restaurants and a four (4) bedroom dwelling above with two (2) carparking spaces – Approved 29 January 2001.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan from 11 May 2021 to 25 May 2021.

As a result of the public exhibition process council is in receipt of two submissions from:

Name:	Address:
Doug Sewell	14 Woodland Street, Balgowlah Heights 2093
Fiona Zwart	732/25 Wentworth Street, Manly

The matters raised within the submissions are as follows:

- *The proposal will have an adverse impact on the streetscape with inconsistent design.*





Comment: No physical works are proposed by the subject application which is for subdivision only. Should the owners consider changes on the street frontage, this would be subject to a separate Development Application.

- *The proposal will add FSR to the sites which will be used to develop the existing buildings' heights*

Comment: The Floor Space Ratio control that applies to the allotment will not change as a result of this application, however a small additional amount of floor area may be allowed if any future redevelopment of the sites were to occur.

However, this application does not propose any change to the built form. Such a proposal would be subject to a separate development application, and would be considered on its merits and against Council controls at such time.

- *The existing buildings were constructed beyond the height standard*

Comment: This is not relevant to this application, which involves no built works.

- *Development consent should be conditional that unauthorised structures are removed for 30, 31 and 32 South Steyne.*

Comment: It is acknowledged that there is a complicated history with the above-mentioned sites as detailed in the objector's correspondence. It is understood that non-complying works were undertaken on the roof terrace and this matter resulted in a protracted proceedings including the involvement of the Ombudsman. However, it is understood that this matter was resolved to Council's satisfaction.

Should any further issues of unauthorised works be outstanding, this is a matter to be considered by Council's Compliance Officer and is not relevant to the current subdivision application.

## REFERRALS

Internal Referral Body	Comments
Engineering	<p><b>No objection, with conditions.</b></p> <p><i>The proposed consolidation of Lots 1 to 5 of DP 1255547 with each of the respective lots adjoining these lots i.e. Lot 1 and 2 of DP 10130165, Lot 10 and 11 of DP 861592 and Lot 7 of DP 861591 is satisfactory. The application includes the owners consent for the parcels involved.</i></p> <p><i>No objection to approval, subject to conditions as recommended.</i></p> <p><i>The proposal is therefore supported.</i></p>

### External Referral

No external referrals were required for the application.

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

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



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

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
on the natural and built environment and social and economic impacts in the locality	<p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for a residential 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.

#### **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.

#### **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.

#### **STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS) AND STATE REGIONAL ENVIRONMENTAL PLANS (SREPS)**

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

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 retail/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. No building works are proposed.

#### **State Environmental Planning Policy (Coastal Management) 2018**

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



The subject land has not been included on the Coastal Vulnerability Area Map under State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP).

**Clause 13. Development on land within the coastal environment area**

The site is mapped as 'Coastal Environment Area' by State Environmental Planning Policy (Coastal Management) 2018, accordingly the consent authority must consider clause 13 of the SEPP.

*(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,*

The proposed development involves no physical works and will not impact upon the biophysical, hydrological or ecological environments.

*(b) coastal environmental values and natural coastal processes,*

There will be no impact on environmental values or 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,*

The proposal will not result in a decrease to water quality leaving the site.

*(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*

There will be no impact on vegetation, habitats, headlands or 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,*

The proposed development will not result in any change to the existing access to and along the foreshore and beach.

*(f) Aboriginal cultural heritage, practices and places,*

There will be no impacts on Aboriginal cultural heritage, practices and places.

*(g) the use of the surf zone.*

There will be no impact on the surf zone.

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

The site is mapped as 'Coastal Use Area' by State Environmental Planning Policy (Coastal Management) 2018, accordingly the consent authority must consider clause 14 of the SEPP.

Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

*(a) has considered whether the proposed development is likely to cause an adverse impact on the following:*

*(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

The proposed development will not result in any change to the existing access to and along the foreshore and beach.



(ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*

The proposed development does not increase overshadowing or wind funnelling with no built works proposed. There will be no loss of views from public places to foreshores.

(iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*

There are no built works proposed and accordingly the scenic quality of the coast is maintained and unchanged.

(iv) *Aboriginal cultural heritage, practices and places,*

(v) *cultural and built environment heritage, and*

There will be no impacts on heritage.

(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*

There will be no adverse impacts as referred to in (a).

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

There will be no impact as there are no proposed built works.

#### 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 Size	N/A	N/A	N/A	N/A
Height of Buildings	12m	unchanged	N/A	N/A
Floor Space Ratio	3:1 (28-29) – 1162.8m <sup>2</sup>  (30- 32) -1847.4m <sup>2</sup>  (33) – 674.1m <sup>2</sup>	(28-29) - 716.6m <sup>2</sup> 1.85:1  (30- 32) -1806.1m <sup>2</sup> 2.93:1 (33) – 358.1m <sup>2</sup> 1.59:1	N/A	Yes



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### Floor Space Ratio

Floor space ratio calculations have been done separately for each building/ownership parcel rather than each individual lot ie Nos. (28-29), (30, 31, 32) & (33). This has been completed in this manner as some of the lots, which are under the same ownership, have one building that contains tenancies/units extending across multiple lots on each level.

### Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision – consent requirements	Yes
4.1 Minimum Subdivision Lot Size	Yes

### MANLY DEVELOPMENT CONTROL PLAN

#### Built Form Controls

These are not relevant to this application

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.3 Landscaping Design	Yes	Yes
3.3.1 landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking/Privacy. Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
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)	Yes	Yes
4.2.2 Height of Buildings (Considerations of Exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car Parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.5 Manly Town Centre and Suburbs	Yes	Yes
4.2.5.3 Carparking and Access	Yes	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.4 Awnings	Yes	Yes
4.4.2 Awning supported from the ground	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes
5 Special Character Areas	Yes	Yes
5.4 Environmentally Sensitive Lands	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps Accompanying the DCP	Yes	Yes

#### Detailed Assessment

##### **4.4.8 Subdivision**

The proposed lot consolidation will bring the development into compliance with **4.4.8.2 Prevailing Subdivision Pattern and natural features**. The existing lot layout is inconsistent with neighbouring sites. The lot consolidation will allow for a more traditional and simplified lot layout, in line with the requirements of the DCP.

#### **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.



## 7.12 CONTRIBUTIONS

The proposal is not subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019 as there are no costs of works associated with the 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

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

## RECOMMENDATION

THAT Council, as the consent authority APPROVE Development Consent to Development Application No DA2021/0448 for the subdivision of 10 existing Torrens Title Lots into five (5) new Torrens Title Lots at 28-33 South Steyne MANLY, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Plan of consolidation of Lot 1 in DP1255547 & Lot 1 in DP1030165, Lot 2 in DP1255547 & Lot 2 in DP1030165, Lot 3 in DP1255547 & Lot 11 in DP861592, Lot 4 in DP1255547 & Lot 10 in DP861592, & Lot 5 in DP1255547 & Lot 7 in DP861591	10/06/2020	Paul Barry Byrne

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

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

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

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

### 2. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:





- A. the name and licence number of the principal contractor, and
- B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
  - A. the name of the owner-builder, and
  - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

### 3. General Requirements

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

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried



- out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
  - (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
  - (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
  - (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
  - (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
  - (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
  - (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
  - (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
  - (k) Prior to the commencement of any development onsite for:
    - i) Building/s that are to be erected
    - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
    - iii) Building/s that are to be demolished
    - iv) For any work/s that is to be carried out
    - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
  - (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
  - (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork



NSW Codes of Practice.

- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2018
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

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

##### 4. Subdivision Certificate Application (Consolidation)

The Applicant shall submit a Subdivision Certificate Application (Consolidation) to Council for each proposed consolidation, 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.

##### 5. Survey Plan - Building Identification

A declaration by a registered surveyor shall be provided to Council as evidence that the structures are located within the appropriate property and or easement boundaries. This shall be in the form of a copy of the final subdivision plan, with the distances from the boundaries to the



edges of these structures endorsed in red thereon and signed by the registered surveyor.

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

**Reason:** To ensure accurate location of buildings.



PLAN FORM 2 (A2)

WARNING: GREASING OR FOLDING WILL LEAD TO REJECTION

Sheet 1 of 1 Details

